



417 Walnut Street  
Harrisburg, PA 17101-1902  
717 255-3252 / 800 225-7224  
Fax 717 255-3298  
www.pachamber.org

April 12, 2011

Pamela M. Bush, Esq.  
Secretary and Assistant General Counsel  
Delaware River Basin Commission  
P.O. Box 7360  
25 State Police Drive  
West Trenton, NJ 08628-0360

Re: DRBC Proposed Natural Gas Development Regulations

Dear Ms. Bush:

On behalf of its membership comprising thousands of businesses of all sizes and across all industry sectors, the Pennsylvania Chamber of Business and Industry ("Chamber") respectfully offers the following comments and concerns regarding the scope and direction of the proposed Delaware River Basin Commission (DRBC) natural gas development regulations. Most particularly, we encourage the Commission to pursue a revised course that is far more carefully focused on DRBC's core mission of managing *interstate* water quantity and quality, and that avoids duplication of state regulatory programs and encroachment into land use and other regulatory matters that are well beyond DRBC's core mission.

When DRBC was created in 1961, the legislatures of the four Basin States and Congress recognized the benefits of establishing an interstate agency to address water quantity and quality issues of interstate impact and concern. DRBC was created as a *water management* agency, exercising powers delegated from the States to implement regulations and programs designed to avoid interstate conflict and manage water resources in a cooperative manner. At the same time, the legislatures of the States clearly signaled that such powers were to be exercised in a manner that (in the words of the DRBC Company §1.5) will "preserve and utilize the functions, powers, and duties of existing offices and agencies of government ...." Throughout its first fifty years of operation, DRBC has taken reasonable care to adhere to that principle, recognizing that its core mission involves interstate water issues, while other State (and in some cases Federal) agencies have jurisdiction over a wide range of other matters.

For the past fifty years, Pennsylvania has supported DRBC, financially and otherwise, consistently maintaining a level of support beyond that of any other State member jurisdiction. Our commitment is predicated upon an understanding of DRBC's important role, and a belief that its core mission is important to our citizens. At the same time, that commitment is predicated on DRBC continuing to fulfill and focus on its core mission. Particularly during these times when State budgets are challenged and tax resources are limited, it is imperative that all

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agencies (state and interstate) maintain a close adherence to their primary functions, avoiding duplication and extension into areas beyond their core areas of responsibility and expertise.

It is beyond question that the development of unconventional natural gas from the Marcellus and other shales, conducted in an environmentally-responsible manner, presents an important opportunity for our region and nation to provide a "home grown" source of clean energy, as well as broad-based economic benefits. A study conducted by Pennsylvania State University underscores the contribution that Marcellus Shale development has already provided, and its long-term potential in terms of employment, tax revenues, and a source of energy and feedstocks to support a range of industries in the northeastern United States. The fact is that we in the northeast are energy interdependent, and the provision of an ample, long-term supply of natural gas at reasonable prices is critical to all of our states. Chamber members are acutely aware of the importance of reliable, stable priced energy to all of our enterprises – from steel and equipment manufacturing, to petrochemicals and pharmaceuticals. As the mix of electric generation capacity changes, and more efficient forms of electric production (such as combined cycle plants) are pursued, we understand the key role that natural gas will play in providing electricity, as well as heating, for homes, offices and factories across this region.

At the same time, we recognize that this development must proceed in accordance with sound environmental regulations. Pennsylvania has already taken considerable leadership in this regard, with a robust oil and gas regulatory program. That program includes specific siting standards spelled out by statute, and significant recent amendments to its Chapter 78 well construction standards. Pennsylvania administers a focused erosion and sedimentation and stormwater management control program linked to oil and gas permits, including mandatory special best management practices for special protection watersheds. The Commonwealth's program incorporates specific regulatory arrangements governing flowback and produced water management, including recent amendments to 25 Pa. Code §95.10 governing oil and gas wastewater treatment, plus mandates for wastewater reduction plans, impoundment siting and construction standards, and other requirements.

Pennsylvania is not new to regulating oil and gas development; the Pennsylvania Department of Environmental Protection and its predecessor agencies have many decades of experience. Moreover, the Commonwealth has implemented significant increases in the number of regulatory and inspection staff, supported by substantial permit fees, to assure that applications are properly reviewed and sites are regularly inspected.

It is with this perspective that we have reviewed the proposed DRBC natural gas development regulations.

We recognize that DRBC has a role – but it should be a carefully focused role – in addressing the water resource impacts of natural gas development. Like many other enterprises, natural gas development involves water withdrawals; although, as estimated by the Susquehanna River Basin Commission (SRBC), the total quantity of water used by all Marcellus Shale

development in that basin is less than one-half that of the recreation industry and less than just one major power plant. Similarly, natural gas development may theoretically involve wastewater discharges subject to DRBC jurisdiction – albeit, the likelihood of significant new discharges in the Delaware Basin is almost nil given recent amendments to Pennsylvania’s Ch. 95 water quality regulations imposing stringent TDS and chloride standards on all new or expanded oil and gas wastewater discharges (both conventional or unconventional). The Chamber would support even-handed regulation of the oil and gas industry’s surface and groundwater withdrawals and wastewater discharges. The oil and gas industry’s water quantity and quality activities should be treated like every other industry in the Basin – subject to the same standards, the same criteria, and the same procedures.

Our concern, however, arises because the proposed DRBC regulations appear to go far beyond water withdrawals and discharges, into areas that are at best tangential to truly interstate water quantity and quality concerns:

- ***Natural Gas Development Plans.*** Sections 7.3(a) and 7.5 would purport to require project approval dockets for a “natural gas development plan” (NGDP), demanding that every natural gas producer submit for approval detailed plans identifying all of their leaseholds throughout the basin, and laying out their plans for development of those leaseholds, including the siting of all well pads, landscape analyses, endangered species habitat analyses, and “circulation plans” (i.e., traffic pattern analyses) for every well pad, compressor station, pipeline or other related activities. The NGDP provisions essentially mandate a minimum 5-year land use development plan for each operator’s total holdings in the Basin. This requirement clearly goes beyond DRBC’s core mission and Compact authority. DRBC is not a land use agency, or a traffic agency, or an endangered species protection agency. No other industry in the basin is mandated to prepare five year plans for potential development covering all of their properties the Basin; and DRBC is hardly equipped to consider and evaluate such plans for this or any other economic sector. The natural gas development plan proposal is far off the mark in terms of DRBC’s prime functions. It will divert DRBC staff time and effort away from important water issues, while at the same time invading and conflicting with the jurisdiction of a myriad of state and local agencies.
- ***Setbacks and Siting Restrictions.*** Section 7.5 likewise would purport to establish a series of setback requirements and siting restrictions that appear to be “super zoning” efforts – again leaving the arena of water management to venture into land use regulation. In Pennsylvania, state statutes already provide clear and concise setback and siting requirements, and we understand similar measures are in place in New York. There is no need for DRBC to become a super-zoning agency.

- ***Well Pad Development Approvals.*** The Section 7.5 provisions for well pad development approvals also seems to venture beyond the water quantity and quality regulatory focus to address a range of land use and other issues, such as forest disturbance.
- ***Financial Assurances.*** Section 7.3(k) would impose financial assurance (*i.e.*, bonding) requirements in the amount of \$125,000 for every natural gas well, to cover plugging, abandonment and land restoration efforts. State laws already require such bonds, and currently the Pennsylvania General Assembly is considering legislation to update our bonding arrangements to cover the situation presented by unconventional gas wells. Here, DRBC is attempting to become a regional oil and gas well regulatory agency, duplicating State requirements even where DRBC has no authority or expertise in the subject matter. With all due respect, we understand that DRBC lacks a single petroleum engineer, and it is clear that even if DRBC were to have the proceeds of such financial assurances, it lacks any staffing or technical capability to oversee and implement well plugging or site restoration activities in the field. DRBC should be cooperating with the State agencies who already have bonding authority and clearly have such engineering capabilities, rather than inventing a super-regional gas well regulatory program.

We have focused on but a few of the elements of the proposed DRBC regulations to make a point. If DRBC strays into tangential issues, including matters that are well beyond its capabilities and technical expertise, limited Commission staff will be drawn away from addressing core water resource issues that impact all industries and users. We already see a substantial backlog in the processing of project review applications pending before the Commission, and that backlog has a serious negative impact on economic development and rejuvenation across the Basin. Boggling DRBC staff down on non-core issues will further exacerbate that situation, to detriment of all of us in the regulated community who need (and should reasonably expect) timely review of our water-related projects.

Hence, we strongly urge that DRBC refocus its efforts on the water quantity and quality issues that lie within its expertise and fundamental charge. Other aspects of natural gas site development should be left to the States and other cognizant agencies. DRBC may consult and coordinate, but it should refrain from overreaching.

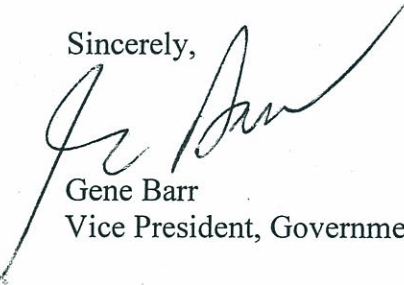
At the same time, we would encourage DRBC to draw upon the considerable and positive experience of the SRBC. We support DRBC's adoption of the approval-by-rule (ABR) approach. But like the SRBC's arrangements, we believe that such approvals must be limited to water related issues, such as consumptive use, and not devolve into a free-ranging regulation of all things related to gas well development and land development.

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It is clearly time for DRBC to get on with the task of adopting reasonable regulations governing the water withdrawal and discharge aspects of natural gas development, honing its programs to address those issues that are interstate in nature. Given its limited budgetary and staffing resources, DRBC needs to act within the sphere of its function and expertise, acting in partnership with and leaving to other federal and state agencies issues that lie within their respective expertise and legal authorities.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Barr", with a long, sweeping horizontal line extending to the left.

Gene Barr  
Vice President, Government & Public Affairs

