



THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

CHRISTINE C. QUINN
SPEAKER

RECEIVED/DELAWARE RIVER
BASIN COMMISSION

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February 16, 2011

Carol R. Collier
Executive Director
Delaware River Basin Commission
P.O. Box 7360
West Trenton, NJ 08628-0360

Dear Ms. Collier:

We are writing to urge you in the strongest possible terms to hold a public hearing on the Draft Natural Gas Development Regulations for the Delaware River Basin in New York City.

As of today date, only three public hearings on the draft regulations have been scheduled by the Commission, but none in New York City or the nearby area.

With so much of our City's water supply at risk of being contaminated by drilling in the Delaware River Basin, we find it deeply troubling and unacceptable that no leaders of New York City government were even approached about having a hearing in the city. The New York City Council has been actively involved in this issue for more than 18 months, and we remain deeply concerned about the impact that hydraulic fracturing could have on our city's health and precious water supply.

Over 300 New Yorkers attended our town hall meeting last August to voice their concerns about hydraulic fracturing. Thousands more have contacted us since then, with several advocacy groups forming across the five boroughs in response to this concern.

An additional hearing on the draft regulations in New York City in late February or early March would give millions of New Yorkers a fair opportunity to weigh in and express their views on this critically important matter directly to the Commission.

Again, we urge to schedule a hearing here in our city.

Sincerely,

Christine C. Quinn
Speaker

James F. Gennaro
Chair, Environmental Protection Committee

cc: Hon. Andrew Cuomo, Governor, State of New York
Hon. Michael Bloomberg, Mayor, City of New York



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April 14, 2011

Ms. Pamela M. Bush
Commission Secretary
Delaware River Basin Commission
25 State Police Drive, P.O. Box 7360
West Trenton, New Jersey 08628

Re: Comments on the DRBC Draft Natural Gas Development Regulations

Dear Ms. Bush:

Introduction

The Council of the City of New York has a number of serious concerns about the proposed regulations for natural gas development. Over the past several years, the New York City Council has held several oversight hearings on the topic of natural gas drilling by hydraulic fracturing in the New York City Watershed.

At these hearings a number of experts, environmental advocates and individuals raised important issues pertaining to the process, environmental analysis and review, lack of cumulative impact analysis and absence of any ability to treat produced wastewater generated by natural gas drilling operations. In particular, we are submitting, for the record, the transcript of the public hearing that the Council held on March 1, 2011 to solicit comments on the proposed Delaware River Basin Commission Natural Gas Development regulations inasmuch as the Delaware River Basin Commission failed to hold any public hearing on the proposed rules in New York City. Additionally, the Council has the following specific comments on the proposed regulations.

DRBC Comments

1. Under the Delaware River Basin Compact, the Delaware River Basin Commission ("DRBC") clearly has authority to deal with water usage including water conservation, control, use and management¹. However, nowhere does the Compact state that the DRBC has authority to issue well pad permits for natural gas development as described in Section 7.5. Where is the DRBC authority to issue well pad permits found?

¹ Delaware River Basin Compact, Article 3, Section 3.1, 3.6, Article 5, Section 5.5.

2. Section 7.3(b) (2) indicates that Commission Approvals come from the Executive Director and the Pennsylvania Commissioner. It does not appear that the New York State Department of Environmental Conservation Commissioner has the same authority as the Pennsylvania Commissioner to, acting jointly with the Executive Director, to grant, deny or condition protected area permit. This position seems inconsistent with Article 1 section 1.3 (b) of the Compact which indicates that the water resources of the basin are subject to "joint exercise of such powers of sovereignty in the common interest of the people of the region".
3. Given the potential dangers of natural gas drilling, Section 7.3(c) (1) (ii), which permits Natural Gas Well Projects to be eligible for Approval by Rule (ABR), the wide discretion apparently vested in the Commission members may result in discretionary decision-making that is not in the interests of the people of New York City and that subject to very limited accountability.
4. Under Section 7.3(e)(1), approvals of water withdrawals and water uses for natural gas development may have terms of up to 10 years but the proposed rule does not indicate whether the ten years would commence from the time when an application is submitted or when the application is approved. It would be more appropriate to have approvals cover a shorter time frame in case mistakes have been made in granting the approval. These approvals could always be renewed if the particular project was proceeding without any problems.
5. Under Section 7.3(e)(2), approvals of Natural Gas Development Plans ("NGDP") may have terms of up to 10 years but the proposed rule does not indicate whether the ten years would commence from the time when an application is submitted or when the application is approved. These Natural Gas Development Plans should be reevaluated periodically given that new NGDP's will constantly be coming in effecting the landscape and layout of areas.
6. Under Section 7.3(e)(3) approvals of well pads for natural gas development may have terms of up to 10 years but the proposed rule does not indicate whether the ten years would commence from the time when an application is submitted or when the application is approved. It would be more appropriate to have approvals of well pads for natural gas covers a shorter time frame in case mistakes have been made in granting the approval. These approvals could always be renewed if the particular project was proceeding without any problems.
7. Sections 7.3(e) (1), 7.3(e) (2) and 7.3(e) (3) should be eliminated in favor of reliance on host state regulation as the proposed rules do in Section 7.3(e) (4).
8. Under Section 7.3(f), if by the third anniversary of the date of approval of a natural gas project, neither construction nor operation of the project has commenced, the approval will be deemed expired. What is the rationale for waiting three years? It would be better

to have approvals deemed expired after one year without any activity. If after the approval expired and the permittee or a successor wants to initiate the same project, would the approval or permitting process start again or would an expired permittee gain any benefit from having once received a permit?

9. Under Section 7.3(i), the project sponsor only has to notify property owners within 2,000 feet of a well pad of its application. Either all property owners should be notified within 4,000 feet or the regulations should defer to the host state.
10. Under Section 7.3(k) (3), Financial Assurances do not appear to cover monetary damages to those who drink contaminated drinking water. Financial assurances should cover costs of remediation for anyone whose drinking water is adversely impacted by gas drilling activities permitted by the Commission.
11. Under Section 7.3(k) (8), Financial Assurances per gas well are \$125,000. The sum of \$125,000 is a pittance compared to the potential harm that may be caused from contamination. Financial assurances should cover all costs of remediation or restoration for natural resources damages that result from contamination.
12. Section 7.3(k) (10), grants the Executive Director of the DRBC tremendous discretion in regard to financial assurances. Where Executive Director of the DRBC has so much discretion to deal with financial assurances, the discretion of the director should be limited by the rules with specific guidelines as well as articulated rationales, and should be subject to appeal and judicial review. Furthermore the Executive Director should exercise his discretion over financial assurances in favor of safeguarding the drinking water instead of protection the interests of natural gas companies.
13. Under Section 7.5(b)(4) some setback requirements are set at the minuscule level of 500 feet, while others defer to the host state. These rules appear to set arbitrary limits and lack a rationale for the discrepancy between these setbacks and host state requirements. Reliance on host state requirements for all setbacks would provide statewide certainty. What if the host state has one setback distance and an adjoining state has a larger setback distance and a project is outside the first setback but inside the second?
14. Under Section 7.5(c) (1) it is not clear whether there any other interests besides leaseholds. Could other interests be implicated? What if the project operator owns the property outright?
15. Under Section 7.5(c) (1) Commission approval is only of an NGDP "after the effective date of these regulations". It would appear to make sense to impose NGDP requirements on anyone drilling for natural gas within the jurisdictional boundaries of the DRBC, not just those who seek permits approval of the regulations.

16. Under Section 7.5(c) (1) the NGDP requirement is applicable only to those with five or fewer natural gas well pads. Since from one well pad, numerous wells could be horizontally drilled, the NGDP requirement should apply to anyone looking to drill, irrespective of the number of well pads they have.
17. Under Section 7.5(iv) (B), recording of non-domestic wastewater is required. As this is a very important and valuable resource, all water use should be recorded.
18. It is stated in Article 7.5(c) (1) that an approved NGDP is required for projects of five or more well pads. Do small projects go through a scaled-down approval process or are they not monitored at all?
19. Article (2) (ii) (A) states that it must be verified that *"the wastewater treatment and disposal facilities have all applicable approvals from the host state and DRBC, if located in the Delaware River Basin. The project sponsor must also verify that the approved wastewater treatment and disposal facilities have the capacity and capability to accept the non-domestic wastewater generated from the hydraulic fracturing operation."* (p 63) If it is rare for a treatment facility to be able to handle this type of wastewater, there will be capacity problems.
20. Article 7.4(c) (3) details the alternate "Approval by Rule" procedure. It would be helpful to know what steps are removed from the standard approval process in order to expedite decisions under the "Approval by Rule" procedure.
21. Commission or State DEP should always conduct a natural diversity inventory assessment separate from that of the project sponsor. 7.5(d)
22. An invasive species control plan should be required for all projects, not just when the Commission deems it necessary. 7.4(d)(x)
23. Is the water data monitored by the Commission in real time, or is there a significant delay? If there is, water withdrawal at a sight may be defying criteria and causing environmental damage but the commission would be unaware until it is too late.
24. It should be specified where the minimum setback requirements for well pads are derived from, i.e. what scientific evidence backs up these space requirements. (7.5(b) (4).
25. Article 7.5(b) (9) about giving a project sponsor a variance on the siting conditions requirements in sections 7.5(b) (3) and (4) if the sponsor proves an "undue burden" may not be strong enough.
26. Section 7.5(b) (9) allows a project sponsor to request a variance to Siting Restrictions in 7.5(b) (3) and Setback Distances in 7.5(b) (4) if the project sponsor demonstrates that

the siting and setback requirements would cause an undue burden for the project sponsor because of reasons affecting the leaseholding but fails to clarify or set standards for what constitutes "an undue burden". There should be clear standards for what constitutes an undue burden.

27. *"A project sponsor who is required to prepare a NGDP may make an application to the Commission for up to five (5) well pad approvals prior to and during pendency of the NGDP application. These five well pad approvals can be any combination of exploratory well pads, stratigraphic well pads, well pads that do not employ hydraulic fracturing, low volume hydraulically fractured well pads, or high volume hydraulically fractured well pads."* (p 51)
- a. This may be the answer to question (19). If this means that up to 5 well pads of any kind can be applied for and carried out without any oversight, that's concerning.
28. *"A project sponsor may also make an application to the Commission requesting an **exemption from the preparation of a NGDP** where the project sponsor demonstrates that: it will propose five (5) or fewer natural gas well pads despite having leaseholds in excess of 3,200 acres in the basin; and the well pad sites are geographically disparate."* (p 52)
- a. This exemption possibility is also concerning.
29. Section 7.6(b) concerning wastewater treatment plant "treatability studies" is vague and inadequate. The rules should proscribe wastewater standards for all the specific chemical elements of the gas drilling wastewater.
30. Regulations should be based on a comprehensive Cumulative Impact Study, not on existing state regulations. These rules fail to take into account the cumulative impacts across multiple wells of water withdrawal and the full life cycle of well development among other topics.

While there may be other problems with the draft regulations as they currently exist, we ultimately believe that the regulations need to be significantly revised to clarify the source of your authority to issue regulations pertaining to natural gas development, to improve financial assurances for damage to the watershed resources, to eliminate the unwarranted discretion of the Executive Director of the DRBC and to increase the protection of the New York City watershed that provides 14 million people daily with potable water.



Speaker Christine C. Quinn



Councilman James F. Gennaro