

# TOWN OF HIGHLAND

Town Supervisor  
ANDREW BOYAR

Highlandsupervisor@hvc.rr.com  
(845) 557-8901  
Fax: (845) 557-0257

PO Box 177  
4 Proctor Road  
Eldred, NY 12732

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Commission Secretary  
DRBC  
P.O. Box 7360  
25 State Police Drive  
West Trenton, NJ 08628.

## **RE: TOWN OF HIGHLAND COMMENTS ON DRBC DRAFT REGULATIONS ON GAS DRILLING**

I am writing on behalf of the Town of Highland in Sullivan County, New York to comment on the draft regulations for natural gas drilling in the Delaware River Basin.

Citizens in the Town of Highland are deeply concerned about the risks of natural gas extraction using the HVSWHFT process, including dangers to our health, safety, property, and economic well-being.

The job of the Delaware River Basin Commission is to protect the exceptional water quality of the Delaware. It would have been prudent for the Commission to insist on the best possible scientific evidence of the long term safety of natural gas drilling or any industrial process proposed for the environs of the Delaware River. Such evidence might be provided by two proposed studies. The first is the upcoming EPA study of hydraulic fracturing and its potential impacts on drinking water, public health and the environment, which is underway and due to be completed in 2012. The second would be the DRBC's own proposed study of the cumulative impacts of natural gas development on the Basin's water resources. Although Congressman Maurice Hinchey of New York secured \$1 million in funding for this study in 2010, DRBC representative Clark Rupert asserted at the February 3 meeting of the UDC in Tusten New York that the agency "had no funding" for such a study.

Given the mounting evidence of serious environmental damage caused by the natural gas industry, these new, comprehensive studies might very well have indicated that drilling in the Delaware Watershed is simply too risky to be allowed with the technologies currently in use. By choosing to fast track the creation of draft regulations instead of waiting for these studies, the DRBC has essentially "grandfathered" its intention to allow drilling to proceed regardless of the risks. It has done so in spite of urgent appeals from New York State officials and the New York City Council, the US Fish and Wildlife Service, the National Park Service, and numerous regional organizations, as well as a host of scientific opinions that have raised serious concerns about the potential hazards of hydrofracking.

The resulting document is rife with the weaknesses and omission such a flawed process was guaranteed to produce. Among the most troubling aspects of the draft regulations:

### **Lack of data on the cumulative impact of water withdrawals and the proposed drilling practices**

Section 7.4 of the draft regulations states the following:

Due to advances in horizontal drilling and hydraulic fracturing technologies, thousands of natural gas development projects are expected to be proposed for the Delaware River Basin. Each will involve land disturbance for such appurtenances as roads, well pads, pipelines, impoundments, and compressor stations; and most will entail the withdrawal, diversion, importation into or exportation out of the basin of surface water, ground water, non-contact cooling water, mine drainage water, and/or treated wastewater. *These uses may have a substantial effect, either individually or cumulatively, on the surface water and groundwater resources of the basin.* [Emphasis added]



Yet the Commission has chosen to proceed with draft regulations in the absence of any comprehensive data on what those cumulative effects may be, and without any substantial, peer-reviewed study of the effects of HVSWHV on fresh water resources and human health, in complete contradiction of the Commission's stated intention to protect the headwaters and groundwater of the Delaware River Basin. This over-arching flaw in the whole process can only serve to call into question the integrity and potential effectiveness of any resulting regulatory framework – a castle built upon sand.

#### **Lack of Enforcement Capability**

The DRBC admits it has no mechanism to enforce its own regulations, and states that it will rely upon the PA DEP and NY DEC for enforcement of its regulations. However, these agencies are already notoriously understaffed. Given the industry's own estimates of the ultimate build-out, it is highly irresponsible for the DRBC to promulgate regulations without a thorough plan and budget for staff and training to implement the necessary enforcement.

#### **Improper Reliance on the Industry**

The Commission will rely upon the oil and gas industry to report violations and police itself, in spite of the fact that independent analysis of PA DEP's own accident records (see attached Pennsylvania Land Trust Report) reveals a troubling history of accidents.

Furthermore, the industry consistently dismisses accidents as part of its learning curve. As recently as February 3, Dr. Terry Engelder of Penn State, one of the industry's most respected proponents, gave a presentation in LaPorte, PA in which he expanded on the often-repeated notion that the industry is learning as it goes and must make mistakes in order to learn from them. He described the property owners of Dimock, PA whose water wells and property values (and possible, their health) have been severely damaged by migration of methane and fracking chemicals through improperly cased wells as having made "a necessary sacrifice for the greater good." ProPublica has reported that in addition to the faulty well casings that caused the blowout in Dimock, the drilling company was also fined for failing to file timely required reports on its operation in the area.

Similarly, it has recently been revealed that the industry has continued to use diesel fuel as a fracking fluid component, despite the fact that the three leading fracking firms, Halliburton, Schlumberger and BJ Services Company, all signed an agreement with the EPA in 2005 promising to stop doing so. This agreement was the basis for the industry's exemptions from the Clean Drinking Water Act and other federal regulations (see attached LA Times April 14, 2005). The industry has responded to these disclosures with defiance, claiming that the rules were properly developed (see attached NY Times, January 31, 2011).

Clearly, the industry's position is to 1) resist regulation; 2) exploit lack of resources at state agencies tasked with oversight; 3) deny culpability; and 4) trivialize the impact of accidents. How can such an industry be trusted to self-report? And, given the DRBC's own characterization of the Delaware River Basin as a unique and critically important water source for 15 million people, how can the Commission contemplate taking such risks without multiple layers of properly-funded oversight?

#### **Over-Reliance of the PA DEP and NYS DEC**

The Commission will rely upon totally inadequate PA regulations (evidenced by the industry's miserable record in the state), and NYS regulations that have not yet been completed.

In November 2010, NYS DEP Commissioner Pete Grannis was fired for exposing the fact that the DEC is critically understaffed and unable to handle even its current burden of duties. In PA, the pro-drilling Corbett administration has signaled its intention to facilitate gas drilling by rolling back "cumbersome" environmental restrictions. Like it or not, the state's regulatory agencies as well as the EPA are vulnerable to budget problems related to the overall health of the economy, and to anti-regulatory political maneuvering at the state and federal level. The DRBC, with its clear mission to protect the Delaware River Basin, should take the lead in proposing tough regulations and insisting upon adequate staffing.

#### **Extraordinary Discretion to the Executive Director**

The Draft Regulations include a highly questionable "Approval by Rule" provision, which allows the DRBC Executive Director extraordinary discretion to approve drilling projects, including additional well pads, without a



full permitting process or public oversight. Throughout the draft regulations, the Executive Director is given authority to streamline or create exemptions from the regulations.

These discretionary powers are particularly troubling when coupled with the notion that costs to the driller may be considered. For example, on page 64, (ii) E, the regulations refer to the Commissioner's power to adjust the required frequency of water sampling if the project sponsor asserts that the sampling is not "economically practicable." This is a slippery slope that opens the door to complaints about the expense of regulatory compliance at every stage of the process.

#### **Financial Burdens to the Taxpayer**

The Draft regulations allow drillers to develop a gas well pad by putting up as little as \$125,000, which can be reduced even further by the Executive Director, leaving an unfair burden on taxpayers to pay the costs of environmental clean-ups.

#### **Limitations on the Review Process**

The DRBC has given stakeholders an unacceptably short time to respond effectively to the 83 pages of draft regulations. The response period should be extended to six months. In addition, hearings should be scheduled in both New York City and Philadelphia, two urban areas that will be intensely affected -- both economically and in terms of public health -- by contamination problems arising from shale gas extraction in the Delaware River Basin. A second comment period and round of hearings should be scheduled when the Commission issues a revised draft of the regulations.

#### **Conclusion**

By issuing its draft regulations without benefit of cumulative impact data or the upcoming EPA study, the Commission has abdicated its official obligation to "protect human health and the environment, including water resources." Far from protecting the Upper Delaware, this action has advanced our region a huge step closer to possible catastrophic contamination of a vital water supply, both for residents of the Upper Delaware and for the 15 million people who rely on the watershed for their drinking water.

The only way to repair this deeply flawed process is to heed the warnings of your Compact members and postpone the issuance of regulations until they can be based upon reliable science. To do anything less is a betrayal of the Commission's purpose and of the public trust.

Very truly yours,

Andrew Boyar  
Supervisor  
Town of Highland  
Sullivan County, New York

#### **Attachments:**

Pennsylvania Land Trust Report, "Marcellus Shale Drillers in Pennsylvania Amass 1435 Violations in 2.5 Years"

LA Times April 14, 2005: "Exemptions Likely To Drilling Rules" by Tom Hamburger

NY Times, January 31, 2011: "Gas Drilling Technique is Labeled Violation" by Tom Zeller, Jr.