

**STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF DELAWARE, NEW
JERSEY, NEW YORK AND PENNSYLVANIA
ON DELAWARE RIVER BASIN COMMISSION'S
PROPOSED NATURAL GAS REGULATIONS**

The League of Women Voters of Delaware, New Jersey, New York, and Pennsylvania believe that natural resources should be managed as interrelated parts of life-supporting ecosystems. Resources should be conserved and protected to assure their future availability. Pollution of these resources should be controlled in order to preserve the physical, chemical and biological integrity of ecosystems and to protect public health.

In regard to our water resources, we support:

- water resource programs and policies that reflect the interrelationships of water quality, water quantity, ground-water and surface water and that address the potential depletion or pollution of water supplies;
- measures to reduce water pollution from direct point-source discharges and from indirect nonpoint sources;
- policies to achieve water quality essential for maintaining species populations and diversity, including measures to protect lakes, estuaries, wetlands and in-stream flows;
- stringent controls to protect the quality of current and potential drinking-water supplies, including protection of watersheds for surface supplies and of recharge areas for groundwater.

With specific regard to the proposed regulations for natural gas drilling from Marcellus Shale in the Delaware River Basin, we support:

- full disclosure of pollution data;
- management of land as a finite resource not as a commodity;
- identification and regulation of areas of critical concern including ... rare or valuable ecosystems; significant wildlife habitats; unique scenic or historic areas; wetlands ... “ and “renewable resource lands, where development could result in the loss of productivity (such as watersheds, aquifers, and aquifer-recharge areas, significant agricultural and grazing lands, forest lands);
- policies to ensure safe treatment, transportation, storage and disposal of solid and hazardous wastes in order to protect public health and air, water and land resources”;

With these positions in mind, we submit the following comments regarding the Delaware River Basin Commission's Proposed Natural Gas Regulations.

Public Notice: The League has long been known for its insistence on adequate public notice of activities affecting public health and the environment.

Section (7.3(i)) p. 18. of these regulations addresses Public Notice.

In subsection (1), we request that County Conservation Districts be added to the local agencies receiving notice of an application submitted to the Commission. Conservation Districts are often

the first **place to which** citizens will turn with a question about a natural resource issue. Because these offices will be the recipients of complaints when an impact on local streams is observed, they need to know what drilling activities are planned in their county.

This section requires that project sponsors place a notice in a local newspaper, “at least once.” We request that that requirement be increased to “at least four times . . .” This is the requirement under the Federal Surface Mining Act and relevant PA laws for coal mining. We see no reason why this competitive resource extraction industry should do less. Public notice requirements should be consistent for all these entities.

This section requires that the notice include, “a description of the project . . .,” but provides little guidance on what should be included in the description. That guidance must be included in these regulations. Some details that we **consider important** include: physical location of the project, including street address and municipality; source of water to be used; what storage will be provided on-site; wastewater disposal and/or on-site reuse; public roads used to access the site; location and description of transmission lines proposed and a public location in the local area where the application and plans can be reviewed. (We suggest that County Conservation Districts be that location.) If water well testing will be provided to local residents, information on the process, nature, and **reporting** of the water evaluation should be included in the notice.

Public Notice - Approval by Rule – Section 7.3 A and elsewhere:

In many instances, these regulations allow for “Approval by Rule (ABR)” for activities relating to gas extraction. Our review finds that most often, the Public Notice section is referenced when ABR is provided. We urge that the Commission staff make sure that Public Notice is a requirement for all applications for ABR.

We do not understand, however, what public comment opportunities will be provided when an ABR decision is made. Applications requiring a Docket decision are provided an opportunity for public comment. Through what means will public comment be provided for ABR approvals?

Public Notice – Variances: Section 7.5(b)(9) allows the Executive Director to grant variances to siting restrictions and setbacks (7.5(b) (3) and (4). Notice must be given to the property and mineral rights owners, but no other public notice is required. We believe notice should be given to local agencies and adjacent property owners as well.

Reliance on state regulations:

Section 7.1 (i) states:

Subject to the provisions of this Section 7.1, a project sponsor’s compliance with state laws and permit requirements relating to natural gas and exploratory well construction and operation shall constitute satisfaction of the project sponsor’s obligations under section 3.8 of the Compact that relate to regulation of gas well construction and operation, except as specified in Section 7.5. In particular, a project sponsor’s compliance with New York Environmental Conservation Law Article 23 (NY ECL §23-0101 et seq.), and its implementing regulations and permitting requirements or Pennsylvania’s requirements in the Oil and Gas Act, the act of December 19, 1984 (P.L. 1140, No. 223), as amended, 58 P.S. §§ 601.101 et seq., and 25 Pa. Code Chapter 78,

satisfies the Commission's requirements with respect to natural gas well construction and operation.

We do not agree with this provision. PA is in the process of dismantling its natural gas regulatory program. DRBC MUST be there for the residents of the Basin who want their water resources protected. DRBC should adopt regulations more stringent than the states where necessary. In fact, since you propose regulations in section 7.6 relating to wastewater disposal that are more stringent than PA's, we do not understand why section 7.1 gives away your authority to enforce your regulations.

Monitoring and Reporting violations:

Section 7.3 (m) requires the project sponsor to report violations or complaints to DRBC. We urge you to develop a way for these reports to be accessed by the public, preferably on the DRBC and the project sponsors' websites. The only way that the public will come to accept that shale gas drilling is a safe operation is for the industry to be completely open and transparent in its dealing with the regulators and the general public.

Enforcement:

Similarly, any enforcement actions taken under section 7.3(n) should be reported on the DRBC website, easily accessed by the public.

Water usage:

Section 7.4 regulates Water Sources for Uses Related to Natural Gas Well Development. We urge you to make available on the DRBC website any application, approval and reporting of water usage for shale gas development. The quarterly reporting required by section (ix) on page 39 should be reported electronically and made available on your website.

Section 7.5 – Well Pads for Natural Gas Activities:

This section is where DRBC hopes to have the most impact on shale gas development projects in the Basin. We applaud your recognition of the "critical importance" of the headwaters and groundwater of the Delaware Basin to the drinking water and other uses by 15 million people in New York, New Jersey and Pennsylvania. We assume this section of the regulations was developed to encourage planning to minimize cumulative impact of multiple well pads in the headwaters of the Basin. We agree that good planning is of extreme importance for minimizing impacts.

However, we wondered if the regulations, as currently written, will capture enough of the well siting decisions to be effective.

- Natural Gas Development Plans (NGDP) are required for leaseholds that total over 3,200 acres. Will that lead to many site developments of less than 3200 acres, to avoid the requirement for a NGDP, and to defeat its purpose?
- NGDP are required when the intention is to construct more than 5 well pads . . . Again, will that lead to many development projects of 5 or fewer wells?
- A NGDP is not required for 3 months after the application for the first well. A project sponsor may submit up to 5 well pad applications prior to application for a NGDP approval (p 51, second from bottom paragraph).

How can true planning take place with so many ways to delay or avoid the requirement for a NGDP? We recommend that no permits be issued for individual wells in Special Protection Waters without an approved NGDP. The studies needed for a NGDP may be considered onerous by project sponsors, but such studies are needed if the impact of multiple wells is to be minimized and the Special Waters of the Basin are to be adequately protected.

Variations and ABR: Frankly, these sections of the regulations appear to be a hurried “cut and paste job.” We find duplicate sections referencing other sections as “above” or “below” when the referenced sections are not to be found at the location given. With that in mind, we want only to add that the many opportunities for variations and ABRs will again defeat the purpose of planning to minimize cumulative impacts.

Section 7.5 Well pads for Natural Gas Activities:

Section 7.5 (b)(4) (p. 49) provides setback requirements. These are totally inadequate. Legislation has been introduced in PA to increase setbacks required from water supply wells, water supply reservoirs, surface water intakes, domestic wells, and streams to 2500 feet. We urge you to adopt larger setbacks and be proactively protective of our drinking water sources and trout streams. In addition, we urge you to prohibit horizontal drilling under a water supply reservoir or within 2500 feet of water supply well.

Wastewater Storage/Reuse/Impoundments:

Section 7.5 (h)(1)(iv) (p. 59) Wastewater (for all well pads) – (A)(4) – states that wastewater, flowback water, production water, etc “may not be applied to any road or other surface in the Delaware River Basin.” This is an admirable requirement. However, how will it be enforced? Are the recording and reporting requirements of this section adequate to uncover any such planned “water” uses from wells in the Basin? How will the importing of such waters from out of the Basin for use on roads, or other surfaces, be monitored and prohibited?

Section 7.5 (h)(2)(iv) Wastewater Storage (for high volume hydraulically fractured wells): These regulations seem to require that all “production water” stored on site be in “water-tight tanks.” However, we do not see a similar requirement for “production water” imported to the site for re-use. It appears this water can be stored in impoundments. We urge you to review the requirements for storage of “production water” to assure that ALL storage must be in water-tight tanks. We do not believe “production water” or “flowback water” or any wastewater contaminated with industrial chemicals should be stored in impoundments in the Delaware Basin. Impoundments are not a safe way to store the hazardous materials associated with gas production. They can overflow in heavy rains and chemicals can volatilize from the exposed surface. No liner, whether synthetic or otherwise, is impervious to breakdown from the chemicals it holds.

All required reports of wastewater production and disposition should be available to the public on the DRBC website.

Section 7.5 (h) (v) Non-point source pollution control plan (p 59)

This requirement is a good one, as sediment pollution from well pad sites is a serious threat to Delaware drinking water sources. However, DRBC should bring the County Conservation Districts into the review and implementation of the Non Point Source Pollution Control Plan through administrative agreements where CCD's have that capability. They are the first line of defense for our streams.

Section 7.6 Wastewater Generated by Natural Gas Development

Section 7.6 (h) allows for underground injection for disposal of industrial wastewater. We are strongly opposed to any use of underground injection for industrial wastewater disposal in the Basin. Deep injection waste wells have been linked to multiple earthquakes in Texas, West Virginia, Oklahoma, and Arkansas. In fact, the Arkansas Geological Society recorded 800 earthquakes between September 2010 and March 2010 in the Greenbrier area near such wells. Aquifer contamination from underground injection wells is a further source of danger.

Cumulative and long term impact of natural gas drilling in the Delaware Basin:

Many, including Commission staff, have called for a cumulative impact study of natural gas development in the Basin. We agree on the importance of such a study. Much is at risk in this heavily populated area of the country. The waters of the Delaware provide for vast economic development in the region – including New York City. Although the Commission is under pressure to get regulations in place to allow drilling to start in the Basin, we urge you to recognize the risk involved in hasty decisions.

We are particularly concerned about the effects of the forest fragmentation that will occur with multiple well pads in the Delaware headwaters on the purity of the drinking water so many people use.

We have heard a great deal about impacts to people's health from pollution of their drinking water and/or from air pollution around well sites, from trucking accidents and from pipeline problems. The industry denies that impacts from hydraulic-fracturing exist and claims accidents are minor and infrequent.

We sincerely hope that the EPA study currently underway regarding the potential impact of hydraulic fracturing on human health and the environment, underway now, will provide answers to these conflicting claims. That study will undergo rigorous peer review, and will, we hope, provide guidance on regulations needed to allow the industry to develop while protecting water and air resources. We do not believe DRBC should develop final regulations for drilling within the Delaware basin until that study is complete and available to the public.