

The Town of Lumberland  
Proctor Road  
Glen Spey, New York 12737  
February 6, 2011

Commission Secretary  
Delaware River Basin Commission  
25 State Police Drive  
P.O. Box 7360  
West Trenton, NJ 08628-0360

Dear Commission Secretary:

**Background:** The Town of Lumberland through its Advisory Committee on Energy and the Environment has studied the entire DRBC document entitled Draft Natural Gas Development Regulations. We commend you for your unequivocal and overriding concern for the protection of a nationally significant resource as stated in Section 7.5:

The headwaters and groundwater of the Delaware River Basin are critically important to the supply of clean water to satisfy basin needs for drinking water, aquatic life, recreation, and other designated uses. Over 15 million people (approximately five percent of the nation's population) rely on the waters of the Delaware River Basin for drinking, agricultural, and industrial use, but the watershed drains only four-tenths of one percent of the total continental U.S. land area.

Your past adoption of the Upper Basin as a Special Protection Waters area and your subsequent expansion of that designation to include the lower portions of the watershed demonstrate an even deeper commitment to protecting "the existing high water quality in areas of the Delaware River Basin deemed to have exceptionally high scenic, recreational, ecological and/or water supply values."

**A New Industry:** Faced with the prospect of widespread natural gas extraction, the DRBC has repeatedly voiced its deep concern with such large scale industrialization particularly in the Upper Basin. You state in Section 7.4:

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.



We particularly take note of your reference to “a substantial effect” of a cumulative nature that may be visited upon the surface and groundwater resources. Given such concern, we would expect the utmost caution by the DRBC to assure in advance that our River Basin would not be subjected to stress from which it might never recover.

**Needed Studies:** Along these lines and much to our chagrin, we can find no evidence to date that the DRBC has undertaken a serious study of the impacts from activity of potentially tens of thousands of drill sites within the Basin. Nor do we find evidence of a single, reputable peer-reviewed study of the effect of high volume hydraulic fracturing on our fresh water resources used for human consumption. So it is with dismay and disappointment, that we have witnessed the issuance and now the review of regulations, which can only be construed as the precursor to the immediate exploitation of the Marcellus Shale gas reserves—a turn of events not in keeping with the high-minded proclamations and caution that the DRBC has consistently voiced.

Indeed, we are loath to even become engaged in a discussion of these regulations, because we feel that caution has been thrown to the wind in favor of proceeding with natural gas extraction before the necessary studies have been completed and analyzed. We implore you to put this regulation review process on hold and await the results of the EPA Study on the potential risks to water quality posed by hydrofracking. We also request that you use the funds already appropriated through the efforts of Congressman Hinchey and others to order a thorough study of the cumulative impacts **before** the first production wells are drilled.

We note that in Section 7.5 you do address the need for an “analysis of potential water resource impacts” beyond those generated by a single well. However, the requirement of a Natural Gas Drilling Plan (NGDP) to address the concern of multiplied effects—where “natural gas well pad leaseholds (encompass)...over 3200 acres” or where there is “the intention to construct more than five natural gas well pads”—is no substitute for a Basin-wide cumulative impact study. The time to study widespread and multiplied impacts should happen **before** drilling and especially before the momentum and expectations of the industry become unstoppable and not subject to proper oversight due to the sheer magnitude of its presence in the Basin.

**A Failed Collaboration:** More to this point, we noted a recent DRBC request-for-proposal seeking the services of an information technology entity which could “handle the expected high volume of 1.) project applications” and 2.) reports anticipated to increase from (10) to (100) per month respectively in each category. Yet, this urgent circumstance will represent only a tiny fraction of the increased demand for oversight which will press in upon the DRBC staff. Nor will your staff be able to find worthy collaborative support (that it seems to be anticipating) from ineffective state agencies in NY and PA in order to enforce the DRBC regulations. The NYS Department of Environmental Conservation has undergone staff reductions that forced the dismissal of the previous commissioner when he spoke out so forcefully regarding the inability of his staff to monitor not only the current projects, but the potentially enormous future increase in natural gas development.



And in Pennsylvania, the Department of Environmental Protection has been unable to prevent well blowouts, toxic spills, and the contamination of aquifers in certain locales. One of our advisory committee members met with Conservation District officials in Bradford County, PA, where drilling activity is only in the early stage of development. Yet, the District Manager related stories of project inspections receiving “desk approvals” from DEP personnel unable to physically carry out all the required inspections and approvals in the field due to the sheer volume of work. The District Manager also lamented a substantial number of tanker trucks leaving drill pads with “produced water” without proper manifests indicating the nature, volume, or destination of the toxic water. Perhaps this woeful oversight problem has been corrected by now; but it points to the danger of opening up an area to natural gas extraction before adequate study and safeguards are established.

**Failure of Industry to Police Itself:** The DRBC states that its oversight regimen will be supported by the voluntary reporting of violations by “project sponsors”. We are not at all comfortable with an industry policing itself, especially given the extractive industry’s long historical record of adhering to best practices and environmental and human health safeguards *only* if forced to by specific regulation. Although there are some good companies out there, time and again, most of the industry players have chosen expediency over the public good. (The record is scant to non-existent of industry lobbying for regulations! Indeed, such an effort would be contrary to the shareholder expectations to realize as much profit as possible on their investments.)

The recent allegation by Congressional investigators that oil and gas companies injected tens of millions of gallons of diesel fuel into onshore wells, in apparent violation of the Safe Water Drinking Act and after signing an agreement of intent, is a case in point. Even if you allow for the industry claim that the EPA “never properly developed rules and procedures to regulate the use of diesel in fracking, despite a clear grant of authority from Congress” (NY Times, February 2, 2011), such an admission shows that the industry knew clearly what the will of the people was—but chose to ignore it—and instead used technicalities to justify their continued underground injection of a highly toxic and polluting substance. We are reminded of the reckless child on the school playground who when caught in the act, claimed innocence because he was unaware of any properly developed rule against throwing rocks.

If you are to proceed with this process of regulation formulation, and we sincerely hope you will not, we do have several final concerns some related to the document itself:

**Approval by Rule:** The draft document makes constant reference to “approval by rule” which grants the Executive Director discretionary authority to speed up the approval of drilling projects. We can only see this devolving into a situation where projects become rubber stamped (as noted in Bradford County) due to the heat of the moment and the high volume of applications—leaving many projects lacking in proper oversight. We believe that most of this “approval by rule” authority should be withdrawn from the regulations.



**Bonding:** The draft document provides for as little as \$125,000 in bonding per well pad. We think this is woefully inadequate and risks sticking the taxpayers with clean-ups for environmental accidents. There is a tendency—as we have seen with the Gulf disaster and as we have seen with the contaminated water in Dimock, PA—for the extractive industry to point the finger at someone else, even when its culpability has been demonstrated by clear evidence from governmentally sanctioned scientific study. Cabot Gas to this day, maintains that the methane migration on Carter Road in Dimock was a pre-existing condition for which they bear no responsibility. Such irresponsible conduct dictates that sufficient bonding should be demanded prior to exploitation of this resource.

**Widespread Concern:** We are not the only ones to urge a cautious approach before opening up the Basin to widespread natural gas drilling. All of the following officials or entities have urged a waiting period until the EPA Study and a cumulative impact study commissioned by the DRBC have been completed and analyzed: New York State (former) Governor Paterson, New York City Mayor Michael Bloomberg, New York Congressman Maurice Hinchey, the New York City Council, the Philadelphia City Council, the U.S. Fish and Wildlife Service, and the National Park Service. We applaud their leadership on this issue and urge you to review their arguments and reconsider your current course of action.

**Hearing from All Stakeholders:** Finally, we have serious reservations with this entire hearing process and urge you to:

1. Extend the comment period to six months.
2. Include hearing locations in New York City, Philadelphia, and in the middle and lower Basin areas of Pennsylvania thereby embracing the major population areas where some (15) million people depend upon the Delaware River as a resource for water and other vital uses.
3. Establish a second round of hearings when and if you decide to publish a revised draft of regulations.

**Conclusion:** Through the unanimous adoption of a Resolution (150), the Town of Lumberland has committed itself to a responsible approach in regard to natural gas extraction, neither for nor against drilling itself, but rather in favor of the completion of thorough and exhaustive scientific studies **in advance** of industry activity—studies which will either assure us or not, that the integrity of our beloved Delaware Valley and “the health and wellbeing of its people” will be protected and that no “imminent nor long-term danger to the citizens of Lumberland” will be posed by a new and massive industrial presence. In word, you have matched our Town’s concern. With all of your regulatory power, we ask that you match your own words with deeds and withdraw these Draft Natural Gas Development Regulations for consideration at a later date—if ever.

Sincerely,  
The Town Board of the Town of Lumberland



**Resolution #150, 2010**  
**RESOLUTION FOR THE LUMBERLAND TOWN BOARD**  
**REGARDING NATURAL GAS DRILLING**

**WHEREAS:** the Town Board of the Town of Lumberland recognizes that its citizens have a reasonable expectation to live in an environment where clean air and water prevail; where the natural character and the value of their land are protected; and where dangers to health and safety are not tolerated; and

**WHEREAS:** the Town Board recognizes the presence of the Millenium Natural Gas Pipeline within its borders, and recognizes the presence of the natural gas-bearing sedimentary formation called the Marcellus Shale which lies beneath the entire surface of the Township and beneath the entire watershed of the Upper Delaware River, and

**WHEREAS:** the Town Board recognizes that various legislative and executive regulatory entities- including but not limited to the US Environmental Protection Agency, the Delaware River Basin Commission, and the new York State Senate-have numerous concerns with the potential advance of the natural gas industry into the Marcellus Shale, such concerns related to reduced water supply and water contamination that would result from large scale withdrawal of the region's water for industrial use, and to the improper treatment and disposal of the hundreds of billions of gallons of water that would be intentionally contaminated as part of the extraction process, and

**WHEREAS:** on April 13<sup>th</sup> Bill No. A10633 was introduced by eighteen Assembly Members, including Aileen Gunther, A. D. 98, and along with it's companion bill in the Senate S8043, and

**WHEREAS:** Bills No. A10633 and S8043 to amend N.Y. Env. Conserv. L. #23-0303, insofar as #23-0303 has been construed to strictly limit local governments ability to pass local laws and/or ordinances affecting the exploration and/or extraction of oil and gas, and

**WHEREAS:** Bills No. A10633 and S8043 expressly clarifies #23-0303 to re-establish "Home Rule" and the authority of local governments to pass local laws and/or ordinances which may affect the exploration and/or extraction of oil and gas, provided such local laws and/or ordinances do not regulate the exploration and/or extraction of oil and gas regulated by State statute, regulation and/or permit.

**NOW, THEREFORE, BE IT RESOLVED:** that the Town Board of the Town of Lumberland urges any and all legislative and executive regulatory entities, with the

requisite authority, to act with due diligence to not only impose but also to continue the moratorium on natural gas drilling until such time as all studies examining the industrial process of natural gas drilling using horizontal drilling and hydraulic fracturing are completed; as well as studies examining the cumulative impacts that large scale natural gas extraction may have upon the Delaware River Watershed and upon the health and wellbeing of its people are completed and are considered to pose no imminent and long-term danger to the citizens of Lumberland.

AND FURTHER BE IT RESOLVED: that the Town Board of the Town of Lumberland strongly supports these bills A10633 and S8043 and urges our State Legislators to support these bills and to make sure they are re-introduced in the next session of Legislature.

MOTION BY: Supervisor Nadia Rajsz

SECOND BY: Councilmen Joseph Carr, Jay Shafer, James Akt and William J. McKerrell

VOTE: 5 - 0

ADOPTED BY THE TOWN BOARD OF THE TOWN OF LUMBERLAND

VIRGINIA V. HORN, TOWN CLERK

DECEMBER 8, 2010