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BASIN COMMISSION

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Town of Tusten  
210 Bridge Street  
Narrowsburg, New York 12764

February 15, 2011

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

**RE: TOWN OF TUSTEN COMMENTS ON DRBC DRAFT NATURAL GAS DEVELOPMENT REGULATIONS**

The Town of Tusten in Sullivan County, New York wishes to collectively comment on the draft Natural Gas Development Regulations in the Delaware River Basin. Citizens in the Town of Tusten are extremely concerned about the risks of natural gas extraction, including dangers to our citizens health, safety, property values, and long-term economic sustainability. This letter highlights many of these concerns.

Tusten's economic base revolves around tourism, single owner or family businesses, the second home industry and small agri-businesses. Tusten's economy is dependent on the Delaware River, its recreational opportunities, unsurpassed scenic beauty and its abundant bounty of fish and wild game that support a wide variety of commerce and industries. Environmental damage and negative public impact to Tusten's River Corridor Environment will tremendously harm the local economic vision, which considers the rural character, open space and recreational activities supporting the township of utmost importance.

From the 2007 Town of Tusten Comprehensive Plan:

"Tusten's comprehensive plan clearly indicates its goal is to preserve the rural character and open space of the town. This was the opinion of 74% of the respondents during the public input period."

The Town of Tusten is currently engaged in a zoning re-write to implement this planning vision. The potential introduction of gas drilling has introduced a conflicting goal between the express interests of our citizens, re-making our area into an industrial zone with high volumes of traffic due to our unique location and central position in Sullivan County. As a Board representing the long term interests of our citizens, we believe it is important to express our concerns regarding the DRBC's fast tracking of regulations and taking actions that go against the Delaware River Basin Commission stated mission to protect the exceptional water quality of the Delaware for future generations.

We would like the DRBC to consider the following comments in their revised regulations.



### **Regulations are in total conflict with the River Management Plan of the Upper Delaware Council.**

The draft regulations do not seem to have consideration of the impacts to the River Management Plan, adopted in 1986 and of which the Delaware River Basin Commission is prominent collaborator.

Industrial activities of any kind are clearly not allowed according to the River Management Plan, which is based on the law that created the Upper Delaware Wild and Scenic River. All parties including Pennsylvania and New York Governors and the Secretary of Interior agreed and signed that they would manage accordingly. If the River Management Plan were to be crystallized into a single concept it would be **NO INDUSTRIALIZATION.**

So while the DRBC has had a representative sit at the table of the UDC's monthly deliberations, it has crafted an endorsement of industrial use into this Wild and Scenic Recreational River in direct conflict with the UDC's River Management Plan and seems to go against the expressed will of Congress that created the DRBC.

### **No Delaware River Corridor Setback**

While the draft regulations address the extreme importance of surface and subsurface waters that are critical to 15 Million people, it does not remotely recognize the River Corridor set forth in the River Management Plan (see maps following page 60 of the RMP). The 500' setback for the Delaware River and its tributaries does not adequately protect the water quality and potential environment impacts. The DRBC should consider banning surface activity within The River Corridor for a two mile setback from the Delaware River itself. Recent articles in the New York times have documented cases of diesel being used in the hydro-fracturing process, as cases where Pennsylvania is allowing the dumping of produced water directly into streams and rivers. Allowing the gas industry to inject millions of gallons of chemically enhanced water into the Earth or into the Delaware tributaries is of great concern and requires greater clarification in the 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]

The draft regulations were made in the absence of any comprehensive data on what these substantial cumulative effects may be, without a peer-reviewed study on the effects of hydraulic fracturing on fresh



water resources and human health, and in complete contradiction of the Commission's stated intention to protect the headwaters and groundwater of the Delaware River Basin. The regulations should allow for more time for these studies to be performed and have triggers that will allow for further adjustments to the regulations when the cumulative impact is fully understood.

### **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 contradictory for the DRBC to promulgate regulations without a thorough plan and budget for staff and training to implement the necessary enforcement of the regulations. In lieu of regulatory enforcement, accountability and financial liability by the companies seems inadequate in the draft regulations.

### **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 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 have been severely damaged by migration of methane and fracking chemicals through improperly cased wells.

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.

Clearly, the industry has demonstrated 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. The draft regulations need to address these recent developments and help the public understand what the DRBC is doing to learn from these mistakes.

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

The Commission will rely upon contradictory regulations between states, which includes Pennsylvania's unregulated approach which has had many mistakes and cases for concern, and the New York State regulations that have not yet been completed and which are proceeding with caution.

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. The DRBC, with its clear mission to protect the Delaware River Basin, should be leading the regulatory process by ensuring that adequate staffing is in place to enforce the state regulations, that financial impacts are in place to prevent the industry from taking short cuts in the Delaware River Corridor, and that the regulations fully consider and incorporate the public comments.

#### **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. Further clarification as to why this would be required or necessary should be explained.

#### **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. Given the lack of enforcement powers, this seems inadequate to the potential risks involved in the activities.

#### **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 and held 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**

Addressing the concerns outlined above, will strengthen the Town of Tusten's concerns, but it is our belief that further cumulative impact studies and data, including the upcoming EPA study, will do the most to ensure that the Commission can further "protect human health and the environment, including water resources" and protect our town's economic vision for generations to come. Thorough public meetings, discourse and review of the incorporated comments into the final regulations should not be fast tracked, but done in a manner that helps Towns like ours fully understand the long term impacts, continue to support the River Management Plans, help enforce the DRBC's vision, and prevent the fracturing of our various Townships, Counties and States that these regulations apply.

Respectfully,

Margaret Harrison

Supervisor

Town of Tusten

Sullivan County, New York