



wallenpaupack  
lake estates

## PROPERTY OWNERS ASSOCIATION

A GROWING ORGANIZATION

RECEIVED/DELAWARE RIVER  
BASIN COMMISSION

2011 APR -4 P 12:24

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March 30, 2011

Natural Gas Regulations  
c/o Commission Secretary  
Delaware River Basin Commission  
P.O. Box 7360  
West Trenton, NJ 08628-0360

Subject: DRBC NATURAL GAS DEVELOPMENT REGULATIONS

Dear Sir:

Wallenpaupack Lake Estates is a private community on Lake Wallenpaupack in Wayne County, Pennsylvania. Review of the subject document has resulted in concerns regarding the potential adverse impact on the safe drinking water sources of the community. Primary concerns identified by the review are:

- The prospect of being forced to share the aquifer that provides drinking water with a natural gas well that will penetrate that aquifer is a concern. The fact that the draft regulation not only permits the sharing of that aquifer could be permitted by a rule, without a hearing, and/or without even advising the entities (public and private) that may be directly involved or impacted is a grave concern and defies the principal of "consent of the governed." upon which our nation is founded. A standard of notification in which a 2000 foot horizontal surface distance from a well-head, in an industry in which horizontal extraction of oil and gas from fractured layers of rock has become the best practice of industry, seems an arbitrary rather than a responsible regulation or provision of law.
- Financial responsibility of the project sponsor that is limited to environmental remediation is insufficient to protect the public interest. Project sponsors must financially be able to make reparation for potential drinking water damages to entities, public and private. This issue is a major concern and must be corrected since a civil suit at the expense of the entity, public or private, is the only current remedy to recoup damages inflicted that have public health consequences.

Specific comments relating to the draft Delaware River Basin Commission Regulation are provided at the enclosure.

Sincerely,



Jerry Beskovoyne  
President  
Wallenpaupack Lake Estates POA  
Board of Directors

CF:

US Senator Patrick J. Toomey  
US Senator Robert P. Casey, Jr.  
US Congressman Thomas A. Marino (10th District)  
PA DEP  
PA Senator Lisa Baker (20th District)  
PA Legislator Michael Peifer (139th District)  
Commissioners, Wayne County, PA  
Supervisors, Paupack Township, Wayne County, PA  
BOD, Lake Wallenpaupack Watershed Management District  
PPL, Lake Wallenpaupack Office



1. Section 7.2: Suggest insertion of a definition for the term “mitigation” as defined by the US EPA : Measures taken to reduce adverse impacts on the environment. (Source: <http://www.epa.gov/OCEPAterms/mterms.html>)

2. Section 7.2: Suggest insertion of a definition for the term “remediation,” since the term and its derivatives are used throughout the draft regulation. "Remediation" as defined by the US EPA is “1. Cleanup or other methods used to remove or contain a toxic spill or hazardous materials from a Superfund site; 2. for the Asbestos Hazard Emergency Response program, abatement methods including evaluation, repair, enclosure, encapsulation, or removal of greater than 3 linear feet or square feet of asbestos-containing materials from a building.” (source: <http://www.epa.gov/OCEPAterms/rterms.html>)

3. Section 7.3 (i) (1): This requirement to notify any property owner within 2,000 feet of the well pad is inconsistent with a requirement to notify all entities that will potentially be impacted by sharing the same aquifer, especially in an industry in which horizontal, sub-surface drilling is considered best practice. For consistency with Section 7.4 e (4) (ii), recommend that the requirement for notification mandate the inclusion of all property owners sharing the same aquifer. Additionally, since horizontal drilling and extraction is now common practice within the oil and gas industry, recommend that notification be mandated to all property owners within the same aquifer or 2,000 feet of any portion of the well, whichever is greater.

4. Section 7.3 (k) (8): It is noted that “remediation” is not defined in Section 7.2 of this draft regulation, thus establishing the basis for future litigation. Recommend that, in addition to inserting the definition of “remediation” in Section 7.2, this provision be revised to reflect that there be financial assurance in the amount of \$125,000 per natural gas well or the estimated amount of total remediation and potential reparations as established by an independent qualified professional, whichever is more. Regulation of Wastewater discharge as in Section 7.6 (c) and the Commission's Water Quality Regulations is a necessary but insufficient criterion for ensuring that damages are not inflicted to drinking water source(s). In view of the fact that the EPA definition of remediation does not include reparations for damages to entities, public or private, needed financial assurances may far exceed the proposed amount of \$125,000. Notwithstanding the exception granted to hydraulic fracturing by underground injection under Title 42, Chapter 6 A, Subchapter XII, Part C, Section 300 h, Para (d) (1) (B) IAW the US Safe Drinking Water Act, numerous case laws exist in which damages are ultimately awarded to entities that have experienced adverse impact on their drinking water source(s). Ultimately, a civil suit at the expense of the entity, public or private, is the only remedy to recoup damages inflicted since there is currently no protection in law nor regulation. While statutory correction of this void has been proposed, including the US Fracturing Responsibility and Awareness of Chemicals Act (H.R. 2766/S. 1215), pending such approval, there is sufficient US and state case law precedent to provide ample authority to regulate the financial assurance responsibilities of project sponsors, inclusive of reparations for restoration of adverse impact on drinking water source(s).

5. Section 7.3 (k) (15): This reduction in amount of initial financial assurance at the option of the project sponsor is appropriate only for those instances in which the conditions that follow have been completed prior to the effective date of this regulation. If not, the regulator relinquishes authority over the future compliance with its own regulation.

6. Section 7.5 (h) (1) (vi) (C): The report of investigation should address mitigation, remediation, and restoration plans as the stated intent is to prevent adverse impact as well as to alleviate post-damage impact, if it should occur.

7. Section 7.6 (h): Para is limited to the intentional injection of underground wastewater. Control of the unintentional injection or release of underground waste water needs also to be addressed. Procedures to be followed in the event of discovery of unintentional injection or release of wastewater are not mandated in any portion of this draft regulation and are left to the sponsor-generated mitigation plan as discussed in Section 7.5 (h) (1) (vi) (C).