

March 11, 2013

Dear Senator,

We understand that you are considering Senate Bill 411 which is intended to limit the treatment liability of entities that allow the use of acid mine water (AMD) for hydraulic fracturing of gas wells. We ask you to suspend consideration of the bill at this time and take the time to carefully consider its consequences.

The co-sponsorship memo indicates that it is a reintroduction of legislation SB 1346, which passed the Senate last session. The current version Senate Bill 411, PN 431, however contains significant changes to last session's bill, which warrants its further deliberation.

Senate Bill 411 bill would expand the scope of liability protection beyond what was proposed last year in SB 1346. Section 5 of SB 411 now includes: "any person who uses and any person who allows the use of or provides mine drainage, mine pool water or treated mine water, as part of a water pollution abatement project, including a mine operator or water pollution abatement project operator that provides for payment or otherwise treated mine drainage for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water."

It appears that Section 8107 (a)(6) is being amended to eliminate liability under the Hazardous Sites Cleanup Act for possible spill and release in the transport and use of mine drainage water. The new text reads: "May not be considered to be RELEASING A HAZARDOUS SUBSTANCE OR CONTAMINANT UNDER THE ACT OF OCTOBER 18, 1988 (P.L. 756, No. 108), KNOWN AS THE HAZARDOUS SITES CLEANUP ACT, OR engaging in the processing, treatment or disposal of a solid waste under the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act, or in the discharge of industrial waste or pollutants under The Clean Stream Law, when using mine drainage, mine pool water or treated mine drainage for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water."

We are not clear why the original text of SB 1346 was amended. We have additional questions and concerns about how SB 411 would affect liability for unintended spills and releases into the environment. We would welcome the opportunity to discuss these issues with you and appreciate your support in delaying final action on SB 411. A recent detailed analysis of SB 411 prepared for the Delaware Riverkeeper Network can be viewed by clicking on the following link:

<http://www.delawareriverkeeper.org/resources/Reports/SB.411minedrainage.Legal%20memo.pdf>

Sincerely,

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