

For Immediate Release
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Organizations Oppose Senate Bill 411
SB411 grants liability limitation for Acid Mine Drainage used for gas well fracking, industrial use or other “beneficial use”

Harrisburg, PA – Environmental organizations filed a letter today with Pennsylvania’s Senators calling for them to suspend consideration of SB411 due to the overly expansive immunity provided by the Bill when acid mine drainage (AMD) is used for broadly defined uses off site. The Bill could be voted on by the Senate as early as today.

SB411’s scope of liability protection 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.”

The Bill defines “other beneficial use” as “Any use of water for a purpose that produces any economic, environmental, ecological, or other benefits, including irrigation, silvaculture, cooling water, flow maintenance and augmentation, consumptive use makeup, and any other use of water deemed to be a beneficial use under common law”.

The groups’ letter points out that SB411 eliminates liability under the Hazardous Sites Cleanup Act for possible spill and release in the transport and use of mine drainage water, the Solid Waste Management Act, and liability in the discharge of industrial waste or pollutants under The Clean Stream Law, when using AMD as specified in the Bill.

The groups are concerned about the environmental and community ramifications of SB411 and request that Senators carefully consider the Bill, which is based on a similar bill from last session SB 1346 that has been substantially changed.

"The current bill is substantively different from SB 1346, its predecessor, yet the memo by Senator Kasunic that accompanies the bill makes no mention of that. It's a serious omission and one that could have tremendous consequences for Pennsylvania if our legislators vote the bill into law because they thought they knew what they were voting for. SB 411 is a bad bill that should be defeated," says **Karen Feridun, founder of Berks Gas Truth.**

"SB411 facilitates the moving of polluted water from one place to another; it spreads acid mine drainage pollution throughout the Commonwealth for use in fracking and for broadly and vaguely defined so-called "beneficial" uses and it removes one of the most effective deterrents—an operator's legal responsibility to clean up pollution the operation caused," stated **Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network.** DRN also filed a separate letter regarding the Bill.
<http://www.delawariverkeeper.org/resources/Letters/ltr%20to%20Senate%20SB411%203%2011%2013.pdf>

Thomas Au, Conservation Chair of the Pennsylvania Sierra Club stated, "The Senate needs to hold public hearings on this bill in order to inform the public of the ramifications of the proposal."

"Lehigh Valley Gas Truth and other concerned organizations are baffled and dismayed at SB 411, which by incentivizing the use of acid mine drainage for fracking, would give drilling companies complete immunity from the Clean Streams Act and basically cart blanche to pollute with impunity. With the current violation rate at .75 per well and hundreds of impacted PA families already suffering with contaminated water and drilling-related health issues, it is safe to say that this bill is an extraordinarily bad idea which must be stopped immediately," said **Julie Edgar, Lehigh Valley Gas Truth.**

"It is disconcerting that our legislators continue to grant exemptions and dole out special privileges to this industry," said **Steve Hvozdovich, Marcellus Shale Policy Associate, Clean Water Action.** "Who if not industry will be liable for the possible spills, release and discharges when mine drainage is used, the people of Pennsylvania? This legislation warrants further discussion and should not be rushed through the legislature."

The letter filed by groups follows:

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 HAZARDIOUS 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.delawariverkeeper.org/resources/Reports/SB.411minedrainage.Legal%20memo.pdf>

Sincerely,
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