



## **To Frack or Not to Frack:** **Proposed Natural Gas Development Regulations in the Delaware River Watershed**

The Delaware River Basin Commission (DRBC) issued draft natural gas development regulations on December 9, 2010 with a public comment period that closed April 15, 2011 (<http://www.state.nj.us/drbc/naturalgas-draftregs.pdf>). These were published despite a storm of protest and requests from thousands to conduct a comprehensive environmental analysis, including cumulative impact studies, of the potential effects of gas development on the Delaware River Watershed and the water supply of 15 million people, which the DRBC ignored. 69,800 submissions (a record number) were received by the DRBC from the public on the proposal; they are reviewing and plan to respond to those comments in the coming months. Portions of New York, Pennsylvania, New Jersey, and Delaware drain to the Delaware River; these states and a federal representative (Army Corps of Engineers) are the voting members of the DRBC. The NY Attorney General's office has filed a lawsuit against DRBC for not following federal environmental law by prematurely issuing the draft rules. ([http://www.ag.ny.gov/media\\_center/2011/may/DRBC%20Complaint%20\(Final\).pdf](http://www.ag.ny.gov/media_center/2011/may/DRBC%20Complaint%20(Final).pdf))

In the meantime, the drilling moratorium in the Delaware River Basin remains in place. DRBC is charged with a legal mandate to "Do No Harm" to the Special Protection Waters of the Delaware River. The DRBC MUST, under their existing regulations, maintain the exceptional water quality that now exists in the Wild and Scenic-designated River and improve it where it needs help. The proposed rules do not meet that standard. They do not protect from the adverse impacts of individual wells in the short or long term, nor do they address the cumulative impacts of water withdrawal, land transformation, and well construction from multiple wells as gas builds out. There is no method proposed to prevent the degradation and pollution that natural gas drilling will cause to the River's water resources including its habitats, streams, and communities, making this harm inevitable.

Some specific concerns about the draft rules are:

- DRBC wrongly acquiesces to State regulations in many crucial areas. These include:
  - stormwater management (PA and federal government largely exempt gas well development);
  - stream protection (PA exempts gas drilling from Exceptional Value and High Quality stream buffer standards—the best of the best streams in PA);
  - drilling, cementing and well construction, making aquifer contamination unavoidable (for instance, PA's Chapter 78 is largely substandard in safety);
  - air quality (PA exempts gas wells from state air pollution standards);

- setbacks from homes, public buildings, roads, and public and private water supply wells are all deferred to state standards (PA and NY have grossly inadequate setback standards);
  - DRBC and the States measure setbacks from the well pad, not the horizontal well bore and hydraulic fracture zone (where pollution can occur);
  - centralized wastewater impoundments are allowed and left under state regulations despite DRBC's finding that open waste pits on well sites are too dangerous and require closed tank systems to capture all flowback.
- No limits on how many wells can be drilled and how closely they can be spaced from each other; this means the drillers are in control of how intensely the Watershed is developed (they are serving their bottom line), not the DRBC (who is charged with protecting water resources).
  - Much gas well development will occur without the planning DRBC proposes for more than 5 well pads or companies who have leaseholdings of 3200 acres or more. At 10-12 wells per pad, 50 to 60 gas wells can be drilled without any plan oversight and variances, exemptions and limited expansions could make matters worse. Even where natural gas development plans are required, it is not clear how the planning will limit adverse environmental impacts nor is it clear how cumulative analyses can be made from these plans to avoid large scale degradation.
  - No restriction on the dangerous chemicals that will be used in drilling and hydraulic fracturing ("fracking"); approximately 260 chemicals - and another 40 compounds with secret ingredients that the industry will not disclose— are being used in fracking fluids in Pennsylvania and other states where shale gas is being mined (NYSDEC Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas, and Solution Mining Regulatory Program, 2009). Many of these chemicals are hazardous to humans and other species, many are toxic such as naphthalene, glutaraldehyde, and acrylamide and some are classified as carcinogenic by the federal government such as benzene, formaldehyde, and methanol.
  - Public disclosure of all of the ingredients in the chemical formulas used in fracking is not required (just because the federal 2005 Energy Policy Act exempts fracking from the Safe Drinking Water Act doesn't mean the DRBC should). Public participation of many permitting aspects is missing.
  - Proposed wastewater standards do not require the removal of all of the hazardous constituents in gas drilling wastewater. Cuttings from the drilling process and solids that are left from wastewater filtering are not classified as hazardous waste even though they contain hazardous materials, which will allow them to go to common landfills (just because the federal government has a special exemption for gas processing solids doesn't mean the DRBC should).
  - DRBC proposes to protect flood hazard areas BUT allows variances so that only floodways, the stream area that carries the bulk of floodwater, are clearly off limits.
  - DRBC proposes an Approval by Rule that will allow fast track approval of gas drilling and some water withdrawals, with no opportunity for public comment and input. In PA, the rush to drill has led to pollution and accidents throughout the Marcellus shale fairway (PADEP records show 2010 violations=2,486, wells drilled, 2010=2,755; violations in 2011 have ballooned to about 11 per day).

For more details information see DRN comment to DRBC:

<http://www.delawariverkeeper.org/resources/Comments/Org%20sign%20on%20letter%20AND%20RN%20Comments%20on%20DRBC%20RULES.combined.pdf>