

Why a Full Ban on Fracking is Required in the Delaware River Watershed
White Paper for the Biden Administration
To Secure Prompt & Meaningful Action

In 2010, the four states of the Delaware River Watershed, supported by the federal Obama administration, passed a resolution through the Delaware River Basin Commission (DRBC) that put in place a *de-facto* moratorium to protect the Delaware River, its communities and watershed from the irreversible harms of hydraulic fracturing for natural gas (fracking). The Governors of the four states – New York, New Jersey, Pennsylvania and Delaware - and a federal representative from the Army Corps of Engineers, representing the U.S. President, comprise the voting members of the federally-created interstate DRBC.

On September 13, 2017, the Governors of the four states, by and through the DRBC, followed up this action with the approval of a resolution that, among other actions, instructed the DRBC staff to develop gas regulations that would transform the moratorium into a permanent ban on fracking throughout the Delaware River watershed. The proposed ban on fracking, while supported by the watershed states¹, was opposed by the Army Corps Colonel representing the Trump administration.

On February 25, 2021, the DRBC Commissioners enacted regulations permanently banning fracking in the Basin.² The ban is now enshrined as regulation governing the entire watershed. All four Governors approved the ban while the federal representative abstained. Action was also taken on a second resolution towards the proposal of regulations covering the import and export of frack wastewater and water for fracking. Draft regulations for those activities are to be issued for public comment by September 30, 2021.³ The resolution could lead to the adoption of a ban on the import of wastewater produced by fracking for its processing and discharge here and the export of water from the basin for use in fracking outside of the watershed.

We are reaching out to urge President Biden, through his representative on the DRBC, to support regulations that would prohibit the import of fracking wastewater for discharge in the watershed and the export of water from the river for fracking.

The Delaware River provides drinking water for over 17 million people, including New York City and metropolitan Philadelphia. Because of its outstanding natural values the nontidal river is designated by Congress as a Wild and Scenic River, is one of last undammed rivers in the nation, and is the longest stretch of anti-degradation protection waters in the United States. The tidal river is a National Estuary. Delaware, Pennsylvania, New Jersey, and New York border the Delaware with tributaries that flow

¹ NY, PA and DE all voted to support the proposed ban on fracking at the 2017 vote; at the time NJ, then under a Christie administration, abstained but since that time Governor Phil Murphy took office in 2018 and has repeatedly announced he supports a ban on fracking in the Delaware River watershed along with other harmful aspects of the industry, including the import of wastewater from fracking.

² https://www.nj.gov/drbc/about/regulations/final-rule_hvhf.html#1

³ https://www.nj.gov/drbc/library/documents/ResForMinutes022521_regs-transfers.pdf

through the watershed to the main stem river, estuary, and Bay, comprising a 13,500 square mile watershed.

The Delaware, because of its healthy water quality, flows, and ecosystems is a recognized economic driver for the region, supporting over \$22 billion of annual economic benefit. The healthy quality, flows, river life and wildlife draw visitors from all over the region, nation and world to benefit from the natural beauty, recreational and family-value benefits the River provides.

The draft regulations that the DRBC will issue by September 30 of this year will provide the details of the proposed changes to the current Water Code. Just as the public advocated for the fracking ban, the public support for the banning of fracking wastewater import and discharges here and the export of water that would fuel fracking outside of the basin, is overwhelming.

Through the submission of over 70,000 written comments and days of verbal testimony, the public supported the proposed ban on fracking but opposed opening up the watershed to the wastewater and water withdrawals of the fracking industry during the 2017-2018 public comment period.⁴ As those comments made clear, it is simply not logical to ban fracking but allow the pollution and water resource depletion caused by fracking to occur anyway. 104,000 petitions from a diverse representation of constituencies were submitted to the Governors in support of the FULL ban in 2018.

Along with the public, the interstate coalition of diverse organizations that has championed a full ban on fracking for many years wholeheartedly applauds the adopted ban on fracking but steadfastly opposes allowing wastewater from fracking to be imported and water exported for fracking, and will continue to advocate for the full ban until it is achieved. **We are reaching out to urge President Biden and his Administration to join our goal of complete protection of the Watershed and its communities.**

This support is needed now, at the critical juncture when the draft regulations will be released, the public will comment, and the final decisions will be made by the Commissioners of the DRBC. Pressure from industry to drill in the watershed has intensified in recent years. A lawsuit has been brought by the Pennsylvania Senate GOP caucus, led by two Republican Senators to overturn the DRBC's ban on fracking.⁵ This lawsuit has become a political flashpoint in Pennsylvania state politics with fracking at its center. Industry representatives⁶ have a long-running legal challenge to the DRBC's authority to regulate fracking in their efforts to access the gas locked in the Marcellus and Utica shales that underlie 40% of our precious watershed.

⁴ https://www.nj.gov/drbc/library/documents/CRD_HVHFrulemaking.pdf

⁵ *Yaw, et al. v. Del. River Basin Comm'n*, 2:21-cv-00119 (E.D. Pa. 2021)

⁶ *Wayne Land & Mineral Grp., LLC v. Del. River Basin Comm'n*, 3:16-cv-00897 (M.D. Pa. 2016); <https://www.law360.com/cases/573b39277c9e047950000001/articles>

As the push to expand fracking and related activities builds, and the industry pushes to find locations to dispose of the enormous quantities of highly toxic wastewater being produced with fewer options for disposal, as the demand for more consumption of water for fracking grows, the need for comprehensive protection provided by DRBC regulations becomes more urgent. A vote by the the federal representative and the Governors for a complete ban on fracking operations (i.e. wastewater and water withdrawals) can be achieved at this moment in time, a moment that may disappear as our state governments change during the Biden Administration.

Over the last 12 years, starting with the original moratorium on fracking in the Watershed, and intensifying when the 2017 draft fracking regulations were issued, and continuing through to today, scientific and technical studies documenting the harms caused by fracking to human health and the environment have multiplied. Members of the public and representatives of our coalition organizations have steadily and persistently presented the evidence to the DRBC as it has emerged. Presenters have spoken at every DRBC public comment session since 2016, keeping the Commissioners abreast of the hundreds of scientific reports, environmental and health research papers, and the growing body of evidence regarding fracking and its unavoidable and devastating impacts.

Examples of recent findings submitted include:

- In March 2020, numerous new reports on the global warming potential of methane and the effects of climate change already occurring in the Delaware River region were presented. Additionally, the *Intergovernmental Panel on Climate Change* report was submitted, showing that to avoid the impending climate disasters for the world's most vulnerable communities, greenhouse gas emissions must be reduced by at least 45% from 2010 levels by 2030 to prevent global warming of 1.5°C above pre-industrial levels.⁷ Reports on methane demonstrated it is the most powerful greenhouse gas warming the atmosphere (86 times more potent than carbon on the critical 20-year time scale).⁸ This supports the need institute a ban on fracking and its unavoidable greenhouse gas emissions.
- In June 2020, the Attorney General publicly released Pennsylvania's 43rd Statewide Investigating Grand Jury Report #1 on the unconventional oil and gas

⁷ *Intergovernmental Panel on Climate Change, Summary for Policymakers, Revised on January 2019 by the IPCC, Switzerland, ISBN 978-92-9169-151-7*, downloaded at: <https://www.ipcc.ch/sr15/>

⁸ Myhre, G. et al. 2013. Anthropogenic and Natural Radiative Forcing. In: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Stocker, T.F., D. Quin, G.K. Plattner, M.Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex, and P.M. Midgley (eds). Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA
http://www.climatechange2013.org/images/uploads/WGIAR5_Citations_Draft.pdf

industry.⁹ The report documents the unprecedented damage to the environment and human health that the “fracking boom” brought to communities where fracking occurred throughout the last decade in the Commonwealth.

- Reports on adverse health impacts of fracking and its operations have been published by the hundreds in recent years. One review of literature from 2016 through 2018 showed that health effects are continuing and in some cases escalating in Pennsylvania’s fracked regions, with significant impacts on infants, young children and fetuses.¹⁰ A shocking cluster of childhood cancers in southwestern Pennsylvania is being investigated by the state Department of Health. The 7th Edition of the Compendium of scientific reports on the effects of fracking published in December 2020 concluded that the examination by the Concerned Health Professionals of New York and the Physicians for Social Responsibility “uncovered no evidence that fracking can be practiced in a manner that does not threaten human health directly and without imperiling climate stability upon which public health depends”. The reviewers recommended that the only way to avoid these health impacts is to ban fracking.¹¹

The unrelenting pressure of the special interests who want to expand drilling and fracking into our Watershed must be halted – the only way to effectively avoid harm is to prevent it in the first place. The stakes are too high to do anything less. The Watershed requires a complete, permanent, watershed-wide ban on fracking and its activities.

The draft regulations are due to be issued before September 30, 2021. Now that the DRBC has adopted regulations that permanently ban fracking, regulations that will prevent degradation and pollution are necessary to complete the job.

The regulations must:

- ban the storage, processing, discharge and/or handling of wastewater produced by fracking;
- prohibit the export of Delaware River Watershed water and water resources out of the basin for fracking anywhere.

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⁹ <https://www.attorneygeneral.gov/wp-content/uploads/2020/06/FINAL-fracking-report-w.responses-with-page-number-V2.pdf>

¹⁰ https://www.delawariverkeeper.org/sites/default/files/FracTrackerAlliance_DRKHealthReview_Final_4.25.19_0.pdf

¹¹ Concerned Health Professionals of New York, *The Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking*, 7th Edition, December 2020. <https://concernedhealthny.org/compendium/>

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