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## Comments of the Delaware County Board of Supervisors Regarding the Delaware River Basin Commission Draft Natural Gas Development Regulations

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The Delaware County Board of Supervisors (DCBS) is a nineteen (19) member Board that is responsible for operating the government of Delaware County, New York. The Supervisors from each of the nineteen (19) towns within this county are the members of this Board. In this submission, the DCBS appreciates the opportunity to provide the Delaware River Basin (DRBC) comments on the Draft Natural Gas Development Regulations as it relates to the Marcellus Shale located within the boundaries of Delaware County, NY.

**History**

Delaware County is principally a county based in agriculture. Like many areas, farming has offered a way-of-life that provides little financial rewards, but the quality of life is based on the natural resources available and the ability to utilize those resources. When looking at the communities of the county, most of the essentials were available as well as affordable even though the area suffers from extraordinarily poor economic conditions and this has been the case for decades. Despite these economic conditions, the taxpayers of Delaware County have been strong advocates for the environment, perhaps because they had to be, since the county's formation in 1797.

In 1905, the legislature of the State of New York passed a bill that allowed the City of New York to purchase property outside their municipal boundaries for the expressed purpose of supplying water to its residents. This resulted in the creation of the New York City watershed in Delaware County, NY. Except for the communities and farms that were flooded to create the impoundments, the formation of the watershed had little impact on the day-to-day life of the residents of the county. In 1986, Congress passed the Safe Drinking Water Act that, in short, required all water supplies that relied on surface water to install filtration. No easy task for a city that supplies 9 million residents their drinking water daily. The city was granted a filtration waiver only after agreeing to own or control all human activity in their watershed. This was accomplished in 1997 when the City of New York and the watershed towns entered into an agreement that allowed the city to enforce water quality standards that exceeded New York State Department of Health standards as long as the City of New York paid for the enhanced version. By-in-large, this arrangement has been satisfactory; however the unintended consequence has been a dampening of the economic condition of the county, which appears to be exacerbated when coupled with the economic downturn experienced by the rest of the country during this past decade.

In 1961, the Delaware River Basin Commission was established to foster cooperation between the states along the Delaware River.

As was the case with the New York City watershed, the residents of Delaware County initially did not even know there existed, a federally-funded commission to protect the river as there was little impact on their daily lives. The subsequent activities of the DRBC were, for the most part applauded, given the environmental ethic so prevalent in the upper basin of the Delaware River. There does, however, continue to be an economic chasm when one compares the household incomes to see that the mid-basin residents enjoy a 64% greater income level than their rural counterparts of the upper basin'. It is this huge discrepancy that has caused the residents of the upper basin, which is home to the Marcellus Shale play, to view this industry both as a source of income and a way to maintain the open space they cherish. Absent this industry, the upper basin of the Delaware River can expect subdivision and segmentation of the forests in a desperate act by the landowners to gain enough income to maintain their homes. Any effort to thwart this industry will extinguish the relationship between the upper basin landowners and the DRBC.

#### Background

Delaware County (and some of its neighboring counties) has been losing population for decades. The income level of the full-time population has been falling further and further behind the remainder of the state's population. Between the years 1996 and 2006, the full-time population in Delaware County decreased by 4%, while the population of New York State increased by 1.74%. In addition to that decrease, the population is also experiencing a series of disconcerting shifts in age. During the ten year period from 1990 to 2000, the number of residents over 65 years of age in Delaware County increased by approximately 16% while the number of residents less than 18 years of age decreased by approximately a 21%<sup>2</sup>. The aging population needs access to community services in order to survive. This demand for community services will be more and more difficult to provide if the workforce continues to dwindle. The loss of full time residents is, in part, due to the lack of affordable housing. Statistics indicate that the wages to full time residents has not kept pace with the cost of affordable housing. According to the 2005 census, the County's Per Capita Income is 37% lower than the average income in New York State<sup>3</sup>. During the period 1999 to 2006, the median household income in Delaware County increased at a rate of 1% while during nearly the same period (2000 to 2005), median home values in the County increased at a rate of 68%<sup>4</sup>. The cost of new housing is beyond the reach of the typical household in Delaware County. The cost of installing basic utilities for a new home (i.e. septic system, water supply, electricity, telephone, site grading and driveways) makes a modular home on a private lot beyond the reach of a typical family.

Delaware County is under the regulations from two agencies: the New York City Department of Environmental Protection (See Exhibit B) as well as the New York State Department of Environmental Conservation (See Exhibit A). Additionally, at least two thirds of Delaware County must comply with regulations provided by the Delaware River Basin Commission (See Exhibit C). The county is concerned that the cumulative effect of these three agencies has tended to inhibit most residential development while discouraging most natural resource based industry from flourishing. In the county's opinion, these agencies employ the precautionary principles that assign infinite costs to the environmental risk without considering the economic benefit, a position that has impacted the county very negatively in the past 15 years.

Department of Watershed Affairs: Comments on the Delaware River Basin Commission's draft Natural Gas Development Regulations, December 9, 2010: Article 7 of Part III '

#### Basin Regulations.

##### General: Assumptions

The county believes that the assumptions behind the DRBC regulations may have been exaggerated and therefore overstate the impacts of this industry. An example of such an overstatement can be found with the determination that the 498,000 acres located within Delaware County is available for gas exploration. The determination by the New York State Department of Environmental Conservation to require environmental impact statements for each individual well project in the NYC watershed literally denies that this will every happen in the watershed. While the path technically does exist to construct wells in the NYC watershed, (we have painfully learned with projects with a much smaller footprint than the drilling industry) the environmental review gauntlet the NYCDEP employs is not timely, very costly and proves unsuccessful by merely outlasting the applicants funding stream. Many times, the businesses eventually leave the county due to their limited resources. Additionally, NYC either owns or controls about 1/3 of the 498,000 acres and has publicly stated they will not allow drilling on those parcels. Given this removal of acreage that is likely to never see gas drilling and if one uses the wells per pad that DRBC used in their calculations, this reduces the well census by over 3000 horizontal wells in the Delaware River Basin.

##### Cumulative Impact

We completely oppose any requirement proposed by some that a cumulative impact assessment be conducted. Just as is the case with

the formation of regulatory agencies, the gas industry is not static. The industry and technologies are changing in a manner that we have observed that reduces the number of well pad locations significantly. One would have to do a cumulative impact analysis based upon the assumption of an industry that will never evolve to be more efficient. Otherwise, no comparative data would be useful. For example, enhancements in the technology of fracturing that have substantially changed the impact on the environment such as liquid propane<sup>5</sup> or nitrogen thereby reducing or potentially eliminating the use of large volumes of water would alter the impact analysis to a useless exercise.

#### New York City Watershed

The New York City Department of Environmental Protection has regulatory authority over hazardous substances, wastewater, petroleum products, storm water as well as 12 other activities within the unfiltered water supply of the City of New York (See exhibit B). The department has approximately 6000 employees that monitor these activities, enforce regulations, as well as oversee water supply to the residents of New York City. As per a decision by the New York State Department of Environmental Conservation, drilling for natural gas in an unfiltered water supply will require an individual permit that will be subject to the State Environmental Quality Review<sup>6</sup>. This review will require the natural gas industry to complete an environmental impact statement for the project, undergo a coordinated review by all interested parties and establish a plan and assurances for those impacts that need mitigation before a permit is issued. Delaware County believes that the process that a company has to endure for the purpose of drilling a natural gas well will exceed the scrutiny that DRBC would provide and therefore believes no other regulations by the DRBC are warranted.

Delaware County believes the fees required for natural gas projects within the New York City watershed are not warranted. Unless the DRBC has a plan to add engineering staff for review and oversight, Delaware County believes the staff at both the NYCDEP and the NYSDEC will provide the level of review that DRBC staff would be unable to perform. In the county's opinion, DRBC would enjoy a substantial savings should they delegate these functions to NYSDEC and NYCDEP.

#### Forest

Delaware County respectfully disagrees with the overall impact natural gas development will have on the forests given the history of the Catskills. Early in the 10 century, Delaware County forest would be recognized as "virgin" timber, populated heavily with hemlock, pines and several species of hardwoods. The forest were harvested for their bark which was used in the tanning industry and the surplus logs were loaded onto rail cars and sent off to remote locations such as New York City and Philadelphia for the construction of homes. At the height of this clear cutting, the county was deforested with approximately 80% of the surface entirely cleared of any trees. Today, only about 20% remain open space with the forests regenerated to cover previously open fields. With this in mind, requiring a natural gas project that would require 3 acres or more of clear cutting to be subjected to the hearing process and the dynamics of a docket approval appears to serve only one purpose, to prohibit gas exploration. Recognizing this county's reforestation history, Delaware County believes there is no reason to limit natural gas development based on unsubstantiated impacts.

#### Slope

While slopes greater than 20% will likely deter most drilling firms from constructing a 5 acre drill pad, the possibility does exist. In New York State, there are stringent storm water regulations that would deal with the resulting storm water runoff in a manner that will protect the basin's water quality. See Exhibit A for a full discussion of the NYS regulations. Furthermore, in the New York City watershed, a second layer of storm water regulations exists that ensure the NYC drinking water supply will not be adulterated. See Exhibit B for a full disclosure of the regulations imposed by the City of New York. These two agencies as well as the high construction costs most likely encourage companies to seek drill pad sites under 20% slope in Delaware County.

#### Land Use

Sections 7.1 and 7.5, intended or not, could set a precedent to intervene in other land use issues beyond natural gas drilling. This would be in direct conflict with NYS Home Rule.

#### Items:

##### 7.3 Administration

The county fully understands the need for a revenue stream necessary to implement regulation. In this case, however, it appears to the county that these regulations are being implemented for the dual role of revenue generator for the DRBC and an effort to expand existing control over basin activities where not necessary. It is unclear to this county why there is a need for much of the administration as it would be duplicative of host state. We therefore recommend that any administrative activities identified as duplicative to the as yet established New York State Rules and Regulations resulting from the DGEIS process be removed from the

DRBC regulations.

The fee schedule as written is confusing and will require the development of an additional excessive layer of DRBC bureaucracy. As presented it appears to be designed to obfuscate and discourage sponsors from pursuing natural gas drilling activities. The DRBC must consider the socio-economic impact value of natural gas drilling on par with that of protecting the environment particularly since in New York State regulations the NYS SEQR includes a socio-economic impact as a component of the environment. (We need to expand and site these requirements and insist that state SEQR processes for issuing a permit be followed and that the DRBC regulations only apply to those matters that the host State regulations do not address.

Should they survive the gauntlet of bureaucracy and maze of fees the DRBC will have the funds necessary to expand, control and duplicate activities host states are more suited to administer. Administration of the program by the DRBC should be delegated to states as much as possible as identified by each host state.

#### 7.4 Waters Sources for Uses Related to Natural Gas Development

Delaware County recognizes that healthy stream biology is dependent upon adequate flow. We believe the DRBC role should be limited to the maintenance of stream flow. For this reason we support the Susquehanna River Basin Commission's approach to maintaining adequate stream flow-by and believe it should be implemented by the DRBC. The Commission's role in Natural Gas Drilling should be limited to this function only unless the host state has a more restrictive policy. If so, then DRBC proposed responsibilities should be delegated to the host state.

Delaware County agrees with the water withdrawal regulations as 7.4 (d)(1). Communities using surface water withdrawn from the Delaware River should have the option to sell water for natural gas development and this provision of "approval by rule" streamlines the process while at the same time providing adequate flow-by. This mechanism should ensure access to water, ensure down-stream water users there water source is protected, as well as substantial income for the communities involved.

#### 7.5 Well pads for Natural Gas Activities

In the county's opinion, this section should be removed in its entirety. It makes little sense for the host state to employ environmental professionals to oversee natural gas exploration, only to have their decisions be trumped by the DRBC that operates in a very limited area of each host state. A gas exploration company may have a permit to drill in one area of the state, which using this section would require a setback of 500 feet from a watercourse and then a mere 4 miles away in the same town and state find they are out of compliance with that state's regulations when they do follow the setback regulations. It appears to this county, that a wiser course of action would be to accept the host state's regulations. We agree with New York State Governor Patterson when he suggested in his letter of 12/6/2010 "Your proposed program, covering only a very small portion of New York State, could well conflict with the technical and regulatory protocols ultimately adopted in New York, causing confusion, duplication, redundant regulatory fee assessments, differing regulations in different locations and possible mismanagement. It would make far more sense for DRBC to participate in the New York process and assist in making the program as effective as possible, certainly before undertaking unilateral action".

Delaware County's suggestion is to eliminate this entire section and participate with each host state's staff in creating a unified science-based regulation.

#### Suggestions

The natural gas industry offer unparalleled economic opportunities for the region with extremely limited impacts on the natural environment. It should be noted that the environmental impact from this industry can be very well controlled, in part because the topography of this region will yield a very limited number of drill sites and secondly because of the robust nature of the host state's regulatory features. No industry offers so much, with so small a footprint on the land that supports the tourism industry and our rural lifestyle. Natural gas drilling, moreover, is advancing rapidly and constantly reducing both water use and risks to water quality. Neither rise to the levels associated with other major energy producing industries or even other economic endeavors. While green sources of energy may be the future the nation they are a tiny fraction of energy supply and will take decades to develop. Natural gas is a combination of economic opportunity with low risk is unusual and the benefit to the nation from development of such clean energy here at home and close to a metropolitan market compels us to respectfully request:

>DRBC and the residents of the Delaware River Basin should recognize that the goals of environmental protection and economic vitality within the Basin are not inconsistent. Furthermore, it should be the intention of all parties to cooperate in the development

and implementation of water quality protection and the economic vitality of the basin. To assure all interests are considered the DRBC should conduct a SocioEconomic Impact of the proposed regulations.

>DRBC should have a Memorandum of Agreement between all host states to ensure that they will enforce their regulations within the Delaware River Basin.

>DRBC should adopt the water withdrawal strategies consistent with those currently implemented by the Susquehanna River Basin Commission

>DRBC should establish a water quality monitoring program throughout the Delaware River Basin to aid in the environmental assessments that will lead to long-term protection of the Delaware Basin. Furthermore, the DRBC should make that water quality data available to all residents of the basin.

> DRBC should partner with host states to maintain a database, derived from the partnering state that includes natural gas industry data throughout the basin. This data should be available for communities and towns to use at their discretion in the development of land use planning strategies.

>DRBC should meet periodically with state environmental agencies to review water quality data, policies, and propose adjustments to natural gas development regulations as necessary for each host state to consider. Furthermore, while DRBC should act as a coordinator for policies related to natural gas development regulations between host states, it should be the host state's purview as to regulation language.

In closing, Delaware County appreciates the opportunity to provide these comments. The county strongly believes that natural gas exploration and harvest could be a benefit to the landowners and county taxpayers if done properly.

For this reason we dedicated significant staff time during the comment period to examine the Draft Supplemental Generic Environmental Impact Statement (DSGEIS) issued in September 2009 and the Delaware River Basin Draft Natural Gas Development Regulations issued December 9, 2010. A particular concern highlighted by county staff was the need to actively enforce the regulations once they are implemented. We continue to voice this concern today whether it is New York State or any other regulatory entity. We recognize this is a construction process and we recognize accidents can happen. For this reason, there is a need to have oversight staff on the ground to eliminate, as much as humanly possible, any accidents that might occur as a result of hydraulic fracturing. Resolution 2009-217 is attached as Exhibit D and the language in the resolution further demonstrates the county position that we do not accept reckless exploration as the norm, but rather expect and appreciate the need for a plan to provide the necessary oversight. Delaware County believes that a state-wide plan with partnering agencies will result in safe, clean energy for our residents.

Respectfully submitted,

Tina Mole