

NYS Assembly

We are pleased that the Delaware River Basin Commission has proposed a new Part 440 to ban high volume hydraulic fracturing (HVHF) in hydrocarbon bearing rock formations within the Delaware River Basin. We think this is an important step in helping to protect the health and water quality of the roughly 15 million people who depend upon drinking water from the Delaware River Basin.

The science on the impacts of HVHF is compellingly incomplete as is evidenced by New York State's Final Supplemental Generic Environmental Impact Statement (FSGEIS). "The Department adopts the NYSDOH statement in the Public Health Review that "[w]hile a guarantee of absolute safety is not possible, an assessment of the risk to public health must be supported by adequate scientific information to determine with confidence that the overall risk is sufficiently low to justify proceeding with HVHF in New York. The current scientific information is insufficient. Furthermore, it is clear from existing literature and experience that HVHF activity has resulted in environmental impacts that are potentially adverse to public health."

HVHF is also an intensively consuming use of water, with the United States Environmental Protection Agency (EPA) estimating that 70 to 90 percent of the water is permanently withdrawn from the water cycle. As a result, we are pleased to see that HVHF restrictions would apply to all HVHF-related withdrawals, even those below the normal threshold of 100,000 gallons per day. In conjunction with the proposed ban, additional requirements would be imposed pursuant to the revised Part 401.43 on the exportation of water from the Basin for utilization in HVHF operations.

Additional requirements would also be imposed on the importation of HVHF wastewater for treatment and disposal within the Basin, including the addition of formal statements to the regulations indicating that the Commission discourages the use of Basin resources for such purposes, and requiring that a proposed withdrawal of any volume undergo reviews of the alternatives to and the impacts of the project and imposing new conditions, including more stringent treatment and discharge requirements, for any HVHF wastewater imported into the Basin. We instead urge the Commission to adopt a prohibition on the storage, disposal, discharge, and processing of HVHF waste within the Basin.

In background materials for the proposal, the Commission states that since it initiated this rulemaking in 2010 there has been no de facto moratorium on either importation or exportation related to HVHF. However, this proposal highlights the many flaws associated with HVHF and would significantly restrict future HVHF projects, calling into question the wisdom of stopping just short of a ban.

Many interested parties have called for such a complete ban on HVHF that includes these ancillary activities. We believe that the Commission should give strong consideration to these calls to extend its proposal by also prohibiting the exportation of Basin water for HVHF operations and importation of HVHF wastewater.

If it adopts the proposed ban, the Commission will have joined two of its member states, New York and Maryland, in determining that the practice of high volume hydraulic fracturing poses unacceptably high risks to the environment and public health. The availability of clean and sustainable water of sufficient quality and quantity to support the many other critically-important

uses – drinking water, agriculture, industry, the ecosystem, and recreation – should not be subjugated to support a process that itself has already been found to be environmentally unacceptable.

We are concerned that although the additional measures proposed to mitigate the risks associated with HVHF-linked exportation and importation are useful augmentations of current project reviews, they may not go far enough in preserving the quality of the Basin's water resources. While New York's abundant water resources have historically spared us the "water wars" of the West, areas in and near the Basin have experienced severe drought conditions and the on-going threats posed by climate change should dictate prudence on exporting water for depletive uses.

The HVHF wastewater that would be imported only brings potential risks since it contains numerous substances that would damage the environment, a fact that is highlighted in the Commission's background information which states "In the Marcellus region, produced water is generated in large quantities and often contains high concentrations of total dissolved solids (TDS or "salts") and constituents that may be harmful to human health and the environment. New York's FSGEIS recognizes this fact with the statement "Waste disposal, as a general matter, also presents risks because of the uncertainty as to how and where high-volume hydraulic fracturing-generated-waste could be properly disposed. Overall, the absence of existing facilities with recognized capacity to accept large volumes of wastewater raises the potential of significant impacts, including improper or illegal disposal. "

The ability to treat such wastes effectively remains unproven and the risks of spills must also be considered. Such factors suggest a complete ban may be the best option rather than finding out too late that such importation led to contamination.

In summary, while we believe that the Commission has proposed a strong set of regulations and clearly intends to fulfill its role of environmental stewardship, we urge it to carefully weigh the, at best, minimal benefits of allowing HVHF-related exportation and importation against the substantial risks of this approach. New York has taken steps to protect its people, land, and water from contamination associated with HVHF and would like the Commission to do the same.

Sincerely,

Member of Assembly Steve Englebright, 4th Assembly District, Chair, Environmental Conservation Committee

Member of Assembly Daniel Quart, 73rd Assembly District, Chair, Assembly Administrative Regulations Review Commission

Member of Assembly Christine Pellegrino, 9th Assembly District, Chair, Legislative Commission on Toxic Substances and Hazardous Waste

Member of Assembly Didi Barrett, 106th Assembly District

Member of Assembly David Buchwald, 93rd Assembly District

Member of Assembly Kevin A. Cahill, 103rd Assembly District

Member of Assembly Steven Cymbrowitz, 45th Assembly District

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