

Upper Delaware Council

Please see uploaded letter entitled, "Bush Pamela DRBC - Special Regulations Part 440 - Hydraulic Fracturing in Shale and Other Formations"



Upper Delaware Council

P.O. Box 192, 211 Bridge Street, Narrowsburg, New York 12764-0192 • (Tel.) 845-252-3022 • (Fax) 845-252-3359
www.upperdelawarecouncil.org

February 1, 2018

Pamela Bush, Commission Secretary
Delaware River Basin Commission
P.O. Box 7360, 25 Cosey Road
West Trenton, NJ 08628-0360
Submitted via <http://dockets.drbc.commentinput.com/>

RE: Special Regulations Part 440-Hydraulic Fracturing in Shale and Other Formations

Dear Ms. Bush,

The Upper Delaware Council, Inc. (UDC) offers the following comments on the Delaware River Basin Commission's (DRBC) draft rules regarding natural gas development activities, as released for public review on November 30, 2017.

The DRBC proposes to amend its Special Regulations and Comprehensive Plan by prohibiting high-volume hydraulic fracturing in hydrocarbon-bearing rock formations within the Delaware River Basin, and by addressing provisions related to water use and management of produced water from this process.

As a non-profit organization responsible for the coordinated implementation of the 1986 *Final River Management Plan for the Upper Delaware Scenic and Recreational River*, the UDC represents the interests of two states—the Commonwealth of Pennsylvania and the State of New York—and 13 of the 15 local governments that border along the main stem starting at the confluence of the East and West Branches of the Delaware below Hancock, NY and flowing 73.4 miles to Railroad Bridge No.2 near Mill Rift, PA. The DRBC participates on the Council as a non-voting member. We operate under the terms of a Cooperative Agreement with the National Park Service as our non-voting federal partner.

The UDC focuses its oversight on the boundary encompassing 55,574.5 acres of primarily private property that was mapped after the U.S. Congress designated the Upper Delaware Scenic and Recreational River to the National Wild and Scenic Rivers System in 1978.

It has been the Upper Delaware Council's consistent position to oppose surface activities associated with hydraulic fracturing from being allowed within the Upper Delaware Scenic and Recreational River federal-state-local management area to avoid any potential impairment to the special values here and to preserve our non-industrialized regional character. We find that the magnitude of risks from any negative consequences and cumulative impacts from natural gas development in the designated boundary are incompatible with the goals of the River Management Plan.

Given that upholding private property rights and local land use controls remain of paramount concern to the Council, horizontal drilling under the river corridor should be considered only if it can be done consistent with the objectives of the River Management Plan.

Working together to conserve the Upper Delaware Scenic and Recreational River

Town of Hancock - Town of Fremont - Town of Delaware - Town of Cochecton - Town of Tusten - Town of Highland 1
Town of Lumberland - Town of Deerpark - Damascus Township - Berlin Township - Lackawaxen Township - Shohola Township - Westfall Township
State of New York - Commonwealth of Pennsylvania - Delaware River Basin Commission - In partnership with the National Park Service

We request that any well pads be sited as far away as possible from the river corridor boundary to still be able to horizontally drill beneath the river corridor, if this activity is allowed.

Since New York enacted a state-wide ban on high-volume hydraulic fracturing as of June 29, 2015 that pertained to UDC's eight NY member towns in the Counties of Delaware, Sullivan, and Orange, the DRBC's proposed prohibition on natural gas drilling would potentially affect the UDC's five PA member townships of Damascus, Berlin, Lackawaxen, Shohola, and Westfall within Wayne and Pike Counties. The two non-member Townships (Buckingham and Manchester in Wayne County) fall under the direct jurisdiction of the National Park Service.

Proposed actions regarding the storage, treatment, disposal and/or discharge of wastewater associated with horizontal drilling and hydraulic fracturing, and the regulation of inter-basin transfer of water and wastewater for purposes of natural gas development where permitted, would potentially affect the entire basin.

Justification for Position

In reviewing development projects and zoning amendments to assess their potential impacts on the Upper Delaware Scenic and Recreational River resources, the UDC receives its guidance from the River Management Plan (RMP) and the Land and Water Use Guidelines (Guidelines).

The Guidelines state that "New major oil and gas transmission lines and refining/production facilities for other than local service will not be located within the river corridor excepting for individual wells, (subject to conditional use review), lines constructed to provide service to or collect from individual customers or wells. This does not prohibit maintenance of existing facilities or the location of new lines within existing rights-of-way" (page 123).

Major Oil and Gas Lines are defined as "Any pipe or conduit used for the transmission of natural gas, oil or other fuel which is one thousand (1000) feet or longer and is under pressure of 125 pounds per square inch (p.s.i.) or greater. This does not apply to natural gas, oil, or other fuel distribution lines for residential, industrial and commercial use" (page 129).

Major and Minor Surface Mining Operations are also distinguished by capacity. Major is constituted as "Any new land use operation which extracts minerals from the earth from active operations exceeding two (2) acres in size, including, but not limited to, strip mining, dredging, quarrying, coal or uranium mining"; while Minor does not exceed "two acres of active face at one time plus an area equal in size to the active face necessary for accessory use" (page 129).

Another relevant definition is Heavy Industrial Use, which the Guidelines define as "The manufacturing, production or refining of raw materials or the large scale assembly of component parts for non-local distribution or consumption, typically involving the generation of waste by-products, extensive buildings and ancillary transportation modes, but not including home occupation or traditional activities such as lumber yards or dairy processing plants" (page 127).

The *Schedule of Compatible, Conditional, and Incompatible Land Uses* in the Land and Water Use Guidelines (page 134) lists as incompatible uses in the river corridor's hamlets, recreational segments, and scenic segments: Major Oil & Gas Transmission Lines; Major Surface Mining Operations; and Heavy Industrial Uses.

The Guidelines explain that the Schedule of Uses "encourages development in certain areas. In other areas it is permitted if the proposed development will not degrade the river corridor. Finally,

the legislation prohibits certain activities, such as water resources development projects. In addition, other uses are identified which would have irreversible adverse impacts on the river and which, under this agreement, are incompatible with the river corridor... There may be a number of unforeseen future uses that cannot be specifically provided for in the schedule. When those situations arise, the affected town, the Council and the National Park Service will compare those uses to similar uses that are defined in the Guidelines and make their judgments accordingly" (page 133).

While the 1986 RMP did not envision the scope and technology of high-volume hydraulic fracturing operations to extract natural gas from the Marcellus Shale geologic strata, the UDC interprets the intent of these incompatible determinations to prohibit this heavy industrial use within the Upper Delaware Scenic and Recreational River boundary in recognition of the outstandingly remarkable values that were deemed as being in the national interest to conserve.

Water Importation and Exportation

The UDC shares the objectives of the DRBC's Special Protection Waters designation to assure that the present exceptional water quality enjoyed in the Upper Delaware River is maintained or improved with no measurable changes.

We support the DRBC's policy of discouraging exportations of water from the Delaware River Basin on the basis that water must be available to meet in-basin needs, including during periods of low flow and drought conditions. The Delaware River system already has extraordinary demands imposed on its water resources with out-of-basin transfers that approximate half the flow volume of the river at times. While over 15 million people rely on this water for drinking, agricultural, and industrial purposes, the watershed drains only four-tenths of one percent of the total continental U.S. land area.

Under the new rule, all proposed transfers of surface water, groundwater, treated wastewater or mine drainage water, at any rate or volume, for utilization in hydraulic fracturing to produce oil and gas outside the Delaware River Basin would require Commission approval in the form of a docket. The current threshold for review is a daily average quantity of 100,000 gallons.

It would further require an analysis of alternatives to exportation and an evaluation of the water resource, economic, and social impacts of the proposal. The same would hold true for the importation of wastewater from hydraulic fracturing into the Basin to protect against potential pollution. Projects involving the treatment and discharge of produced water within the Basin would need to comply with the more stringent of applicable federal, state, and DRBC Water Quality Regulations requirements with additional effluent limitations.

Since the UDC has no regulatory authority, the organization relies on the Commonwealth of Pennsylvania, State of New York, and the DRBC to administer environmental laws which pertain to natural gas development and to act consistently with the goals and objectives of the RMP, as each entity has formally agreed to do.

The DRBC adopted Docket D-78-51 CP (Revised) on March 23, 1988 stating, "The Upper Delaware Scenic and Recreational River Area, within the boundaries as determined by the NPS, is hereby included in the Comprehensive Plan... DRBC hereby endorses the intent of the Management Plan, including the creation of an Upper Delaware Council as defined in the Management Plan, and will provide staff for DRBC participation as an advisory member of the Council without vote."

We urge serious deliberation and consideration of all input from the scientific community, federal and state environmental agencies, resource stewardship organizations, local governments, and residents before the DRBC commissioners vote on this significant rulemaking action that will affect the entire basin.

The UDC therefore appreciates the extension of the public comment period deadline from Feb. 28 to March 30 and the scheduling of additional public hearing opportunities to help assure that sufficient time is offered to solicit comments.

Sincerely,

Aaron — — — — —

Upper Delaware Council, Inc.

Cc: Steve Tambini, Executive Director, DRBC, UDC Representative
Gay Vietzke, Regional Director, NPS Northeast Region, UDC Representative
Kristina Heister, Superintendent, NPS UDS&RR, UDC Alternate
Commonwealth of Pennsylvania Governor Tom Wolf
Tim Dugan, PA DCNR, UDC Representative
Rhonda Manning, PA DEP, UDC Alternate
New York State Governor Andrew Cuomo
Bill Rudge, NYS DEC, UDC Representative
Michael Flaherty, NYS DEC, UDC Alternate
U.S. Senator Pat Toomey (PA)
U.S. Senator Robert P. Casey, Jr. (PA)
U.S. Senator Charles Schumer (NY)
U.S. Senator Kirsten Gillibrand (NY)
U.S. Congressman Tom Marino (10th District-PA)
U.S. Congressman John Faso (19th District-NY)
U.S. Congressman Sean Patrick Maloney (18th District-NY)
PA Senator Lisa Baker (20th District)
NY Senator John J. Bonacic (42nd District)
PA Rep. Michael Peifer (139th District)
PA Rep. Jonathan Fritz (11th District)
NY Assemblywoman Aileen Gunther (100th District)
NY Assemblyman Clifford Crouch (122nd District)