

Each of the member states of the Delaware River Basin Commission is subject to the public trust doctrine as is the Commission itself. These obligations arise either explicitly, such as the Environmental Rights Amendment in Article 1 Section 27 of the Pennsylvania Constitution (see *Robinson Township v. Commonwealth*, 83 A. 3d 901, 950-51 (Pa. 2013)(plurality); *Pennsylvania Environmental Defense Foundation v. Commonwealth*, (Pa., June, 20, 2017)), or as a matter of statutory or common law in other DRBC member states. The Pennsylvania constitutional provision (Section 27) provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

In the current proposal of new regulations that would apply to oil and gas development related to the Basin and its resources, we are pleased to see the Commission will be prohibiting gas production utilizing high volume hydraulic fracturing (HVHF). However we are concerned that the proposed regulations may not apply to prevent what is known as "conventional" wells that do not apply HVHF technology. We also are quite concerned that the proposed rules in conjunction with the recently adopted "one process/one permit" ("OP/OP") rule could be applied to authorizing activities involving gas development, such as allowance of facilities to treat waste liquids generated by HVHF production permitted in other Commission member states such as Pennsylvania.

For instance, we are quite concerned that the proposed rules could be interpreted to allow waste liquids and solids to be imported into the Basin for treatment and disposal. Of greatest concern is whether practices such as "brine" disposal by dumping or spraying waste liquids and solids produced by HVHF or other gas production operations outside the Basin on to similar unpaved roads located in the Basin. Much of this disposal by "brine" spreading is allowed in many townships in Pennsylvania as a "beneficial use" to control dust or "stabilize" un-paved roads. First, there is nothing to support the characterization of this practice as a "beneficial use." This "brine" material is just as toxic as the materials and wastes that will be banned under the proposed new rules. Second, the ban that is proposed for HVHF wells must be extended to ban brine spreading or other waste management practices that could introduce into the Basin the toxic waste materials produced outside the Basin. On this issue, we have attached for your information a report prepared by HydroQuest on the so-called "beneficial use" of oil and gas development wastes.

See, [https://www.dropbox.com/home/Jeff/dammit/Jan%2031/Hydroquest%20Paul%20Rubin?preview=HydroQuest+Brine+Spreading+Report+\(2-23-18\).docx](https://www.dropbox.com/home/Jeff/dammit/Jan%2031/Hydroquest%20Paul%20Rubin?preview=HydroQuest+Brine+Spreading+Report+(2-23-18).docx)

The proposed regulations must be read in conjunction with the recently adopted "OP/OP" rule. This rule is being relied on as the basis for a significant number of projects that would be reviewed under the DRBC docket process if the OP/OP was not applied to those projects. Among the currently pending projects under this rule in New Jersey is an application by DuPont to re-open the Chemours treatment facility to accept wastes from out-of-Basin oil and gas development projects. Under the public trust obligations of the Commission and the involved member states of Pennsylvania and New Jersey the

Chemours project should be rejected because the ban on oil and gas development under the proposed rules should be applied to all aspects of the oil and gas process.

In conclusion, the proposed rule should be expanded to assure that all aspects of oil and gas activity are banned in the Basin. We have seen an alarming increase of adverse health effects in Pennsylvania, West Virginia and Ohio where oil and gas development continues to expand. See, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction)*, (Concerned Health Professionals of NY, March 13, 2018). See, <http://concernedhealthny.org/>

We appreciate this opportunity to comment on the proposed regulations. If you have any questions please contact us.

Respectfully submitted,

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