



March 28, 2018

Submitted via electronic transmission

Mr. Steven J. Tambini, PE
Executive Director
Delaware River Basin Commission
25 Cosey Road; P.O. Box 7360
West Trenton, NJ, 08628-0360

Re: Hydraulic Fracturing in Shale and Other Formations: Subchapter B – Special
Regulations
Notice of proposed rulemaking

Dear Mr. Tambini:

The American Exploration & Production Council (“AXPC”) read with interest the publication of the notice of proposed rulemaking, *Special Regulations Part 440 – Hydraulic Fracturing in Shale and Other Formations* (“Proposal”), published in the Federal Register on January 12, 2018¹. AXPC was disappointed that the Delaware River Basin Commission (“DRBC”) would issue such proposed regulations – prohibition of high volume hydraulic fracturing – under the guise of protection and conservation of its water resources when its counterpart Commission, the Susquehanna River Basin Commission (“SRBC”), has proven that its water resources can be properly managed to avoid any such impacts². Although it has chosen to narrowly comment on this Proposal, AXPC fully supports the comments filed by the Marcellus Shale Coalition (“MSC”).

AXPC asserts that the majority of DRBC’s commissioners have already decided the fate of this proposed rulemaking as evidenced in the statements from the Governors of Delaware, New York, and Pennsylvania issued on September 13, 2017³. To be clear, AXPC is not questioning the notion that commissioners are entitled to their own views on proposed regulation, but to advertise them so blatantly prior to the public comment period seemingly undermines the integrity of that process. It appears to put political posturing ahead of DRBC’s mission to “base decisions on sound science”⁴. Essentially, DRBC has failed in its most fundamental responsibility; to allow reasoned science and the interests of the citizens it purports to represent guide its actions and decisions.

¹ Published in Delaware Register of Regulations (Vol. 21 Issue 7) on January 1, 2018; Published in New York State Register January 3, 2018; Published in Pennsylvania Bulletin (Vol 48, No. 2) January 13, 2018

² SRBC 2013 Assessment Document

³ Governor Tom Wolfe website [article](#), *Pennsylvania, Delaware, and New York Approve Resolution to Permanently Ban Fracking in the Delaware River Basin*, September 13, 2017

⁴ DRBC’s Vision Statement

Apart from having concerns relating to the legal and technical justifications for this proposed rule, concerns detailed in the MSC's comment letter, AXPC believes that if DRBC were to adopt the Proposal as written it would conflict with its 2001 Comprehensive Plan. As detailed in the Introduction, specifically in Section D, the Comprehensive Plan provides, "...a flexible, growing and evolving general framework for the orderly development of the water and related resources of the basin." AXPC asserts that this statement is intended to embrace innovation and technological advancement by the various water users within the DRBC's jurisdiction and reflect such achievements in its regulations. A ban on any activity within the basin is obviously outside the realm of a flexible, evolving framework.

On a narrow, but critical point, AXPC urges that DRBC revise its definition of *Pollutants of Concern*. The draft definition proposes to incorporate *all parameters*, or roughly 75 individual constituents, listed in the Environmental Protection Agency's ("EPA") Technical Development Document for the Effluent Limitations Guidelines for the Oil and Gas Extraction Point Source Category 2016 Final Rule⁵. Interestingly, the EPA's pass-through analysis ultimately did not identify a single, specific pollutant of concern. Therefore, DRBC's definition should be modified to reflect the EPA's ultimate determination instead of the constituents considered.

AXPC encourages thoughtful consideration of the public's comments on this rulemaking and implores the DRBC to arrive at regulations that are rooted in sound science. AXPC appreciates DRBC's consideration of the statements presented herein and appreciates the opportunity to participate in this public process.

AXPC is a national trade association representing 31 of America's premier independent natural gas and oil exploration and production companies. AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

Respectfully Submitted,



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⁵ Federal Register Vol. 81, No. 124, June 28, 2016