

Top Three Asks for the Susquehanna River Basin Commission (SRBC)

(Developed February, 2012 by Earthworks, Lower Susquehanna Riverkeeper, and Sierra Club PA Chapter)

The following information has been developed for use in activities focusing on SRBC issues, such as meetings, action alerts, written comments, and testimony. While every organization should tailor them to suit its own needs and positions, this document provides a basis for coordinated, consistent communications with officials, the public, and the media.

We all agree that it's valid to question whether shale gas development should be moving forward at all, including in the Susquehanna River Basin. But as an immediate strategy to influence the SRBC, our consensus message is two-fold:

- Given all the detrimental impacts of gas development on the environment and communities, Commissioners need to take action and stop additional permitting and other actions that accelerate shale gas development.
- It is inappropriate for SRBC to authorize more water withdrawal permits and implement new shale gas regulations without first performing the scientific studies necessary to ensure that decisionmaking is comprehensive and informed.

With this in mind, here's what SRBC must do:

1. Respect Joint Authority

SRBC holds the unique position of managing water resources shared jointly across three states. Section 1.3 of the Susquehanna River Basin Compact (adopted in 1972) states that the purpose of the Compact is "...to provide for a joint exercise of these powers of sovereignty in the common interest of the people of the region." Joint authority requires policy coordination and uniform standards among member states with regard to water use and management.

Unquestionably, this principle is not being followed in the context of natural gas development within the Susquehanna River Basin. Activities in one member state, Pennsylvania, are determining SRBC's decisions on permits and regulations—even though two other member states, Maryland and New York, have not yet decided whether to even allow shale gas development.

Both Maryland and New York are currently studying the full scope of environmental impacts that gas development brings, including on water resources. Indeed, those studies are intended to serve as the basis for new regulations to address the type of drilling underway in Pennsylvania, (i.e., high-volume hydraulic fracturing and horizontal drilling in deep shale formations) should Maryland and New York decide to allow such development.

With this in mind, the Commission should delay adoption of its final rules scheduled for issuance on April 1, 2012, and not issue any more permits for water withdrawals until the work of the Maryland moratorium commission and New York's environmental review process are complete.

Any final regulations from the Commission should, in keeping with the Commission's exercise of joint authority, reflect its signatory member states' final assessment of the impacts of shale gas development and mirror any regulations deemed necessary to prevent harm to human health and the environment. Doing otherwise would contradict the Commission's clear mandate to work through its signatory member states with policies that protect, utilize, and conserve shared water resources for current and future generations.

The magnitude, severity, and pace of shale gas development creates impacts that span political boundaries, and thus are beyond the capacity of any one state's regulatory controls. This issue is especially important in the context of the 2010 Chesapeake Bay Total Maximum Daily Load (TMDL) Final Rule, which limits the addition of sediment, nitrogen, and phosphorus to the Chesapeake Bay from the Susquehanna River. (The Susquehanna River Basin provides about half of the freshwater that flows into the Chesapeake Bay.)

In fact, sediment deposition in waterways is one primary and direct effect of shale gas development. The TMDL requires accurate planning of how jurisdictions will reduce sediment loading across the Susquehanna Basin—an obligation that complements the SRBC's duty (under Article 7, Section 7.1 of its Compact) to promote sound practices of watershed management and prevent runoff and soil erosion.

The Commission has specific expertise and authority in this area, and both can and should play a decisive role in ensuring compliance with the TMDL by promoting a uniform and comprehensive management program for shale gas development. In so doing, the Commission would fulfill its duties under the Compact.

2. Develop a Comprehensive Management Plan for Shale Gas Drilling

Planning is a primary purpose of the SRBC, as reflected in Section 3.3 ("Powers and Duties of the Commission") of the Compact, which directs the Commission to perform comprehensive planning to ensure water quantity and quality for all parties. Specifically, Section 3.5.3 mandates that the Commission shall "...[a]dminister, manage, and control water resources in all matters determined by the Commission to be interstate in nature or to have a major effect on the water resources and water resources management."

Shale gas development must be studied on a Basin-wide scale

While the SRBC has conducted in-depth planning for many other crucial water resource issues affecting the basin (e.g., water supply, agricultural use, acid-mine impairment, and Conowingo Pond management), it has not taken the initiative to create—in partnership with the public—a management mechanism for shale gas development.

A growing body of evidence clearly shows that gas development poses threats to water resources and water resources management. Despite this, the Commission continues to take a fragmented approach to shale gas decisionmaking by failing to consider the broad effects its authorizations have on the Basin as a whole.

For example, the Commission currently manages shale gas development via piecemeal analysis of each water withdrawal permit. These authorized withdrawals are often individually minor, yet can be cumulatively significant over time. The SRBC must remedy this situation by properly assessing and planning for current and foreseeable impacts on water quality and quantity—and thereby fulfill its planning mandate.

Furthermore, authorizing individual water withdrawals for shale gas operations constitutes a “growth-inducing” action that supports and promotes the industry as a proper policy choice—but one that is being made without the scientific analysis required to support it. With this in mind, the Commission must establish strategies to avoid further damage to water resources and reduce existing impacts.

SRBC has the authority and duty to conduct a Basin-wide impact study

Whether or not a cumulative impacts study is required pursuant to the National Environmental Policy Act (NEPA), it was imprudent for the SRBC to allow widespread gas drilling without first conducting a science-based, Basin-wide impacts study and then adopting a management plan and regulations based on the study. SRBC has the authority to conduct a comprehensive study under Section 3.4.1 et. seq., and 5.2(a)-(e) of its Compact, and in fact is called do so in the case of shale gas development pursuant to Sections 3.5.2-5 (“Duties of the Commission”).

Likewise, SRBC has the authority to modify or decline to issue water withdrawals and consumptive use permits for gas development under the Code of Federal Regulations (Section 18, “Conservation of Power and Water Resources,” specifically 806.21, 806.23(b)(2), and 806.32(a),(d)). At this time, SRBC also has the authority both to conduct a cumulative impacts study *and* to stop issuing permits until that study is completed and the recommendations of the study are implemented through regulation.

The SRBC should take both these actions now in order to better manage the water resources of the Basin: halting further water withdrawals while it takes advantage of the studies underway in New York and Maryland and of data collected from Pennsylvania gas development operations. SRBC is uniquely and ideally positioned to take these actions because it has authority to use all three member states as agencies that serve its work.

A study process should commence immediately even if water withdrawal permits for shale gas development continue to be issued. However, as long as permits supporting shale gas operations continue to be issued, the SRBC should not adopt the rules finalized on December 15, 2011, or any others that accelerate the pace of shale gas development within the Basin.

3. Increase Transparency and Opportunities for Public Participation

At the same time, the SRBC should improve the transparency of its operations and data-collection. It should also increase opportunities for meaningful public participation. As a public agency whose members are appointed by State Governors (i.e., elected officials), SRBC must be responsive to the concerns of residents across the Basin and conduct its business in a transparent, inclusive manner.

Doing so is essential to improve public confidence in the Commission's commitment to its mandate and the sound management of public water resources, and to encourage constructive participation by both experts and residents of the Basin. The Commission can support this process in a variety of ways:

Make more information available to the public on the SRBC's website

Publicly available information should include post-hydraulic fracturing stimulation reports (which SRBC already requires as a means of ensuring gas well operators identify the sources and amounts of all freshwater and wastewater used), as well as the amounts and places of disposal or re-use of wastewater generated. Moreover, the timing is ripe to implement such publicly available tracking mechanisms jointly between the SRBC and the Pennsylvania Department of Environmental Protection (PADEP), since PADEP is currently revamping its general permits and tracking mechanisms for the transportation and reuse of wastewater and flowback water produced through gas development.

Publication of this information will enable the public to investigate the accuracy of the reports by cross-referencing them against data reported to PADEP. In the absence of any publicly reviewable and transparent "cradle-to-grave" system for tracking drilling wastes in Pennsylvania, public participation can help ensure that wastewater is properly transported, stored, and disposed.

Likewise, as discussed below, because PADEP has consistently suffered from personnel and funding shortages that affect its compliance and enforcement abilities, SRBC should clarify how it plans to determine the efficiency and accuracy of aspects of Pennsylvania's shale gas regulatory program that affect water resources.

Real-time data should also be made available with regard to the monitoring of SRBC-approved withdrawals, including when permitted water withdrawals are exceeded; where, when, and for what cause inspections and investigations are performed by the SRBC; and when and for what reason Notices of Violation are issued to operators.

Establish a Shale Gas Citizens Advisory Council

In light of the rapid pace of shale gas development in the Susquehanna River Basin and the difficulties inherent in effectively managing such a widespread and damaging industry, the SRBC should establish a Shale Gas Citizens Advisory Council and convene regular meetings.

The Citizens Advisory Council established for the PADEP could be a model. That Council is comprised of citizen volunteers from various stakeholder groups and has proven to be an important way to distribute information and involve the public in securing improvements to environmental laws and regulations.

Allow the public to review and comment on the proposed revision of the Memorandum of Understanding (MOU) between the SRBC and the PADEP

This process is welcome, given that the current MOU between the agencies is from 1999 and does not address hydrocarbon development. However, it is critical that the SRBC include the public in the revision process.

The Susquehanna River Basin Compact authorizes the Commission to engage any other agency of a member state for any purpose. Again, both MD and NY agencies are studying potential shale gas drilling impacts, yet to date the Commission has chosen to rely solely on the PADEP to ensure that oil and gas production operations don't impair the quality of the Basin's water resources. In addition, outside experts and members of the public have valuable information about the effectiveness of the PADEP in regulating and overseeing gas operations, which could inform the Commission and potentially affect SRBC's reliance on the agency and thus the content and outcome of the MOU itself.