

**TESTIMONY**  
**HOUSE STATE GOVERNMENT COMMITTEE**  
**DELAWARE RIVER BASIN COMMISSION**  
**HARRISBURG, PA**

**JUNE 11, 2018**

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For the record, I am Joe Garner, President of the PA Septage Management Association (PSMA).

**PA Septage Management Association** represents firms that install and service onlot septic systems and also perform other services such as application of biosolids (treated waste) to farms. In addition, many of our member firms serve municipality facilities that discharge into the Delaware River and tributaries. Our members have both professional and personal interests in conserving natural resources and the quality of Pennsylvania's waters. Many of our members live in the Delaware River Basin and are themselves outdoors people who fish, hike, boat, hunt, and otherwise appreciate a quality outdoors environment.

However, PSMA believes that the Delaware River Basin Commission has exceeded its authority beyond its original mission in trying to keep waters pure and unpolluted.

**This Is Not Just About Fracking**

Thus far, attention has focused on the anti-fracking regulation that the Delaware River Basin Commission is going to approve. Not surprisingly, fracking foes regard the regulation as a critical issue. Not surprisingly, supporters of natural gas development feel just as strongly on the other side. House members may recall the debate on House Resolution 515 which ended up being a debate between pro and anti-fracking legislators.

**The issue is far larger than this one regulation and this one industry.**

**PSMA asks that this committee examine the larger picture, one of state sovereignty.**

Whether or not a lawmaker supports fracking, the fact is that there is a Pennsylvania law, Act 13, which regulates fracking. PSMA's issue with the fracking regulation is that it is an example where the Delaware River Basin Commission decides that it can do what it wants even if it conflicts with Pennsylvania law.

We do not believe the Commission should be able to ignore enacted PA legislation. This is a matter of state sovereignty.

The original enabled legislation which entered Pennsylvania into the Delaware River Basin Commission is Act 268 of 1961. Section 7.4 Water Management reads:

**Section 7.4. Cooperative Planning and operation**

- (a) The commission shall **cooperate with the appropriate agencies of the signatory parties** and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.
- (b) The commission **shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency is available** to operate the same under reasonable conditions... (*Emphasis added*)

Ignoring Pennsylvania's Act 13 simply because the Delaware River Basin Commission is anti-fracking does not show willingness to cooperate with other public and private agencies if one includes the PA General Assembly or the Department of Environmental Protection as interested parties. In addition, (b) says that the **Commission cannot act on a “project” unless no other suitable unit or agency is available.** *The Delaware River Basin Commission is asserting that banning fracking is a “project”, something which is being litigated.*

PA Department of Environmental Protection and the Environmental Quality Board are quite “suitable” and should the General Assembly change Act 13, DEP will implement those changes.

### **Future Commission Precedent Expansion Concerns**

As an expansion of the Delaware River Basin Commission's power, the anti-fracking regulation establishes a precedent. In the name of protecting water, the Commission could now:

- Restrict or prohibit application of biosolids on farmland even though normal activities of farming which include application of these treated wastes are regulated by Pennsylvania's Right to Farm Act and by ACRE. This activity is also performed through a regulated permitting process.
- Restrict or ban installation of onlot septic systems. These systems are a natural way to dispose of human waste and installation is also a regulated process by Pennsylvania. Act 537 gives DEP regulatory authority over septic systems and local officials, the Sewage Enforcement Officers (SEOs), also have legal authority to review local projects.

Currently, DEP is implementing Act 26 of 2017. This sets standards for approval of what are termed ‘alternate systems’. These are newer ways to install septic systems that are used in other states. PA law specifies that the Department of Environmental Protection working in conjunction with the Sewage Advisory Committee, shall develop standards by which to review these technologies. The Delaware River Basin Commission should not be able to take away Pennsylvania's authority to decide which alternate systems are acceptable simply because it decides to.

PSMA asks that members of the State Government Committee review a sponsorship memo circulated by Representative Jonathan Fritz which asks you to sign on to legislation which expressly prohibits the Delaware River Basin Commission from regulating or restricting installation and maintenance of onlot septic systems since Pennsylvania already has a regulatory system in place. Rep. Fritz' bill would prevent the ‘mission creep’ now taking place by the Commission from expanding into the regulation of onlot septic systems.

### **Conclusion**

We hope that a takeaway from this hearing will be that you understand the real and present danger to state legislative regulatory authority that the Delaware River Basin Commission poses. Members of the PA Septage Management Association are businesses regulated under the laws of the Commonwealth. We would like to keep it that way.

Following are several resources for your consideration:

- ~ Appendix A: Act 13
- ~ Appendix B: Act 26
- ~ Appendix C: Sections of the PA enabling 1961 law Act 268 enabling PA participation in the Delaware River Basin Commission relevant to this testimony
- ~ Appendix D: Rep. Fritz' Sponsorship Memo

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### **Appendix A: Act 13**

The Commission action clearly violates this section of the Compact. Pennsylvania's Act 13 sets forth a regulatory framework for extraction of natural gas in all of Pennsylvania. It does NOT exempt the Delaware River Basin Commission as taking precedence over Pennsylvania law.  
(Source:

<http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/OilGasReports/2012/act13.pdf>)

APPENDIX TO TITLE 58 OIL AND GAS

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Supplementary Provisions of Amendatory Statutes  
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2012, FEBRUARY 14, P.L.87, NO.13

#### **§ 5. Application of law.**

The addition of 58 Pa.C.S. Ch.23 shall apply to **all oil and gas deposits and oil and gas development activities and operations subject to the jurisdiction of the Commonwealth.** With respect to oil and gas deposits on national forest lands identified under section 17(o) of the Mineral Leasing Act (106 Stat. 3108, 30 U.S.C. § 226(o)), the application of regulations and statutes adopted by the Commonwealth shall be the exclusive method and means by which any requirements may be imposed on any feature, aspect or process of oil and gas operations pertaining to the development of the deposits. (*Emphasis added*)

### **Appendix B**

#### **Pennsylvania Statute Regulating Onlot Septic Alternate Systems (Act 26 of 2017)**

[http://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?syear=2017&sind=0&body=S&type=B&bn=144](http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2017&sind=0&body=S&type=B&bn=144)

AN ACT

Amending the act of January 24, 1966 (1965 P.L.1535, No.537),entitled, as amended, "An act providing for the planning and regulation of community sewage systems and individual sewage systems; requiring municipalities to submit plans for systems in their jurisdiction; authorizing grants; requiring permits for persons installing such systems; requiring disclosure statements in certain land sale contracts; authorizing the Department of Environmental Resources to adopt and administer rules, regulations, standards and procedures; creating an advisory committee; providing remedies and prescribing penalties," further providing for official plans.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, is amended by adding subsections to read:

Section 5. Official Plans.--\* \* \*

(c.1) When proposing a plan supplement or plan revision for a new land development, the applicant may submit and the department shall accept, for the purpose of satisfying general site suitability requirements, any conventional or alternate on-lot system permittable by a sewage enforcement officer.

(C.2) (1) WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION, THE DEPARTMENT SHALL, IN CONSULTATION WITH THE SEWAGE ADVISORY COMMITTEE, DEVELOP SCIENTIFIC, TECHNICAL AND FIELD TESTING STANDARDS UPON WHICH AN EVALUATION OF EACH ONLOT SEWAGE SYSTEM THAT HAS BEEN CLASSIFIED AS AN ALTERNATE SYSTEM IN ACCORDANCE WITH 25 PA. CODE § 73.72 (RELATING TO ALTERNATE SEWAGE SYSTEMS) SHALL BE BASED.

(2) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE SEWAGE ADVISORY COMMITTEE, REVIEW THE SCIENTIFIC, TECHNICAL AND FIELD TESTING DATA FOR EACH INDIVIDUAL ONLOT SEWAGE SYSTEM AND EACH COMMUNITY ONLOT SEWAGE SYSTEM THAT IS CLASSIFIED AS AN ALTERNATE ONLOT SEWAGE SYSTEM.

(3) IF, BASED ON THE REVIEW SPECIFIED IN PARAGRAPH (2), THE DEPARTMENT DETERMINES THAT THERE IS SUFFICIENT SCIENTIFIC, TECHNICAL AND FIELD TESTING DATA TO RECLASSIFY AN ALTERNATE SYSTEM AS A CONVENTIONAL SYSTEM, THE DEPARTMENT SHALL RECLASSIFY THE ALTERNATE SYSTEM AS A CONVENTIONAL SYSTEM.

(4) IF, BASED ON THE REVIEW SPECIFIED IN PARAGRAPH (2), THE DEPARTMENT DETERMINES THAT THERE IS INSUFFICIENT OR INADEQUATE SCIENTIFIC,

TECHNICAL OR FIELD TESTING DATA TO CONTINUE CLASSIFYING THE ONLOT SEWAGE SYSTEM AS AN ALTERNATE SYSTEM, THE DEPARTMENT MAY UNDERTAKE A RULEMAKING TO REMOVE THE SYSTEM'S CLASSIFICATION AS AN ALTERNATE SYSTEM.

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#### **Appendix C: Limits to Commission Authority**

The original 1961 Compact as ratified by Pennsylvania Act 268 of 1961 (July 7, 1961) suggests that the Commission is supposed to work in cooperation with states rather than deciding for itself what a state will do.

#### **Delaware River Basin Compact Act 268 July 7, 1961**

##### **Article 1: 1.3 Purpose and Findings**

(c) In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; **to provide for cooperative planning and action by the signatory parties with respect to such water resources**; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.

<http://www.state.nj.us/drbc/library/documents/compact.pdf> (*Emphasis added*)

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## **Appendix D: Sponsorship memo from Rep. Fritz**

Dear Colleague;

I respectfully ask that you join me in sponsoring legislation that clarifies the role of the Delaware River Basin Commission (DRBC) as it relates to protecting waters in the Delaware River Basin region.

Regrettably, the DRBC appears to be disregarding terms of the Interstate Compact by overruling the authority of the PA Department of Environmental Protection (DEP) when it comes to the proposed regulation that would permanently ban hydraulic fracturing in the Delaware River Basin. This action by the DRBC is a classic example of what is called “mission creep”.

My proposed legislation is a measure to prevent a further expansion of that self-assumed authority (“mission creep”) by the DRBC.

It is foreseen that the Delaware River Basin Commission will likely attempt to regulate installation and maintenance of onlot septic systems. These systems are regulated by DEP under the authority of Act 537. The technology used to install an onlot septic system must be approved by the Department, per Act 26 of 2017. A permit is issued by DEP to approve the construction. Compliance with these rules is also governed by DEP along with help of Sewage Enforcement Officers (SEOs), local officials or contractors whose activities are also regulated by Act 537 and DEP. This fear that Act 537 and the Department of Environmental Protection’s regulatory authority will be ignored by the Delaware River Basin Commission is real and, as such, necessitates legislative safeguarding.

Jonathan Fritz, 111th District