DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

August 23, 2011

Via Electronic Mail

Mr. Richard A. Cairo
Susquehanna River Basin Commission
1721 N. Front Street
Harrisburg, Pennsylvania 17102-2391
rcairo@srbc.net

Dear Mr. Cairo:

Please accept this letter as comments on the Susquehanna River Basin Commission's ("SRBC") proposed rulemaking concerning the regulation of water use in connection with natural gas production through the process of hydrofracturing. As discussed in greater detail below, we ask that the SRBC think twice about further relaxing the regulatory process applicable to hydrofracturing at a time when state and federal agencies across the country are recognizing the importance of ensuring vigorous regulatory oversight and public involvement.

As most of us now know, technological improvements in hydrofracturing have made it economical to tap large reserves of natural gas contained in shale formations throughout the country. Much of the recent drilling activity has occurred in the Marcellus shale – a large geological deposit ranging through much of the SRBC's jurisdiction. The process of hydrofracturing requires the injection of large volumes of water and chemicals – some carcinogenic – into a well in order to force open crevices within the shale that allow natural gas to escape and travel through the well and back up to the surface. As the gas comes to the surface, it pushes back out of the well "flowback" comprised of the water and chemicals injected into the well mixed with the chemical constituents within the shale itself, some of which are radioactive. This flowback is sometimes re-used and sometimes disposed of at wastewater treatment plants that treat the wastewater before discharging it into the Susquehanna River and its tributaries.

At least that is how it is supposed to happen.

Over the past year or so, we have heard a growing chorus of concerns about what happens when things go wrong with the hydrofracturing process. Multiple studies, news reports, and firsthand accounts have demonstrated that improper handling of hydrofracturing fluids can have serious consequences for the environment and for local infrastructure, such as wastewater treatment plants and roads. Additionally, as depicted in the Academy Award-nominated documentary "Gasland" and elsewhere, landowners in areas of concentrated hydrofracturing report the contamination of their well water with methane and other petroleum byproducts. In 2008 and 2009, drinking water advisories were issued for portions of the Monongahela River because of the discharge of high volumes of flowback into the river with inadequate treatment. At least one well blowout has resulted in the discharge of thousands of gallons of untreated flowback into the tributaries of the Susquehanna River, and reports of methane "bubbling" out of the River have emerged. And all of this is in addition to the significant threat of erosion and sedimentation caused by clearing forests and farmlands to create the drilling pads that pockmark the countryside.

Increased awareness of these adverse environmental effects has prompted several states and the federal government to initiate bipartisan studies of hydrofracturing and how best to regulate it. New York, for example, imposed a moratorium on hydrofracturing while it undertook the preparation of a Supplemental Generic Environmental Impact Statement that would comprehensively set forth the risks and regulation of this burgeoning industry. The federal government too has ordered a study of the impacts of hydrofracturing by a commission chaired by the Secretary of Energy. Here in Maryland, drilling is on hold while a bipartisan and diverse commission studies the potential problems associated with the drilling process and makes recommendations for new regulations. The call for deliberation has been heard.

At the same time that Maryland, New York, and the federal government are urging restraint and greater regulation, the SRBC appears to be moving in a different direction with its proposal to further streamline its regulation of the first step in the hydrofracturing process – the withdrawal of water from the Susquehanna River and its tributaries. Instead of restricting or abolishing the streamlined "approval by rule" (or "ABR") mechanism that allows for quick access to the waters of the Susquehanna, the SRBC is proposing to expand it, both in scope (*e.g.*, extending it to all hydrocarbon development projects) and duration (*e.g.*, from 4 to 15 years). While the expedited authorization of hydrofracturing projects through ABR may have seemed like a good idea in 2009, when applications for water use were overwhelming the SRBC, whatever efficiency benefits provided by ABR are by now far, far outweighed by the increasingly documented adverse environmental impacts. In light of the environmental risks involved, it is our view that the SRBC should be increasing public scrutiny of hydrofracturing withdrawals, not relaxing it.

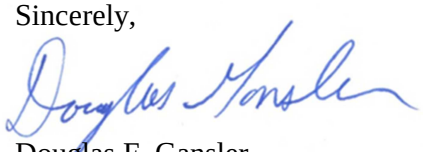
We understand that the SRBC is an interstate body, the regulations of which overlay the regulations of its member states. And we further understand – though do not necessarily agree – that the SRBC believes that it must defer to its member states' regulation of the environmental impacts associated with the projects that come to the SRBC for water. And while these may be good reasons not to regulate the adverse effects of hydrofracturing directly, they are not good reasons for streamlining the SRBC's regulatory role at a time when jurisdiction after jurisdiction is calling for precisely the opposite. Now is the time for regulatory deliberation, not streamlining.

Accordingly, we ask that the SRBC abandon the proposed rulemaking and, instead, take a step back and re-assess the wisdom of regulating hydrofracturing through the ABR process. And we ask that it do so while undertaking the preparation of a Programmatic Environmental Impact Statement of hydrofracturing's impacts on the basin in compliance with the National Environmental Policy Act. Only then will the SRBC be in a position to understand the cumulative impacts of what it is enabling when it authorizes the withdrawal of water for hydrofracturing.

We recognize and appreciate all that the Commission does to ensure that the Susquehanna River remains a source of clean and healthy drinking water; its establishment of publicly accessible remote water quality monitoring stations is an important part of a transparent, public-spirited regulatory system. And yet, the Susquehanna is in trouble. Designated America's "Most Endangered" River by American Rivers in 2011, the River faces greater pressure than ever before, with hydrofracturing contributing to the threats to both its water quality and quantity. Now is the time for the SRBC to flex its regulatory muscle and take steps to ensure that the promise of shale hydrofracturing is realized safely for everyone involved.

Thank you for the opportunity to submit these comments. If you have any questions, please do not hesitate to contact me at the number listed above.

Sincerely,



Douglas F. Gansler
Attorney General