

For Immediate Release
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Environmental and Community Organizations
Oppose SB411 Acid Mine Drainage Immunity for Fracking Bill
Letter filed pressing Pennsylvania Senators

Harrisburg, PA – Thirty five organizations representing members from throughout Pennsylvania filed a letter today opposing SB411 calling upon Senators to either table the bill or vote no on the measure. The Senate is poised to vote on SB411¹, which would amend the Environmental Good Samaritan Act (EGSA) and extend immunity for those involved in withdrawing Acid Mine Drainage (AMD) in connection with oil and gas operations and other uses offsite.

The letter reviews the far-reaching adverse environmental and community impacts that the bill would engender and the untenable situation for harmed residents who would be left without recourse due to the grant of immunity to the companies involved. The letter states: “The General Assembly would violate the Pennsylvania Constitution if it enacts SB411 without any environmental impact assessment. As the Pennsylvania Supreme Court made clear last month in the Act 13 litigation, the General Assembly has an obligation under Article I, Section 27 [the Environmental Rights Amendment] of the Pennsylvania Constitution to perform environmental impact analyses when it enacts legislation that affects the reserved environmental rights of Pennsylvania citizens and public natural resources.”

The letter goes on to explain that “Performing investigation and analysis in advance of acting, and taking seriously the outcome of those analyses, is part of the General Assembly’s obligation under the Constitution to avoid infringing on each

¹ <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&slnd=0&body=S&type=B&bn=0411>

citizen's right to a clean, healthy environment, and to act as a trustee (a fiduciary) of the people's public natural resources."

The organizations make the point that the General Assembly's fiduciary obligations requires members "...to consider before acting whether the proposed legislation will lead to the "degradation, diminution, or depletion" of the people's public natural resources either now, or in the future" and an environmental impact analysis on the potential effects of the Bill's provisions is essential, particularly in light of the very recent Supreme Court Decision in Robinson Twp., Washington Cnty. v. Com. The groups urge the Senate to table the bill until such a study is complete or to vote no if it is not tabled.

The full text of the letter and the signers follows.

Dear Senator,

Many of the undersigned organizations have written to you in the past expressing our opposition to SB 411. We want to bring to your attention an important issue regarding this bill.

The activities that would occur as a result of the enactment of SB411 are far-reaching and require comprehensive analysis and yet the General Assembly has not conducted any study or analyses of the potential impacts. This is a consequential mistake that must be avoided.

The General Assembly would violate the Pennsylvania Constitution if it enacts SB411 without any environmental impact assessment. As the Pennsylvania Supreme Court made clear last month in the Act 13 litigation, the General Assembly has an obligation under Article I, Section 27 of the Pennsylvania Constitution to perform environmental impact analyses when it enacts legislation that affects the reserved environmental rights of Pennsylvania citizens and public natural resources. Performing investigation and analysis in advance of acting, and taking seriously the outcome of those analyses, is part of the General Assembly's obligation under the Constitution to avoid infringing on each citizen's right to a clean, healthy environment, and to act as a trustee (a fiduciary) of the people's public natural resources.

Article I, Section 27 declares:

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.

As the Supreme Court recognized, the General Assembly must “**consider in advance of proceeding** the environmental effect of any proposed action on the constitutionally protected features.” Robinson Twp., Washington Cnty. v. Com., --- A.3d ---, 2013 WL 6687290, *33 (Dec. 19, 2013) (*emphasis added*). Further, the General Assembly has fiduciary obligations as a trustee of public natural resources who must conserve and maintain those resources for present *and future* Pennsylvanians. The General Assembly must consider before acting whether the proposed legislation will lead to the “degradation, diminution, or depletion” of the people’s public natural resources either now, or in the future. Id. at *38, *40 & n.46; see also 20 Pa.C.S. § 7203(a) & (c)(5); In re Scheidmantel, 868 A.2d 464, 492 (Pa. Super. Ct. 2005) (“trustee’s action must represent an actual and honest exercise of judgment predicated on a genuine consideration of existing conditions”); 20 Pa.C.S. § 7773. The General Assembly must also consider whether the legislation places higher environmental burdens on some Pennsylvania citizens than others, which violates a trustee’s obligation to treat the beneficiaries equitably in light of the trust’s purposes. Id. at *40, *59.

As you know, SB411 would amend the Environmental Good Samaritan Act (EGSA) and extend immunity for those involved in withdrawing Acid Mine Drainage (AMD) in connection with oil and gas operations and other uses offsite. SB411 would incentivize the spread of AMD-polluted water to other streams and watersheds in Pennsylvania. The bill does not promote the reduction and abatement of AMD pollution, which is the purpose of EGSA. In fact, SB411 would harm streams and communities where the AMD water is being withdrawn transferring water out of source watersheds, impacting water supplies upon which the people and economies rely in these areas. Voluminous withdrawals would deplete aquifers that sustain local water wells and healthy stream flows essential to the restoration of these vulnerable waterways that groups are struggling to bring back under the EGSA. There has not even been an analysis to show how much of this water could replace fresh water that is currently being used in well drilling and hydraulic fracturing, one of the rationales the bill is based on.

These are substantial impacts and important inquiries that require thorough analysis before SB411 is voted on. We ask you, as a Pennsylvania Senator who is bound to safeguard the public natural resources for our benefit and the benefit of future generations and who is bound to insure that all Pennsylvanians are treated fairly and equally, not disproportionately burdening some for the benefit of others, that you fully analyze the potential impacts of SB411 and not move ahead without that knowledge as the Senate is now poised to do. The Supreme Court has very recently reminded the General Assembly of this obligation in Robinson Twp., Washington Cnty. v. Com., please carefully consider their ruling and recognize the relevance to SB411.

We remain opposed to SB411 and we ask that SB411 be tabled immediately so the required environmental impact assessment can be conducted. If you do not table the bill, we urge you to vote no.

Sincerely,

Allegheny Defense Project, Ryan Talbott, Executive Director
Beaver County Marcellus Awareness Committee, Celia Janosik, Treasurer
Berks Gas Truth, Karen Feridun, Founder
Center for Coalfield Justice, Patrick Greuter, Esq., Executive Director
Citizens for Clean Water, Susquehanna County, Pa., Vera Scroggins
Citizens for Water, Joe Levine, Director
Clean Water Action - Pennsylvania, Steve Hvozdoch, Marcellus Shale Coordinator
Communities United For Rights and Environment, Kenneth Joseph Weir, President
Damascus Citizens for Sustainability, Barbara Arrindell, Director
Delaware Riverkeeper Network, Maya van Rossum, the Delaware Riverkeeper and
Tracy Carluccio, Deputy Director
Earthworks, Nadia Steinzor, Eastern Program Coordinator
Environmental Justice Committee, Thomas Merton Center, Wanda Guthrie, Chair
Food and Water Watch, Sam Bernhardt, Pennsylvania Coordinator
Friends of the Harmed, Dana Dolney
Green Party of Pennsylvania, Jay Sweeney, Chair
League of Women Voters of PA, Susan Carty, President and Betty Tatham, Vice
President, Issues and Action
Marcellus Outreach Butler, Diane Sipe, Director
Marcellus Protest, Briget Shields
Mountain Watershed Association, Beverly Braverman, Executive Director
NYH2O, Buck Moorhead, Chair
PA Forest Coalition, Richard A. Martin, Coordinator
Paradise Gardens and Farm, J. Stephen Cleghorn, PhD.
Peach Bottom Concerned Citizens Group, Maria Payan, Executive Director, York
County, PA
PennEnvironment, David Masur, Executive Director
Pennsylvania Alliance for Clean Water and Air, Jenny Lisak, Co-director
Protect Eagles Mere Alliance, Shannon Baker, President

Protect Our Children, Diane Sipe
Protect Our Parks, Gloria Forouzan
Protecting Our Waters, Iris Marie Bloom, Executive Director and Coryn Wolk, Deputy
Director
Responsible Drilling Alliance, Robert Cross, Board President
Shale Justice Coalition, John Trallo, Executive Committee
Sierra Club PA Chapter, Joanne Kilgour, Chapter Director
Upper Burrell Citizens Against Marcellus Pollution, Ron Slabe, Debra Borowiec, Co-
founders
Westmoreland Marcellus Citizens' Group, Jan Milburn, President
Youghiogheny Riverkeeper, Krissy Kasserman