

MEMORANDUM

To: Delaware Riverkeeper Network & Other Interested Parties

From: Jordan B. Yeager & Lauren M. Williams
Curtin & Heefner LLP (www.curtinheefner.com)

Re: Preliminary Review of Today's Draft of H.B. 1950

Date: February 6, 2012

We have conducted a preliminary review of the draft of H.B. 1950 that we were able to obtain today. The current version of the bill would rob municipalities of their central role in protecting the health, safety, and welfare of our communities. The bill would greatly constrict the ability of local governments to protect key resources and the unique character of each of Pennsylvania's communities. In addition to general preemption provisions relating to the Oil and Gas Act, the current draft of H.B. 1950 would restrict the zoning tools available to a municipality in the name of statewide uniformity.

For example, under the bill each municipality would be required to allow "oil and gas operations," except for natural gas processing plants, in all zoning districts. Municipalities would have only a limited ability to prohibit, or classify such operations as a conditional use, in residential districts. "Oil and gas operations" is broadly defined, and includes activities such as location assessment, seismic testing, drilling, fracturing, and pipeline operations. These provisions would be highly problematic particularly for municipalities with agricultural districts, resource protection districts, and open space districts. Also, municipalities would be required to allow impoundment pits for drilling wastewater in all zoning districts, including residential districts, so long as they are not closer than 300 feet from an existing building. This provision would threaten each municipality's ability to protect important community areas, such as schools, community centers, lakes, cemeteries, and parks.

Likewise, the bill would require municipalities to allow natural gas compressor stations as uses permitted by right in agricultural and industrial districts, and as conditional uses in all other zoning districts. The bill contains very limited standards for these uses, and it is unclear if permitted uses must meet those standards. Similarly, processing plants would have to be allowed as uses permitted by right in industrial districts, and as conditional uses in agricultural districts, again subject to very limited standards. The draft bill—like its predecessors—would still specify one-size-fits-all standards for local zoning ordinances, which would hinder a municipality's ability to protect key resources in its community. H.B. 1950 essentially requires a municipality to allow an industrial use in non-industrial areas with little ability to protect the surrounding resources and community.