



## Legislation Text

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**File #:** Res 1850-2009, **Version:** A

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### Res. No. 1850-A

Resolution calling on the United States Congress to pass H.R. 2776 of 2009, removing the exemption for hydraulic fracturing from the Safe Drinking Water Act; on the United States Environmental Protection Agency to reassess its 2004 study of hydraulic fracturing with respect to its risks to unfiltered drinking water systems and to apply stringent regulations to protect drinking water supplies from any risk due to hydraulic fracturing; on the New York State Department of Health to study the public health and regulatory risks of hydraulic fracturing to the New York City water supply system and to propose any necessary actions to protect public health; on the New York State Department of Environmental Conservation, the New York State Legislature, and New York State Governor David Paterson to prohibit drilling for natural gas within the boundaries of the watershed; and on the New York State Department of Environmental Conservation to extend the public comment period on its draft Supplemental Generic Environmental Impact Statement relating to high-volume hydraulic fracturing to February 28, 2010.

By Council Members Gennaro, Lappin, Garodnick, the Speaker (Council Member Quinn), Brewer, Comrie Jr., Fidler, Gentile, Gonzalez, Katz, Koppell, Liu, Nelson, Palma, Sanders Jr., Vallone Jr., Weprin, Gerson, Foster, White Jr., de Blasio, Mark-Viverito, James, Recchia Jr., Crowley, Eugene, Arroyo, Jackson and Sears

Whereas, The New York City drinking water supply is one of our most vital resources; and

Whereas, The high quality of the water supplied to New York City from the Catskill and Delaware watersheds, the largely rural and agricultural land uses in the watershed, and the actions being taken by the City of New York to preserve natural buffers and to improve the quality of that water, have earned a Filtration Avoidance Determination from the United States Environmental Protection Agency (EPA), making it one of just five unfiltered drinking water supplies to serve a major United States city; and

Whereas, The entire Catskill and Delaware watersheds, which together provide approximately 90% of the City's daily water supply, sit atop the Marcellus Shale geological formation, which contains large deposits of natural gas; and

Whereas, Increasing interest in the use of natural gas as a fuel and new developments in gas recovery technology have recently made drilling for natural gas in the Marcellus Shale formation economically viable;

and

Whereas, Drilling within the Marcellus Shale employs a technique known as hydraulic fracturing, a recovery process that frees natural gas deposits using large quantities of water, combined with multiple chemical additives, many of which are known to be toxic; and

Whereas, Chemicals contained in hydraulic fracturing fluids have been associated with a variety of public health risks, including developmental delays and cancers; and

Whereas, Naturally-occurring radioactive elements and other pollutants may also be disturbed, concentrated and released by the hydraulic fracturing process, leading to contamination of underground aquifers and surface waters; and

Whereas, Hydraulic fracturing presents risks of water contamination during drilling operations and during the storage and disposal of millions of gallons of the water and chemical additive mixture required for each well that is created; and

Whereas, Hydraulic fracturing has resulted in contaminated water supplies in other states, including Pennsylvania, Texas, Wyoming, and New Mexico; and

Whereas, Should the City of New York lose its Filtration Avoidance Determination, through widespread land use changes, heightened risks of contamination or other causes, it would be required by EPA to build and operate an additional water filtration plant, the cost of which has been estimated by the New York City Department of Environmental Protection to be approximately \$10 billion, which under existing law and rules would be borne by New York City ratepayers and other users of the water system; and

Whereas, A filtration plant would not necessarily be capable of removing all dangerous contaminants from the drinking water supply; and

Whereas, The Energy Policy Act of 2005 exempted hydraulic fracturing from regulation under the Underground Injection Control program of the Safe Drinking Water Act; and

Whereas, State-by-state regulation of hydraulic fracturing activities results in inconsistent standards for

drilling activities and unreliable information about the dangers of hydraulic fracturing; and

Whereas, United States Representatives DeGette, Hinchey, and Salazar have recently introduced Congressional legislation, H.R. 2766 of 2009, known as the “Fracturing Responsibility and Awareness of Chemicals Act of 2009,” to repeal the exemption for hydraulic fracturing from the Safe Drinking Water Act; and

Whereas, Lisa Jackson, the current Administrator of the United States Environmental Protection Agency, has recognized the need for the EPA to re-examine the potential danger to drinking water supplies posed by hydraulic fracturing; and

Whereas, Federal study and regulation of hydraulic fracturing will support and enhance State efforts to protect drinking water supplies; and

Whereas, No amount of careful planning and operation can guarantee that there will be no chemical spills that could flow into reservoirs, underground migration of fracturing fluids toward the water supply, or other accidents resulting from drilling operations within the New York City watershed; and

Whereas, The New York City watershed area supplies drinking water to millions of New York City and New York State residents; and

Whereas, A prohibition on drilling within the watershed for the New York City drinking water supply would provide important long-term protection to the New York City water supply and all its users; and

Whereas, The Chief Executive Officer of Chesapeake Energy (Chesapeake), the energy company that holds the most mineral leases within the Marcellus Shale, has stated publicly that Chesapeake will not drill anywhere in the New York City watershed because of the intense public concern about potential adverse impacts; and

Whereas, While Chesapeake’s decision not to drill within the New York City watershed is to be commended, it does not, however, preclude them from engaging in drilling in the watershed in the future, does not preclude Chesapeake from transferring their leases to other companies and does not preclude other

companies from entering into leases with property owners who do not have leases with Chesapeake; and

Whereas, Other energy companies, such as XTO Energy Inc. and Penn Virginia Corporation, have recorded over 200 leases in Delaware County, some of which are within the watershed; and

Whereas, An informal corporate statement of an intention not to drill within the watershed does not preclude the need for a legally enforceable prohibition on drilling within the watershed; and

Whereas, A prohibition on drilling for natural gas within the watershed for the New York City drinking water supply may be enacted through State legislation or established through a determination by the DEC that natural gas drilling is inconsistent with New York City water supply protection; and

Whereas, Governor Paterson has the power to seek a prohibition on drilling for natural gas within the watershed for the New York City drinking water supply by introducing such legislation in the State Legislature and actively promoting it; and

Whereas, New York State has recently released a draft Supplemental Generic Environmental Impact Statement relating to high-volume hydraulic fracturing, but has allowed the public an inadequate period of just ninety days to review and submit comments on this lengthy and highly technical document, which requires a public comment period lasting until February 28, 2010; and

Whereas, It is of extreme importance for the New York State Department of Health to independently study the public health and regulatory risks of hydraulic fracturing to the New York City water supply system and to propose any necessary actions to protect public health; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Congress to pass H.R. 2776 of 2009, removing the exemption for hydraulic fracturing from the Safe Drinking Water Act; on the United States Environmental Protection Agency to reassess its 2004 study of hydraulic fracturing with respect to its risks to unfiltered drinking water systems and to apply stringent regulations to protect drinking water supplies from any risk due to hydraulic fracturing; on the New York State Department of Health to study the public health and regulatory risks of hydraulic fracturing to the New York City water supply system and to

propose any necessary actions to protect public health; on the New York State Department of Environmental Conservation, the New York State Legislature, and New York State Governor David Paterson to prohibit drilling for natural gas within the boundaries of the watershed; and on the New York State Department of Environmental Conservation to extend the public comment period on its draft Supplemental Generic Environmental Impact Statement relating to high-volume hydraulic fracturing to February 28, 2010.

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## Legislation Text

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**File #:** Res 0462-2010, **Version:** \*

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### Preconsidered Res. No. 462

Resolution calling on the Delaware River Basin Commission to refrain from issuing regulations governing gas exploration and production using hydraulic fracturing and for water withdrawal for the purpose of hydraulic fracturing within the Delaware River Basin until a cumulative impact study is completed to assess the risks and inform the development of adequate regulations for hydraulic fracturing in the Delaware River Basin.

By Council Members Gennaro, Koppell, Lander, Levin, Chin, Fidler, Greenfield, Jackson, Lappin, Rose, Sanders Jr. and Williams

Whereas, Over 15 million people, and approximately five percent of the nation's population, receives their drinking water from the Delaware River; and

Whereas, New York City gets approximately half its water from four large reservoirs located on tributaries to the Delaware; and

Whereas, The New York City watershed is dependent on a safe and reliable flow from the Delaware River, the East Branch of which feeds the Pepacton Reservoir and the West Branch of which feeds the Cannonsville Reservoir, supplying collectively about 290 billion gallons of water per year into the west-of-Hudson portion of the watershed; and

Whereas, The Delaware River Basin Commission ("DRBC") was established in 1961 when the Federal government and the states of Delaware, New Jersey, Pennsylvania and New York enacted concurrent compact legislation, creating a regional body with the force of law to oversee a unified approach to managing the water resources of the Delaware River; and

Whereas, The Delaware River Basin Commission's mission is to "conserve and protect the water basin or any

existing or future water supply source" and is charged with "water quality protection, water supply allocation, regulatory review (permitting), water conservation initiatives, watershed planning, drought management, flood loss reduction, and recreation": and

Whereas, The Commission's Executive Director recognized the potential risks of hydraulic fracturing in the Delaware River Basin, determining in the Commission's Executive Director Determination dated May 19, 2009, that, "[n]atural gas extraction projects in these shale formations may individually or cumulatively affect the water quality of Special Protection Waters by altering their physical, biological, chemical or hydrological characteristics."; and

Whereas, The Commission's Executive Director submitted an application for funding to the United States Congress on behalf of the DRBC to conduct the needed cumulative studies of how hydraulic fracturing will impact the Delaware River Basin; and

Whereas, Representatives Maurice Hinchey, Rush Holt and Joe Sestak have secured approval from the House Appropriations Committee, the Subcommittee on Interior, Environment, and Related Agencies of \$1 million for a United States Geological Survey-DRBC cumulative impact study on hydraulic fracturing within the Delaware River Basin; and

Whereas, On June 25, 2010, the United States Department of the Interior, acting on behalf of the National Park Service and the United States Fish and Wildlife Service expressed the agencies' concern about gas exploration and drilling in the Delaware River Basin and its impact on Federal interests; and

Whereas, The, State of New Jersey's representative to the DRBC, Commissioner Bob Martin of the New Jersey Department of Environmental Protection, stated in a letter to the Commission dated July 13, 2010 that gas regulations should be "expedited" and urged that the DRBC issue rules by September 30, 2010, prior to preparation of the cumulative impact study; and

Whereas, Despite the pending Federal funding for a cumulative impact study, the Commission is preparing to finish regulations this year, allowing gas drilling and well production to begin before a cumulative impact study can even start; and

Whereas, There have been numerous recorded incidents of water contamination in states currently allowing hydraulic fracturing for gas exploration and production; and

Whereas, High volume hydraulic fracturing has been exempted from significant federal regulations protecting the public health and safety of New York City residents pursuant to the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, National Environmental Policy Act, Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act ; and

Whereas, The injection of undisclosed chemicals into the ground would, but for the Safe Drinking Water Act exemption, come under the regulatory jurisdiction of the Federal Environmental Protection Agency; and

Whereas, There is a potential that hydraulic fracturing in the Delaware River Basin could contaminate the Delaware River; and

Whereas, The potential contamination of the Delaware River Basin from gas exploration and production using hydraulic fracturing could contaminate surface water and ground water, with the potential for a catastrophic public health and safety disaster for the residents of New York City, now, therefore, be it,

Resolved, That the New York City Council calls upon the Delaware River Basin Commission to refrain from issuing regulations governing gas exploration and production using hydraulic fracturing and for water withdrawal for the purpose of hydraulic fracturing within the Delaware River Basin until a cumulative impact study is completed to assess the risks and inform the development of adequate regulations for hydraulic fracturing in the Delaware River Basin.

SS

9-28-10 10:50 pm