

## CLIENT ALERT

### State of New York Files Suit Against Federal Agencies Seeking Environmental Review of Natural Gas Development in the Delaware River Basin

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On May 31, 2011, the State of New York sued various federal agencies and agency officials in the Eastern District of New York alleging that the agencies and officials violated the National Environmental Policy Act ("NEPA") by allowing regulations proposed by the Delaware River Basin Commission ("DRBC") that would authorize natural gas development, including hydraulic fracturing, in the Delaware River Basin to move forward without first studying their environmental effects and preparing an environmental impact statement. The DRBC is a regional body comprised of state and federal officials that regulates and manages the water resources of the Delaware River Basin. New York asserts that the development of the DRBC regulations is a "federal action" that triggers NEPA review because the defendant federal agencies - including the Corps of Engineers, the Fish and Wildlife Service, the National Park Service, the Department of the Interior, and the Environmental Protection Agency - "play a significant role" in the development of the regulations and "have authority to approve the DRBC Regulations."

According to the Complaint, the proposed DRBC regulations would lead to the development of 15,000 to 18,000 natural gas wells within the Delaware River Basin. Focusing on potential environmental impacts of hydraulic fracturing, New York alleges that the proposed natural gas development would endanger New York's unfiltered drinking water supply and the use of the Upper Delaware River for recreational and conservation purposes, and also cause air pollution and contribute to climate change.

The Complaint notes that DRBC proposed the regulations over the objections of former New York governor David Paterson. Hydraulic fracturing has been a contentious issue in New York. In December 2010, Governor Paterson signed an executive order banning high volume, horizontal hydraulic fracturing in New York through July 1, 2011. This year, several bills have been introduced in the New York State Assembly to restrict or regulate hydraulic fracturing in the state.

**[For a copy of the complaint, click here.](#)**

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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