

# DELAWARE RIVER BASIN COMMISSION

## PROPOSED

### PUBLIC NOTICE

#### Notice of Proposed Rulemaking and Public Hearing

#### Proposed Amendments to the Administrative Manual and Special Regulations Regarding Natural Gas Development Activities; Additional Clarifying Amendments

**Summary:** The Commission will hold public hearings and accept written comment on a proposal to amend its *Special Regulations* by the addition of a section on hydraulic fracturing in shale and other rock formations, including: the prohibition of high volume hydraulic fracturing in such formations; provisions related to water use for hydraulic fracturing; and provisions related to the management of produced water from hydraulic fracturing. The Commission also proposes to amend its *Administrative Manual - Rules of Practice and Procedure* by the addition of project review classifications and fees related to the management of produced water from hydraulic fracturing of hydrocarbon bearing rock formations. Minor amendments to the project review classifications unrelated to hydraulic fracturing are also proposed.

#### **DATES:**

*Written comments:* Written comments will be accepted through 5 p.m. on February 28, 2018.

#### *Public hearings:*

1. January 23, 2018, 1 p.m. to 4:30 p.m., Waymart, Wayne County, PA
2. January 23, 2018, 6 p.m. to as late as 9:30 p.m., Waymart, Wayne County, PA
3. January 25, 2018, 1 p.m. to 4:30 p.m., Philadelphia, PA
4. January 25, 2018, 6 p.m. to as late as 9:30 p.m., Philadelphia, PA

On November 30, 2017, a notice including these public hearing dates, times and locations was posted on the DRBC website and circulated directly to DRBC notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additional comment opportunities or changes to the information provided above.

#### **ADDRESSES:**

Written comments will be accepted through the Commission's on-line public comment collection system at: <http://dockets.drbc.commentinput.com>. Requests to submit comments by another method will be granted based on lack of access to the web-based comment system. Requests may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

The hearing locations are:

1. Ladore Camp, Retreat and Conference Center, 287 Owego Turnpike, Waymart, PA 18472 (Jan. 23 hearings)
2. DoubleTree by Hilton Hotel Philadelphia Airport, 4509 Island Avenue, Philadelphia, PA 19153 (Jan. 25 hearings)

Additional opportunities for comment or changes to the public input process will be published on the Commission's website, drbc.net and through its Twitter account. To receive direct notice of such additions or changes, please subscribe through the Commission's website at: <http://www.nj.gov/drbc/contact/interest/>.

Public hearing registration procedures are set forth below.

#### **Registration to Attend and Speak at a Public Hearing**

To reduce uncertainty on the part of attendees about whether they will have a seat and an opportunity to speak at a public hearing, and to provide for a safe and orderly hearing process, the Commission is requiring on-line or on-site registration to attend each public hearing and is encouraging use of the on-line registration system, which will track and publish in real time the available capacity for each hearing. Advance registrants will be eligible to request speaking time and will be informed in advance if they have a reserved speaking slot. Those who register on site may sign up to speak if time allows or may be added to a waiting list. Key elements of the procedure are as follows:

- On-line or on-site registration is required to attend each public hearing.

- On-line registration will remain open until the beginning of each hearing.
- On-site registration will be available at the hearing venues.
- Available capacity for each hearing will be posted on the web-based registration system. When users access the system, they will see the number of seats still available or if the venue is at capacity.
- If capacity has been reached for a specific hearing, registrants will be placed on a waiting list.
- Those who do not register in advance are advised to check the availability of seats BEFORE planning travel to a hearing.
- **Those who pre-register on-line will be eligible to reserve an opportunity to speak at a hearing.**
- Prior to the hearing dates, the DRBC will contact all those who have pre-registered and provide them with an opportunity to request speaking time.
- If more people request to speak than time allows, those not assigned time will be placed on a waiting list.

Written and oral comment will receive equal consideration. See the "Public Process" subsection of **Supplementary Information** for additional details concerning the public hearings and submission of written comments.

### **Preamble**

For background on the draft rule and a description of its contents, click here: [http://regulations.delaware.gov/register/january2018/proposed/DRBC\\_preamble.pdf](http://regulations.delaware.gov/register/january2018/proposed/DRBC_preamble.pdf)

### **Additional Information Regarding the Public Process**

*Substance of comments.* The Commission expressly seeks comment on the effects the proposed rules may have within the basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality basinwide. Comment is also requested on whether use of base fluids other than water for HVHF is practical within the basin and if so, how it should be addressed in these rules, and on any alternatives to the proposed rules that the commenters would like the Commission to consider, as well as on draft guidance published simultaneously with the rules for determining background concentrations of certain pollutants. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin. Comments on matters not within this scope may not be considered.

Non-digitized voluminous materials such as books, journals or collected letters/petitions will not be accepted. Digital submissions of these, as well as articles and websites, must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

*Submission of written comments.* Written comments along with any attachments may be submitted through the Commission's web-based comment system (<http://dockets.drbc.commentinput.com>) until 5 P.M. on February 28, 2018. All materials should be provided in searchable formats, preferably in.pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through a method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will be included in the rulemaking record if an express exception has been granted. Requests for exceptions to the submission of comments using the web-based system will be granted based on lack of access to the Internet and may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

*Public hearings.* Details regarding registration to attend public hearings and to request speaking time are set forth in the fourth section of this notice, captioned "Registration to Attend and Speak at a Public Hearing". Additional procedures are described here. Notably, municipal, county, state, and federal elected officials (and staff speaking on behalf of elected officials) will be asked to identify themselves as such when registering. The number of speakers and the number of attendees will be limited by the space and time available. In order to provide as many individuals who wish to speak as possible with an opportunity to do so, each person will be limited to one time slot at one hearing location. Depending on the number who wish to be heard, speakers will be limited to two or three minutes.

The Commission appreciates the public's participation and input on this important matter. In order to ensure that scheduled public hearings are orderly and safe, it is essential that public hearing procedures be followed. The Commission's policies related to speaker conduct, audience conduct, safety, security, signs, placards and banners will be in effect at these public hearings. Participants are requested to review all DRBC public hearing procedures on DRBC's website at:

[http://www.state.nj.us/drbc/library/documents/procedures\\_public-hearings050317.pdf](http://www.state.nj.us/drbc/library/documents/procedures_public-hearings050317.pdf).

The public is reminded that oral and written comments will receive the same consideration.

**Supplementary Information:**

The Delaware River Basin Commission (DRBC or "Commission") is a regional interstate and federal agency formed by concurrent compact legislation of the four basin states and the federal government in 1961 to manage the water resources of the Delaware River Basin without regard to political boundaries. Its members are, *ex officio*, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the federal government. Most actions of the Commission, including the adoption of rules to effectuate, apply and enforce the compact, require a majority vote of the Commission's five members. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act.

Detailed and up-to-date information about the public process, including links to the proposed rules and guidance are available on the Commission's website, drbc.net, and specifically, at:

[http://www.nj.gov/drbc/meetings/proposed/notice\\_hydraulic-fracturing.html](http://www.nj.gov/drbc/meetings/proposed/notice_hydraulic-fracturing.html).

Dated: December 15, 2017

Pamela M. Bush, J.D., M.R.P.

Commission Secretary

**Proposed Rule Text**

The draft rule text may be viewed here: <http://regulations.delaware.gov/register/january2018/proposed/DRBC Rule Text.pdf>

**21 DE Reg. 526 (01/01/18) (Prop.)**