

# DELAWARE RIVER BASIN COMMISSION

Statutory Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (Delaware River Basin Compact); United States Public Law 87-328, approved September 27, 1961, 75 Statutes at Large 688.

## FINAL

### FINAL RULE

#### **Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities**

**Proposed:** *Delaware Register of Regulations* on December 1, 2021 (25 Del. Reg. 559-566).

**Adopted:** December 7, 2022, by the Delaware River Basin Commission, Pamela M. Bush, Esq., Commission Secretary.

**Filed:** December 15, 2022, as a final regulation.

**Effective:** Thirty days after publication in the *Federal Register*.

**Summary:** By Resolution No. 2022 - 04 on December 7, 2022, the Delaware River Basin Commission ("DRBC" or "Commission") approved amendments to its Comprehensive Plan and the Delaware River Basin Water Code concerning importations of water into and exportations of water from the Delaware River Basin; its Special Regulations - High Volume Hydraulic Fracturing, to prohibit discharges to waters or land within the basin of wastewater from high volume hydraulic fracturing ("HVHF") and HVHF-related activities; and its Water Quality Regulations, to facilitate the implementation in state-issued permits of the prohibition on such discharges.

**Contact:** Pamela M. Bush, Esquire, Commission Secretary and Assistant General Counsel, at [pam.bush@drbc.gov](mailto:pam.bush@drbc.gov) (preferred) or 609-477-7203.

**Supplementary Information:** The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York and Pennsylvania - and the Division Engineer, North Atlantic Division of the U.S. Army Corps of Engineers, representing the Federal Government. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

#### **Background**

By a Resolution for the Minutes on February 25, 2021, the DRBC Commissioners directed the Executive Director to prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update the Commission's policies and provisions concerning inter-basin transfers of water and wastewater from and into the basin and to "include in the draft regulations such other proposed amendments . . . as [the Executive Director, in consultation with the Commissioners] deem necessary or appropriate." The directive accompanied the Commission's decision not to include in its final rule adopted on the same date, portions of a proposed rule published in the *Federal Register* in January 2018 that concerned the exportation of water to support high volume hydraulic fracturing ("HVHF") and the importation, treatment, and discharge of "produced water" and "CWT wastewater"(with accompanying definitions).<sup>1</sup> In accordance with the Commission's February 25, 2021 directive, the Commission published a new proposed rule on its website on October 28, 2021.<sup>2</sup> A notice of proposed rulemaking and accompanying rule text appeared in the *Federal Register*, 86 Fed. Reg. 66250, on November 22, 2021; the *Delaware Register of Regulations*, 25 Del. Reg. 548, 559, on December 1, 2021; the *New Jersey Register*, 53 N.J.R. 1994, on December 6, 2021; the *New York Register* on November 17, 2021, p. 2; and the *Pennsylvania Bulletin*, 51 Pa. B. 7471 on December 4, 2021.

Opportunity for public input on the proposed rules was provided during a comment period that ran from October 28, 2021, through February 28, 2022. In addition to accepting written comments, the Commission accepted oral comment at five hearings conducted via Zoom and telephone. The fifth hearing included toll-free telephone access and real-time English-to-Spanish and Spanish-to-English professional translation, which allowed attendees to listen and participate in either English or Spanish. The Commission received a total of 2,461 public comment submissions, consisting of 2,388 in writing and 73 oral comments. Notably, in many cases, a single written submission consisted of comments with multiple signatories or

1. See 86 FR 20628 (April 21, 2021) and 83 FR 1586, pp. 1589, 1591 (January 12, 2018).

2. By a Resolution for the Minutes dated September 9, 2021, the DRBC Commissioners extended from September 30, 2021 to November 30, 2021 the date by which draft regulations would be published.

parts, and many similar or identical comments were separately submitted by multiple commenters using form letters or template language provided by organizations.

The Commission reviewed the statements, consultant reports, scientific literature and other materials submitted by commenters. The staff, in consultation with the Commissioners, prepared a Comment and Response Document summarizing the comments on the proposed rule and setting forth the Commission's responses and revisions in detail. By Resolution No. 2022 - 04 on December 7, 2022, the Commission adopted the Comment and Response Document simultaneously with its adoption of the final rule.

### **Final Rule**

The elements of the Commission's final rule are summarized below.

*Water Code.* With respect to imports and exports of water into and from the Delaware River Basin, the Commission in its proposed and final rule reaffirms and expands on findings and policies it previously added to the Water Code (at Section 2.30) and Comprehensive Plan by Resolution No. 1991-9 in June of 1991. The December 2022 amendments restate and provide for the implementation of these policies with greater specificity.

*Special Regulations - High Volume Hydraulic Fracturing.* The final amendments to the Special Regulations at 18 CFR part 440 include as proposed a new Section 440.4(a) comprising the Commission's determination that "[t]he discharge of wastewater from HVHF and HVHF-related activities poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the basin's water resources" and further, that "[c]ontrolling future pollution by prohibiting discharges of wastewater from HVHF and HVHF-related activities to waters or land within the basin is required to effectuate the Comprehensive Plan, avoid injury to the waters of the basin as contemplated by the Comprehensive Plan, and protect the public health and preserve the waters of the basin for uses in accordance with the Comprehensive Plan." The final amendments at new Section 440.4(b) prohibit the discharge of wastewater from high volume hydraulic fracturing and HVHF-related activities (hereinafter "HVHF wastewater") to waters or land within the basin.

*Water Quality Regulations.* The amendments to the Commission's Water Quality Regulations, consisting of a new Section 4.50, facilitate the implementation in state-issued permits of the prohibition set forth in the Special Regulations at 18 CFR 440.4.

*Incorporation by Reference.* The final rule incorporates by reference into the Code of Federal Regulations at 18 CFR part 410 the Commission's Water Quality Regulations and the Delaware River Basin Water Code as amended by the Commission on December 7, 2022.

### **Changes From the Proposed Rule**

*Water Code.* After careful consideration of the comments received, the Commission revised its proposed amendments to Section 2.30 of the Delaware River Basin Water Code (the "Water Code") concerning the exportation of wastewater to better align these aspects of the rule with the Commission's policies for water conservation and pollution prevention.

The language originally proposed at Section 2.30.2 C.3 of the Water Code would have allowed the Commission to approve any exportation of wastewater, subject to an evaluation of factors designed to ensure no harm to the basin's water resources or the health and safety of the basin community. Many commenters were concerned that this exception was too broad. Upon further consideration, the Commission agrees. It concluded that to consider and, subject to an evaluation of the factors set forth at Section 2.30.3, approve any exportation of wastewater risks undercutting the conservation objectives served by limiting exportations of basin water in accordance with the introductory paragraph and paragraphs 1. and 2. of Section 2.30.2 C. of the proposed, now final, amendments. Accordingly, the final language of section 2.30.2 C.3 narrows the circumstances in which the Commission may approve an exportation of wastewater to instances in which the project sponsor demonstrates either (i) that the wastewater is to be conveyed to a straddled or adjacent public wastewater collection system; or (ii) that the wastewater may not lawfully be discharged to a public wastewater collection system and is being exported to a waste management facility that has all state and federal approvals required to lawfully receive it.

Thus, the final rule subjects proposed exportations of wastewater to limitations that are consistent with those applicable to exportations of water generally. Because water and wastewater service areas often straddle basin boundaries, the final rule also ensures that straddled and adjacent wastewater collection systems, including for both sewered and hauled septage, may continue to operate, and if necessary, expand, normally. And it recognizes that in the interest of preserving water quality, state-permitted facilities and federal-permitted facilities for the proper treatment and disposal of difficult-to-treat wastewater that may be located outside the basin must remain available to wastewater generators within the basin.

To clarify the changes to Section 2.30.2 C.3 of the Water Code, Section 2.30.1 of the final rule includes definitions of "Public wastewater collection system," "Adjacent public wastewater collection system," and "Straddled public wastewater collection system" that were not included in the proposed rule. The definitions are designed to parallel those previously proposed for "Public water system," "Adjacent public water system," and "Straddled public water system," respectively.

The final rule includes additional non-substantive changes in two sections. Language in Section 2.30.1 A., defining "Adjacent public water system," was revised for greater stylistic consistency and clarity. The wording of Section 2.30.2 C.2. was changed slightly to make clear that any exportation under that provision must be for the purpose of meeting public health and safety needs of the receiving system regardless of whether the exportation is intended to be temporary, short-

term, or in response to an emergency.

**Special Regulations - High Volume Hydraulic Fracturing.** The final rule in § 440.2 includes a new defined term, "Discharge of wastewater from HVHF and HVHF-related activities," to make the meaning of the rules more explicit. In the same section, the definition of "Wastewater from HVHF and HVHF-related activities" was altered by the addition of two words. The words "or" and "containing" were inserted in subsection (1) of the definition to clarify that the definition refers to wastewater, brine, or sludge *containing* (as opposed to constituting) the various listed contaminants. Additional non-substantive changes were made to conform proposed rule text in § 440.2 to Code of Federal Regulations standards.

**Water Quality Regulations.** The final rule includes no changes from the amendments proposed to the Water Quality Regulations.

### **Activities Prohibited and Activities not Regulated by the Final Rule**

Many commenters urged the Commission to prohibit activities that were prohibited by the language of the rule as proposed and are now prohibited by the final rule at 18 CFR 440.4. The final rule at Section 440.4(b) prohibits the discharge of wastewater "from high volume hydraulic fracturing and HVHF-related activities to waters or land within the basin." The terms "HVHF-related activities" and "wastewater from HVHF and HVHF-related activities" are defined in detail in Section 440.2. Activities about which multiple commenters expressed concern and that are prohibited by the final rule include (but are not necessarily limited to) the following:

- discharge of HVHF wastewater to waters or land within the basin;
- road spreading of HVHF wastewater;
- injection of HVHF wastewater into deep wells within the basin;
- disposal of HVHF wastewater in basin landfills;
- discharge of leachate from any landfill in the basin that accepts HVHF waste after the effective date of the final regulations, including after treatment at an onsite or off-site leachate or wastewater treatment plant; and
- spills and leaks during transport, transfer, or storage of HVHF wastewater within the basin if not fully captured by a containment system in place throughout the duration of the spill or leak and thereafter promptly removed or remediated.

Other commenters urged the Commission to prohibit activities that are beyond the scope of the proposed rule. As explained in detail in the Commission's Comment and Response document, the final rule does not:

- regulate air emissions from HVHF activities;
- categorically prohibit the transfer of HVHF wastewater into the basin when no resulting discharge is proposed;
- regulate the transportation and storage of HVHF materials, which are regulated under detailed state and federal programs focused on these activities;
- categorically prohibit the transfer of water from the basin if it would be used to support HVHF (or any other specified activity). However, the rule does limit the circumstances under which transfers of water from the basin will be considered and provides for an evaluation of such proposals based on factors designed to ensure no harm to the basin's water resources or the health and safety of the basin community; or
- prohibit road spreading of wastewater from conventional drilling activities, an activity not within the scope of DRBC's proposed rulemaking. The Commission will continue to coordinate with the basin states to review the scientific evidence regarding harm to water resources caused by road spreading of conventional oil and gas production wastewater and may in the future consider whether additional regulation of the practice is needed in the basin.

### **Additional Materials**

Additional materials can be found on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at [https://www.nj.gov/drbc/about/regulations/final-rule\\_import-export-hvfh-discharge.html](https://www.nj.gov/drbc/about/regulations/final-rule_import-export-hvfh-discharge.html). These include links to Resolution No. 2022 - 04 of December 7, 2022 adopting the final rule; the Commission's Comment and Response Document; mark-ups comparing the final to the proposed rule text for Section 2.30 of the Water Code and for the Commission's Special Regulations at 18 CFR part 440; mark-ups comparing the amended to the existing rule text for 18 CFR part 440 and the Commission's Water Quality Regulations; and clean drafts of the amended and existing Section 2.30 of the Water Code for comparison.

The Commission's notice of proposed rulemaking, proposed rule text, written comments received, and transcripts of public hearings can be found on the DRBC website at [https://www.state.nj.us/drbc/meetings/proposed/notice\\_import-export-rules.html](https://www.state.nj.us/drbc/meetings/proposed/notice_import-export-rules.html).

Pamela M. Bush,  
Commission Secretary and Assistant General Counsel.  
Dated: December 15, 2022

For the reasons set forth in the preamble, effective thirty days after publication in the *Federal Register*, the Commission's final rule amends the Delaware River Basin Water Code, the Commission's Water Quality Regulations, and chapter III of Title 18 of the Code of Federal Regulations. The rule text is set forth below:

## DELAWARE RIVER BASIN WATER CODE

1. Amend Section 2.30 of the Delaware River Basin Water Code by repealing the existing text and replacing it in its entirety as set forth below:

### DELAWARE RIVER BASIN WATER CODE

#### ARTICLE 2 - CONSERVATION, DEVELOPMENT AND UTILIZATION OF DELAWARE RIVER BASIN WATER RESOURCES

##### 2.30 IMPORTATIONS AND EXPORTATIONS OF WATER, INCLUDING WASTEWATER

2.30.1 **Definitions** (*Resolutions Nos. 91-9 and 2022-04*). For purposes of this section 2.30:

- A. "Adjacent public water system" means a public water system (as defined herein) located outside the Delaware River Basin that has a service area directly bordering the service area of a public water system located in whole or in part within the Basin.
- B. "Adjacent public wastewater collection system" means a public wastewater collection system (as defined herein) located outside the Delaware River Basin that has a service area directly bordering the service area of a public wastewater collection system located in whole or in part within the Basin.
- C. "Basin water" (also, "waters of the Basin") means water in, on, under or above the ground within the Delaware River Basin. "Basin water" includes wastewater.
- D. "Delaware River Basin" (or "Basin") has the meaning assigned to it by Section 1.2(a) of the *Delaware River Basin Compact* - the area of drainage into the Delaware River and its tributaries, including Delaware Bay.
- E. "Exportation" means the conveyance, transfer, or diversion of Basin water from a source within the Delaware River Basin to a location outside the Basin without return of such water to the Basin. Exportations from the Basin of consumer goods or foods that have been manufactured, bottled, packaged, or processed using Basin water are not considered "exportations" for purposes of this rule.
- F. "Importation" means the conveyance, transfer, or diversion of water, including wastewater, into the Delaware River Basin from a source outside the Basin, resulting in a discharge of the imported water to land or water within the Basin, with or without prior treatment.
- G. "Public water system" means a system primarily for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. A "public water system" may be publicly or privately owned.
- H. "Public wastewater collection system" means a system with all required state and federal approvals that serves more than 250 people or conveys more than 25,000 gallons of wastewater per day and is primarily for the collection and conveyance of domestic sewage from private, commercial, institutional, or industrial sources, to a treatment system with all necessary state and federal approvals. A "public wastewater collection system" may be publicly or privately owned.
- I. "Straddled public water system" means a public water system that serves an area partially within and partially outside of the Delaware River Basin.
- J. "Straddled public wastewater collection system" means a public wastewater collection system that serves an area partially within and partially outside of the Delaware River Basin.
- K. "Wastewater" means water that is stored, transported or discharged after use, including, but not limited to, any water for which a National Pollutant Discharge Elimination System (NPDES) permit under the federal Clean Water Act or any state or DRBC approval is required before the water can lawfully be discharged to waters or land within the Basin.

##### 2.30.2 **Protection and Preservation**

- A. The waters of the Delaware River Basin are limited in quantity, and the Basin is frequently subject to drought warnings, drought declarations, and drought operations due to limited water supply storage and streamflow during dry periods. In addition, portions of the Basin have been delineated by the Commission as groundwater protected areas due to water shortages. Therefore, it is the policy of the Commission to promote the conservation and preservation of water and related natural resources, including aquatic ecosystems, and effectuate the Comprehensive Plan and the uses of the water resources of the Basin identified therein, by discouraging, limiting, or placing conditions on the exportation of Basin water as may be required to protect the health and safety of Basin residents, aquatic ecosystems and the uses of water identified in the Compact and Comprehensive Plan.
- B. The Commission shall review a proposed new exportation of Basin water, including any proposed increase in the rate or volume of an existing exportation, and may impose conditions, obligations and release requirements related thereto, pursuant to Sections 3.3, 3.8, 5.2, 10.3, 10.4 and Article 11 of the Compact and the regulations and docket approvals implementing these provisions.

- C. A proposed new exportation of Basin water that is subject to review under the Compact and implementing regulations, including any proposed increase in the rate or volume of an existing exportation, may be approved by the Commission after consideration of the factors set forth at Section 2.30.3 below, if:
  - 1. the sponsor demonstrates that the exportation of Basin water is required to serve a straddled or adjacent public water system;
  - 2. the sponsor demonstrates that the exportation of Basin water is required to meet public health and safety needs on a temporary, short-term, or emergency basis; or
  - 3. the sponsor is proposing an exportation of wastewater and demonstrates either (i) that the wastewater is being conveyed to a straddled or adjacent public wastewater collection system; or (ii) that the wastewater may not lawfully be discharged to a public wastewater collection system and is being exported for treatment, disposal or both at a waste management facility that has all required state and federal approvals to lawfully receive it.
- D. Basin waters have limited capacity to assimilate pollutants without significant impacts to the health and safety of Basin residents, the health and functioning of aquatic ecosystems in the Basin, and the effectuation of the Comprehensive Plan. Accordingly, it is the policy of the Commission to discourage, limit, or condition the importation of wastewater into the Delaware River Basin as necessary to avoid impairment of Basin waters. A proposed new importation of water, including any proposed increase in the rate or volume of an existing importation, shall be reviewed by the Commission consistent with the factors set forth at Section 2.30.3 below.
- E. This Section 2.30 shall not apply to importations and exportations of water, including wastewater, that existed prior to enactment of the Compact or that were approved by the DRBC prior to December 7, 2022.

2.30.3 **Commission Considerations** (*Resolutions Nos. 91-9 and 2022-04*). In evaluating importations and exportations, the Commission's review will include consideration of the following factors:

- A. For exportations of Basin water (including wastewater):
  - 1. the effect of the exportation on the health and safety of the Basin community;
  - 2. the effect of the exportation on existing or future water availability or shortages, including, but not limited to, sources within areas designated by the Commission as protected areas pursuant to Section 10.2 of the Compact, sources within Delaware River reaches with flows that are frequently augmented by reservoir releases due to low flows, and sources in areas subject to DRBC drought operations or state drought declarations within the past five years;
  - 3. the effect of the exportation on aquatic ecosystems;
  - 4. the effect of the exportation on water quality and waste assimilation;
  - 5. the effect of the exportation on salinity concentrations;
  - 6. the effect of the exportation on the water uses protected by the Comprehensive Plan, DRBC regulations or DRBC docket approvals, or on the ability of DRBC to effectuate the Comprehensive Plan;
  - 7. the effect of the exportation, including its volume, rate, timing and duration, on passby or instream flow requirements contained in DRBC regulations or project approvals;
  - 8. the sponsor's planned use for the water and any resulting public benefits;
  - 9. the availability to the sponsor of alternatives to the exportation of Basin water and whether these alternatives have been diligently pursued, including without limitation a review of the sponsor's uses of water outside the sponsor's service area, if any; conservation measures undertaken by the sponsor or a public water system in the service area where the sponsor is located to forestall the need for a transfer of Basin water; and the results of a water audit (or audits) performed by the sponsor in accordance with Section 2.1.8 of the Delaware River Basin Water Code; and
  - 10. whether the exportation would contravene sections 3.3 and 3.5(a) of the Compact by impeding or interfering with the rights, powers, privileges, conditions or obligations contained in the Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954), as modified by the Commission with the unanimous consent of the parties to the Decree.
- B. For importations of water (including wastewater):
  - 1. the effect of the importation on the health and safety of the Basin community with due consideration of the available alternatives to the importation;
  - 2. the characterization and treatability of the water, if it consists of wastewater;
  - 3. the potential impacts on water resources of the Delaware River Basin of the proposed importation and of each available alternative, including alternatives that avoid an importation of water,

including wastewater. The potential impacts considered will include the effects of the quality, volume, flow rate, timing and duration of the proposed importation in relation to:

- a. flow objectives or passing or instream flow requirements contained in DRBC regulations or project approvals;
- b. the record of hydrologic conditions in the proposed receiving region and the larger Delaware River Basin;
- c. water uses as established by the Comprehensive Plan, including the DRBC Water Code;
- d. the effect of the importation on aquatic ecosystems;
- e. water quality and waste assimilation capacity in the affected receiving streams; and
- f. prior regulations or orders of the Commission which may be identified during the course of the Commission's review.

2.30.4 **Analyses by Applicant for Section 3.8 Approval.** When an importation or exportation of water or wastewater is subject to review by the Commission, the applicant shall furnish the Commission with such analyses of the factors set forth in Sections 2.30.2 and 2.30.3 above and as the Commission may direct.

2.30.5 **Water Charges** (*Resolutions Nos. 91-9 and 2022-04*). Exportation of Basin water constitutes consumptive water use and will be subject to the water charges in effect at the time of transfer in accordance with the Commission's Water Supply Charges regulations (18 CFR Part 420), as amended.

2.30.6 **Wastewater Treatment Requirements** (*Resolution No. 91-9*). It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for importations of wastewater. An effluent loading or concentration authorized in accordance with a water-quality-based effluent limit such as a wasteload allocation may not include loadings attributable to an importation of wastewater.

2.30.7 **Existing Allocations** (*Resolution No. 91-9*). It is the policy of the Commission to charge all exportations of Basin water against any special regional allocation or any depletive use allocation as may exist at the time of receipt of a completed application for exportation.

2.30.8 **1954 Supreme Court Decree.** This Section 2.30 is intended to preserve the diversions, compensating releases, rights, conditions, and obligations of the parties to the U.S. Supreme Court Decree of 1954 in *New Jersey v. New York*, 347 U.S. 995 (1954), as modified by the Commission with the unanimous consent of the parties to the Decree.

## WATER QUALITY REGULATIONS

1. Amend Section 4.40.2 by replacing references to "Section 4.50" with references to "Section 4.60" as set forth below:

**Section 4.40.2 Enforcement Procedures.** The enforcement procedure of Section 4.60 with respect to effluent quality requirements for discharges shall be deemed applicable to the enforcement of this Section and Section 3.40. For the purposes thereof, the word "discharger" as used in Section 4.60 includes any party affected by this Section.

2. Amend Article 4 by adding a new Section 4.50 as set forth below:

**Section 4.50 Wastewater from High Volume Hydraulic Fracturing.** The provisions of 18 CFR 440.4 and the purpose and definitions applicable thereto, encompassing 18 CFR 440.1 and 18 CFR 440.2, are hereby incorporated into these Water Quality Regulations.

3. Amend Article 4 by renumbering prior Section 4.50 as new Section 4.60 as set forth below. Asterisks represent no change to existing text:

### Section 4.60 Enforcement Procedures.

4.60.1 **Scope.** \* \* \*

4.60.2 **Abatement Schedules and Permits.**

\* \* \* \* \*

4.60.3 **Waste Load Allocations.** \* \* \*

\* \* \* \* \*

4.60.4 **Inspection and Surveillance.**

\* \* \* \* \*

4.60.5 **Noncompliance; Notice.**

\* \* \* \* \*

4.60.6 **Order of Abatement; Sanctions.** \* \* \*

## REGULATIONS

1. The authority citation for part 410 continues to read as follows:

**Authority:** Delaware River Basin Compact, 75 Stat. 688.

2. Amend § 410.1 by revising paragraph (c) to read as follows.

### **§ 410.1 Basin Regulations - Water Code and Administrative Manual - Part III Water Quality Regulations.**

\* \* \* \* \*

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to regulations contained within the Delaware River Basin Water Code with Amendments through December 7, 2022 and the Administrative Manual-Part III Water Quality Regulations with Amendments through December 7, 2022. Both the Delaware River Basin Water Code and the Administrative Manual-Part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect copies at the Delaware River Basin Commission (DRBC), 25 Cosey Road, West Trenton, New Jersey 08628-0360, 609-883-9500, [www.drbc.gov](http://www.drbc.gov), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

## **PART 440 - HIGH VOLUME HYDRAULIC FRACTURING**

3. The authority citation for part 440 continues to read as follows:

**Authority:** Delaware River Basin Compact (75 Stat. 688).

4. Amend § 440.1 by revising paragraph (d) to read as follows:

### **§ 440.1 Purpose, authority, and relationship to other requirements.**

\* \* \* \* \*

(d) *Relationship to other Commission requirements.* The provisions of this part are in addition to all applicable requirements in other Commission regulations, dockets, permits, and determinations.

\* \* \* \* \*

5. Amend § 440.2 by revising the introductory paragraph, adding in alphabetical order definitions for "Discharge of wastewater from HVHF and HVHF-related activities," "HVHF-related activities," and "Wastewater from HVHF and HVHF-related activities", and revising the definition of "Water resource(s)", to read as follows:

### **§ 440.2 Definitions.**

For purposes of this part, the following terms and phrases have the meanings provided. Some definitions differ from those provided in regulations of one or more agencies of the Commission's member states and the Federal Government. Other definitions are consistent with terms defined by the Delaware River Basin Compact.

\* \* \* \* \*

*Discharge of wastewater from HVHF and HVHF-related activities* is an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, spreading, spraying, injecting, leaching, dumping, or disposing of such wastewater to waters or land within the Basin, and including the abandonment or discarding of barrels, containers, and other receptacles containing such wastewater.

\* \* \* \* \*

*HVHF-related activities* are:

(1) Construction of an oil or natural gas production well that is to be stimulated using HVHF as defined in this section;

(2) Chemical mixing or storage of proppant, chemicals and other additives to make fracturing fluid; and

(3) Management of wastewater from hydraulic fracturing, including storage, disposal, treatment, or reuse in hydraulic fracturing operations or other uses.

\* \* \* \* \*

*Wastewater from HVHF and HVHF-related activities* is:

(1) Any wastewater, brine, or sludge containing chemicals, naturally occurring radioactive materials, heavy metals or other contaminants that have been used for or generated by high volume hydraulic fracturing or HVHF-related activities;

(2) Leachate from solid wastes associated with HVHF-related activities, except if the solid wastes were lawfully disposed of in a landfill within the Basin prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]; and

(3) Any products, co-products, byproducts or waste products resulting from the treatment, processing or modification of the wastewater described in paragraphs (1) and (2) of this definition.

*Water resource(s)* is, in accordance with section 1.2(i) of the Delaware River Basin Compact, "water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control" within the Delaware River Basin.

6. Add § 440.4 to read as follows:

**§ 440.4 Wastewater from high volume hydraulic fracturing and related activities.**

(a) *Determination.* The Commission has determined that the discharge of wastewater from high volume hydraulic fracturing and HVHF-related activities poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the Basin's water resources. Controlling future pollution by prohibiting such discharge is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

(b) *Prohibition.* No person may discharge wastewater from high volume hydraulic fracturing or HVHF-related activities to waters or land within the Basin.

**26 DE Reg. 547 (01/01/23) (Final)**