



Delaware River Basin Commission

Revised Draft Natural Gas Development Regulations

“At-a-Glance” Fact Sheet

November 8, 2011 (corrected after original posting)

Purpose, Authority and Scope

On November 21, 2011, the Commission will consider adoption of Article 7 of DRBC’s Water Quality Regulations to protect the water resources of the Delaware River Basin during the construction and operation of natural gas development projects. Draft regulations were originally published on December 9, 2010 (“Dec. 2010 draft”). The Commission held eighteen hours of public hearings at three locations during February 2011 to receive testimony and received approximately 69,000 submissions commenting on the Dec. 2010 draft during the public comment period that closed on April 15, 2011. DRBC published a revised draft of Article 7 on its web site on November 8, 2011 (“revised draft regulations”). The revisions were guided by the public’s comments and Commissioners’ discussions with their respective staff, advisors, and one another. *The public comment period that closed on April 15, 2011 is not being reopened.*

The revised draft regulations apply to all “natural gas development projects” as that term is defined in Section 7.2, including the construction and operation of all natural gas wells in the basin, regardless of the target geologic formation, whether a well is for production or exploration, and whether high-volume or low-volume hydraulic fracturing is contemplated. Appurtenant infrastructure is also addressed.

The revised draft regulations are divided into sections that address the purpose, authority and scope of the rule (7.1); definitions (7.2); administrative processes (7.3); water sources and conditions of bulk water use and management approvals for natural gas development projects (7.4); the protection of high value water resource landscapes and Commission-designated Special Protection Waters (“SPW”) through mandatory Natural Gas Development Plans (“NGDPs”) for lease holdings of 3,200 acres or more and for all project sponsors who intend to develop more than five well pads (7.5); and the transfer, treatment and discharge of wastewater generated by natural gas development activities (7.6). The Commission will rely on the oil and gas program of the state in which a natural gas well is located to regulate the construction and operation activities of the natural gas well and well pad for which separate administration by the Commission would result in unnecessary duplication. If a state or federal regulatory requirement is more stringent than a DRBC requirement, the more stringent regulation would apply. Upon its effective date, which will be 60 days after Commission approval, Article 7 would supersede the Executive Director’s Determinations dated May 19, 2009, June 14, 2010 and July 23, 2010.

If and when adopted, this Article would constitute a joint exercise of the sovereign authority of Delaware, New Jersey, New York, Pennsylvania, and the federal government pursuant to the Delaware River Basin Compact. The Article would also amend the Commission’s Comprehensive Plan. Commission regulations are one mechanism by which the basin states and federal government work together to manage water resources in an integrated manner for the benefit of all citizens of the basin.

18-Month Assessment

- DRBC staff will provide Commissioners with an administrative and operational review of the new program 18 months after its effective date. Commissioners will review staff’s assessment and within six months will make recommendations for any adjustments they deem appropriate.
- Total Bulk Water Use and Management Approvals (“BWAs”) issued following the effective date of the regulations will authorize water use for not more than 300 natural gas wells. No additional BWAs may be issued until the Commissioners at a public meeting approve the resumption of issuance of such approvals.

Approval by Delegated Authority (“ADA”) Procedures

- The term “Approval by Rule” in the Dec. 2010 draft has been replaced with the more accurate “Approval by Delegated Authority” (“ADA”). ADAs are issued by the Executive Director. The intent continues to be to provide a streamlined process for approval of projects that satisfy certain criteria, including compliance with enhanced public notice requirements.

Approval of Water Sources

- All water sources within the basin used for natural gas development activities must have Commission approval.
- Sources previously approved by DRBC that have excess allocations may supply in-basin natural gas development projects within the same state without any additional DRBC approval.
- New withdrawals and existing sources that require increases in their allocations must receive Commission approval in the form of a docket or protected area permit before serving natural gas development activities.
- In order to encourage the use of sources other than fresh water for hydraulic fracturing of natural gas wells, the revised draft regulations provide for ADAs for the diversion into the basin (importation) of non-contact cooling water, treated wastewater that meets certain criteria, mine drainage water, and recovered flowback and production water (if within the same state) to be used in hydraulic fracturing.

Bulk Water Use and Management Approval (“BWA”)

- DRBC will rely on state regulatory requirements for the construction and operation of individual natural gas wells and well pads.
- Project sponsors of all natural gas development projects located in the basin must obtain a Commission-issued BWA for each natural gas well pad and each project consisting of the hydrostatic testing of natural gas gathering lines or transmission lines. Such approvals will ordinarily be in the form of an ADA issued to the natural gas development project sponsor; however, a docket issued by the Commissioners would be required for projects proposed to be located in: (1) management areas of the National Park Service (NPS) or other areas in which the NPS or other federal agencies have management interest; and (2) the watersheds draining to New York City’s Delaware Basin reservoirs. A variance also would be required in the Upper Delaware Scenic and Recreational River corridor.
- A BWA must be in place before water from any source – whether inside or outside the basin – is used for natural gas development activities and before the project sponsor commences well pad construction (including initiation of site disturbance), or begins operation of a pre-existing natural gas well pad or natural gas well. The Commission anticipates concurrent review by states for all necessary state approvals, although a state may issue permits first if it chooses to do so.
- Most of the conditions proposed for natural gas well pads in the Dec. 2010 draft, including siting and setback restrictions, are included in the revised draft regulations as requirements of a BWA. Additional setbacks or best management practices may be required to protect public drinking water systems or water supply reservoirs and in watersheds of waterbodies designated by DRBC as Special Protection Waters, by Pennsylvania as “high quality waters” or “exceptional value waters”, or by New York for extra protection.
- Mandatory surface water sampling will be performed by the Commission before and after well pad construction, each well stimulation, and annually thereafter, unless the project sponsor elects and is approved to perform this work. DRBC also will undertake a regional ambient surface water monitoring program.
- The revised draft regulations require pre- and annual post-construction groundwater sampling reports as a condition of the BWA for all natural gas well pad projects, not just for high-volume hydraulic fracturing projects as in the Dec. 2010 draft.
- To encourage the use of sources other than fresh water for hydraulic fracturing, each BWA will contain a standard condition providing that if the source project and the receiving project are located within the basin and within the same state, reuse of flowback and production water may be undertaken in compliance with conditions of the approval issued by the host state.
- Flowback and production water proposed to be used to fracture natural gas wells within the basin but in a different state or to be diverted out of the basin will continue to require ~~express approval by either an ADA issued by the Executive Director. (for re-use in the basin in a different state) or by the Commissioners (for out-of-basin diversions).~~
- In a change from the Dec. 2010 draft, the revised draft regulations place on the user rather than on the withdrawer the responsibility for metering and reporting water usage for natural gas development projects, and for the tracking of water and wastewater.
- The Commission will maintain an Approved List of Water Sources (“ALWS”) for each natural gas development project sponsor that receives one or more BWAs for projects in the basin. A project sponsor may take the quantity of water allocated by a BWA from any source or combination of sources on its ALWS and may not use water from any source not included on its ALWS.

Natural Gas Development Plan (“NGDP”) For Protection of High Value Water Resource Landscapes and Special Protection Waters

- Section 7.5 of the revised draft regulations is retitled “Protection of High Value Water Resource Landscapes and Special Protection Waters.” The focus remains on requirements that the Commission believes are essential to maintaining existing high water quality in the non-tidal river. The section has two parts: it establishes (1) siting requirements for natural gas development projects and (2) requirements for the preparation of NGDPs for large lease holdings.
- The purpose of a NGDP is to identify foreseeable natural gas development activity in a defined, leasehold-scale geographic area. Through proper site planning, a NGDP will facilitate analysis of potential water resource impacts and the development of measures to avoid and minimize such impacts or, in the alternative, will require mitigation or compensation for them.
- The revised draft regulations continue to require that any natural gas development project sponsor with natural gas leaseholds in the basin encompassing a total of over 3,200 acres or who intends to construct more than five natural gas well pads in the basin may undertake natural gas development projects in the basin only after obtaining approval in the form of a docket issued by the Commission for a NGDP.
- A single project sponsor may develop a maximum of five natural gas well pads in the basin in the absence of a Commission-approved NGDP after obtaining a BWA for each well pad and all necessary state approvals.

Management of Wastewater Generated by Natural Gas Development Projects

- To ensure that untreated natural gas wastewater is not released to the groundwater or surface waters of the basin, in accordance with the BWA: (a) flowback and production water must be stored in closed tanks and either reused or removed from the pad site within a prescribed time (usually 90 days); (b) open impoundments at pad sites may be used only to store fresh water; and (c) no wastewater (treated or untreated), hydraulic fracturing fluid, mine drainage water, other fluids or unused water from any source may be placed into any fresh water impoundment or discharged to groundwater, surface water, roads or other land surfaces or otherwise used at a natural gas project site or elsewhere within the basin without the express written approval of the Executive Director or Commission and the appropriate state agency. There can be no open storage of any fluid other than fresh water on a pad site; centralized wastewater storage facilities, including open impoundments, serving multiple pad sites can be constructed and operated in accordance with state regulations.
- The revised draft regulations continue to require that any wastewater treatment facility within the basin may accept non-domestic wastewater from a natural gas development project only if the facility first obtains approval from the Commission in the form of a docket (for new or as yet un-docketed facilities) or docket modification.
- Language in the revised draft regulations clarifies that states or the U.S. Environmental Protection Agency will be responsible for regulating “disposal” facilities (such as solid waste disposal sites or underground injection wells) that do not have discharges; however, transfer facilities not providing treatment and/or discharge must still obtain Commission approval to accept natural gas wastewater.
- Treatability studies prepared in fulfillment of host state or federal requirements may be used to satisfy Commission requirements applicable to all treatment and discharge facilities that propose to accept non-domestic wastewater from natural gas development projects.

Financial Assurance Requirements

- The Dec. 2010 draft required financial assurance in the amount of \$125,000 per well to address capping, closure, and remediation activities, with a complicated mechanism by which the Executive Director could reduce or cap that amount in certain instances. The revised draft regulations replace the \$125,000 per well limit with three separate financial assurance requirements and three separate limits, each addressing a different concern – capping and closure (\$25,000 per well or \$250,000 in the aggregate); accidental spills and releases (\$5 million for individual well pads not within a NGDP, and \$8,000 per acre with a maximum of \$25 million for lands within a NGDP; or if insurance is used, \$5 million per occurrence and \$25 million in the aggregate); and mitigation/restoration required as part of a NGDP (in an amount equal to the estimated cost of completing the mitigation and restoration, which will be specific to the NGDP). The revised draft regulations also remove the mechanisms by which financial assurance may be reduced by the Executive Director.
- The revised draft regulations clarify that providing the requisite financial assurance does not limit a project sponsor’s liability or duty to comply with host state closure requirements or the mitigation and restoration requirements for NGDPs set forth in Section 7.5. The financial assurance requirement does not limit the duty or liability of the project sponsor to remediate any release or threatened release of hazardous substances, pollutants or contaminants at its project sites.