

Frequently Asked Questions (FAQs)

Resolution to Publish Revised Draft Rules Addressing Natural Gas Development Activities within the Delaware River Basin



1. Can you briefly explain the result of the Resolution approved by the Delaware River Basin Commission (DRBC) at its September 13, 2017 business meeting that was related to Natural Gas Development Activities?

The adopted Resolution directs the Executive Director to prepare and release for public comment a revised set of rules to regulate proposed projects related to natural gas development activities within the Delaware River Basin. According to the Resolution, a notice of revised proposed rulemaking, including the text of revised draft rules, will be published no later than November 30, 2017.

2. Has the Commission made a final decision to adopt rules for hydraulic fracturing or “fracking” in the Delaware River Basin?

No. The Commission will not finalize rules until it has gathered and reviewed public comment on revised draft regulations. Once the public process is complete, the Commission will consider any changes to the draft rules that may be appropriate based on the comments received.

3. Will the draft rules consider the potential for prohibition of hydraulic fracturing in the Basin?

Yes. The Resolution provides that the draft rules will include prohibitions related to the development of natural gas utilizing horizontal drilling and hydraulic fracturing within the Basin.

4. What else will be considered in the rules?

The rules will also consider the regulation of activities related to natural gas development that could affect water resources. The details will be set forth in the draft rules, which are to be released for public input no later than November 30, 2017.

5. Where and when will public hearings be conducted?

The public process on the revised draft regulations will include one or more public hearings and ample opportunity for written comment. Details regarding the time and place of the hearings have not yet been determined. These details, along with instructions for submitting written comments, will be released simultaneously with publication of the revised draft rules.

6. Can I send comments to DRBC about fracking at this time?

Members of the public can write to government officials at any time. However, comments on the draft rule will be included in the rulemaking record on which Commission action is based only if they are submitted during the public comment period that is established for the proposed rulemaking. All opportunities for comment on the record will be detailed in the public notice that accompanies publication of the revised draft regulations. Comments received before the comment period officially opens **will not be included** in the decision-making record.

7. Can we meet with DRBC staff before they issue draft rules?

No. Staff will be focused on drafting rules and on other Commission activities. The public will have ample opportunity to provide comment to the Commissioners and staff during the public comment period once the draft rules are developed and released (no later than November 30, 2017).

8. Is there a moratorium on fracking and will it continue?

By a Resolution dated May 5, 2010, the Commission postponed consideration of well pad docket applications pending the completion of a rulemaking to address natural gas development activities. By Resolution and Order dated December 8, 2010, the Commission postponed decision on its authority to review natural gas exploratory well activities in shale formations until either the adoption of final regulations or the submission of an application. Since then, the Commission has neither received, nor has it considered, any applications for well pad projects – a situation that has sometimes been referred to as a “*de facto* moratorium.”

9. Who makes the final decision for the Commission on this matter?

Only the Commissioners are empowered by the Delaware River Basin Compact, the federal and state law that created the Commission, to adopt new rules or modify existing ones. The Commissioners are the Governors of the four Basin states and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who serves as the federal representative. A list of the current Commissioners is provided at <http://www.nj.gov/drbc/about/commissioners/>. A majority vote of three Commissioners is required on this matter.

10. Why is the Commission considering this direction now?

The science and policy questions related to natural gas development are complex and evolving, requiring thoughtful analysis. Among the Basin states, since 2010 Pennsylvania has advanced statutory and regulatory actions regarding natural gas drilling, and New York has completed a state environmental impact analysis to preclude certain natural gas development activities. During this same timeframe, the DRBC Commissioners have conferred in good faith, continuing to receive information from many stakeholders with diverse views, and have closely followed the evolving scientific literature on the impacts of natural gas development on water resources. Based on these efforts, the Commissioners are now directing DRBC staff to prepare a revised set of draft rules addressing natural gas development activities within the Basin to be published no later than November 30, 2017.

11. Where can I find more information about this Resolution, the draft rules and the Commission's role in this activity?

Interested parties are encouraged to check the Commission's web site – www.drbc.net - for the most up-to-date information concerning this rulemaking process.

In addition, the DRBC web site includes an archive that provides an accurate record of prior DRBC activities related to this matter at <http://www.nj.gov/drbc/programs/natural/>

Finally, you can sign up for a DRBC "listserv" related to natural gas development activities to receive periodic DRBC-related information and updates on this topic sent to you directly via email at <http://www.nj.gov/drbc/contact/interest/index.html>

12. Is there currently a moratorium or a de-facto moratorium on the disposal of wastewater from hydraulic fracturing within the Delaware River Basin (DRB) or on the export or inter-basin transfer of water for uses related to hydraulic fracturing?

No. At the present time, any discharge of wastewater within the Basin is subject to state and federal regulations, including those implementing the federal Clean Water Act, and to DRBC regulations. Any proposal to transfer water or wastewater into the basin, or to export water or wastewater from the Basin is subject to existing DRBC regulations.

13. Why will the revised draft regulations include provisions relating to hydraulic fracturing wastewater in the Basin and inter-basin transfer of water associated with hydraulic fracturing?

Under current review thresholds, existing DRBC regulations apply to many wastewater discharges in the Basin as well as to requests for inter-basin transfers of water and wastewater. As directed by the resolution approved on September 13, 2017, revisions to the existing DRBC regulations will be developed to specifically address the risks to water resources associated with the treatment and disposal of wastewater from hydraulic fracturing, and likewise, to address proposed transfers of water out of the DRB for purposes of hydraulic fracturing. The detailed draft rules will be published by November 30, 2017 for public review and comment. The public is asked not to pre-judge the proposed rules before their publication.

14. When might I expect the Commissioners to vote on draft rules?

Since the rulemaking process commonly takes six months or longer, a vote by the Commissioners to adopt final rules is currently expected to occur in 2018. The rulemaking process will require one or more public hearings and a written comment period. After the close of the comment period, additional time is needed for the Commission to review the oral and written comments received during the comment period, and to prepare a response document along with any changes to the draft rules based on the comments received. As indicated in the answer to question 5, details about the hearing(s) and the length of the comment period, and instructions for submitting written comments will be included in the notice of revised proposed rulemaking to be published no later than November 30, 2017. The estimated length of the rulemaking process will become clearer following the public input process. As always, the Commission may adopt final rules only at a duly-noticed Commission meeting that is open to the public.

Last Updated: 9/13/2017