

Part 440 of DRBC’s Special Regulations at Title 18 of the Code of Federal Regulations, as amended, is shown below. Additions are shown in red with underscore and deletions are shown in ~~red with strikethrough~~ compared to the text of the proposed amendments to 18 C.F.R. Part 440, originally published on October 28, 2021.

SUBCHAPTER B – SPECIAL REGULATIONS

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PART 440 – HIGH VOLUME HYDRAULIC FRACTURING

Sec.

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440.1 Purpose, authority and relationship to other requirements.

- (a) *Purpose.* The purpose of this part is to protect and conserve the water resources of the Delaware River Basin. To effectuate this purpose, this section establishes standards, requirements, conditions, and restrictions to prevent or reduce depletion and degradation of surface and groundwater resources and to promote sound practices of water resource management.
- (b) *Authority.* This part implements Sections 3.1, 3.2(a), 3.2 (b), 3.6(b), 3.6(h), 4.1, 5.2, 7.1, 13.1 and 14.2(a) of the Delaware River Basin Compact.
- (c) *Comprehensive Plan.* The Commission has determined that the provisions of this part are required for the immediate and long range development and use of the water resources of the Basin and are therefore incorporated into the Commission's Comprehensive Plan.
- (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.
- (e) *Severability.* The provisions of this part are severable. If any provision of this part or its application to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part, which can be given effect without the invalid provision or application.
- (f) *Coordination and avoidance of duplication.* In accordance with and pursuant to section 1.5 of the Delaware River Basin Compact, to the fullest extent it finds feasible and advantageous the Commission may enter into an Administrative Agreement (Agreement) with any Basin state or the Federal Government to coordinate functions and eliminate unnecessary duplication of effort. Such Agreements will be designed to: Effectuate intergovernmental cooperation, minimize the efforts and duplication of state and Commission staff resources wherever possible, ensure compliance with

Commission-approved requirements, enhance early notification of the general public and other interested parties regarding proposed activities in the Basin, indicate where a host state's requirements satisfy the Commission's regulatory objectives, and clarify the relationship and project review decision making processes of the states and the Commission for projects subject to review by the states under their state authorities and by the Commission under Section 3.8 and Articles 6, 7, 10 and 11 of the Compact.

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.

Basin is the area of drainage into the Delaware River and its tributaries, including Delaware Bay.

Commission is the Delaware River Basin Commission (DRBC) created and constituted 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.

Fracturing fluid(s) is a mixture of water (whether fresh or recycled) and/or other fluids and chemicals or other additives, which are injected into the subsurface and which may include chemicals used to reduce friction, minimize biofouling of fractures, prevent corrosion of metal pipes or remove drilling mud damage within a wellbore area, and propping agents such as silica sand, which are deposited in the induced fractures.

High volume hydraulic fracturing (HVHF) is hydraulic fracturing using a combined total of 300,000 or more gallons of water during all stages in a well completion, whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water.

HVHF-related activities are:

- (1) Construction of an oil or natural gas production well that is to be stimulated using HVHF as defined herein 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.

Hydraulic fracturing is a technique used to stimulate the production of oil and natural gas from a well by injecting fracturing fluids down the wellbore under pressure to create and maintain induced fractures in the hydrocarbon-bearing rock of the target geologic formation.

Person is any natural person, corporation, partnership, association, company, trust, Federal, state, or local governmental unit, agency, or authority, or other entity, public or private.

Wastewater from *high volume hydraulic fracturing 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 THE FEDERAL REGISTER]~~the effective date of this rule~~; 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 ~~same~~ 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.

440.3 High volume hydraulic fracturing (HVHF)

- (a) **Determination.** The Commission has determined that high volume hydraulic fracturing poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Controlling future pollution by prohibiting such activity in 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.
- (b) **Prohibition.** High volume hydraulic fracturing in hydrocarbon bearing rock formations is prohibited within the Delaware River Basin.

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.