

# “What keeps you up at night?”

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## Delaware River Basin Commission expected to adopt natural gas development regulations

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### SUMMARY

The Delaware River Basin Commission is expected to adopt natural gas development regulations that will apply to all natural gas development projects in the basin. Once adopted, the regulations will take effect sixty days later.

All natural gas development projects in the Delaware river basin will be subject to regulation by the Delaware River Basin Commission (“DRBC”) starting December 20, 2011, assuming the DRBC acts as expected at its November 21 meeting and adopts its long awaited rulemaking.

While drilling in the Marcellus Shale has been the impetus for this rulemaking, the rules will apply to all natural gas development projects in the basin, regardless of geologic formation, whether the well is for production or exploration and whether high or low volume hydraulic fracturing is concerned.

The DRBC had established a ban on natural gas development within the basin during the past year, and the new regulation is not intended to open the floodgate – it is subject to an 18-month DRBC assessment review and no more than 300 natural gas wells will be approved during this period.

Key components of the draft regulations are:

**Approval of Water Sources** — DRBC approval is required in order to use any water source within the basin for natural gas development. The draft regulation encourages the use of grey water for hydraulic fracturing, including diversion into the basin of non-contact cooling water, treated wastewater, mine drainage water, and recovered flowback and production water.

**Bulk Water Use and Management Approval (“BWA”)** — Before water from any source, whether inside or outside the basin, is used for natural gas development activities, and prior to commencing well pad construction (including initiating site disturbance) the DRBC must issue a BWA. Normally the Executive Director will issue this approval, except where the project is located in

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(1) management areas of the National Park Service (NPS) or other areas managed by the NPS or other federal agencies; (2) the watersheds draining to New York City's Delaware Basin reservoirs; and (3) the Upper Delaware Scenic and Recreational River corridor. In each of these instances either a docket or variance approval must come directly from the Commissioners.

**Natural Gas Development Plan (“NGDP”) For Protection of High Value Water Resource Landscapes and Special Protection Waters** — Section 7.5 of the draft regulations establishes siting requirements for natural gas development projects and the preparation of NGDPs for large lease holdings.

**Management of Wastewater Generated by Natural Gas Development Projects** — Untreated natural gas wastewater is not to be released to the groundwater or surface waters of the basin.

Accordingly:

- Flowback and production water must be stored in closed tanks and either reused or removed from the pad site within a defined time (usually 90 days)
- Open impoundments at pad sites may store only fresh water
- Wastewater (whether treated or not), hydraulic fracturing fluid, mine drainage water, other fluids or unused water from any source may not be placed into freshwater impoundments or discharged to groundwater or 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 DRBC Executive Director and the appropriate state agency
- No open storage of any fluid other than fresh water is permitted on a pad site
- Centralized wastewater storage facilities, including open impoundments, serving multiple pad sites may be constructed and operated in accordance with state law
- No wastewater treatment facility within the basin may accept non-domestic wastewater from a natural gas development project without obtaining approval from

the Commission in the form of a new docket or docket modification

- Disposal facilities that do not have discharges will remain the exclusive responsibility of the USEPA and the states; however, transfer facilities accepting natural gas wastewater must still obtain Commission approval in the form of a docket, regardless of whether they provide treatment and/or discharge
- Treatability studies prepared to satisfy state and federal requirements may also be used to satisfy the DRBC

**Financial Assurance Requirements** — the draft regulations would establish the following financial assurance requirements:

**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 an NGDP, and \$8,000 per acre, with a maximum of \$25 million for lands within an NGDP; or if insurance is used, \$5 million per occurrence and \$25 million in the aggregate

**mitigation/restoration** — specific to the NGDP

The draft regulations provide no mechanism for the Executive Director to reduce the amount of the financial assurance, nor do they limit the project sponsor's liability or duty to comply with state law closure requirements or the mitigation and restoration requirements for NGDPs. Likewise, the duty to remediate any release or threatened release of hazardous substances, pollutants or contaminants from a project site remains subject to state and federal jurisdiction.

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