

# DELCORA

On November 17, 2017, the Delaware River Basin Commission (the "DRBC") published its "Notice of Proposed Rulemaking and Public Hearing: Proposed Amendments to the Administrative Manual and Special Regulations Regarding Hydraulic Fracturing Activities; Additional Clarifying Amendments," seeking public comment on the proposed revisions to the longstanding existing regulations. The Delaware County Regional Water Quality Control Authority ("DELCORA") has reviewed the proposed regulations, and offers the following comments with respect to the proposed addition of 18 C.F.R. §401.35(b)(18), which relates to the newly defined terms "produced water" and "CWT wastewater," as defined in 18 C.F.R. §440.2.

## I. BACKGROUND ON DELCORA AND ITS OPERATIONS

In the late 1960's, Delaware County recognized the need for a regional wastewater management plan. From that need, DELCORA, a regional wastewater management authority was created on October 20th, 1971 and tasked with providing environmentally sound and cost-effective wastewater treatment services to the citizens and businesses of Delaware County, Pennsylvania. Since its inception, DELCORA has been instrumental in improving the water quality of the County and the Delaware River Estuary. Today, the authority owns, operates and maintains collection systems and reclamation facilities that serve approximately a half million people in the Greater Philadelphia area including 42 municipalities in Delaware and Chester Counties.

## II. DELCORA'S JUNE 2016 DOCKET

DELCORA owns and operates the Western Regional Treatment Plant (WRTP), which provides wastewater collection and treatment in the western portion of DELCORA's regional service area in Delaware County, Pennsylvania. Located in Chester and discharging to the Delaware River Estuary, WRTP has a permitted effluent discharge capacity of 44 million gallons per day (mgd) before completion of a plant expansion and 50 mgd after the completion of plant expansion in accordance with its National Pollutant Discharge Elimination System (NPDES) permit (No. PA0027103 A-2). DELCORA filed an Application to the DRBC on July 28, 2015 for a renewal of Docket NO. D-1992-018 CP-3. In response the DRBC issued a docket for the facility on June 15, 2016 renewing its approval of both the existing and proposed outfall. Most importantly, in connection with the issuance of its docket the DRBC reiterated the extensive effluent limitations imposed by the DEP in Effluent Table A-1, noting the additional DRBC-imposed parameters at Table A-2. Tables A-3 and A-4 pertain to the same effluents, but address the discharges once the outfall rate increases to 50 mgd.

Of particular importance, the DRBC noted the CBOD5 and TDS levels relating to Outfall No. 001 in the aforementioned Table A-1 and A-3. The DRBC specifically notes that these levels are set by the DEP, and the DRBC's additional sampling protocols are further set forth at Section C.II.x of the docket. There is no indication therein of any need to reduce any such effluents, though monitoring is required.

The DRBC next addresses the CBOD5 and TDS issue in its letter to Raymond A. Ferra, Ph.D., dated January 17, 2018. In this letter the DRBC notes that there is some increase in CBOD5 and TDS levels from 2012 through 2017, which it potentially attributes to the receipt and processing of leachate, requesting certain additional analytical data, but not indicating any exceedance of permit

levels. In essence, the DRBC requested certain updates regarding DELCORA's continued ability to meet its water quality regulations, as well as a characterization of any such leachate. In short, the DRBC was not constrained in its ability to review the WRTP's in-take of leachate, and the impacts that leachate treatment could conceivably have upon effluent water quality.

Moreover the DRBC also makes it plain that with respect to wastewater imported into the Delaware River Basin (the "DRB"), Section 2.30 of the Water Code, DELCORA must take specific steps to remove all of the CBOD20 (with respect to in-basin wastewater the removal is 89.5%). This is another example of the DRBC's robust existing ability to monitor and regulate in- and out-of-basin industrial wastewater, notwithstanding how it was created in the first place. In short, the DRBC made it clear that DELCORA is to identify industrial wastewater that is derived from leachate, and further demonstrated that once such a wastewater stream is identified, the DRBC has the existing regulatory tools needed to analyze any impact that leachate could have upon water quality in the DRB.

### III. THE DRBC's NEW PROPOSED CWT REQUIREMENTS FOR DOCKETING

The DRBC's proposed addition to 18 C.F.R. 401.35(b)(18) appears to confuse rather than clarify the application of the DRBC's water quality criteria to leachate. The imposition of the concept of the Centralized Waste Treatment Facility could be interpreted to address the receipt of leachate at a facility such as the WRTP. The WRTP itself could be considered a CWT facility under the new regulations, given the new definition at 18 C.F.R. 440.2. That is DELCORA would treat non-hazardous industrial wastewater for discharge into the DRB. Thus, the discharge of the treated wastewater would constitute "CWT wastewater" (defined in the same section), which in turn triggers docketing at 401.35(b)(18), unless otherwise exempted under 401.35(a). However, the DRBC appears to already possess robust authority in this area as reflected in the issuance of docket D-1992-018 CP-3, as discussed above.

The DRBC should clarify the intent of this provision. Given that the definition of CWT Facility is embedded in the new proposed regulations governing hydro fracturing activities, it may be the DRBC's intent to capture treated or partially treated "frack" water, and regulate its discharge into the DRB. If that is the intent, then the leachate or other industrial wastewater received at the WRTP could be captured within this provision. As discussed above, the DRBC already possesses extensive regulatory authority to track, treat and discharge leachate, regardless of its point of origin. This is clearly reflected in the existing regulations at 401.35(b)(8), which regulates Facilities that create a direct discharge to surface or ground waters of industrial wastewater. In essence, it would appear that any discharge from a CWT Facility could also constitute the discharge of industrial wastewater. While the DRBC may have some question as to whether frack water would otherwise be considered an industrial wastewater, the DRBC has traditionally processed dockets for the discharge of treated leachate as a discharge of industrial wastewater under 401.35(b)(8).

In Pennsylvania, leachate would constitute an "industrial waste" as that term is defined at 25 Pa. Code 92a.2 (emphasis added):

Industrial waste

(i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from

manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations.

(ii) The term includes all of these substances whether or not generally characterized as waste.

In New Jersey, leachate constitutes a "Process wastewater," which by its own terms includes industrial wastewater at N.J.A.C.  $\diamond$ 7:15-1.5:

'Process wastewater' means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater includes, but is not limited to, leachate and cooling water other than non-contact cooling water. This definition includes the terms commercial wastewater and industrial wastewater as used in 40 CFR Part 503.

Thus in the states throughout the DRB, the concept of leachate as an industrial wastewater is thoroughly embedded. Therefore, the existing DRBC regulation calling for the docketing of industrial waste discharges is sufficient to include landfill leachate, and the DRBC should modify the text of the proposed regulation at  $\diamond$ 401.35(b)(18) to exclude industrial wastewater discharges otherwise within the jurisdiction of existing  $\diamond$ 401.35(b)(8).

In short, if CWT wastewater is meant to include leachate then there is a potential conflict between these two provisions that could create confusion with respect to the appropriate provisions under which a docket should be filed, and the potential consequence that a docket could be approved but subject to an appeal based upon the provision under which the approval was rendered.

In addition, the DRBC has proposed a revised provision concerning leachate treatment and solid waste disposal facilities at  $\diamond$ 401.35(b)(14). The DRBC proposes changes to the existing language found at  $\diamond$ 401.35(b)(15), which originally related to landfill and solid waste facilities that could impact the DRB's water quality. The new provision can be read to apply to any leachate treatment project located within the DRB and associated with a landfill or solid waste disposal facility located within the DRB, or potentially as a leachate treatment facility located within the DRB that treats leachate from any landfill, whether within the DRB or not. The specific concern is that "leachate treatment projects" is not a defined term. It could apply only to wastewater treatment plants (or the like) associated with in-basin landfills, which is a relatively discrete focus. However, it could also apply to any initiative at any in-basin wastewater treatment facility that proposes to treat leachate. If the latter is the intent, DELCORA would again point out that this raises overlap with the CWT wastewater definition, as well as that of "industrial wastewater." In short, there could be three separately applicable bases for a docket filing for DELCORA in the event it is seeking approval for a new leachate stream.

If the DRBC's intent is that this provision governs facilities constructed within the DRB for treatment of leachate generated at the landfill to which the facility is related, then this is a logical revision of the former provision (though a definition of "Leachate treatment and disposal project" would provide greater clarity). If the DRBC's intent is that this provision captures off-site facilities seeking to treat leachate, such as the WRTP then DELCORA would ask that the DRBC clarify the jurisdictional lines to avoid overlap with the definition of "industrial wastewater" and/or "CWT wastewater." For example, the DRBC could modify the proposed definition of CWT wastewater as follows:

CWT wastewater For purposes of this part, "CWT wastewater" means any wastewater or effluent resulting from the treatment of produced water by a CWT, but shall not include "leachate," as such term is defined at 40 C.F.R. 258.2.

In that manner, the new regulations will continue to process and docket leachate treatment proposals that exceed the threshold quantities set forth in 18 C.F.R. 401.35(a) as an "industrial wastewater." The proposed language at 401.35(b)(14) could be modified to state:

Leachate treatment and disposal projects associated with, and primarily servicing in-basin landfills and solid waste disposal facilities.

This modification makes it clear that the section pertains to leachate treatment systems at landfills, but would not capture a facility like the WRTP which does not primarily service disposal facilities.

Conclusion:

DELCORA respectfully requests that the DRBC clarify its intent with respect to above-cited provisions referencing leachate, process water and CWT wastewater. DELCORA is prepared to respond to any questions the DRBC may have, and kindly contact the undersigned with any issues the DRBC may wish to discuss.

Sincerely,

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