

## DELAWARE RIVER BASIN COMMISSION

### 18 CFR Part 410

#### Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Classify the Lower Delaware River as Special Protection Waters

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** By Resolution No. 2008–9 on July 16, 2008, the Delaware River Basin Commission (“Commission” or DRBC) approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the “Lower Delaware” and to assign the Special Protection Waters (SPW) classification “Significant Resource Waters” (SRW) on a permanent basis to this reach. The Commission also approved language to clarify aspects of the SPW regulations, especially with respect to existing facilities, that have confused some DRBC docket holders and applicants since the SPW program was originally adopted by the Commission in 1992 for point sources and in 1994 for non-point sources.

**DATES:** Effective September 26, 2008. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of September 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Pamela M. Bush, secretary and assistant general counsel, Delaware River Basin Commission, by phoning 609–883–9500 ext. 203, or by e-mail to [pamela.bush@drbc.state.nj.us](mailto:pamela.bush@drbc.state.nj.us); Kim Wobick, information resources coordinator, Delaware River Basin Commission, by phoning 609–883–9500 ext. 263, or by e-mail to [kim.wobick@drbc.state.nj.us](mailto:kim.wobick@drbc.state.nj.us).

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission (“Commission” or “DRBC”) is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states—Delaware, New Jersey, New York and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Notice of the proposed amendments appeared in the **Federal Register** (72 FR 57255) on October 9, 2007 as well as in

the *Delaware Register of Regulations* on October 1, 2007 (11 DE Reg. 376–378 (10/01/07)), the *New Jersey Register* (39 N.J.R. 4392) on October 15, 2007, the *New York State Register* (page 8) on October 10, 2007 and the *Pennsylvania Bulletin* (37 Pa. B. 5527) on October 13, 2007, respectively. The Commission held informational meetings about the proposed changes on October 25, 2007 in Stockton, New Jersey and on November 1, 2007 in Easton, Pennsylvania. A public hearing was held on December 4, 2007, and written comments were received through December 6, 2007.

By Resolution No. 2005–2 in January of 2005, following a duly noticed public hearing, the Commission classified the Lower Delaware River as SRW on a temporary basis, pending the determination of numeric values for existing water quality for this section of the river and a thorough evaluation of the data to determine whether or not to classify certain sections of the Lower Delaware as Outstanding Basin Waters and whether to make the temporary Special Protection Waters designation permanent for some or all of the Lower Delaware. Following additional advertised public hearings in September 2005, September 2006, September 2007 and May 2008, temporary designation was extended repeatedly pending the Commission’s final action on July 16, 2008. By that action, the Commission continued temporary classification of the Lower Delaware as SRW once more, until the amendments approved by Resolution No. 2008–9 are filed with each of the signatory parties in accordance with Section 14.2 of the Delaware River Basin Compact and a notice of final rulemaking has appeared in the **Federal Register**.

A comment and response document addressing comments offered at the public hearing and written comments received through the close of the comment period is available on the Commission’s Web site, *DRBC.net*. Copies of this document may be obtained by request of the Commission’s information resources coordinator at the telephone and e-mail addresses listed above. A charge for printing and mailing may apply.

DRBC Resolution No. 2008–9, including the amended rule in the form approved by the resolution, also is available on the DRBC Web site, *DRBC.net*. The resolution incorporates the entire text of Section 3.10.3 A.2. of the Water Quality Regulations and Water Code, showing the amendments as proposed in October of 2007 and as finally approved by the Commission on July 16, 2008. Copies may be obtained

from the information resources coordinator at the telephone and e-mail addresses listed above. A charge for printing and mailing may apply.

#### List of Subjects in 18 CFR Part 410

Incorporation by reference, Water pollution control, Water reservoirs, Water supply, Watersheds.

■ For the reasons set forth in the preamble, the Delaware River Basin Commission amends Part 410 of title 18 of the Code of Federal Regulations as follows:

#### PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

■ 1. The authority citation for Part 410 continues to read:

**Authority:** Delaware River Basin Compact, 75 Stat. 688.

■ 2. Revise § 410.1 to read as follows:

##### § 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

(a) The Water Code of the Delaware River Basin is a codification of regulations of the Delaware River Basin Commission applicable to public and private water projects and programs within the Delaware River Basin. Article I of the water code sets forth general policies of the Commission. Article II concerns the conservation, development and utilization of Delaware River Basin water resources, including during periods of drought. Article III sets forth water quality standards and guidelines for the Delaware River Basin. Article IV contains rules relating to application of water quality standards within the Basin. The Commission’s Administrative Manual—Part III, Water Quality Regulations, applies to all public and private entities that discharge waste to waters of the Delaware River Basin.

(b) Article III of the water code consists of Article III of the water quality regulations. Article IV of the water code consists of portions of Article IV of the water quality regulations.

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to the regulations contained within the Delaware River Basin Water Code with Amendments Through July 16, 2008, Printed: September 12, 2008, and the Administrative Manual Part III Water Quality Regulations with Amendments Through July 16, 2008, Printed:

September 12, 2008. Both the Delaware River Basin Water Code and the Administrative Manual Part III Water Quality Regulations are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain or inspect a copy at the Delaware River Basin Commission (DRBC), 25 State Police Drive, West Trenton, New Jersey 08628-0360, 609-883-9500, <http://www.drbc.net>, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: September 18, 2008.

**Pamela M. Bush,**

*Secretary and Assistant General Counsel.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2007-0011; FRL-8721-5]

RIN 2060-AN72

### Standards of Performance for Petroleum Refineries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; reconsideration and stay of effective date.

**SUMMARY:** This action grants Petitioners' request for reconsideration and Petitioners' request for a stay until December 25, 2008 for certain specific provisions in the newly promulgated standards of performance for new, modified, or reconstructed process units at petroleum refineries. The effective date for the final rule promulgating amendments to the current standards of performance for petroleum refineries has not changed and remains June 24, 2008.

**DATES:** Effective September 26, 2008, in Title 40 CFR part 60, subpart Ja, § 60.100a(c), the definition of "flare" in § 60.101a, and §§ 60.102a(g), 60.107a(d), and 60.107a(e) are stayed until December 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency,

Research Triangle Park, NC 27711, telephone number: (919) 541-0884; fax number: (919) 541-0246; e-mail address: [lucas.bob@epa.gov](mailto:lucas.bob@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Environmental Protection Agency published a final rule on June 24, 2008 that contained the following: (1) Final amendments to the existing refineries new source performance standards (NSPS) in 40 CFR part 60, subpart J; and (2) a new refineries NSPS in 40 CFR part 60, subpart Ja (73 FR 35838). The preamble to that rule contained an incorrect effective date and contained an error in the Congressional Review Act (CRA) statement in the Statutory and Executive Order Reviews section. To address that error, the effective date of NSPS subpart Ja was stayed for 60 days until September 26, 2008. The amendments in NSPS subpart J were not affected and remained effective from June 24, 2008.

On June 13, 2008, the American Petroleum Institute (API), the National Petrochemical and Refiners Association (NPRO), and the Western States Petroleum Association (WSPA) (collectively referred to as "Industry Petitioners") requested an administrative stay under Clean Air Act (CAA) section 307(d)(7)(B) of certain provisions of 40 CFR part 60, subpart Ja. On July 25, 2008, the Industry Petitioners sought reconsideration of the provisions of NSPS subpart Ja for which they had previously requested a stay. Specifically, Industry Petitioners requested that EPA reconsider the following provisions in NSPS subpart Ja: (1) The definition of "modification" (40 CFR 60.100a(c)); (2) the definition of "flare" (40 CFR 60.101a); (3) the fuel gas combustion device sulfur limits as they relate to flares (40 CFR 60.102a(g)(1)); (4) the flow limit for flare systems (40 CFR 60.102a(g)(3)); (5) the total reduced sulfur and flow monitoring requirements for flares (40 CFR 60.107a(d), (e)); and (6) the nitrogen oxide (NO<sub>x</sub>) limit for process heaters (40 CFR 60.102a(g)(2)). Subsequently, on August 21, 2008, the Industry Petitioners identified additional issues for reconsideration.

On August 25, 2008, HOVENSA, LLC ("HOVENSA") filed a petition for reconsideration of the following provisions of 40 CFR part 60, subpart Ja: (1) the NO<sub>x</sub> limit for process heaters (40 CFR 60.102a(g)(2)); (2) the flaring requirements, including the definitions of "flare" and "modification" (40 CFR 60.100a(c), 60.101a, 60.102a(g)-(i), 60.103a(a)-(b)); and (3) the depressurization work practice standard

for delayed coking units (40 CFR 60.103a(c)). The petition also requested that EPA stay the effectiveness of these provisions during the reconsideration process.

EPA received a third petition for reconsideration on August 25, 2008, from the Environmental Integrity Project, Sierra Club, and Natural Resources Defense Council ("Environmental Petitioners") requesting EPA reconsider several aspects of 40 CFR part 60, subpart Ja. The petition identifies the following issues for reconsideration: (1) EPA's decision not to promulgate NSPS for carbon dioxide and methane emissions from refineries; (2) the flaring requirements (40 CFR 60.100a(c), 60.101a, 60.102a(g)-(i), 60.103a(a)-(b)); (3) the NO<sub>x</sub> limit for fluid catalytic cracking units (FCCU) (40 CFR 60.102a(b)(2)); and (4) the particulate matter limit for FCCU (40 CFR 60.102a(b)(1)). Unlike the other Petitioners, Environmental Petitioners did not seek a stay of these provisions during reconsideration.

EPA has begun reviewing all of these petitions and is addressing in this notice only those issues for which Industry Petitioners and HOVENSA sought reconsideration and a stay of those specific provisions during reconsideration. EPA is taking no action on all of the other issues raised in the petitions but will consider all of the outstanding issues in a future notice.

In this action, EPA is granting reconsideration with respect to the following provisions: (1) The definition of "modification;" (2) the definition of "flare;" (3) the fuel gas combustion device sulfur limits as they apply to flares; (4) the flow limit for flare systems; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO<sub>x</sub> limit for process heaters. We are granting reconsideration on these specific issues because the grounds for Petitioners' objections arose after the public comment period (but within the time specified for judicial review) and the objections are of central relevance to the outcome of the final rule pursuant to CAA section 307(d)(7)(B).

EPA is also granting Industry Petitioners and HOVENSA's request for a 90-day stay of the following provisions that are under reconsideration (see CAA section 307(d)(7)(B)): (1) The definition of "modification;" (2) the definition of "flare;" (3) the fuel gas combustion device sulfur limits; (4) the flow limit for flare systems; (5) the total reduced sulfur and flow monitoring requirements for flares; and (6) the NO<sub>x</sub> limit for process heaters. We are staying