

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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DAMASCUS CITIZENS FOR	)	
SUSTAINABILITY,	)	No.: 2:23-cv-00061-RBS
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
THE DELAWARE RIVER BASIN	)	
COMMISSION,	)	
	)	
<i>Defendant.</i>	)	
	)	

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PLAINTIFF DAMASCUS CITIZENS FOR SUSTAINABILITY’S  
NOTICE OF VOLUNTARY DISMISSAL OF COMPLAINT WITHOUT PREJUDICE

In accordance with Fed.R.Civ.P. 41(a)(1)(A)(i), Plaintiff Damascus Citizens for Sustainability (“DCS”) files this Notice of Voluntary Dismissal of Complaint Without Prejudice, and states as follows:

1. On January 6, 2023, DCS filed a Complaint against the Delaware River Basin Commission (“DRBC”) regarding the DRBC’s rulemaking on oil and gas wastewater, which DRBC voted on at its December 7, 2022 meeting.

2. On March 28, 2023, the DRBC filed a Motion to Dismiss that:

a. Expressly confirmed the DRBC’s position regarding how its regulation of oil and gas wastewater applied to conventional/unconventional wells, stating, *inter alia*:

“DRBC agrees that its regulation prohibits the discharge to waters or land within the Basin of all HVHF and HVHF-related wastewater, 18 C.F.R. §

440.4, regardless of the type of well at which the wastewater is generated. This is the interpretation advocated for by DCS. DRBC is implementing and will continue to implement the regulation in this manner.”

DRBC Motion to Dismiss, p.22; see also, e.g., id. at pp.12-13, 25.<sup>1</sup>

b. Included a set of revised Frequently Asked Questions (“FAQs”) (also available on the DRBC’s website<sup>2</sup>), and confirmed that that there is no unconventional/conventional distinction in its regulations; and

c. Raised other reasons for the dismissal of DCS’s Complaint, which DCS objects to, but will not address herein.

3. DCS expects DRBC to comply with its representations to this Court and revised FAQs.

4. In its Revised FAQs, DRBC also stated: “The Commission will continue to coordinate with the Basin states to review the scientific evidence regarding harm to water resources caused by road spreading of non-HVHF oil and gas production wastewater and may in the future consider whether additional regulation of the practice is needed in the Basin.” Exhibit A to Motion to Dismiss (Revised FAQs, #13, p.8).

5. DCS will continue to present the Basin states, federal government, and DRBC with evidence regarding harm (not just from roadspreading) to assist them in

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<sup>1</sup> “HVHF” is “high-volume hydraulic fracturing”, which is defined, along with “HVHF-related activities” and “Discharge of wastewater from HVHF and HVHF-related activities”, at 18 C.F.R. § 440.2.

<sup>2</sup> [https://nj.gov/drbc/library/documents/FAQ\\_FinalRule\\_import-export-hvhf-discharge\\_revised.pdf](https://nj.gov/drbc/library/documents/FAQ_FinalRule_import-export-hvhf-discharge_revised.pdf)

future decisionmaking on potential non-HVHF oil and gas production wastewater regulations, among other subjects.

6. DCS also expects DRBC to establish a verification system to ensure operators do not illegally import wastewater from HVHF and HVHF-related facilities under the guise of “non-HVHF oil and gas production wastewater.”

a. Because of solid waste and other environmental law exemptions, no manifesting system exists that would allow DRBC to confirm that imported oil and gas wastewater is what it purports to be.

b. Given that up to 95% of all wells are fracked,<sup>3</sup> DCS expects DRBC to treat all oil and gas wastewater as wastewater from HVHF and HVHF-related facilities unless proven otherwise using means that are independently and publicly verifiable.

7. DCS continues to disagree with DRBC’s decision not to review import of wastewater for the purposes of storage only and/or transport only, as DCS believes that DRBC continues to overlook a major source of potential pollution to the land and waters of the Basin.

8. Nothing in this document constitutes an admission by DCS of any argument raised in the DRBC’s Motion to Dismiss; for instance, DCS does not concede that it lacks standing and that this matter is not ripe for review.

9. Based on the DRBC’s representations in its Motion to Dismiss and its revised FAQs, and based on further review of the DRBC’s importation regulations as a

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<sup>3</sup> <https://www.api.org/news-policy-and-issues/hydraulic-fracturing>

result of the DRBC's representations in its Motion to Dismiss, DCS is choosing to voluntarily withdraw and dismiss its Complaint without prejudice to the right of either party to raise any legal and factual issues that were raised or could have been raised in this proceeding should, for example, the DRBC: a) withdraw its revised FAQs; b) fail to comply with its representations in this proceeding and/or its revised FAQs; and/or c) fail to develop a mechanism that prevents illegal importation of wastewater from HVHF and HVHF-related activities.

10. Fed.R.Civ.P. 41(a)(1)(A)(i) states that "plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment."

11. In this matter, the DRBC has not filed an answer, and has not filed a motion for summary judgment.

12. Therefore, voluntary dismissal in accordance with Fed.R.Civ.P. 41(a)(1)(A)(i) is proper.

WHEREFORE, in consideration of the above, DCS hereby VOLUNTARILY WITHDRAWS and DISMISSES its Complaint without prejudice, as further described herein.

Date: April 26, 2023

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