



Delaware River Basin Commission

25 State Police Drive

PO Box 7360

West Trenton, New Jersey

08628-0360

Phone: (609) 883-9500 Fax: (609) 883-9522

Web Site: <http://www.drbc.net>

Steven J. Tambini, P.E.
Executive Director

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From: Pamela Bush, Commission Secretary and Assistant General Counsel
William J. Muszynski, P.E., Manager Water Resources Management Branch

Subject: DRBC Response to Comments and Staff Recommendation on Proposed Amendments to DRBC's *Rules of Practice and Procedure* to Provide for One Process/One Permit

The Delaware River Basin Commission ("the Commission" or "DRBC") in May 2015 initiated rulemaking to amend DRBC's *Rules of Practice and Procedure* ("RPP") to provide for the One Process/One Permit program (also "Program" or "One Permit"). For those projects subject to regulatory review by both the DRBC and a Signatory Party, the objective of the Program is to provide for close inter-agency collaboration and the issuance of a single approval instrument incorporating the applicable requirements of the two authorities. Staff has reviewed the oral and written comments submitted on the proposal and presents for the Commission's consideration a response to comments, including where warranted, proposed revisions to the draft rule to address concerns raised during the comment period. Staff recommends that the Commissioners approve the rule with the modifications set forth in redline in Appendix A, together with our response to comments.

This Memorandum includes the following parts:

- I. Procedural Background
- II. Commenters and Key Comments
- III. Recommended Revisions to the Draft Rule
- IV. Detailed Response to Comments
 - A. Implementing vs. Contravening the Compact; B. Programmatic Efficiencies and Environmental Outcomes; C. DRBC Project Review Fees and Funding; D. Public Access to Information/Public Participation; E. New Jersey Demonstration Program; F. Uniform Application and Enforcement of DRBC Requirements and Uniform Level of Environmental Review; G. Impact on DRBC's Natural Gas Policies; H. DRBC as Lead Agency

APPENDIX A – Redline (Mark-Up) Comparing Proposed and Final Rule Text

APPENDIX B – March 2015 NJDEP AA

APPENDIX C – List of Commenters

I. Procedural Background

The Commission introduced the One Process/One Permit program (also “Program” or “One Permit”) to the basin community during meetings with regulated entities, environmental organizations and other stakeholders on February 12 and March 3, 2015 and through publication on the DRBC website of a press release and a set of Frequently Asked Questions (“FAQs”) about the Program, with responses, on February 27, 2015. During the Commission’s quarterly public meeting on March 10-11, 2015, the Commission approved Resolution No. 2015-4 (also, “the Resolution”), authorizing and directing the Executive Director to initiate rulemaking to amend DRBC’s *Rules of Practice and Procedure* (“RPP”) to provide specific authorization for and define the scope of the Program. The Resolution further authorized the Executive Director to enter into an administrative agreement with the New Jersey Department of Environmental Protection (“March 2015 NJDEP AA”) (provided as Appendix B), in part to demonstrate implementation of the Program for wastewater discharge projects in order to practice, learn and share in advance of Commission action on the proposed rule amendments. On May 5, the Commission hosted a joint meeting of its Water Quality and Water Management advisory committees dedicated to discussion of One Permit. On May 7, 2015, an updated version of the FAQs was posted on DRBC’s website, addressing issues raised by commenters during the stakeholder and advisory committee meetings and the March 10 public hearing on Resolution No. 2015-4.

Notice of a draft “One Permit Rule” was published on the DRBC website on May 17, 2015. On the same date, DRBC notified all addressees on DRBC’s Interested Parties List that it had posted the draft rule. A notice of proposed rulemaking appeared in the *Federal Register* on May 19, 2015 (80 Fed. Reg. 28567); in the *New York State Register* on May 27, 2015 (NYS Register, May 27, 2015, at 4); in the *Pennsylvania Bulletin* on May 30, 2015 (45 Pa. B. 2611); and in the *New Jersey Register* and the *Delaware Register of Regulations* on June 1, 2015 (47 N.J.R. 1256 and 18 Del. Reg. 1002, respectively).

A public hearing on the proposal was conducted on June 9, 2015, and written comments were accepted through July 1, 2015.

II. Commenters and Key Comments

During the public hearing on June 9, 2015 the Commissioners heard oral comment on the draft rule from 19 speakers (see list at Appendix C), of which four spoke as individual citizens and 15 spoke on behalf of organizations or coalitions comprised of multiple entities. Prior to the close of the public comment period on July 1, 2015, twelve (12) written comments were received (see list at Appendix B), which included four that were the texts of oral comments. Comments were offered in the names of approximately 41 different entities.¹

¹ The number of named entities is greater if “sibling” companies such as PSEG Power LLC, PSEG Fossil LLC, and PSEG Nuclear LLC, all members of commenter the Delaware Estuary TMDL Coalition are counted separately. They have not been. See footnotes to Appendix C for complete list of members or sign-on entities for each set of written comments.

Commenters representing the regulated community without exception supported the Program, while commenters representing environmental and watershed organizations and unaffiliated individuals either opposed the Program or raised concerns without taking a position either supporting or opposing it. Supporters, opponents and “concerned” commenters offered specific recommendations or requests for improving the rule.

Supporters of the rule praised One Permit for:

- promoting the purposes of Section 1.5 of the Compact, which directs the Commission to employ the authorities of existing offices and agencies of government to the fullest extent feasible and advantageous;
- improving efficiency in the regulatory review of projects;
- reducing confusion and duplication, including the imposition of conflicting or duplicative requirements;
- freeing up DRBC resources for application to basin-wide concerns not addressed by individual states; and
- creating a regulatory review framework that will advance needed infrastructure projects and achieve essential environmental outcomes.

Opponents of the rule commented that in their view One Permit would:

- violate the word or the spirit of the Delaware River Basin Compact and its implementing regulations, including with respect to the review of projects and the process for appealing decisions made under the Compact;
- diminish the public’s access to information and opportunities for input regarding water-related projects within the basin;
- result in loss of the basin-wide perspective afforded by the Commission’s review of water-related projects;
- undermine the Commission’s authority;
- lead to reductions in state funding for the DRBC;
- render the outcomes of DRBC project reviews more subject to the political pressures within individual host states; and
- leave project reviews in New Jersey under-staffed due to state program rollbacks.

Supporters and “concerned” commenters had questions relating to DRBC’s project review fees, including:

- concern regarding how DRBC would continue to collect its project review fees under One Permit; (WRADRB)
- the recommendation that some “right sizing of fees” follow adoption of the Program; (NJ-WEA) and
- the recommendation that fees be established that do not undermine the Program’s advantages. (AEA-NJ)

Commenters offered the following requests or recommendations for improving the draft rule should the Commission proceed with the Program:

- Include in the rule a provision explicitly obligating the Signatory Party Agencies to furnish DRBC with timely and detailed public notice of each application submitted under the Program and obligating DRBC to make that information available promptly to the public. (CDRW, DRN, DCS, NJ-LOWV)
- Before adopting the rule or implementing the Program full-scale, evaluate the New Jersey Demonstration Program in the areas of: application of DRBC regulations; effect on the public process; and ability to keep the Commissioners from non-host states informed and engaged in decision making. (CDRW, NJ-LOWV, Others)
- Modify the rule to provide that DRBC will serve as “lead agency” for categories of projects including:
 - new projects with potential direct or indirect effect on the main stem;
 - projects with potential impact on DRBC-designated Special Protection Waters;
 - projects involving the importation of wastewater from outside the basin for treatment or discharge inside the basin; and
 - projects for which relief from or modification of a DRBC requirement is requested. (DRN, DCS, Others)
- Revise paragraphs D.2 and D.3 of the rule to provide that (a) DRBC will specify in a writing the terms and conditions identified by DRBC staff as necessary or appropriate for inclusion in the state’s approval instrument, along with the regulatory and technical basis for each; and (b) a copy of this writing will be provided to the project sponsor as well as to the state agency. (DETC)
- Provide in the rule that for projects covered by One Permit, once a state permit or approval is issued, DRBC’s docket will remain in place only as to those matters not covered by the state permit or approval and that the docket will be readily transferable and not serve as an independent source of substantive operational requirements for a facility. (DETC)
- In each administrative agreement implementing the rule, require, rather than merely authorize, collaborative and cooperative compliance and enforcement activities. (DCS)

III. Revisions to the Draft Rule

Revisions to the draft rule are shown in redline in Appendix A. The changes and rationales for them are summarized as follows:

- Paragraph B has been clarified to provide that applications for approvals required by the Compact and Commission regulations, but not within the scope of the Program, must continue to be submitted to the Commission. This clarification makes express the intent of the draft rule.

- Neutral commenters and rule opponents alike urged DRBC to provide by rule for continued public access to information on the status of projects under active review pursuant to the *Delaware River Basin Compact*, including those administered under One Permit. In response,
 - A new paragraph D.2 has been added, providing that to enable the Commission to compile and make available to the public a current list of pending applications for projects within the basin subject to Commission jurisdiction, the Signatory Party Agency will notify the Commission at least monthly of applications received under the Program.
 - Paragraph D.5 has been modified to establish that the Commission will maintain on its website a list of projects being administered under the Program. This will allow interested parties to keep informed of ongoing reviews in all four basin states.

The two modifications also will facilitate DRBC's administration and evaluation of the Program by (1) ensuring that DRBC Commissioners and staff are aware of applications received and have the means to identify at an early stage projects of particular concern or that may require extra attention; (2) affording DRBC staff the ability, as they may deem necessary, to commence preliminary reviews prior to initiation of the 30-day comment period that begins upon receipt of an NJDEP "pre-draft" permit under the March 2015 NJDEP AA or the equivalent developed by other agencies; (3) facilitating the operation of paragraph I.1. of the revised draft rule, which establishes that because an application has been timely filed with the Signatory Party Agency, the corresponding DRBC docket is, upon expiration, deemed administratively continued as to all of its provisions that pertain to regulatory programs administered by the Signatory Party Agency under the administrative agreement, until final action is taken on the application; and (4) ensuring that DRBC has the information needed to invoice applicants that have not paid DRBC's project review fee simultaneously with submitting their applications.

- The draft rule was not as clear as either Resolution No. 2015-04 or the March 2015 NJDEP AA on the subject of DRBC's project review fees. The rule has been revised to clarify that DRBC's current Project Review Fee Schedule as set forth in Resolution No. 2009-2 will be the operative fee schedule for projects reviewed under the Program, unless and until the Commission replaces it. See revised rule, par. H.
- Supporters of the Program recommended that the rule provide that once a state permit or approval is issued under the Program, DRBC's docket will remain in place only as to those matters not covered by the state permit or approval and that the docket should be readily transferable and not serve as an independent source of substantive operational requirements for a facility. The version of the draft rule published for comment included at paragraph I a provision authorizing the Executive Director to terminate a docket in whole or in part upon issuance of the Signatory Party Agency approval. The staff agrees that more efficient mechanisms for the disposition of Commission dockets during the transition to One Permit are preferable. Accordingly, paragraph I has been divided into two sub-paragraphs, as follows:

- Paragraph 1.1 provides that for projects covered by the Program, when a renewal application is timely submitted to the Signatory Party Agency, the most recent docket upon its expiration will be deemed administratively continued until final action is taken on the application.
- Paragraph 1.2 eliminates the need for separate Executive Director action to terminate or continue provisions of each docket by providing that unless the Executive Director or the Commission otherwise directs, upon the Signatory Party Agency’s final action on an application for a project subject to the Program, (a) any existing or administratively continued docket will terminate as to all of its provisions and conditions entirely within the scope of the Signatory Party Agency approval; and (b) such docket will continue in effect as to any provisions and conditions not entirely within the scope of the Signatory Party Agency approval, including for example, addition of a project to the Comprehensive Plan.
- The rule as proposed authorizes Signatory Party agencies, in accordance with an applicable administrative agreement, to issue in their approvals for projects to be administered under the Program the finding and determination required by Section 3.8 of the Compact that a project subject to Section 3.8 review does not substantially impair or conflict with the Commission’s Comprehensive Plan (“the Finding”). Paragraph D.4 of the draft rule was revised to clarify that where in accordance with an applicable administrative agreement implementing One Permit the Finding continues to be made by the Commission, the Signatory Party agency may include the Commission’s Finding in the agency’s approval, together with any conditions identified by the Commission as necessary to support it, thereby achieving a unified permit.

Minor additional revisions to the rule text were made as deemed necessary for clarity or accuracy. In particular, changes were made to underscore two aspects of the rule that have been part of One Permit from the start: (1) that participation in the Program by Signatory Party Agencies is voluntary; and (2) that the scope of a Signatory Party Agency’s participation is defined by an administrative agreement between DRBC and the agency that has been duly adopted in accordance with Section 2.3.11.D. of the rule.

IV. Detailed Response to Comments

A. Implementing vs. Contravening the Compact

COMMENTS:

Some commenters stated that the proposed rule would promote the purposes expressly articulated in Section 1.5, among other sections of the Compact, providing in relevant part that “the commission is authorized and directed to utilize and employ [the existing] offices and agencies [of government] for the purpose of this compact to the fullest extent it finds feasible and advantageous.” This group further remarked that the draft rule “properly reflect[s] the evolution of the permitting programs administered by the states, including the NPDES permit program. ... [It] is a realistic and well-conceived approach that ... implement[s] DRBC’s requirements in an effective and streamlined manner.” (Brenda Gotanda, DETC)

Others protested that delegating such authority to one or another Signatory Party would contravene the letter and spirit of the Compact.

One group opined, “The Commission is the only body authorized by Section 3.8 [of the Compact] to make the decision concerning impairment or conflict with the Comprehensive Plan. ... Th[e] delegation of decisional authority is not allowed under Section 3.8.” (DCS-NYH20-CFW) A concurring voice argued that One Permit “empowers individual state agencies to directly exercise DRBC authority and thereby to bind all four watershed States and the Federal Government to decisions that may not be in their collective best interests.” (DRN) It adds, “to give this power to one state or the other under [the proposed rule and administrative agreements] ... undermines the authority of the other states as participants in the Commission, and undermines the authority of the Commission itself.”

In a related objection, a commenter said, “The proposed One Process/One Permit Program would also violate ... Section 2.3.5.C of the Rules [of Practice and Procedure] provid[ing] a mechanism for any state or federal agency to refer to the Commission for Section 3.8 review any project that would otherwise be excluded from review under Section 2.3.5.A. Under the proposed One Process/One Permit Program, the referral authority under Section 2.3.5.C. would be eliminated for projects reviewed by a signatory party agency through an administrative agreement under the proposed Program.” (DCS-NYH20-CFW)

“The intent of those who wrote the Compact,” wrote the same entity, “was to make sure that projects that might have a substantial effect on the water supply would be reviewed by all five parties to the Compact, with public input, regardless of where in the river basin a project might be located. ... The commissioners are directed by the Compact to look at the whole basin, without regard to political boundaries, when developing and applying the Comprehensive Plan in reviewing projects that may substantially impair or conflict with that Plan. This is separate and apart from any state agency review that may be required by state law.” (DCS-NYH20-CFW)

RESPONSE:

The DRBC was formed in 1961 through concurring legislation of the member states and the federal government. The statute is known as the Delaware River Basin Compact (“Compact”). Sections 1.5 and 3.9 of the Compact authorize and encourage coordination and cooperation between government agencies. As one commenter noted, Section 1.5 provides in relevant part that “the Commission is authorized and directed to utilize and employ [the existing] offices and agencies [of government] for the purpose of this compact to the fullest extent it finds feasible and advantageous.” Section 3.9 provides that “[t]he commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may: ... (b) Employ any other agency or instrumentality of any of the signatory parties ... *for any ... purpose.*” (Emphasis added.) Section 2.3.3 of DRBC’s *Rules of Practice and Procedure* (“RPP”) expressly authorizes and directs the Executive Director to enter into administrative agreements (“AAs”) with federal and state regulatory agencies to accomplish objectives of the Compact. The Program objectives, which include procedural efficiency, elimination of

unnecessary duplication of staff functions, and achievement of the same or improved environmental outcomes, align well with Compact objectives.

Contrary to the view of the objectors, One Permit will not diminish the authority of the DRBC or its members acting in their capacity as Commissioners. In particular, paragraph F. of the proposed rule provides that “[n]otwithstanding any other provision of this Section 2.3.11, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact.” Moreover, in accordance with Articles 11 and 13 of the Compact and paragraph E. of the proposed rule, the Commission will continue to review and act upon proposed modifications to the Comprehensive Plan.

Nor will the proposed rule affect the ability of any member state or federal agency to refer any project to the Commission for Section 3.8 review in accordance with Section 2.3.5 C of the *Rules of Practice and Procedure*. Any member state or federal agency may continue to make such a referral. As in the past, the Commission will consider the referral and will exercise its discretion to take up the proposed review or decline to do so.

In response to those concerned that the regional perspective afforded by review under the Compact will be lost under One Permit, it is important to recognize that today’s sophisticated federal and state regulatory programs for the treatment and discharge of wastewater and state programs regulating water withdrawals did not exist at the time the Compact was enacted and the Commission’s *Rules of Practice and Procedure* were originally promulgated. In some instances, state regulations today are more protective than the Commission’s. The proposed rule is designed to preserve the Commission’s unique authority and perspective, while eliminating unnecessary process. It in no way alters existing federal, state or DRBC substantive standards or requirements.

As set forth in paragraph D.3 of the proposed rule, DRBC staff will continue to interpret the DRBC requirements and to provide technical review under applicable DRBC standards, especially where the staff have special expertise. For example, under DRBC’s Special Protection Waters program, DRBC staff will continue to determine whether “Substantial Alterations and Additions” as defined by Commission rules are proposed, and to conduct the modeling necessary to determine effluent limits that ensure “No Measurable Change” to water quality in these waters. DRBC staff also will continue to calculate the alternative mixing zone for a discharge of treated industrial wastewater to the Delaware River Estuary. DRBC recommendations to the Signatory Party Agency will become part of that agency’s decision making record. Project sponsors will continue to be subject to the more stringent of DRBC and state or federal requirements. In accordance with paragraphs E and F of the proposed rule, the Commission will continue to perform a separate Section 3.8 review in those instances where it is either required or appropriate in the view of the Executive Director or any of the Signatory Parties. In such instances, the project will be subject to the full review and decision making by the Commission, and the state will no longer make a determination on behalf of the Commission. The Program is being used to promote equal or better environmental outcomes through a higher level of inter-agency collaboration and cooperation and a more efficient regulatory process.

COMMENTS:

Several commenters objected that the March 2015 administrative agreement between DRBC and NJDEP, which would be implemented if the draft rule were adopted, provides DRBC with only 30 days to review a pre-draft permit, and in some instances, provides that the Section 3.8 finding is to be implied if the Commission fails to comment within those 30 days. The commenters remark that this provision conflicts with the intent of the Compact in general and with Section 3.8 in particular. They recommend that to ensure that the Commissioners are directly notified of pending actions and final decisions in the event One Permit is approved, staff should at a minimum make an oral presentation at each quarterly meeting of the Commission, identifying all applications filed and decisions rendered under the Program by Signatory Party Agencies since the most recent meeting of the Commission. (DCS-NYH20-CFW, DRN)

RESPONSE:

Although the mechanisms may vary by state, DRBC in each instance will have sufficient time to conduct a proper review. The “30-day” review period referenced by the commenter must be viewed in its larger context. By way of illustration, the AA developed by NJDEP and DRBC to illustrate how the two agencies will work together to issue approvals for wastewater discharges and water withdrawals in the New Jersey portion of the basin (the March 2015 NJDEP AA) provides multiple mechanisms for early notice and/or additional DRBC review time, as follows:

1. Paragraph II.D of the agreement states that on or before January 31 of each year, NJDEP will provide DRBC staff with a list of the NJPDES permits targeted for issuance during the coming year for projects in the Delaware River Basin. This notification, which will include a short description of each project, affords DRBC staff an early opportunity to identify complex projects or issues and communicate concerns to the state. NJDEP will give DRBC timely notice of any changes to the list that may be made during the year.
2. Paragraph II.I.1.b of the agreement, which concerns wastewater discharge projects *other than* simple renewal projects, provides that NJDEP will advise DRBC when a NJPDES application or request for a pre-application meeting for such a project within the New Jersey portion of the basin is received. This practice also affords DRBC an opportunity for early involvement in more complex reviews.
3. Paragraph II.I.1.e of the agreement, which again concerns wastewater discharge projects other than simple renewals, provides that NJDEP will give the Commission “sufficient time” for input on “pre-draft” and “draft” permits, and states that “‘sufficient time’ will include 30 days for review of a ‘pre-draft’ permit, *except that* ... for projects located within the drainage area of [Special Protection Waters], ‘sufficient time’ will consist of notice *as early as possible, preferably before initiation of design*, to allow for an opportunity for DRBC and applicants to perform and consult on modeling for the ‘No Measurable Change’ analysis before the project is designed.” (Emphasis added.)
4. Paragraph II.I.f of the agreement provides that NJDEP’s Treatment Works Approval (TWA) program staff will “notify DRBC upon receipt of any TWA application for the construction or

modification of a water or wastewater treatment facility located within the Delaware River Basin” and that “the TWA program staff will also copy the DRBC Project Review Section Supervisor on the application completeness letter when issued.”

As those who attend DRBC’s public hearings and meetings are aware, the majority of projects reviewed by the Commission are simple renewals involving no substantive changes to a withdrawal or a discharge. The rule and the agreements implementing it are designed to allow such renewals to be processed more efficiently, but they also will afford DRBC staff the time required to perform more complex reviews.

In response to comments on the proposed One Permit Rule, the Commission has added to the rule a provision for each Signatory Party Agency participating in the Program to notify DRBC on a monthly basis of applications received under the Program during the preceding month. This provision further ensures that DRBC staff will have sufficient notice to identify and take adequate time for those reviews that may require more intense effort on their part.

B. Programmatic Efficiencies and Environmental Outcomes

COMMENTS:

Representatives of the regulated community commented that the Program will result in regulatory efficiencies, including less duplication, shorter project review times, lower costs, and less confusion for the regulated community. In particular, these commenters indicated that including all operating requirements in a single approval instrument would reduce or eliminate the confusion some permittees experience under the current system, which often results in issuance of both a DRBC docket and a state permit. (DETC, NJWEA, WRADRB)

Supporters stated that they believe the administrative efficiencies gained by the Program will result in improved environmental outcomes. (NJWEA, WRADRB)

RESPONSE:

For several years Commissioners and staff have received comments, particularly from dischargers, expressing frustration or confusion over the need for approvals from both the host state and the Commission. In the Compliance context in particular, dischargers alleged to have violated conditions of their DRBC-issued dockets, have said they (mistakenly) believed operating in accordance with a state-issued NPDES permit would ensure compliance with all DRBC discharge requirements. For this reason, the staff believes that including all state and DRBC requirements in a single instrument may improve compliance – and environmental outcomes.

COMMENTS:

Supporters of the Program recommended that the rule provide that once a state permit or approval is issued under the Program, DRBC’s docket will remain in place only as to those matters not covered by the state permit or approval and that the docket should be readily transferable and not serve as an independent source of substantive operational requirements for a facility.

RESPONSE:

The version of the draft rule published for comment included at paragraph I a provision authorizing the Executive Director to terminate a docket in whole or in part upon issuance of the Signatory Party Agency approval. The staff agrees that more efficient mechanisms for the disposition of Commission dockets during the transition to One Permit are preferable. Accordingly, paragraph I has been divided into two sub-paragraphs, as follows:

- Paragraph I.1 provides that for projects covered by the Program, the most recent docket will be deemed administratively continued when a renewal application is timely submitted to the Signatory Party Agency.
- Paragraph I.2 eliminates the need for separate Executive Director action to terminate provisions of each docket by providing that unless the Executive Director or the Commission otherwise directs, upon the Signatory Party Agency's final action on an application for a project subject to the Program, (a) any existing or administratively continued docket will terminate as to all of its provisions and conditions entirely within the scope of the Signatory Party Agency approval; and (b) such docket will continue in effect as to any provisions and conditions not entirely within the scope of the Signatory Party Agency approval, including for example, addition of a project to the Comprehensive Plan.

The transfer of a DRBC docket upon transfer of ownership of a project is addressed in Resolution No. 2009-2, establishing the Commission's current Project Review Fee Schedule. That schedule will remain in effect and docket transfers will continue to be administered under the existing procedures unless and until the Commission replaces them. Administrative refinements will be made as appropriate as we implement the Program.

C. DRBC Project Review Fees and Funding

COMMENTS:

Supporters expressed their concern that the Program lacks detail as to how DRBC will continue to collect its permit application fees (WRADRB); recommended that some "right-sizing of fees" follow adoption of the Program (NJWEA); and expressed their desire that fees be established that do not undermine the Program's advantages (AEA-NJ).

RESPONSE:

An important goal of the Program is to improve regulatory efficiency. However, the Program does not modify substantive requirements, and in many cases, DRBC will devote significant resources and work effort to review projects and support its regulatory program. In principle, the DRBC regulatory program should be supported by program fees. Unless and until a different fee schedule is established, the Commission's fee schedule set forth in Resolution No. 2009-2 remains in effect for all projects subject to Commission review, whether or not a separate DRBC approval instrument is issued. Any changes to fees,

including any new fees, elimination of fees, or changes to fee structures, can occur only with the Commission's approval following a process that includes a duly noticed public hearing. Paragraph H of the draft rule has been clarified to state that "[u]nless and until a different schedule is established, the applicable fee(s) for Commission services rendered pursuant to [new Section 2.3.11 of the *Rules of Practice and Procedure*] shall be those set forth in DRBC Resolution No. 2009-2 for the review and renewal of project approvals." The paragraph further states that "Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the then-current schedule and applicable rules." For projects administered under the One Permit Program, the Commission will invoice applicants upon receipt of notification from the Signatory Party Agency that an application that is to be reviewed under the Program has been filed.

COMMENTS:

Several commenters expressed their concern that on-going funding constraints may be driving changes to the Commission's operations and that One Permit may result in additional cuts in state funding to DRBC, resulting in the loss of staff. (CDRW, Jeff Tittel)

RESPONSE:

No cuts in state funding for the Commission are projected in connection with the Program. The driving principles behind One Permit are:

- To promote inter-agency cooperation and collaboration on shared mission objectives;
- To achieve regulatory program efficiencies;
- To avoid unnecessary duplication of effort; and
- To reduce the potential for confusion on the part of regulated entities.

The Program promotes collaboration and is designed to improve process efficiency between the DRBC and the respective environmental agencies of Signatory Parties, while achieving the same or improved environmental outcomes.

DRBC technical reviews will be conducted in a manner similar to current reviews, and DRBC will provide the DRBC requirements to Signatory Party Agencies for inclusion in their approvals. Unless and until the Commission amends its current Project Review Fee Schedule (set forth in Resolution No. 2009-2), applicants for approvals under the One Permit Program will be subject to the same DRBC fees they would incur without the Program.

D. Public Access to Information/ Public Participation

COMMENTS:

Many of those who submitted comments opposing the Program and a group of entities that neither opposed nor supported it, expressed concern that One Permit would not result in programmatic efficiencies and increased environmental protection, but to the contrary, would create greater confusion on the part of interested parties and diminish opportunities for public involvement in the review process. Several commenters expressed satisfaction with DRBC's existing public process, praising it as critical to maintaining the integrity of a regional approach. One entity expressed concern that the Program would

undermine public participation by shifting to the public the burden of tracking the status of project reviews across four separate states with different rules and procedures. This group is concerned that under One Permit, the public will no longer know which reviews are occurring when, or where a comment should be filed, and further, that the public will lose the opportunity it now enjoys to provide input during the development of a DRBC recommendation (under existing procedures, a draft docket). They maintain that relying on state public participation programs conflicts with DRBC's mission statement (which includes a commitment to "[s]eek increased public involvement,") and alienates and disenfranchises the public. (DRN)

Commenters requested that an explicit obligation be added to the rule, should the Commission move forward with it, requiring Signatory Party Agencies to provide DRBC with project applications on a timely basis and requiring DRBC in turn to make this information available to the public in a timely manner. They also requested that the rule obligate DRBC to furnish project descriptions with sufficient detail for members of the public to identify projects of interest to them without reading each application. (CDRW, DRN)

One group of objectors protested that the public's opportunity for input under the Program would be limited to the procedures available under state regulatory programs, which they characterized as affording less information and access. Specifically, they noted that current DRBC practices afford interested parties the opportunity to comment as soon as an application is filed with the Commission, to provide input during the review process, to present testimony at Commission meetings, and to request an administrative hearing under Article 6 of the Commission's *Rules of Practice and Procedure* ("Article 6"). Opportunities to comment at the state level, they said, usually occur only once – at the end of a permit process. They further alleged that states lack an opportunity for hearing similar to that afforded by Article 6. (DCS-NYH20-CFW)

RESPONSE:

DRBC has modified the draft rule to address the public's concerns regarding continued access to information on projects subject to Section 3.8 review but for which a Signatory Party Agency will be the lead under One Permit. Paragraph D.2 of the draft rule has been revised to provide that for projects eligible for review under One Permit, the Signatory Party Agency will furnish DRBC on a monthly basis with a list of applications received. Paragraph D.5 of the draft rule has been revised to provide that the Commission will use information furnished by the Signatory Parties to maintain on its website a list of applications pending under the Program. DRBC will include on its website the information necessary (e.g., NPDES or water allocation permit numbers and html addresses) for interested parties to locate notices of comment opportunities and final actions on the Signatory Party Agencies' web pages. Because the Commission's website will provide timely information concerning projects under review under One Permit, interested parties will continue to be able to alert decision-makers to their concerns.

Opportunities for written comment on draft approvals will in many instances be expanded under the Program. In accordance with Section 14.4 of the Compact, DRBC has made draft dockets available to the public at least 10 days prior to a public hearing. In contrast, each of the environmental agencies of the Signatory Parties holds a 30-day written comment period on draft approvals. Where the Signatory Party

Agency is the lead for a review under One Permit, all written comments, including those relating to DRBC requirements must be filed with the Signatory Party Agency in accordance with its published procedures and requirements, links to which will be provided on DRBC's website. Comments may also be submitted to DRBC staff and/or Commissioners.

Some commenters on the draft rule are concerned that opportunities for oral comment at public hearings will be diminished under the Program. Because the Commission convenes only quarterly and holds its business meetings in public, and because the Compact requires a hearing for actions of the Commission that modify the Comprehensive Plan, DRBC's longstanding practice has been to hold a public hearing before making a decision on most regulatory actions. It is noted that the vast majority of draft dockets receive no comment during the Commission's public hearing and comment period. The state and federal agencies with regulatory jurisdiction over projects in the Delaware River Basin generally conduct public hearings on draft permits and approvals only upon the request of interested parties and only when, in the discretion of the particular agency, the hearings are warranted by the level of public interest and other factors. Under One Permit, requests for a public hearing must be submitted to the lead Signatory Party Agency in accordance with that agency's procedures. The Signatory Party Agency will exercise its discretion to grant or deny the request.

The public will continue to have an opportunity to offer comments during the Open Public Comment segment provided during most Commission meetings. While comments offered during Open Public Comment are not a part of the official decision-making record, the comments may potentially lead to further action at the state or federal agency level or separate action by the Commission.

The issue of appeals of actions taken under the Compact, including the Article 6 hearing process, is addressed separately (see below, pp. 16-17).

COMMENTS:

Commenters recommended that for any review subject to the Section 3.8 finding under the Compact, the One Permit Rule should explicitly provide an equal opportunity for comment by interested parties from other basin states and ensure that the concerns of commenters are accorded equal weight, regardless of their home state. (DRN)

RESPONSE:

Regardless of their home state, interested parties will have access through DRBC's website to information about applications being administered under One Permit throughout the basin. State agencies administering the NPDES program under the Clean Water Act must consider and respond to all comments timely filed on a draft approval, regardless of the commenter's home state. (See 40 CFR §§ 123.25(a)(1)(28) and (a)(1)(31); and 40 CFR § 124.17(a) and (c).)

Any interested party may always contact the DRBC Commissioner acting on behalf of the Governor of his or her state or the Federal Government to recommend that the Commissioner designate a project for separate Commission review. An interested party may appeal the final action of a Signatory Party Agency

on behalf of the Commission; provided, however, that in accordance with paragraph G. of the draft rule, before commencing an action in a court of appropriate jurisdiction, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision.

COMMENTS:

If the Program is approved, one commenter said there should be a verbal presentation at Commission quarterly meetings on all applications proposed and decisions made by states under the Program to ensure the Commissioners are directly notified of decisions. (DRN)

RESPONSE:

DRBC staff will inform the Commissioners and their staffs of applications received by the Signatory Party Agencies that are eligible for review under One Permit and of actions taken. Commissioners and the public will also be notified when applications are to be subject to separate review and approval by the Commission. In sum, Commissioners will:

- be fully informed of applications being processed;
- have an opportunity to provide comments on any application undergoing review under the Program; and
- have an opportunity to exercise their authority under paragraph F of the One Permit Rule, which provides that any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact.

COMMENTS:

In order to ensure the Signatory Party Agency has clear and complete decision-making record and to inform regulated entities of the basis for conditions placed in the approvals issued under One Permit, one set of commenters recommended that paragraphs D.2 and D.3 of the rule be revised to provide that (a) DRBC will specify in a writing the terms and conditions identified by DRBC staff as necessary or appropriate for inclusion in the state's approval instrument, along with the regulatory and technical basis for each; and (b) a copy of this writing will be provided to the project sponsor. (DETC)

RESPONSE:

Paragraph D.3 of the rule has been revised to provide expressly that “[f]or those categories of projects identified in the administrative agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the administrative agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under § 3.8 of the Compact.” To address the need for a complete decision-making record, after consultation with the Signatory Party Agency staff, the recommendation required by paragraph D.3 will be furnished in writing to the Signatory Party Agency. A copy of the recommendation will be furnished to any interested party on request.

COMMENTS:

Commenters noted that the Compact provides for federal judicial review of final agency actions by the Commission. They said that the provisions for review of state agency permit actions might not be the

same and requested that the Commission carefully compare the Commission procedures with the state procedures that would apply under the One Permit Rule as drafted. In particular, they asked that the Commission ensure the continued availability of an administrative hearing such as that afforded by Article 6 of the *Rules of Practice and Procedure*, at which expert testimony may be submitted and witnesses cross-examined. (DCS-NYH2O-CFW)

One group of commenters requested that the Commission consider adopting an appeals mechanism similar to that available under Natural Gas Act appeals, which “dictates that any initial decision is immediately appealed ... to the circuit court that has proper jurisdiction. There is no exhaustion of administrative remedies” (DRN)

RESPONSE:

Like the Commission, the basin states have administrative appeal processes. A final decision by a basin state agency may be appealed to the Environmental Appeals Board in Delaware, to the Environmental Hearing Board in Pennsylvania, or to an administrative law judge in New Jersey or New York. In each jurisdiction, fact and expert testimony may be introduced and witnesses may be cross-examined. DRBC staff will be available to provide testimony regarding DRBC requirements, if necessary.

In some respects, the state administrative review processes have advantages over DRBC’s. In particular, each of the states maintains an appeals board and/or individual administrative law judges. When the Commission grants a hearing under Article 6 of the *Rules of Practice and Procedure*, the Chair must appoint a hearing officer, who may or may not be an experienced judge. Article 6 provides for hearing costs to be assessed by the hearing officer to the party requesting the hearing, unless the hearing officer apportions costs where doing so would in her view be fair and equitable. Among the Signatory Parties, hearing cost assessment mechanisms vary. In New York State, for example, applicants pay the cost of adjudicatory hearings to review decisions of the Department of Environmental Conservation. In some instances, the state statute under which an appeal is brought allows a prevailing party to recover attorneys’ fees, an opportunity not provided by DRBC’s rules.

Regulations of the Commission’s member state environmental agencies all provide for judicial review in state courts following the exhaustion of administrative remedies. Section 15.1(p) of the Compact, providing that the United States district courts shall have original jurisdiction of all cases or controversies arising under the Compact, is unaffected by the One Permit Rule.

E. New Jersey Demonstration Program

COMMENTS:

A number of commenters said that the Commission must provide an explicit mechanism for evaluating the Demonstration Program before approving the rule and implementing One Permit. They proposed that such an evaluation consider:

- Both qualitative and quantitative measures of success (DRN, DSC-NYH2O-CFW, others)
- The State’s application of Compact requirements (CDRW, others)

- The impact of One Permit on the public process (CDRW, others)
- The ability of the DRBC staff to keep Commissioners and other states informed (DRN, DSC-NYH20-CFW, others)
- The impact of the Program on water quality (DRN)

Commenters also opined that the evaluation should be subject to public review and input before implementation of the Program. (CDRW)

RESPONSE:

The purpose of the New Jersey Demonstration Program was not to evaluate the Program prior to the adoption of a rule or to delay the development of AAs with other basin states. In fact, the language of paragraph 5 of DRBC Resolution No. 2015-4, which authorized and directed the Executive Director to enter into the March 2015 NJDEP AA and to initiate rulemaking for One Permit, suggests that the Commission anticipated rulemaking might be completed *before* any projects reviewed under the New Jersey Demonstration Program reached the approval stage, and further, that if a new rule had not yet been adopted, the Demonstration Program would end as early as January 1, 2016 or after eight (8) project applications were processed under the Program. In developing the March 2015 NJDEP AA together with the One Permit Rule, the staff of the Commission and Signatory Parties completed a framework for the Program and provided the public and the regulated community with the opportunity to understand how the Commission and NJDEP would implement it. The Demonstration Program has enabled DRBC and NJDEP to turn commitment into early action by implementing without delay some of the process improvements they jointly developed.

After a more extensive period of operation under the rule and agreements with the NJDEP and other Signatory Party Agencies, the Commissioners may decide to direct the Executive Director to conduct a formal evaluation of the Program and/or make such changes as may be determined to be necessary to improve it.

As discussed in greater detail above, changes to paragraphs D.2 and D.5 of the draft rule ensure that the public and Commissioners will have access to information on the status of projects being administered under the rule and adequate opportunity to comment, or in the case of Commissioners, to designate specific projects for full review and decision-making by the Commission. Because the Program preserves DRBC's substantive requirements, including those under the Special Protection Waters Program, and because the more stringent of the DRBC and Signatory Party Agency requirements will continue to be included in permits, no adverse effects on water quality are anticipated. In fact, by eliminating the confusion over requirements that accompanied the issuance of separate DRBC and state approvals, the Program is expected to result in improved compliance and environmental outcomes.

F. Uniform Application and Enforcement of DRBC Requirements and Uniform Level of Environmental Review

COMMENTS:

Some commenters emphasized that DRBC was created to manage the water resources of the basin using a basin-wide approach. Because Signatory Party Agency programs are focused on individual state or federal agency requirements and do not consider basin-wide impacts as DRBC must do, some commenters protested that One Permit would undermine this fundamental role of the Commission. Commenters expressed the related concern that different state reviewers under the Program would interpret the Commission's requirements in different and possibly conflicting ways. (DCS-NYH20-CFW, DRN, Others)

Although DRBC is comprised of four states and the federal government, some commenters said that it is viewed as a neutral entity, and its reviews are seen as independent of any one state or federal agency's authorities. DRBC review is thus seen as a backstop against what may or may not happen at the state level. (DCS-NYH20-CFW, DRN, Jeff Tittel)

One group of commenters expressed their concern that under the Program, environmental reviews of projects in the basin will be diminished and rendered inconsistent because of the differences among state regulatory programs. In support of their position, they say that whereas rigorous environmental reviews are required for projects subject to New York's State Environmental Quality Review Act (SEQRA), and New Jersey requires an environmental review under Executive Order 215 for projects that receive state funding, neither Pennsylvania nor Delaware has any such requirement for permitting actions. (DCS-NYH20-CFW)

RESPONSE:

It is true that the basin states have varying requirements for environmental reviews of projects and that DRBC provides a regional perspective. The DRBC staff will continue to bring that perspective, along with its expertise in interpreting DRBC requirements, to the reviews the staff performs and the written recommendations it provides to the Signatory Party Agencies issuing approvals. In accordance with paragraph D.3 of the rule and the terms of each AA, the staff will continue to memorialize the standards, terms and conditions deemed necessary to ensure that projects do not impair or conflict with the Comprehensive Plan, a practice that will provide for consistency in the interpretation of DRBC requirements.

As stated above, the regulatory standards of the DRBC are unchanged by One Permit. Project sponsors will continue to be subject to the more stringent of applicable DRBC, state and federal requirements.

Those concerned that the regional perspective afforded by review under the Compact will be lost under One Permit are also referred to the response to the first set of comments, above, which states in relevant part: "DRBC staff will continue to interpret the DRBC requirements and to provide technical review under applicable DRBC standards, especially where the staff have special expertise. For example, under DRBC's Special Protection Waters program, DRBC staff will continue to determine whether 'Substantial Alterations and Additions' as defined by Commission rules are proposed, and to conduct the modeling

necessary to determine effluent limits that ensure ‘No Measurable Change’ to water quality in these waters. DRBC staff also will continue to calculate the alternative mixing zone for a discharge of treated industrial wastewater to the Delaware River Estuary. DRBC recommendations to the Signatory Party Agency will become part of that agency’s decision making record.”

Some comments indicated that commenters believe the Commission develops or requires applicants to develop for projects in the basin an analysis of “cumulative impacts” as that term is defined by the National Environmental Policy Act (“NEPA”) and its implementing regulations. The Commission’s rules at one time provided for the performance of a NEPA-like analysis for certain projects; however, by Resolution No. 80-11 on July 23, 1980 the Commission suspended application of these regulations. Subsequently, by Resolution No. 1997-18 on November 19, 1997, the Commission amended the *Rules of Practice and Procedure* (“RPP”) “for clarification and conformance with existing Commission interpretations and practices,” in part by removing in its entirety the section of the RPP relating to environmental assessments. In doing so, the Commission stated that its “review of projects will continue to require all projects to comply with all environmental and other policies in the Commission’s Comprehensive Plan....”

COMMENTS:

A group of commenters expressed concern that under state permit-by-rule programs – in particular those for temporary water withdrawals and discharges – certain categories of projects receive no review other than that afforded by the Commission. The commenters further alleged that One Permit would eliminate the Commission’s review in such instances. In particular, the commenter said that up to 100,000 gallons of water per day over 30 days could be withdrawn in the basin only with the Commission’s approval under Section 3.8 of the Compact, but that the March 2015 NJDEP AA and the rule would allow such a withdrawal to be made without Commission review under One Permit. (DCS-NYH20-CFW)

RESPONSE:

The commenter has mis-read the Commission’s *Rules of Practice and Procedure* or the March 2015 NJDEP AA or the two together. Neither the administrative agreement nor the proposed One Permit Rule alters DRBC’s existing thresholds for review.

The *Rules of Practice and Procedure* (RPP) have historically provided and continue to provide in relevant part that:

“except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph C. of this section, a project in any of the following classifications *will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact ...*

* * * *

2. A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period *does not exceed* 100,000 gallons;

3. A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period *does not exceed* 100,000 gallons;

* * * *

RPP § 2.3.5 A. (emphasis added). This section is read together with the next, providing in relevant part that

“[a]ll other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to whether the project impairs or conflicts with the Comprehensive Plan.”

RPP § 2.3.5 B. Accordingly, the Commission as a rule reviews withdrawals involving 100,000 gallons per day or more as a 30-day average. (The threshold is lower – 10,000 gpd – in the Southeastern Pennsylvania Ground Water Protected Area.) Withdrawals below the threshold are presumed to have no substantial effect on water resources and thus are excluded from Commission review. For the benefit of the NJDEP staff, the March 2015 NJDEP AA at paragraphs II.C.1 and II.E.1 – 6 (for wastewater discharges) and at paragraphs III.C.1 and III.E.1 – 5 (for water allocations) enumerates the kinds of projects that “[u]nder the Compact and DRBC regulations ... are not subject to DRBC review except in accordance with either Section 2.3.5 B.18 (determination by the Executive Director) or Section 2.3.5 C (request by a Commission member agency) of DRBC’s *Rules of Practice and Procedure*” (emphasis added). As the agreement states at paragraph III.E.1, paraphrasing the rules as set forth in DRBC’s *Rules of Practice and Procedure*, such projects include, “[a] water withdrawal from groundwater or from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive days *does not exceed* 100,000 gallons.”

Under the draft rule and the March 2015 NJDEP AA, projects that divert *less than* 100,000 gallons per day or more for up to 30 days *remain* exempt from review by the Commission. Projects that divert 100,000 gallons per day or more *remain* subject to review by the Commission. The Program does not alter the thresholds for review under Section 3.8 of the Compact.

COMMENTS:

Commenters expressed their concern that the agreements between DRBC and Signatory Party Agencies under the Program will differ by agency and by program; that differences in procedure, scope and schedule will result; that rules of the Signatory Party Agencies will also change over time, and that DRBC staff and Signatory Party Agencies will be unable to keep their agreements current. (DCS-NYH20-CFW)

RESPONSE:

The Commission recognizes that while state and federal statutes and rules have fundamental similarities, they are not uniform and each will continue to evolve. The AAs between DRBC and different Signatory Party Agencies will naturally vary as well and may periodically need to be amended or revised. The core principles and basic requirements embodied in the AAs as set forth in the rule, however, will apply to all of the agreements. In accordance with paragraph D of the draft rule, all such agreements and substantive changes to them will be subject to public notice and comment, including a duly noticed public hearing prior to their adoption by the Commission. In addition, the AAs will establish collaborative processes that facilitate continuous communication and information transfer between the parties. When changes are made to a Signatory Party Agency's regulations, a collaborative process will be used to determine the impact, if any on the AA. All of the agreements will fully recognize the substantive standards and legal authorities of each party and will continue to determine where the more stringent of applicable DRBC and state or federal agency requirements must be included in approvals issued by participating Signatory Party Agencies. (See, N.J.A.C. 7:9B-1.13(h)(1) and (2), providing in relevant part that for the mainstem Delaware River and Bay, for parameters with criteria in the DRBC *Water Quality Regulations*, the criteria contained therein are the applicable criteria; and for tributaries to the mainstem Delaware River and Delaware Bay, the applicable criteria are the more stringent of those contained in the DRBC *Water Quality Regulations* and those adopted by the state. Also see 25 Pa. Code § 93.2.(b), providing that when an interstate agency under an interstate compact establishes water quality standards regulations applicable to surface waters of the Commonwealth more stringent than those set forth in the Pennsylvania Code, the more stringent standards apply; and Delaware Code of Regulations, CDR 7-7000-7401 § 4.4, providing that for waters of the Delaware River and Delaware Bay, duly adopted DRBC *Water Quality Regulations* are the applicable criteria, unless DRBC has not adopted an applicable regulatory standard or criteria and Delaware has, in which case Delaware's criteria are applicable.)

The AAs cannot alter Section 3.8 of the Compact or any rule of DRBC or a Signatory Party Agency, nor can they affect the ability, provided by paragraph F of the rule, for any Commissioner or the Executive Director to designate for Commission review any project that is reviewable under the Compact.

COMMENTS:

One commenter said that paragraph I.D of the March 2015 NJDEP AA should be revised to clarify that DRBC is not merely promised access to information "as technology allows" but is entitled to full access to data and information as it is received by the states. (DRN)

RESPONSE:

DRBC and NJDEP intend to work together to share data and information as necessary to meet the objectives of One Permit. Section I.D of the March 2015 NJDEP AA recognizes that the most effective way to share data is electronically and that there may be technological constraints to data sharing between the DRBC and NJDEP systems. Section I.D provides for the use of multiple methods of data sharing and coordination, including periodic status reports, continuous improvement meetings, and interagency training, to accomplish the goals of the Program.

COMMENTS:

Some commenters expressed their belief that state regulatory programs are unreliable because their implementation is affected by shifting political leadership. DRBC is seen as insulated from the shifts in state politics and as maintaining as its priority the welfare of the basin as whole. The commenters said that DRBC review provides checks and balances they consider crucial to responsible management of the basin's water resources. They see One Permit as weakening this aspect of DRBC's role. (Doug O'Malley, Patty Cronheim)

Some commenters said that because Signatory Party Agencies are more vulnerable than DRBC to local political agendas, One Permit could result in poorer environmental outcomes. (Bill Wolfe, Kenneth Collins, Doug O'Malley)

RESPONSE:

Because four of the DRBC Commissioners are the Governors of the basin states and the fifth is a high-ranking official in an agency housed in the executive branch of the federal government, the Commission's members are accountable to their respective electorates. It is a misperception that DRBC is entirely insulated from political shifts. That said, the DRBC is charged with adopting and promoting uniform and coordinated policies (see Compact § 3.1.), and the staff are charged with applying DRBC's rules consistently throughout the basin. The DRBC staff will continue to review projects and interpret Commission requirements consistently when in accordance with paragraph D.3 of the rule, they provide Signatory Party Agencies with a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under Section 3.8 of the Compact. Moreover, nothing in One Permit alters the authority or standards of either DRBC, its Signatory Parties or their agencies. Because the Program fully recognizes the standards and authorities of each party, the more stringent of the applicable DRBC and Signatory Party Agency requirements will be included in approvals issued under One Permit.

In instances where the Compact and the Commission's rules so provide or so require, such as where a project must be added to the Comprehensive Plan, the Commission will continue to issue a separate approval. (See paragraph E. of the rule.)

COMMENTS:

A commenter objected to the Program on grounds that prior agreements with the states have been ignored, alleging that deposition testimony from a high-ranking PADEP official revealed that the Department did not comply with the state's administrative agreements. (DRN)

RESPONSE:

It is true that DRBC's current project review procedures do not conform to the "current" administrative agreement between DRBC and PADEP's predecessor agency, the Pennsylvania Department of Environmental Resources. DRBC and PADEP recognize the need to update that agreement, which was

signed nearly four decades ago in August of 1976. Both view adoption of the One Permit Program as an opportunity to develop a modern administrative agreement to implement it.

COMMENTS:

A group of commenters expressed concern that under One Permit, enforcement activities will be conducted primarily by the lead (usually the state) agency. They express concern that state budgetary and/or political pressure may prevent effective enforcement. They suggest that a collaborative and cooperative enforcement program be required as part of the Program and further recommend that the DRBC “add its enforcement personnel to enforcing the state permits to maximize the effectiveness of the program.” They also request that the AAs recognize and facilitate citizen input in the enforcement context. (DCS-NYH20-CFW)

RESPONSE:

Paragraph 2.3.11.F of the rule, Retention of Commission Review and Enforcement Actions, provides that nothing in any provision of the One Permit Rule or the AAs limits the authority of the Commission to exercise its review or enforcement authority under the Compact or applicable regulations. To avoid duplicative penalties and processes, however, the Commission has historically deferred to the states in enforcement matters with respect to any conditions for which a state permit includes requirements equivalent to or more stringent than DRBC’s. In the event of a violation, state statutes and regulations generally allow for or require higher financial penalties than those authorized by the DRBC Compact. Accordingly, the agency issuing the approval will have primary responsibility for enforcing the conditions it contains, even if the conditions are based on DRBC regulations. In complex enforcement matters involving DRBC requirements, the Commissioners and staff will collaborate and cooperate with the state agencies as appropriate or necessary. The administrative agreements between DRBC and Signatory Party Agencies will include more detailed provisions regarding coordination on compliance matters. *See, e.g.* Section VII of the March 2015 NJDEP AA.

Importantly, because the approvals issued under One Permit will include applicable DRBC requirements, the potential for confusion will be reduced and compliance is expected to improve among regulated entities that would otherwise need to comply with two separate instruments of approval for their activities.

G. Impact on DRBC’s Natural Gas Policies

COMMENTS:

Several commenters expressed their concern that the Program is politically motivated to streamline the natural gas agenda. One commenter said he believes the Program is an effort by New Jersey to make independent decisions regarding Natural Gas projects. (Mr. Rapp, Others)

RESPONSE:

One Permit does not alter the Commission’s current policies regarding natural gas development activities. The Executive Director’s Determination of May 2009, which eliminated DRBC’s project review thresholds

for activities associated with natural gas development, including withdrawals, discharges and diversions of water or wastewater into or out of the Special Protection Waters drainage area in connection with hydraulic fracturing, remains in place. Also unchanged is the Commission's decision of May 2010 to postpone the review of natural gas well pads pending the adoption of DRBC regulations to address these activities. Any changes to the current status of natural gas drilling within the basin would require Commission review and approval.

Depending upon the specific details of each natural gas or other transmission main project, the project could require review and approval by DRBC. Nothing in the Program changes that. However, it is feasible that if the only thresholds for review by DRBC were proposed water withdrawals, wastewater discharges, or both, a coordinated review would be performed, similar to that required for any other withdrawal or discharge project.

H. DRBC as Lead Agency

COMMENTS:

Several commenters suggested that the Program should be modified to make DRBC the lead agency for:

- new project proposals that could impact the main stem Delaware River;
- all projects that impact Special Protection Waters;
- all proposals that import over 50,000 gallons of wastewater from outside the basin; and
- all proposals that seek relief from, reduction of or modification of DRBC requirements.

(DRN, DCS-NYH20-CFW, Others)

RESPONSE:

The commenters are essentially recommending that the Commission maintain the *status quo* – *i.e.*, the continuation of separate approval programs. To do so would be to forego the desired benefits of the Program – more efficient and effective use of DRBC and Signatory Party resources, improved coordination and collaboration between DRBC and the Signatory Party Agencies, reduction in duplicative procedures and requirements, less confusion and improved compliance on the part of regulated entities, and improved environmental outcomes.

DRBC's review of the project applications remains substantively the same under One Permit. DRBC will continue to be involved in the review of projects in the categories identified by the commenters and will continue to make determinations concerning relief from DRBC requirements. The sponsor of any new project that is required by Article 11 or 13 of the Compact to be added to the Comprehensive Plan will be required to file an application with the Commission. If, following the Commission's review and public hearing, the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. (See paragraph E of the draft rule.) Only after the DRBC issues its approval in such instances may other project approvals be issued through the Program. New projects not required to be added to the Comprehensive Plan will also undergo Commission review. Any DRBC requirements

applicable to such projects that are not included in the approval issued by a Signatory Party Agency under One Permit will be placed in a separate approval instrument issued by the DRBC. New or expanded out-of-basin water or wastewater imports and exports that meet DRBC thresholds also will continue to be subject to Commission approval. (See DRBC Water Code § 2.30.4 and Section II.E.1 and Appendix A of the March 2015 NJDEP AA.)

As is noted elsewhere in this document, under One Permit DRBC staff will continue to interpret the DRBC requirements and to provide technical review under applicable DRBC standards, especially where the staff have special expertise. For projects located within the drainage area of DRBC Special Protection Waters, DRBC staff will continue to determine whether 'Substantial Alterations and Additions' as defined by Commission rules are proposed, and to conduct the modeling necessary to determine effluent limits that ensure 'No Measurable Change' to water quality in these waters. DRBC staff also will continue to calculate the alternative mixing zone for a discharge of treated industrial wastewater to the Delaware River Estuary. DRBC's role in these respects is set forth expressly in the March 2015 NJDEP AA (see Section II.I.2.a and Appendix A.) If the state approval for any reason does not include the Commission's requirements, the Commission will issue the requirements by a separate action.

With respect to requests for relief from or modifications of DRBC requirements, the March 2015 NJDEP AA similarly provides for the Commission to provide NJDEP with the required determinations. (See Section II.G.2.d, II.I.2.f and Appendix C of the AA.) The Commission's determinations will be incorporated into the state approvals.

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

2.3.11 One Permit Program

A. Purpose. The purpose of the One Permit Program set forth in this Section is to provide the opportunity for the environmental agency and/or other administrative agency of a Signatory Party (“Signatory Party Agency”) and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement under subsection 2.3.11.D.

Deleted: will incorporate, where appropriate.

B. Scope. This Section applies to all projects that: (1) are reviewable under the Compact; (2) meet the thresholds for review set forth in Section 2.3.5 of these Rules of Practice and Procedure; (3) are subject to review by a Signatory Party Agency under its own statutory authorities; and (4) are within regulatory programs that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this Section 2.3.11 of the Rules. For any project that requires an approval under the Compact that is outside the scope of the Signatory Party Agency's approval issued in accordance with an Administrative Agreement under this Section, the project sponsor shall apply to the Commission in accordance with procedures established by the Commission.

Deleted: categories of projects

C. Regulatory Programs. Regulatory programs eligible for administration under the One Permit Program may include but are not limited to those concerning: Basin discharges, Basin water withdrawals, and Basin flood plain requirements.

Deleted: A Signatory Party Agency or the Commission may at any time propose to the other that a regulatory program be administered within the Basin under the One Permit Program

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D. Procedure. The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

1. Except as provided in subsections 2.3.11.B. and E. of these Rules or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this Section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.

Deleted: subsection

2. To enable the Commission to compile and make available to the public a current list of pending applications for projects within the Basin subject to Commission jurisdiction, the Signatory Party Agency shall notify the Commission at least monthly of applications the Signatory Party has received during the preceding month that may be eligible for review under the One Permit Program.

Deleted: <#>Notice that the project sponsor has filed an application with the Signatory Party Agency shall be provided to the Commission in the manner specified in the applicable Administrative Agreement ¶ The Signatory Party Agency receiving the application shall for

3. For those categories of projects identified in the Administrative Agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the Administrative Agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under § 3.8 of the Compact as to those regulatory programs identified in an Administrative Agreement in accordance with paragraph B above.

Deleted: solicit the recommendation of the Commission staff

Deleted: The process for solicitation of the recommendation by Commission staff shall be

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4. Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

§ 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under § 3.8 of the Compact, as specified in the Administrative Agreement, as to the regulatory program covered by the Signatory Party Agency's approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor, If in accordance with the applicable Administrative Agreement the determination under § 3.8 of the Compact is made by the Commission, the Signatory Party Agency may include the determination together with any associated conditions of approval in its permit or other approval instrument covering the project.

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5. The Commission will maintain on its website a list of all projects being administered pursuant to the Program.

E. Comprehensive Plan Projects. Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. Deleted: before initiating project design

If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this Section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

Deleted: before initiating project design

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

F. Retention of Commission Review and Enforcement Authorities.

Notwithstanding any other provision of this Section 2.3.11, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this Section may include collaborative and cooperative compliance and enforcement procedures, nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

G. Exhaustion of Signatory Party Administrative Remedies Prerequisite to

Appeal. Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency under this Section 2.3.11, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

Deleted: on behalf of the Commission

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H. Fees. The Commission shall establish and maintain a schedule of fees for any or all

of the services it renders pursuant to this Section 2.3.11. Unless and until a different schedule is established, the applicable fee(s) for Commission services rendered pursuant to this Section shall be those set forth in DRBC Resolution No. 2009-2 for the review and renewal of project approvals. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the then-current schedule and applicable rules.

Deleted: such

I. Effect of One Permit Program on Commission Dockets.

Deleted: Termination

Deleted: existing

- 1. Unless the Executive Director or Commission otherwise directs, if a docket holder submits, or has submitted, a timely application to a Signatory Party

Deleted: . At such time as the

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

Agency ~~for a project subject to review under an Administrative Agreement~~
~~duly adopted under Section 2.3.11.D., the most recent docket for the project~~
~~shall, upon expiration, be deemed administratively continued until final action~~
~~is taken~~ in accordance with ~~paragraph I.2. below.~~

Deleted: makes the Project Review Determination and issues a permit or other approval instrument to a

Deleted: sponsor

2. ~~Unless~~ the Executive Director ~~or Commission otherwise directs, upon a~~
~~Signatory Party Agency’s final action on an application for a project subject to~~
~~the One Permit Program, (i) any existing or administratively continued docket~~
~~for such project shall terminate as to all of its provisions and conditions that~~
~~pertain to regulatory programs administered by the Signatory Party Agency~~
~~under the Administrative Agreement (“the Covered Programs”); and (ii) the~~
~~docket shall continue~~ in effect ~~as to any provisions and conditions~~ not
~~pertaining only to Covered Programs, including, as applicable, the~~
~~incorporation of the project in the Commission’s~~ Comprehensive Plan.

Deleted: this Section

Deleted: 3 11,

Deleted: is authorized

Deleted: in whole or in part any Commission docket then

Deleted: with respect to such project, provided that such termination shall

Deleted: serve to remove a project from or otherwise modify the

J. Modification of Rules of Practice and Procedure to Conform to this Section.

Any project subject to ~~review under an Administrative Agreement duly adopted under Section~~
~~2.3.11.D.~~, shall be governed by this Section 2.3.11 and not Sections 2.1.4, 2.1.5, 2.1.6, 2.1.8,
 2.3.4 A, C and E, 2.3.6, 2.3.7 and Article 6 where they are inconsistent with the procedures
 provided in this Section.

Deleted: the One Permit Program

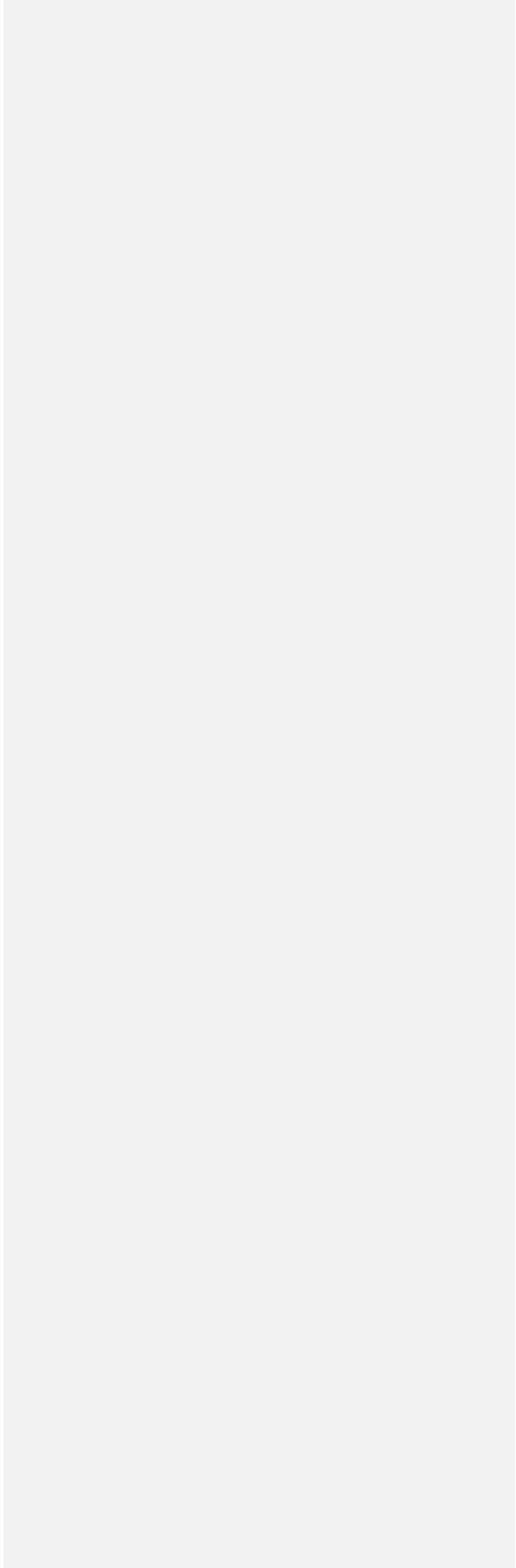
K. No Interference with Supreme Court Decree. In accordance with Sections 3.3(a)

and 3.5 of the Compact, nothing in this Section 2.3.11 shall grant the authority to any Signatory
 Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating
 releases, rights, conditions, obligations and provisions for administration thereof provided in the
 United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954)

REDLINE COMPARING PROPOSED AND FINAL RULE TEXT

(“Decree”). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

DRAFT





Administrative Agreement

Between the

Delaware River Basin Commission

and the

New Jersey Department of Environmental Protection

March 2015

**Administrative Agreement between
Delaware River Basin Commission and
New Jersey Department of Environmental Protection**

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**Administrative Agreement between
Delaware River Basin Commission and
New Jersey Department of Environmental Protection**

This Administrative Agreement (“Agreement”) is made by and between the Delaware River Basin Commission (“DRBC” or “Commission”), a federal interstate compact agency, and the New Jersey Department of Environmental Protection (NJDEP) (collectively, the “Parties,” and individually, a “Party”).

WHEREAS,

1. The DRBC and the NJDEP both have authority and existing standards, rules, regulations, and programs to govern certain activities within the same geographic area within the Delaware River Basin.
2. The DRBC and the NJDEP share common mission objectives for managing and protecting water resources within the Delaware River Basin.
3. Both the DRBC and the NJDEP recognize that while the programs of each Party are often similar, they are not always the same. The Parties further recognize the authority of each other to promulgate rules, regulations and standards.
4. The DRBC and the NJDEP support the principles of: inter-agency cooperation; avoidance of unnecessary duplication of effort; and program cost efficiencies.
5. The DRBC and the NJDEP will continue to use available resources, including this Agreement, to advance the principles defined above and, where feasible, to develop one common regulatory process to implement the rules, regulations, and standards, of each Party.

NOW THEREFORE, the DRBC and the NJDEP set forth the following terms and conditions to meet this Agreement as follows:

I. General Provisions

A. Administrative Agreement Authority

1. Section 1.5 of the Delaware River Basin Compact (“the Compact”) authorizes the Commission to utilize existing agencies for the purpose of the Compact to the fullest extent it finds feasible and advantageous.

2. Section 3.9 of the Compact provides that the Commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the Delaware River Basin.
3. Section 2.3.3 of the Commission's Rules of Practice and Procedure authorizes and directs the Executive Director to enter into cooperative Administrative Agreements ("AAs") with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:
 - a. To facilitate the submission and review of applications and determinations required under Section 3.8 of the Compact;
 - b. To avoid unnecessary duplication of staff functions and hearings required by law;
 - c. For such other and different purposes as he or she may deem feasible and advantageous for the administration of the Compact or any other law.
4. Upon the effective date of a DRBC rule providing specific authorization for and defining the scope of the One Process/One Permit Program, this Agreement will replace all prior administrative agreements between the Parties, including those dated August 20, 1976 and December 18, 2009 (as amended) between the Commission and the NJDEP.
5. Nothing in this Agreement shall be construed as a waiver of any authority possessed by the Commission or by the NJDEP.
6. Nothing in this Agreement prohibits any lawfully adopted implemented changes to the authority of each Party in the future.

B. Scope of this Agreement

1. The scope of this Agreement is limited to projects and activities that can be commonly managed and administered under the following regulatory programs of each Party:
 - a. Water withdrawals
 - b. Wastewater discharges
2. This Agreement will implement applicable sections of the Compact with respect to the review of water withdrawal and wastewater discharge projects. With the exception of the limited instances described in Sections II.E., III.E., IV., V.E. and VI. below, a final action of the NJDEP under this Agreement will also constitute an action on behalf of the Commission under Section 3.8, 10.3 and/or 5.2 of the Compact for those requirements that are subject to Commission review.

- C. One Process and One Permit. Where applicable, under the terms of this Agreement and under the authority and responsibility of each agency, the DRBC and the NJDEP will follow a single process led by the NJDEP, and the NJDEP will issue a single permit that covers all the standards, rules, requirements, terms and conditions for each withdrawal or discharge project or activity that can be covered by the New Jersey Pollutant Discharge Elimination System (NJPDES) Program for discharges or the state's Water Allocation Program for withdrawals. It should be noted that one process and one permit will not cover all activities and applications related to projects involving withdrawals and discharges.
- D. Agency Cooperation. The DRBC and the NJDEP will cooperate with one another to meet the objectives of this Agreement by, among other things, participating in: periodic status and continuous improvement meetings; interagency training and knowledge sharing; document and information sharing; advanced planning and sharing of proposed changes to any regulatory standard, requirement or program affecting Delaware River Basin water resources; development and communication of appropriate permit terms and conditions for each Party under Delaware River Basin approvals; and report development and sharing. The NJDEP and the DRBC agree to work cooperatively, as technology is available and allows, to provide the DRBC with reasonable access to data for water withdrawals and wastewater discharges to fulfill Basin planning, forecasting, and compliance monitoring functions.

II. Review of Wastewater Discharge Projects

- A. Scope. This Section concerns wastewater discharge projects within the Delaware River Basin that require an NJPDES permit under the Clean Water Act and state law that may also be subject to DRBC review and approval under the Compact and Commission regulations.
- B. Objectives
1. In order to eliminate, where possible, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's NJPDES permit as the single permit for all conditions necessary to ensure that discharges made under NJPDES permits do not substantially impair or conflict with the Commission's Comprehensive Plan and regulations relating to wastewater and stream quality objectives (also referred to as "water quality criteria").
 2. The DRBC and the NJDEP will manage and maintain one permit review and approval process for wastewater discharge projects. The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific

project and upon the type of project, the project applicant may be interacting with both the DRBC and the NJDEP to obtain review and approval through a single permit.

3. Transition to One-Discharge One-Permit

- a. For applications submitted to NJDEP after the effective date of DRBC rules providing for the One Process/One Permit Program, the One Project/One Permit Program will be used, and a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections II.E., IV., V. and VI.C. below, also will constitute an action on behalf of the Commission.
 - b. For applications under review by either the NJDEP or the DRBC upon the effective date of this Agreement, the DRBC and the NJDEP staff will confer to determine whether the Parties should proceed with issuance of separate approvals (dockets and permits, respectively) or should instead complete their review under the One Process/One Permit Program. Wherever feasible, the transition to one permit will be implemented.
4. In all instances where the transition has been made, a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections II.E., V.E. and VI.C. below, also will constitute an action on behalf of the Commission.

C. Project Categories. Wastewater discharge projects will be divided into three categories:

1. **Category WW1: No DRBC Review Required.** Projects within the Delaware Basin that are not subject to review under the Compact or Commission regulations as defined in Section II.E. below;
2. **Category WW2: Standard Renewals.** Wastewater discharge projects that are subject to review under the Compact or Commission regulations and that meet the criteria set forth in Section II.F. below; and
3. **Category WW3: Other Projects.** Includes all "Other Wastewater Discharge Projects," as defined in Section II.H. below.

D. Annual Notice of Permit Renewal Application Dates. On or before January 31st of each year, NJDEP will provide to DRBC a list of NJPDES applications that are targeted for permit issuance during the coming year for projects in the Delaware River Basin ("DRB-NJ Project List"). For each project on this list, NJDEP will also include information for the most recent permit action, consisting of the "Permit Overview Screen" in the New Jersey Environmental Management System (NJEMS), which offers a concise description of the permitted activity and associated information (e.g. flow values, flow types, waterbody

names). The NJDEP will provide DRBC with timely notification of revisions to the DRB-NJ Project List that may be made throughout the year.

- E. **Category WW1: No DRBC Review Required.** Under the Compact and DRBC regulations, the following wastewater discharge projects are not subject to review by the Commission, except in accordance with either Section 2.3.5 B.18 (determination by the Executive Director) or Section 2.3.5 C. (request by a Commission member agency) of the Rules of Practice and Procedure (RPP). (See Section IV. of this Agreement for categories of projects other than wastewater discharge projects that are not subject to the Commission’s review.):
1. Wastewater discharges directed to wastewater treatment plants that are subject to the review of the NJPDES Pretreatment, Significant Indirect User, and Residuals Management Program, except where a wastewater treatment plant is proposing to import 50,000 gallons of wastewater or more per day from outside the Delaware River Basin.
 2. Wastewater discharges directly to surface or groundwater from domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere in the basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.
 3. Wastewater discharges directly to surface or groundwater from industrial wastewater treatment facilities when such facilities have a design capacity of less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere within the basin.
 4. Wastewater discharges – whether direct or indirect – to surface or groundwater from landfills or remediation activities, when the discharge is less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere within the basin.
 5. Discharges covered by a NJPDES General Permit for hydrostatic testing, when the discharge is less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere in the basin.
 6. Discharges consisting exclusively of either construction dewatering or swimming pool discharges. (Such projects are determined to be “temporary or short term projects” in accordance with Section 2.3.5 A.19. of DRBC’s Rules of Practice and Procedure and to have no substantial effect on water resources of the basin.)
- F. **Category WW2: Standard Renewals – Definition.** For the purposes of this Agreement, “Standard Renewals” are wastewater discharge projects for which:

1. a NJPDES permit and a Commission docket are in effect at the time of application for the NJPDES permit renewal, or for which the most recent NJPDES permit issued for the facility includes a finding, pursuant to this or a successor Agreement, that the project would not substantially impair or conflict with the Commission's Comprehensive Plan and regulations relating to wastewater and stream quality objectives; and for which,
2. the wastewater discharge is to surface or ground waters within DRBC Water Quality Zones 2 through 6 (the Delaware River Estuary and Bay) or the tidal or non-tidal portions of tributaries thereto, and no increase is proposed to the effluent flow or pollutant load established by the facility's current NJPDES permit or DRBC docket; or
3. the wastewater discharge is an existing discharge to surface or ground waters located within the drainage area of waters designated by the Commission as Special Protection Waters (SPW); and both (a) no increase is proposed to the effluent flow or pollutant load established by the NJPDES permit or DRBC docket in effect on the date of SPW designation; and (b) no "Substantial Alterations or Additions" are proposed as that term is defined at Section 3.10.3.A.2.a.16. of the Water Quality Regulations (WQR) (copy attached hereto for reference, as Appendix B).

G. Category WW2: Standard Renewals – "One Process" Responsibilities

1. For "Standard Renewals" NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permits.
 - b. include in each NJPDES permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to effluent quality and stream quality objectives, the project conforms to the Commission's Comprehensive Plan.
 - c. include a finding, based upon DRBC's recommendation, that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.
 - d. provide DRBC with a copy of the pre-draft permit and give DRBC 30 days to provide input. The Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a recommended finding that the project does not substantially impair or conflict with the Commission's Comprehensive Plan is implied and the process for simple renewals will proceed.
 - e. establish monitoring requirements for whole effluent toxicity (WET).

- f. issue determinations required by Clean Water Act Sections 316(a) (relating to thermal discharges) and 316(b) (relating to impingement and entrainment); provided, however, that the authority to replace DRBC requirements with a 316(a) determination is subject to a DRBC rule change. (In the absence of the rule change, the NJDEP will continue to issue NJPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)
 - g. continue to collect all NJDEP permit and review fees required under applicable rules and regulations.
 - h. Advise applicants and the DRBC staff at the earliest stage possible when an applicant must apply for and obtain approval from the Commission for relief from or modification of a Commission requirement. Such instances include but are not limited to those listed in Appendix C.
2. For “Standard Renewals” DRBC will:
- a. within 30 days of receipt of a draft permit from NJDEP, provide NJDEP with written comments, including any recommendations for additional requirements or clarifications necessary or appropriate to support a finding that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - b. provide technical assistance when NJDEP staff requests it.
 - c. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
 - d. review and provide NJDEP with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.G.1.h. above.
3. Should the Parties not agree during the review process on any matter material to the finding referenced in Section II.G.2.a. and b. above, the issue will be handled in accordance with the dispute resolution process identified in Section IX.E. of this Agreement.
- H. **Category WW3: “Other” – Definition.** For the purposes of this Agreement, “Other Wastewater Discharge Projects” are wastewater discharge projects located within the area regulated by the Delaware River Basin Commission that do not fall within the categories defined at Sections II.E. (“No DRBC Review Required”) and II.F and II.G. (“Standard Renewals”) above. They include but are not limited to:

1. new wastewater discharge projects
2. existing wastewater discharge projects that are subject to the review of both Parties but that lack either a NJPDES permit or a DRBC docket
3. projects involving wastewater discharges to surface or ground waters within DRBC Water Quality Zones 2 through 6 (the Delaware River Estuary and Bay) or the tidal or non-tidal portions of tributaries thereto, where an increase is proposed to the effluent flow or pollutant load established by the facility's current NJPDES permit or DRBC docket
4. projects involving new wastewater discharges to surface or ground waters located within the drainage area of waters designated by the Commission as SPW, where either: (a) an increase is proposed to the effluent flow or pollutant load established by the NJPDES permit or DRBC docket in effect on the date of SPW designation; or (b) "Substantial Alterations or Additions" are proposed as that term is defined at Section 3.10.3.A.2.a.16. of the WQR (copy attached hereto for reference, as Appendix B).

I. **Category WW3: "Other" – "One Process" Responsibilities**

1. For "Other Wastewater Discharge Projects," the NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permits.
 - b. advise DRBC when an NJPDES application or request for a pre-application meeting for a wastewater discharge project within the New Jersey portion of the Delaware River Basin is received.
 - c. include in each NJPDES permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to effluent quality and stream quality objectives, the project conforms to the Commission's Comprehensive Plan.
 - d. include a finding, based upon DRBC input, that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.
 - e. provide the Commission with sufficient time for input to the "pre-draft" and "draft" permits. In general:
 - i. "sufficient time" will include 30 days for review of a "pre-draft" permit, except that
 - ii. for projects located within the drainage area of SPW, "sufficient time" will consist of notice as early as possible, preferably before the initiation of

design, to allow for an opportunity for DRBC and applicants to perform and consult on modeling for the “No Measurable Change” analysis before the project is designed.

- f. NJDEP’s Treatment Works Approval (TWA) program staff will notify DRBC upon receipt of any TWA application for the construction or modification of a water or wastewater treatment facility located within the Delaware River Basin. (See Section I.2.a. below regarding identification of such facilities). The TWA program staff will also copy the DRBC Project Review Section Supervisor on the application completeness letter when issued. The primary TWA program contact for purposes of this Agreement will be the Assistant Director, Municipal Finance and Construction Element.
 - g. advise applicants and the DRBC staff at the earliest stage possible when an applicant must obtain approval for relief from or modification of a Commission requirement, including but not limited to those listed in Appendix C.
 - h. continue to collect all NJDEP permit and review fees required under applicable rules and regulations.
2. For “Other Wastewater Discharge Projects,” DRBC will:
- a. provide the TWA program contact identified in Section I.1.f. above with a list of existing wastewater treatment plants within the Delaware River Basin. This list will be periodically updated to reflect any new wastewater discharges or modifications to existing discharge locations. DRBC will also copy the TWA and NJPDES program contacts and the Water Program Director on any determination that it sends to the TWA program applicant regarding DRBC requirements related to the proposed wastewater treatment modifications.
 - b. provide NJDEP with written comments, including standards, terms and conditions as appropriate, for implementation of either the SPW program or the Commission’s regulations applicable to the Delaware River Estuary and Bay and tributaries thereto, that are necessary or appropriate to support a finding that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - c. determine if a project is required to be incorporated into the Commission’s Comprehensive Plan (CP) and undertake the process, including a public hearing and Commission action, for incorporation of such project into the CP as appropriate. Once the Commission has added a project to the CP, the Commission and the NJDEP will use the state’s NJPDES permit as the single permit for all

conditions necessary to ensure that discharges do not substantially impair or conflict with the CP.

- d. provide technical assistance when NJDEP staff request it, subject to resource constraints.
 - e. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
 - f. review and provide NJDEP with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.I.1.g. above.
3. Should the Parties not agree during the review process on any matter material to the finding of no conflict with the Comprehensive Plan, the issue will be handled in accordance with the dispute resolution process identified in Section VII.C. of this Agreement.

III. Coordinated Review of Water Supply Projects

- A. Scope. This Section concerns water withdrawals within the Delaware River Basin that require a water allocation permit pursuant to the New Jersey Water Supply Management Act and the implementing rules at *N.J.A.C. 7:19-1.1 et seq.* that may also be subject to DRBC review and approval under the Compact and Commission regulations.
- B. Objectives
 1. In order to eliminate, where possible, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's water allocation permit or agricultural certificate as the single permit for all conditions necessary to ensure that water withdrawals do not substantially impair or conflict with the Commission's Comprehensive Plan.
 2. The Commission and the NJDEP will manage and maintain one permit review and approval process for water withdrawal projects. The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific project and upon the type of project, the project applicant may be interacting with both the DRBC and the NJDEP to obtain review and approval of a single permit.
 3. Transition to One Water Withdrawal Permit.
 - a. For new, major modification and renewal applications submitted to NJDEP after the effective date of this Agreement, the One Process/One Permit Program will be used,

and a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections III.E., IV. and VI.C., below, also will constitute an action on behalf of the Commission.

- b. For applications under review by either the NJDEP or the DRBC upon the effective date of this Agreement, the DRBC and NJDEP staff will confer to determine whether the Parties should proceed with issuance of separate approvals (dockets and permits, respectively) or should instead complete their review under the One Process/One Permit Program. Wherever feasible, the transition to one permit will be implemented.
4. In all instances where the transition has been made to One Process/One Permit a subsequent decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections III.E. and VI.C., below, also will constitute an action on behalf of the Commission.
- C. Project Categories. Water withdrawal projects will be divided into three (3) categories:
1. **Category WA-1: No DRBC Review Required.** Water Withdrawal projects within the Delaware River Basin that are not subject to review under the Compact or Commission regulations or as defined in Section III.E. below;
 2. **Category WA-2: Notification.** Water withdrawal projects that are subject to the Compact or Commission regulations and that meet the criteria set forth in Section III.F. below; and,
 3. **Category WA-3: Notification and Review.** Includes all "Other Water Withdrawal Projects" as defined in Section III.H. below.
- D. Notice of Applications; Water Use Data Sharing
1. NJDEP permit applications. Within 14 days of the end of any month in which NJDEP receives water allocation permit applications or requests for pre-application meetings for projects within the Delaware River Basin, NJDEP will provide to DRBC a list of such applications and requests. The list will include any information that might be determinative of DRBC involvement, including but not necessarily limited to: the applicant's name, facility name, change in the quantity of a DRBC-approved diversion into or out of the basin, withdrawal location, purpose and amount of the proposed allocation (if known).
 2. Water use data. Within 90 days of the close of each calendar year, NJDEP will provide to DRBC all available water use data it has collected for water allocation projects within the New Jersey portion of the Delaware River Basin.

- E. **Category WA-1: No DRBC Review Required.** Under the Compact and DRBC regulations, the following water withdrawal projects are not subject to DRBC review except in accordance with either Section 2.3.5 B.18 (determination by the Executive Director) or Section 2.3.5 C. (request by a Commission member agency) of DRBC’s Rules of Practice and Procedure (RPP).
1. A water withdrawal from groundwater or from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive days does not exceed 100,000 gallons.
 2. Diversions into or out of the basin whenever the design capacity is less than a daily average rate of 100,000 gallons.
 3. Withdrawals for agricultural use within the State of New Jersey.
 4. Temporary dewatering permits to facilitate construction. (Such projects are determined to be “temporary or short term projects” in accordance with Section 2.3.5 A.19. of DRBC’s Rules of Practice and Procedure and to have no substantial effect on water resources of the basin.)
 5. Any “minor modification of a water supply allocation permit or temporary dewatering permit,” as that term is defined at *N.J.A.C. 7:19-1.5(b)*.
- F. **Category WA-2: Notification – Definition.** For the purposes of this Agreement, “Notification” projects are existing water withdrawal projects as described below. For these projects, NJDEP will provide notification to DRBC in accordance with Section III.D.1. above. However, there is a presumption that DRBC will not comment on these projects because, by definition, such renewals or extension involve no changes that would likely affect the Commission’s earlier and existing determination that the project would not substantially impair or conflict with the Comprehensive Plan. These projects include:
1. water allocation permit renewals under N.J.A.C. 7:19-2.4 where:
 - a. a Commission docket for the withdrawal is in effect at the time the renewal application is made; or
 - b. the most recent NJDEP water allocation permit, issued for the withdrawal includes a finding, pursuant to this or a successor Agreement, that the project will not substantially impair or conflict with the Commission’s Comprehensive Plan and regulations related to water withdrawal; and
 2. water allocation permit renewals involving no change to a diversion of water into or out of the basin that was previously approved by the DRBC;

3. water allocation permit renewals involving no change in the approved monthly and annual withdrawal amounts
4. extensions of NJDEP water allocation permits

G. **Category WA-2: Notification – “One Process” Responsibilities**

1. For “Notification” projects NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permits.
 - b. provide monthly to the Commission the list of projects for which applications were received by the NJDEP in the preceding month and a description of each application described in Section III.D.1. above.
 - c. include in each NJDEP water allocation permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to water withdrawal the project conforms to the Commission’s Comprehensive Plan, including but not limited to:
 - for surface water withdrawal projects, a provision that DRBC’s Water Charges Regulations apply
 - for public water supply withdrawals, a provision that DRBC’s water auditing requirements (at Section 2.1.8 of the Water Code) apply.
 - d. include a finding that with respect to water withdrawal, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
2. For “Notification” projects DRBC will:
 - a. review the list provided by the NJDEP in accordance with Section III.D.1 above and identify any projects that require DRBC review notwithstanding the presumption set forth at Section III.F. above.
 - b. provide technical assistance when NJDEP staff requests it, subject to resource constraints.
 - c. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.

H. **Category WA-3: “Notification and Review” – Definition.** For the purposes of this agreement, “Notification and Review” projects are water withdrawal projects located within the Delaware River Basin that do not fall within the categories defined in Sections

III.E. (projects not subject to Commission review) and III.F.-G. (“Notification” projects) above. These include but are not limited to:

1. new water withdrawal projects
2. new projects that involve diversions into or out of the basin that are subject to DRBC review in accordance with Section 2.30 of the Commission’s Water Code and Section 2.3.5 A.16, 17, or 18 of the RPP)
3. renewals and modifications of existing water withdrawal projects that are subject to the review of the DRBC but that have never received a DRBC docket
4. major modifications to existing projects, as defined at N.J.A.C. 7:19-1.5(a), including but not limited to any project that involves a withdrawal from within the Delaware River Basin in excess of the monthly or annual allocation set forth in an existing NJDEP permit or DRBC docket
5. projects that involve a change to a diversion into or out of the basin (including to or from Delaware Bay) previously approved by DRBC in accordance with Section 2.30 of the Water Code and Sections 2.3.5 A.16, 17, or 18 of the RPP)

I. **Category WA-3: “Notification and Review” – “One Process” Responsibilities**

1. For “Notification and Review” projects, the NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permits.
 - b. provide monthly to the Commission the list described in Section III.D.1 above.
 - c. include in each NJDEP water allocation permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to water withdrawal, the project conforms to the Commission’s Comprehensive Plan.
 - d. include a finding, based upon DRBC’s recommendation, that with respect to water withdrawal the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - e. provide the Commission with sufficient time for input. In general, “sufficient time” will consist of 30 days for review of a draft permit.
 - f. advise applicants and the DRBC staff at the earliest stage possible when an applicant must obtain approval for relief from or modification of a Commission requirement.

2. For “Notification and Review” projects, DRBC will:
 - a. within 30 days of receipt of a draft permit from NJDEP, provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a finding that with respect to water withdrawals, diversions or allocations, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - b. provide a written recommendation that, subject to the conditions as set forth in the preceding paragraph, with respect to water withdrawals, diversions or allocations, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - c. determine and advise the NJDEP if a project is required to be incorporated into the Commission’s Comprehensive Plan (CP) and undertake the process, including a public hearing and Commission action, for incorporation of projects into the CP as appropriate. Once the Commission has added a project to the CP, the Commission and NJDEP will use the state’s water allocation permit as the single permit for all conditions necessary to ensure that water withdrawals do not substantially impair or conflict with the CP.
 - d. provide technical assistance when NJDEP staff requests it
 - e. review and provide NJDEP with the determination regarding requests for relief from or modification of Commission requirements requested in accordance with Section III.I.1.f. above.
3. Should the Parties not agree during the review process on any matter material to the finding, the issue will be handled in accordance with the dispute resolution process identified in Section IX.E. of this Agreement.

IV. Projects Not Considered to be Wastewater Discharges or Water Withdrawals Within the Scope of this Agreement

For the following categories or aspects of projects, the Commission conducts no review for conformity with the Commission’s Comprehensive Plan, unless review is required by the Executive Director (in accordance with Section 2.3.5 B.18 of RPP) or by the Commission (in response to a federal or state agency request in accordance with Section 2.3.5 C. of the RPP), or unless technical assistance is requested by the state or federal agency:

- A. Siting, design and construction of industrial/sanitary landfills.

- B. Electric generation/co-generation facilities designed to consumptively use in excess of 100,000 gpd during any 30 consecutive day period, except where the project involves a new or expanded water withdrawal or discharge.

V. Review of General Permits

- A. Projects eligible for an NJDEP Master General Permit (MGP) and related authorization (“MGP-Authorized Projects”) shall not be covered under this Agreement unless and until such time as the Commission, after reviewing the applicable MGPs at the time of MGP renewals by NJDEP or the development of new MGPs, has found and determined that the MGP contains all terms and conditions necessary to ensure that MGP-Authorized Projects do not impair or conflict with the DRBC Comprehensive Plan (“the Section 3.8 Finding and Determination”).
- B. The NJDEP will provide DRBC with an opportunity to review and provide input in accordance with procedures outlined in Section II.G. (“Standard Renewals”) on the renewal of any NPDES MGPs that could potentially apply to projects that are also subject to DRBC review. It is understood by both parties that depending upon the complexity of the MGP, more than 30 days may be needed for DRBC to review and comment on the new draft MGP.
- C. The NJDEP and the Commission agree that as the resources of each Party permit, the Parties may undertake a review of each existing MGP at any time prior to the time of the MGP renewal, in order for the Commission to provide input and/or make the Section 3.8 Finding and Determination as appropriate.
- D. All NPDES MGPs for which the Commission has made the 3.8 Finding and Determination shall be listed in Appendix D of this Agreement. For all projects authorized by an MGP that has been added to Appendix D, there will be no DRBC review prior to issuance of the authorization by NJDEP.
- E. For projects within the Delaware River Basin that are authorized by an MGP that has not been added to Appendix D, the applicant may still require DRBC approval pursuant to the Compact and existing DRBC rules. The burden shall be on the applicant and/or the DRBC to determine the need for a separate application to DRBC.
- F. NJDEP will provide DRBC with a copy of all MGP authorizations issued within the DRB at the time they are sent to the applicant.

VI. Separate Action by the Commission

- A. By means of a docket or resolution following a duly noticed public hearing and those additional consultations and actions required by Section 13.1 of the Compact, the Commission will incorporate into the Comprehensive Plan any new or existing project required by the Compact to be incorporated into such plan.
- B. Water withdrawals from the main stem and Delaware Bay below the Delaware Memorial Bridge or from the tidal portions of tributaries to these waters shall be subject to the full review and decision making by the Commission.
- C. If at any point prior to the issuance of the NJPDES permit or water allocation permit the Executive Director or any Signatory Party determines that a project for which the NJDEP's final action would constitute a decision on behalf of the Commission pursuant to this Agreement should be reviewed and adjudicated by the Commission, the Executive Director will so notify the NJDEP in writing, at which time the project shall be subject to the full review and decision making by the Commission. New Jersey will no longer make a determination on behalf of the Commission in this circumstance.

VII. Other Requirements

A. Compliance

- 1. To the extent authorized by state law, NJDEP will be responsible for compliance monitoring and enforcement of all permit standards, terms and, conditions in the single permit including those designed to implement DRBC requirements. Any and all funds secured by NJDEP through an enforcement action shall be payable to the State of New Jersey. As set forth below, NJDEP will notify or consult with DRBC regarding enforcement actions relating to facilities within the Delaware River Basin.
 - a. Notification. NJDEP will notify DRBC of automatic or inspection-based enforcement relating to discharges and water withdrawals included in this agreement within the Delaware Basin.
 - b. Consultation. When NJDEP in its discretion pursues an Administrative Consent Order (ACO) as defined by applicable New Jersey regulations for violation of a DRBC requirement, NJDEP will consult DRBC and will give due consideration to any comment that DRBC furnishes. If the Commission does not respond to NJDEP within two weeks of receipt of such request or draft, then NJDEP at its discretion will proceed with the ACO. NJDEP will bear all costs of enforcement

and will exercise its discretion in collecting, settling or adjudicating enforcement actions involving facilities within the Delaware River Basin.

2. Nothing in this Agreement limits the Commission's authority under the Compact and Commission regulations to issue an order or orders upon any entity which the Commission determines to be in violation of the Compact or Comprehensive Plan.

B. Water Supply and Wastewater Planning

The NJDEP and the Commission agree to confer during the development and amendment of the New Jersey water supply and area wide water quality management plans, including amendments associated with adopted Total Maximum Daily Loads (TMDLs). The NJDEP will copy the Commission on annual updates of the statewide sewer service area maps and permitted surface water dischargers. The Commission may adopt the state and regional water supply and statewide and area wide water quality management plans into the Commission's Comprehensive Plan.

The Commission will not review applications for extensions to existing water distribution and wastewater collection systems not involving service area changes.

VIII. NJ Demonstration Program

- A. Purpose. The NJ Demonstration Program is an opportunity for NJDEP and DRBC to begin the coordinated review process described in this Agreement while the Commission proceeds with formal rulemaking to provide for such process.
- B. Eligible Projects. DRBC and NJDEP will jointly determine a list of pilot projects based on in-house applications for new or renewing wastewater discharge projects to proceed under the NJ Demonstration Program. The review of such projects will conform to the procedures described herein at Section II.G. (for "Standard Renewals") and II.I. (for "Other Wastewater Discharge Projects").
- C. Approval. If a project reviewed under the NJ Demonstration Program reaches the DRBC or NJDEP approval stage before DRBC has adopted a final rule providing for the One Process/One Permit Program, then NJDEP and DRBC will work collaboratively and cooperatively to:
 1. Obtain a finding, based upon action by the Commission, that the project does not impair or conflict with the DRBC Comprehensive Plan ("the Section 3.8 Finding and Determination") before the NJDEP issues the final permit
 2. Include the finding along with other DRBC input to support the finding and all other NJDEP terms and conditions into a single NJPDES permit.

3. NJDEP and DRBC reserve the right to issue separate approval or decision actions during the demonstration period, if required, at the discretion of either party.

D. Term of Demonstration Program

1. The Demonstration Program will end and Section VIII of this agreement will terminate on the effective date of new DRBC rules for the One Process/One Permit Program; provided however, that
2. if new rules for One Process/One Permit Program have not yet been promulgated, the Demonstration Program will end on January 1, 2016 or when eight (8) demonstration project applications have been processed under the program, whichever is later.
3. If the Demonstration Program ends without new One Process/One Permit rules in effect, the Parties may:
 - a. jointly agree to extend the demonstration period to allow more time for DRBC to promulgate new One Process/One Permit rules; or
 - b. work collaboratively and in good faith to amend or terminate this Agreement and to develop an alternative long-term cooperative agreement to meet goals similar to those outlined in this Agreement.

IX. Administrative Provisions

- A. Amendment. This Agreement may be amended by the mutual written agreement of both parties.
- B. Project Review Fees. Unless and until the Commission adopts a new fee schedule, any project subject to this Agreement in project categories WW2, WW3, and WA3, will be subject to the applicable fee(s) set forth in DRBC Resolution No. 2009-2, which is posted on the Commission's website at <http://www.state.nj.us/drbc/library/documents/Res2009-2.pdf>. NJDEP fees likewise remain unchanged by this Agreement.
- C. Termination on Written Notice. This Agreement may be terminated by either the NJDEP Commissioner or the Commission upon thirty days (30) written notice to the other Party.
- D. Reservation of Authority. The Commission and the NJDEP have and may exercise their independent authorities under their respective statutes and regulations to take appropriate actions to ensure compliance with the terms and conditions of their respective decision making documents and regulations.
- E. Dispute Resolution. The Commission's Water Resources Management Branch Manager and the NJDEP's appropriate Division Director will work together to resolve any issues

regarding a subject project. If the issues cannot be resolved, such issues will be elevated to the Executive Director and the state's DRBC Commissioner before the permit is released for public comment or before the permit is issued, depending upon the stage at which DRBC comment is solicited under this Agreement. If the Parties are unable to agree, then each will issue an approval instrument or other determination.

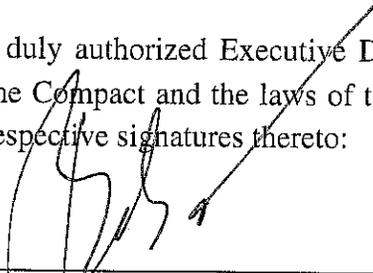
- F. No Third-Party Rights or Enforceability. This Agreement does not create any rights in any person or entity not a party hereto and is not enforceable except by the NJDEP or the Commission.
- G. Severability/Waiver. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by a competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should one or more covenants or conditions be waived by either party, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the waiving party to or of any subsequent similar act by the other party.
- H. Choice of Law. This Agreement is being executed and is intended to be performed in the State of New Jersey, and as to all aspects of this Agreement that are within the scope of state law, shall be governed in all respects by the laws of the State of New Jersey.
- I. Entire Agreement. The Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of the Agreement. The Agreement represents the entire agreement between the Parties; all negotiations, oral agreements and understandings are merged herein.
- J. Binding Effect. All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.
- K. Authority. By the signatures below, the Parties execute the Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.
- L. Effective Date. This Agreement shall take effect on the date of execution by the last signing Party.

IN WITNESS thereof, the Commission, through its duly authorized Executive Director, and NJDEP, through its Commissioner, as authorized by the Compact and the laws of the signatory party, have executed this Agreement by affixing their respective signatures thereto:



Steve J. Tambini, P.E., Executive Director
Delaware River Basin Commission

Date 3/24/2015



Bob Martin, Commissioner
New Jersey Department of Environmental
Protection

Date 4/14/2015

APPENDIX A – Wastewater Program - Specific Implementation Procedures

Technical Topic	Implementation Agreement
Substantial Alterations or Additions (SPW only)	<p>SPW requirements must be considered in project design when a project involves either (a) increases in the effluent flow or pollutant load established by the NJPDES permit or DRBC docket that was in effect at the time of SPW designation; or (b) “Substantial Alterations or Additions” (SAA) as defined in the DRBC Water Quality Regulations. (For complete definition of SAA, see Appendix B.) DRBC modelers will develop the SPW effluent requirements* and NJDEP will include them in its NJPDES permits if they are more stringent than NJDEP limits.</p> <p>*DRBC provides SPW effluent limits for wastewater treatment facilities required to meet SPW no measurable change requirements for Ammonia (NH₃-N), Dissolved Oxygen, Fecal Coliform, Nitrate (NO₃-N), Total Nitrogen, Total Phosphorous and Total Suspended Solids in the Lower Delaware River SPW and for BOD₅, Fecal Coliform, Ammonia + Ammonium, Total Kjeldahl Nitrogen, Nitrite+ Nitrate and Total Phosphorous in the Upper and Middle Delaware River SPW.</p> <p><u>SPW Mixing Zone Analysis:</u> For discharges within the drainage area of waters designated by the Commission as SPW and the tributaries thereto, the NJDEP or the permittee may request that DRBC staff perform a mixing zone analysis when the discharge is new or is an existing discharge subject to the requirement for “No Measurable Change to Existing Water Quality” or when an increased flow or load or “Substantial Alterations or Additions” are proposed.</p> <p>In the event that the time for DRBC’s SPW review and analysis exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application, the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener</p>

Technical Topic	Implementation Agreement
	<p>clause to approve the SAA and associated SPW requirements at a future date.</p>
<p>Import/Export Regulations</p>	<p>The existing rules at Section 2.30 of the Water Code and Sections 2.3.5 A. 16-18 of the RPP require that the Commission approve and incorporate into the CP imports and exports of water and wastewater for amounts of 50,000 gallons a day or more (as a daily average) for wastewater and 100,000 gallons per day or more (as a daily average) for water.</p> <p>Within 30 days of the DRBC’s receipt of an NJDEP pre-draft permit, DRBC will identify and provide to the NJDEP the water and wastewater requirements for inclusion in the NJDEP permit. In-basin effluent limitations will be adjusted by subtracting 100% of the imported load (lbs./day) from the in-basin allocation. In Zones 2-5, percent removal of BOD20, as provided in the DRBC’s “Status of Wasteload Allocations” will also be required.</p>
<p>Mixing Zone Review</p>	<p>DRBC requirements apply to discharges to the main stem Delaware River, Estuary and Bay (Water Quality Zones 2 – 6); the more stringent of NJDEP and DRBC requirements apply in the tidal portions of the tributaries. DRBC will take the lead in developing mixing zone requirements and the dilution factor for discharges to Zones 2-6 and the tidal portions of the tributaries. NJDEP will include these requirements in the NJPDES permit as appropriate. DRBC technical assistance may require interfacing with the applicant and the applicant’s consultant in determining the size of the mixing zone and the dilution factor for acute toxicity and TDS.</p> <p>Applicants may choose to apply to the DRBC for an Alternative Mixing Zone (AMZ) determination under the DRBC Water Quality Regulations. DRBC will provide the determination to the applicant and the NJDEP.</p> <p>In the event that the time for DRBC’s review and analysis for a mixing zone, dilution factor or an AMZ exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application,</p>

Technical Topic	Implementation Agreement
	the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to include, as appropriate, a mixing zone, dilution factor or an AMZ at a future date.
Total Dissolved Solids	DRBC's basin-wide effluent limit of 1000 mg/L will be included in NJPDES permits, except that if an applicant requests an alternate TDS limit, DRBC staff will review and develop an alternate limit (a "TDS Determination"), consistent with DRBC regulations. In the event that there are no available effluent data for TDS, NJDEP will allow for a maximum of five years of data collection prior to imposing a TDS requirement.
CBOD20	DRBC will establish CBOD20 allocations and percent removal requirements as provided in the DRBC's "Status of Wasteload Allocations" for discharges to Water Quality Zones 2 – 5 and the tidal portions of the tributaries, and NJDEP will include these in its NJPDES permits.
Color	DRBC regulations provide for a color limit of 100 PtCoU. If an applicant demonstrates the need for a higher limit, DRBC will provide a determination establishing an alternate limit consistent with Section 4.30.5 of the WQR. NJDEP will include the determination in its NJPDES permits.
Temperature	DRBC will provide NJDEP with heat dissipation areas and associated temperature limits for certain power plants discharging to the main stem Delaware River or tidal portions of tributaries (DRBC Water Quality Zones 2-6) thereto, including: PSEG's Mercer, Hope Creek and Salem plants and the Chemours (formerly Dupont) Deepwater plant. DRBC staff is also developing draft amendments to the WQR to provide for deference to Section 316(a) variances approved by NJDEP. (In the absence of the rule change, the NJDEP will continue to issue NJPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)

Technical Topic	Implementation Agreement
	In the event that the time for DRBC's review and analysis exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application, the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to include the heat dissipation area at a future date.
Whole Effluent Toxicity (WET)	NJDEP will assign WET limits in accordance with NJDEP and DRBC Water Quality Regulations and EPA guidance. The most sensitive species will be utilized in the monitoring requirements. Dual species (fish and invertebrate) testing will be required at least every 10 years to confirm the most sensitive species. DRBC will provide input as necessary in accordance with Section II.G.-I. above.
Toxic Limits	NJDEP will assign limits for toxics criteria in accordance with Commission's Water Quality Regulations and EPA TSD guidance and applicable state regulations.

APPENDIX B: Excerpt from: ADMINISTRATIVE MANUAL – PART III WATER QUALITY REGULATIONS, With Amendments through December 4, 2013, 18 CFR Part 410, (FR Mar 2014)

ARTICLE 3

**WATER QUALITY STANDARDS FOR THE DELAWARE RIVER BASIN
[COMPREHENSIVE PLAN, SECTION X]**

Section 3.10 Basinwide Surface Water Quality Standards.

* * * * *

3.10.3 Stream Quality Objectives.

A. Antidegradation of Waters.

* * * * *

2. Special Protection Waters.

a. Definitions

* * * * *

- 16) “Substantial Alterations or Additions” are those additions and alterations resulting in: (a) a complete upgrade or modernization of an existing wastewater treatment plant, including substantial replacement or rehabilitation of the existing wastewater treatment process or major physical structures such as headworks, settling tanks, and biological/chemical treatment and filtration tanks, whether conducted as a single phase or a multi-phased project or related projects; or (b) a new load or increased flow or loading from an existing facility that was not included in a NPDES permit or docket effective on the date of SPW designation. Among other projects, modifications made solely to address wet weather flows; and alterations that are limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal are not deemed to be “Substantial Alterations or Additions.”

* * * * *

APPENDIX C: List of DRBC Waivers/Variations from Stream Quality Objectives and Effluent Limitations

NJDEP will advise applicants and the DRBC staff at the earliest stage possible when an applicant must apply for and obtain approval from the Commission for relief from or modification of a Commission requirement. Such instances include but are not limited to the following:

1. approval for exportation of wastewater from or importation of wastewater to the basin in accordance with Sections 2.3.5 A.16 and 2.3.5 A.18 of the RPP and Section 2.30 of the Water Code.
2. determination in accordance with Section 2.3.5 A.19 of the RPP that a project otherwise subject to review is short-term or temporary and will have no substantial impact on water resources of the basin.
3. waiver of a rule by the Commission for good cause shown, in accordance with Section 2.9.3 of the RPP.
4. TDS determination in accordance with Section 3.10.4 D.2. of the WQR
5. alternative mixing zone for a toxic pollutant in accordance with Section 4.20.5 A.1.f. of the WQR.
6. color variance in accordance with Section 4.30.5 A.2.c. of the WQR
7. temperature variance in accordance with Section 4.30.6 F. of the WQR.

APPENDIX D: NJDEP General Permits Approved or Conditionally Approved by the Commission

[TO BE DEVELOPED]

ATTACHMENT C – LIST OF COMMENTERS

ORAL COMMENTS - PUBLIC HEARING – JUNE 9, 2015			
	Commenter	Organization	+ Written Stmt. (✓)
1.	Ms. Barbara Arrindell	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water	✓
2.	Ms. Shirley Masuo	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water	✓
3.	Ms. Mav Moorhead	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water	✓
4.	Mr. Buck Moorhead	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water	
5.	Mr. Jeff Zimmerman	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water	
6.	Kenneth Collins	Citizen	
7.	Ms. Kathy Klein	Water Resources Association of the Delaware River Basin	
8.	Mr. Dennis Palmer	New Jersey Water Environment Association	
9.	Mr. Bill Wolfe	Citizen	
10.	Maya van Rossum	Delaware Riverkeeper Network	✓
11.	Ms. Brenda Gotanda	Delaware Estuary TMDL Coalition	
12.	Mr. Doug O'Malley	Environment New Jersey	
13.	Mr. Jeff Tittel	New Jersey Sierra Club	
14.	Ms. Wendy Goetz	Citizen - Greenland Highland, NJ	
15.	Ms. Kerry Butch	New Jersey League of Women Voters	
16.	Mr. Aaron Stemplewicz	Delaware Riverkeeper Network	
17.	Mr. James Rapp	Citizen	
18.	Ms. Patty Cronheim	Hopewell Township Citizens Against the PennEast Pipeline	
19.	Ms. Mary Ellen Noble	Delaware Riverkeeper Network	

WRITTEN COMMENTS REC'D ON OR BEFORE JULY 1, 2015 (Other than Texts of Oral Statements)			
	Name	Organization	Letter
1.	Mr. Dennis Palmer	New Jersey Water Environment Association ¹	June 2, 2015
2.	Ms. Kathy Klein	Water Resources Association of the Delaware River Basin ²	June 3, 2015
3.	Ms. Peggy Gallos	Association of Environmental Authorities of New Jersey ³	June 9, 2015
4.	Maya van Rossum	Delaware Riverkeeper Network ⁴	June 9, 2015
5.	Mr. Michael J. Pickel	Aqua Pennsylvania, Inc.	June 25, 2015
6.	Marc Gold, Esq., MGKF LLP	Delaware Estuary TMDL Coalition ⁵	June 29, 2015
7.	Coalition for the Delaware River Watershed	19 Organizations ⁶ signed on	July 1, 2015
8.	Mr. Jeff Zimmerman	Damascus Citizens for Sustainability, Inc., NYH2O, Inc. and Citizens for Water ⁷	July 1, 2015

¹ NJWEA is a “non-profit educational organization dedicated to preserving and enhancing the water environment.” Its membership consists of “2800 engineers, operators, scientists, students and other professionals.” See <http://www.njwea.org/08/28/2015>.

² WRADRB is a “non-profit, non-partisan advocacy and public information organization whose stated MISSION is to promote sound water resources management within the Delaware River Basin. The WRA represents water users and those dependent or interested in the Basin’s water resources.” <http://www.wrardb.org/board.php>. Its members include “power, water and wastewater utilities; government and municipal agencies; civic, environmental and academic interests; business and industry; and numerous individuals.” See <http://www.wrardb.org/members.php>.

³ AEA “deliver[s] information, education and advocacy programs and services that help member organizations provide excellent service to ratepayers and that help the public understand and value the work of AEA members.” See <http://www.aeanj.org/>.

⁴ Delaware Riverkeeper Network (DRN) is a 501(c)(3) membership organization that “provides effective advocacy, volunteer monitoring programs, stream restoration projects and public education ... [and that] goes to court when necessary to ensure enforcement of environmental safety laws.” See <http://www.delawariverkeeper.org/about/whoweare.asp>.

⁵ The Delaware Estuary TMDL Coalition is a group of municipal and industrial dischargers to the Delaware Estuary whose members are: Calpine Corporation, Camden County Municipal Utilities Authority; City of Philadelphia Water Department; Delaware County Regional Water Quality Control Authority (DELCORA); E.I. DuPont de Nemours and Company; The Chemours Company FC, LLC; Exelon Generation Company, LLC; National Railroad Passenger Corporation (Amtrak); PBF Energy, Delaware City Refining Company LLC and Paulsboro Refining Company LLC; Philadelphia Energy Solutions Refining and Marketing, LLC; PSEG Power LLC, PSEG Fossil LLC, and PSEG Nuclear LLC; and Rohm and Haas Company and Rohm and Haas Chemicals LLC.

⁶ American Littoral Society, American Rivers, Aquashicola/Pohopoco Watershed Conservancy, Blue Mountain Preservation Association, Delaware Nature Society, Friends for the Abbott Marshlands, Friends of the Upper Delaware River, Friends of the Wissahickon, Guardians of the Brandywine, Lehigh Gap Nature Center, Musconetcong Watershed Association, National Parks Conservation Association, National Wildlife Federation – Mid-Atlantic Regional Center, New Jersey Audubon Society, New Jersey League of Conservation Voters, PennFuture, Pinelands Preservation Alliance, Tobyhanna Creek/Tunkhannock Creek Watershed Association, Wissahickon Valley Watershed Association.

9.	Nicole and Gregg Miller	Citizens	Undated
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⁷ Damascus Citizens for Sustainability (DCS) “is a collaborative endeavor to preserve and protect clean air, land and water as a civil and basic human right in the face of the threat posed by the shale gas extraction industry.” See <http://www.damascuscitizensforsustainability.org/about-us/#sthash.RMdYuh9S.dpuf>. NYH2O is described as “non-profit citizens’ advocacy promoting awareness and legislative action protecting New York water from the threat of natural gas hydrofracking.” See <https://www.causes.com/causes/428260-nyh2o-defending-water-for-all-new-yorkers/about>. A mission statement or description of Citizens for Water was not found. Citizens for Water Foundation Inc. is a public foundation based in New York City, the activities of which are said to include “philanthropy, volunteerism, and grantmaking.” See <http://www.guidestar.org/organizations/27-4444002/citizens-water-foundation.aspx>.