

RESOLUTION NO. 2015 – 4

A RESOLUTION authorizing the Executive Director to initiate rulemaking to provide for the One Process – One Permit Program and to enter into an administrative agreement with New Jersey for demonstration of the program.

WHEREAS, Section 3.2 and 13.1 of the *Delaware River Basin Compact* (“Compact”) require the Commission to develop and adopt a comprehensive plan for the immediate and long range development and use of the water resources of the Delaware River Basin (“Basin”); and

WHEREAS, the Commission has adopted a comprehensive plan that includes, among other things, rules and regulations establishing requirements for projects undertaken in the Basin that may affect water resources; and

WHEREAS, Section 3.8 of the Compact prohibits any person from undertaking a project having a substantial effect on the water resources of the Basin until the Commission approves the project based on a determination that the project would not substantially impair or conflict with the Commission’s comprehensive plan; and

WHEREAS, Section 1.5 of the *Delaware River Basin Compact* authorizes and directs DRBC to utilize and employ the “existing offices and agencies of government ... to the extent not inconsistent with the compact”, and Section 3.9 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 basin.”; and

WHEREAS, to implement these sections of the Compact, DRBC’s *Rules of Practice and Procedure* expressly recognize and provide the DRBC with the authority to enter into administrative agreements with federal and state agencies to meet the objectives of its regulatory programs; and

WHEREAS, the DRBC and the signatory parties to the Compact (“Signatory Parties”) share many common mission objectives for managing and protecting water resources within the Delaware River Basin; and

WHEREAS, in addition to enacting the Compact, the Signatory Parties have enacted their own statutes to protect water resources within their respective jurisdictions, including the portions within the Basin; and

WHEREAS, the environmental agencies of the Signatory Parties each have adopted rules, regulations, standards and permitting programs applicable to projects involving water-related activities, including but not limited to wastewater discharges and, in some states, water withdrawals and diversions, within their respective jurisdictions, that overlap with the Commission’s rules, regulations, standards and programs applicable to the same projects; and

WHEREAS, the Commission hereby finds that coordination of the reviews by DRBC and the appropriate Signatory Party when a project is subject to review by both of them, and to the extent practicable, issuance of a single instrument incorporating both DRBC and Signatory Party

requirements would promote interagency collaboration, achieve program efficiencies, simplify the regulatory process for project sponsors and operators, and reduce the potential for confusion on the part of regulated entities and the public; and

WHEREAS, the Commission further finds that by fully recognizing the standards and authorities of each party and providing for implementation of the most protective of DRBC and state requirements, a One Process – One Permit program will achieve greater administrative efficiencies while ensuring that equal or better environmental outcomes are obtained; and

WHEREAS, the Commission intends to amend the *Rules of Practice and Procedure* to provide specific authorization for and define the scope of the One Process – One Permit Program and enter into a modified administrative agreement with each Signatory Party agency that wishes to implement the program; and

WHEREAS, to inform the rulemaking process and aid in the development or refinement of new administrative agreements, the Commission and the New Jersey Department of Environmental Protection wish to implement a “demonstration program”; and

WHEREAS, the Commission has carefully reviewed the draft agreement with New Jersey that is attached hereto and finds that a demonstration program utilizing the procedures it describes will be of value in the rulemaking process as well as in the development of new agreements with each of the basin states that wishes to implement the One Process – One Permit program; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is authorized and directed to initiate rulemaking to amend the *Rules of Practice and Procedure* to establish the One Process – One Permit Program.

2. The Executive Director is further authorized to enter into the accompanying administrative agreement with the New Jersey Department of Environmental Protection (or a substantially similar version) with respect to wastewater discharge projects to demonstrate implementation of the program and inform both the rulemaking process and the development and refinement of administrative agreements between the Commission and any or all of its other member states, pending adoption by the Commission of a final rule.

3. Under the One Process – One Permit program, DRBC staff will continue to perform technical reviews as necessary and appropriate to identify and will recommend conditions of approval to ensure that projects subject to review under the Delaware River Basin Compact and implementing regulations do not impair or conflict with the Commission’s comprehensive plan; and the DRBC will continue to perform those functions, such as adding projects to the comprehensive plan, as may be reserved for the Commission in the amended rules and/or administrative agreements.

4. For any projects reviewed by DRBC and the New Jersey Department of Environmental Protection under the demonstration program, the fee schedule approved by

DRBC Resolution No. 2009-2 shall remain in effect, and the fees applicable under current practices shall be paid directly to the Commission. The Commission's fee schedule set forth in Resolution No. 2009-2 will remain in effect unless and until the Commission amends it through rulemaking or a comparable public process.

5. In the event that a project reviewed under the New Jersey demonstration program reaches the approval stage before DRBC has finalized rule changes providing specific authorization for the One Process – One Permit program, the state-issued approval will incorporate DRBC requirements; however, the Commission will act separately to make the determination required by Section 3.8 of the *Delaware River Basin Compact*.

6. In accordance with Sections 3.3(a) and 3.5 of the Compact, no environmental agency shall be authorized by the One Process – One Permit Program 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) ("Decree"). Any such action may 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.

/s/ Angus Eaton

Angus Eaton, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, J.D., M.R.P., Commission Secretary

ADOPTED: March 11, 2015