

A RESOLUTION to amend the *Administrative Manual – Rules of Practice and Procedure* (18 C.F.R. Part 401) by the addition of a new section 2.3.11 (18 C.F.R. § 401.42), captioned “One Permit Program”.

WHEREAS, the Commission (also “DRBC”) conceived of the One Process/One Permit Program (also “Program” or “One Permit”) to promote interagency cooperation, coordination and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects.

WHEREAS, the sponsors of many water resource-related projects in the Delaware River Basin currently are required to apply to both the DRBC and a state agency, among others, for approvals.

WHEREAS, for those projects subject to regulatory review by both the DRBC and a Signatory Party, the Program is designed to provide for close inter-agency collaboration and meet the objectives of Section 1.5 of the Compact, including the opportunity in accordance with a duly adopted Administrative Agreement between a participating Signatory Party Agency and the Commission, for issuance of a single approval instrument incorporating the applicable requirements of the two authorities.

WHEREAS, before publishing a notice of proposed rulemaking, the Commission initiated a public information and participation process to introduce the Program to the basin community and obtain feedback on its design, including:

- meetings with regulated entities, environmental organizations and other stakeholders on February 12 and March 3, 2015;
- publication on the DRBC website of a press release and a set of Frequently Asked Questions (and answers) (“FAQs”) about the Program on February 27, 2015;
- following a duly noticed public hearing and written comment period, adoption during the Commission’s quarterly public meeting on March 10-11, 2015, of Resolution No. 2015-4, authorizing and directing the Executive Director to: initiate rulemaking to provide specific authorization for and define the scope of the Program; and enter into an administrative agreement with the New Jersey Department of Environmental Protection (“March 2015 NJDEP AA”) to demonstrate how the Program would be implemented for wastewater discharge projects;
- a joint meeting of the Commission’s Water Quality and Water Management advisory committees on May 5, 2015 dedicated to discussion of One Permit;

- publication on DRBC's website on May 7, 2015 of an updated version of the FAQs, addressing issues raised by commenters during the stakeholder and advisory committee meetings and the March 10 public hearing on Resolution No. 2015-4.

WHEREAS, notice of the draft rule was published on the DRBC website on May 17, 2015, 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); and DRBC notified its Interested Parties List on May 17 that the notice and draft rule were available on the Commission's website.

WHEREAS, a public hearing on the proposed rule was conducted on June 9, 2015, and written comment was accepted through July 1, 2015.

WHEREAS, during the comment period, DRBC staff and Commissioners heard from 19 oral commenters and received 12 written submissions (offered, collectively, in the names of approximately 41 different entities), which included a number of specific recommendations and requests for improving the rule.

WHEREAS, in consultation with the Commissioners, staff developed a detailed comment and response document, including recommended changes to the rule in response to the comments received.

WHEREAS, the Commissioners have carefully considered and consulted with staff on the comments and proposed changes to the draft rule and find that the changes are both responsive to the public's concerns and a logical outgrowth of the draft originally published for comment.

Now therefore, BE IT RESOLVED by the Delaware River Basin Commission:

1. The *Administrative Manual – Rules of Practice and Procedure* (18 C.F.R. Part 401) is hereby amended by the addition of a new section 2.3.11 (18 C.F.R. § 401.42), captioned "One Permit Program," the text of which is attached.
2. The staff memorandum dated December 1, 2015 and captioned "DRBC Response to Comments and Staff Recommendation on Proposed Amendments to DRBC's *Rules of Practice and Procedure* for the One Process/One Permit" is hereby adopted as the Commission's response to comments on the draft rule published in May 2015.
3. In accordance with the final rule, administrative agreements between DRBC and Signatory Party agencies that elect to participate in the Program may be approved by the Commission after each such agreement undergoes a duly noticed public hearing.

4. Upon the effective date of the final rule, the March 2015 NJDEP AA will become the operative administrative agreement between the Commission and the New Jersey Department of Environmental Protection, superseding all previous administrative agreements between the two agencies.
5. The final rule will become effective 30 days following its publication in the Federal Register.

*/s/ Kara S. Coats*

---

Kara S. Coats, Chairwoman *pro tem*

*/s/ Pamela M. Bush*

---

Pamela M. Bush, Commission Secretary

ADOPTED: December 9, 2015

### **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.

**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.

**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.

**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 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.

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

**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.

**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.

**I. Effect of One Permit Program on Commission Dockets.**

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

**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.

**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) ("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.