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COMMENTS AND RESPONSES ON DRAFT AMENDMENTS TO THE ADMINISTRATIVE AGREEMENT OF MARCH 2015 BETWEEN THE DELAWARE RIVER BASIN COMMISSION AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

I. Procedural Background

The Delaware River Basin Commission (“Commission” or “DRBC”) on October 27, 2023, published on the DRBC website its fourth quarter Notice of Public Hearing and Business Meeting, along with the materials on which the public was invited to comment.¹ The availability of the notice and linked materials was advertised the same day *via* the Commission’s listservs and social media. Among the linked materials were a draft resolution to amend the Commission’s Administrative Agreement with the New Jersey Department of Environmental Protection (“NJDEP”) dated March 2015 (the “AA”), and a pdf file showing the proposed amendments to the AA in redline. The draft resolution and the redline AA are provided as **Exhibit B** of this comment and response document (“CRD”). The public hearing was scheduled for Wednesday, November 8, 2023, and the written comment period was set to run through 5 p.m. on Tuesday, November 14, 2023.

The draft resolution posted on October 27, 2023, described the purpose of the amendments as:

[to] (i) includ[e] within the categories of projects managed under the Commission’s One Permit Program underground storage caverns as contemplated by NJDEP’s regulations codified at Title 7, Chapter 1F of the *New Jersey Administrative Code*; (ii) remov[e] provisions that are no longer necessary or applicable concerning the transition to the One Permit Program; and (iii) update[e] certain citations, language and procedures to align with recent regulatory changes and with current terminology and practice, and to eliminate redundancy[.]

On Friday, November 3, in response to a letter request from the Delaware Riverkeeper Network (“DRN”) dated Monday, October 30 (included in **Exhibit D** of this CRD), the Commission amended its web notice to announce that the period for written comment on the proposed AA amendments would be extended through 5 p.m. on Monday, November 20. (The updated notice is included in **Exhibit A**.) The Commission simultaneously linked from its web notice a Frequently Asked Questions document (“FAQ”) on the

¹ A copy of the detailed web notice is provided as **Exhibit A**. Meeting and hearing notices that did not identify the specific items to be heard and considered, but which directed readers to the Commission’s website for a more detailed notice and links to materials, also appeared in the *Federal Register*, 88 Fed. Reg. 72444, Oct. 20, 2023, available at: <https://www.federalregister.gov/documents/2023/10/20/2023-23157/notice-of-public-hearing-and-business-meeting-november-8-and-december-6-2023>; *Pennsylvania Bulletin*, 53 Pa.B. 6713, Oct. 28, 2023, available at: <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-43/1469.html>; and *Delaware Register of Regulations*, 27 DE Reg. 275, Oct. 1, 2023, available at: <https://regulations.delaware.gov/documents/October2023c.pdf>.

proposed amendments, which is provided as **Exhibit C**. The extended comment period and availability of the FAQ were announced via the Commission's listservs and social media.

The FAQ published on November 3, 2023, posed and offered responses to the following questions:

1. What is the driver for the proposed amendments to the Commission's 2015 administrative agreement with the New Jersey Department of Environmental Protection (NJDEP)?
2. What will be the effect on the Commission's project review process of adding storage cavern projects to the One Permit Program through the Commission's AA with NJDEP?
3. How will the DRBC notify the public that a cavern project is pending under the One Permit Program?
4. What are the reasons for the proposed amendments to the AA unrelated to NJDEP's underground storage cavern program?
5. How will the proposed amendments to the AA affect the environment and communities?
6. How can the public find out more about the DRBC One Process One Permit Program?
7. How can the public review and comment on the draft resolution and proposed amendments to the 2015 AA between the DRBC and NJDEP?

II. Comments Received

The Commission received two written and one oral comment submissions on the proposed amendments, all from DRN. These consisted of (1) DRN's letter request of October 30, 2023, seeking additional information and an extended comment period on the proposed amendments; (2) an oral comment by Tracy Carluccio of DRN, offered at the Commission's public hearing of November 8, 2023; and (3) a written comment submitted by DRN on November 20, 2023. The two letters and a transcript of the oral comment are provided in **Exhibit D**.

DRN's comments in the form of sample quotations (in quotes) and paraphrased statements, followed by DRBC's responses, are grouped thematically as follows:

- A. Magnitude of the Proposed Changes to the March 2015 AA
- B. Public Process for the Proposed Amendments
- C. Process for Coordinated Project Review Under the Amended AA
- D. Impact of the Proposed AA Amendments on Communities
- E. Issues Not Directly Related to the Proposed AA Amendments

III. Comments and Responses

A. Magnitude of the Proposed Changes to the March 2015 AA

DRN Comment:

- “Not only are the changes to the AA numerous, but considering the many projects in the state of New Jersey that will be affected by this [amendment], the AA is a significant development regarding the permitting process in the State.”

DRBC Response:

Substantive changes to the AA that has been in place since March of 2015 are minimal. In its FAQ document published on November 3, 2023, the Commission expanded at length on the description it provided in the draft resolution published on October 27, 2023. As the FAQ document makes clear:

The Commission’s primary purpose in amending its 2015 Administrative Agreement (“AA”) with the NJDEP is to add certain underground storage cavern projects to the classes of projects that may be reviewed in accordance with the DRBC’s One Permit Program, regulations for which are set forth at Section 2.3.11 of the Commission’s Rules of Practice and Procedure (RPP), 18 C.F.R. 401.42.

Although “many projects” in the New Jersey portion of the Basin may be covered by the amended AA, the vast majority of these projects consist of wastewater discharge and water allocation projects, which are already subject to the March 2015 AA and for which no substantive changes to the AA are proposed.

The Commission included as FAQ No. 4 a detailed list of the changes unrelated to the storage cavern program. *See Exhibit C, pp. 2-4.* These fall within three categories: (1) provisions no longer necessary or applicable (relating to DRBC’s transition to the One Permit Program, including a demonstration program that is no longer needed, as the program has been in place since 2015); (2) updates to citations to add, as a convenience, citations to the *Code of Federal Regulations* and to correct citations that changed as the result of a rulemaking process completed in 2021; and (3) updates to language and procedures to align with current terminology and practice, and to eliminate redundancy.

As the FAQ document emphasizes, the third category includes no material changes for wastewater discharge and water allocation projects in the New Jersey portion of the Basin. Such projects have been consistently reviewed under the Commission’s One Permit Program regulations at 18 C.F.R. § 401.42 and the current AA for the past seven years. The amendments unrelated to storage caverns are described in the FAQ document in an exhaustive list that is not reprinted here. *See Exhibit C, pp. 3-4.* They include, among others, the addition of cross-references between sections of the AA, the addition of captions as shorthand for different project types identified in the AA (*see, e.g.,* Sections II.H., III.F. and III.H. of the proposed AA), and the addition of an understanding that the phrase “sufficient time” for input from DRBC means 30 days unless staff of the respective agencies mutually agree otherwise. The latter modification merely recognizes that staff of the two agencies have cooperated well, and that in particular, staff of the NJDEP have accommodated the DRBC’s need for additional time to complete a review as needed.

Notably, even the amendments related to underground storage cavern projects are procedural in nature. No new substantive requirements are imposed on any class of projects by the proposed AA amendments.

The new class of projects subject to the proposed amended AA, underground storage caverns, is expected to include few new projects. And for these added projects, the amended AA would establish a procedure similar to that in place since 2015 for wastewater discharge and water allocation projects in the New Jersey portion of the Basin. In other words, the proposed AA amendments do not constitute a “significant development regarding the permitting process in the State.”

B. Public Process for the Proposed Amendments

Length and Timing of Comment Period

DRN Comments:

- By letter dated October 30, the commenter requested an extension of 15 days from the original public comment deadline of November 14 to provide “adequate and reasonable time for public involvement.” After the DRBC announced on November 3 that the comment period would be extended by six days, through November 20, 2023, DRN commented that, “this is still not an adequate length of time for the public to understand and comment on the proposed amendment”
- “A November 20th deadline may prove difficult to many members of the public. This deadline is leading up to the Thanksgiving holiday, one of the most traveled holidays in the country. Members of the public may find themselves preparing to travel, or readying their homes to receive family members. Amidst this busy holiday, finding time to not only review this AA but make sense of it, as well as formulate thoughts, opinions, and or concerns into a written comment may prove difficult for many.”

DRBC Response:

In view of the narrow scope of the substantive changes proposed to the AA, the 24-day public comment period the Commission provided was in the Commission’s view reasonable and appropriate.

The proposed AA amendments and the accompanying resolution were published initially on October 27, 2023. At that time, the public comment period was set to close after eighteen days (October 28–November 14, 2023). On October 30, 2023, the DRN submitted to the Commission a request that the public comment period be extended by fifteen additional days. Considering the nature of the proposed changes (discussed above), the Commission responded by extending the public comment period by six days, through November 20, 2023, for a total of 24 days of public comment.

The proposed AA amendments were subjects of a duly noticed public hearing on November 8, 2023, satisfying the procedural requirement of the Commission’s *Rules of Practice and Procedure* (“RPP”) governing administrative agreements for implementation of the One Permit Program. See 18 C.F.R. § 401.42(d). The eleven (11) days’ notice provided in advance of the hearing satisfied the statutory requirement established by the *Delaware River Basin Compact* (the “Compact”) to provide at least ten days’ notice to the public. See Compact, §14.4(b).

The final comment period of October 28–November 20, 2023 included one federal holiday, Veterans Day, which fell on a Saturday and would typically have been observed on Friday, November 10, 2023. Otherwise, the comment period started nineteen days after the preceding holiday, Indigenous Peoples Day/Columbus Day (observed on October 9, 2023), and 27 days before Thanksgiving Day, and it ended three days before Thanksgiving Day (November 23, 2023).

Timing of Public Hearing

DRN Comments:

- "Discussion of these amendments [was] held at a November 8th, 2023 public hearing, where the AA was discussed with a variety of other topics. A public hearing where other topics take time away from discussing the AA is insufficient."
- "The public is entitled to a meeting solely dedicated to this topic so that they can become oriented with this amended AA, as well as inquire about how these changes might affect the river, its watershed and its water supplies, and projects in their own localities."
- "Hosting a separate hearing after Thanksgiving Day would accomplish a great deal in promoting public inclusion by making participation accessible and convenient for the general public."

DRBC Response:

The Commission does not agree that including multiple items as subjects of its November 8, 2023 public hearing "took time away from discussing the AA." The Commission routinely includes multiple items at a single hearing and keeps the hearing open for as long as necessary to give all those who wish to comment orally an opportunity to be heard. On the rare occasions when all of those who wish to speak on a subject cannot be accommodated in a single hearing session, the Commission's practice is to schedule multiple sessions. The hearing on November 8, 2023 commenced at 1:30 p.m. and lasted approximately 23 minutes, until about 1:53 p.m. The hearing ended because all of those in attendance who wished to speak on any of the matters scheduled for hearing on that date, including those who had registered in advance to speak and those who had not, had been afforded time to do so.

Notably, DRN provided comment on the proposed AA amendments at the November 8, 2023, public hearing and submitted written comments on the proposal after a period of 24 days. DRBC did not receive comments from any other parties. The magnitude of the changes proposed and the level of public interest throughout the comment period did not, in the Commission's view, warrant extending the process past the Thanksgiving holiday.

The Commission appreciates the suggestion that it provide an informational meeting or briefing in addition to, and possibly in advance of, its public hearing on matters of potential public interest and complexity that have not been topics of prior public discussion or debate. Adding this step, where appropriate in the future, could help promote public understanding.

Request for More Public Dialogue

DRN Comments:

- “The public should . . . be provided with public presentation materials that further elaborate on DRBC’s rationale behind [the proposed] modifications[,]” including “a more comprehensive discussion of the underlying purpose, goals, and implications of the proposed [changes] . . . and how this will affect communities and the environment.”
- “We appreciate that a FAQ document has been provided on the DRBC website on the proposed amendment, but we consider these issues to require greater in-depth analysis and public discussion.”

DRBC Response:

On October 27, 2023, the Commission published a draft resolution that briefly described the proposed amendments, and a mark-up of the March 2015 AA showing the text of the proposed amendments.

In response to DRN’s request that the Commission provide “public presentation materials that further elaborate on the rationale behind the proposed modifications,” the Commission developed and on November 3, 2023, published, the five-page FAQ document attached hereto as **Exhibit C**. The FAQ document addressed each of the issues raised in DRN’s October 30 letter request in a format that accommodated more detail than a typical slide presentation. The FAQ lays out the Commission’s principal purpose and its rationale for each of the proposed changes to the existing AA and describes the impact of the proposed action on the environment and communities. In the Commission’s view, the level of public interest generated by the FAQ, resolution and mark-up together has been commensurate with the limited impact of the proposed action. The Commission believes its efforts to detail the proposed changes to the AA and garner public feedback, including extension of the public comment period and publication of the FAQ, were proportional to the demonstrated level of public interest in this matter.

C. Process for Coordinated Project Review Under the Amended AA

Underground Storage Cavern Projects

DRN Comment:

- “Details about precisely how, when, and under what circumstances these underground storage cavern projects would be referred for review by New Jersey DEP to the Commission is of great importance.”
- Citing section V.D.1.a. of the proposed amended AA, the commenter wrote, “[F]or underground storage caverns, ‘[w]ithin 14 days of the end of any month in which NJDEP has determined that an application for an underground storage cavern project within the Delaware River Basin is administratively complete, NJDEP will provide to DRBC for each such application’ That being said, there is no information in the AA that elaborates on (1) how long the DRBC will have to respond to the application notifications, or (2) if NJDEP will pause the permitting process while they wait to notify on these applications in the last 14 days of each month/while the DRBC evaluates if these projects are subject to review.”

DRBC Response:

The process by which NJDEP will refer storage cavern projects to the Commission is addressed in detail in Section V.D. of the proposed amended AA. The amendments provide that “[w]ithin 14 days of the end of any month in which NJDEP has determined that an application for an underground storage cavern project within the . . . Basin is administratively complete, NJDEP will provide to DRBC for each such application” the elements of information listed. See proposed AA, sec. V.D.1.a. NJDEP’s storage cavern program regulations, codified at N.J.A.C. 7:1F, define administrative completeness. See N.J.A.C. 7:1F-4.2(c).

NJDEP notifies DRBC of all applications for projects within categories identified in the AA as being subject to DRBC review. Thus, no “pause” occurs after DRBC has been notified that an application is administratively complete for the purpose of, in the commenter’s words, “evaluat[ing] if these projects are subject to review” or for any other purpose. Rather, the notification initiates a process of coordinated review in which DRBC and NJDEP counterparts may confer as often as necessary and at any stage, until a final permit is issued. “Sufficient time,” generally understood to be 30 days, for DRBC to review pre-draft and draft permits is expressly provided.² Proposed AA, sec. VH.1.e. In the course of the review, the Commission’s project review staff will identify for inclusion in New Jersey’s permit any conditions in addition to those required by the NJDEP’s detailed regulations that are necessary to ensure the project does not impair or conflict with the Commission’s Comprehensive Plan.

In addition to provisions governing operation and maintenance, emergency response, decommissioning, and environmental and health impacts, NJDEP’s comprehensive regulations for underground storage caverns include detailed provisions for public notice and comment. Notice in the [DEP Bulletin](#) is required “upon each significant action or determination the Department makes regarding [a storage cavern project] application under review.” N.J.A.C. 7:1F-4.2(e). The regulations also require that a public hearing be conducted and a comment period of at least 30 days be held on any draft approval to construct an underground storage cavern. See N.J.A.C. 7:1F-4.2(f).

Unless in accordance with section VII.C. of the proposed amended AA and section 401.42(f) of the Commission’s RPP (18 C.F.R. § 401.42(f)) a DRBC Commissioner or the Executive Director designates a project for separate Commission review, NJDEP will serve as the lead agency for the review of storage cavern projects proposed within the New Jersey portion of the Basin and will issue a single permit containing all NJDEP and DRBC requirements.

Projects Other than Underground Storage Cavern Projects

DRN Comments:

- "There are several ambiguities regarding the 14 day period at the end of each month where NJDEP notifies DRBC of water allocation applications."
 - “[T]here is no information in the AA that elaborates on (1) how long the DRBC will have to respond to the application notifications, or (2) if NJDEP will pause the permitting process

² The proposed AA will be amended to make clear that this applies to UC-2 projects as defined by the AA. For UC-1 projects, which are existing projects that may not require any extensive review, DRBC and NJDEP will determine the time needed for DRBC review on a project-by-project basis.

while they wait to notify on these applications in the last 14 days of each month/while the DRBC evaluates if these projects are subject to review.”

- “[F]or cases outside of underground storage caverns, will the public be allowed to comment during the DRBC’s evaluation or only during the 30 day period they are provided to conduct 3.8 reviews of projects after the DRBC has already responded in the affirmative that a project is subject to their review?”

DRBC Response:

No substantive changes are proposed to the process established by the 2015 AA for coordinated review or public comment with respect to water allocation projects or wastewater discharge projects.

Coordinated review. Under the current process, the NJDEP notifies the Commission of applications for wastewater discharge and water allocation projects that are located within the New Jersey portion of the Basin and meet the review thresholds established by DRBC’s RPP at 18 C.F.R. § 401.35. Accordingly, notification is provided for all projects that are subject to DRBC review; no “pause” is required to determine whether DRBC review is required.

The notification initiates a process of coordinated review in which DRBC and NJDEP counterparts may confer as often as needed and at any stage, until a final permit is issued. The agreement contemplates a period of 30 days for the DRBC’s project review staff to review a pre-draft or draft permit, but staff of the respective agencies may also confer before a pre-draft is shared, and if DRBC requires additional time for a review, the NJDEP staff have never failed to accommodate. In the course of the coordinated review, the Commission staff identify for inclusion in New Jersey’s permit any conditions in addition to those dictated by the NJDEP’s regulations that are necessary to ensure the project does not impair or conflict with the Commission’s Comprehensive Plan. When the state agency serves as lead, the process for *public* comment is not governed by provisions of the AA but by the relevant state agency’s regulations, as described in greater detail below.

Public notice and comment. Both NJDEP and DRBC provide for and value public input in the project review process.

In accordance with DRBC’s One Permit Program regulations (at 18 C.F.R. § 401.42), unless the Executive Director or the Commissioners determine that the Commission will independently review a project (see 18 C.F.R. § 401.42(f); proposed AA, § VII.C), a single, NJDEP-led public process is used for wastewater discharge and water allocation projects covered by the AA. See 18 C.F.R. § 401.42(a); March 2015 AA and proposed AA, sec. I.C. The public process is not defined by the AA. Rather, as the Commission explained in its response to comments on the One Permit Program regulations in 2015,³ all written comments, including those related to DRBC requirements, must be filed with the Signatory Party agency in accordance with that agency’s published procedures. The public’s comments will be addressed during the agencies’

³ See memo captioned, 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, Dec. 1, 2015, p. 14. Available at: <https://www.nj.gov/drbc/programs/project/#3>.

coordinated review. When the comments concern a DRBC issue, a courtesy copy may be provided to the Commission, but this is not required.

Approximately once each month, the Commission posts on its website a new Notice of Applications Received (“NAR”), identifying applications submitted to the Commission since publication of the previous NAR, and a table—the “OPOP Status Matrix”—listing the status of all projects undergoing review in accordance with the Commission’s One Permit Program regulations and an implementing administrative agreement.⁴ The Commission notifies listserv subscribers of the availability of the NAR and the updated matrix.

NJDEP public process for wastewater discharge permits. In accordance with NJDEP regulations, notice of issuance of each draft wastewater discharge permit (called a “New Jersey Pollutant Discharge Elimination System (‘NJPDES’) permit”) is published, at a minimum, in the [DEP Bulletin](#), and a period of at least 30 days is provided for the submission of public comments on the draft permit. See N.J.A.C. 7:14A-15.10(a)–(c) and (e). Public notice is provided as well in one or more daily or weekly newspapers for any facility classified by NJDEP as a major facility. See N.J.A.C. 7:14A-15.10(e)2. A public hearing is held on a draft NJPDES permit “if there is or may be a significant degree of public interest in favor of holding a public hearing,” and the NJDEP may in its discretion hold a public hearing “if it determines that a hearing is likely to clarify one or more legal and/or factual issues” related to the permit. See N.J.A.C. 7:14A-15.12(a). If a public hearing has not been scheduled by the NJDEP, any person may request one. See N.J.A.C. 7:14A-15.11(b). Notably, although renewals of NJPDES permits are subject to notice and public comment, see N.J.A.C. 7:14A-16.3(e), a “minor modification” of a NJPDES permit, including, for example, to require more frequent monitoring or reporting by the permittee or to make certain changes to interim compliance dates, is not subject to public notice, see N.J.A.C. 7:14A-15.10(b)2.; 7:14A-16.5.

NJDEP public process for water allocation permits. Following a determination that a new water allocation permit or a major modification of a permit is technically complete, the NJDEP publishes a notice of receipt of the application in a newspaper of general circulation in the area affected by the proposed allocation and provides a period of at least 30 days for the submission of public comments. See N.J.A.C. 7:19-2.7(a). The notice must include a statement to the effect that a hearing will be scheduled if any interested party, including the applicant or the NJDEP itself, requests one in writing before the close of the comment period. *Id.* Notice of a hearing is provided at least 30 days in advance of the hearing date in the same manner as for publication of the notice of application. See N.J.A.C. 7:19-2.7(e).

“Pauses” in the Process

DRN Comment:

- “For W-2 category projects, the AA states that ‘[t]he Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a renewal of the previous Section 3.8 Finding is recommended . . . and the permit issuance process for simple renewals will proceed.’ However, [for] W-3 category projects, the AA only states ‘within 30 days of receipt of a pre-draft or draft permit from NJDEP, [the DRBC will] provide NJDEP with comments,

⁴ The most recent “OPOP Status Matrix” as the table is called, is available at: <https://www.nj.gov/drbc/programs/project/opop-status-page.html>.

including any additional requirements, terms or conditions necessary or appropriate to support a Section 3.8 finding,' but nothing that might indicate 'the permit issuance process for simple renewals will proceed.' Will W-3 permits pause to allow time for the DRBC to conduct a 3.8 finding[] before the permit issuance process proceeds, or is this omitted because a pause will not occur in these instances?"

DRBC Response:

Neither the March 2015 AA nor the proposed amended AA provides for "pauses" in the coordinated review process conducted or to be conducted under these agreements. Rather, once NJDEP staff notify DRBC's project review staff of an application for a wastewater discharge or water allocation project covered by the AA, a process of coordinated review is initiated during which DRBC and NJDEP counterparts may confer as often as needed and at any stage until a final permit is issued. Commission staff are afforded the time they require to "provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a Section 3.8 Finding." A period of 30 days is understood by the parties to generally be sufficient for DRBC to comment on a pre-draft or draft permit, but the length of time ultimately needed is variable and may be determined by mutual agreement on a case-by-case basis.

Wastewater discharge projects. In accordance with Section I.D. of the 2015 AA and the AA as proposed, on or before January 31 of each year, NJDEP provides DRBC with a list of the NJPDES applications that are targeted for permit issuance during the coming year for projects in the Delaware River Basin. Under the same section of the AA, NJDEP provides DRBC with "timely notification" of any revisions to the annual list. Accordingly, the parties know in advance of the pre-draft or draft permit stage which wastewater discharge projects will be WW-2's as defined in Section II.F of the 2015 AA and the AA as proposed. These are "standard renewals" for which no changes are proposed and for each of which a finding that the project would not substantially impair or conflict with the Commission's Comprehensive Plan (the "Section 3.8 Finding") was previously made. Because coordination typically begins well in advance of permit drafting for wastewater discharge projects, and because WW-2 projects by definition involve no changes that would necessitate re-evaluating the previous Section 3.8 finding, both the 2015 AA and the AA as proposed provide that DRBC silence on a pre-draft or draft permit can be understood to mean a Section 3.8 Finding is recommended. See, 2015 AA and AA as proposed, sec. II.G.e. Requiring further administrative steps would in these instances be duplicative and without significant benefit. With respect to "standard renewals," please also see DRBC's response in the next subsection, captioned "Section 3.8 Finding Procedure for Standard Renewal Discharge Projects."

Class WW-3 wastewater discharges, defined at Section II.H. of both the 2015 AA and the AA as proposed, are rare. When these projects arise, the NJPDES team engages DRBC staff very early in the permit review process. DRBC's involvement at an early stage means that for those WW-3 applications that will proceed under the One Permit Program (rather than under a separate DRBC review), DRBC permit conditions have been identified before the pre-draft or draft permit is shared. Because coordination typically begins well in advance of permit drafting for WW-3 wastewater discharge projects, again, DRBC silence on a pre-draft or draft permit can be understood to mean a Section 3.8 Finding is recommended. See proposed AA, sec. II.I.f. (WW-3 projects). Requiring additional administrative steps would in these instances again be duplicative of previous work without providing significant benefit.

Water allocation projects. NJDEP's water allocation review team does not generate an annual list of projects in the Delaware Basin for which it plans to issue permits. Rather, in accordance with Section III.D. of the 2015 AA and the AA as proposed, the water allocation group notifies the DRBC monthly of any water allocation permit application or request for a pre-application meeting received during the previous month. As a result, coordinated review between the two agencies may not routinely commence for water allocation projects as far in advance of permit drafting as it does for wastewater discharge projects. The parties have not found it appropriate or advantageous to include for water allocation projects the AA provision included for wastewater discharge projects to the effect that DRBC silence on a pre-draft or draft permit should be understood to mean that a Section 3.8 Finding is recommended.

Section 3.8 Finding Procedure for Standard Renewal Discharge Projects

DRN Comment:

- DRN objects to the process for "standard renewal" discharge permits, whereby if DRBC staff offer no comments on a pre-draft or draft NJPDES permit, the Section 3.8 finding is recommended. DRN would prefer that DRBC's recommendation be written and explicit.

DRBC Response:

DRBC acknowledges DRN's preference that DRBC make a written recommendation even regarding projects that involve "standard renewals." DRBC has concluded that a streamlined process for WW-2 standard renewals saves administrative resources and is in the public interest. Because WW-2 standard renewals are projects as to which a Section 3.8 finding has already been made and no change to effluent flow or pollutant loading is proposed (and, for discharges to Special Protection Waters, no Substantial Alterations or Additions are proposed), adding DRBC administrative steps would duplicate earlier steps in the coordinated review without significant benefit. For specific projects, DRBC can make written determinations where it concludes that such additional documentation is warranted or when NJDEP staff who are applying DRBC requirements alert DRBC that additional DRBC action is warranted.

Timing of Referral of an SPW Project to DRBC

DRN Comment:

- "DRBC should receive [SPW] applications from NJDEP after an application is administratively complete, so that DRBC can publish these pending permits earlier, and inform NJDEP as to the criteria an application must meet in order to accomplish technical completeness."

DRBC Response:

In accordance with Section II.1.b. of both the existing AA and the AA as proposed, NJDEP will advise DRBC when an application for a WW-3 wastewater discharge project is received. WW-3 projects include any proposed discharge within the drainage area of DRBC Special Protection Waters ("SPW") that is either new or an existing project involving (a) a proposed increase in 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," as that term is defined at Section 3.10.3.A.2.a.16. of the Commission's *Water Quality Regulations*. The project application will promptly be added to the Commission's OPOP Status

Matrix (described above), an updated version of which is posted and circulated to DRBC listserv subscribers approximately once per month.⁵

D. Impact of Proposed AA Amendments on Communities

DRN Comment:

- DRN sees these as important and substantive issues that will impact communities and the environment because they have involved consequential projects and issues.

DRBC Response:

The Commission agrees that the projects subject to the amended AA are important to the water resources of the Basin and to Basin communities. The Commission has determined that these projects merit review under Section 3.8 of the Compact because they may have “a substantial effect on the water resources of the basin.” *See* Compact, § 3.8; RPP § 401.35. Notably, however, the amended AA does not impose any new requirements on projects. Rather, it provides for ongoing implementation of existing environmental protections, including those provided by NJDEP’s robust storage cavern program, in a streamlined manner. The existing AA and the proposed version both “support the principles of: inter-agency cooperation; avoidance of unnecessary duplication; and program cost efficiencies” by providing that “the NJDEP will issue a single permit that covers all the standards, rules, requirements, terms and conditions” of both the Commission and the NJDEP for projects subject to the AA. *See* existing AA and proposed AA, Whereas cl. 4; § I.C.

E. Issues Not Directly Related to the Proposed AA Amendments

DRN Comment:

- “The term ‘substantially impair’ in the Administrative Agreement, in reference to the DRBC’s Rules of Practice and Procedure (RPP), is too ambiguous.”

DRBC Response:

The term “substantially impair” comes directly from the Commission’s organic statute, the Delaware River Basin Compact, enacted in 1961. Section 3.8 of the statute, which empowers the Commission to review projects and establishes the foundational legal standard for the Commission’s review, provides in relevant part:

The commission shall approve a project whenever it finds and determines that such project would not **substantially impair** or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would **substantially impair** or conflict with such plan.

⁵ The most recent “OPOP Status Matrix” as the table is called, is available at: <https://www.nj.gov/drbc/programs/project/opop-status-page.html>.

Compact, § 3.8 (emphasis added). The Commission's *Rules of Practice and Procedure* ("RPP") establish thresholds by which it can be determined whether a project of a type identified in the RPP has a "substantial effect" on the water resources of the Basin and therefore must be reviewed to determine whether it would substantially impair or conflict with the Comprehensive Plan. See 18 C.F.R. § 401.35(c). Projects that have no substantial effect on the water resources of the Basin do not substantially impair or conflict with the Comprehensive Plan. In addition, the Commission's substantive regulations, all of which are included in the Comprehensive Plan, illustrate the Commission's interpretation of Section 3.8. DRBC has thus, where feasible, used the regulatory process to inform the public of DRBC's interpretation of the statute. Importantly, one well-established mechanism for an administrative agency to interpret the terms of a statute it implements is the adjudication process—the process by which individual applications are reviewed and approvals issued. Because the scenarios under which proposed projects not excluded by the section 401.35(c) thresholds may substantially impair or conflict with the Comprehensive Plan are varied and difficult to anticipate in advance, for over six decades DRBC has used its project-by-project review under Section 3.8 to develop a body of precedent for how it interprets Section 3.8 in general and "substantially impair or conflict" in particular. In the Commission's view, this approach is preferable to attempting to define "substantially impair" in an AA.

EXHIBIT A

DRBC Fourth Quarter 2023 Notices of Public Hearing and Business Meeting (Web Versions)

Friday, October 27, 2023 and

Friday, November 3, 2023

EXHIBIT A1


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Upcoming Commission Meetings

- [Fourth Quarter 2023](#)
- [4Q Public Hearing: November 8, 2023 - 1:30 P.M.](#)
- [4Q Business Meeting: December 6, 2023 - 10:30 A.M.](#)
- [Contacts for Public Hearing & Business Meeting](#)
- [Related DRBC Public Hearing/Business Mtg Info](#)

Fourth Quarter 2023

The Delaware River Basin Commission (DRBC) will hold its **fourth-quarter public hearing on Wednesday, November 8, 2023 at 1:30 p.m.** The public hearing is open to the public and will be held virtually via Zoom Webinar.

The DRBC will hold its **fourth-quarter business meeting on Wednesday, December 6, 2023 at 10:30 a.m.** The business meeting is open to the public and will be held virtually via Zoom Webinar.

4Q Public Hearing: November 8, 2023 - 1:30 P.M.

The 4Q public hearing via Zoom Webinar will take place on Wednesday, November 8, 2023, commencing at 1:30 p.m.

- [Public Hearing Agenda](#) (pdf)

Items to be heard include one resolution and 26 draft dockets for withdrawals, discharges and other projects that could have a substantial effect on the Basin's water resources, all of which are listed below.

The public is advised to check the Commission's web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

To Attend the Public Hearing +/- Provide Oral Testimony:

- [Click here to register for the Zoom Webinar](#). At this link, you are able to register to attend the public hearing and register to provide testimony on matters scheduled for hearing, if desired.
- Watch the livestream on the DRBC's YouTube channel: <http://www.youtube.com/user/delrivbasincomm/>.

Please Note:

- To provide testimony on public hearing items, you must register for the Zoom Webinar & note in your registration that you wish to testify (you cannot provide testimony if watching on YouTube).
- To ensure an opportunity to provide testimony, please register by 5 p.m. on November 7, 2023.
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To Provide Written Comment on the Public Hearing Items:

- Written comment on items scheduled for hearing should be made through the Commission's web-based comment system, SmartComment: <https://dockets.drbc.commentinput.com/>.
- Written comments on matters scheduled for hearing on Wednesday, November 8 will be accepted through 5:00 p.m. on Tuesday, November 14, 2023.
- Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged.

- Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628-0360.

Items to be Heard November 8, 2023

- A Resolution to amend the Administrative Agreement between the DRBC and the New Jersey Department of Environmental Protection
 - [View Draft Resolution](#) (pdf)
 - [View Draft Administrative Agreement with New Jersey](#) (pdf)
 - Draft Dockets (all pdfs)
 - [View Docket Location Map](#) (pdf)
1. [American Nickeloid Company, D-1985-030-4](#). An application to renew the approval of the applicant's existing 0.045 mgd IWTP and its discharge. The IWTP will continue to discharge treated effluent to the Lehigh River at River Mile 183.7 - 45.1 (Delaware River - Lehigh River) within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which is classified as Special Protection Waters, in Walnutport Borough, Northampton County, Pennsylvania.
 2. [Middle Smithfield Township, D-1990-080 CP-5](#). An application to renew the approval of the existing 1.0 mgd Fernwood WWTP. The WWTP will continue to discharge treated effluent to the Bush Kill at River Mile 226.9 - 2.3 (Delaware River - Bush Kill) which is located within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has designated as Special Protection Waters, in Middle Smithfield Township, Monroe County, Pennsylvania.
 3. [Maidencreek Township Authority, D-1991-058 CP-6](#). An application to approve the withdrawals from new wells 6 and 7 and renew a total combined allocation of 23.46 million gallons per month (mgm) of groundwater from new wells 6 and 7 and existing wells 2, 3 and 5 for public water supply. The wells are completed in the Allentown, Epler and Ontelaunee Formations in the Lower Maiden Creek and Willow Creek watersheds in Maidencreek Township, Berks County, Pennsylvania.
 4. [Orwigsburg Borough, D-1992-005 CP-4](#). An application to renew the approval of an existing groundwater withdrawal of up to 11.8 million gallons per month from existing wells 1, 2, 3 and 4 for public water supply. The wells are completed in the Mahantango Formation and are located in the Manhannon Creek Watershed in Orwigsburg Borough, Schuylkill County, Pennsylvania.
 5. [East Vincent Township, D-1993-032 CP-5](#). An application to renew the applicant's existing 0.325 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 43.5 (Delaware River - Schuylkill River), via Outfall No. 001, in East Vincent Township, Chester County, Pennsylvania.
 6. [Viant Collegeville, LLC, D-1993-061-4](#). An application to renew the approval of an existing groundwater withdrawal of up to 3.265 mgm associated with the remediation of groundwater from existing Wells Nos. UTM-1 and UTM-11. The project wells are completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Perkiomen Creek Watershed in Trappe Borough, Montgomery County, Pennsylvania.
 7. [Lower Bucks County Joint Municipal Authority, D-1993-068 CP-4](#). An application to renew the approval of the existing 10 mgd Lower Bucks County Joint Municipal Authority WWTP. No modifications are proposed. The WWTP will continue to discharge treated effluent to Water Quality Zone 2 of the Delaware River at River Mile 122.1, via Outfall No. 001, Located in Bristol Township, Bucks County, Pennsylvania.
 8. [Northside Heights Mobile Home Estates, D-1996-039 CP-4](#). An application to renew the approval of the existing 0.1 mgd Northside Heights Estates WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Lizard Creek at River Mile 183.7 - 39.3 - 7.0 - 0.2 (Delaware River - Lehigh River - Lizard Creek - UNT Lizard Creek), via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW) , in East Penn Township, Carbon County, Pennsylvania.
 9. [Downingtown Area Regional Authority, D-1998-033 CP-5](#). An application to renew the applicant's existing 10.88 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the East Branch Brandywine Creek at River 70.73 - 1.5 - 20.0 - 7.65 (Delaware River - Christina River - Brandywine Creek - East Branch Brandywine Creek) via Outfall No. 001, in East Cain Township, Chester County, Pennsylvania.
 10. [Oley Township Municipal Authority, D-2001-036 CP-3](#). An application to renew the approval of an existing groundwater withdrawal of up to 10.416 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 2, 3 and 4. The project wells are completed in Granitic Gneiss. The requested allocation is not an increase from the previous allocation. Well No. 1 is located in the Furnace Creek Watershed and Wells Nos. 2, 3 and 4 are located in the Manatawny Creek Watershed, which are both in Oley Township, Berks County, Pennsylvania.
 11. [Rivercrest Homeowners Association, D-2001-045 CP-5](#). An application to renew the approval of the applicant's existing 0.112 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to the Schuylkill River at River Mile 92.47 - 36.3 - 0.5 (Delaware River - Schuylkill River - UNT Schuylkill River), via Outfall No. 001, and at Doe Run at River Mile 92.47 - 36.3 - 0.8 (Delaware River - Schuylkill River - Doe Run), via Outfall No. 002, all located in Providence Township, Montgomery County, Pennsylvania.
 12. [Northampton Borough Municipal Authority, D-2004-006 CP-3](#). An application to renew the approval of an allocation of 248.0 million gallons per month of surface water from two existing surface water intakes on the Lehigh River and one existing intake at the Spring Mill Dam for public water supply. The intakes are located in the Lehigh River and Spring Creek Watersheds in Whitehall Township, Lehigh County, Pennsylvania within the drainage area to the Lower Delaware which the Commission has designated as Special Protection Waters.
 13. [Telford Borough Authority, D-2004-010 CP-3](#). An application to renew the approval of an existing groundwater withdrawal of up to 38.6 mgm to supply the applicant's public water supply distribution system from Well Nos. 1, 2, 3, 4, 5, 6 and 7. The project wells are

- the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the East Branch Perkiomen Creek Watershed, in Telford Borough in Bucks and Montgomery County, Pennsylvania and West Rockhill and Hilltown Townships, Bucks County, Pennsylvania.
14. [Bear Creek Mountain Resort and Conference Center, D-2005-016-4](#). An application to renew the approval of the applicant's existing 0.045 mgd WWTP and its discharge. The WWTP will continue to reuse its treated effluent for its snowmaking system (0.035 mgd) and discharge its treated effluent to land via a spray irrigation field. The WWTP and its discharge to land will continue to operate within the drainage area to Schuylkill River, located in Longswamp Township, Berks County, Pennsylvania.
 15. [East Brandywine Township Municipal Authority, D-2007-043 CP-4](#). An application to renew the approval of the applicant's existing 0.055387 mgd Hillendale WWTP and its discharge to land. The WWTP will continue to discharge treated effluent to 4 designated drip areas, located within the drainage area to East Branch Brandywine Creek, located in East Brandywine Township, Chester County, Pennsylvania.
 16. [Bryn Athyn Borough, D-2008-013 CP-6](#). An application to renew the approval of the applicant's existing 0.065 mgd Academy of The New Church WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Huntingdon Valley Creek at River Mile 109.75 - 12.02 - 1.11 - 0.17 (Delaware River - Pennypack Creek - Huntingdon Valley Creek - UNT Huntingdon Valley Creek) via Outfall No. 001, in Bryn Athyn Borough, Montgomery County, Pennsylvania.
 17. [Department of the Navy, D-2010-038 CP-4](#). An application to renew the approval of an existing discharge of treated groundwater from the Department of the Navy, Warminster Groundwater Treatment Plant (GWTP). The existing GWTP will continue to pump and treat an average annual flow of 0.216 mgd of contaminated groundwater from 29 on-site wells for discharge to an unnamed tributary (UNT) of the Little Neshaminy Creek, a tributary of the Neshaminy Creek, at River Mile 115.6 - 23.6 - 3.3 - 1.4 (Delaware River - Neshaminy Creek - Little Neshaminy Creek - UNT), via Outfall No. 002, relocated for federal permitting requirements in Warminster Township, Bucks County, Pennsylvania.
 18. [Hamburg Municipal Authority, D-2012-022 CP-2](#). An application to renew the approval of a combined allocation of 35 million gallons per month of surface water and groundwater from Furnace Creek Reservoir and existing water filtration plant and existing wells HMA-2, HMA-3, HMA-4, HMA-5, HMA-6 and HMA-7 for public water supply. The project wells are located in the Furnace Creek and Schuylkill River Watersheds, in Windsor Township, Berks County, Pennsylvania.
 19. [Pottstown Borough Water Authority, D-2013-022 CP-2](#). An application to renew the approval of the applicant's existing Water Filtration Plant (WFP) and its discharge of up to 0.121 of filter backwash. The WFP will continue to discharge 0.12 mgd of treated filter backwash and process water to the Schuylkill River at River Mile 92.47 - 55.7 (Delaware River - Schuylkill River) and 0.0098 to an unnamed tributary to the Schuylkill River at river mile 92.47 - 56 - 0.19 (Delaware River - Schuylkill River - UNT to Schuylkill River), via Outfall Nos. 001 and 002, respectively. The facility is located in West Pottsgrove Township, Montgomery County, Pennsylvania.
 20. [Tyler Hill Camp, Inc, D-2017-001-2](#). An application to approve the applicant's existing 0.030 mgd WWTP and its discharge. The WWTP will continue to discharge to Laurel Lake, which flows to an unnamed tributary (UNT) of North Branch Calkins Creek at River Mile 295.8 - 0.7 - 4.0 - 1.2 - 0.3 (Delaware River - Calkins Creek - North Branch Calkins Creek - UNT North Branch Calkins Creek - Laurel Lake) located in Damascus Township, Wayne County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.
 21. [Glencrest MHP LLC, D-2017-007-2](#). An application to renew the approval of the applicant's existing 0.035 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Coplay Creek at River Mile 183.7 - 21.1 - 12.6 - 0.47 (Delaware River - Lehigh River - Coplay Creek - UNT to Coplay Creek), via Outfall No. 001, in Washington Township, Lehigh County, Pennsylvania, within the drainage area to the Lower Delaware Special Protection Waters (SPW).
 22. [Lehigh County Authority, D-2017-012 CP-2](#). An application to renew the approval of the applicant's existing 0.035 mgd Sand Spring WWTP, and its discharge. The existing WWTP will continue to discharge treated effluent to an unnamed tributary to Coplay Creek at River Mile 183.7 - 20.8 - 9.8 - 0.1 (Delaware River - Lehigh River - Coplay Creek - UNT to Coplay Creek) via Outfall 002, in the drainage area to the Lower Delaware Special Protection Waters (SPW) Area, in North Whitehall Township, Lehigh County, Pennsylvania.
 23. [Bangor Area School District, D-2018-007 CP-2](#). An application to renew the applicant's existing 0.023 mgd WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Jacoby Creek at River Mile 207.5 - 2.3 - 2.4 (Delaware River - Jacoby Creek - UNT to Jacoby Creek), via Outfall No. 001. The project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters, in Upper Mount Bethel Township, Northampton County, Pennsylvania.
 24. [Philadelphia \(City of\), D-1970-053 CP-2](#). An application to modify the applicant's existing 200 mgd Southwest Water Pollution Control Plant (SWPCP) and increase the facility's hydraulic design capacity. The applicant proposes to expand the capacity of the facility's primary sedimentation tank capacity to reduce combined sewer overflow (CSO) events and increase its peak instantaneous flow from 420 to 460 mgd. The existing SWPCP will continue to discharge treated effluent to Water Quality Zone 4 of the Delaware River at River Mile 91.7, located in the City of Philadelphia, Pennsylvania.
 25. [Hickory Hills MHC, D-1973-079-3](#). An application to approve a modification of the docket holder's existing 0.06 million gallons per day (mgd) WWTP and its discharge. The existing two (2) train, extended aeration activated sludge treatment process will be replaced with a 2-train 0.06 mgd Sequencing Batch Reactor (SBR) system. The WWTP will continue to discharge to an unnamed tributary to East Branch Monocacy Creek at River Mile 183.66 - 11.5 - 10.1 - 6.3 - 0.35 (Delaware River - Lehigh River - Monocacy Creek - East Branch Monocacy Creek - UNT East Branch Monocacy Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters, in Moore Township, Northampton County, Pennsylvania.
 26. [Bangor Borough, D-1988-087 CP-2](#). The purpose of this docket is to approve upgrades and to renew approval of the docket holder's existing 1.6 million gallons per day (mgd) WWTP and its discharge. The purpose of the capital improvement is to upgrade the existing controls to modern standards, no treatment changes are proposed at this time. The docket holder's WWTP will continue to discharge up to 1.6 mgd of treated effluent to Martins Creek at River Mile 183.67 - 9.5 - 9.2 (Delaware River - Lehigh River - Martins Creek), within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which is classified as Special Protection Waters, in Washington Township, Northampton County, Pennsylvania.

The 4Q public business meeting will take place via Zoom Webinar on Wednesday, December 6, 2023, commencing at 10:30 a.m.

- View Business Meeting Agenda (posted ~10 days before business mtg.)

The December 6, 2023, Business Meeting will include the following:

- Adoption of the Minutes of the Commission's September 7, 2023, Business Meeting;
- Announcement of upcoming meetings and events;
- A report on hydrologic conditions;
- Reports by the Executive Director and the Commission's General Counsel; and
- Consideration of any items for which a hearing has been completed or is not required.

The agenda is expected to include consideration of the resolution and draft dockets for withdrawals, discharges and other projects that were subjects of the public hearing on November 8, 2023.

Commission consideration on December 6 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

There will be no opportunity for additional public comment for the record at the December 6 Business Meeting on items for which a hearing was completed on November 8 or a previous date.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

To Attend the Business Meeting +/- Provide Open Public Comment:

- [Register for the Zoom Webinar](#). At this link, you are able to register to attend the business meeting and register to provide open public comment, if desired.
- Watch the livestream on the DRBC's YouTube channel: <http://www.youtube.com/user/delrivbasincomm/>.

Please Note:

- To provide open public comment, you must register for the Zoom Webinar & note in your registration that you wish to provide open public comment (you cannot provide comment if watching on YouTube).
- Registration for open public comment does not guarantee an opportunity to speak during the 1-hour session, based on time limitations and other factors. Those interested in giving public comment should register by 5 p.m., December 5, 2023.
- Comments made during open public comment sessions are not included in any decision-making record. There is no requirement for the Commission to provide for open public comment.
- To ensure a smooth connection, please make sure you are using the most up to date version of Zoom. It is recommended to do this prior to the scheduled business meeting time. For questions related to using the Zoom interface, please visit <https://support.zoom.us/hc/en-us> for Zoom support.
- Use of the Zoom registration interface for both the business meeting webinar and open public comment registration is being provided on a pilot basis and is subject to change. People who register will receive an email confirmation (from Delaware River Basin Commission Meetings <no-reply@zoom.us>) when they register; folks will also receive a reminder email on the day of the business meeting that will include the registration details. Please check your spam if you do not see this email in your in-box.

Contacts for Public Hearing & Business Meeting

For Additional Info & Questions:

- Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting [Amber Munchback](#), 609-477-7240.
- For other questions concerning hearing items, please contact [David Kovach](#), Project Review Section Manager, at 609-477-7264.
- For general questions on how to participate in the public hearing and/or business meeting, or for questions related to the DRBC process, please email contact@drbc.gov.

Accommodations for Special Needs:

- Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609-477-7203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.
- Those with limited internet access may listen and speak at virtual public meetings of the DRBC using any of several toll-free phone

Notice Posted: October 27, 2023

Related DRBC Public Hearing/Business Mtg Info

Email Notification:

- [Sign up to receive email notice when DRBC meeting notice is posted](#)

2023 DRBC Quarterly Meeting Dates:

- [2023 Commission Public Hearing/Business Meeting Dates](#)

Procedures to Participate in DRBC Public Hearings, Business Meetings & Open Public Comment Sessions:

- [Procedures for DRBC Public Hearings](#) (pdf 385 KB)
- [Procedures for DRBC Business Meetings](#) (pdf 361 KB)
- [Procedures for DRBC Open Public Comment Sessions](#) (pdf 386 KB)

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Last Modified: 10/27/2023



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Fourth Quarter 2023

The Delaware River Basin Commission (DRBC) held its **fourth-quarter public hearing on Wednesday, November 8, 2023 at 1:30 p.m.** The public hearing was open to the public and was held virtually via Zoom Webinar.

- Written comments on the 26 draft dockets heard on November 8, 2023, will be accepted through 5 p.m., Tuesday, November 14, 2023.
- Written comments on the draft resolution heard on November 8, 2023, will be accepted through 5 p.m., Monday, November 20, 2023.

The DRBC will hold its **fourth-quarter business meeting on Wednesday, December 6, 2023 at 10:30 a.m.** The business meeting is open to the public and will be held virtually via Zoom Webinar.

4Q Public Hearing: November 8, 2023 - 1:30 P.M.

The 4Q public hearing via Zoom Webinar took place on Wednesday, November 8, 2023, commencing at 1:30 p.m.

- [Public Hearing Agenda](#) (pdf; updated 11/3/23)

Items heard included one resolution and 26 draft dockets for withdrawals, discharges and other projects that could have a substantial effect on the Basin's water resources, all of which are listed below.

Please note: On November 13, 2023, the Commission will hold separate hearings on proposed amendments to its Rules of Practice and Procedure (RPP). For more information on the rulemaking, including how to attend the public hearings and submit written comments, please visit: https://www.nj.gov/drbc/meetings/proposed/notice_RPP_amendments.html.

The public was advised to check the Commission's web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public was also asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

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<https://www.nj.gov/drbc/meetings/upcoming/index.html>

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- Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged.
- Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628-0360.

Items Heard November 8, 2023

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 - [View Draft Administrative Agreement with New Jersey](#) (pdf)
 - [View FAQ](#) (NEW; pdf; posted November 3, 2023)
- Draft Dockets (all pdfs)
 - [View Docket Location Map](#) (pdf)
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- 2. [Middle Smithfield Township, D-1990-080 CP-5](#). An application to renew the approval of the existing 1.0 mgd Fernwood WWTP. The WWTP will continue to discharge treated effluent to the Bush Kill at River Mile 226.9 - 2.3 (Delaware River - Bush Kill) which is located within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has designated as Special Protection Waters, in Middle Smithfield Township, Monroe County, Pennsylvania.
- 3. [Maidencreek Township Authority, D-1991-058 CP-6](#). An application to approve the withdrawals from new wells 6 and 7 and renew a total combined allocation of 23.46 million gallons per month (mgm) of groundwater from new wells 6 and 7 and existing wells 2, 3 and 5 for public water supply. The wells are completed in the Allentown, Epler and Ontelaunee Formations in the Lower Maiden Creek and Willow Creek watersheds in Maidencreek Township, Berks County, Pennsylvania.
- 4. [Orwigsburg Borough, D-1992-005 CP-4](#). An application to renew the approval of an existing groundwater withdrawal of up to 11.8 million gallons per month from existing wells 1, 2, 3 and 4 for public water supply. The wells are completed in the Mahantango Formation and are located in the Manhannon Creek Watershed in Orwigsburg Borough, Schuylkill County, Pennsylvania.
- 5. [East Vincent Township, D-1993-032 CP-5](#). An application to renew the applicant's existing 0.325 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 43.5 (Delaware River - Schuylkill River), via Outfall No. 001, in East Vincent Township, Chester County, Pennsylvania.
- 6. [Viant Collegeville, LLC, D-1993-061-4](#). An application to renew the approval of an existing groundwater withdrawal of up to 3.265 mgm associated with the remediation of groundwater from existing Wells Nos. UTM-1 and UTM-11. The project wells are completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Perkiomen Creek Watershed in Trappe Borough, Montgomery County, Pennsylvania.
- 7. [Lower Bucks County Joint Municipal Authority, D-1993-068 CP-4](#). An application to renew the approval of the existing 10 mgd Lower Bucks County Joint Municipal Authority WWTP. No modifications are proposed. The WWTP will continue to discharge treated effluent to Water Quality Zone 2 of the Delaware River at River Mile 122.1, via Outfall No. 001, Located in Bristol Township, Bucks County, Pennsylvania.
- 8. [Northside Heights Mobile Home Estates, D-1996-039 CP-4](#). An application to renew the approval of the existing 0.1 mgd Northside Heights Estates WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Lizard Creek at River Mile 183.7 - 39.3 - 7.0 - 0.2 (Delaware River - Lehigh River - Lizard Creek - UNT Lizard Creek), via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW) , in East Penn Township, Carbon County, Pennsylvania.
- 9. [Downingtown Area Regional Authority, D-1998-033 CP-5](#). An application to renew the applicant's existing 10.88 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the East Branch Brandywine Creek at River 70.73 - 1.5 - 20.0 - 7.65 (Delaware River - Christina River - Brandywine Creek - East Branch Brandywine Creek) via Outfall No. 001, in East Cain Township, Chester County, Pennsylvania.
- 10. [Oley Township Municipal Authority, D-2001-036 CP-3](#). An application to renew the approval of an existing groundwater withdrawal of up to 10.416 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 2, 3 and 4. The project wells are completed in Granitic Gneiss. The requested allocation is not an increase from the previous allocation. Well No. 1 is located in the Furnace Creek Watershed and Wells Nos. 2, 3 and 4 are located in the Manatawny Creek Watershed, which are both in Oley Township, Berks County, Pennsylvania.

11. [Rivercrest Homeowners Association, D-2001-045 CP-5](#). An application to renew the approval of the applicant's existing 0.112 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to the Schuylkill River at River Mile 92.47 - 36.3 - 0.5 (Delaware River - Schuylkill River - UNT Schuylkill River), via Outfall No. 001, and at Doe Run at River Mile 92.47 - 36.3 - 0.8 (Delaware River - Schuylkill River - Doe Run), via Outfall No. 002, all located in Providence Township, Montgomery County, Pennsylvania.
12. [Northampton Borough Municipal Authority, D-2004-006 CP-3](#). An application to renew the approval of an allocation of 248.0 million gallons per month of surface water from two existing surface water intakes on the Lehigh River and one existing intake at the Spring Mill Dam for public water supply. The intakes are located in the Lehigh River and Spring Creek Watersheds in Whitehall Township, Lehigh County, Pennsylvania within the drainage area to the Lower Delaware which the Commission has designated as Special Protection Waters.
13. [Telford Borough Authority, D-2004-010 CP-3](#). An application to renew the approval of an existing groundwater withdrawal of up to 38.6 mgm to supply the applicant's public water supply distribution system from Well Nos. 1, 2, 3, 4, 5, 6 and 7. The project wells are completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the East Branch Perkiomen Creek Watershed, in Telford Borough in Bucks and Montgomery County, Pennsylvania and West Rockhill and Hilltown Townships, Bucks County, Pennsylvania.
14. [Bear Creek Mountain Resort and Conference Center, D-2005-016-4](#). An application to renew the approval of the applicant's existing 0.045 mgd WWTP and its discharge. The WWTP will continue to reuse its treated effluent for its snowmaking system (0.035 mgd) and discharge its treated effluent to land via a spray irrigation field. The WWTP and its discharge to land will continue to operate within the drainage area to Schuylkill River, located in Longswamp Township, Berks County, Pennsylvania.
15. [East Brandywine Township Municipal Authority, D-2007-043 CP-4](#). An application to renew the approval of the applicant's existing 0.055387 mgd Hillendale WWTP and its discharge to land. The WWTP will continue to discharge treated effluent to 4 designated drip areas, located within the drainage area to East Branch Brandywine Creek, located in East Brandywine Township, Chester County, Pennsylvania.
16. [Bryn Athyn Borough, D-2008-013 CP-6](#). An application to renew the approval of the applicant's existing 0.065 mgd Academy of The New Church WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Huntingdon Valley Creek at River Mile 109.75 - 12.02 - 1.11 - 0.17 (Delaware River - Pennypack Creek - Huntingdon Valley Creek - UNT Huntingdon Valley Creek) via Outfall No. 001, in Bryn Athyn Borough, Montgomery County, Pennsylvania.
17. [Department of the Navy, D-2010-038 CP-4](#). An application to renew the approval of an existing discharge of treated groundwater from the Department of the Navy, Warminster Groundwater Treatment Plant (GWTP). The existing GWTP will continue to pump and treat an average annual flow of 0.216 mgd of contaminated groundwater from 29 on-site wells for discharge to an unnamed tributary (UNT) of the Little Neshaminy Creek, a tributary of the Neshaminy Creek, at River Mile 115.6 - 23.6 - 3.3 - 1.4 (Delaware River - Neshaminy Creek - Little Neshaminy Creek - UNT), via Outfall No. 002, relocated for federal permitting requirements in Warminster Township, Bucks County, Pennsylvania.
18. [Hamburg Municipal Authority, D-2012-022 CP-2](#). An application to renew the approval of a combined allocation of 35 million gallons per month of surface water and groundwater from Furnace Creek Reservoir and existing water filtration plant and existing wells HMA-2, HMA-3, HMA-4, HMA-5, HMA-6 and HMA-7 for public water supply. The project wells are located in the Furnace Creek and Schuylkill River Watersheds, in Windsor Township, Berks County, Pennsylvania.
19. [Pottstown Borough Water Authority, D-2013-022 CP-2](#). An application to renew the approval of the applicant's existing Water Filtration Plant (WFP) and its discharge of up to 0.121 of filter backwash. The WFP will continue to discharge 0.12 mgd of treated filter backwash and process water to the Schuylkill River at River Mile 92.47 - 55.7 (Delaware River - Schuylkill River) and 0.0098 to an unnamed tributary to the Schuylkill River at river mile 92.47 - 56 - 0.19 (Delaware River - Schuylkill River - UNT to Schuylkill River), via Outfall Nos. 001 and 002, respectively. The facility is located in West Pottsgrove Township, Montgomery County, Pennsylvania.
20. [Tyler Hill Camp, Inc, D-2017-001-2](#). An application to approve the applicant's existing 0.030 mgd WWTP and its discharge. The WWTP will continue to discharge to Laurel Lake, which flows to an unnamed tributary (UNT) of North Branch Calkins Creek at River Mile 295.8 - 0.7 - 4.0 - 1.2 - 0.3 (Delaware River - Calkins Creek - North Branch Calkins Creek - UNT North Branch Calkins Creek - Laurel Lake) located in Damascus Township, Wayne County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.
21. [Glencrest MHP LLC, D-2017-007-2](#). An application to renew the approval of the applicant's existing 0.035 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Coplay Creek at River Mile 183.7 - 21.1 - 12.6 - 0.47 (Delaware River - Lehigh River - Coplay Creek - UNT to Coplay Creek), via Outfall No. 001, in Washington Township, Lehigh County, Pennsylvania, within the drainage area to the Lower Delaware Special Protection Waters (SPW).
22. [Lehigh County Authority, D-2017-012 CP-2](#). An application to renew the approval of the applicant's existing 0.035 mgd Sand Spring WWTP, and its discharge. The existing WWTP will continue to discharge treated effluent to an unnamed tributary to Coplay Creek at River Mile 183.7 - 20.8 - 9.8 - 0.1 (Delaware River - Lehigh River - Coplay Creek - UNT to Coplay Creek) via Outfall 002, in the drainage area to the Lower Delaware Special Protection Waters (SPW) Area, in North Whitehall Township, Lehigh County, Pennsylvania.
23. [Bangor Area School District, D-2018-007 CP-2](#). An application to renew the applicant's existing 0.023 mgd WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) to Jacoby Creek at River Mile 207.5 - 2.3 - 2.4 (Delaware River - Jacoby Creek - UNT to Jacoby Creek), via Outfall No. 001. The project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters, in Upper Mount Bethel Township, Northampton County, Pennsylvania.
24. [Philadelphia \(City of\), D-1970-053 CP-2](#). An application to upgrade to the docket holder's existing Southwest Water Pollution Control Plant and to renew approval of its existing discharge. The proposed upgrade consists of installing a primary sedimentation tank (PST) and upgrading the appurtenant PST facilities to provide redundancy for maintenance. The existing SWPCP will continue to discharge

treated effluent to Water Quality Zone 4 of the Delaware River at River Mile 91.7, located in the City of Philadelphia, Pennsylvania.

25. [Hickory Hills MHC, D-1973-079-3](#). An application to approve a modification of the docket holder's existing 0.06 million gallons per day (mgd) WWTP and its discharge. The existing two (2) train, extended aeration activated sludge treatment process will be replaced with a 2-train 0.06 mgd Sequencing Batch Reactor (SBR) system. The WWTP will continue to discharge to an unnamed tributary to East Branch Monocacy Creek at River Mile 183.66 - 11.5 - 10.1 - 6.3 - 0.35 (Delaware River - Lehigh River - Monocacy Creek - East Branch Monocacy Creek - UNT East Branch Monocacy Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters, in Moore Township, Northampton County, Pennsylvania.
26. [Bangor Borough, D-1988-087 CP-2](#). The purpose of this docket is to approve upgrades and to renew approval of the docket holder's existing 1.6 million gallons per day (mgd) WWTP and its discharge. The purpose of the capital improvement is to upgrade the existing controls to modern standards, no treatment changes are proposed at this time. The docket holder's WWTP will continue to discharge up to 1.6 mgd of treated effluent to Martins Creek at River Mile 183.67 - 9.5 - 9.2 (Delaware River - Lehigh River - Martins Creek), within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which is classified as Special Protection Waters, in Washington Township, Northampton County, Pennsylvania.

4Q Business Meeting: December 6, 2023 - 10:30 A.M.

The 4Q public business meeting will take place via Zoom Webinar on Wednesday, December 6, 2023, commencing at 10:30 a.m.

- View Business Meeting Agenda (posted ~10 days before business mtg.)

The December 6, 2023, Business Meeting will include the following:

- Adoption of the Minutes of the Commission's September 7, 2023, Business Meeting;
- Announcement of upcoming meetings and events;
- A report on hydrologic conditions;
- Reports by the Executive Director and the Commission's General Counsel; and
- Consideration of any items for which a hearing has been completed or is not required.

The agenda is expected to include consideration of the resolution and draft dockets for withdrawals, discharges and other projects that were subjects of the public hearing on November 8, 2023.

Commission consideration on December 6 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

There will be no opportunity for additional public comment for the record at the December 6 Business Meeting on items for which a hearing was completed on November 8 or a previous date.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

To Attend the Business Meeting +/- Provide Open Public Comment:

- [Register for the Zoom Webinar](#). At this link, you are able to register to attend the business meeting and register to provide open public comment, if desired.
- Watch the livestream on the DRBC's YouTube channel: <http://www.youtube.com/user/delrivbasincomm/>.

Please Note:

- To provide open public comment, you must register for the Zoom Webinar & note in your registration that you wish to provide open public comment (you cannot provide comment if watching on YouTube).
- Registration for open public comment does not guarantee an opportunity to speak during the 1-hour session, based on time limitations and other factors. Those interested in giving public comment should register by 5 p.m., December 5, 2023.
- Comments made during open public comment sessions are not included in any decision-making record. There is no requirement for the Commission to provide for open public comment.
- To ensure a smooth connection, please make sure you are using the most up to date version of Zoom. It is recommended to do this prior to the scheduled business meeting time. For questions related to using the Zoom interface, please visit <https://support.zoom.us/hc/en-us> for Zoom support.
- Use of the Zoom registration interface for both the business meeting webinar and open public comment registration is being provided on a pilot basis and is subject to change. People who register will receive an email confirmation (from Delaware River Basin Commission Meetings <no-reply@zoom.us>) when they register; folks will also receive a reminder email on the day of the business meeting that will include the registration details. Please check your spam if you do not see this email in your in-box.

Contacts for Public Hearing & Business Meeting

For Additional Info & Questions:

- Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting [Amber Munchback](#), 609-477-7240.
- For other questions concerning hearing items, please contact [David Kovach](#), Project Review Section Manager, at 609-477-7264.
- For general questions on how to participate in the public hearing and/or business meeting, or for questions related to the DRBC process, please email contact@drbc.gov.

Accommodations for Special Needs:

- Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609-477-7203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.
- Those with limited internet access may listen and speak at virtual public meetings of the DRBC using any of several toll-free phone numbers that will be provided to all virtual meeting registrants.

Notice Posted: October 27, 2023

Related DRBC Public Hearing/Business Mtg Info

Email Notification:

- [Sign up to receive email notice when DRBC meeting notice is posted](#)

2023 DRBC Quarterly Meeting Dates:

- [2023 Commission Public Hearing/Business Meeting Dates](#)

Procedures to Participate in DRBC Public Hearings, Business Meetings & Open Public Comment Sessions:

- [Procedures for DRBC Public Hearings](#) (pdf 385 KB)
- [Procedures for DRBC Business Meetings](#) (pdf 361 KB)
- [Procedures for DRBC Open Public Comment Sessions](#) (pdf 386 KB)

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Last Modified: 11/08/2023

EXHIBIT B

Proposed **Resolution authorizing the Executive Director to amend the Commission's administrative agreement with the New Jersey Department of Environmental Protection (NJDEP)**

and

**PDF in Track Changes Showing Proposed Amendments to the Commission's
March 2015 Administrative Agreement with the NJDEP**

as published for public comment on October 27, 2023

NO. 2023 –

A RESOLUTION authorizing the Executive Director to amend the Commission's administrative agreement with the New Jersey Department of Environmental Protection (NJDEP).

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, the Commission's *Rules of Practice and Procedure*, at 18 C.F.R. § 401.33, 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 in order: (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; and (c) for such other and different purposes as the Executive Director may deem feasible and advantageous for the administration of the *Compact* or any other law;

WHEREAS, the Commission's *Rules of Practice and Procedure*, at 18 C.F.R. § 401.42, establishes a One Permit Program to provide the opportunity for an environmental agency of a Signatory Party and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects;

WHEREAS, in accordance with 18 C.F.R. §§ 401.33 and 401.42, the Commission and NJDEP are party to an AA dated March 2015, under which the One Permit Program is implemented for certain wastewater discharge and water allocation projects located in the New Jersey portion of the Basin;

WHEREAS, staff of the Commission and the NJDEP have jointly drafted revisions that would amend the existing AA by: (i) including within the categories of projects managed under the Commission's One Permit Program underground storage caverns as contemplated by NJDEP's regulations codified at Title 7, Chapter 1F of the *New Jersey Administrative Code*; (ii) removing provisions that are no longer necessary or applicable concerning the transition to the One Permit Program; and (iii) updating certain citations, language and procedures to align with recent regulatory changes and with current terminology and practice, and to eliminate redundancy;

WHEREAS, the Draft AA was the subject of a duly noticed public hearing conducted by the Commission on November 8, 2023; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is authorized and directed to execute an administrative agreement with NJDEP that in all material respects conforms to the Draft AA duly noticed for hearing on November 8, 2023, except where changes within the parameters established by 18 C.F.R. § 401.42 are deemed appropriate and are a logical outgrowth of the published draft.
2. The effective date of the amended administrative agreement shall be the later of its execution date or such other mutually convenient date as may be set forth in the agreement.

BY THE COMMISSION

Adopted:



Administrative Agreement

**Between the
Delaware River Basin Commission
and the
New Jersey Department of Environmental
Protection**

March 2015 [Insert Date of Execution of Amended Agreement]

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

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DRAFT

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 ("RPP"), 18 C.F.R. 401.33, 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), and April 14, 2015. ~~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. ~~Wastewater discharges-withdrawals~~
 - b. Wastewater allocationsdischarges
 - b.c. Underground storage caverns
2. This Agreement will implement applicable sections of the Compact with respect to the review of wastewater discharge, water ~~withdrawal~~allocation, ~~and wastewater discharge,~~ and underground storage cavern projects. With the exception of the limited instances described in Sections II.E., III.E., IV., VI.E. and VII. below, a final action of the NJDEP

under this Agreement will also constitute an action on behalf of the Commission under ~~either or both of Sections 3.8 and, 10.3 and/or 5.2 of the Compact, for those requirements that are subject to Commission review.~~

3. Section VII of this Agreement identifies certain instances in which separate action by the DRBC is required in connection with projects covered by this Agreement.

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 allocation, or~~ discharge, or underground storage cavern 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 ~~withdrawal allocations, or the state's Underground Storage Cavern program for underground storage caverns.~~ It should be noted that one process and one permit ~~will~~ may not cover all activities and applications related to projects involving ~~withdrawal allocations, and~~ discharges, and underground storage caverns.

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 such consultation and training as the Parties deem useful; ~~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 further agree to work cooperatively, as technology is available and allows, to provide the DRBC with reasonable access to data for water ~~withdrawal allocations, and~~ wastewater discharges, and underground storage caverns 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~~ appropriate, 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 which includes the Commission's~~ 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~~

~~3. a. For wastewater discharge permit applications submitted to the 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., VI. and VII.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 within the New Jersey portion of the Delaware River Basin will be divided into three categories:

1. **Category WW-1: 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 WW-2: 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 WW-3: Other Wastewater Discharge Projects.** Includes all ~~“Other Wwastewater Ddischarge Pprojects,”~~ 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 WW-1: No DRBC Review Required.** Under the Compact and DRBC regulations, the following wastewater discharge projects are not subject to DRBC review by the Commission, except by direction of the Commission pursuant to in accordance with either Section 2.3.5 B.17. (determination by the Executive Director) or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) or (c)) (request a Commission member agency) of the Rules of Practice and Procedure (RPP). (See Section IV of this Agreement for additional categories of projects other than wastewater discharge projects that are not generally 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 interstate waters the Commission has designated as Special Protection Waters (“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. *[Editor’s note: Paragraphs 4 and 5 are deleted because the described categories fall within II.E.3., which closely tracks language in DRBC’s regulations at 18 CFR §§ 401.35(a)(4) & (5).]* ~~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.~~

~~6.4.~~ 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 (18 C.F.R. 401.35(a)(19))~~ and to have no substantial effect on water resources of the basin.)

F. **Category WW-2: Standard Renewals – Definition.** For the purposes of this Agreement, “Standard Renewals” ~~are~~ wastewater discharge projects are projects for which:

1. ~~a NJPDES permit and~~ a Commission docket ~~are~~ is 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 (“~~Section 3.8 Finding~~”) ~~and regulations relating to wastewater and stream quality objectives~~; and for which, *[Editor’s note: DRBC’s regulations relating to wastewater and stream quality objectives are part of the Comprehensive Plan.]*
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 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 Commission’s Water Quality Regulations (“WQR”) (excerpt attached hereto for reference, as Appendix B).

G. **Category WW-2: Standard Renewals – “One Process” Responsibilities**

1. For each “Standard Renewals” wastewater discharge project, NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permits.
 - b. include in each the 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 wastewater discharge project conforms to the Commission’s Comprehensive Plan.

- c. include ~~a—the Section 3.8 fFinding, based upon consistent with 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 and draft permit and give DRBC 30 days to provide input on each.
 - e. The Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a renewal of the previous Section 3.8 Finding is recommended, ~~finding that the project does not substantially impair or conflict with the Commission’s Comprehensive Plan is implied and the permit issuance process for simple renewals will proceed.~~
 - e.f. 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 docket 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” wastewater discharge projects DRBC will:
- a. within 30 days of receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with written comments, including any recommendations for additional requirements or clarifications necessary or appropriate to support a—the Section 3.8 fFinding included in the previous docket or permit, ~~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 ~~Section 3.8 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 WW-3: “Other Wastewater Discharge Projects” – 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 project.* A new wastewater discharge projects for which no DRBC docket or NJDEP permit exists at the time of application.
- 2. *Existing project but no Section 3.8 Finding.* An existing wastewater discharge projects that ~~are is~~ subject to the review of both Parties but ~~that lack either for which no Section 3.8 Finding has been made, whether in that lack either~~ a NJPDES permit or a DRBC docket.
- 3. *Change to existing effluent flow or pollutant load of a discharge in tidal area.* A projects involving a 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. *Change to existing project in SPW drainage area.* A projects ~~involving new wastewater discharges to surface or ground waters located~~ within the drainage area of ~~waters designated by the Commission as DRBC SPW, where either:~~ involving (a) a ~~proposed n~~ 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 excerpt~~ attached hereto for reference, as Appendix B).

I. Category WW-3: “Other” Wastewater Discharge Projects – “One Process” Responsibilities

1. For each “Other Wastewater Discharge Projects,” NJDEP will:
 - a. act as the lead permitting agency and prepare ~~all~~ draft and final permits.
 - b. advise DRBC when a NJPDES application or request for a pre-application meeting for a wastewater discharge project ~~within the New Jersey portion of the Delaware River Basin of the types listed in Section II.H. is received.~~
 - c. include in ~~each the~~ 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~~ wastewater discharge project conforms to the Commission’s Comprehensive Plan.
 - d. include a Section 3.8 f Finding, ~~based upon consistent with~~ 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.~~
 - e. provide ~~the Commission DRBC~~ with copies of the sufficient time for input to the “pre-draft” and “draft” permits with sufficient time to provide input on each. In general:
 - i. unless the program staff mutually agree otherwise, “sufficient time” will include means 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. The Parties agree that after sufficient time as defined above has passed, if the DRBC staff has provided no written comments and has not asked for more time, then a Section 3.8 Finding is recommended and the permit issuance process will proceed.
 - g. establish monitoring requirements for whole effluent toxicity (“WET”). *[Editor’s note: This was inadvertently omitted from the previous AA.]*
 - f.h. make available and maintain a report on the NJDEP DataMiner website (<https://njems.nj.gov/DataMiner>) that lists Treatment Works Approval (“TWA”) applications received for the construction or modification of a water or wastewater

~~treatment facility. 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 II.I.2.c. 1.2.a. below regarding identification of such facilities). Upon a request by DRBC, The~~ TWA program staff will provide also copy the DRBC Project Review Manager with a copy of on the application completeness letter for any such application when issued. The primary TWA program contact for purposes of this Agreement will be the Assistant Director, Municipal Finance and Construction Element.

~~g.i.~~ g.i. continue to collect all NJDEP permit and review fees required under applicable rules and regulations.

~~g.j. Advise~~ g.j. 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~~ Such instances include ~~ing~~ but are not limited to those listed in Appendix C.

2. For each "Other Wastewater Discharge Projects" DRBC will:

[Editor's note: Sequence of a.-f. has been modified as noted. Changes to content are shown in redline.]

~~ba. within the time period specified in Section II.I.1.e. above, after receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with written comments, including any recommendations for additional requirements or clarifications necessary or appropriate to support a Section 3.8 Finding. 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.~~

~~db. provide technical assistance when NJDEP staff requests it, subject to resource constraints.~~

~~ac. provide the TWA program contact identified in Section I.I.f. above with a list of existing wastewater treatment plants within the New Jersey portion of 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.~~

~~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.~~

~~43. In all instances where the transition has been made to The One Process/One Permit Program will be used for new, major modification, and renewal applications submitted to NJDEP, and 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. In any instance where the Commission determines that a new, major modification, or renewal application submitted to NJDEP requires an amendment to the Commission's Comprehensive Plan, the Commission reserves its authority to make such amendment in accordance with Section 13.1 of the Comprehensive Plan and Article 1 of the RPP (18 CFR Part 401, Subpart A).~~

C. Project Categories. Water ~~withdrawal-allocation~~ projects within the New Jersey portion of the Delaware River Basin will be divided into three (3)-categories:

1. **Category WA-1: No DRBC Review Required.** Water ~~Withdrawal-allocation~~ 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-allocation~~ 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 Allocation~~ 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 may reasonably assist DRBC in determining whether the project is reviewable and into which category the project falls~~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-allocation~~ projects are not subject to DRBC ~~DRBC~~ review, except by direction of the Commission in accordance with either Section 2.3.5 B.17. ~~(determination by the Executive Director)~~ or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) and 18 C.F.R. 401.35(c), respectively)~~of DRBC's Rules of Practice and Procedure (RPP)~~. (See Section IV of this Agreement for additional categories of projects that are generally not subject to the Commission's review.)

1. A water ~~withdrawal-allocation~~ from groundwater or from an impoundments or running streams for any purpose when the daily average gross ~~withdrawal-allocation~~ 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.~~ *[Editor's note: Moved E.3 (Withdrawals for agricultural use) to § IV, Projects Generally Not Subject to Commission Review.]*
- ~~4.3.~~ 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 (18 C.F.R. 401.35(a)(19))~~ and to have no substantial effect on water resources of the basin.)
- ~~5.4.~~ 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**

1. For the purposes of this Agreement, "Notification" water allocation projects are existing water ~~withdrawal-allocation~~ projects as described in Section III.F.2. 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 ~~such~~ these

~~existing a-projects~~ because, by definition, ~~such-they consist of~~ renewals or extensions involving no changes that would likely affect the Commission's ~~earlier-and existingprevious~~ determination that the project would not substantially impair or conflict with the ~~Comprehensive Plan~~ Section 3.8 Finding.

2. These projects include water allocation permit renewals under N.J.A.C. 7:19-2.4 where (a) a Commission docket for the allocation is in effect at the time the renewal application is made or (b) the most recent NJDEP water allocation permit issued for the withdrawal allocation includes a Section 3.8 Finding pursuant to this or a successor Agreement, and the renewals:

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. ~~_____ i. water allocation permit renewals involving no change in the approved monthly and annual withdrawal allocation amounts; or~~

4. ~~_____ ii. are extensions of NJDEP water allocation permits.~~

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

1. For “Notification” water allocation 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 extension or renewal ~~issued for a project within the Delaware River Basin~~ all requirements necessary to ensure that ~~with respect to water withdrawal~~ the water allocation project ~~conforms to the~~ does not

substantially impair or conflict with the Commission's Comprehensive Plan, including but not limited to:

- for surface water ~~withdrawal~~ allocation projects, a provision that DRBC's Water Charges Regulations apply; and
 - for public water supply ~~withdrawals~~ allocations, a provision that DRBC's water auditing requirements (at Section 2.1.8 of the Water Code) apply.
- d. include (or continue to include) a Section 3.8 ~~f~~Finding in each NJDEP ~~that with respect to water withdrawal, the water allocation permit extension or renewal project does not substantially impair or conflict with the Commission's Comprehensive Plan.~~
- e. provide DRBC with each final permit when issued.
2. For "Notification" water allocation 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" water allocation projects are water ~~withdrawal allocation~~ projects ~~located within the Delaware River Basin~~ that do not fall within the categories defined in Sections III.E. and F. ("No DRBC Review Required" projects not subject to Commission review and "Notification" projects, respectively) ~~and III.F. G. ("Notification" projects) above.~~ These include but are not limited to:

1. New water allocation project. A new water ~~withdrawal~~ allocation projects for which no DRBC docket or NJDEP permit exists at the time of application;
2. New or modified importation or exportation project. A new projects ~~that involve involving a~~ diversions into or out of the basin (including to or from Delaware Bay) that ~~are~~ is subject to DRBC review, and any change to such a project as previously approved by DRBC, each in accordance with Section 2.30 (Importations and Exportations of Water, Including Wastewater) of the Commission's Water Code and Section 2.3.5 A.16, 17, or 18 of the RPP (18 C.F.R. 401.35(a)(16), (17), or (18)); *[Editor's note: As revised, this paragraph incorporates former H.5.]*

3. ~~Existing project but no Section 3.8 Finding. A renewals and-or modifications of an existing water withdrawal-allocation projects that is are-subject to the review of the DRBC-both Parties but for which that have never received a DRBC docket no Section 3.8 Finding has been made, whether in an NJDEP permit or a DRBC docket; and~~
4. ~~Major modification, as defined by NJDEP. A major modifications, to-of an existing projects, as defined at N.J.A.C. 7:19-1.5(a), including but not limited to any project that involves an allocation withdrawal of water -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” water allocation 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, and promptly provide thereafter any corresponding pre-draft permit requested by the Commission after its review of such list.
 - 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 water allocation project conforms to the Commission’s Comprehensive Plan.
 - d. include a Section 3.8 Finding, consistent with DRBC’s recommendation 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. Unless the program staff mutually agree otherwise, in general, “sufficient time” will consist of means 30 days for review of a pre-draft or 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” water allocation projects, DRBC will:
 - a. within 30 days of receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a ~~Section 3.8 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. if it so determines, 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 water allocation 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 Comprehensive Plan as appropriate. Once the Commission has added a project to the Comprehensive Plan, the Commission and NJDEP will use the state’s water allocation permit as the single permit for all conditions necessary to ensure that the water ~~withdrawals-allocation~~ does not substantially impair or conflict with the Comprehensive Plan.
 - d. if it deems necessary after review of projects described in Sections III.H.2 and III.H.4 above, undertake the process, including a public hearing and Commission action, for an amendment of the Comprehensive Plan.
 - e. provide technical assistance when NJDEP staff requests it.
 - f. 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.
 - eg. 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 Generally Not Subject Considered to Commission Review Wastewater Discharges or Water Withdrawals Within the Scope of this Agreement

~~For the following categories or aspects of projects, t~~The Commission conducts no review of the following categories or aspects of projects 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 ~~17 or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) or (c)) 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.~~Allocations for agricultural use in the state of New Jersey.

V. Review of Underground Storage Cavern Projects

A. Scope. This Section concerns underground storage caverns within the Delaware River Basin that require a construction or operating permit pursuant to N.J.S.A. 58:10-35 et seq. and the implementing rules at N.J.A.C. 7:1F-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 appropriate, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's underground storage cavern construction and/or operating permits, as applicable, as the permit(s) for all conditions necessary to ensure that underground storage caverns do not substantially impair or conflict with the Commission's Comprehensive Plan, including the Water Quality Regulations, pursuant to 18 C.F.R. 401.42 (DRBC's One Permit Program). The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific project and the activities proposed, the project applicant may interact with both the DRBC and the NJDEP to obtain review and approval of a single project. Notably, projects of this type also may require multiple permits from the NJDEP.

C. Project Categories. Underground storage cavern projects within the New Jersey portion of the Delaware River Basin will be divided into two (2) categories:

1. **Category UC-1: Notification.** Underground storage cavern projects that are subject to the Compact or Commission regulations and that meet the criteria set forth in Section V.E. below; and

2. **Category UC-2: Notification and Review.** All “Other Underground Storage Cavern Projects” as defined in Section V.G. below.

D. Notice of Applications, Approvals, and Decommissionings.

1. NJDEP permit applications.

a. Notice of applications. Within 14 days of the end of any month in which NJDEP has determined that an application for an underground storage cavern project within the Delaware River Basin is administratively complete, NJDEP will provide to DRBC for each such application:

- name of the applicant
- name of the project sponsor if different from applicant
- substance to be stored
- name of the facility;
- purpose of the facility
- capacity of the proposed storage cavern
- location of the proposed storage cavern
- any other information that may reasonably assist DRBC in determining whether the project is reviewable by DRBC and whether it falls within either Category UC-1 or UC-2.

b. Within 14 days of execution of this Agreement, NJDEP will provide the information listed in Section V.D.1.a. (immediately above) for any administratively complete application that is pending upon the date of execution of this Agreement.

2. Notice of NJDEP permit approvals, transfers and decommissionings. Within 90 days of the close of each calendar year, NJDEP will provide to DRBC a list of all permit approvals issued by NJDEP under *N.J.A.C. 7:1F-4.2(g)(1)* (construction), *7:1F-4.2(j)(2)* (operation), *7:1F-4.6* (renewal), and *7:1F-4.8(d)* (transfer), and decommissionings of storage cavern systems noticed to NJDEP under *N.J.A.C. 7:1F-6.1(b)*.

E. Category UC-1: Notification – Definition

1. For the purposes of Section V of this Agreement, “Notification” projects are existing underground storage cavern projects as described in Section V.E.2. below. For such projects, NJDEP will provide notification to DRBC in accordance with Section V.D.1. above. However, there is a presumption that DRBC will not comment on these projects because, by definition, they consist of renewals or extensions involving no changes that would likely affect the Commission’s previous Section 3.8 Finding.
2. A “Notification” underground storage cavern project is an underground storage cavern permit extension under N.J.A.C. 7:1F-4.5(b) or renewal under N.J.A.C. 7:1F-4.1(b) (caverns in operation as of May 1, 2023) or 7:1F-4.6 (all other caverns within the Delaware River Basin approved by NJDEP pursuant to N.J.A.C. 7:1F) where either: (a) a Commission docket for the underground storage cavern is in effect at the time the renewal application is made; or (b) the most recent NJDEP permit or renewal issued for the underground storage cavern includes the Section 3.8 Finding, and in either case, the renewal involves no major modification to the design, stored substance(s), or operation of the project.

F. Category UC-1: Notification – “One Process” Responsibilities

1. For each “Notification” project, NJDEP will:
 - a. act as the lead permitting agency and prepare all draft and final permit extensions and renewals.
 - b. within the time period stated in Section V.D.1. above, provide the Commission with the information described in that section.
 - c. include in each NJDEP underground storage cavern permit extension or renewal all requirements necessary to ensure that the project does not substantially impair or conflict with the Commission’s Comprehensive Plan, including but not limited to:
 - a provision that the underground storage cavern shall be available at all times for inspection by the NJDEP and the Commission; and
 - a provision that the underground storage cavern shall be operated at all times to comply with the provisions of the Commission’s WQR relating to ground water.
 - d. include (or continue to include) the Section 3.8 Finding.
2. For “Notification” projects, the DRBC will:

- a. review the information provided by the NJDEP in accordance with Section V.D.1. above, and identify any projects that require DRBC review, including as the result of changes made to the Comprehensive Plan since the previous determination that the project would not substantially impair or conflict with the Comprehensive Plan.
- 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.

G. Category UC-2: Notification and Review – Definition. For the purposes of this agreement, a “Notification and Review” project is an underground storage cavern project other than that defined in Section V.E. above. These include but are not limited to:

1. New underground storage cavern project. A new underground storage cavern project for which no DRBC docket or NJDEP permit exists at the time of application;
2. Existing underground storage cavern project, but no Section 3.8 Finding. A renewal or modification of an existing underground storage cavern project that is subject to the review of both Parties but for which no Section 3.8 Finding has been made, whether in an NJDEP permit or a DRBC docket; and
3. Major modification, as defined by NJDEP. A major modification of an existing underground storage cavern project, as defined at *N.J.A.C. 7:1F-1.6*.

H. Category UC-2: Notification and Review – “One Process” Responsibilities

1. For “Notification and Review” underground storage cavern 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 V.D.1. above.
 - c. include in each NJDEP underground storage cavern permit all requirements necessary to ensure that the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
 - d. include in the NJDEP permit underground storage cavern permit a Section 3.8 Finding, consistent with DRBC’s recommendation.
 - e. provide the Commission with a copy of the pre-draft and draft permit with sufficient time for input. In general, unless the program staff mutually agree otherwise, “sufficient time” means 30 days.

- 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” underground storage cavern projects, DRBC will:
- a. within the time period specified in V.H.1.e. above after receipt of a pre-draft permit from NJDEP, provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a Section 3.8 Finding.
 - b. if it so determines, provide a written recommendation that, subject to the conditions as set forth in the preceding paragraph, the underground storage cavern 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, and undertake the process, including a public hearing and Commission action, for incorporation of projects into the Comprehensive Plan as appropriate.
3. Once the NJDEP has issued a permit or permits for a UC-2 project, and unless pursuant to Section VII.C. of this Agreement, separate review of a subsequent modification of the project by the Commission is undertaken, the Commission and NJDEP will use the state’s underground storage cavern program permit(s) for all conditions necessary to ensure that the project does not substantially impair or conflict with the Comprehensive Plan.

VI. 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 at~~ 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.GH. (“~~Standard Renewals~~ Other Wastewater Discharge Projects”) 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 a~~ 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 Section 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.

VII. 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.~~
- A. In connection with any project covered by this Agreement, the Commission shall, as it deems necessary, by docket, resolution, or other instrument, undertake the process, including a public hearing and Commission action, for amendment of the Comprehensive Plan.
- B. Water ~~withdrawals~~ allocations 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.

VIII. 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 wastewater discharges, and water withdrawals, allocations, and underground storage caverns 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, impose administrative penalties, or pursue civil penalties against upon any entity which the Commission determines to be in violation of the Compact or any rule, regulation or order of the Commission duly made 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 ~~T~~total M~~maximum D~~daily L~~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.

A proposed extension to an existing water distribution or wastewater collection system involving a water allocation or wastewater discharge subject to Commission review is eligible

for review under this Agreement in accordance with the procedure set forth in Section II or Section III above, as appropriate; provided, however, that t~~The Commission will not must separately review applications for extensions to existing water distribution and wastewater collection systems not involving service area changes, when the extension involves an inter-basin transfer of water or wastewater in accordance with 18 C.F.R. 401.35(a)(16)-(18), traverses a reservoir or recreation project area included in the Commission’s Comprehensive Plan in accordance with 18 C.F.R. 401.35(a)(12)), or otherwise requires a modification of the Comprehensive Plan.~~

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 Regulatory Program Fees. ~~Unless and until the Commission adopts a new fee schedule, a~~Any project subject to this Agreement ~~in project categories WW_2, 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> at 18 C.F.R. § 401.43, and as that section may periodically be amended. In particular, see 18 CFR 401.43(b)(1)(iii)(A) (waiver of DRBC application fee for certain applications where a DRBC signatory party serves as lead under the One Permit Program) and (b)(2) (DRBC annual monitoring and coordination fee applicable to active water allocation and wastewater discharge approvals).~~ NJDEP fees ~~likewise remain are~~ 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~~Project Review 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 draft 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 a~~All aspects of this Agreement that ~~are within the scope of state law~~pertain to New Jersey's authority or its state-administered programs; shall be governed in all respects by the laws of the State of New Jersey. All aspects of this Agreement that pertain to the DRBC's authority or to Commission-administered programs shall be governed in all respects by the Compact and any other applicable federal law.
- I. Entire Agreement. The Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all prior agreements between DRBC and the NJ DEP and 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

Shawn M. LaTourette, Commissioner
New Jersey Department of Environmental
Protection

Date _____

Date _____

DRAFT

APPENDIX A – Wastewater Program - Specific Implementation Procedures

Technical Topic	Implementation Agreement
<p>Substantial Alterations or Additions (SPW only)</p>	<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 <u>Comprehensive Plan</u> 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 <u>CBOD20</u>, 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
	<p>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.</p>
Total Dissolved Solids	<p>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.</p>
CBOD20	<p>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.</p>
Color	<p>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.</p>
Temperature	<p>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 Mereer, 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 docket in accordance with the Compact and DRBC regulations.)</p>

Technical Topic	Implementation Agreement
	<p>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.</p>
Whole Effluent Toxicity (WET)	<p>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.</p>
Toxic Limits	<p>NJDEP will assign limits for toxics criteria in accordance with Commission’s Water Quality Regulations and EPA TSD guidance and applicable state regulations.</p>

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~~ Covered by this Administrative Agreement

Consolidated School General Permit (ASC)

Consolidated Potable Water Treatment Plant (BPW)

General Groundwater Remediation Clean-up (BGR)

{TO BE DEVELOPED}

DRAFT

EXHIBIT C

Frequently Asked Questions (“FAQ”) Document

Published Friday, November 3, 2023

FREQUENTLY ASKED QUESTIONS**Draft 2023 Amendments to the Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection****1. What is the driver for the proposed amendments to the Commission’s 2015 administrative agreement with the New Jersey Department of Environmental Protection (NJDEP)?**

The Commission’s primary purpose in amending its 2015 Administrative Agreement (“AA”) with the NJDEP is to add certain underground storage cavern projects to the classes of projects that may be reviewed in accordance with the DRBC’s One Permit Program, regulations for which are set forth at Section 2.3.11 of the Commission’s *Rules of Practice and Procedure* (RPP), [18 CFR 401.42](#).

On April 6, 2023, the NJDEP issued a final rule governing the “construction, operation, modification, and decommissioning of underground storage cavern systems used for the underground storage of any natural or artificial gas, or any petroleum product or derivative of any petroleum product, excluding liquefied natural gas.” [55 N.J.R. 905\(a\)](#) (May 1, 2023). These comprehensive regulations, designed to prevent “the pollution, contamination, diversion, or depletion of subsurface and percolating waters” and other environmental media, are more focused and detailed than DRBC’s regulations for the protection of water resources from such activities. The NJDEP permitting and operational standards for storage caverns include, but are not limited to, provisions governing operation and maintenance, emergency response, decommissioning, and environmental and health impacts.

2. What will be the effect on the Commission’s project review process of adding storage cavern projects to the One Permit Program through the Commission’s AA with NJDEP?

Adding storage cavern projects to the DRBC’s One Permit Program through the proposed AA amendments will allow the DRBC and NJDEP to follow a single process led by the NJDEP for review of these projects. As for certain classes of wastewater discharge and water allocation project applications that have been processed under the One Permit Program for the past eight years, the changes provide for NJDEP to issue a single permit that covers all the standards, rules, requirements, terms and conditions for each covered storage cavern project, including those conditions required, in accordance with Section 3.8 of the Delaware River Basin Compact (“Compact”), to ensure the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.

Under the One Permit Program and the implementing AA with NJDEP, when an application for a project subject to review by both agencies is filed with the NJDEP, the DRBC staff is notified. For those categories of projects identified in the AA as requiring DRBC input, the DRBC staff provides the input, including where specified by the AA, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the determination required by Section 3.8 of the Compact. Unless the NJDEP disapproves the project or the AA provides for separate Commission action, the NJDEP includes in the permit issued to the project sponsor the finding required by Section 3.8 of the Compact and any associated conditions of approval. With respect to underground storage caverns, the Commission would ordinarily review new underground storage cavern projects, renewals and modifications of existing underground storage cavern projects subject to the Commission’s review but not previously reviewed by the

Commission, and major modifications of existing underground storage cavern projects. Under the AA, the DRBC staff would provide input during NJDEP's review of such projects.

Notably, pursuant to Section 2.3.11 F. of the RPP (18 CFR 401.42(f)), Section VI.C. of the 2015 AA, and Section VII.C. of the proposed amended AA, the Commission's ability to exercise its review and enforcement authorities is expressly retained. Thus, by regulation, and under the current AA and the AA as proposed, the Executive Director or any signatory party to the Compact may exercise their discretion to require that a project be "subject to the full review and decision making by the Commission."

3. How will the DRBC notify the public that a cavern project is pending under the One Permit Program?

In accordance with Section 2.3.11 D.5 of the RPP (18 CFR 401.42(d)(5)), when DRBC staff are notified that the NJDEP has received an application for any project covered by the One Permit Program, the Commission staff add the application to a list on DRBC's [One Permit Program status page](#). The public is thus provided with notice that an application is pending and can seek additional information on the application from the Commission and the lead agency. In the case of storage cavern projects in the New Jersey portion of the basin, interested members of the public can comment on the application in accordance with the procedures and practices of the NJDEP.

4. What are the reasons for the proposed amendments to the AA unrelated to NJDEP's underground storage cavern program?

In addition to "(i) including within the categories of projects managed under the Commission's One Permit Program underground storage caverns as contemplated by NJDEP's regulations codified at Title 7, Chapter 1F of the New Jersey Administrative Code," the proposed amendments would "(ii) remov[e] provisions that are no longer necessary or applicable concerning the transition to the One Permit Program; and (iii) update[e] certain citations, language and procedures to align with recent regulatory changes and with current terminology and practice, and to eliminate redundancy." [Draft Resolution](#) authorizing the Executive Director to amend the Commission's administrative agreement with the New Jersey Department of Environmental Protection.

Provisions no longer necessary or applicable. The 2015 AA included a Section VIII, "New Jersey Demonstration Program," under which the two agencies agreed to select certain new or renewing wastewater discharge projects to be reviewed in accordance with the AA on a pilot basis. Since the program has now been implemented under the Commission's regulations and the 2015 AA for eight years, the provisions for a "Demonstration Program" and references to them are no longer needed or relevant and are proposed to be deleted.

Updates to citations. The Commission's regulations were originally codified as parts of an "Administrative Manual" in accordance with a numbering system unique to the Commission. Except for the DRBC's *Water Code* and *Water Quality Regulations*, which are incorporated by reference in the *Code of Federal Regulations* ("CFR") at 18 CFR Part 410, all of the Commission's regulations are also set forth in full in the *Code of Federal Regulations* ("CFR"). Because the CFR is now available in a convenient online format as the [eCFR](#), and because its numbering system is far more compact and widely used than that of the Administrative Manual, we have added CFR citations in parentheses to all citations of DRBC regulations in the AA.

In some instances, updates to citations to the RPP are needed because the Commission has made rule changes since the AA with NJDEP was adopted in 2015. By [Resolution No. 2021-01](#) in February of 2021, after an extensive notice and comment rulemaking process, the Commission adopted final rules that in relevant part revised the language of section 2.3.5 B.18 (401.35(b)(18)) of the RPP, renumbered sections 2.3.5 B. 15-18 of the RPP (18 CFR 401.35(b)(15)-(18)) (which became (b)(14) – (b)(17)), and revised section 2.3.5 C. of the RPP. Accordingly, multiple references to sections 2.3.5 B.17 (18 CFR 401.35(b)(17)) and 2.3.5 C. (18 CFR 401.35(c)) in the 2015 AA are proposed to be updated.

Updates to language and procedures to align with current terminology and practice, and to eliminate redundancy.

- The One Permit Program underway pursuant to the 2015 AA has worked smoothly and will continue with no material changes for wastewater discharge and water allocation projects.
- The 2015 AA used the terms “water allocation” and “water withdrawal” interchangeably. Because NJDEP’s program uses the former term, the proposed amendments include consistent replacement of the term “water withdrawal” with “water allocation.”
- Section 3.8 of the Compact establishes that any project having a substantial effect on water resources of the basin may be approved only if it “would not substantially impair or conflict with the [Commission’s] comprehensive plan.” Compact, § 3.8. Because the finding that a project would not substantially impair or conflict with the Comprehensive Plan is referenced repeatedly in the AA, the proposed revisions define the term “Section 3.8 Finding” once at Section II.F.1., and again at Section VI.A., and otherwise use it throughout the agreement in place of lengthier restatements of the provision.
- Because the NJDEP’s staff have routinely accommodated the needs of the DRBC’s staff regarding adequate time to review pre-draft and draft permits, proposed revisions include an assumption that adequate time for review means 30 days unless the staff of the respective agencies mutually agree otherwise.
- At Section II.H. of the AA, defining the types of projects classified as “Other Wastewater Discharge Projects” under the agreement, captions have been added for each project type, and language has been revised to improve clarity.
- Similarly, at Sections III.F. and III.H, defining the types of water allocation projects classified as “Notification” and “Notification and Review” projects, respectively, language has been revised for clarity. In Section III.H., defining “Notification and Review” water allocation project types, the project types have been consolidated and descriptive captions added for each type. In neither instance are substantive changes proposed to the types of projects included in the classification.
- At Section III.I.2., identifying DRBC’s responsibilities with respect to “Notification and Review” water allocation projects, an obligation has been added that reads, “consistent with Section IX.B. below, the collection of all applicable DRBC fees in accordance with rules and regulations in effect at the time of

application.” This responsibility was already included under Section IX of the 2015 Agreement and was inserted here as well for the convenience of users of the Agreement.

- Similarly, the proposed amendments include additional references in several locations as appropriate to provisions of Section VII “Separate Action by the Commission” (Section VI in the 2015 AA). These provisions reference, for example, the Commission’s continuing responsibility, through a notice and comment process, to amend the Comprehensive Plan as appropriate in connection with any project covered by the AA, and its reservation of authority to conduct a separate review and decisionmaking process for any project covered by the AA. No substantive changes to the provisions of Section VII (Section VI of the 2015 AA) are proposed.
- A change to the process for sharing information about NJDEP Treatment Works Approvals (TWA) for wastewater discharge projects reflects NJDEP’s intention to create and maintain a report listing TWA applications received on the NJDEP DataMiner website. Because DRBC staff and the general public will have access to this report, NJDEP will not need to provide DRBC with this information by other means. DRBC will coordinate with the TWA staff on any applications for TWA approvals within the Basin. Revisions to Sections II.I.1.h. and II.I.2.c. of the AA are proposed accordingly.
- Section VI, “Review of General Permits” of the proposed AA (Section V of the 2015 AA) continues to provide that an NJDEP Master General Permit (MGP) and the projects authorized by that permit will be covered under the AA at such time as the Commission has reviewed the MGP and determined that it “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’).” 2015 AA, sec. V.A; prop. AA, sec. VI.A. The AA further provides that “All NPDES MGPs for which the Commission has made the Section 3.8 Finding shall be listed in Appendix D of this Agreement.” 2015 AA, sec. V.D.; prop. AA, sec. VI.D. The proposed amendments include the addition to Appendix D of three MGPs: those known as the “Consolidated School General Permit (ASC),” the “Consolidated Potable Water Treatment Plant (BPW),” and the “General Groundwater Remediation Clean-up” MGPs. Under the proposed amendments, on the recommendation of the Commission’s Project Review staff and with the concurrence of the NJDEP, the Section 3.8 Finding will be included in authorizations issued under the Consolidated School General Permit at § IV.H.3.b.iv. and in the Consolidated Potable Water Treatment Plant permit at § IV.D.3.d. The Section 3.8 Finding will also be included in individual permits issued under the General Groundwater Remediation Clean-Up permit.

5. How will the proposed amendments to the AA affect the environment and communities?

The proposed amendments to Commission’s AA are procedural; they do not alter the substantive requirements applicable to projects. The proposed amendments provide for ongoing implementation of existing environmental protections, including those provided by NJDEP’s robust storage cavern program, in a streamlined manner. The impact of the proposed amendments on communities is thus minimal. Interested parties will continue to have notice of projects that are subject to review under the Compact and New Jersey law through Commission and NJDEP notification processes. When applications are processed under the One Permit Program, the NJDEP permit, if issued, will be the single instrument of approval unless, pursuant to the authorities cited in response to Question 2 above, the Executive Director or any signatory party to the Compact requires the project to be subject to the full review and decision

making by the Commission, or unless separate action by the Commission is otherwise required by Section VII of the proposed amended AA (for example to incorporate projects into the Commission's Comprehensive Plan).

6. How can the public find out more about the DRBC One Process One Permit Program?

For additional information about the One Permit Program, please see the pertinent rulemaking documents at <https://www.nj.gov/drbc/programs/project/#3> and the program status page at <https://www.nj.gov/drbc/programs/project/opop-status-page.html>.

7. How can the public review and comment on the draft resolution and proposed amendments to the 2015 AA between the DRBC and NJDEP?

Links to the [draft Resolution](#) authorizing the Executive Director to amend the Commission's administrative agreement with the NJDEP and the [text of the proposed amendments](#) are available here and on the Commission's website at: <https://www.nj.gov/drbc/meetings/upcoming/index.html>. The latter page also includes links to register to attend and provide oral comment during the Commission's public hearing on Wednesday, November 8, 2023, at 1:30 p.m., and to submit written comments on the proposed resolution and amendments. The comment period, originally set to close on Tuesday, November 14, 2023, at 5:00 p.m., has been extended through Monday, November 20, 2023, at 5:00 p.m.

EXHIBIT D

**Comments Received on the Commission's Proposed
Amendments to the March 2015 Administrative Agreement Between the
DRBC and NJDEP**

Bush, Pam [DRBC]

From: Carlos Donato <carlos@delawariverkeeper.org>
Sent: Monday, October 30, 2023 3:15 PM
To: Tambini, Steve [DRBC]; Kavanagh, Kristen B. [DRBC]; Bush, Pam [DRBC]; Pregent, Kevin [DRBC]; kwarren@warrenenvcounsel.com
Cc: Maya van Rossum; Tracy Carluccio; Kacy Manahan
Subject: [EXTERNAL] November 8, 2023 Public Hearing
Attachments: DRBC Administrative Agreement Hearing.pdf

Good afternoon,

The Delaware Riverkeeper is submitting this letter in relation to the Draft Resolution, Administrative Agreement Draft with New Jersey, and the commenting deadline of the DRBC's public hearing that will be held on November 8, 2023. Please see the attached letter.

Thank you for your time, and we look forward to hearing back from you.

-Carlos

Carlos Donato
Fossil Fuel Fellow
Delaware Riverkeeper Network
925 Canal St.
Bristol, PA 19007
carlos@delawariverkeeper.org
Pronouns: he, him, his

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October 30, 2023

Notice of Public Hearing and Business Meeting

Delaware River Basin Commission (DRBC)

Address: 25 Cosey Rd, West Trenton, NJ 08628

Phone: (609) 883 - 9500

Re: Notice of Public Hearing and Business Meeting / Draft Resolution and Administrative Agreement with New Jersey.

Dear Commissioners and DRBC staff,

Delaware Riverkeeper Network (DRN) and Maya K. van Rossum, the Delaware Riverkeeper, submit the following in response to the Delaware River Basin Commission (DRBC) administrative hearing scheduled for November 8, 2023.

Background

The Delaware Riverkeeper is filing this letter to address concerns in relation to the notice of Public Hearing and Business Meeting published October 20, 2023, on Vol. 88, No. 202 of the Federal Register. Our concerns regard the information that will be discussed at the public hearing and the deadline to file comments on these topics. Our request is as follows:

In relation to the Administrative Agreement between New Jersey and the DRBC, as well as the draft resolution, the public should be provided presentation materials that touch on the rationale behind these amendments.

During this meeting, the commission will address a draft resolution and an Administrative Agreement draft between the DRBC and New Jersey. While the DRBC has disclosed the items that will be modified on the existing administrative agreement, the public should also be provided with presentation materials that further elaborate on DRBC's rationale behind these modifications. We believe that there needs to be a more comprehensive discussion of the underlying purpose, goals, and implications of the

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proposed Administrative Agreement. It is important that the public understands why the Administrative Agreement is being revised and how this will affect communities and the environment.

We request that the public comment period for this resolution and Administrative Agreement be extended 15 days in order to provide adequate and reasonable time for public involvement.

Presently, public hearing on this meeting is scheduled for November 8, 2023 and written comments are due on November 14, 2023, 5:00 p.m. After the hearing, those attempting to submit public comments would have 6 days in total, and only 4 week days to review and integrate information discussed at the public hearing. Meeting such a brief turn around will likely prove difficult for several members of the public. Due to this possibility, we are requesting that the commenting deadline be extended 15 days, in order to provide the public with reasonable time to formulate adequate and comprehensive comments.

Thank you for your consideration of this request. Please do not hesitate to contact Carlos Donato with any questions at carlos@delawareriverkeeper.org.

Sincerely,



Maya K. van Rossum, the Delaware Riverkeeper
keepermaya@delawareriverkeeper.org



Tracy Carluccio, Deputy Director
tracy@delawareriverkeeper.org



Kacy Manahan, Senior Attorney
kacy@delawareriverkeeper.org

Editor's note: The text below is a transcript generated by Zoom of oral testimony offered at the Commission's public hearing on Nov. 8, 2023. For an unknown reason, a 10-15-second gap occurred in the recording, as noted in the transcription.

Tracy Carluccio

Okay, thank you. Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network. Delaware Riverkeeper Network makes our verbal testimony today on behalf of more of our more than 26,000 members. We will be submitting written comments by the new date of November 20th, which was extended by DRBC. DRN requested an extension of 15 days from the currently noticed deadline for written comments of November 14th. The DRBC's granted extension provides another 6 days for comment beyond November 14th, but not the full 15 days we requested, unfortunately. DRN will meet the new deadline, but notes that this is still not an adequate length of time for the public to understand and comment on the proposed amendment of the DRBC's Administrative Agreement with New Jersey DEP. DRN also requested that the public should be provided with public presentation materials that further elaborate on the rationale behind the proposed modifications. A comprehensive discussion of the underlying purpose, goals, and implications of the proposed changes is important. And that should be provided to the public with a full picture of this agreement. We need to fully understand why the Administrative Agreement is being revised and how this will affect communities and the environment. While the DRBC has disclosed the items that would be modified in the existing Administrative Agreement and has discussed this briefly today, the review has been focused mainly on procedure. DRN is very concerned about the proposed changes to the New Jersey agreement. As we delve further into the details and research the background, we see the complexity that requires close scrutiny. For instance, the details about precisely how, when, and under what circumstances these underground storage cavern projects would be referred for review by New Jersey DEP to the Commission is of great importance. Subsequent

[AUDIO RECORDING AND TRANSCRIPTION ERROR]

For DRBC to simply state in its FAQ that the impact on communities will be minimal is not adequate. DRN sees these as important and substantive issues that will impact communities and the environment because they have and involved consequential projects and issues. We appreciate that a FAQ document has been provided on the DRBC website on the proposed amendment, but we consider these issues to require greater in-depth analysis and public discussion. Thank you very much for the opportunity to comment verbally today and we will be submitting written comment as well.



November 20, 2023

Administrative Agreement (AA) between New Jersey Department of Environmental Protection (NJDEP) and the Delaware River Basin Commission (DRBC)

Delaware River Basin Commission
25 Cosey Rd,
West Trenton, NJ 08628

Re: Amendments to the Administrative Agreement (AA) between NJDEP and the DRBC

Dear Commissioners,

The Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper (collectively, "DRN"), submit the following in response to the Delaware River Basin Commission's (DRBC, the Commission) released draft of the **Administrative Agreement (AA)** between New Jersey and the DRBC.

Background

DRN is filing this letter to address concerns and ambiguities raised by the amendments to the DRBC AA between the Commission and NJDEP. On Tuesday, October 10, 2023, Vol. 88, No. 202 of the Federal Register published a notice for a public hearing on November 8, 2023 and a business meeting on December 6, 2023. Among the several topics that were discussed at the November 8th public hearing is a draft of the amended AA between NJDEP and the DRBC. Items heard included the resolution and 26 draft dockets for withdrawals, discharges and other projects that could have a substantial effect on the Basin's water resources. Written comments for the AA amendments are due on November 20, 2023. This document serves as the written comments that highlight DRN's questions and concerns regarding the released draft of what may become the new AA between NJDEP and the DRBC.

The issues we raise are as follows:

This public commenting period should be rescheduled to a more convenient date.

Although an extension for the public commenting deadline has already been granted, a November 20th deadline may prove difficult to many members of the public. This deadline is leading up to the

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Thanksgiving holiday, one of the most traveled holidays in the country. Members of the public may find themselves preparing to travel, or readying their homes to receive family members. Amidst this busy holiday, finding time to not only review this AA but make sense of it, as well as formulate thoughts, opinions, and or concerns into a written comment may prove difficult for many residents of New Jersey that are affected by these changes. Allowing for a later commenting deadline, and even hosting a separate hearing after the holiday, would accomplish a great deal in promoting public inclusion by making participation accessible and convenient for the general public.

In order to promote public involvement, the DRBC should hold a public meeting to present materials to the public and explain the rationale behind each amendment to the Administrative Agreement between NJDEP and DRBC.

The DRBC should hold a public hearing dedicated solely to the draft amendments of the AA, where they should include presentation materials on the amendments and their application. As of right now, the only resource available to the public that describes the rationale and purpose behind these amendments is the FAQ for the 2023 draft amendments to the AA between DRBC and NJDEP.¹ A FAQ document alone is deficient when it comes to the several questions that the public might have regarding these changes. At best, the FAQ document only covers the most fundamental procedural and rationale questions. Furthermore, discussion of these amendments were held at a November 8th, 2023 public hearing, where the AA was discussed with a variety of other topics. A public hearing where other topics take time away from discussing the AA is insufficient. Not only are the changes to the AA numerous, but considering the many projects in the state of New Jersey that will be affected by this, the AA is a significant development regarding the permitting process in the State. The public is entitled to a meeting solely dedicated to this topic so that they can become oriented with this amended AA, as well as inquire about how these changes might affect the river, its watershed and its water supplies, and projects in their own localities.

The term “substantially impair” in the Administrative Agreement, in reference to the DRBC’s Rules of Practice and Procedure (RPP), is too ambiguous.

The term “substantially impair,” in reference to the DRBC’s responsibility and the AA’s objective to assure that a project does not “substantially impair or conflict with the Commission’s Comprehensive Plan,”² is an ambiguous standard. This standard is referred to in the Delaware River Basin Compact, and in all DRBC corresponding documents, as a 3.8 finding. The Compact states:

“No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan. The commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the commission hereunder shall be subject to judicial review in any court of competent jurisdiction.”³

¹ FREQUENTLY ASKED QUESTIONS, Draft 2023 Amendments to the Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection

² Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection, II(B)(1), at 4.

³ Section 3.8 Referral and Review, Delaware River Basin Compact

The issue here is that neither the AA, DRBC's Rules of Practice and Procedure, or the Comprehensive Plan provide insight into what explicitly constitutes a substantial impairment to the Comprehensive Plan.

According to the AA, when NJDEP notifies DRBC on a water allocation application/renewal, the commission considers whether a project might be subject to 3.8 review. If DRBC determines that a project is subject to review, NJDEP must conduct a "3.8 finding," send their evaluation to the DRBC, and the DRBC will either respond with their own 3.8 evaluation, or may not provide a response at all if the DRBC agrees with NJDEP's findings.⁴ Without clear indication or insight on what the DRBC considers a substantial impairment to the Comprehensive Plan, the public can never have full confidence as to the decision making process within the DRBC. Without such confidence, New Jersey localities and members of the public that could be affected by proposed permits will struggle significantly to understand and vocalize their arguments related to said projects. The barrier this type of ambiguity creates not only undercuts public participation, but casts doubts on the conformity and standards that present and future DRBC Commissioners should rely on when evaluating if a project truly "substantially impairs or conflicts with the Comprehensive Plan." This concern undermines the objectives that an AA between NJDEP and DRBC seeks to accomplish.

There are several ambiguities regarding the 14 day period at the end of each month where NJDEP notifies DRBC of water allocation applications.

In relation to when the DRBC receives notification of water allocation applications from NJDEP, there remains procedural ambiguities regarding the permitting review process. The amended AA states "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."⁵ Additionally, for underground storage caverns, "[w]ithin 14 days of the end of any month in which NJDEP has determined that an application for an underground storage cavern project within the Delaware River Basin is administratively complete, NJDEP will provide to DRBC for each such application."⁶ That being said, there is no information in the AA that elaborates on (1) how long the DRBC will have to respond to the application notifications, or (2) if NJDEP will pause the permitting process while they wait to notify on these applications in the last 14 days of each month/while the DRBC evaluates if these projects are subject to review. Furthermore, (3) for cases outside of underground storage caverns, will the public be allowed to comment during the DRBC's evaluation or only during the 30 day period they are provided to conduct 3.8 reviews of projects after the DRBC has already responded in the affirmative that a project is subject to their review?

The AA does not touch on any of these questions.

- (1) After receiving notification of a water allocation project, how long does the DRBC have to provide a response to NJDEP? Where other requirements on the AA give the DRBC deadlines to respond to NJDEP, or at least communicate to establish extended deadlines, the AA does not mention anything related to a timeline for DRBC to notify NJDEP if a water allocation project is subject to review or not.
- (2) Will NJDEP pause the permitting process while it waits to disclose these applications in the last 14 days of each month, or while the DRBC evaluates if these projects are subject to review? For W-2 category projects, the AA writes that "[t]he Parties agree that after 30 days, if the DRBC

⁴ Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection

⁵ Id., III(D)(1)

⁶ Id., V(D)(1)(a)

staff has provided no written comments, then a renewal of the previous Section 3.8 Finding is recommended, finding that the project does not substantially impair or conflict with the Commission's Comprehensive Plan is implied and the permit issuance process for simple renewals will proceed.”⁷ When the AA states “the permit issuance process for simple renewals will proceed,” does that mean that the permitting process would have been paused after DRBC rendered an evaluation for a project disclosed within this 14 day period, or only after NJDEP has sent their pre-draft permits to DRBC so that the commission can conduct a 3.8 finding? If there is a pause for DRBC to review a pre-draft application within this 30 day period, it would make sense to also pause the permitting process when NJDEP is preparing to disclose received applications to the DRBC within the earlier end-of-month 14 day period mentioned above. However, there is no such explicit clarification on the AA. The AA should elaborate on if the permitting process pauses while NJDEP awaits to disclose water allocation projects to DRBC, and if it remains paused while NJDEP awaits a response from DRBC.

- (3) When and how will the DRBC and NJDEP schedule public hearings and allow for public comments after the DRBC has received a list of water allocation projects from NJDEP? The AA does not answer if the public will be afforded the opportunity to provide public comments on a proposed project after the DRBC publishes these pending applications, or even during the 30 day period. The most information the public receives regarding their involvement can be found on the FAQ document the DRBC has published on their website regarding the 2023 amendments to the AA. Here, they inform us that the public will be

“provided with notice that an application is pending and can seek additional information on the application from the Commission and the lead agency. In the case of storage cavern projects in the New Jersey portion of the basin, interested members of the public can comment on the application in accordance with the procedures and practices of the NJDEP.”⁸

But once again, besides directing the public to NJDEP in cases of underground storage projects and describing a general public notice, the AA and the FAQ sheet do not address when and how the DRBC will schedule public hearings and comments for these pending permits.

It is unclear whether the permitting process will pause for W-3 and new W-2 projects, like those in the W-2 categories, when DRBC receives pre-draft permits from NJDEP.

The AA does not elaborate on the permitting process regarding 3.8 findings for W-3 and new W-2 applications. For W-2 category projects, the AA states that “[t]he Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a renewal of the previous Section 3.8 Finding is recommended, finding that the project does not substantially impair or conflict with the Commission's Comprehensive Plan is implied and the permit issuance process for simple renewals will proceed.”⁹ However, in relation to W-3 projects, the AA only states “within 30 days of receipt of a pre-draft or draft permit from NJDEP, [the DRBC will] provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a Section 3.8 finding,”¹⁰ but nothing that might indicate “the permit issuance process for simple renewals will proceed.” Will W-3

⁷ Id., II(G)(1)(e)

⁸ FREQUENTLY ASKED QUESTIONS, Draft 2023 Amendments to the Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection, #3 at 2.

⁹ Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection, II(G)(1)(e)

¹⁰ Id., III(I)(2)(a)

permits pause to allow time for the DRBC to conduct a 3.8 findings before the permit issuance process proceeds, or is this omitted because a pause will not occur in these instances?

DRBC should always respond to NJDEP when it provides a “3.8 finding” to the Commission.

Regarding W-2 permits, “[t]he Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a renewal of the previous Section 3.8 Finding is recommended, finding that the project does not substantially impair or conflict with the Commission’s Comprehensive Plan is implied and the permit issuance process for simple renewals will proceed.”¹¹ Although the DRBC can communicate to NJDEP if they require more time than 30 days to review the finding, DRBC should still always reply to NJDEP’s findings, even if they agree. Replying to findings creates a clear paper trail that the public can follow in order to know if a project has been approved. Otherwise, if DRBC didn’t reply to NJDEP’s 3.8 finding for W-2 categories, then the public wouldn’t understand what this means unless they read through and reviewed the AA. Furthermore, if the 30 day period falls within a holiday or any other world event that would prevent thorough evaluation and the DRBC does not respond with their own findings, NJDEP may proceed with an application that, in reality, did not receive the attention it should have. The DRBC is the leading expert authority regarding what “substantially impairs” means in a 3.8 finding. The Commission’s input provides expert insight into their rationale and the standard they employ for such findings. DRBC’s response is not just valuable, but should be considered necessary.

In relation to DRBC’s Special Protection Waters (SPW) review, notification of an application from NJDEP should occur once an application is administratively complete, instead of after technical completeness.

NJDEP’s submission of an application for SPW review should occur after they find an application is administratively complete, as opposed to technically complete. Regarding substantial alterations and additions for SPW’s, under Appendix A, the AA states that “[i]n 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.”¹² If NJDEP must disclose water allocation applications within the last 14 days of each month so that the DRBC can notify them if a project is subject to review, and “substantial alterations” to SPWs are activities that fall both under W-2 and W-3 water allocation permit categories, then NJDEP should wait for DRBC’s deliberation on a project’s review category before determining that an application is technically complete. Requiring an application to be technically complete prior to notification will: (1) delay the speed at which NJDEP will notify DRBC of a water allocation application, (2) delay the speed at which DRBC will notify the public of a pending permit, and (3) demand technical criteria from an application that is yet to be categorized by the commission – therefore risking undertaking steps on an application that may either be deficient or extraordinary in relation to what DRBC requires. Thus, DRBC should receive applications from NJDEP after an application is administratively complete, so that DRBC can publish these pending permits earlier, and inform NJDEP as to the criteria an application must meet in order to accomplish technical completeness.

DRN opposes the proposed AA as presented and urges the Commissioners to vote NO on the Resolution to approve the amended AA. DRN advocates that DRBC start over with a public process that will provide ample opportunity for the public to participate in this important decision making. DRN also advocates that the ambiguities we discuss in these comments be addressed and a sufficiently clear, publicly understandable, and more precise AA that encourages public participation at critical phases of review, be proposed at a future time.

¹¹ Id., II(G)(1)(e)
¹² Id., Appendix A

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum".

Maya K. van Rossum, the Delaware Riverkeeper
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19107
keepermaya@delawariverkeeper.org

A handwritten signature in blue ink that reads "Tracy Carluccio".

Tracy Carluccio, Deputy Director
Delaware Riverkeeper Network
tracy@delawariverkeeper.org

A handwritten signature in blue ink that reads "Carlos Donato".

Carlos Donato, Fossil Fuel Infrastructure Fellow
Delaware Riverkeeper Network
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