



**Department of  
Environmental  
Conservation**

# Administrative Agreement

**Between the  
Delaware River Basin Commission  
and the  
New York State Department of Environmental  
Conservation**



**Administrative Agreement**  
**Between**  
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**Administrative Agreement between  
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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 York State Department of Environmental Conservation (NYSDEC) (collectively, the “Parties,” and individually, a “Party”).

*WHEREAS,*

1. The DRBC and the NYSDEC 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 NYSDEC share common mission objectives for managing and protecting water resources within the Delaware River Basin.
3. Both the DRBC and the NYSDEC 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 NYSDEC support the principles of: inter-agency cooperation; avoidance of unnecessary duplication of effort; and program cost efficiencies.
5. The DRBC and the NYSDEC 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 NYSDEC agree as follows:

**I. General Provisions**

A. Administrative Agreement Authority

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

2. Section 3.9 of the Compact provides that the Commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the Delaware River Basin.
3. Section 2.3.3 of the Commission's Rules of Practice and Procedure authorizes and directs the Executive Director to enter into cooperative Administrative Agreements ("AAs") with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:
  - a. To facilitate the submission and review of applications and determinations required under Section 3.8 of the Compact;
  - b. To avoid unnecessary duplication of staff functions and hearings required by law;
  - c. For such other and different purposes as he or she may deem feasible and advantageous for the administration of the Compact or any other law.
4. Section 2.3.11 of the Commission's Rules of Practice and Procedure, adopted on December 9, 2015, 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.
5. Upon the effective date of Section 2.3.11, this Agreement will replace all prior administrative agreements between the Parties, including the agreement dated June 22, 1965 (as amended) between the Commission and the Water Resources Commission of New York, which preceded NYSDEC in its capacity as the coordinating agency for water resource matters in New York State.
6. Nothing in this Agreement shall be construed as a waiver of any authority possessed by the Commission or by the NYSDEC.
7. Nothing in this Agreement prohibits the adoption and implementation of lawful changes to each Party's authority in the future, although such changes may require modification of this Agreement.

B. Scope of this Agreement

1. The scope of this Agreement is limited to projects and activities that can be commonly managed and administered under the following regulatory programs of each Party:
  - a. Water withdrawals
  - b. Wastewater discharges

2. This Agreement will implement applicable sections of the Compact with respect to the review of water withdrawal and wastewater discharge projects. With the exception of the limited instances described in Sections II.E., IV., V.E. and VI. below, a final action of the NYSDEC under this Agreement with respect to a wastewater discharge that is also regulated by the DRBC will also constitute an action on behalf of the Commission under Sections 3.8, 10.3 and/or 5.2 of the Compact for those requirements that are subject to Commission review.
- C. One Process and One Permit. Where applicable under the terms of this Agreement and under the authority and responsibility of each agency, the Parties will follow a single process led by the NYSDEC for wastewater discharges and a single process led by the DRBC for water withdrawals. The NYSDEC will issue a single permit that covers all the standards, rules, requirements, terms and conditions of both Parties for each discharge project or activity covered by the State Pollutant Discharge Elimination System (“SPDES”) Program and the Delaware River Basin Compact. The DRBC will issue a single docket that covers all the standards, rules, requirements, terms and conditions of both Parties for each water withdrawal covered by the state’s Water Allocation Program and the Delaware River Basin Compact. It should be noted that one process and one permit will not cover all activities and applications related to projects involving withdrawals and discharges.
  - D. Agency Cooperation. The DRBC and the NYSDEC will cooperate with one another to meet the objectives of this Agreement by, among other things, participating in: periodic status and continuous improvement meetings; interagency training and knowledge sharing; document and information sharing; advanced planning and sharing of proposed changes to any regulatory standard, requirement or program affecting Delaware River Basin water resources; development and communication of appropriate permit and docket terms and conditions for each Party under Delaware River Basin approvals; and report development and sharing. The NYSDEC and the DRBC agree to work cooperatively, as technology is available and allows, to provide each other with reasonable access to data for water withdrawals and wastewater discharges to fulfill 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 a State Pollutant Discharge Elimination System (“SPDES”) permit under the Clean Water Act and New York law that may also be subject to DRBC review and approval under the Compact and Commission regulations.

B. Objectives

1. In order to eliminate, where possible, the requirement for separate Commission docket approvals, the DRBC and the NYSDEC will use the state's SPDES permit as the single permit for all conditions necessary to ensure that discharges made under SPDES permits do not substantially impair or conflict with the Commission's Comprehensive Plan and regulations relating to wastewater and stream quality objectives (also referred to as "water quality criteria").
2. Nothing in this Agreement alters NYSDEC's obligation to meet all requirements associated with 6 NYCRR Part 621, the Uniform Procedures Act.
3. The DRBC and the NYSDEC 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 NYSDEC to obtain review and approval through a single permit and in limited circumstances described in Sections II.I.2.e, IV, V.E and VI herein, may be required to obtain approvals from both agencies.
4. Transition to One-Process/One-Permit for Discharges
  - a. For applications submitted to NYSDEC after the effective date of both (i) DRBC Rules of Practice and Procedure 2.3.11 establishing the One Permit Program and (ii) this Agreement, the One Process/One Permit Program will be used and a decision by the NYSDEC as to all matters covered by the NYSDEC's final action, with the exception of the limited instances described in Sections II.E., IV., V. and VI.C. below, also will constitute an action on behalf of the Commission.
  - b. For applications under review by either the NYSDEC or the DRBC upon the effective date of this Agreement, staff of the DRBC and the NYSDEC 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 Process/One Permit will be implemented.
5. In all instances where the transition has been made, a decision by the NYSDEC as to all matters covered by the NYSDEC's final action, with the exception of the limited instances described in Sections II.E., V.E. and VI.C. below, also will constitute an action on behalf of the Commission.

- C. Project Categories. Wastewater discharge projects will be divided into three categories:
1. **Category WW1: No DRBC Review Required.** Projects within the Delaware River Basin that are not subject to review under the Compact or Commission regulations, as defined in Section II.E. below;
  2. **Category WW2: Renewals or Modifications to Existing Discharge Project Permits/Approvals.** Wastewater discharge projects that are subject to review under the Compact and Commission regulations and meet the criteria set forth in Section II.F. below; and
  3. **Category WW3: Other Wastewater Discharge Projects.** Wastewater Discharge Projects that are subject to review under the Compact and Commission regulations and are: new, or are project renewals or modifications to existing permits/approvals that are not included in Categories WW1 and WW2, and meet the criteria set forth in Section II.H. below.
- D. Annual Conference. In January of each year, staff of the NYSDEC and the DRBC will confer regarding projects that could be subject to review pursuant to this Agreement during the coming year, in part to identify as early as possible any complex issues or reviews that could require additional effort by either Party (“Annual Conference”). The Annual Conference will help NYSDEC to determine which projects to place on its list of SPDES applications targeted for permit issuance during the year (“List”) and will help DRBC know which permit renewals subject to review under this Agreement may require early attention. The NYSDEC will provide DRBC with timely notification of issuance of and revisions to its List, once the List is developed and may periodically confer with DRBC regarding changes to the List.
- E. Category WW1: No DRBC Review Required. Under the Compact and DRBC regulations, the following wastewater discharge projects are not subject to review by the Commission, except in accordance with either Section 2.3.5 B.18 (determination by the Executive Director) or Section 2.3.5 C. (by the Commission in response to a federal or state agency request) of the Rules of Practice and Procedure (RPP). (See Section IV. of this Agreement for categories of projects other than wastewater discharge projects that are not subject to the Commission’s review.):
1. Wastewater discharges 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.
  2. 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.

3. Discharges consisting exclusively of either construction dewatering or swimming pool discharges. (Such projects are determined to be “temporary or short term projects” in accordance with Section 2.3.5 A.19. of DRBC’s Rules of Practice and Procedure and to have no substantial effect on water resources of the basin.)

F. **Category WW2: Renewals or Modifications to Existing Wastewater Discharge Approvals – Definition.** For the purposes of this Agreement, WW2 covers renewals or modifications to existing wastewater discharge permit/approvals for which:

1. an SPDES permit and a Commission docket are in effect at the time of application for the SPDES permit renewal, or for which the most recent SPDES permit issued for the facility includes a determination, pursuant to this or a successor Agreement, that the project would not substantially impair or conflict with the Commission’s Comprehensive Plan and regulations relating to wastewater and stream quality objectives; and for which,
2. the wastewater discharge is to surface or ground waters within DRBC Water Quality Zones 1, E, W1, W2 and N1 or tributaries thereto, and no increase is proposed to the effluent flow or pollutant load established by the facility’s current SPDES permit or DRBC docket; or
3. the wastewater discharge is an existing discharge to surface or ground waters located within the drainage area of waters designated by the Commission as Special Protection Waters (SPW); and both (a) no increase is proposed to the effluent flow or pollutant load established by the SPDES permit or DRBC docket in effect on the date of SPW designation; and (b) no “Substantial Alterations or Additions” are proposed as that term is defined at Section 3.10.3 A.2.a.16. of the Water Quality Regulations (WQR) (copy attached hereto for reference, as Appendix B); or
4. the wastewater discharge is from a wastewater treatment plant that receives industrial waste or waste that is subject to the Significant Industrial User or Residuals Management programs.

G. **Category WW2: Renewals or Modifications to Existing Wastewater Discharge Approvals – “One Process” Responsibilities**

1. For WW2 Renewals or Modifications to Existing Wastewater Discharge Approvals NYSDEC will:
  - a. act as the lead permitting agency and prepare all draft and final permits/approvals.

- b. for each project located in the Delaware River Basin, provide DRBC with a copy of the SPDES permit application or require the applicant to submit a copy of the application directly to DRBC.
  - c. provide DRBC with a copy of the draft permit when NYSDEC provides it to the applicant. The Parties agree that after 30 days, if the DRBC staff has given NYSDEC no written comments, then a recommended determination that the project does not substantially impair or conflict with the Commission's Comprehensive Plan is implied and the SPDES permitting process will proceed.
  - d. include in each SPDES permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to effluent quality and stream quality objectives, the project conforms to the Commission's Comprehensive Plan.
  - e. include in each SPDES permit a determination, based upon DRBC's recommendation, that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.
  - f. in accordance with applicable NYSDEC guidance, establish monitoring requirements for whole effluent toxicity (WET).
  - g. 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 NYSDEC will continue to issue SPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)
  - h. Copy the DRBC Project Review Section Supervisor on application completeness letters issued by the NYSDEC for projects located in the Delaware River Basin.
  - i. continue to collect all NYSDEC permit and review fees required under applicable rules and regulations.
  - 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 but are not limited to those listed in Appendix C.
2. For WW2: Renewals or Modifications to Existing Wastewater Discharge Approvals, DRBC will:

- a. on the basis of the project sponsor's application and after consultation with NYSDEC, provide NYSDEC with the conditions recommended to support a determination that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with DRBC's Comprehensive Plan.
  - b. review the draft permit provided by the NYSDEC, with the understanding that if DRBC has given NYSDEC no further written comments within 30 days, then DRBC's recommended determination – i.e., that with respect to effluent quality and stream quality objectives the project does not substantially impair or conflict with the Commission's Comprehensive Plan – stands, and the SPDES permitting process will proceed.
  - c. provide technical assistance when NYSDEC staff request it.
  - d. consistent with Section VIII.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
  - e. review and provide NYSDEC with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.G.1.j. above.
3. Should the Parties not agree during the review process on any matter material to the determination referenced in Section II.G.2.a. above, the issue will be handled in accordance with the dispute resolution process identified in Section VIII.E. of this Agreement.

H. **Category WW3: Other Wastewater Discharge Projects – Definition.** For the purposes of this Agreement, Category WW3 – Other Wastewater Discharge Projects – means projects located within the Delaware River Basin that do not fall within categories WW1 (No DRBC Review Required) and WW2 (Renewals or Modifications to Existing Wastewater Discharge Permits/Approvals) and that meet the criteria set forth below. They include but are not limited to:

1. new wastewater discharge projects.
2. existing wastewater discharge projects that are subject to the review of both Parties but that lack either a SPDES permit or a DRBC docket.
3. projects involving wastewater discharges to surface or ground waters within DRBC Water Quality Zones 1, E, W1, W2 and N1, including the tributaries thereto, where an increase is proposed to the effluent flow or pollutant load established by the facility's current SPDES permit or DRBC docket.

4. projects involving new or existing wastewater discharges to surface or ground waters located within the drainage area of waters designated by the Commission as SPW, where either: (a) an increase is proposed to the effluent flow or pollutant load established by the SPDES permit or DRBC docket in effect on the date of SPW designation; or (b) “Substantial Alterations or Additions” are proposed as that term is defined at Section 3.10.3 A.2.a.16. of the WQR (copy attached hereto for reference, as Appendix B).

I. **Category WW3: Other Wastewater Discharge Projects – “One Process” Responsibilities**

1. For WW3 – Other Wastewater Discharge Projects, the NYSDEC will:
  - a. act as the lead permitting agency and prepare all draft and final permits.
  - b. advise DRBC when a request for a pre-application meeting for a wastewater discharge project within the New York portion of the Delaware River Basin is received. For projects located within the drainage area of SPW, NYSDEC staff will advise DRBC staff when they become aware of wastewater treatment projects that are in the pre-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.
  - c. for each project located in the Delaware River Basin, provide DRBC with a copy of the SPDES permit application or require the applicant to submit a copy of the application directly to DRBC.
  - d. include in each SPDES permit issued for a project within the Delaware River Basin all requirements necessary to ensure that with respect to effluent quality and stream quality objectives, the project conforms to the Commission’s Comprehensive Plan.
  - e. on the basis of DRBC’s recommendation, include a determination in each SPDES permit issued within the Delaware River Basin, that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
  - f. in accordance with applicable NYSDEC guidance, establish monitoring requirements for whole effluent toxicity (WET ).
  - g. provide DRBC with a copy of the draft permit when DEC sends it to the applicant. The Parties agree that if the DRBC staff has given NYSDEC no further written comments after 30 days, then the recommended determination – i.e., that with respect to effluent quality and stream quality objectives the project does not

substantially impair or conflict with the Commission's Comprehensive Plan – stands, and the SPDES permitting process will proceed.

- h. inform DRBC upon NYSDEC's receipt of any notification by a discharger (under 6 NYCRR Section 750-2.6, -2.9, or -2.10 and/or TOG 1.3.8) that the discharger proposes to construct or modify a water or wastewater treatment facility located within the Delaware River Basin. (See Section I.2.a. below regarding identification of such facilities).
- i. copy the DRBC Project Review Section Supervisor on application completeness letters issued by the NYSDEC for projects located in the Delaware River Basin.
- j. advise applicants and the DRBC staff at the earliest stage possible when an applicant must obtain approval for relief from or modification of a Commission requirement, including but not limited to those listed in Appendix C.
- k. continue to collect all NYSDEC permit and review fees required under applicable rules and regulations.

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

- a. provide the NYSDEC with a list of existing wastewater treatment plants within the Delaware River Basin. This list will periodically be updated to add new wastewater discharges or amend references to existing discharges.
- b. on the basis of the project sponsor's application and after consultation with NYSDEC, provide NYSDEC with a preliminary list of the conditions recommended to support a determination that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with DRBC's Comprehensive Plan.

DRBC's list of recommended conditions will include but not necessarily be limited to: standards, terms and conditions as appropriate, for implementation of the Commission's regulations applicable to the SPW Program.

- c. within 30 days of receipt of a draft permit from NYSDEC, provide NYSDEC with written comments, including any further recommendations for conditions or clarifications necessary or appropriate to support a determination 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. copy the NYSDEC program contact on any determination that DRBC sends to the project applicant regarding DRBC requirements related to the proposed wastewater treatment modifications.
  - e. determine if a project is required to be incorporated into the Commission's Comprehensive Plan (CP) and undertake the process, including a public hearing and Commission action, for incorporation of such project, with any necessary project requirements, into the CP as appropriate. Once the Commission has added a project to the CP, the DRBC and the NYSDEC will use the SPDES permit as the single permit for all conditions necessary to ensure that discharges do not substantially impair or conflict with the CP.
  - f. provide technical assistance when NYSDEC staff request it, subject to resource constraints.
  - g. consistent with Section VIII.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
  - h. review and provide NYSDEC with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.I.1.g. above.
3. Should the Parties not agree during the review process on any matter material to the determination of no conflict with the Comprehensive Plan, the issue will be handled in accordance with the dispute resolution process identified in Section VIII.E. of this Agreement.

### **III. Coordinated Review of Water Withdrawal Projects**

- A. As set forth at Section I.C. above, the DRBC will issue a single docket that covers all the standards, rules, requirements, terms and conditions of both Parties for each water withdrawal covered by the state's Water Allocation Program and the Delaware River Basin Compact. Thus, the Commission will continue to make the determination required by Section 3.8 of the Compact for such projects.
- B. The practices and procedures to be employed by the Parties for coordinated review of water withdrawals are set forth in Appendix E of this Agreement, titled "DRBC/NYSDEC Coordination Process for Water Withdrawal Regulatory Program Activities." As long as reviews of water withdrawals located within the Basin in New York State continue to be conducted in accordance with Section I.C. of this Agreement, the Parties may amend Appendix E by mutual agreement at the staff level, in accordance with the procedures

described in Appendix E. The public will be apprised of updates of Appendix E through the Commission's website.

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

The Commission conducts no review of the siting, design and construction of industrial/sanitary landfills for conformity with the Commission's Comprehensive Plan, unless review is required by the Executive Director (in accordance with Section 2.3.5 B.18 of the RPP) or by the Commission (in response to a federal or state agency request under Section 2.3.5 C. of the RPP), or unless technical assistance is requested by the state or federal agency.

#### **V. General Permits**

- A. Projects eligible for a NYSDEC General Permit (GP) and related authorization will not be eligible for the One Process/One Permit program established by Section 2.3.11 of the Commission's Rules of Practice and Procedure and implemented through this Agreement unless and until such time as the Commission, after reviewing the relevant GPs, has expressly found and determined that a particular GP contains all terms and conditions necessary to ensure that projects covered by the GP do not impair or conflict with the DRBC Comprehensive Plan ("Section 3.8 Determination").
- B. The NYSDEC will provide DRBC with an opportunity to review and provide input in accordance with procedures outlined in Section II.G. (relating to Category WW2 projects) on the renewal of any SPDES GPs 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 GP, more than 30 days may be needed for DRBC to review and comment on the new draft GP.
- C. The NYSDEC and the Commission agree that as the resources of each Party permit, the Parties may undertake a review of each existing GP at any time prior to the time of the GP renewal, in order for the Commission to provide input and make the Section 3.8 Determination as appropriate.
- D. All SPDES GPs for which the Commission has made the Section 3.8 Determination shall be listed in Appendix D of this Agreement. For all projects authorized by a GP that has been added to Appendix D, there will be no DRBC review prior to issuance of the authorization by NYSDEC.

- E. For projects within the Delaware River Basin that are authorized by a GP that has not been added to Appendix D, the applicant may still be required to obtain DRBC approval pursuant to the Compact and existing DRBC rules.
- F. NYSDEC will provide DRBC with a copy of all GP acknowledgement letters issued within the DRB at the time they are sent to the applicant. On the basis of such letters, DRBC may notify an applicant that DRBC review and approval are also required.

## **VI. Separate Action by the Commission**

- A. By means of a docket or resolution following a duly noticed public hearing and those additional consultations and actions required by Section 13.1 of the Compact, the Commission will incorporate into the Comprehensive Plan any new or existing project required by the Compact to be incorporated into such plan.
- B. Water withdrawals from surface and ground waters of the Delaware River Basin shall be subject to the full review and decision making by the Commission (See Section III of this Agreement).
- C. If at any point prior to the issuance of a SPDES permit the Executive Director or any Signatory Party determines that a project for which the NYSDEC'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 NYSDEC in writing, at which time the project shall be subject to the full review and decision making by the Commission. New York will no longer make a determination on behalf of the Commission in this circumstance.

## **VII. Other Requirements**

- A. Compliance
  - 1. Wastewater. To the extent authorized by state law, NYSDEC will be responsible for compliance monitoring and enforcement of all permit standards, terms and conditions set forth in its SPDES permits, including those designed to implement DRBC requirements. Any and all funds secured by NYSDEC through an enforcement action shall be payable to the State of New York. As set forth below, NYSDEC will notify or consult with DRBC regarding enforcement actions relating to facilities within the Delaware River Basin.
    - a. Notification. NYSDEC will notify DRBC of inspection-based enforcement relating to discharges included in this agreement within the Delaware River Basin.

- b. Consultation. When NYSDEC in its discretion pursues an Administrative Consent Order (ACO) as defined by applicable New York regulations for violation of a DRBC requirement, NYSDEC will consult DRBC and will give due consideration to any comment that DRBC furnishes. If the DRBC does not respond to NYSDEC within two weeks of receipt of such request or draft, then NYSDEC at its discretion will proceed with the ACO. NYSDEC 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. Water Withdrawal. To the extent authorized by the Compact, DRBC will be responsible for compliance monitoring and enforcement of all water withdrawal docket standards, terms and, conditions, including those designed to implement NYSDEC requirements. Any and all funds secured by DRBC through an enforcement action shall be payable to the DRBC. As set forth below, DRBC will notify or consult with NYSDEC regarding enforcement actions relating to facilities within the Delaware River Basin.
  - a. Notification: DRBC will notify NYSDEC of all draft enforcement actions relating to water withdrawals included in this agreement within the New York portion of the Delaware Basin.
  - b. Consultation. Before DRBC formally notifies a docket holder of a violation or commences an enforcement action by other means, DRBC staff will consult with the DRBC alternate Commissioner from New York (or if so directed by the alternate Commissioner, with NYSDEC staff) and give due consideration to NYSDEC's concerns. If the NYSDEC does not respond to DRBC within two weeks of receipt of a request for comment, DRBC at the discretion of the Executive Director, may issue the notice or otherwise initiate the action. DRBC will bear all costs of enforcement that are not recovered from the defendant or respondent in the enforcement action and will exercise its discretion in collecting, settling or adjudicating enforcement actions involving facilities in New York within the Delaware River Basin.
  - c. Also see Section III (Compliance) of Appendix E (for discussion of joint compliance inspection opportunities).
3. Nothing in this Agreement limits the authority of either Party under the Compact or state law to issue an order or orders upon any entity which the Commission or state determines to be in violation of the compact or any rule, regulation or order of either Party.

B. Water Supply and Wastewater Planning

The NYSDEC and the Commission agree to confer during the development and amendment of the New York water supply and area wide water quality management plans, including amendments associated with adopted Total Maximum Daily Loads (TMDLs). The Commission may adopt the state and regional water supply and statewide and area wide water quality management plans into the Commission's Comprehensive Plan.

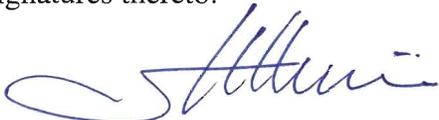
The Commission will not review applications for extensions to existing water distribution and wastewater collection systems not involving service area changes.

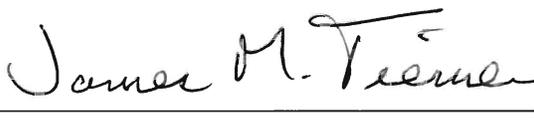
**VIII. Administrative Provisions**

- A. Amendment. This Agreement may be amended by the mutual written agreement of both parties.
- B. Project Review Fees. Unless and until the Commission adopts a new fee schedule, any project subject to this Agreement in project categories WW2, WW3, and Section III., 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>. NYSDEC fees likewise remain unchanged by this Agreement.
- C. Termination on Written Notice. This Agreement may be terminated by either the NYSDEC Commissioner or the Commission upon thirty days (30) written notice to the other Party.
- D. Reservation of Authority. The Commission and the NYSDEC have and may exercise their independent authorities under their respective statutes and regulations to take appropriate actions to ensure compliance with the terms and conditions of their respective decision making documents and regulations.
- E. Dispute Resolution. The Commission's Water Resources Management Branch Manager and the NYSDEC's appropriate Division Director will work together to resolve any issues regarding a subject project. If the issues cannot be resolved, such issues will be elevated to the Executive Director and the state's DRBC Commissioner before the permit is released for public comment or before the permit is issued, depending upon the stage at which DRBC comment is solicited under this Agreement. If the Parties are unable to agree, then each will issue an approval instrument or other determination.
- F. No Third-Party Rights or Enforceability. This Agreement does not create any rights in any person or entity not a party hereto and is not enforceable except by the NYSDEC 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 or administrative tribunal, 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 York, and as to all aspects of this Agreement that are within the scope of state law, shall be governed in all respects by the laws of the State of New York.
- I. Entire Agreement. The Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of the Agreement. The Agreement represents the entire agreement between the Parties; all negotiations, oral agreements and understandings are merged herein.
- J. Binding Effect. All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.
- K. Authority. By the signatures below, the Parties execute the Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.
- L. Effective Date. This Agreement shall take effect upon its execution by both Parties.

*IN WITNESS* thereof, the Commission, through its duly authorized Executive Director, and NYSDEC, through its Commissioner or designee, as authorized by the Compact and the laws of the State of New York, respectively, have executed this Agreement by affixing their respective signatures thereto:

  
 \_\_\_\_\_  
 Steven J. Tambini, P.E., Executive Director  
 Delaware River Basin Commission

  
 \_\_\_\_\_  
 James Tierney, Assistant Commissioner  
 New York State Department of  
 Environmental Conservation

Date 3/21/2016

Date 3/25/2016

**APPENDIX A – Wastewater Program - Specific Implementation Procedures**

<b>Technical Topic</b>	<b>Implementation Agreement</b>
<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 SPDES 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 NYSDEC will include them in its SPDES permits if they are more stringent than NYSDEC limits.</p> <p>*DRBC provides SPW effluent limits for wastewater treatment facilities required to meet SPW no measurable change requirements for Ammonia (NH<sub>3</sub>-N), Dissolved Oxygen, Fecal Coliform, Nitrate (NO<sub>3</sub>-N), Total Nitrogen, Total Phosphorous and Total Suspended Solids in the Lower Delaware River SPW and for BOD<sub>5</sub>, 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 NYSDEC 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 NYSDEC notifies DRBC of its receipt of a technically complete application, the NYSDEC will consult</p>

Technical Topic	Implementation Agreement
	<p>with DRBC to determine next steps. NYSDEC may, at its discretion, issue a SPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to approve the SAA and associated SPW requirements at a future date.</p>
<p>Import/Export Regulations</p>	<p>The existing rules at Section 2.30 of the Water Code and Sections 2.3.5 A. 16-18 of the RPP require that the Commission approve and incorporate into the CP imports and exports of water and wastewater for amounts of 50,000 gallons a day or more (as a daily average) for wastewater and 100,000 gallons per day or more (as a daily average) for water.</p> <p>Within 30 days of the DRBC's receipt of an NYSDEC pre-draft permit, DRBC will identify and provide to the NYSDEC the water and wastewater requirements for inclusion in the NYSDEC permit. In-basin effluent limitations will be adjusted by subtracting 100% of the imported load (lbs./day) from the in-basin allocation.</p>
<p>Mixing Zone Review</p>	<p>As provided for above, DRBC will take the lead in developing mixing zone requirements and the dilution factor for discharges to Zones 1, E, W1, W2 and N1 and tributaries thereto with regard to TDS and SPW. NYSDEC will include these requirements in the SPDES 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.</p> <p>In the event that the time for DRBC's review and analysis for a mixing zone or dilution factor exceeds 6 months after NYSDEC notifies DRBC of its receipt of a technically complete application, the NYSDEC will consult with DRBC to determine next steps. NYSDEC may, at its discretion, issue a SPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to include, as appropriate, a mixing zone, and dilution factor.</p>

Technical Topic	Implementation Agreement
Total Dissolved Solids	DRBC's basin-wide effluent limit of 1000 mg/L will be included in SPDES permits, except that if an applicant requests an alternate TDS limit, DRBC staff will review and develop (or DEC staff will develop and furnish to DRBC for consideration) an alternate limit (a "TDS Determination"), consistent with DRBC regulations. In the event that there are no available effluent data for TDS, NYSDEC will allow for a maximum of five years of data collection prior to imposing a TDS requirement.
Color	DRBC regulations provide for a color limit of 100 PtCoU. If an applicant demonstrates the need for a higher limit, DRBC will provide a determination establishing an alternate limit consistent with Section 4.30.5 of the WQR. NYSDEC will include the determination in its SPDES permits.
Temperature	<p>DRBC will provide NYSDEC with heat dissipation areas and associated temperature limits for certain power plants discharging to the DRBC Water Quality Zones 1, E, W1, W2 and N1 and tributaries thereto. DRBC staff is also developing draft amendments to the WQR to provide for deference to Section 316(a) variances approved by NYSDEC. (In the absence of the rule change, the NYSDEC will continue to issue SPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)</p> <p>In the event that the time for DRBC's review and analysis exceeds 6 months after NYSDEC notifies DRBC of its receipt of a technically complete application, the NYSDEC will consult with DRBC to determine next steps. NYSDEC may, at its discretion, issue a SPDES 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)	NYSDEC will assign WET limits in accordance with NYSDEC TOGs Nos. 1.3.1 and 1.3.2. The most sensitive species will be utilized in the monitoring requirements. Dual species (fish and

Technical Topic	Implementation Agreement
	<p>invertebrate) testing will be required at least every 10 years to confirm the most sensitive species. Since DRBC's Interpretive Guidelines apply as basin wide guidelines in New York waters (<i>see</i> DRBC Water Quality Regulations, Interpretive Guideline No. 1, § B.(2)b.(i)), in no case shall effluent limitations greater than 2.0 TUa be established without a determination of a mixing zone where the Maximum Allowable Waste Concentration (MAWC) of 0.3 TUa is met at the edge of the mixing zone. DRBC will provide input as necessary in accordance with Section II.G.-I. above.</p>
Toxic Limits	<p>DRBC has reviewed TOG 1.3.1 TMDLs and Water Quality-Based Effluent Limits and found that the NYSDEC requirements are equivalent to the targets are applied by the DRBC (<i>see</i> pages 7 &amp; 8 of the TOG). NYSDEC will assign limits for toxics criteria in accordance with TOG 1.3.1.</p>
Monitoring Frequencies (General)	<p>Unless otherwise specified elsewhere in this agreement, the monitoring frequencies will be as established in accordance with NYSDEC guidance (e.g., TOGS 1.3.3). More frequent monitoring may be requested by DRBC in specific cases such as, but not limited to, instances in which data is being collected to develop effluent limits, discharge operations are seasonal, or to establish statistical correlations between alternative testing and reporting methods.</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**

NYSDEC 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: NYSDEC General Permits Approved or Conditionally Approved by the Commission**

[TO BE DEVELOPED]

## **APPENDIX E: DRBC/NYSDEC Coordination Process for Water Withdrawal Regulatory Program Activities**

### **New York State Department of Environmental Conservation & Delaware River Basin Commission**

The following procedures will be utilized by the Water Resource Management Branch (WRMB), of the Delaware River Basin Commission (“Commission” or DRBC) and the New York State Department of Environmental Conservation (NYSDEC) for the purpose of facilitating coordinated review of water withdrawal projects, avoiding duplication of effort, and assuring the overall protection of water resources in the New York State portion of the Delaware River Basin. This coordination process is intended to promote intergovernmental cooperation, avoid unnecessary duplication of staff functions, minimize burdens on the regulated community, and generally allow for the efficient use of agency resources in protecting the water resources of the basin.

The majority of New York State’s portion of the Delaware River Basin lies within NYSDEC Regions 3 and 4, with a smaller portion located within NYSDEC Region 7 (*see* Figure 1: Map of NYSDEC Regions and DRBC Basin).

The process described within this appendix is intended to facilitate communication and coordination on water withdrawal projects located within the Delaware River Basin within New York State that are either:

- a. subject to regulation by both the DRBC and NYSDEC; or
- b. subject to regulation by the DRBC, but not by NYSDEC.

NYSDEC statutory authorities related to water withdrawal permitting, reporting and registration are contained in the state’s Environmental Conservation Law at: Section 3-0301(2)(m)<sup>1</sup>; Article 15 – Title 15 (Water Resources – Water Supply); and Article 21 – Title 17 (Pollution Control Compacts – Delaware River Basin Water Commission Compact). In accordance with Section 15-1501(7)(b), water withdrawal projects that have received an approval from DRBC are exempt from the permit requirements of ECL Section 15-1501.<sup>2</sup>

Nothing contained in this appendix shall be construed as a waiver of any authority possessed by either the Commission or NYSDEC, including the right to regulate withdrawals, consumptive water uses or diversions of water, or the right to reopen dockets or permits, or issue orders or impose additional conditions that may be necessary to protect the public health, safety and welfare or the environment, consistent with the laws and regulations of the respective agencies. Prior to

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<sup>1</sup> Article 3, Title 3, Sec. 301.2 m. (§3-0301(2)(m)) authorizes the NYSDEC, through its commissioner, to “[a]dopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of this chapter.”

<sup>2</sup> *Also see*, 6 NYCRR §601.9(b), exempting from NYSDEC’s water withdrawal permitting requirements “[w]ithdrawals that have received an approval from the Delaware River Basin Commission or Susquehanna River Basin Commission.”

undertaking any such actions within the New York portion of the basin, each agency will notify the other, and to the extent practicable and appropriate, the agencies will coordinate such actions.

Beyond project review, the coordination process will also be used to facilitate water use registration and data sharing, including but not limited to the sharing of water withdrawal and water use data.

All references to the NYSDEC Regional Permit Administrator (“RPA”) and the DRBC Water Resource Management Branch Manager in this appendix shall be understood to encompass their respective designees listed in Section VII below. Written communications between the NYSDEC and the DRBC will generally be in the form of email.

## **I. Project Application Review**

The official record for the project, including but not limited to the project application and all related docket files, will be retained by the Commission. Copies of records will be furnished to NYSDEC upon request.

### **A. Pre-application notifications**

Prior to preparing an application, both NYSDEC and the DRBC strongly recommend that a project sponsor request a pre-application meeting. The DRBC staff will reinforce this recommendation when project sponsors contact them.

The NYSDEC RPA and the DRBC Manager will provide each other with early written notification (email is preferred) of a pre-application meeting with a project sponsor. To facilitate early communication about projects, participation by representatives from both agencies (in person, or via video or teleconferencing) is encouraged. If either agency requests to participate in the pre-application meeting, the host agency will schedule the meeting at a mutually agreeable time and venue. At such meetings, in the event that a representative of only one agency is present, that representative will advise the project sponsor of the authorities of both agencies (by means of verbal notice and written guidance, fact sheets, or other materials) and will provide contact information for representatives of both agencies. As appropriate, minutes or notes from pre-application meetings will be prepared by the host agency and sent to the other agency within 30 calendar days.

### **B. Aquifer testing/ pumping test results**

The Commission’s regulations require that aquifer test results be submitted as part of any application for new or increased groundwater withdrawals. Project sponsors in the New York portion of the basin will be directed to follow the “Pumping Test Procedures for Water Withdrawal Applications,” TOGS<sup>3</sup> 3.2.1, which is available on the NYSDEC website at: <http://www.dec.ny.gov/lands/86950.html>, and to submit the results to the Commission as part of any groundwater withdrawal application submittal. Note that the Commission and NYSDEC will advise project sponsors to submit aquifer testing plans to the Commission for review and approval

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<sup>3</sup> “TOGS” stands for “Technical and Operational Guidance Series.”

prior to conducting a test, especially if the project sponsor proposes to deviate from the NYSDEC Test Procedures. If deviations from DEC Test Procedures are requested, DRBC will consult with NYSDEC prior to approving them.

The DRBC staff will provide the NYSDEC RPA with written notification (commonly via email) when a project sponsor submits an aquifer testing plan, and will share the plan with NYSDEC staff. NYSDEC staff will transmit any relevant comments to the Commission within 30 days of receipt of the aquifer testing plan.

The DRBC staff will review the aquifer testing plan for consistency with applicable regulations and requirements of the Commission and the terms of this Agreement. For those plans determined to be incomplete, DRBC will notify the project sponsor in writing of the deficiencies, with a copy to the NYSDEC RPA. DRBC staff will also copy the NYSDEC RPA or designee on correspondence to the project sponsor approving a testing plan.

*A. Application requirements and Project Review fees*

Project sponsors for water withdrawal and use projects that are subject to regulation by the Commission but not by NYSDEC, or that are subject to regulation by both agencies, will be expected to make application on forms provided by the Commission and will be subject to the Commission's Project Review fees. Project sponsors will be required to complete the DRBC's Ground and/or Surface Water Withdrawal Application and the "Applicant's Statement – Project Review Fee Form," both of which are available on the DRBC website, drbc.net.

*B. New York SEQR Process*

NYSDEC regulations provide that certain projects or activities proposed or permitted by a state agency or local governmental unit may be subject to review under 6 NYCRR Part 617 State Environmental Quality Review (SEQR). SEQR requires the sponsoring or approving governmental body to identify and consider the environmental impacts of the activity it is proposing or permitting. The Commission is not a state or local agency subject to SEQR.



The Commission and NYSDEC acknowledge that a project may be subject to SEQR. Responsibility to comply with SEQR will remain with the appropriate State or local agency.

Promptly following a pre-application meeting after a project application is submitted, or otherwise as early in the review process as reasonably possible, NYSDEC staff will notify DRBC in writing if NYSDEC is the lead or an “involved agency” in the SEQR review of an action.<sup>4</sup> If NYSDEC is an “involved agency” under SEQR, NYSDEC staff will thereafter keep DRBC staff apprised of the status of the SEQR review, including notifying the Commission within five days of completion of the SEQR review.

To the extent possible, the Commission’s review of withdrawal applications should be coordinated with the lead agency for SEQR review.

*A. Receipt of an Application*

Upon receipt of the project application from the project sponsor, the DRBC Manager will post notice on DRBC’s “Application Status Page” on the Commission’s website and also will notify NYSDEC staff via email. The Application Status Page is capable of displaying project applications by type, state, name, etc. The Commission also issues a Notice of Application Received (NAR) and will provide the NYSDEC with an electronic copy of the NAR.

The entire application, including supplemental materials and all documents uploaded by the project sponsor, will be made available to NYSDEC electronically. Public records will continue to be made available to interested persons upon request, in accordance with the records access rules of DRBC and NYSDEC, respectively.

For those projects determined by the Commission to be administratively incomplete, the DRBC Manager will notify the project sponsor in writing with a copy to the NYSDEC RPA.

*B. Pass-by flows*

The Commission currently uses the ten-year 7-day low flow (Q7-10) statistic as the default pass-by flow for withdrawals from a stream. The Commission is currently studying and evaluating alternative low flow protection policies. For water withdrawal projects located within New York State and covered by this appendix, the Commission and NYSDEC agree that the conditions of approval recommended by DRBC staff to the DRBC Commissioners will be consistent with any applicable NYSDEC regulatory requirement or technical guidance regarding low flow protection that results in more stringent protection than the Q7-10 pass-by flow. NYSDEC agrees in general to support Commission determinations based on NYSDEC’s regulatory requirements and technical guidance, although it reserves the right to recommend departure from these requirements

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<sup>4</sup> NYSDEC’s SEQR Handbook, 3<sup>rd</sup> Edition (NYSDEC Division of Environmental Permits, 2010) explains that “[f]or SEQR purposes, an agency is ‘involved’ when the determination is made that the agency has or will have a discretionary decision to make regarding some aspect of the action. Normally an agency becomes aware of its involvement when it receives an application or is contacted by another involved agency as part of a coordinated review.” See <http://www.dec.ny.gov/permits/6447.html>.

when doing so in NYSDEC's view better serves its or the basin's water management objectives and is consistent with applicable law.

### *C. Application review*

The DRBC will review the project in accordance with applicable regulations and requirements of the Commission and in coordination with NYSDEC, as described in this appendix.

DRBC will afford NYSDEC timely opportunities to provide comments and technical assistance to the DRBC Manager in the review of projects.

For those projects deemed by DRBC staff to be technically deficient or if additional information is needed from a project sponsor, the DRBC Manager will notify the project sponsor in writing, with a copy to the NYSDEC RPA.

During technical review, the DRBC Manager will contact the NYSDEC RPA in writing to determine if the latter is aware of any issues that might not be evident from the applicant's submissions that could affect processing of the application.

NYSDEC staff may choose to accompany Commission staff during site evaluations. At the earliest practicable time, the DRBC Manager will notify the NYSDEC RPA in advance of scheduled:

- site investigations (conducted for all applications);
- inspections of aquifer test monitoring networks;
- aquatic resource surveys;
- public informational meetings; and
- Commission public hearings/ business meetings

DRBC staff will make best efforts to keep schedules shared with NYSDEC staff current. Because all field activities are subject to scheduling changes, however, arrangements for the joint inspection of projects should be closely coordinated and confirmed in advance.

The DRBC Manager may request that DRBC staff accompany NYSDEC staff during site evaluations scheduled by NYSDEC with a project sponsor. At the earliest practicable time, the NYSDEC RPA will provide DRBC with advance notice of scheduled field surveys and facility inspections.

Participation in joint field surveys and site evaluations by staff of the two agencies will be governed by the agencies' respective legal authorities and policies. Nothing contained herein should be construed to supersede or preempt such authorities.

The DRBC Manager and the NYSDEC RPA will work together to resolve any issues regarding review of a subject project before a draft approval is published by the Commission for public comment.

*D. Public water supply applications*

Public water supply permitting has been incorporated into NYSDEC's Water Withdrawal Permitting regulations and, as such, is covered by the procedures identified above.

The NYSDEC RPA will review applications submitted by public water suppliers and conduct any necessary coordination with the New York State Department of Health (NYSDOH), copying the DRBC Manager on correspondence as appropriate. NYSDEC will coordinate with NYSDOH and its principal staff contact to the extent required.

*E. Pre-decisional coordination*

Commission determinations for most projects are made at regularly scheduled Commission meetings, which are duly noticed and open to the public. The Commission meets four times each year, usually in March, June, September, and December. Each Commission business meeting is preceded by a public hearing, including on recommended docket approvals, which may be scheduled for a date four to five weeks in advance of the public meeting date.

The DRBC Manager will notify the NYSDEC RPA of active applications on a quarterly basis, approximately 8-10 weeks prior to the Commission's public hearing. This will commonly be by email and will be in the form of a spreadsheet that contains summary information for each active project in the New York State portion of the basin.

The results of the Commission staff's technical analysis, including but not limited to any preliminary recommendations for passby flows, will be provided to the NYSDEC RPA for review and comment as they become available. The RPA will notify the DRBC Manager as early as practicable of any concerns with these preliminary recommendations.

Approximately 5 weeks prior to a Commission public hearing, DRBC staff will furnish to NYSDEC staff a list of the projects scheduled for hearing, accompanied by a draft of each proposed docket, containing the findings and conditions that in DRBC staff's view are necessary to support a determination that the project does not substantially impair or conflict with the Commission's Comprehensive Plan. Within 10 days of receipt of a draft docket, NYSDEC will either submit all its comments in writing to the DRBC Manager or will request additional time for review. The DRBC Manager will work with the NYSDEC RPA to resolve any NYSDEC concerns. The Commission and NYSDEC also will work jointly to develop standard conditions for dockets approving projects located in the New York State portion of the Basin. The agencies will review and revise such conditions periodically as appropriate. With respect to low flow protection, the approach will be as set forth in section "B" of this appendix.

*F. NYSDEC/Commission issued approvals*

NYSDEC and the Commission agree to provide each other with copies of water withdrawal approvals issued for projects located within the New York State portion of the Delaware River Basin within 30 days of the issuance of such approvals.

## II. Data Sharing

### A. NYSDEC approvals

For water withdrawal projects subject to regulation by NYSDEC but not by the Commission, NYSDEC will provide the Commission with project data and copies of final approvals within 30 days of the issuance of such approvals.

### B. Water use data

1. DRBC Contact/Recipient. NYSDEC will furnish water use data for withdrawals located in the Delaware River Basin to a contact in DRBC's Information Technology and Planning Branch, to be identified by the DRBC Manager. If an IT contact has not been identified, then the data will be furnished to the DRBC Manager.

2. Timing of data transfer. NYSDEC will furnish data to the Commission as soon as practicable following the March 31 reporting deadline established by DRBC's Water Audit rule (Resolution No. 2009-1).

3. Types of data to be shared.

- Due to the potential adverse cumulative impact of smaller withdrawals on basin water resources, NYSDEC will assist the Commission in acquiring data from its state agencies for withdrawals and uses that NYSDEC would not ordinarily track, including for example, for public water supplies with capacities of less than 100,000 gpd regulated by NYSDOH.
- NYSDEC will notify the DRBC Manager of projects that report water withdrawals or withdrawal capability of greater than 100,000 gpd for which the owners or operators have not obtained Commission approval, and will assist DRBC in determining the historic use of such sources.
- The Commission will make available to NYSDEC, upon request, available water use data for the Delaware River Basin in a form compatible with data from New York State's 15 other major basins.
- NYSDEC and the Commission will exchange information on water use data analysis methods, including estimates for consumptive water use by sectors, to enable enhanced future data comparisons.

### C. Water quality data

[Reserved.]

### **III. Compliance**

A. *See Sections VII.A.2 and VII.A.3. of the Agreement of which this appendix is a part.*

#### **B. Joint compliance inspection opportunities**

In connection with its routine inspections of facilities it regulates, NYSDEC will inform the Commission's Manager of any instances of possible non-compliance for projects approved by the Commission.

The NYSDEC RPA will provide the DRBC Manager with notice of planned inspections of withdrawal facilities located in the basin as far in advance of the inspection dates as possible. To the extent practicable, the RPA will also accommodate DRBC staff who wish to accompany NYSDEC during such inspections. NYSDEC and DRBC may also conduct joint compliance inspections.

### **IV. Coordination Outreach**

To initiate the coordination process under this appendix, the agencies will convene one or more technical sessions involving Commission and NYSDEC Regional Office staff to familiarize all with respective jurisdictional programs, key personnel and the coordination process in general.

Thereafter, at least annually, the agencies will convene a regulatory coordination meeting to review procedures, discuss issues of concern to staff of either or both agencies, orient new staff to the coordination process, and make program modifications that they agree are necessary or convenient to fulfill the purposes of this Agreement.

### **V. Agency Contacts**

The agencies will maintain and share active contact lists, identifying key personnel and contact information for all relevant program areas. The current list is attached. At a minimum, these lists will be updated for each annual regulatory coordination meeting.

### **VI. Changes to the Coordination Process**

The coordination process outlined above will be reviewed annually. In accordance with Section III.B. of the Agreement, changes to this appendix may be made with the written mutual agreement of the NYSDEC, Bureau of Water Resource Management, Water Quality Section Chief, and the DRBC Water Resource Management Branch Manager.

## VII. Agency Contacts<sup>5</sup>

### DRBC

Water Resource Management Branch Manager (throughout this appendix, “DRBC Manager”) William J. Muszynski, P.E. [william.muszynski@drbc.nj.gov](mailto:william.muszynski@drbc.nj.gov) 609-883-9500 ext. 221

Project Review Section (PRS), Supervisor (Manager’s designee for most issues) David Kovach, P.G. [david.kovach@drbc.nj.gov](mailto:david.kovach@drbc.nj.gov) 609-883-9500 ext. 264

Watershed Planning and Compliance Section Supervisor (Manager’s designee for compliance matters) Chad Pindar, P.E. [chad.pindar@drbc.nj.gov](mailto:chad.pindar@drbc.nj.gov) 609 -883-9500 ext. 268

Information Technology (Manager’s designee for data sharing and IT issues) Water Resources Analyst Kent Barr [kent.barr@drbc.nj.gov](mailto:kent.barr@drbc.nj.gov) 609 -883-9500 ext. 237

### NYSDEC

Region 3: Daniel Whitehead RPA (845) 256 - 3801 [daniel.whitehead@dec.ny.gov](mailto:daniel.whitehead@dec.ny.gov)  
Shohreh Karimipour RWE (914) 428 - 2505 [shohreh.karimipour@dec.ny.gov](mailto:shohreh.karimipour@dec.ny.gov)

Region 4: William Clarke RPA (518) 357 - 2455 [bill.clarke@dec.ny.gov](mailto:bill.clarke@dec.ny.gov)  
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DOW Division of Water

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<sup>5</sup> Names may be changed by written notification from the respective agencies to reflect personnel changes.