

**Amendments to 18 CFR Part 401  
Rules of Practice and Procedure**

# **Comment and Response Document**

**June 5, 2024**



**Delaware River Basin Commission**

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# 1. INTRODUCTION

## 1.1 Background

The Delaware River Basin Commission (the “Commission” or “DRBC”) is a federal-interstate compact agency formed by concurrent legislation of Delaware, New Jersey, New York, Pennsylvania, and the United States in 1961<sup>1</sup> to manage the water resources of the Delaware River Basin (“Basin”).<sup>2</sup> [The Commissioners](#) are, *ex officio*, the governors of the four Basin states<sup>3</sup> and the Division Engineer, North Atlantic Division, United States Army Corps of Engineers, who represents the United States.<sup>4</sup>

On September 28, 2023, the Commission posted to its website and published in the *Federal Register*<sup>5</sup> a notice of proposed rulemaking to amend the Commission’s Rules of Practice and Procedure (the “RPP”)<sup>6</sup> to: resolve ambiguities concerning the automatic termination of DRBC project approvals and make conforming amendments to related provisions as appropriate; update the Commission’s Water Resources Program and Project Review procedures to better conform them to current practice; remove references to the federal Freedom of Information Act (“FOIA”) that may create confusion about the regulations applicable to requests for Commission public records; and align pronouns with the Commission’s policies regarding diversity, inclusion, and belonging.<sup>7</sup> The need and rationale for the amendments are set forth in detail in the Commission’s notice of proposed rulemaking.

The text of the proposed amendments and the Notice of Proposed Rulemaking and Public Hearing published on the DRBC website in September 2023 are attached as Appendix A of this document. These and other materials related to the proposal can be found on the website at: [https://www.nj.gov/drbc/meetings/proposed/notice\\_RPP\\_amendments.html](https://www.nj.gov/drbc/meetings/proposed/notice_RPP_amendments.html).

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<sup>1</sup> Pub. L. No. 87-328, 75 Stat. 688, Approved Sept. 27, 1961; 53 Del. Laws ch. 71, Approved May 26, 1961; 1961 N.J. Laws ch. 13, Approved May 1, 1961; 1961 N.Y. Laws ch. 148, Approved Mar. 17, 1961; 1961 Pa. Laws Act 268, Approved July 7, 1961 (the “Compact”).

<sup>2</sup> *Id.* § 1.3(e).

<sup>3</sup> *Id.* § 2.2.

<sup>4</sup> Water Resources Development Act of 2007, § 5019(a).

<sup>5</sup> 88 Fed. Reg. 66722 (Sept. 28, 2023). The Commission’s web notice and proposed rule text are provided in Appendix A of this CRD.

<sup>6</sup> The RPP is codified in the Code of Federal Regulations (“C.F.R.”) at 18 C.F.R. Part 401. Throughout this CRD, “Part 401” refers to Part 401 of Title 18 of the C.F.R. References to “Subparts” are to subparts of Part 401, and references to any specific Commission rule (e.g., § 401.0) are to Commission rules contained in Part 401 unless otherwise specified.

<sup>7</sup> The Commission’s notice of proposed rulemaking also appeared in each of the Basin-state registers. See 27 Del. Reg. Regs. 206 (Oct. 1, 2023); 45 N.Y. Reg. 9 (Oct. 11, 2023); 55 N.J. Reg. 2179(a) (Oct. 16, 2023); 53 Pa. Bull. 6698 (Oct. 28, 2023).

## 1.2 Public Process

The Commission solicited and accepted public comment on this proposed rulemaking during the 63-day period that ran from September 28 through November 30, 2023. Written comments were accepted through an on-line comment collection system. An exception process was provided for those who lacked access to the on-line system or were otherwise unable to use it. The Commission received no requests for exceptions. Opportunities for oral comment included two virtual public hearings at the dates and times listed below.

- Hearing #1: November 13, 2023 – 1:30 p.m.
- Hearing #2: November 13, 2023 – 6:30 p.m.

For each virtual hearing, individuals without convenient access to a computer or the internet could join by phone using a toll-free number. Every person who wished to speak at each of the two hearings was afforded an opportunity to do so.

The Commission’s website features an interactive language translation widget capable of translating web-based formatted text on any of DRBC’s web pages from English to over 100 different languages. The notice for this rulemaking advised readers that on request, the Commission would also provide certified translations of rulemaking documents into languages other than English. The Commission received no requests for certified translation in connection with this rulemaking.

The Commission received 199 written submissions through its online comment system and ten oral comments during its two public hearings on the proposal. All submissions are available for review and download at:

<https://hearing.drbc.commentinput.com/?id=T95htQGAg>.

The comment submissions typically consisted of a set of comments from a single individual or organization, and they typically addressed more than one aspect or provision of the proposed amendments. However, in many instances, a single submission included a set of comments by two or more individuals or organizations. Some submissions consisted of petitions or a set of comments with multiple signers. Similar or identical comments were in many instances submitted by individual commenters using form letters or template language provided by others. Commenters were not limited to a single submission, and some commenters offered two or more submissions. The “199” figure represents the number of individual written submissions the Commission received during the comment period without regard to the number of comments within a submission, the number of signers on a single submission, or the number of individuals making a joint submission. Additional detail regarding the type and number of comments received is provided in the sections of this CRD that focus on comments and responses.

The Commission received ten oral comments during its two public hearings on the proposal. Oral comments were captured by recordings and rough transcripts in Zoom. Staff “cleaned up” formatting in the Zoom transcripts. All oral and written comments were then organized and addressed in the manner described in Section 1.4 below.

The Commissioners, in consultation with the DRBC staff and staff of their respective agencies, carefully reviewed and considered the comments received during the public comment period.

Changes to the proposed amendments were incorporated into the final rules in response to the comments received. The Commissioners adopted the final rules at a duly noticed public meeting on June 5, 2024.

### 1.3 Changes Made in Response to Public Comments

Changes to the proposed amendments in response to comments received during the public comment period are described below. All relate to the Commission's proposed amendments to § 401.41.

1. *Action on request for extension.* The Commissioners, not the Executive Director, will approve or deny all requests for extended or renewed approval under amended § 401.41(a) and (b), respectively. In conjunction with this change, rather than establishing a prescribed extension term of five years, the final rule at § 401.41(a) provides for the Commissioners to grant an extension of *up to* five years.
2. *Eligibility for extension.* To qualify for extension of a docket approval that would otherwise expire under § 401.41, in addition to demonstrating that approved activities, site conditions, and the Comprehensive Plan have not materially changed, the docket holder (project sponsor) will be required to demonstrate that it “is diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals.”

The docket holder will not be required to demonstrate that it has expended a fixed, minimum dollar amount, a proposal to which commenters objected. Nor will the docket holder be obligated to show that it has expended a substantial sum in relation to the project cost, as the rule originally provided, or to show that it has expended a fixed percentage representing a substantial sum in relation to the total cost of the project, as some commenters proposed. In the Commission's view, these approaches are impracticable where the project costs consist primarily of construction costs, and where the sponsor could not lawfully or reasonably commence construction because all final permits have not been secured.

3. *Required public process.* The Commission will publish notice that it has received a request for a docket extension under § 401.41(a) and provide an opportunity for written comment of at least ten days' length on whether the docket holder has demonstrated all elements requisite for an extension—i.e., that the approved activities, site conditions, and Comprehensive Plan have not materially changed, and that the project sponsor has diligently pursued the project in reliance on the Commission's approval. The project sponsor will be afforded an opportunity to respond to the comments received but will not be obligated to do so. The Commission will provide notice at least ten days prior to the date of a business meeting at which the Commissioners consider action on a request pursuant to § 401.41(a).
4. *Public hearing.* A public hearing will be provided if three or more Commission members request in writing to the Executive Director or by vote at a public meeting that one be held.

In addition to the above changes made in response to public comment, the following modifications were made to the provisions for extension of a docket that would otherwise expire under § 401.41(a):

5. *Administrative continuance.* A provision was added to address the situation where a request for extension is timely, but final Commission action on the request occurs after the docket would otherwise expire. In such instances, the final rule provides that the docket will be administratively continued pending final Commission action.
6. *Construction complete.* A provision has been added to make clear that if the authorized activities are limited to construction activities, an extension in accordance with § 401.41(a) is no longer required once construction is complete. Because some dockets issued for construction activities impose ongoing obligations on docket holders, this provision further states that the expiration of the docket, including any approved extension, does not eliminate ongoing docket obligations expressly identified as such in the docket approval. Such an obligation, for example, might consist of a requirement that flood warning signage be maintained or deed or lease restrictions relating to notice about potential flooding be continued indefinitely in a residential building constructed in a floodplain.
7. *Process for re-application.* Under the final rule, if a request for extension under § 401.41(a) is denied, and the project sponsor wishes to apply for renewal of its approval under paragraph (b), the project sponsor's application and the associated review fee must be received by a date to be established by the Commission. In this situation, the docket approval is not thereafter administratively continued automatically. However, the Commission may, in its discretion, administratively extend the docket approval in whole or in part for a period ending on or before the date on which the Commission renders a final decision on the sponsor's renewal application.

Section 401.41(b), providing for re-application to the Commission in the event that material changes to a project are proposed or other eligibility criteria for an extension under paragraph (a) of the section have not been met, has been reworded.

8. *Language of final § 401.41(b).* The final language adopted for § 401.41(b) has been modified from the language as proposed to more accurately reflect that the burden is on the docket holder to demonstrate eligibility for an extension under § 401.41(a).

A summary of the concerns raised by commenters regarding § 401.41 and the Commission's responses are set forth in Section 4.1.3 of this CRD. The Commission's resolution adopting the final rule, along with the text of the final rule, are provided in Appendix B of this CRD.

## 1.4 Organization of Comments and Responses

This CRD is generally organized by proposed rule section. In some instances, a single comment concerned multiple rule sections. In such cases, a response may be repeated, cross-referenced to another section, or addressed in a general summary response. In many instances, similar or identical comments were submitted by multiple individuals and organizations. The Commission staff reviewed all the comments and then distilled those with similar themes into "statements of concern." Each statement of concern is a representative quoted or paraphrased version of one or more comments on a shared theme. The Commission has responded to each statement of concern. The process of screening, grouping, paraphrasing and organizing comments for response is depicted in

Figure 1.

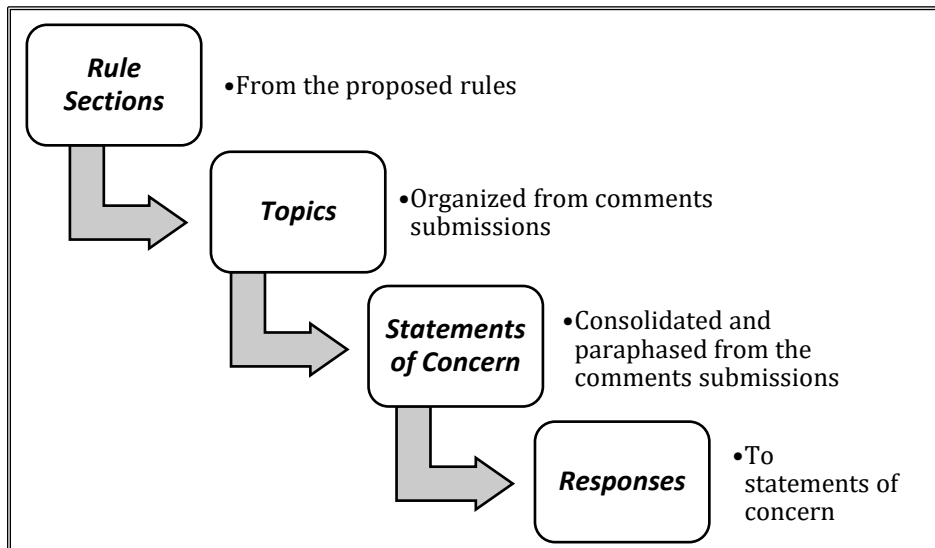
The Commission also received comments on subjects outside the scope of the rules. To provide a complete and comprehensive view of the comments received, the staff developed statements of concern for these comments. In some cases, responses to these out-of-scope submissions are provided; however, in other cases the Commission simply notes that the comments are beyond the scope of the proposed action.

## 2. RESPONSE TO COMMENTS – RPP, SUBPART A

### STATEMENT OF CONCERN (SC-1)

Twenty-seven organizations and 300 individuals submitted or signed onto comments recommending that § 401.8(a) be amended by reserving for the Commissioners the authority delegated to the

**Figure 1: Process for organizing comment submissions and responses**



“Executive Director” in the last sentence of the paragraph.

### RESPONSE (R-1)

Section 401.8(a) explains the Commission’s obligations under Article 11 of the Compact with respect to projects for which the sponsor is a federal, state or local entity. Without amendments, the provision in its entirety read:

After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new

and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of this part.

Consistent with the *proposed* rule, the Commission's final rule replaces the phrase "changed substantially" with "changed materially," and the phrase "is deemed substantial" with "is deemed material." A definition of the term, "material change" has been added to the RPP at § 401.121(e).

The further modification requested by the commenters is that the Commission revoke the authority delegated to the Executive Director to determine when a change to a project included in the Comprehensive Plan pursuant to Article 11 of the Compact is proposed such that the project is a new and different one for purposes of that article and must be considered anew by the Commissioners for inclusion before the project can proceed. Because such a change would not constitute a logical outgrowth of the proposed amendments, it is not included in the final rulemaking. The Commission acknowledges the suggestion.

For additional comments and responses related to the adoption of the defined term "material change," see Section 6, below. For additional discussion of the "logical outgrowth" requirement, see Section 8.2 below.

### 3. RESPONSE TO COMMENTS – RPP, SUBPART B

#### STATEMENT OF CONCERN (SC-2)

As quoted and paraphrased below, one commenter questioned the proposed change to the period of time covered by the Commission's annual Water Resources Program in § 401.22:

- "The Commission proposes removing the required time period that proposed projects and facilities will be adopted into the Water Resources Program (Program) . . . to restore the 'flexibility the Compact allows regarding the period to be covered by the annual program.' However, the Commission does not explain the purpose or benefit of allowing flexibility regarding the Program's time period."
- The Commission has already developed Programs that do not abide by the required six-year period . . . . Consequently, the Commission must have already determined that it is beneficial to utilize a different time frame. The Commission must provide the reasoning, purpose, and benefit of no longer following the standard six year time period.
- The Commission must explain why conforming the period to be covered by the Commission's annual Water Resources Program as set forth in § 401.22 to the same period as provided for in Section 13.2 of the Compact is in the best interest of the Basin and the public.



## RESPONSE (R-2)

Section 3.2(b) of the Compact provides in part for the Commission to adopt an annual “water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and other . . . governmental and private [entities] during the ensuing six years or such other reasonably foreseeable period as the commission may determine.” The provision further states that “the water resources program shall include a systematic presentation of: 1) the quantity and quality of water resources needs for such period; 2) the existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated; [and] 3) a separate statement of the projects proposed to be undertaken by the commission during such period.”<sup>8</sup>

The commenter’s paraphrase, which refers to the time period in which “projects and facilities will be adopted into the Water Resources Program” thus does not accurately describe the substance and purpose of the Water Resources Program as set forth in the Compact. The time periods listed in former § 401.22 (“the ensuing six-year period”) and in Section 13.2 of the Compact (“the ensuing six years or such other reasonably foreseeable period as the commission may determine”) do not establish deadlines by which the Commission must incorporate projects and facilities into the Water Resources Program, but simply the period that any given annual Water Resources Program should reasonably cover.

The Commission’s implementing regulations at § 401.22 more accurately state, “The Water Resources Program will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action in the ensuing . . . period.”

The commenter is correct that the Commission has relied on the statutory language of the Compact to develop Water Resources Programs that cover periods of fewer than six years. Since the *Water Resources Program FY 2014–2016* (May 8, 2013), the Commission has adopted Water Resources Programs covering three-year periods. Accordingly, six years is the “standard” (the commenter’s term) only in the sense that it is one of the options mentioned in the Compact. At the public hearing of May 7, 2013 for the Water Resource Program adopted by the Commission on May 8, 2013, then-Director of Water Resource Management Dr. Kenneth Najjar explained that the Commission was “choosing a three year [period] as being our foreseeable period of [sic] which to prepare this Water Resources Program.”<sup>9</sup> A plan extending beyond the “foreseeable period” would be of little utility. Thus, if three years is the “foreseeable period” from the perspective of the Commission’s planners, then it is a *reasonable* period for the purposes of the Water Resources Program under the Compact.

Although the Commission can predict certain needs decades into the future, responding with approaches other than the construction of new, large-scale infrastructure involves an adaptive and iterative process. The proposed and final amendment gives the Commission the flexibility it needs—and which the statute allows—to set forth shorter-term strategies, including approaches based on

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<sup>8</sup> See also Compact, § 3.2(b); 18 C.F.R. § 401.22.

<sup>9</sup> Testimony of Dr. Kenneth Najjar before the DRBC Public Hearing, p. 12, Sargent’s Court Reporting Service, Inc. (May 7, 2013) (on file with the Commission).

the best information and technologies available in a world where information and best practices are evolving at an accelerating pace.

## 4. RESPONSES TO COMMENTS – RPP, SUBPART C

### 4.1 Comments related to specific provisions

#### 4.1.1 Section 401.38 [Comment O-4]

##### STATEMENT OF CONCERN (SC-3)

One commenter was concerned that the proposed amendment to § 401.38 did not explain in sufficient detail how the referral of an application by a federal or state agency to the Commission would work in practice. Specifically, the commenter asked for clarification on:

1. “When the Commission will receive [an] application from a State or Federal agency;”
2. “The level of review that the Commission will undertake to complete Section 3.8 review;” and
3. “How the public will be involved in the process.”

##### RESPONSE (R-3)

The amendment to § 401.38 provides that when a federal or state agency *receives* a project application for a project that would be reviewable by the Commission, the federal or state agency shall refer the project for review to the Commission “in such form and manner as shall be provided by Administrative Agreement.” In contrast, former § 401.38 stated that the referring agency would provide the referral “Upon *approval* . . . of any project” (emphasis added). In practice, the Commission and signatory party agencies review projects concurrently whenever possible. The amendment clarifies that referrals should—and in practice, do—occur well before the referring agency has issued its own approval of a project.

The commenter is correct that the amended regulation does not set forth specific procedures for how a referral should be made. Rather, as indicated in the regulation, those details are left to applicable administrative agreements and agency practice. Notably, once the Commission receives an application, the project is included in the Commission’s Notice of Applications Received (“NAR”), published more-or-less monthly. The most recent NAR is always available at: <https://www.nj.gov/drbc/programs/project/nar.html>. Anyone who wishes to be notified by email upon publication of a new NAR may subscribe using a link on the same page.

With respect to the level of review the Commission undertakes, in accordance with Section 3.8 of the Compact,<sup>10</sup> for any proposed project that could have a substantial effect on water resources of the

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<sup>10</sup> *Supra*, note 1.

basin, the Commission must determine whether the project “would substantially impair or conflict with” the Commission’s comprehensive plan “for the immediate and long range development and use of the water resources of the basin.”<sup>11</sup> Specifically, Section 3.8 provides that 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.

Section 13.1 of the Compact generally describes what the Comprehensive Plan must contain. In practice, all of the Commission’s substantive requirements concerning water quality, withdrawals, discharges, metering, monitoring and reporting are set forth in the Commission’s regulations, which are available at: <https://www.nj.gov/drbc/about/regulations/>. The Commission’s Water Quality Regulations and Water Code provisions have been incorporated into the Comprehensive Plan.

A similar explanation and additional information about the project review process appear at: <https://www.nj.gov/drbc/programs/project/>. How the regulations are applied in a Commission review is best understood by reviewing draft and or final Commission docket approvals, called “dockets.” Draft dockets are posted for comment every quarter, at least ten days prior to the Commission’s regularly scheduled public hearing. To receive an email notification when draft dockets are posted, members of the public may subscribe at: <https://www.nj.gov/drbc/contact/interest/>, by selecting “Upcoming Meeting Notices.”

For projects reviewed under the Commission’s One Permit Program, 18 C.F.R. § 401.42, the Commission’s regulatory requirements may be included in a permit issued by the signatory party agency, rather than in a separate DRBC docket, in accordance with an administrative agreement with the particular agency. In these instances, interested members of the public may comment in accordance with the public process afforded by the signatory party agency. The status of projects undergoing review pursuant to the One Permit Program is provided on the Commission’s website at: <https://www.nj.gov/drbc/programs/project/opop-status-page.html>.

As of 2024, an administrative agreement between the DRBC and the New York State Department of Environmental Conservation (“NYSDEC”) provides that unless the Commission issues a separate approval under the terms of the agreement, NYSDEC will serve as lead on wastewater discharge projects. Similarly, an administrative agreement between the DRBC and the New Jersey Department of Environmental Conservation (“NJ DEP”) provides that unless the Commission issues a separate approval under the agreement’s terms, the NJ DEP will serve as lead on wastewater discharges, water allocations (withdrawals), and storage cavern projects. Links to the noted administrative agreements are provided at: <https://www.nj.gov/drbc/about/regulations/administrative-agreements.html#2>.

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<sup>11</sup> Compact, § 13.1. See also, § 3.2(a).

#### 4.1.2 Section 401.39

##### STATEMENT OF CONCERN (SC-4)

Seventy-five commenters submitted a form letter expressing concern that § 401.39 confers too much authority on the Executive Director regarding “decisions about the submission of applications for projects, what is required in an application, and when an application is complete.” The commenters’ concerns are paraphrased or quoted as follows:

- There should be “express requirements that prescribe what is required in an application in order to provide a level field of review and clear understanding by the public of exactly what is required ‘for administration of the provisions of the Compact.’”
- What is required in an application “should not be left to individual decisionmaking by the Executive Director on a case by case basis. Granting authority to the Executive Director and doing so one application at a time can lead to consequential inconsistencies, it could lead to subjectively influenced decisions, it doesn’t afford any public notice and lacks objective reliability.”
- The DRBC Commissioners should decide the minimum requirements, forms, and accompanying documentation for project applications.
- The minimum requirements, forms, and accompanying documentation for project applications should be uniform and consistent, and not determined on a case-by-case basis.
- The Commission staff should determine what additional information and documentation is required after the initial threshold review.
- The public should have access to the minimum requirements, forms, and accompanying documentation before and after applications are filed.

##### RESPONSE (R-4)

The unamended regulation at § 401.39 stated in part that applications should be submitted “in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the *Compact*.” Accordingly, the unamended rule empowered the Executive Director (or his delegee) to identify and request such information, including the types listed in unamended § 401.39(a), as might be necessary for the review of projects under Section 3.8.

The substance of an application is not determined “one application at a time” as commenters suggest. Rather, for many years the Commission’s uniform application forms for the categories of activities identified as withdrawals, discharges, and consumptive use projects subject to review under Section

3.8 of the Compact have been available to applicants and the general public on the Commission's website.<sup>12</sup> The current forms are also provided in Appendix C of this CRD.

Although the rules require paper submissions, the Commission has long directed project sponsors to submit their applications electronically, a process that has improved efficiency, reduced cost, and made these materials more readily available for public inspection. Once filed with the Commission, application materials are available to anyone upon request in accordance with Subpart H of the RPP, "Public Access to Records and Information."<sup>13</sup>

In its current rulemaking, the Commission proposed to update § 401.39, concerning the "form of submission of projects," by eliminating the outdated requirement for paper submissions and replacing the non-exclusive, generic list of documentation to accompany an application with a directive pointing to the application forms on the Commission's website. The forms are tailored to the different project types that comprise nearly all project applications. The Commission proposed no change to its longstanding delegation to the Executive Director of authority to determine the supporting documentation required for a particular review and has retained the delegation in its final rule, which has been adopted in the form proposed.

#### **4.1.3 Section 401.41**

Eighty-five commenters submitted a form letter setting forth objections to the proposed amendments to § 401.41. The commenters' objections are paraphrased or quoted and grouped by theme in SC-5 through SC11, below. A single multi-part response addressing their concerns follows.

##### **STATEMENT OF CONCERN (SC-5)**

Overall, the commenters objected to the amendments on grounds that under the proposed rule, "The Executive Director is being invested with exclusive authority regarding extension of permits that removes public input completely and relieves the Commissioners of their responsibility to review and approve extensions."

##### **STATEMENT OF CONCERN (SC-6)**

A commenter was concerned that "key permits" (a term not used in the unamended rule or in the proposed amendments) were being given or would be given a "pass" under the rule. The commenter posed the following questions and concerns:

- What is the definition of a "key permit"?
- When can a "key permit" be extended without any public comment?;
- Why should "key permits" receive automatic extensions?;
- Key permits without an expiration date are given favored status; and

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<sup>12</sup> See DRBC website, *Project Review: Applications & Info for Docket Holders* (section titled *Application Forms & Submittal Process*), available at: <https://www.nj.gov/drbc/programs/project/docket-app-info.html>.

<sup>13</sup> To submit a request for records, visit <https://www.nj.gov/drbc/public/records-access/index.html#2>.

- Fossil fuel projects that have already been approved are being “fast tracked” without public response and input.

### STATEMENT OF CONCERN (SC-7)

The commenters expressed concern that the proposed amendments to the requirement that a docket holder have expended “substantial funds” to qualify for an extension would create a “low bar” or were not sufficiently clear. Specifically, the commenters said:

- \$1,000,000 is too low of an amount to be considered a sufficient investment in a project;
- The \$1,000,000 figure “can be disregarded under certain circumstances;”
- The \$1,000,000 figure is “an arbitrary standard that does not clearly indicate what is expected.”
- No substantive explanation is given regarding what “substantial funds in relation to a project” means; and
- The expenditure of substantial funds requirement should be expressed as a percentage of total cost of a project rather than as a dollar figure.

### STATEMENT OF CONCERN (SC-8)

The same commenters objected to proposed § 401.41(a)(1)(i)(B), which provided an exception from the requirement that a docket holder demonstrate expenditure of “substantial funds” when circumstances beyond the docket holder’s control prevented it from doing so. The commenters said:

- Including pending litigation relating to a project as a circumstance beyond the project sponsor’s control is an attempt to “intimidate the public.”
- The amended rule is “meant to intimidate and stop any litigations for destruction of health, environment[], and property.”
- “Allowing litigation and litigation expenses to be considered when assessing whether to award an extension allows project applicants to hide other problems behind litigation. A project may actually be suffering from . . . other factors, but could still receive an extension by alleging that litigation is what held the project back.”
- “A total assessment of the factors that are slowing a project’s progress should be considered rather than whether the project is currently in the midst of litigation.”

### STATEMENT OF CONCERN (SC-9)

The commenters objected to proposed § 401.41(a)(1)(ii), which would have expressly authorized the Executive Director to determine whether a material change to a previously approved project were proposed such that a new application and project review process would be required. The commenters stated that the proposal would confer too much authority on the Executive Director.

## STATEMENT OF CONCERN (SC-10)

One commenter was concerned that the appeals procedure set forth in proposed § 401.41(a)(3) may not be “an option for many individuals or even small organizations.” As a result, the commenter characterized proposed § 401.41(a)(3) as creating fewer opportunities for the public to engage with the Commission.

## STATEMENT OF CONCERN (SC-11)

One commenter was concerned that amended § 401.41 would result in the Executive Director making decisions “behind closed doors” and completely independently from the DRBC Commissioners, and that the amended rule is not inclusive enough with respect to the DRBC Commissioners’ involvement in decision making.

## RESPONSE

### BACKGROUND

*The unamended rule.* Pursuant to the unamended provision, a docket was terminated automatically after three years if the docket holder had not “expended substantial funds (in relation to the cost of the project) in reliance upon [the] approval.” In practice, if the docket holder demonstrated that it met this criterion, the Executive Director would “extend” the docket for another three years. Otherwise, if the project sponsor still wished to undertake the approved activities, the sponsor was required to re-apply to the Commission under the customary Section 3.8 project review process.

*Proposed amendments; two distinct paths.* The proposed amendments: clarified that the automatic termination provision is applicable only to approvals issued with no expiration date; extended from three years to five the period before which an approval could automatically expire if the sponsor has not yet undertaken the approved activities; revised the demonstrations a docket holder must make to avoid termination; established two procedural paths and in doing so, made clear when the Commission rather than the Executive Director must act on a sponsor’s request for extension; and defined the public process that would be used in the respective cases.

Under the first path (proposed § 401.41(a)), where no material changes to the project, the Comprehensive Plan, or applicable rules have occurred, the proposed amendments explicitly delegated authority to the Executive Director to extend the approval, provided the applicant demonstrated it was still diligently pursuing its project in reliance on the approval, and the approved activities and applicable law were unchanged. Like all docket approvals issued by the Commission under Section 3.8 of the Compact, an approval subject to termination under § 401.41(a) would have been adopted by vote of the Commissioners after notice and an opportunity for public comment, including a public hearing. (SC-5, SC-9, SC-10.) Thus, the public would already have had opportunities for comment, as well as to appeal the Commission’s action approving the docket under the existing regulations at Subpart F. (SC-10.) Although the unamended rules included no provision for public notice of a request for extension or a grant of extension under § 401.41(a), the amendments as proposed provided public notice of an extension by the Executive Director once granted. The amendments made clear that an appeal of the Executive Director’s action could be taken in

accordance with provisions set forth in Subpart F of the RPP. No change to the (longstanding) Subpart F process was proposed. (SC-10.)

Under the second path (proposed § 401.41(b)), where material changes to the project were proposed or changes to the Comprehensive Plan or applicable rules *had* occurred since the Commission issued its docket, the proposed amendments required the applicant to submit an application, which would undergo a new public process, just as for any new or renewal docket application. As would be the case following any Commission action, appeal of a docket issued under proposed § 401.41(b) would be available under Subpart F of the RPP, to which no material changes were proposed.

#### RESPONSE TO COMMENTS; FINAL RULE

The Commission does not find the commenters' concerns compelling from the standpoint of due process. Notably, where no material changes to the applicable laws have occurred and no material changes are proposed to the approved activities, none of the signatory party environmental agencies requires a project to undergo an entirely new review, including a public process, if the permit holder has not commenced the permitted activities, typically within a period of five years.<sup>14</sup> Under these circumstances, decisionmakers have no reason to revisit their original approval, which in the case of a docket issued by the Commission under Section 3.8 of the Compact, is always a decision of the Commissioners made following a public process that includes due notice and an opportunity for written and oral comment. That process has not changed.

Moreover, contrary to the objectors' assertions, an Executive Director does not make decisions "behind closed doors' and completely independently from the DRBC Commissioners" (SC-11). The Executive Director routinely consults with the Commissioners and serves at the Commissioners' pleasure.<sup>15</sup>

Nevertheless, the final rule provides for action by the Commissioners on all requests for extension under § 401.41. The final rule also provides for notice and an opportunity to comment on a request for extension prior to Commission action on the request.

The Commission must always balance the public's concerns about a project with the need for fairness to project sponsors. In the Commission's view, where the project and the applicable law have not materially changed, sponsors who have acted in good faith in reliance on a Commission approval under Section 3.8 of the Compact should not be returned to square one (a new application, public process, and appeals) after only three years. This is particularly so if the Commissioners conducted a lengthy administrative process during the three-year period and reaffirmed their decision, and where a judicial appeal is ongoing. The final rule in the Commission's view balances the needs for transparency, reliability, and due process on the parts of both project sponsors and objectors.

Under the final rule, the DRBC Commissioners, not the Executive Director, will act on all requests for extension under § 401.41(a) (where no material changes to the project or the applicable law are

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<sup>14</sup> See, e.g., 33 C.F.R. § 325.6(d); 7-7000-7504 Del. Admin. Code; N.J.A.C. §§ 7:7-8.2; 7:7-27.3(b)-(c); 6 NYCRR §§ 621.7; 621.11; 25 Pa. Code § 105.13(c)(2)(v).

<sup>15</sup> See Compact, § 14.5(a).



involved), as well as on requests for renewed approval under § 401.41(b) (where material changes to the approved activities are proposed, changes to the applicable law have occurred, or both). (SC-5, SC-9.) As discussed in greater detail below, the public will be afforded an opportunity to comment in all instances. The Commission recognizes that in practice under the proposed amendments, if the Executive Director were to extend a docket that objectors opposed (one presumably considered a “key permit” by the commenters quoted or paraphrased in SC-6), and if the objectors appealed this decision to the Commissioners under Subpart F, the decision would ultimately fall to the Commissioners anyway. By the same token, if a docket received little or no comment when it was first issued, a request to extend the docket would be unlikely to engender much comment. Accordingly, the final rule provides additional public process in advance of a decision and is unlikely to create a much greater administrative burden than the proposed amendments.

The commenters were particularly concerned about public notice and opportunities for comment. (SC-5, SC-9.) Under the final rule, notice of all requests for extension will be provided. Notice will likely be included in the Notice of Application Received (“NAR”) that the Commission issues more-or-less monthly, describing all applications submitted for review under Section 3.8 of the Compact since issuance of the previous NAR. The Commission will also provide a duly noticed opportunity of at least ten days’ length for written comment, and notice will be provided at least ten days before the public meeting at which a proposed extension under § 401.41(a) is scheduled for Commission action. A public hearing will be provided in such cases only if three or more Commission members request in writing that the Executive Director provide one, or if the Commission so directs by vote of at least three members at a public meeting. (SC-5, SC-9.) Requests under § 401.41(b) (where material changes to the facts or law have occurred) will be subject to the same public process as other docket renewals. That process includes publication of an NAR, publication of a draft docket, duly noticed opportunities for written and oral comment, and Commission action at a duly noticed public meeting. (SC-5, SC-9.)

Under the original rule, a docket could be extended if the project holder demonstrated that it had “expended substantial funds (in relation to the cost of the project) in reliance upon” the approval. Where no material changes to approved activities, the site conditions, or the Commission’s Comprehensive Plan have occurred, and in spite of a docket holder’s best efforts, the issuance or defense of approvals takes an extended time, however, this requirement seems impracticable and unfair. In particular, the bulk of the project cost in many instances is in construction, but construction cannot *legally* commence without essential permits and cannot *reasonably* commence when the status of permits necessary to construct the project remains uncertain. If a sponsor has encountered delays beyond its control in securing or defending necessary approvals, expending even two percent of the total project cost in reliance on a Commission approval may be impracticable. Reasonable project sponsors may choose not to spend great sums to commence activities that could be abruptly terminated by an unfavorable administrative or court decision. (SC-7.)

Accordingly, the Commission initially proposed alternative ways for a docket holder to demonstrate its active pursuit of a project in reliance on the Commission’s approval. These included expending at a minimum the sum of \$1,000,000 or demonstrating that circumstances beyond the sponsor’s control prevented it from spending either \$1,000,000 or a substantial sum in relation to the total project cost. Examples of circumstances beyond a sponsor’s control expressly included pending legal challenges.

Commenters responded by objecting to the proposed \$1,000,000 minimum on grounds this figure was “too low” or “arbitrary” and by objecting to the inclusion of litigation as a circumstance beyond the sponsor’s control as discussed below. The commenters preferred that an expenditure of a fixed percentage of the project cost be required. After careful consideration, the Commission has rejected such a one-size-fits-all approach. Expenditure of a fixed percentage constituting a substantial sum in relation to the project’s total cost is inappropriate in the Commission’s view where, as noted above, the bulk of the cost lies in construction that cannot be expected to commence before all essential permits and approvals are secured. If a sponsor claims that circumstances beyond its control have prevented it from expending “substantial sums,” the Commission has instead provided the sponsor with an opportunity to demonstrate that it has actively pursued or defended the remaining permits and approvals required, and that project construction could not lawfully or reasonably proceed or have proceeded more rapidly. (SC-7) In an additional step away from a prescriptive approach, the Commission has replaced the mandatory extension term of five years with a provision authorizing it to grant an extension of *up to* five years.

The commenters also alleged that “including pending litigation as a circumstance beyond the project sponsor’s control ‘is an attempt to intimidate the public.’” (SC-8.) Litigation can be intimidating for both plaintiffs and defendants because it is costly, it may leave the parties in a prolonged state of uncertainty, and the potential for an adverse ruling exists for both sides. But neither the proposed rule nor the rule as adopted alters the right of any person or organization to challenge an approval issued by the Commission or any other body. Nor would the Commission’s proposed rule have any effect on the outcome of such appeals. The Commission is aware of no evidence that a provision in the rule granting an extension on the basis of litigation will deter challenges to permits from being filed, thereby allowing construction to proceed. The claim that the proposed rule is in some way intimidating to the public is unconvincing.

Commenters further alleged that by treating delays caused by litigation as beyond a sponsor’s control, the Commission would somehow be masking or allowing the sponsor to mask “other problems” or “other factors” impeding the approved activities.” (SC-8.) They opined that “[a] total assessment of the factors that are slowing a project’s progress should be considered rather than whether the project is currently in the midst of litigation.” (SC-8.) In the Commission’s view, it is unclear how treating litigation as beyond a sponsor’s control might conceal the “true” reasons why the sponsor might be unable to undertake approved activities. A “total assessment of the factors that are slowing a project’s progress” should of course be undertaken by the project’s sponsors. But the Commission’s primary focus is on determining whether the project, if undertaken, would “substantially impair or conflict with the [Commission’s] comprehensive plan.”<sup>16</sup> If the facts or law relevant to that decision have not changed, and the project sponsor demonstrates diligent pursuit of the approvals it requires, the approval is eligible for extension under the final rule.

One commenter remarked that the appeals procedure referenced in § 401.41(a)(3) of the proposed amendments might not be “an option for many individuals or even small organizations.” (SC-10.) On that basis, the commenter concluded, the provision created fewer opportunities for the public to engage. The commenter is reminded that a docket issued by the Commission under Section 3.8 of the

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<sup>16</sup> Compact, § 3.8.

Compact is always a decision of the Commissioners made after a public process that includes due notice and an opportunity for written and oral comment, followed by an opportunity to appeal the Commission's decision. The proposed amendments ensured public notice of an Executive Director action to extend (not issue) a docket, where none previously was required, making a Subpart F appeal available where, as a practical matter, none previously had been. However, the final rule provides an opportunity for the public to comment at virtually no expense, and for the Commission to consider such comments, outside the context of the more burdensome Subpart F appeal process (which nevertheless remains available).

Thus, under the final rule, the opportunities for public engagement include the following:

- Prior to issuance of an initial docket approval:
  - notice that an application was received;
  - publication of a draft docket;
  - duly noticed public hearing at least ten days after publication of the draft docket;
  - period for the submission of written comment, usually running for five days past the public hearing date; followed by
  - Commission action at a duly noticed public meeting.
- Following the Commission's initial docket approval:
  - 30 days to request an adjudicatory hearing under Subpart F of the RPP.

Under the final rule, in the rare instances in which a docket is issued with no expiration date and in which the docket holder has not undertaken the approved activities after five years, opportunities for the public to engage will include, in addition to the opportunities afforded during the initial review process:

- Prior to action on a request for extension under § 401.41(a) (no change to the project or the Comprehensive Plan):
  - notice that a request for extension under § 401.41 was received;
  - a duly noticed opportunity to comment in writing on the request, running for at least ten days; and
  - an additional public hearing if a majority of the Commissioners determine at a duly noticed public meeting that a hearing would aid their decision making; and
  - Commission action at a duly noticed public meeting.
- Prior to action on a request for extension under § 401.41(b):
  - same opportunities as for any initial docket application.
- Following Commission action on a request for extension under § 401.41(a) or (b):
  - 30 days to request an adjudicatory hearing under Subpart F of the RPP.

The Commission did not propose and thus cannot at this time adopt substantive amendments to its Subpart F appeals procedure.

Importantly, pursuant to the final rule (as under the proposed amendments), the issues before the Commission on requests for extension are solely those related to the extension request and not those considered at the time the docket was issued.

## 4.2 Comments related to Subpart C, but not specific to this rulemaking

### Section 4.2.1 GLC Dock 2 Project

#### STATEMENT OF CONCERN (SC-12)

Under former § 401.41, the Executive Director extended the Commission’s docket issued for the GLC Dock 2 project. Members of the public requested “that a public hearing be held and that any final determination be voted on by the Commissioners. But the only subsequent action taken was the Commissioner vote, which did not allow for any public comment or participation.”

#### RESPONSE (R-12)

The commenter is mistaken. In response to the public’s requests, the Commission:

- announced that the docket holder’s request for an extension would be decided by a vote of the Commissioners;
- invited the coalition of non-profit organizations (including that of the commenter) and the project sponsor to submit written comments for the Commission’s consideration; and
- considered the additional written comments submitted before voting at a duly noticed public meeting on September 8, 2022 to grant the project sponsor’s request for an extension.

#### STATEMENT OF CONCERN (SC-13)

Numerous commenters alleged that the extension of the Commission’s docket for the GLC Dock 2 project under former § 401.41 was a “back room” decision, and requested increased transparency and public participation. Specifically, these commenters stated:

- “Only when Delaware Riverkeeper Network discovered the approval through a Freedom of Information Act request was the decision to extend the permit discussed at a public meeting and voted on.”
- If the Commission had followed its regulations in place in 2022, Delaware River Partners, the GLC Dock 2 project sponsor, would have been required to submit a new application.
- “Increased transparency and participation are not the intent of the rule-making proposal. In fact, in almost all cases the intent is the opposite.”

## RESPONSE (R-13)

The Commission disagrees with the commenters' interpretation of DRBC's regulations. By the year 2022, the Commission had long interpreted § 401.41(a) in a manner that allowed for Executive Director action.

Recognizing that the language of the unamended rule was open to conflicting interpretations, however, the Commission proposed the clarifying amendments it published in September 2023. In addition to greater clarity, the amendments provided greater transparency and expanded opportunities for public engagement. They also remained consistent with the Commission's view that where the applicable law and facts have not changed, extensive additional process is neither necessary nor appropriate. The proposed amendments to § 401.41 and responses to comments on the amendments are set forth in detail in Section 4.1.3 above.

Notably, the comments quoted or paraphrased in SC-13 above refer to a request for records under Subpart H of the Commission's RPP as a "FOIA" request. The Commission recognizes that although "FOIA" is an acronym for the federal Freedom of Information Act, the term is sometimes used in a generic sense to refer to a request for public records filed under state or regional statutes other than FOIA. The public should recognize that the regulations for public access to records at Subpart H of the Commission's RPP are authorized by the Delaware River Basin Compact, which is a federal statute but is not the FOIA. Notably, the Commission's prompt response to the DRN's request for records under Subpart H of the RPP resulted in the expanded process the Commission provided on the GLC Dock 2 docket extension in 2022.

### **Section 4.2.2 General Comments Regarding Project Approvals**

#### STATEMENT OF CONCERN (SC-14)

Many commenters submitted general statements regarding the importance of public participation and assessing environmental impacts in the Commission's decision making, and in particular with respect to its review of projects under Section 3.8 of the Compact. Representative statements, either paraphrased or quoted, include:

- The rulemaking decreases or eliminates the public's right to voice opposition to potential projects.
- The Commission should encourage local citizens to be involved in the Commission's decision-making processes.
- "Public input is essential to good decision making that serves the people;"
- The public "cannot effectively [participate] and influence outcomes if the decisionmaking process is not open and interactive, with all important decisions . . . available for review and comment."
- The Commission should not "limit ANY communication from or to the public" (emphasis in original) that it serves.

- There needs to be an equal opportunity for both the public and private organizations who may benefit economically from Commission decisions to provide information to the Commission.
- The Commission should “maintain free and open comment opportunities for all.”
- “Some projects are getting a pass and not subject to public comments.”
- It is important for the Commission to consider the environmental impacts of projects.
- Do not alter existing public participation in Commission decisions.
- The removal of the public from the decision-making process does not uphold or affirm the Commission’s Vision, Mission, and Values.

### RESPONSE (R-14)

As noted in Response R-5 through R-11 above, a docket approval issued by the Commission under Section 3.8 of the Compact is always a decision of the Commissioners, made following a public process that includes due notice and an opportunity for written and oral comment. No change to that process has been proposed or adopted. The proposed rule would have provided public notice and an express opportunity to appeal an action by the Executive Director to *extend* (not issue) a docket issued by the Commission with no expiration date that would otherwise expire under § 401.41. Executive Director action could only occur where the applicable law and facts had not materially changed, and where the project sponsor demonstrated substantial expenditures in reliance on the Commission docket. The notice and appeal provisions were new features not included in the unamended rule. In response to the commenters’ request for expanded opportunities to engage, however, the Commission in the final rule has added provisions for notice and an opportunity to comment prior to a decision on a request for extension under § 401.41.

In response to the comment that the Commission should “maintain free and open comment opportunities for all,” the commenter is advised that members of the public can write to or petition the Commissioners or the Commission staff on any matter at any time. The Commission also routinely accepts oral comment on any matter concerning the water resources of the Basin during the “Open Public Comment” session that typically follows each duly noticed Commission business meeting. In either instance, such comments are off-the-record, meaning that they are not included as part of an official decision making record unless they are also submitted during a duly noticed public comment period on a matter that is under the Commission’s consideration.

The assertion that “[s]ome projects are getting a pass and not subject to public comments,” is incorrect. The Commission’s proposed amendments and final rule concern the process for *extending* a Commission docket under certain limited circumstances, where no material changes to the approved activities, material circumstances, or the applicable law have occurred. As discussed in Response R-5 through R-11 above, each project that is issued a Commission docket is the subject of a notice of application received, publication of a draft docket, an opportunity for oral and written comment, action by the Commission at a duly noticed public hearing, and an opportunity for appeal, in the first instance.

### **Section 4.2.3 Comments and Pressure from Regulated Entities**

#### **STATEMENT OF CONCERN (SC-15)**

One commenter expressed concern over the role of “for-profit entities” in the Commission’s project approval process, stating “I urge the Commission to make [protections for community health and well-being and for the ecosystem] top priority in all future decisions, even when the pressure from powerful, for-profit entities whose operations often threaten the environment and waterways, is increased when they seek to use the Delaware River Basin as part of the business plan.”

#### **RESPONSE (R-15)**

Please see the Commission’s response at R-5 through R-11 with respect to balancing the needs of project sponsors and the general public (including individuals and organizations that object to a project) with respect to transparency, reliability and due process. Please also note that in accordance with § 3.8 of the Delaware River Basin Compact, the limited purpose of the Commission’s review is to ensure that a project does not substantially impair or conflict with the Commission’s Comprehensive Plan. The Comprehensive Plan includes regulations designed to protect water resources, but it does not replicate all state and federal programs for protection of the environment.

## **5 RESPONSES TO COMMENT – RPP, SUBPART H**

### **5.1 Comments Related to Specific Provisions**

#### **Section 5.1.1 § 401.409**

#### **STATEMENT OF CONCERN (SC-16)**

One commenter stated a concern that the proposed amendments to Subpart H would reduce the time limit for records requesters to file an administrative appeal from 30 days to 15 days after receiving an adverse determination by the Commission and suggested that the Commission should either retain the current appeal deadline or extend the appeal deadline to match FOIA’s 90-day deadline.

#### **RESPONSE (R-16)**

The amendments proposed to Subpart H—Public Access to Records and Information were for two express purposes: (a) to remove inaccurate references to the federal Freedom of Information Act (FOIA) as the authorizing statute for Subpart H; and (b) to remove gendered pronouns. Amendments of both types were proposed to § 401.109(c), which sets forth the process for appeals from a decision denying access to some or all records responsive to a request. No other types of changes to the section were proposed, including to alter the requirement that an appeal be filed within 30 days of receipt of the Records Access Officer’s determination declining to produce some or all of the requested records. Thus, the final rule neither reduces nor extends the time for an appeal from the denial of a request for records under Subpart H.

## Section 5.1.2 § 401.110

### STATEMENT OF CONCERN (SC-17)

One commenter was concerned with the proposed changes to § 401.110, stating:

- The proposed rule change would allow the Commission to charge search fees regardless of the identity or status of the requester;
- The proposed rule change would eliminate the waiver of administrative fees for noncommercial requesters for the first quarter hour of search time;
- Subpart H should include a fee threshold below which no fees are charged for a search; and
- Section 401.110 should make explicit that the production of electronic records does not trigger the listed per-page duplication fees.

### RESPONSE (R-17)

The proposed changes to § 401.110 do no more than remove two inaccurate references to FOIA. Former § 401.110 already established fees in connection with records requests, and made no distinction based on the identity or status of the requester.

The former rule provides for the waiver of administrative charges for the first quarter hour of staff services in responding to a request for records.<sup>17</sup> No change to this provision is proposed.

The commenter may have misunderstood the asterisks in the proposed regulatory text as indicating that provisions were being removed, when the asterisks actually meant that no change to the existing regulatory text was proposed. The waiver of administrative charges for the first quarter hour of Commission staff services in effect establishes a threshold below which no fees are charged.

The Commission agrees with the commenter that the production of electronic records, which are referred to as “electronically generated records” at § 401.110(a)(2)(iii), does not trigger the per-page fees applicable to photocopied records, which in accordance with §§ 401.110(a)(2)(i)–(ii), are subject to per-page “photocopying fees.” When the Commission is able to produce electronic records by file transfer protocol (“FTP”) site or by email, it does not incur “material costs”<sup>18</sup> chargeable to the requester (although the production of electronic records does involve administrative costs for which charges apply).<sup>19</sup>

### STATEMENT OF CONCERN (SC-18)

One organization commented that the “Commission cannot continue to charge a reviewing attorney’s hourly rate to members of the public before it will release records. For example, the Commission has

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<sup>17</sup> See § 401.110(a)(1)(ii).

<sup>18</sup> See § 401.110(a)(2)(iii).

<sup>19</sup> See *id.*; § 401.110(a)(1).



quoted [Delaware Riverkeeper Network (“DRN”)] a two-thousand dollar fee for access to records. After narrowing the request, DRN was able to lower the cost to six-hundred dollars. . . . These fees are exorbitant,[] effectively exclude the public from access to Commission information that should be transparent and easily accessible.”

## RESPONSE (R-18)

The commenter’s statement regarding attorney fees is misleading. The existing regulations expressly provide that “No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.”<sup>20</sup> The Commission strictly abides by this rule.

However, the Commission does not have staff dedicated to coordinating responses to records requests and has few support staff. Professional staff, from the Executive Director to the engineers and geologists in the Project Review section, including the Commission’s in-house attorneys, perform this non-specialized work. In accordance with § 401.110(a), “Fees,” the administrative fees applicable to the production of records include, among others, staff time associated with “locating and reviewing files,” to be “billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the personnel performing the service.”<sup>21</sup> The collection of records potentially responsive to the request the commenter described would have entailed the work of multiple staff members. The lead for this particular request was the Deputy Executive Director.

The referenced request was also extremely broad. It consisted of “all emails, correspondences, schedules, meeting notes, meeting minutes, attendance records, reports and documents, memoranda, committee member names and alternate member names” between the Commission and members of one of its advisory committees over a period of more than 30 months, or over two and one-half years. Many of the eighteen members and alternates of the committee that was the subject of the request interact with Commission staff *members* (plural) on multiple matters—both committee-related and not.

Although the commenter characterizes its request as one for “easily accessible” Commission records, the task of collecting the requested records would have entailed searching the correspondence of multiple DRBC staff members with the eighteen committee members and alternates over a 30-month period. The search would have involved many hours of document collection and review, and a commensurately high fee. Accordingly, DRBC invited the requester to narrow the request. In doing so, DRBC staff pointed out that the Commission maintains on its website pages that include membership and meeting materials for each of its advisory committees. The committee charge, information about the committee’s members, and an archive of meeting materials, including agendas, meeting summaries, and presentations for each meeting, all are available on the Commission’s website. Meetings of DRBC’s advisory committees are also open to the public.

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<sup>20</sup> § 401.110(b).

<sup>21</sup> § 401.440(a)(1)(i)(B) and (a)(ii).

The commenter did submit a narrowed request, and, as described in the comment, the new estimated fee was 70 percent lower than the original estimate. The requester did not pursue its narrowed request.

Notably, the more specific a requester can be regarding their questions or the documents they seek, the less costly the production of records is likely to be. In accordance with Subpart H, the staff works with requesters to narrow their requests and to identify the records sought with as much specificity as possible. Staff also works to ensure that documents of likely public interest are available on the DRBC website or otherwise stored together in order to keep the cost of searching for and producing records down and ensure staff are able to conduct their program activities efficiently.<sup>22</sup>

### **Section 5.1.3 § 401.115**

#### **STATEMENT OF CONCERN (SC-19)**

Relying on a suggested letter circulated by DRN (a “form letter”), eighty-six commenters submitted identical comments expressing concern over what they mis-perceived as the Executive Director’s sole discretion to withhold any document from release in connection with a records request. They wrote: “It’s proposed that the Executive Director determines whether or not to disclose requested information, deciding unilaterally if a disclosure is in the public interest.”

DRN submitted a separate comment signed by 27 other organizations and 300 individuals (a “sign-on letter”), advancing the same misunderstanding. It wrote:

We also object to the Executive Director being empowered to decide whether or not to disclose a record. The proposal states that the Executive Director may exercise discretion in deciding that “...disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.”

(Ellipses in original comment.)

#### **RESPONSE (R-19)**

The only change the Commission proposed and has adopted to § 401.115 is to remove four instances of gendered pronouns.

The DRN form letter on which many commenters based their submissions lacked important information. Section 401.115 does not confer on the Executive Director the authority to withhold any public record from release. It does the opposite. That is, if a record could lawfully be withheld by the

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<sup>22</sup> See § 401.108(b)(2) and (b)(3).

Commission, this section allows the Executive Director to disclose the document if doing so would be in the public interest.

In the sign-on letter submitted by DRN, the introductory clause of § 401.115, which is essential to the provision's meaning and effect, was omitted, advancing the same misunderstanding. The rule states, "The Executive Director may exercise discretion *to disclose* part or all of *any Commission record that is otherwise exempt from disclosure* pursuant to this part whenever the Executive Director determines that such disclosure is in the public interest, . . ." (Emphasis added.) Because the introductory clause of § 401.115 was omitted in the letter, the organizations and individuals who co-signed the submission did not have full information.

A second comment submitted separately by a DRN staff member indicates that this individual read § 401.115 correctly. The separate DRN comment acknowledged that the Executive Director decides whether "a disclosure of *exempt* records [records that may lawfully be withheld] is in the public interest" (emphasis added). As described above, this is the accurate reading of the regulation. If a record is otherwise exempt from disclosure, the Executive Director may nonetheless decide to release it. As set forth in greater detail in Response R-21 below, the Commission proposed no changes to the exemptions from disclosure set forth in Subpart H of the RPP, which are virtually identical to those provided by FOIA.

## 5.2 Comments not Related to Specific Provisions

### Section 5.2.1 Current Records Request Process

#### STATEMENT OF CONCERN (SC-20)

One commenter wrote: "In order to have an effective records request system, the Commission should have a dedicated records request form and a dedicated Records Request Officer."

#### RESPONSE (R-20)

The Commission agrees. It has long had such an officer, now called the "Records Access Officer,"<sup>23</sup> and has long maintained a records request form. The form is available through a link on the page accessed via the "Contact DRBC" tab on the DRBC home page.<sup>24</sup> As of this writing, the Records Access Officer is Elba Deck, the Commission's Director of Finance and Administration.

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<sup>23</sup> § 401.106.

<sup>24</sup> DRBC, *Public Access to Records*, available at: <https://www.nj.gov/drbc/public/records-access/>.

## Section 5.2.2 Commission Relationship to FOIA

### STATEMENT OF CONCERN (SC-21)

Those who submitted the DRN form letter or a comment modeled on this letter expressed concern about the perceived replacement of FOIA with a “DRBC-centric system,” including:

- “DRBC is removing all references to [FOIA] from its rules and is setting up an alternative DRBC-centric system” that governs public access to records and information.
- “ALL references to [FOIA] were deleted from the proposed regulation, and [] an internal procedure . . . outside [FOIA] had been added” (emphasis in original).
- “Is there an express written exemption for [the Commission] within [federal law]? If so this exemption should be posted upon the agency’s website.”

### RESPONSE (R-21)

Commenters are correct that an express purpose of the rulemaking was to remove inaccurate references to FOIA in Subpart H. That the rulemaking “[sets up a new] DRBC-centric system” or “[adds] an internal procedure” is false. Neither the proposed rule nor the final rule makes substantive changes to Subpart H of the RPP, governing public access to Commission records and information. The authority for the Commission’s rules on this topic has always been the Delaware River Basin Compact (“Compact”), the federal and state statute that created DRBC. References in Subpart H to the federal Freedom of Information Act (FOIA) as the authority for the Commission’s regulations were incorrect.

In response to the comment seeking “a legal basis” for this change, readers are referred to § 15.1(m) of the Compact (within the portion of the statute called “Part II – Effectuation”), by which the United States enacted the Compact with certain reservations. Section 15.1(m) provides that DRBC is not a federal agency for purposes of a number of statutes, including Title 5, U.S. Code, Sections 1001 and 1011, the Administrative Procedure Act (“APA”).<sup>25</sup> The APA, which has since been recodified at 5 U.S.C. §§ 551-559, includes the FOIA.<sup>26</sup> The text of the Compact is posted on the Commission’s website at: <https://nj.gov/drbc/library/documents/compact.pdf>.

The meeting agenda for the Commission meeting at which adoption of Subpart H occurred in 1975 noted that the Commission was exempt from FOIA by virtue of its exemption from the APA.<sup>27</sup> The current staff have found no records indicating why, in spite of this understanding, the term “FOIA” was used in the regulations the Commission adopted.

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<sup>25</sup> See <https://www.loc.gov/item/uscode1946-001005019/> for this historical version of the APA, as enacted in 1946. The APA has since been re-codified at 5 U.S.C. §§ 551-559. See <https://www.archives.gov/federal-register/laws/administrative-procedure>.

<sup>26</sup> See 5 U.S.C. § 552.

<sup>27</sup> See DRBC, Agenda for January 29, 1975 Conference Session and Business Meeting (on file with the Commission Secretary).

Notably, the Commission's rules closely track the federal law in important respects. In particular, the exemptions from disclosure listed in § 401.112 of Subpart H of the RPP are virtually identical to those listed in the analogous section of the FOIA.<sup>28</sup> For this reason, in the few instances in which the Commission has invoked an exemption from disclosure in the context of litigation, it has invited the court to rely on the large body of jurisprudence that exists on the FOIA exemptions in interpreting the Commission's rules. In each case, the court has done so.<sup>29</sup>

The proposed amendments and the final rule will eliminate a potential source of confusion over the law governing the Commission's Subpart H regulations in those respects in which the DRBC regulations differ from the FOIA.

### STATEMENT OF CONCERN (SC-22)

One commenter suggested that the Commission align its exemptions from disclosure with the FOIA's exemptions from disclosure.

### RESPONSE (R-22)

The exemptions from disclosure at § 401.112 of Subpart H are already virtually the same as those of the FOIA. No changes to these exemptions were proposed or adopted. Please see Response R-21 and footnote 28 for further discussion of this topic.

## Section 5.2.3 Accessibility of Public Access to Commission Records

### STATEMENT OF CONCERN (SC-23)

Many commenters wrote generally about the importance of public access to Commission records. Representative statements include:

- "It is essential that the DRBC operates with transparency and openness, and that the public has the opportunity to obtain and evaluate information about the DRBC's operations and activities;"
- The public "cannot effectively take part and influence outcomes if the... underlying information about [important decisions is not] fully disclosed and available for public review;"
- The Executive Director must "make all information available to the public as is required by law;"

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<sup>28</sup> Compare 18 CFR § 401.112(a) through (f) with 5 U.S.C. § 552(b)(2)-(7). In particular, the Commission notes that 18 CFR § 401.112(d), "Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission," the exemption from disclosure most likely to be invoked by the Commission, is virtually identical to 5 U.S.C. § 552(b)(4) of the FOIA.

<sup>29</sup> See, e.g., *Del. Riverkeeper Network and the Del. Riverkeeper v. DRBC*, No. 10-5639 (D.N.J. June 9, 2014) (order denying motion to compel production of documents).

- The “proposed rule changes will make the DRBC less transparent, not more;” and
- “While I appreciate the DRBC taking action to try and eliminate confusion regarding the public information request process, . . . it is my hope that these changes do not limit public access.”

### RESPONSE (R-23)

The Commission shares the commenters’ view that public records must be available for public inspection in a democratic system and that the “underlying information” on which decisions are based must be transparent. Toward that end, the Commission places a high priority on ensuring that key records, such as dockets, resolutions, meeting Minutes, rule proposals, comment and response documents like this one, key communications, and other documents important to decision making, are readily available on the DRBC web pages or upon request. The Commission also posts the proceedings of DRBC advisory committees, including agendas, meeting summaries, and presentations, and routinely makes adjustments to the DRBC web pages to better guide users to the information they seek.

Access to information is a high priority for the DRBC, and the Commission responds in a timely manner to requests for public records. A representative of at least one national non-governmental organization has advised staff informally that they come to DRBC first when seeking records because the Commission is often quicker to respond and more transparent than other government agencies. DRBC’s size is an advantage in this respect. Because the Commission staff is comprised of fewer than 40 people, the bureaucracy involved in responding to requests and producing documents is minimal. When a records request is very broad or involves searching the email accounts and hard drives of multiple staff members, however, the task is difficult, time-consuming, and costly, regardless of DRBC’s size.

As described above, the only changes made to Subpart H were to remove (a) inaccurate references to FOIA and (b) gendered pronouns. This rulemaking has no impact on the interpretation or administration of the Commission’s existing regulations. The Commission remains committed to making its records and information available to the public as required by, and in accordance with, Subpart H.

Please also see Response R-21 for additional relevant information.

### STATEMENT OF CONCERN (SC-24)

The eighty-five commenters who submitted comments based on or identical to those prepared by DRN suggested that the Commission could make the records request process more accessible by adopting a fee waiver similar to that in FOIA when the requested information is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the requester’s commercial interest.

## RESPONSE (R-24)

The changes to Subpart H that the Commission proposed and finalized in this rulemaking consist solely of removing inaccurate references to FOIA and eliminating gendered pronouns. Any substantive change, such as the one the commenters propose concerning fees, would not be a logical outgrowth of this rulemaking and would require a separate rulemaking process. Please also see Responses R-18, R-21, and R-33 for additional relevant information.

### **Section 5.2.4 Pronoun Alignment with the Commission’s Diversity, Equity, Inclusion, and Belonging Policy**

## STATEMENT OF CONCERN (SC-25)

One commenter suggested that the replacement of gendered pronouns with non-gendered pronouns or proper nouns departs from “standard [E]nglish” and could result in confusion from what the commenter referred to as “woke crap.”

## RESPONSE (R-25)

The Commission is committed to implementing its Diversity, Equity, Inclusion, and Belonging Policy (the “DEIB Policy”) and believes its regulations should reflect this commitment.

The changes the Commission proposed and has adopted are consistent with standard English and are no less precise than the original language. The change to the third sentence of § 401.109(c) is one example:

Within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or ~~his~~ **the Executive Director’s** designee shall make a determination and notify the appellant of ~~his~~ **such** determination.

## STATEMENT OF CONCERN (SC-26)

A different commenter supported the proposed replacement of gendered pronouns but requested that the Commission do so throughout the RPP, and not just in Subpart H.

## RESPONSE (SC-26)

The Commission agrees with the commenter’s suggestion. When Commission regulations, including other sections of the RPP, are subject to future rulemaking, the Commission expects to include in such rulemaking the replacement of gendered pronouns.

## 6 RESPONSE TO COMMENTS – RPP, SUBPART I

### STATEMENT OF CONCERN (SC-27)

Commenters who submitted or relied on the DRN form letter expressed concern regarding the added term “material change.” Their concerns are quoted or paraphrased as follows:

- “Materiality is not defined.”
- The terms “‘Material Change’ and ‘Materially’ are used throughout the proposed rulemaking – yet no clear definition is available, only a bureaucratic explanation.”
- The Commission is substituting the word “material” for “substantial” in many regulations. These are words that seem to be interchangeable. Why is the Commission making this change if the words have little difference?
- “The definition [of “material change”] provided in the proposed rule is [unclear], focusing primarily on how the evaluation will be used rather than what the term actually means.”
- The proposed definition of “material change” restates the Commission’s project review standard from Section 3.8 of the Compact and does not provide an explanation of how a change may or may not “meet the threshold of ‘importance’ or ‘substantially impair[ing] or conflict[ing] with’” the Comprehensive Plan.

### RESPONSE (R-27)

While some commenters stated that the Commission did not provide a definition for the new term “material change,” other commenters correctly noted that the Commission proposed a definition in new § 401.121(e), which states:

Material change shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission’s comprehensive plan.

The Commission agrees that the terms “substantial” and “material” are virtually interchangeable. In revising § 401.41, the Commission assigned two categories to projects potentially affected by the rule—those involving one or more material changes and those involving no material changes. It prescribed a less involved procedure for the projects involving no material changes. The Commission chose the term “material change” in this context because this term is commonly used in administrative law to describe a fact, event or premise that is important to a decision.<sup>30</sup>

The term “substantial change” (or variants of that term) was used in three other sections of the RPP, but was undefined. For consistency alone, the Commission substituted “material change” for “substantial change” in each of these sections. These substitutions do not alter the Commission’s

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<sup>30</sup> See Great Lakes-St. Lawrence River Basin Water Resources Compact, *Rules of Practice and Procedure*, § 401; *c.f.*, 17 C.F.R. § 230.405 (definition of “material” in the securities law context).



interpretation or the effect of the rules. In each instance, the Commission must exercise the authority conferred on it by Section 3.8 of the Compact, which requires the Commission to review any project “that may have a substantial effect on the water resources of the basin” and “approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan.” Section 3.8 states further that the Commission “may modify and approve as modified, or may disapprove any such project whenever it finds and determines that such project would substantially impair or conflict with such plan.” The definition the Commission proposed and adopted is consistent with the language of the statute.

## 7 GENERAL COMMENTS ON THE RULEMAKING

### STATEMENT OF CONCERN (SC-28)

Two commenters suggested that the Commission withdraw the proposed rulemaking and not pursue any changes to the RPP.

### RESPONSE (R-28)

The Commission disagrees. The Commission has proposed and adopted substantive changes only to § 401.41 of the RPP. As detailed in the preamble to the proposed rulemaking, events surrounding an application of this provision in 2022 made evident that clarification of the rule was needed. After considering the hundreds of comments submitted on the proposed amendments to this section, the Commission has adopted a final rule that will improve the process by which a docket to which the Commission has assigned no expiration date may be terminated or extended.

### STATEMENT OF CONCERN (SC-29)

One commenter expressed general opposition to the rulemaking without requesting that the Commission withdraw the rulemaking or suggesting alternative amendments to the RPP.

### RESPONSE (R-29)

For the reasons expressed in Response R-28, above and throughout this CRD, the Commission has adopted final rules that include modifications responsive to the comments received.

### STATEMENT OF CONCERN (SC-30)

One commenter expressed “constitutional concerns” that the proposed rulemaking “affect[ed] people’s property without due process.”

### RESPONSE (R-30)

The Commission disagrees. In the Commission’s view, the proposed and final regulations ensure due process for the general public and for the sponsors of projects subject to regulation by the Commission.

### STATEMENT OF CONCERN (SC-31)

One commenter suggested that it is important for the Commission to consider whether a project is “necessary in terms of cost.”

### RESPONSE (R-31)

The financial cost of a project is not a factor the Commission considers in performing its project review function under Section 3.8 of the Compact.

## 8 COMMENTS RELATED TO THE RULEMAKING PUBLIC PROCESS

### 8.1 Requests for Additional Process

#### STATEMENT OF CONCERN (SC-32)

A few commenters requested additional opportunities for public participation in this rulemaking. Representative statements are paraphrased or quoted as follows:

- DRBC should provide an interactive public presentation that includes an opportunity for the public to ask questions.
- The Commission should provide more information explaining the rationale behind the proposed amendments.
- The Commission should provide additional time and opportunity for further public comment.
- The public comment period is inadequate due to its proximity to “the annual holiday season” and should be extended, “at a minimum, to mid-January.”

#### RESPONSE (R-32)

As detailed in Section 1.2 of this CRD, the Commission solicited and accepted written public comment on the proposed amendments to the RPP during a 63-day period that ran from September 28 through November 30, 2023. The Commission also held two public hearings on the proposed rule. One of these took place during traditional working hours and the other was held after traditional working hours, in order to accommodate different schedules.

The Commission provided an explanatory “preamble” in its public notice on the proposed rule changes, and delivered informational briefings at the beginning of each of the two public hearings to further explain the basis and intended effect of the proposed amendments. Given the scope of the substantive changes, which were (and are) limited to § 401.41 of the RPP, the public was afforded ample opportunity to submit comments and questions, all of which are addressed in this CRD. The comment period overlapped with Indigenous Peoples’/Columbus Day (October 9), Veterans’ Day

(November 11) and Thanksgiving Day (November 23), but included ample time before, between, and after these holidays for reviewing the proposal and submitting comments. The magnitude of the changes proposed did not, in the Commission’s view, warrant extending the process by an additional 45 days (or an additional 70%) as suggested by the commenter.

The Commission appreciates the commenter’s suggestion that interactive question-and-answer sessions be provided on proposed rulemakings in the future. The Commission agrees that such opportunities could be beneficial.

## 8.2 “Logical Outgrowth”

### STATEMENT OF CONCERN (SC-33)

One commenter requested that the Commission’s responses to public comments and any revisions to the proposed rule be “reflected in a revised proposed rulemaking.”

### RESPONSE (R-33)

The Commission disagrees with the commenter that its responses to public comments or the changes to the proposed rule necessitate further process. Although, as discussed above, the Commission is not subject to the federal Administrative Procedure Act (the “APA”), the APA rulemaking requirements offer guidance here. Under the APA, a rulemaking notice must include “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”<sup>31</sup> This provision of the APA has been interpreted to mean that “a final rule which departs from a proposed rule must be a logical outgrowth of the proposed rule.”<sup>32</sup>

In the Commission’s view, the changes to the proposed rule incorporated into the final rule are logical outgrowths of the proposal, made in consideration of and in response to the comments received. Under the circumstances, no further proposal and process are required. Many of the comments submitted went beyond the scope of the proposal. These comments did not result in changes to the proposed rule and may be considered by the Commission when it undertakes amendments to its regulations in the future.

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<sup>31</sup> 5 U.S.C. § 553(b)(3).

<sup>32</sup> *Natural Resources Defense Council (“NRDC”) v. EPA*, 279 F.3d 1180 (9th Cir. 2002) (citing *NRDC v. EPA*, 863 F.2d 1420 (9th Cir. 1988)). See also, *National Black Media Coalition v. FCC*, 551 U.S. 158 (2007) (Justice Breyer, writing for a unanimous Court, acknowledging that “the Courts of Appeals have generally interpreted...[§ 553(b)(3)] to mean that the final rule the agency adopts must be ‘a “logical outgrowth” of the rule proposed.’” (Internal citations omitted.)).

## 9 COMMENTS UNRELATED TO THE PRESENT RULEMAKING

### 9.1 General Statements

#### STATEMENT OF CONCERN (SC-34)

Two commenters expressed general support for protecting the environment and ecological systems.

#### RESPONSE (R-34)

The Commission agrees with these sentiments.

#### STATEMENT OF CONCERN (SC-35)

A handful of commenters expressed their belief that, globally, there need to be fewer, or no, fossil fuel projects.

#### RESPONSE (R-35)

The Commission thanks these commenters for their interest, and notes that these comments are unrelated to the subject matter of the proposed rule.

### 9.2 Previous Commission Rulemakings

#### STATEMENT OF CONCERN (SC-36)

A few commenters submitted comments related to high volume hydraulic fracturing. Representative comments include:

- “Time to ban fracking!”
- “The scientific data . . . now . . . show that even treated fracking wastewater is unsafe to release to surface waters.”
- “We are concerned about the effects of taking water for fracking from the Delaware River [Basin] and allowing wastewater from fracking into the Basin.”

#### RESPONSE (R-36)

The current rulemaking does not concern hydraulic fracturing.

The Commission addressed high volume hydraulic fracturing for the extraction of natural gas from shale in rulemakings finalized on February 25, 2021 and December 7, 2022, respectively. The

Commission provided detailed responses to comments for each of those rulemakings in separate Comment and Response Documents, which are available at the links below:

February 25, 2021 Comment and Response Document:

[https://www.nj.gov/drbc/library/documents/CRD\\_HVHFrulemaking.pdf](https://www.nj.gov/drbc/library/documents/CRD_HVHFrulemaking.pdf).

December 7, 2022 Comment and Response Document:

[https://www.nj.gov/drbc/library/documents/CRD\\_Import-Export-HVHF-Discharge120722.pdf](https://www.nj.gov/drbc/library/documents/CRD_Import-Export-HVHF-Discharge120722.pdf).

### STATEMENT OF CONCERN (SC-37)

Two commenters expressed concern over exports of water for activities outside of the Delaware River Basin.

### RESPONSE (R-37)

This CRD and the associated rulemaking are unrelated to exports of water from the Delaware River Basin. The Commission finalized a rule concerning importations and exportations of water, including wastewater, on December 7, 2022. The rule is codified at § 2.30 of the Delaware River Basin Water Code.<sup>33</sup> See Response R-36 above for a link to the corresponding CRD.

## 9.3 Pennsylvania Constitution

### STATEMENT OF CONCERN (SC-38)

One commenter noted that the “protection of natural resources for the benefit of all people[,] including future generations is required by [Pennsylvania’s Constitution].”

### RESPONSE (R-38)

Article I, § 27 of the Pennsylvania Constitution (the “Environmental Rights Amendment”) recognizes and protects Pennsylvania’s citizens’ “right to clean air, pure water and to the preservation of the natural, scenic, historical and esthetic values of the environment.” Federal courts and the Pennsylvania Supreme Court have affirmed this right. *See, e.g., Yaw et al. v. Del. River Basin Comm’n*, 49 F.4th 302 (3d Cir. 2022); *Pennsylvania Env’tl Def. Fund v. Commonwealth*, 161 A. 3d 911 (Pa. 2017); *Robinson Twp. v. Commonwealth*, 83 A. 3d 901 (Pa. 2013).

Although the Environmental Rights Amendment and the Compact have overlapping goals, as a federal-interstate compact agency, the Commission is not bound by, nor is it empowered to carry out, state constitutional provisions. While the Commission believes its regulations are consistent with the Environmental Rights Amendment, the Commission has acted pursuant to the authority granted by

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<sup>33</sup> Delaware River Basin Water Code, available at:

<https://www.nj.gov/drbc/library/documents/watercode.pdf>.

the Compact, not pursuant to the Pennsylvania Constitution. The Pennsylvania Commissioner has concluded that the Commission's regulations, together with applicable Pennsylvania and federal laws, are consistent with and ensure the protections provided in the Pennsylvania Constitution. The Pennsylvania Commissioner votes in a manner consistent with the Commissioner's obligations under Article 1, § 27.

APPENDIX A  
WEB NOTICE AND TEXT OF PROPOSED RULE  
(SEPTEMBER 28, 2023)



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## Notice of Proposed Rulemaking & Public Hearing: Amendments to the Commission's Rules of Practice and Procedure

- [Proposal: Key Information](#)
- [Public Hearing Information](#)
- [Written Comments](#)
- [Supporting Documentation & Translation](#)
- [Background & Summary of Proposed Amendments](#)
- [Proposed Changes to Rules of Practice & Procedure](#)
- [Contacts](#)

### Proposal: Key Information

*The comment period on this proposed rulemaking is now closed.*

The Commission proposes to amend its Rules of Practice and Procedure (RPP) to:

- Resolve ambiguities around the automatic termination of project approvals issued by the Commission and make conforming amendments to related provisions as appropriate;
- Update the Commission's Water Resources Program and Project Review procedures to better conform them to current practice;
- Remove references to the Federal Freedom of Information Act that create confusion about the regulations applicable to requests for Commission public records; and
- Align pronouns with the Commission's policies regarding diversity, inclusion and belonging.

### Public Hearing Dates

- November 13, 2023, 1:30 p.m. to no later than 4 p.m.
- November 13, 2023, 6:30 p.m. to no later than 9 p.m.

### Written Comments

- Deadline: 5 p.m., Thursday, November 30, 2023
- Submit comments at <https://hearing.drbc.commentinput.com?id=T95htQGAq>

### Proposal Documents

- [View pdf of Informational Briefing presentation given before each public hearing](#) (posted 11/14/23)
- [Click here to view the complete proposal documentation](#)

### Public Hearing Information

The DRBC conducted two virtual public hearings to collect public testimony on this proposed rulemaking to amend its Rules of Practice and Procedure.

- **New!** [View pdf of Informational Briefing presentation given before each public hearing](#) (posted 11/14/23)

### To Attend the Public Hearings

- **November 13, 2023, 1:30 p.m. to no later than 4 p.m.**
  - **Please Note!** The Commission regrets that technical difficulties prevented DRBC from livestreaming its November 13, 2023, 1:30 p.m. public hearing on Proposed Amendments to the Commission's *Rules of Practice and Procedure*. A full recording of the informational briefing by Commission staff and public hearing was made available after the public hearing until the close of the comment period at 5 p.m. on November 30.



- [Register for the 1:30 p.m. Zoom Webinar](#) - folks were asked to register for the hearing at this link
  - To attend the public hearing on Zoom, you must register for the Zoom Webinar.
- Watch the livestream of either hearing on the DRBC's YouTube channel: <http://www.youtube.com/user/delrivbasincomm/>
  - No registration is required to attend via the YouTube livestream.
- **November 13, 2023, 6:30 p.m. to no later than 9 p.m.**
  - ***Please Note!*** The Commission regrets that technical difficulties prevented DRBC from livestreaming its November 13, 2023, 6:30 p.m. public hearing on Proposed Amendments to the Commission's *Rules of Practice and Procedure*. A full recording of the informational briefing by Commission staff and public hearing was made available after the public hearing until the close of the comment period at 5 p.m. on November 30.
  - [Register for the 6:30 p.m. Zoom Webinar](#) - folks were asked to register for the hearing at this link
    - To attend the public hearing on Zoom, you must register for the Zoom Webinar.
  - Watch the livestream of either hearing on the DRBC's YouTube channel: <http://www.youtube.com/user/delrivbasincomm/>
    - No registration is required to attend via the YouTube livestream.

### To Provide Testimony at a Public Hearing

After registering for the Zoom Webinar you wish to attend, **sign up to speak at that public hearing by registering through Eventbrite by 5 p.m., Friday, November 10, 2023.**

- **November 13, 2023, 1:30 p.m. to no later than 4 p.m.**
  - [Register to speak at the 1:30 p.m. public hearing via Eventbrite](#)
- **November 13, 2023, 6:30 p.m. to no later than 9 p.m.**
  - [Register to speak at the 6:30 p.m. public hearing via Eventbrite](#)

### Public Hearing Procedures

- Attendance at the hearings is not limited. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so. Online registration to speak at the public hearings will remain open until 5 p.m., Friday, November 10, 2023, or until all available speaking slots have been filled, whichever is earlier.
- Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- After all registered speakers have had an opportunity to be heard, and as time allows, the Commission may provide an opportunity for other webinar attendees to speak, even if they did not register to do so. At such time as all registered speakers in attendance have been heard, and any other webinar attendees who wish to avail themselves of the opportunity to speak (but who did not register to speak) have also been heard, the hearing officer will have discretion to close the hearing.
- Written and oral comment will receive equal consideration.
- To ensure a smooth connection, please make sure the most up-to-date version of Zoom is being used.

### Written Comments

#### How to Submit Written Comments

- Written comments along with any attachments should be submitted through the Commission's web-based comment system: <https://hearing.drbc.commentinput.com?id=T95htQGAG>

#### Deadline to Submit Written Comments

- 5 p.m. on Thursday, November 30, 2023

#### Please Note

- All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text.
- Comments received through any method other than the designated on-line method, including *via* email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless accompanied by a written request for an exception based on lack of access to the web-based comment system. Such requests and accompanying materials may be sent to: Commission

Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

- Written and oral comment will receive equal consideration.

## Substance of Comments

- The Commission welcomes and will consider comments that concern the potential impacts of the proposed amendments on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin and on public participation in the Commission's water resource management activities.
- Non-digitized, voluminous materials such as books, journals and collections of documents will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

## Supporting Documentation & Translation

### Proposed Rulemaking Documents (all pdfs)

- [Notice of Proposed Rulemaking](#)
- [Redline of the Proposed Amendments to the RPP compared to the existing RPP](#)
- Federal & State Register Notices
  - [Federal](#) (dated 9/28/23)
  - [Delaware](#) (dated 10/1/23)
  - [New Jersey](#) (dated 10/16/23)
  - [New York](#) (dated 10/11/23)
  - [Pennsylvania](#) (dated 10/28/23)

### Translation Services for Rulemaking Materials

This DRBC web page can be translated to one of multiple languages by using the Google Translate widget located in the upper right of each web page.

The Commission will consider requests for translation of this notice and the proposed rule text into languages other than English. To request translation of documents related to this rulemaking, please send an e-mail to [translate@drbc.gov](mailto:translate@drbc.gov). Please specify both the requested language and the requested documents.

## Background & Summary of Proposed Amendments

- [View pdf of Informational Briefing presentation given before each public hearing](#) (posted 11/14/23)

### Background

The Commission's Rules of Practice and Procedure (RPP), comprising part 401 of Title 18 of the Code of Federal Regulations, govern the adoption and revision of the Commission's Comprehensive Plan and Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 of the Delaware River Basin Compact (Compact) and other actions of the Commission mandated or authorized by the Compact, including but not limited to the administration of public access to records and information in the Commission's possession.

The proposed amendments are intended primarily to resolve ambiguities in the current language of paragraph (a) of § 401.41 ("Limitation of approval"); to replace certain out-of-date provisions, such as the requirement for paper copies of project review applications under Section 3.8 of the Compact, that no longer conform to current practice; and to eliminate references to the Federal Freedom of Information Act ("FOIA") in Subpart H—Public Access to Records and Information, because the Commission is not a Federal agency and because the Compact expressly exempts the Commission from the Federal Administrative Procedure Act, of which FOIA is a part. The changes proposed to § 401.41 create the need for conforming changes in four other provisions of Subpart C but do not alter the Commission's interpretation or implementation of these provisions.

Ambiguities in the language of paragraph (a) of § 401.41 came to light in 2022 in connection with a request in accordance with this provision for extension of an approval issued in 2019 under Section 3.8 of the Compact. The current provision states that a Commission approval "shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval." The provision further provides that "[a]n approval may be extended or renewed by the Commission upon application." The questions raised by this language include: whether, if the listed conditions are met, an expiring docket automatically extends or renews without the need for Commission action; whether, if acknowledgement or a decision is necessary, the Commission must vote on the matter or the Executive Director may issue the acknowledgment or render the decision; whether the project sponsor may be relieved of the requirement that it have "expended substantial funds" if circumstances beyond the sponsor's control have prevented it from doing so; whether public notice and a public hearing should be provided before an extension is acknowledged, approved or denied; and the duration of an extension if acknowledged or approved.

### Summary of Proposed Amendments to the RPP

#### Amendments to § 401.41.

*Proposed § 401.41(a).* Paragraph (a) of § 401.41 operates when the instrument of Commission approval contains no expiration date. This

occurs when the Commission approves an activity such as dredging under Section 3.8 of the Compact and accompanying regulations at 18 CFR 401.35(a)(7) or construction under the Commission's Flood Plain Regulations, 18 CFR part 415. Because the Commission exercises no continuing oversight over dredging and construction activities, no renewal of an approval for such activities is ordinarily required. Section 401.41(a) serves as a backstop in the unusual instances in which the approved activity is not promptly undertaken. In contrast, approvals for ongoing withdrawals and discharges are issued for limited terms of ten and five years, respectively, as set forth in the instrument of approval. Under existing regulations, an application for renewal of an approval, when required, must be submitted no fewer than 120 days in advance of the assigned expiration date unless the instrument of approval provides otherwise. See 18 CFR 401.43(b)(4)(ii). (An amendment proposed in this rulemaking would change the required timing of submission to 180 days in advance of the assigned expiration date.) That paragraph (a) of § 401.41 operates only when an approval contains no expiration date is made explicit in the amended rule.

In addition, the proposed amendments extend from three years to five the time by which a Commission approval that lacks an expiration date "shall expire" if certain requirements are not met. In the Commission's view, a period of five years, rather than the current three, is appropriate given modern permitting and construction timeframes for Commission-approved projects. As noted above, five years is also the term of a Commission approval for a wastewater discharge, and is the term normally applied to individual permits issued under the Coastal Zone Management Rules established by an agency of one of the Commission's member states, the New Jersey Department of Environmental Protection ("NJDEP") (see N.J. Admin. Code Sec. 7.7-8.2).

Additional changes to § 401.41(a) are proposed to resolve ambiguities in the current language. Under the proposed revision, the project sponsor must submit a written request for an extension, accompanied by supporting documentation. In response, the Executive Director by a written determination must grant a five-year extension if the sponsor's request and supporting documentation demonstrate to the Executive Director's satisfaction that certain criteria are met. Specifically, the Executive Director must grant the extension if he or she determines: (1) that no material change is proposed to the project as approved; (2) that the sponsor has expended, at a minimum, the lesser of one million dollars or substantial funds in relation to the cost of the project or has been prevented from doing so by circumstances beyond the sponsor's control; and (3)-(4), that neither the Commission's Comprehensive Plan nor the condition of the project site has changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

The term "material change" is proposed to be added to Subpart I—General Provisions, § 401.121 (Definitions), and defined as, "a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan." The proposed definition restates the purpose of the Commission's review as set forth in Article 3.8 of the Compact, which provides in relevant part that "[t]he 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."

As proposed, amended § 401.41(a) would also require public notice of a determination by the Executive Director on or before the Commission's next quarterly public hearing or business meeting. The proposed language establishes that determinations by the Executive Director under the provision are appealable in accordance with Subpart F—Administrative and Other Hearings, §§ 401.81 – 401.90.

*Proposed § 401.41(b).* The proposed amendments include a new § 401.41(b), which makes clear that if one or more material changes to an approved project are proposed, or if the Executive Director determines that any one or more of the other criteria listed at proposed § 401.41(a) are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval issued by the Commission. This section applies to any Commission approval, whether or not it includes an expiration date, and regardless of whether the project sponsor has expended a minimum amount of funds in relation to the cost of a project (Existing § 401.43(b)(4)(iii) sets forth the fee associated with modification of a Commission approval).

*Proposed § 401.41(c).* Proposed § 401.41(c) would effectively preserve the current § 401.41(b), which provides that a project review application (as opposed to a Commission approval) that remains dormant (defined by the rule as "no active pursuit of approvals") for three years from the date of Commission receipt of the application will terminate without further action by the Commission.

#### **Conforming amendments in part 401.**

Introduction of the new defined term, "material change," creates the need to replace existing language with the new term in four other provisions of part 401. In each of these instances, the current language includes the undefined term "substantial change," or some variant of that term. The affected provisions are §§ 401.8(a), 401.42(e), 401.43(b)(1)(ii), and 401.43(b)(4)(iii).

#### **Updates of subparts B and C.**

The proposed amendments would revise provisions of the RPP concerning the Water Resources Program (subpart B) and the review of projects under Section 3.8 of the Compact (subpart C), to align them with current practice.

*Period to be covered by the Water Resources Program.* Article 13.2 of the Compact requires the Commission to "annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken . . . during the ensuing six years or such other reasonably foreseeable period as the commission may determine." Currently, § 401.22 dictates that the Water Resources Program "will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action within the ensuing six-year period." The proposed revision would restore the flexibility the Compact allows regarding the period to be covered by the annual program.

*Information required for concurrent inclusion of a project in the Comprehensive Plan and Water Resources Program.* Section 401.23 establishes that a project may be added to the Comprehensive Plan and included in the Water Resources Program by concurrent action of the Commission, provided that in such instances the project sponsor has furnished the Commission with detailed information, a list of which is set forth in the provision. As amended, the list is replaced by a reference to § 401.4(b), which contains a list of the information that must be provided for any project proposed to be included in the Comprehensive Plan.

*Removal of provisions concerning out-of-use classifications.* Sections 401.24–401.26 relate to a system of classifying projects included in the Water Resources Program as either "A" list or "B" list projects. Because this classification system is no longer in use, these sections are proposed to be deleted.

*Time of referral of a project by a State or Federal agency.* The proposed amendments include a revision of § 401.38, captioned "Form of referral by State or Federal agency," to conform the language of this provision to current practice. In practice, the Commission reviews projects concurrently with reviews performed by the regulatory agencies of its member states and the Federal government. Accordingly, as

proposed, § 401.38 provides that upon receipt of an application for a project that is subject to Commission review (rather than upon

issuance of an approval as in the current rule), the member state agency will refer the application to the Commission.

*Form of submission of a project review application.* The proposed rule would amend § 401.39, captioned "Form of submission of projects," to provide that for any project subject to review under Section 3.8 of the Compact, an application will be considered complete and ripe for technical review by Commission staff when the project sponsor submits a completed application using the form provided on the Commission's website and pays the applicable fee plus any outstanding fees, penalties or interest. The Commission's ability to request additional information from a project sponsor is preserved. The amendment would leave certain submission requirements and procedures to the instructions in the applicable form. It would conform § 401.39 to the practice already used by the Commission and most applicants, as well as by some regulatory agencies of the Commission's State and Federal members.

*Timely submission of a renewal application.* The proposed amendments include the revision of paragraph § 401.43(b)(4)(ii) to provide that a project sponsor must file its application for renewal of an expiring approval 180 calendar days prior to the date of expiration of the approval to avoid a late fee. The current rule requires that to avoid a late fee, a renewal application must be filed 120 days prior to the date of expiration of the approval.

*Fees for name change and change of ownership.* The amendments are proposed to include consolidation into a single fee of the fees that currently apply, respectively, when the sponsor of a project undergoes a name change (§ 401.43(b)(4)(iv)) and when the project undergoes a change of ownership (§ 401.43(b)(4)(v)). A corresponding change is required to the accompanying Table 3 to § 401.43. The amendment is proposed because the two types of events entail comparable time and effort on the part of the Commission's project review staff.

## Public Access to Records and Information

Subpart H of the RPP contains regulations related to the disclosure of Commission records to members of the public upon request. The rules currently identify the Federal FOIA as authority pursuant to which the Commission promulgated Subpart H, and the subpart contains multiple references to the FOIA. Although certain language in the current Subpart H is identical to language in the FOIA, the Commission, a Federal-interstate compact agency, is not a Federal agency, and the Commission is expressly exempt by § 15.1(m) of the Compact from the Federal Administrative Procedure Act, of which FOIA is a part. The agenda for a January 29, 1975 Commission conference session and business meeting at which adoption of the then-draft Subpart H regulations was discussed makes clear the Commission understood this at the time. The agenda states, "The Commission is not subject to the Administrative Procedures (*sic*) Act. However, staff recommends approval of these regulations in any case as a matter of desirable policy." At a business meeting on February 26, 1975, the Commission adopted the Subpart H regulations as proposed.

References to the FOIA in Subpart H have created confusion on the part of individuals who seek access to Commission records. In particular, requests for records filed with the Commission under Subpart H often cite to procedural provisions of the FOIA that differ from those in Subpart H. The proposed amendments would eliminate an important source of such confusion. The proposed amendments also would remove gendered pronouns used in the current regulations to align with the Commission's support of diversity, equity, inclusion and belonging.

## Proposed Changes to Rules of Practice & Procedure

- [Download Redline of Proposed Rules of Practice & Procedure compared to the Existing RPP](#) (pdf)

The proposed amendments to the RPP - title 18, chapter III of the Code of Federal Regulations are as follows:

### PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 401 continues to read as follows:

**Authority:** Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

#### Subpart A—Comprehensive Plan

2. In § 401.8, revise paragraph (a) to read as follows:

- **401.8 Public projects under Article 11 of the Compact.**

(a) After a project of any Federal, State or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is materially changed from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director, who will determine whether the change is deemed a material change within the meaning of this part.

\* \* \* \* \*

#### Subpart B—Water Resources Program

3. Revise §§ 401.22 and 401.23 to read as follows

- **401.22 Concept of the program.**

The Water Resources Program, as defined and described in Section 13.2 of the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action. That part of the Program consisting of a presentation of the water resource needs of the Basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

- **401.23 Procedure.**

The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. In such instances, the project's sponsor shall furnish the information listed in §

401.4(b) prior to the inclusion of the project in the Comprehensive Plan and Water Resources Program.

- **§ 401.24 – 401.26 [Removed]**

4. Remove §§ 401.24 through 401.26.

### Subpart C—Project Review Under Section 3.8 of the Compact

5. In § 401.38, revise the introductory text to read as follows:

- **401.38 Form of referral by State or Federal agency.**

Upon receipt of an application by any State or Federal agency for any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

\* \* \* \* \*

6. Revise § 401.39 to read as follows:

- **401.39 Form of submission of projects.**

(a) *Submission constituting application.* Where a project is subject to review under Section 3.8 of the Compact, the submission shall be in accordance with such form of application as the Executive Director may prescribe and with such supporting documentation as the Executive Director may reasonably require for the administration of the provisions of the Compact. An application shall be deemed complete and the Commission's review of the application may commence upon submission of the completed form in accordance with paragraph (b) of this section, and payment of the applicable fee as set forth in § 401.43 together with all balances due the Commission, if any, by the applicant or any member of its corporate structure, for unpaid fees, penalties or interest.

(b) *Submission of applications.* Application forms and accompanying submissions shall be filed in accordance with the filing instructions included on the application form.

(c) *Availability of forms.* Any person may obtain a copy of any form prescribed for use in paragraph (a) of this section on the Commission's website, <https://www.drbc.gov>.

7. Revise § 401.41 to read as follows:

- **401.41 Limitation of approval; dormant applications.**

(a) *Extension by Executive Director.* (1) For any Commission approval not assigned an expiration date, the Commission's approval shall expire five years from the approval date unless prior thereto the Executive Director extends the approval for an additional five-year period based upon a written request from the project sponsor accompanied by supporting documentation demonstrating to the Executive Director's satisfaction that the following criteria have been met:

(i) Either:

(A) The project sponsor has expended, at a minimum, the sum of one million dollars (\$1,000,000) or an amount representing substantial funds in relation to the cost of the project in reliance upon the Commission's approval; or

(B) In the alternative, circumstances beyond the project sponsor's control (including but not limited to, pending legal challenges to local, State or Federal permits) have prevented the sponsor from expending an amount equal to either of the sums set forth in paragraph (a)(1)(i)(A) of this section;

(ii) No material changes to the project as approved are proposed;

(iii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan; and

(iv) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

(2) Otherwise, the Executive Director shall deny the request.

(3) Public notice of a determination by the Executive Director pursuant to this paragraph (a) shall be provided no later than the Commission's next regularly scheduled public hearing or business meeting following the determination. A determination by the Executive Director pursuant to this section is appealable in accordance with subpart F of this part.

(b) *Review by Commissioners.* If in the view of the Executive Director (or if appealed to the Commission pursuant to subpart F of this part, in the view of the Commission), one or more material changes to a project as approved are proposed, or if the Executive Director determines that any one or more of the other criteria listed in paragraph (a) of this section are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval.

(c) *Automatic termination of application.* Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated without further action of the Commission. Any renewed activity following that date will require submission of a new application.

8. In § 401.42, revise paragraph (e) to read as follows:

- **401.42 One permit program.**

\* \* \* \* \*

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive

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

\* \* \* \* \*

9. In § 401.43, revise paragraphs (b)(1)(ii) and (b)(4)(ii), (iii), and (iv) and remove the entries for "Name change" and "Change of Ownership" in Table 3 to § 401.43 and add an entry for "Name change or Change of Ownership" in their place.

The revisions and addition read as follows:

• **401.43 Regulatory program fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Project requiring inclusion in the comprehensive plan.* Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the Compact are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is materially changed from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

\* \* \* \* \*

(4) \* \* \*

(ii) *Late filed renewal application.* Any renewal application submitted fewer than 180 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, any material change to the project as approved shall require an additional application and accompanying fee. Such fee shall be calculated in accordance with paragraph (e) of this section and may be subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change or change of ownership.* Each project with a docket or permit issued by the DRBC will be charged an administrative fee as set forth in paragraph (e) of this section if it undergoes a change in name or a "change in ownership" as that term is defined at § 420.31(e)(2) of this subchapter.

\* \* \* \* \*

**Table 3 to § 401.43—Additional Fees**

Proposed action	Fee	Fee maximum
Name Change or Change of Ownership	\$1,842 <sup>1</sup>	

<sup>1</sup> Subject to annual adjustment in accordance with paragraph (c) of this section.

**Subpart H—[Amended]**

10. Amend Subpart H by removing the authority citation.

11. In § 401.103, revise paragraph (a) to read as follows:

• **401.103 Request for existing records.**

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the provisions of this part, whether or not the provisions of this part are mentioned in the request, and shall be governed by the provisions of this part.

\* \* \* \* \*

12. Revise § 401.104 to read as follows:

• **401.104 Preparation of new records.**

The provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

13. In § 401.105, revise paragraph (b) to read as follows:

• **401.105 Indexes of certain records.**

\* \* \* \* \*

(b) A copy of each such index is available at cost of duplication from the Records Access Officer.

14. Revise § 401.106 to read as follows:

• **401.106 Records Access Officer.**

The Executive Director shall designate a Commission employee as the Records Access Officer. The Records Access Officer shall be responsible for Commission compliance with the provisions of this part. All requests for agency records shall be sent to the Records Access Officer in a manner consistent with § 401.108(a).

15. In § 401.108, revise paragraphs (a), (b)(1), (c), and (d) to read as follows:

• **401.108 Filing a request for records.**

(a) All requests for Commission records shall be submitted to the Records Access Officer on such forms as the Executive Director may prescribe, which shall be available on the Commission's website, <https://www.drbc.gov>, or by written request to the Commission, 25 Cosey Road, West Trenton, NJ 08628.

(b) \* \* \*

(1) If the description is insufficient to locate the records requested, the Records Access Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

\* \* \* \* \*

(c) Upon receipt of a request for records, the Records Access Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.109(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(d) A denial of a request for records, in whole or in part, shall be signed by the Records Access Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

16. In § 401.109, revise paragraphs (a), (b) introductory text, and (c) to read as follows:

• **401.109 Time limitations.**

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the Records Access Officer pursuant to § 401.108(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the Records Access Officer and is logged in accordance with § 401.108(c). A request that is expected to involve fees in excess of \$50.00 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on the initial request.

(b) Within 10 working days (excepting Saturdays, Sundays and legal public holidays) after a request for records is logged by the Records Access Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

\* \* \* \* \*

(c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within 30 days from receipt of the Records Access Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within 20 working days (excepting Saturdays, Sundays and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or the Executive Director's designee shall make a determination and notify the appellant of such determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

\* \* \* \* \*

17. In § 401.110, revise paragraphs (a)(1)(i)(A) and (c) to read as follows:

• **401.110 Fees.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) Processing requests for records;

\* \* \* \* \*

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the Records Access Officer.

18. Revise § 401.115 to read as follows:

• **401.115 Discretionary disclosure by the Executive Director.**

(a) The Executive Director may exercise discretion to disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part whenever the Executive Director determines that such disclosure is in the public interest, will promote the objectives of the Commission and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.108, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to disclose any other record that is exempt from disclosure.

**Subpart I—General Provisions**

19. In § 401.121, redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to read as follows:

• **401.121 Definitions.**

\* \* \* \* \*

(e) *Material change* shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan.

\* \* \* \* \*

**Contacts**

For information regarding the public hearings and submission of written comments:

- Contact Kate Schmidt, Communications Specialist, at [kate.schmidt@drbc.gov](mailto:kate.schmidt@drbc.gov) (preferred) or 609-477-7205.

For information concerning the proposed amendments:

- Contact Pamela Bush, Commission Secretary and Assistant General Counsel, at [pam.bush@drbc.gov](mailto:pam.bush@drbc.gov) (preferred) or 609-477-7203.

Notice Posted: 9/28/23

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Last Modified: 11/30/2023



The proposed amendments to DRBC's Rules of Practice and Procedure, codified at 18 C.F.R. Part 401, appear below. Additions are shown in red with underscore and deletions are shown in ~~red with strikethrough~~. Asterisks represent no change to the existing regulation.

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## PART 401 – RULES OF PRACTICE AND PROCEDURE

### Subpart A – Comprehensive Plan

\* \* \* \* \*

#### 401.8 Public projects under Article 11 of the Compact.

- (a) After a project of any Federal federal, State state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is materially changed ~~substantially~~ from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director, who will determine whether the change is deemed ~~substantial~~ a material change within the meaning of this part.

\* \* \* \* \*

### Subpart B – Water Resources Program

\* \* \* \* \*

#### 401.22 Concept of the program.

The Water Resources Program, as defined and described in Section 13.2 of the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action ~~within the ensuring six year period~~. That part of the Program consisting of a presentation of the water resource needs of the Basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

#### 401.23 Procedure.

The Water Resources Program will be prepared and considered by the Commission for adoption annually. ~~Each project~~ Projects included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. In such instances, the ~~The~~ project's sponsor shall

furnish the ~~following~~ information listed in § 401.4(b) prior to the inclusion of the project in the Comprehensive Plan and Water Resources Program. :

- ~~(a) — The Comprehensive Plan data brought up-to-date for the period of the Water Resources Program;~~
- ~~(b) — Specific location and dimension of a structural project, and specific language of a standard, policy or other non-structural proposal;~~
- ~~(c) — The plan of operation of a structural project;~~
- ~~(d) — The specific effects of a non-structural project;~~
- ~~(e) — Sufficient data to indicate a workable financial plan under which the project will be carried out; and~~
- ~~(f) — A timetable for implementation.~~

#### ~~401.24 Preparation and adoption.~~

~~The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects required to satisfy the Basin needs during the period covered by the Program may be classified as follows:~~

- ~~(a) — A-List: This shall include public projects which require no further review, and inclusion in such list shall be deemed to be approved for the purposes of Section 3.8 of the Compact;~~
- ~~(b) — B-List: This shall include public projects not included in the A-list and privately sponsored projects which are proposed or anticipated by the Commission.~~

#### ~~401.25 Alternatives for public projects.~~

~~Any public project which has been included in the Comprehensive Plan but is not on the "A" list of the current Water Resources Program, at the option of the sponsor, may be submitted for review and approval under Section 3.8 of the Compact in accordance with Subpart C of these regulations.~~

#### ~~401.26 Inventory of other projects.~~

~~Each Water Resources Program will include, for information purposes only, an inventory of projects approved during the previous year pursuant to Section 3.8 of the Compact but which are not part of the Comprehensive Plan or Water Resources Program.~~

## Subpart C – Project Review Under Section 3.8 of the Compact

\* \* \* \* \*

### 401.38 Form of referral by State or Federal agency.

Upon receipt of an application approval by any State state or Federal federal agency for of any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

\* \* \* \* \*

### 401.39 Form of submission of projects ~~not requiring prior approval by State or Federal agencies.~~

~~Where a project does not require approval by any other state or federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the *Comprehensive Plan*, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the *Compact*. These shall include without limitation thereto:~~

~~(a) *Exhibits to Accompany Application.* The application shall be accompanied by the following exhibits:~~

- ~~(1) Abstract of proceedings authorizing project, where applicable;~~
- ~~(2) General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal;~~
- ~~(3) Section of the United States Geological Survey topographic map showing the territory and watershed affected;~~
- ~~(4) Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project;~~
- ~~(5) Written report of the applicant's engineer showing the proposed plan of operation of a structural project;~~
- ~~(6) Map of any lands to be acquired or occupied;~~
- ~~(7) Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and~~
- ~~(8) Analyses and conclusions of regional water supply and wastewater investigations.~~

~~(b) *Letter of Transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which~~

~~communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.~~

~~(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.~~

~~(a) Submission constituting application. Where a project is subject to review under Section 3.8 of the Compact, the submission shall be in accordance with such form of application as the Executive Director may prescribe and with such supporting documentation as the Executive Director may reasonably require for the administration of the provisions of the Compact. An application shall be deemed complete and the Commission's review of the application may commence upon submission of the completed form in accordance with paragraph (b) of this section, and payment of the applicable fee as set forth in § 401.43 together with all balances due the Commission, if any, by the applicant or any member of its corporate structure, for unpaid fees, penalties, or interest.~~

~~(b) Submission of applications. Application forms and accompanying submissions shall be filed in accordance with the filing instructions included on the application form.~~

~~(c) Availability of forms. Any person may obtain a copy of any form prescribed for use in paragraph (a) of this section on the Commission's website, <https://www.drbc.gov>.~~

\* \* \* \* \*

**401.41 Limitation of approval; dormant applications.**

~~(a) Approval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.~~

~~(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.~~

(a) Extension by Executive Director. (1) For any Commission approval not assigned an expiration date, the Commission's approval shall expire five years from the approval date unless prior thereto the Executive Director extends the approval for an additional five-year period based upon a written request from the project sponsor accompanied by supporting documentation demonstrating to the Executive Director's satisfaction that the following criteria have been met:

(i) Either:

(A) The project sponsor has expended, at a minimum, the sum of one million dollars (\$1,000,000) or an amount representing substantial funds in relation to the cost of the project in reliance upon the Commission's approval; or

(B) In the alternative, circumstances beyond the project sponsor's control (including but not limited to, pending legal challenges to local, State or Federal permits) have prevented the sponsor from expending an amount equal to either of the sums set forth in paragraph (a)(1)(i)(A) of this section;

(ii) No material changes to the project as approved are proposed;

(iii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan; and

(iv) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

(2) Otherwise, the Executive Director shall deny the request.

(3) Public notice of a determination by the Executive Director pursuant to this paragraph (a) shall be provided no later than the Commission's next regularly scheduled public hearing or business meeting following the determination. A determination by the Executive Director pursuant to this section is appealable in accordance with subpart F of this part.

(b) Review by Commissioners. If in the view of the Executive Director (or if appealed to the Commission pursuant to subpart F of this part, in the view of the Commission), one or more material changes to a project as approved are proposed, or if the Executive Director determines that any one or more of the other criteria listed in paragraph (a) of this section are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval.

(c) Automatic termination of application. Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically

terminated without further action of the Commission. Any renewed activity following that date will require submission of a new application.

**401.42 One permit program.**

\* \* \* \* \*

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not materially change the project ~~so substantially as to render it a new and different project~~ may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

\* \* \* \* \*

**401.43 Regulatory program fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Project requiring inclusion in the comprehensive plan.* Any project that in accordance with section 11 or section 13.1 of the Delaware River Basin Compact and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the Compact are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is materially changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

\* \* \* \* \*

(4) \* \* \*

(ii) *Late filed renewal application.* Any renewal application submitted fewer than ~~120~~ 180 calendar days in advance of the expiration date or after such other date

specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, ~~each any material change to the project revision or modification that the Executive Director deems substantial as approved~~ shall require an additional application and accompanying fee. Such fee shall be calculated in accordance with paragraph (e) of this section and may be subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change or change of ownership.* Each project with a docket or permit issued by the DRBC ~~or by a Signatory Party Agency pursuant to the One Permit Program rule (§ 401.42)~~ will be charged an administrative fee as set forth in paragraph (e) of this section if it undergoes a change in name or a “change in ownership” as that term is defined at § 420.31(e)(2) of this subchapter.

~~(v) *Change of ownership.* Each project that undergoes a “change in ownership” as that term is defined at 18 CFR 420.31(e)(2) will be charged an administrative fee as set forth in paragraph (e) of this section.~~

\* \* \* \* \*

**Table 3 to § 401.43—Additional Fees**

Proposed action	Fee	Fee maximum
* * * * *	* *	
Name change	\$1,228 <sup>1</sup>	
<u>Name Change or</u> Change of Ownership	\$1,842 <sup>1</sup>	

<sup>1</sup> Subject to annual adjustment in accordance with paragraph (c) of this section.

\* \* \* \* \*

**Subpart H – Public Access to Records and Information**

**Authority:** 5 U.S.C. 552

\* \* \* \* \*

**401.103 Request for existing records.**

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the provisions of this part

~~Freedom of Information Act~~, whether or not the provisions of this part are Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

\* \* \* \* \*

**401.104 Preparation of new records.**

The ~~Freedom of Information Act and the~~ provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

**401.105 Indexes of certain records.**

\* \* \* \* \*

(b) A copy of each such index is available at cost of duplication from the Records Access FOIA Officer.

**401.106 Records Access FOIA Officer**

The Executive Director shall designate a Commission employee as the Records Access FOIA Officer. The Records Access FOIA Officer shall be responsible for Commission compliance with the provisions of this part Freedom of Information Act and these regulations. All requests for agency records shall be sent ~~in writing~~ to the Records Access Officer in a manner consistent with § 401.108(a). ÷

~~FOIA Officer  
Delaware River Basin Commission  
P.O. Box 7360  
West Trenton, New Jersey 08628-0360~~

\* \* \* \* \*

**401.108 Filing a request for records.**

(a) All requests for Commission records shall be submitted ~~filed in writing delivered~~ to the Records Access FOIA Officer on such forms as the Executive Director may prescribe, which shall be available on the Commission's website, <https://www.drbc.gov>, or by written request mailing it to the Commission. ~~The Commission will supply forms for written requests, 25 Cosey Road, West Trenton, NJ 08628.~~

(b) \* \* \*

(1) If the description is insufficient to locate the records requested, the Records Access FOIA Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.



\* \* \* \* \*

- (c) Upon receipt of a request for records, the Records Access FOIA Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.109(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.
- (d) A denial of a request for records, in whole or in part, shall be signed by the Records Access FOIA Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

**401.109 Time limitations.**

- (a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the Records Access FOIA Officer pursuant to § 401.108(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the Records Access FOIA Officer and is logged in accordance with § 401.108(c). A request that is expected to involve fees in excess of \$50.00 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on the initial his request.
- (b) Within 10 ten working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the Records Access FOIA Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

\* \* \* \* \*

- (c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within 30 days from receipt of the Records Access FOIA Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or the Executive Director's his designee shall make a determination and notify the appellant of such his determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its

regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

\* \* \* \* \*

**401.110 Fees.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) Processing FOIA requests for records;

\* \* \* \* \*

(c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the Records Access FOIA Officer.

\* \* \* \* \*

**401.115 Discretionary disclosure by the Executive Director**

(a) The Executive Director may, ~~in his exercise~~ exercise discretion, to disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part. ~~The whenever the Executive Director shall exercise his discretion to disclose such records whenever he~~ determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.108, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director ~~to exercise his discretion~~ to disclose any other record that is exempt from disclosure.

\* \* \* \* \*

**Subpart I – General Provisions**

**401.121 Definitions**

\* \* \* \* \*

(e) **Material change** shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan.

(f) **Sponsor** shall mean any person authorized to initiate, construct or administer a project.

\* \* \* \* \*

APPENDIX B  
RESOLUTION 2024 – 06

A RESOLUTION to amend the Commission’s *Administrative Manual—Rules of Practice and Procedure*.

WHEREAS, the Commission on September 28, 2023 issued a [Notice of Proposed Rulemaking](#) and proposed [amended rule text](#) to amend the Commission’s Rules of Practice and Procedure, 18 C.F.R. Part 401 (“RPP”), to:

- resolve ambiguities in the language of § 401.41(a) (“Limitation of approval”);
- replace certain out-of-date provisions that no longer conform to current practice;
- eliminate references to the federal Freedom of Information Act (“FOIA”) in Subpart H—Public Access to Records and Information, because the Commission is expressly exempt by section 15.1(m) (U.S. reservation clauses) of the Delaware River Basin Compact from the federal Administrative Procedure Act, of which FOIA is a part; and
- make administrative and conforming amendments related to the above; and

WHEREAS, during a comment period that ran through November 30, 2023, including two public hearings on November 13, 2023, the Commission heard oral comment from ten individuals and received 199 written submissions, many of which included multiple comments. Copies of all comments received are posted on the Commission’s website; and

WHEREAS, the Commission staff, in consultation with the Commissioners and their advisors, has developed a detailed response to comments and a set of final regulations; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission hereby finds and determines that it is in the best interest of the Commission to amend the RPP as set forth in the attached revised regulations.
2. The June 2024 Comment and Response Document is hereby adopted in its entirety.
3. The attached Amendments to the *Administrative Manual—Rules of Practice and Procedure*, 18 C.F.R., Part 401, are hereby adopted as final regulations.

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Chair Pro Tem

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Commission Secretary

Adopted: June 5, 2024

**ATTACHMENT**

**AMENDMENTS TO  
ADMINISTRATIVE MANUAL– RULES OF PRACTICE AND PROCEDURE  
18 C.F.R. PART 401**

*[Remainder of page intentionally left blank.]*

**Part 401 of DRBC's Regulations at Title 18 of the Code of Federal Regulations, as amended, is shown below. Asterisks represent no change to the *existing* regulation.**

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**PART 401 – RULES OF PRACTICE AND PROCEDURE**

**Subpart A – Comprehensive Plan**

\* \* \* \* \*

**401.8 Public projects under Article 11 of the Compact.**

- (a) After a project of any Federal, State, or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is materially changed from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director, who will determine whether the change is deemed a material change within the meaning of this part.

\* \* \* \* \*

**Subpart B – Water Resources Program**

\* \* \* \* \*

**401.22 Concept of the program.**

The Water Resources Program, as defined and described in section 13.2 of the Compact, will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action. That part of the Program consisting of a presentation of the water resource needs of the Basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

**401.23 Procedure.**

The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects included in the Water Resources Program shall have been previously included in the Comprehensive Plan, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. In such instances, the project's sponsor shall furnish the information listed in § 401.4(b) prior to the inclusion of the project in the Comprehensive Plan and Water Resources Program.

## Subpart C – Project Review Under Section 3.8 of the Compact

\* \* \* \* \*

### 401.38 Form of referral by State or Federal agency.

Upon receipt of an application by any State or Federal agency for any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

\* \* \* \* \*

### 401.39 Form of submission of projects.

- (a) *Submission constituting application.* Where a project is subject to review under Section 3.8 of the Compact, the submission shall be in accordance with such form of application as the Executive Director may prescribe and with such supporting documentation as the Executive Director may reasonably require for the administration of the provisions of the Compact. An application shall be deemed complete and the Commission's review of the application may commence upon submission of the completed form in accordance with paragraph (b) of this section, and payment of the applicable fee as set forth in § 401.43 together with all balances due the Commission, if any, by the applicant or any member of its corporate structure, for unpaid fees, penalties, or interest.
- (b) *Submission of applications.* Application forms and accompanying submissions shall be filed in accordance with the filing instructions included on the application form.
- (c) *Availability of forms.* Any person may obtain a copy of any form prescribed for use in paragraph (a) of this section on the Commission's website, <https://www.drbc.gov>.

### 401.41 Limitation of approval; dormant applications.

- (a) *Extension (no material change)--(1) Term of approval; extension request.* For any Commission approval not assigned an expiration date, the Commission's approval shall expire five years from the approval date unless prior thereto the Commission extends the approval for an additional period of up to five years, based upon a written request from the project sponsor accompanied by supporting documentation demonstrating that the following criteria have been met:
  - (i) No material changes to the project as approved are proposed;
  - (ii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan;
  - (iii) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan; and



- (iv) The project sponsor is diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals. The project sponsor is not required by this subsection to conduct activities that it is not legally authorized to conduct or that it demonstrates would be unreasonable for it to conduct before obtaining all necessary final government approvals.
- (2) *Denial of extension request.* Otherwise, the extension request shall be denied, and the project sponsor may apply for renewal of its approval under paragraph (b) of this section by a date to be established by the Commission. If the Commission denies the request for an extension pursuant to this section, the docket approval shall not thereafter be administratively continued automatically pursuant to paragraph (a)(5) of this section. The Commission may, however, in its discretion, administratively extend the docket approval in whole or in part for a period ending on or before the date on which the Commission renders a final decision on the sponsor's re-application under paragraph (b) of this section.
- (3) *Public notice.* The Commission will publish notice of receipt of a request for extension under this paragraph (a) and will provide notice at least ten days prior to the date of a business meeting at which the Commissioners may act on such request.
- (4) *Public comment.* An opportunity for written comment of at least ten days' length will be provided on a request for extension. The project sponsor will be afforded an opportunity to respond in writing to the comments received. A public hearing will be provided if three or more Commission members ask the Executive Director in writing to schedule one or vote during a public meeting of the Commission to provide one.
- (5) *Administrative continuance.* A docket that is the subject of a request for extension under paragraph (a) of this section filed at least 90 days before the docket's expiration shall be administratively continued pending the Commission's final action on the request in the event that such action occurs after the otherwise effective date of termination under this section.
- (6) *Extensions no longer needed.* If the activities authorized by a docket are limited to construction activities, an extension is no longer required once construction is complete; however, the expiration of the docket, including any approved extension, does not eliminate ongoing docket obligations expressly identified as such in the docket approval.
- (b) *Re-application (material change).* If the Commission determines that the project sponsor has failed to demonstrate that no material changes to the project as approved are proposed and that the other criteria listed in paragraph (a)(1) of this section are satisfied, the project sponsor must apply for renewal and any necessary modification of its approval in accordance with the customary application procedure for any docket renewal or approval.

(c) *Automatic termination of application.* Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated without further action of the Commission. Any renewed activity following that date will require submission of a new application.

**401.42 One Permit Program.**

\* \* \* \* \*

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and this part. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not materially change the project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

\* \* \* \* \*

**401.43 Regulatory program fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Project requiring inclusion in the comprehensive plan.* Any project that in accordance with section 11 or section 13.1 of the Delaware River Basin Compact and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the Compact are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is materially changed from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

\* \* \* \* \*

(4) \* \* \*

(ii) *Late filed renewal application.* Any renewal application submitted fewer than 180 calendar days in advance of the expiration date or after such other date specified

in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, any material change to the project as approved shall require an additional application and accompanying fee. Such fee shall be calculated in accordance with paragraph (e) of this section and may be subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change or change of ownership.* Each project with a docket or permit issued by the DRBC will be charged an administrative fee as set forth in paragraph (e) of this section if it undergoes a change in name or a “change in ownership” as that term is defined at § 420.31(e)(2) of this subchapter.

\* \* \* \* \*

**Table 3 to § 401.43—Additional Fees**

Proposed action	Fee	Fee maximum
* * * * *	* *	
Name Change or Change of Ownership	\$1,917 <sup>1</sup>	

<sup>1</sup> Subject to annual adjustment in accordance with paragraph (c) of this section.

\* \* \* \* \*

**Subpart H – Public Access to Records and Information**

\* \* \* \* \*

**401.103 Request for existing records.**

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the provisions of this part, whether or not the provisions of this part are mentioned in the request, and shall be governed by the provisions of this part.

\* \* \* \* \*

**401.104 Preparation of new records.**

The provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

**401.105 Indexes of certain records.**

\* \* \* \* \*

(b) A copy of each such index is available at cost of duplication from the Records Access Officer.

**401.106 Records Access Officer**

The Executive Director shall designate a Commission employee as the Records Access Officer. The Records Access Officer shall be responsible for Commission compliance with the provisions of this part. All requests for agency records shall be sent to the Records Access Officer in a manner consistent with § 401.108(a).

\* \* \* \* \*

**401.108 Filing a request for records.**

(a) All requests for Commission records shall be submitted to the Records Access Officer on such forms as the Executive Director may prescribe, which shall be available on the Commission's website, <https://www.drbc.gov>, or by written request to the Commission, 25 Cosey Road, West Trenton, NJ 08628.

(b) \* \* \*

(1) If the description is insufficient to locate the records requested, the Records Access Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

\* \* \* \* \*

(c) Upon receipt of a request for records, the Records Access Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.109(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(d) A denial of a request for records, in whole or in part, shall be signed by the Records Access Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

**401.109 Time limitations.**

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the Records Access Officer pursuant to § 401.108(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the

Records Access Officer and is logged in accordance with § 401.108(c). A request that is expected to involve fees in excess of \$50.00 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on the initial request.

- (b) Within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the Records Access Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

\* \* \* \* \*

- (c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within 30 days from receipt of the Records Access Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or the Executive Director's designee shall make a determination and notify the appellant of such determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

\* \* \* \* \*

**401.110 Fees.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*
- (A) Processing requests for records;

\* \* \* \* \*

- (c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the Records Access Officer.

\* \* \* \* \*

**401.115 Discretionary disclosure by the Executive Director**

- (a) The Executive Director may exercise discretion to disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part whenever the Executive Director determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.
- (b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.108, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director to disclose any other record that is exempt from disclosure.

\* \* \* \* \*

**Subpart I – General Provisions**

**401.121 Definitions**

\* \* \* \* \*

- (e) **Material change** shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission’s comprehensive plan.
- (f) **Sponsor** shall mean any person authorized to initiate, construct or administer a project.

\* \* \* \* \*

APPENDIX C  
COMMISSION DOCKET APPLICATION FORMS



**Delaware River Basin Commission**  
DELAWARE • NEW JERSEY  
PENNSYLVANIA • NEW YORK  
UNITED STATES OF AMERICA

## **INSTRUCTIONS FOR APPLICATION FOR THE DISCHARGE OF POLLUTANTS INTO SURFACE WATERS OR GROUNDWATERS OF THE DELAWARE RIVER BASIN**

### **Who Must Apply?**

An application must be submitted by anyone proposing:

- A discharge of pollutants into surface and/or groundwater.
- A new or existing wastewater treatment facility equal to or exceeding a design capacity of 50,000 gallons per day (gpd) (Basin-wide requirement).
- A new or existing wastewater treatment facility equal to or exceeding a design capacity of 10,000 gallons per day (gpd) in DRBC designated Special Protection Waters (SPW).
- An existing wastewater facility without DRBC approval whose design capacity is above the basin wide or SPW review threshold (whichever is applicable).
- An existing wastewater facility with DRBC approval that requires a docket update/modification to reflect current facility operations and/or Commission requirements.
- Alterations or additions to an existing wastewater treatment facility whose design capacity is above the basin-wide or SPW review threshold (whichever is applicable).
- An expansion of an existing wastewater treatment facilities' design capacity above the basin-wide or SPW review threshold (whichever is applicable).
- Renewal of a DRBC approval.
- A service area change to any reviewable wastewater facility.
- An exportation of wastewater with a design capacity greater than or equal to a daily average rate of 100,000 gpd.
- An importation of wastewater with a design capacity greater than or equal to a daily average rate of 50,000 gpd.

The Delaware River Basin Commission (DRBC or Commission) has an Administrative Agreement (AA) with each of the following signatory parties: the Commonwealth of Pennsylvania and the States of Delaware, New Jersey and New York. The AA with each signatory party describes the classification of projects the Commission will review and can be found on the Commission's website at <https://www.nj.gov/drbc/about/regulations/administrative-agreements.html>. Each of the signatory parties has unique filing requirements which must be met in addition to requirements of the DRBC.

### **At a Minimum, Submittals Shall Include One Copy of each of the Following:**

1. DRBC Application: The attached application should be completed.
2. Project Narrative describing the existing/proposed project.
3. A copy of the most recent N(J)PDES/SPDES Permit approved by the appropriate commonwealth/state agency.
4. A copy of the most recent N(J)PDES/SPDES Permit application.



5. A copy of the application for a Water Quality Management Permit (PA), Treatment Works Approval (NJ), Plan Approval (NY), Wastewater Facility Construction Permits (DE), etc., as required by the appropriate commonwealth/state agency (only required for projects involving construction). This should include plans and specifications and the engineering report.
6. A copy of the final Water Quality Management Permit (PA), Treatment Works Approval (NJ), Plan Approval (NY), Wastewater Facility Construction Permits (DE), etc., as issued by the appropriate commonwealth/state agency (if available - only required for projects involving construction).
7. A list of any materials submitted that may be considered confidential.

### **How to file application?**

1. Complete this application form.
2. Assemble the completed application form and attachments in one or more electronic files.
3. Go to [applications.drbc.net](https://applications.drbc.net) and select "Create Account" to create a new account. Once you have established an account, return to [applications.drbc.net](https://applications.drbc.net) and "Sign in" to your account.
4. After you have signed in, upload the completed application and accompanying materials. You may add or remove files from your account as necessary. DRBC staff will be automatically notified that your materials have been submitted.
5. Payment of the Application Fee is required by a check payable to "Delaware River Basin Commission". Please follow the payment instructions on the [Application Fee Form](#). The completed fee form and payment should be mailed together to:

#### **Delaware River Basin Commission**

PO Box 7360  
25 Cosey Road  
West Trenton, NJ 08628-0360

Alternatively, this completed withdrawal application, the Application Fee Form, and Fee may be printed and mailed to the above address.

**Commonwealth/State Regulatory Agencies:**

Please contact the appropriate commonwealth/state agency to inquire as to what permits are necessary for the wastewater facility.

DELAWARE:

(302) 739-9945  
Delaware Department of Natural Resources  
And Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

NEW JERSEY: New Jersey Department of Environmental Protection Offices serving the Delaware River Basin are as follows:

Division of Water Resources  
Bureau of Point Source Permitting  
(609) 633-3869  
PO Box 29  
Trenton, NJ 08625-0029

Division of Water Resources  
Bureau of Treatment Works Approval  
(609) 984-4429  
P.O. Box 425  
Trenton, NJ 08625-0425

NEW YORK: New York State Department of Environmental Conservation Regional Offices serving the Delaware River Basin are as follows:

Region 3 (Orange, Sullivan, Ulster counties):  
(914) 256-3054  
21 South Putt Corners Road  
New Paltz, New York 12561

Region 7 (Broome, Chenango counties):  
(315) 426-7400  
615 Area Boulevard West  
Syracuse, New York 13204-2400

Region 4 (Delaware, Scholarie counties):  
(518) 357-2069  
Route 10  
Stamford, New York 12167

PENNSYLVANIA: Pennsylvania Department of Environmental Protection Regional Offices serving the Delaware River Basin are as follows;

Southeast Regional Office: (Bucks, Chester, Delaware, Montgomery, Philadelphia counties): (484) 250-5900  
2 East Main Street  
Norristown, Pennsylvania 19401

Southcentral Regional Office: (Berks, Lancaster, Lebanon counties):  
(717) 705-4707  
909 Elmerton Avenue  
Harrisburg, Pennsylvania 17110-8200

Pottsville Mining District  
(570) 621-3118  
5 West Laurel Boulevard  
Pottsville, PA 17901

Northeast Regional Office: (Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Wayne counties):  
(717) 826-2525  
2 Public Square  
Wilkes-Barre, Pennsylvania 18711-0790

### Glossary for DRBC Application:

**Docket:** a legal document granting approval by the Commission, including conditions for a project having a substantial effect on the water resources of the Basin.

**Drainage Area to SPW:** is any watershed tributary to OBW and/or SRW.

**Existing Wastewater Facility:** a facility intercepting, transporting, treating, or discharging pollutants within the Basin with or without Commission approval.

**Expanding Wastewater Treatment Project:** is a project involving either (a) alterations or additions to an existing wastewater treatment facility that result in a reviewable project in accordance with the Commission's *Rules of Practice and Procedure*; 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. *WQR* § 3.10.3 A.2.a.15).

**Flood Plain:** the area adjoining the channel of a stream which has been or hereafter may be covered by flood water.

**gpd:** gallons per day

**mgd:** million gallons per day

**Natural Wastewater Treatment Systems:** are soil-based, vegetative and/or aquatic wastewater treatment systems characterized by the use of low energy treatment processes that use and simulate "natural" environmental processes such as primary and secondary productivity, crop production, wetlands, ponds and others. *WQR* § 3.10.3 A.2.a.10).

**New Wastewater Facility:** a proposed facility designed to discharge pollutants to ground or surface waters of the Basin or to intercept, transport, or treat pollutants within the Basin.

**Non-SPW:** includes the Delaware River and all tributaries between River Mile 0.0 (confluence of the Delaware Bay and the Atlantic Ocean) and River Mile 134.34 (Calhoun Street Bridge, Trenton, New Jersey).

**Outstanding Basin Waters (OBW):** are interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Section 3.10.3.A.2.g.1. of the *WQR* as having exceptionally high scenic, recreational, and ecological values that require special protection.

**Pollutant:** a substance which degrades natural water quality; including, but not limited to: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into groundwater or surface water.

**Re-rate:** modifying a facility approval based upon a revised discharge flow that more accurately describes a facility's operating condition. A re-rate may not require construction or modifications to the physical treatment works.

**Service Area:** the communities, townships, counties, and/or site-specific facilities that are/will be serviced by the facility seeking Commission approval.

**Significant Resource Waters (SRW):** are interstate waters classified by the Commission under Section 3.10.3.A.2.g.2. of the Commission's *Administrative Manual – Part III Water Quality Regulations (WQR)* as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection.

**Special Protection Waters (SPW):** Special Protection Waters (SPW) are designed by the Commission in accordance with Section of 3.10.3.A.2. of the WQRs. SPW designation includes the Delaware River and all its tributaries and corresponding drainage area above River Mile 134.34 (Calhoun Street Bridge, Trenton, New Jersey). SPW have three classifications for the purpose of designation: Outstanding Basin Waters (OBW); Significant Resource Waters (SRW); and the tributaries and drainage area to OBW and SRW.

**Substantial Alterations or Additions:** 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. *WQR* § 3.10.3 A.2.a.16).

**TDS:** Total Dissolved Solids

**TDS Determination:** the conclusion(s) established by the Commission, with regards to granting an Applicant a variance to the basin-wide effluent limit of 1,000 mg/l.

**TDS Questionnaire:** DRBC form to be filed as part of a complete Application to the Commission when an Applicant is seeking an effluent limit less stringent than the basin-wide effluent limit of 1,000 mg/l.

**Wastewater Facility:** a facility designed to discharge pollutants to ground or surface waters of the Basin or to intercept, transport, or treat pollutants within the Basin.

**Wetlands:** those areas which are inundated by surface or ground water with a frequency sufficient to support a prevalence of vegetative or aquatic life that requires saturated soil conditions for growth and reproduction or are delineated as wetlands by a signatory state.



# APPLICATION FOR THE DISCHARGE OF POLLUTANTS INTO SURFACE WATERS OR GROUNDWATERS OF THE DELAWARE RIVER BASIN

Pursuant to the Delaware River Basin Compact and the Rules of Practice and Procedure of the DRBC, application is hereby made for review of the project described below:

Applicant Name: \_\_\_\_\_

Existing Docket Number (if applicable): \_\_\_\_\_

Type of Application:

- Re-rate of Existing Wastewater Facility
- Renewal of Existing Wastewater Facility

Modification of Existing Wastewater Facility:

- Expansion/Modification of Existing Discharge Facility
- Service Area Modification
- Outfall Modification
- TDS Determination
- Other

New Discharge:

- Non-SPW
- Outstanding Basin Waters (OBW)
- Significant Resource Waters (SRW)
- Drainage Area to SPW

**APPLICATION CHECKLIST**

	<u>ENCLOSED</u>	<u>N/A</u>
1. Wastewater Facility Application .....	<input type="checkbox"/>	
• Location Map (Question 6.) .....	<input type="checkbox"/>	<input type="checkbox"/>
• Service Area Map (Question 7.) .....	<input type="checkbox"/>	<input type="checkbox"/>
• Flood Plain Map (Question 8.f.) .....	<input type="checkbox"/>	<input type="checkbox"/>
• Wetland Certification (Question 10.) .....	<input type="checkbox"/>	<input type="checkbox"/>
• Copy of applicable State Applications / Approvals (Question 11.) .....	<input type="checkbox"/>	<input type="checkbox"/>
• SPW Projects (Questions 12. through 17.) .....	<input type="checkbox"/>	<input type="checkbox"/>
2. Project Narrative .....	<input type="checkbox"/>	
3. "Applicant's Statement – Project Review Fee" form & fee .....	<input type="checkbox"/>	
4. N(J)PDES/SPDES Permit .....	<input type="checkbox"/>	
5. N(J)PDES/SPDES Permit application .....	<input type="checkbox"/>	
6. State Construction Application (WQMP, TWA, Plan Approval, WFCP) .....	<input type="checkbox"/>	<input type="checkbox"/>
7. TDS Questionnaire .....	<input type="checkbox"/>	<input type="checkbox"/>

**1. Applicant Information:** (please print or type)

Applicant Name: \_\_\_\_\_

Parent Corporation Name, if different: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Representing Attorney Name, if applicable: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facility Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Township: \_\_\_\_\_ County: \_\_\_\_\_

**2. Consultant Information:**

Name of Engineer: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**3. CERTIFICATION AND SIGNATURE OF APPLICANT**

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that pursuant to Section 14.17 of the Delaware River Basin Compact, an attempt to violate a rule, regulation, or order of the Commission, including by knowingly or negligently submitting false information, may result in penal sanctions that include fines of up to \$1,000 per day.

**Name:**

**Official Title:**

**Signature:**

\_\_\_\_\_  
**Date:**

**4. a. Type of Wastewater:** (check all that apply)

- Municipal Wastewater
- Industrial Wastewater
- Non-Contact Cooling Water (NCCW)
- Contact Cooling Water (CCW)
- Landfill Leachate
- Water Treatment Plant Filter Backwash
- Other: \_\_\_\_\_

**b. Type of Discharge** (Check all that apply)

- Surface Water Discharge
- Land Based/Groundwater Discharge:
  - Spray Field
  - Drip Irrigation
  - Septic System
  - Injection Well
  - Other: \_\_\_\_\_

**5. Receiving surface waterbody/watershed name:** \_\_\_\_\_

**State surface waterbody use classification (Check all that apply):**

<b>Pennsylvania</b>	<b>New Jersey</b>	<b>New York</b>	<b>Delaware</b>
<input type="checkbox"/> EV	<input type="checkbox"/> FW1	<input type="checkbox"/> A	<input type="checkbox"/> ERES
<input type="checkbox"/> Upper HQ	<input type="checkbox"/> FW2	<input type="checkbox"/> AA	<input type="checkbox"/> CWF
<input type="checkbox"/> CWF	<input type="checkbox"/> PL	<input type="checkbox"/> A-S	<input type="checkbox"/> SALW
<input type="checkbox"/> WWF	<input type="checkbox"/> TP	<input type="checkbox"/> AA-S	<input type="checkbox"/> FALW
<input type="checkbox"/> MF	<input type="checkbox"/> TM	<input type="checkbox"/> B	
<input type="checkbox"/> TSF	<input type="checkbox"/> NT	<input type="checkbox"/> C	
	<input type="checkbox"/> SE	<input type="checkbox"/> D	
	<input type="checkbox"/> SC	<input type="checkbox"/> T	
		<input type="checkbox"/> TS	

Q<sub>7-10</sub> statistic: \_\_\_\_\_ (cfs) \_\_\_\_\_ (mgd)

Mean Harmonic Flow: \_\_\_\_\_ (cfs) \_\_\_\_\_ (mgd)

Nearest USGS Gage: \_\_\_\_\_ (reference USGS gage used to calculate)

<b>OUTFALL NO.</b>	<b>LATITUDE (N)</b>	<b>LONGITUDE (W)</b>
	° ' "	° ' "
	° ' "	° ' "
	° ' "	° ' "
	° ' "	° ' "

**6. Attach a map (preferably USGS Quadrangle) which indicates the location of all treatment facilities and discharge locations.**



**7. Service Area**

Enclose a service area map that includes a delineation of the existing service area and any proposed service area.

**8. Wastewater disposal information:**

a. Describe the method of wastewater treatment and **attach** a line diagram of the treatment train:

**b. Existing Treatment Plant Information:**

Treatment Plant:

Name or Owner: \_\_\_\_\_

N(J)PDES/SPDES Permit No.: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

State-Permitted Hydraulic Design Capacity: \_\_\_\_\_ mgd

Flow that N(J)PDES/SPDES Permit limits are based on: \_\_\_\_\_ mgd

Current Operating Flow: \_\_\_\_\_ mgd (Average monthly flow from the previous 12 months).

**c. Proposed Treatment Plant Information:**

Treatment Plant:

Name or Owner: \_\_\_\_\_

N(J)PDES/SPDES Permit No.: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

State-Permitted Hydraulic Design Capacity: \_\_\_\_\_ mgd

Flow that N(J)PDES/SPDES Permit limits are based on: \_\_\_\_\_ mgd

Proposed Flow: \_\_\_\_\_ mgd

**d. Importation/Exportation of Wastewater:**

i. Does the facility treat imported wastewater? If so, describe the volume treated and the source of imported wastewater.

ii. If the facility accepts wastewater from outside of the Delaware River Basin, please attach documentation to this application which demonstrates that Section 2.30.6 of the Water Code (18CFR PART 410) is satisfied.

iii. If the facility is exporting wastewater, please provide a demonstration that the wastewater is being transported to a permitted wastewater facility that has the capacity to treat the wastewater and a written statement from the permitted wastewater facility of said arrangement. (Attach to the Application.)

**e. Emergency Power**

i. Does the existing facility have available standby power? Yes No. If yes, describe the current standby power system:

ii. Does the proposed facility have available standby power? Yes No. If yes, describe the proposed standby power system:

f. The applicant must submit a site map showing the locations of the 100-year flood plain and floodway boundaries (as indicated by the Flood Insurance Study for the project municipality) in relation to all structures. If a Flood Insurance Study has not been completed for the project municipality, supply a copy of the Official Flood Hazard Boundary Map of the site and indicate the locations of all structures (For more information see the Commission’s Flood Plain Regulations).

h. How does the treatment facility handle sludge wastes? If they are taken off-site, please provide off-site facility? \_\_\_\_\_

**9. Public Water Supply: (for Treatment Facility’s service area)**

Owner/Operator of Public Water Supply: \_\_\_\_\_

State Public Water Supply Water Allocation Permit No: \_\_\_\_\_

DRBC Docket/Permit No: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ADDITIONAL INFORMATION**

**10.** Identify all wetlands that may be impacted by the project on a map. Wetlands are defined in the Commission’s *Water Code* (Section 2.350.1) as those areas which are inundated by surface or ground water with a frequency sufficient to support a prevalence of vegetative or aquatic life that requires saturated soil conditions for growth and reproduction or are delineated as wetlands by a signatory state. It is the policy of the Commission to support the preservation and protection of wetlands in accordance with Section 2.350.2 of the *Water Code*. Each application shall include a signed statement that the project is or is not located within a wetland as defined by applicable state and federal regulations.

Information on determining the presence or absence of wetlands can be obtained from the Army Corps of Engineers Philadelphia District Regulatory Branch:

[http://www.nap.usace.army.mil/cenap-op/regulatory/wetlands\\_guidance.html](http://www.nap.usace.army.mil/cenap-op/regulatory/wetlands_guidance.html)

**11. Prior or pending state or federal permits:**

Type of State Permit(s) Required for Project	Status <sup>1</sup>	Agency	Permit Issue Date	Permit Number
Erosion & Sediment Control				
Post Construction Stormwater				
Letter of Map Revision				
Stream Encroachment				
N(J)PDES/SPDES Permit				
State Construction Permit				
Section 404 Permit				
Wetlands Permit				
Other				

<sup>1</sup> If not applicable, list (NA); if approved, (A); if pending, (P); if required but not applied for, (R).

## SPECIAL PROTECTION WATERS (SPW) PROJECTS

**If project is not located in SPW, please ignore sections 12-17.**

In 1992, the DRBC adopted SPW requirements, as part of the DRBC *Water Quality Regulations (WQR)*, designed to protect existing water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap has been classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

On July 16, 2008, the DRBC approved amendments to its *WQR* that designated the portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area as SPW. At that same time, clarity on definitions and terms were updated for the entire SPW program. For detailed information regarding the Commission's SPW program and regulations, please see the *WQR*.

### **12. Standby Power**

- a. Does the existing facility have available standby power? Yes No. If yes, describe the current standby power system:
  
- b. Does the proposed facility have available standby power? Yes No. If yes, describe the proposed standby power system:

### **13. Remote Alarm System**

- a. Is the existing facility staffed 24 hours per day? Yes No. If no, does the facility have a remote alarm system that continuously monitors plant operations? Yes No. If yes, describe:
  
- b. Will the proposed facility be staffed 24 hours per day? Yes No. If no, will/does the facility have a remote alarm system that continuously monitors plant operations? Yes No. If yes, describe:

14. If the facility is existing, does the facility have an Emergency Management Plan (EMP) approved by the Commission? \_\_\_\_\_.

- a. If yes, what year was it approved? \_\_\_\_\_.
- b. If no, you must include an EMP as part of this Application.

**15. Pre-SPW Loads**

- a. To which region of SPW does the facility discharge?  Upper  Middle  Lower (check one)
- b. Was the facility in existence & discharging at the time of SPW designation (December 1992 for Upper or Middle and January 2005 for Lower)?  Yes  No (check one).
- c. If yes, does the facility have pre-SPW Loads confirmed by the Commission for the measurable change (MC) parameters found below:  Yes  No (check one).

Dissolved Oxygen	Fecal Coliform	Total Suspended Solids
Total Phosphorous	Ammonia-Nitrogen	Nitrite-Nitrate-Nitrogen
BOD5 *	Total Kjeldahl Nitrogen *	Total Nitrogen **

\* Only applicable for Upper/Middle SPW

\*\* Only applicable for Lower SPW

- d. If no, the applicant shall make their best effort to provide the Commission with monthly average effluent data (effluent flow & concentration) from the years prior to designation (1987-1991 for Upper and Middle or 2000-2004 for Lower) for as many of the MC parameters as possible by completing the tables below.

Month (1987 or 2000)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH <sub>3</sub> -N (mg/l)	NO <sub>3</sub> - NO <sub>2</sub> -N (mg/l)	BOD <sub>5</sub> (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Jan										
Feb										
March										
April										
May										
June										
July										
August										
Sept										
Oct										
Nov										

Month (1987 or 2000)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH3-N (mg/l)	NO3- NO2-N (mg/l)	BOD5 (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Dec										

Month (1988 or 2001)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH3-N (mg/l)	NO3- NO2-N (mg/l)	BOD5 (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Jan										
Feb										
March										
April										
May										
June										
July										
August										
Sept										
Oct										
Nov										
Dec										

Month (1989 or 2002)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH3-N (mg/l)	NO3- NO2-N (mg/l)	BOD5 (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Jan										
Feb										
March										
April										
May										
June										
July										
August										
Sept										
Oct										
Nov										
Dec										

Month (1990 or 2003)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH3-N (mg/l)	NO3- NO2-N (mg/l)	BOD5 (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Jan										
Feb										
March										
April										

Month (1990 or 2003)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH <sub>3</sub> -N (mg/l)	NO <sub>3</sub> - NO <sub>2</sub> -N (mg/l)	BOD <sub>5</sub> (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
May										
June										
July										
August										
Sept										
Oct										
Nov										
Dec										

Month (1991 or 2004)	D.O. (mg/l)	Fecal Coliform (cfu/100 ml)	TSS (mg/l)	TP (mg/l)	NH <sub>3</sub> -N (mg/l)	NO <sub>3</sub> - NO <sub>2</sub> -N (mg/l)	BOD <sub>5</sub> (mg/l)	TKN (mg/l)	TN (mg/l)	Effluent Flow (mgd)
Jan										
Feb										
March										
April										
May										
June										
July										
August										
Sept										
Oct										
Nov										
Dec										

**16.** For a New or “Expanding Wastewater Treatment Project” or for projects proposing “Substantial Alterations or Additions”, the following may apply:

- a. Direct dischargers to OBW or SRW “must evaluate all non-discharge load reduction alternatives for all or a portion of the incremental load”
- b. Direct dischargers to OBW/SRW/tributaries to SPW “must evaluate natural treatment alternatives (NTA) for all or a portion of the incremental load
- c. Direct dischargers to SRW will require “the Commission..... to make a determination that the project is in the public interest”
- d. For direct dischargers to OBW or SRW, “the minimum level of treatment to be provided for the incremental discharge is” the Commission’s “Best Demonstrable Technology (BDT)” requirement
- e. Direct dischargers to OBW/SRW/tributaries to SPW “must demonstrate that the project will



cause no measurable change (NMC) to Existing Water Quality (EWQ).”

**The applicant shall attach a report titled “Selected Discharge Alternative” which contains a description of how the proposed project meets each of the above applicable requirements.**

**17. Non-Point Source Pollution Control Plan (NPSPCP):** (All projects with sources or service area within the drainage area of Special Protection Waters.) The applicant shall provide a description of how the proposed project controls the new or increased non-point source loads generated within the portion of the project’s service area which is also located within the drainage area of SPW. In general, a NPSPCP shall consist of an **Erosion and Sediment Control Plan (ESCP)** and a **Post Construction Stormwater Management Plan (PCSMP)**.

- a. A NPSPCP submitted for DRBC approval must include:
  - i. An approved ESCP – usually by the County Soil/Conservation District;
  - ii. A PCSMP signed and sealed by a licensed professional Engineer or Geologist;
  - iii. A letter by the licensed professional stating that the NPSPCP meets the requirements of an approvable NPSPCP as described below; and
  - iv. A written narrative describing the steep slope, riparian buffer, floodplain and redevelopment (if applicable) design criteria being utilized in the site design.
- b. For each of the SPW states, a NPSPCP will be deemed acceptable if a project is designed in accordance with:

**In Pennsylvania:**

- i. PADEP’s Erosion and Sediment Pollution Control Program Manual (March 2000), **and**
- ii. PADEP’s draft Pennsylvania Model Stormwater Management Ordinance (2006), **and**
- iii. PADEP’s Pennsylvania Stormwater Best Management Practices Manual (December 2006).

**In New Jersey:** a project is designed in accordance with:

- iv. NJ State Soil Conservation Committee’s Standards for Soil Erosion and Sediment Control in New Jersey (July 1999), **and**
- v. New Jersey Stormwater Best Management Practices Manual – Appendix D - Model Stormwater Control Ordinance for Municipalities (April 2004).

**In New York:** a project is designed in accordance with:

- vi. New York State Standards and Specifications for Erosion and Sediment Control (August 2005), published by the Empire State Chapter of the Soil and Water Conservation Society, **and**
- vii. a Stormwater Pollution Prevention Plan (SWPPP) which includes the water quality and water quantity controls in accordance with the New York State Stormwater Management Design Manual (August 2003).



## INSTRUCTIONS AND APPLICATION FOR A GROUNDWATER AND/OR SURFACE WATER WITHDRAWAL IN THE DELAWARE RIVER BASIN

### Who must apply?

An application must be submitted by anyone proposing:

- A withdrawal from a single well or a group of wells operated as a system exceeding a daily average gross withdrawal of 100,000 gallons per day (gpd) during any 30 consecutive day period, for any purpose.
- A withdrawal from impoundments or running streams exceeding a daily average gross withdrawal of 100,000 gpd during any 30 consecutive day period, for any purpose.
- A withdrawal from a single well or group of wells operated as a system exceeding a daily average gross withdrawal of 10,000 gpd during a 30-day period, for any purpose, within the Southeastern Pennsylvania Ground Water Protected Area. The Delaware River Basin Commission (DRBC or Commission) *Ground Water Protected Area Regulations: Southeastern Pennsylvania* is available on the DRBC website at [http://www.nj.gov/drbc/library/documents/gwpa\\_regs.pdf](http://www.nj.gov/drbc/library/documents/gwpa_regs.pdf)
- An increased ground and/or surface water withdrawal, regardless of the quantity proposed for a project previously approved by the Commission.
- A renewal of an existing withdrawal previously approved by the Commission.
- A diversion or transfer (exportation or Importation) of water into or out of the Delaware River Basin (DRB) with a design capacity in excess of a daily average rate of 100,000 gallons.
- Existing users without a DRBC docket (or GWPA permit) or allocation (i.e., entitlement holders or docket/permit holders without an allocation) that exceed the thresholds described above.
- Groundwater and surface water withdrawals in the State of New Jersey that require review as specified in the March 2015 *Administrative Agreement (AA)* between the DRBC and New Jersey Department of Environmental Protection for inclusion in the DRBC Comprehensive Plan.
- Groundwater and surface water withdrawals in the State of Delaware that require review as specified in the July 2010 *Administrative Agreement (AA)* between the DRBC and Delaware Department of Natural Resources and Environmental Control.

## How to file application?

1. Complete this application form.
2. Assemble the completed application form and attachments in one or more electronic files.
3. Go to [applications.drbc.net](http://applications.drbc.net) and select "Create Account" to create a new account. Once you have established an account, return to [applications.drbc.net](http://applications.drbc.net) and "Sign in" to your account.
4. After you have signed in, upload the completed application and accompanying materials. You may add or remove files from your account as necessary. DRBC staff will be automatically notified that your materials have been submitted.
5. Payment of the Application Fee is required by a check payable to "Delaware River Basin Commission". Please follow the payment instructions on the [Application Fee Form](#). The completed fee form and payment should be mailed together to:

### Delaware River Basin Commission

PO Box 7360  
25 Cosey Road  
West Trenton, NJ 08628-0360

Alternatively, this completed withdrawal application, the Application Fee Form, and Fee may be printed and mailed to the above address.

### State Regulatory Agencies:

Please contact the appropriate state agency to inquire as to what permits are necessary for the project withdrawal.

#### DELAWARE:

(302) 739-9945  
Delaware Department of Natural  
Resources And Environmental  
Control  
89 Kings Highway  
Dover, Delaware 19901

#### NEW JERSEY:

(609) 292-2957  
New Jersey Department of Environmental  
Protection  
Division of Water Resources  
Bureau of Water Allocation  
PO Box 426  
Trenton, New Jersey 08625

NEW YORK: New York State Department of Environmental Conservation Regional Offices serving the Delaware Basin are as follows:

#### Region 3 (Orange, Sullivan, Ulster counties):

(914) 256-3054  
21 South Putt Corners Road  
New Paltz, New York 12561

Region 4 (Delaware, Scholarie counties):  
(518) 357-2069  
Route 10  
Stamford, New York 12167

Region 7 (Broome, Chenango counties):  
(315) 426-7400  
615 Area Boulevard West  
Syracuse, New York 13204-2400

**PENNSYLVANIA:** All applications for public water supply withdrawal projects located in the Commonwealth should be submitted to the appropriate regional office of the Pennsylvania Department of Environmental Protection as indicated below.

Southeast Regional Office: (Bucks, Chester, Delaware, Montgomery, Philadelphia counties):  
(484) 250-5900  
2 East Main Street  
Norristown, Pennsylvania 19401

Northeast Regional Office: (Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Wayne counties):  
(717) 826-2525  
2 Public Square  
Wilkes-Barre, Pennsylvania 18711-0790

South-central Regional Office: (Berks, Lancaster, Lebanon counties):  
(717) 705-4707  
909 Elmerton Avenue  
Harrisburg, Pennsylvania 17110-8200

**A well registration form must be completed for any new well and sent to the appropriate state agency. Send the original registration form to the state agency and include copies in this application to DRBC.**

Pennsylvania (717) 772-4048  
Pennsylvania Well Registration Form  
Pennsylvania Dept. of Environmental Protection  
Division of Water Planning and Allocation  
PO Box 8555  
Harrisburg, Pennsylvania 17105-8555

Delaware (302) 739-4793  
Delaware Dept of Natural Resources and  
Environmental Control  
Water Supply Section  
Water Resources Division  
89 Kings Highway  
Dover, Delaware 19901

New Jersey (609) 292-0604  
New Jersey Well Permits and Records Form  
New Jersey Dept. of Environmental Protection  
Bureau of Water Allocation  
PO Box 029  
Trenton, New Jersey 08625

New York (518) 457-1254  
New York Well Data Form  
New York Dept. of Environmental  
Conservation  
50 Wolf Road, Room 301  
Albany, New York 12233

**DRBC Southeastern Pennsylvania Ground Water Protected Area:** This application is appropriate for projects located within the GWPA of Southeastern Pennsylvania. Counties included in the GWPA are as follows:

- Berks (Douglass, Hereford, Union Townships only)
- Bucks (see Regulations for specific municipalities)
- Chester (see Regulations for specific municipalities)
- Lehigh (Lower Milford Township only)
- Montgomery (All of the area within the county boundary)

**Glossary for DRBC Application:**

**ADF:** Average daily flow of a stream at the point of withdrawal over a period of record.

**Agricultural Irrigation:** Irrigation used for the purpose of growing, harvesting, and producing plant crops or their products for the use or consumption by humans and/or animals.

**cfs:** Rate of flow in cubic feet per second.

**Consumptive Use:** The water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the waters of the basin undiminished in quantity.

**DMS:** Latitude and Longitude coordinates in Degrees (<sup>0</sup>), Minutes (′), Seconds (″) format.

**DRB:** Delaware River Basin

**Docket:** A legal document granting approval for a project having a substantial effect on the water resources of the Basin.

**Existing Well/Intake:** A source previously approved by a DRBC docket/permit.

**Export:** Water withdrawal within the Delaware River Basin that is diverted or transferred outside of the DRB.

**gpd:** gallons per day

**gpm:** gallons per minute

**Import:** Water withdrawal outside the Delaware River Basin that is diverted or transferred into the DRB.

**mg:** million gallons

**mgd:** million gallons per day

**mgm:** million gallons per month. Monthly allocations are established based upon the maximum withdrawal expected during any one month (31 days) of the calendar year.

**mg/30 days:** million gallons per 30 days

**New Well/Intake:** A source not previously approved by a DRBC docket/permit.

**GWPA Permit:** A withdrawal docket in the GWPA for average uses between 10,000 gpd and 100,000 gpd.

**Public Water Supply:** A water supply source (well, intake, etc.) used to provide water for public or community consumption.

**Purveyor:** Any person, corporation, firm, or entity supplying water for public or community supplies.

**Q<sub>7-10</sub>:** A statistical estimate of the lowest average flow during a consecutive 7-day period with an average recurrence interval of 10 years (include period of record and gage used in calculation).



# APPLICATION FOR A GROUND OR SURFACE WATER WITHDRAWAL PROJECT IN THE DELAWARE RIVER BASIN

Pursuant to the Delaware River Basin *Compact* and the *Rules of Practice and Procedure* of the DRBC, application is hereby made for review of the project described below:

## 1. Applicant Information: (please print or type)

Applicant Name (Legal Name):

Parent Corporation Name, if different:

Contact Name and Title:

Mailing Address:

City:  State:  Zip:

Telephone:  Fax:

Email Address:

Representing Attorney Name, if applicable:

Mailing Address:

City:  State:  Zip:

Telephone:  Fax:

Email Address:

## 2. Consultant Information:

Name of Engineer/Geologist:

Name of Firm:

Mailing Address:

Phone:

Email Address:

**3. CERTIFICATION AND SIGNATURE OF APPLICANT**

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that pursuant to Section 14.17 of the Delaware River Basin Compact, an attempt to violate a rule, regulation, or order of the Commission, including by knowingly or negligently submitting false information, may result in penal sanctions that include fines of up to \$1,000 per day.

**Name:**

**Official Title:**

**Signature:**

---

**Date:**

**4. Purpose of Withdrawal:** (check all that apply and at least one)

**Domestic Use**

- Public water supply                       Private water supply

**Commercial Use**

- Bottled water operations                       Snowmaking                       Fish hatchery
- Other

**Industrial Use**

- Industrial process                       Industrial cooling
- Groundwater remediation                       Natural gas development
- Hydrostatic testing                       Electric Generating/Cogenerating
- Other

**Irrigation Use**

- Agricultural                       Golf course                       Nursery
- Other

Please provide a **Project Narrative** which generally describes the proposed project:



## WATER DEMANDS

5. Present water use for all existing wells and surface water sources serving the system **(Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):**

Water Use	Population Served	Service Connections <sup>1</sup>	Self-Supplied Ground (mgd)		Self-Supplied Surface (mgd)		Interconnections (mgd)		Total Self Supply		Peak Month Use (mg)	Estimated Consumptive Use (%) <sup>2</sup>
			Average	Maximum	Average	Maximum	Bulk Purchase	Bulk Sale	Average Daily (mgd)	Maximum Daily (mgd)		
Domestic Use												
Commercial Use												
Industrial Process												
Industrial Cooling												
Irrigation												
Other _____												
<b>Total Water Use</b>												

6. Projected water use (10 years from application date) for all existing and new wells and surface water sources serving the system **(Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):**

Water Use	Population Served	Service Connections <sup>1</sup>	Self-Supplied Ground (mgd)		Self-Supplied Surface (mgd)		Interconnections (mgd)		Total Self Supply		Peak Month Use (mg)	Estimated Consumptive Use (%) <sup>2</sup>
			Average	Maximum	Average	Maximum	Bulk Purchase	Bulk Sale	Average Daily (mgd)	Maximum Daily (mgd)		
Domestic Use												
Commercial Use												
Industrial Process												
Industrial Cooling												
Irrigation												
Other _____												
<b>Total Water Use</b>												

1 – Water purveyors only

2 – **Consumptive use** is defined as the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the waters of the basin undiminished in quantity.

**7. Requested allocation from existing and new well(s) and/or intake(s) (Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):**

	Well or Intake Designation	Requested Instantaneous Rate (gpm)	Requested Allocation (mgm)		Well or Intake Designation	Requested Instantaneous Rate (gpm)	Requested Allocation (mgm)
<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
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<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
<input type="checkbox"/> Existing				<input type="checkbox"/> Existing			
<input type="checkbox"/> New				<input type="checkbox"/> New			
Column Total				Column Total			
Total – All Sources							
If requested total allocation is less than “Total – All Sources” above, indicate total requested allocation							

If any of the above wells are replacements, provide well designation and reason for replacement:

**WATER SOURCES**

**8a. Groundwater Withdrawal Wells:**

	Well ID	Latitude/ Longitude (DDMMSS.S)	State County Municipality	Aquifer Name	Date Drilled m/d/yyyy	Well Head Elevation (ft above msl)	Well Depth (ft)	Casing Depth (ft)	Screened Interval (ft to ft)	Pumping Test Completed (yes or no)	Safe Yield <sup>1</sup> (gpm)	Specific Capacity (gpm/ft)	Existing Pump Capacity (gpm)	Pump Intake Setting (feet)
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
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**Notes: (1) – attach method of computation or attach copy of pumping test data. Pumping test data required for any new wells.**

**8b. Surface Water Withdrawals – rivers, streams, creeks, springs, and brooks**

	Intake ID	Point of Taking Latitude/ Longitude (DDMMSS.S)	State County Municipality	Name of Surface Water Body	State Stream Classification <sup>4</sup>	Drainage Area at Intake (square miles)	Nearest USGS gaging station ID	Q <sub>7-10</sub> <sup>1</sup> At point of taking (cfs)	ADF <sup>2</sup> At point of taking (cfs)	Current Passby Requirement (cfs)	Date Intake Constructed (m/d/yyyy)	Pump Capacity <sup>3</sup> (gpm)
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "										
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "										
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<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "										

<sup>1</sup> Q<sub>7-10</sub>: A statistical estimate of the lowest average flow during a consecutive 7-day period with an average recurrence interval of 10 years (provide method of computation including the gage name, USGS identification, location and the period of record).

<sup>2</sup> ADF: Average daily flow of the stream at the point of withdrawal – include period of record and gage information used in calculation.

<sup>3</sup> If gravity-fed, give maximum hydraulic capacity and label as such.

**<sup>4</sup> Stream Classification Codes**

**Pennsylvania:** EV, HQ, CWF, WWF, MF, TSF

**New Jersey:** FW1, FW2, PL, TP, TM, NT, SE, SC

**New York:** A, AA, A-S, AA-S, B, C, D, T, TS

**Delaware:** ERES, CWF, SALW, FALW

**8c. Surface water withdrawals – ponds, lakes, intake dams, reservoirs, and storage dams:**

	Intake ID	Point of Taking Latitude/ Longitude (DDMMSS.S)	State County Municipality	Name of Surface Water Body	State Stream Classification <sup>4</sup>	Drainage Area at Intake (square miles)	Impoundment Storage Capacity (mg)	Q <sub>7-10</sub> <sup>1</sup> At point of taking (cfs)	ADF <sup>2</sup> At point of taking (cfs)	Current Conservation Release Requirement (cfs)	Release Works (yes/no)	Safe Yield (cfs)	Date Intake Constructed (m/d/yyyy)	Pump Capacity <sup>3</sup> (gpm)
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
<input type="checkbox"/> Existing <input type="checkbox"/> New		° ' "												
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<sup>1</sup> Q<sub>7-10</sub>: A statistical estimate of the lowest average flow during a consecutive 7-day period with an average recurrence interval of 10 years (provide method of computation including the gage name, USGS identification, location and the period of record). If facility is a pond, lake, or impoundment provide the method and supporting calculations for determining the Safe Yield of storage.

<sup>2</sup> ADF: Average daily flow of the stream at the point of withdrawal – include period of record and gage information used in calculation

<sup>3</sup> If gravity-fed, give maximum hydraulic capacity and label as such.

<sup>4</sup> **Stream Classification Codes**

- Pennsylvania:** EV, HQ, CWF, WWF, MF, TSF
- New Jersey:** FW1, FW2, PL, TP, TM, NT, SE, SC
- New York:** A, AA, A-S, AA-S, B, C, D, T, TS
- Delaware:** ERES, CWF, SALW, FALW

**8d. Source Metering, Recording and Reporting (Resolution No. 86-12, amended by Resolution No. 2001-8)**

All water source withdrawals shall be metered in accordance with the above Resolutions and reported to the designated state agency.

Include with the application the following for each water supply source:

- Meter type/method.
- Meter reading and recording procedure.
- Meter calibration, maintenance and replacement schedule.
- Provide affirmation that water use is being reported to the designated state agency.

**8e. Existing and/or New Interconnections and Their Capacities (Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):**

Name of Interconnecting Purveyor	Indicate if interconnection is New or if existing used on Regular <sup>1</sup> , Auxiliary <sup>2</sup> or Emergency <sup>3</sup> Basis	Interconnection Capacity (mgd) <sup>4</sup>	Bulk Purchase		Bulk Sale	
			Annual Average Use <sup>4</sup> (mgd)	Monthly Maximum <sup>4</sup> Use (mg)	Annual Average Use <sup>4</sup> (mgd)	Monthly Maximum <sup>4</sup> Use (mg)
<b>Totals</b>						

<sup>1</sup> Regular Interconnection- An interconnection with another independent water system that is used on a daily basis.

<sup>2</sup> Auxiliary Interconnection- An interconnection with another independent water system that is used seasonally or during periods of increased peak demand.

<sup>3</sup> Emergency Interconnection- An interconnection with another independent water system that is used only during emergencies such as during repairs/maintenance, source contamination, pump failures, fire fighting, etc.

<sup>4</sup> Use zeros if not applicable.

**If no interconnections exist**, discuss the feasibility of interconnecting project system with other distribution systems or any other water source (such as in the case of irrigation of golf courses, the use of WWTP effluent). \_\_\_\_\_

**8f. Import/Export (Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):**

Well or Intake Designation	Basin (Atlantic, Delaware River, Susquehanna River etc.)	Amount Being Imported into the Delaware River Basin <sup>1</sup> (mgd)	Amount Being Exported from the Delaware River Basin <sup>1</sup> (mgd)	Purpose of Withdrawal
<b>Totals</b>				

<sup>1</sup> Use zeros if not applicable.

The diversion or transfer of water from (exportation) or to (importation) the DRB, whenever the design capacity of such transfer is an average daily rate of 100,000 gallons, is subject to the review and approval of the Commission. All projects involving such transfers must be submitted to the Commission for review and determination under Section 3.8 of the *Compact*, and inclusion within the *Comprehensive Plan*. If the export/import is from/to a facility located in Susquehanna River Basin (SRB), please provide the docket number and date of approval by the Susquehanna River Basin Commission. The applicant shall address the items listed below and submit with this application.

- A. Efforts to first develop or use and conserve the resources outside of the Delaware River Basin.
- B. Water resource impacts of each alternative available including the "no project" alternative.
- C. Economic and social impacts of the importation or exportation and each of the available alternatives including the "no project" alternative.
- D. Amount, timing and duration of the proposed transfer and its relationship to passing flow requirements and other hydrologic conditions in the Basin, and impact on in stream uses and downstream waste assimilation capacity.
- E. Benefits that may accrue to the Delaware River Basin as a result of the proposed transfer.
- F. Volume of the transfer and its relationship to other specified actions or Resolutions by the Commission.
- G. Volume of the transfer and the relationship of that quantity to all other diversions.
- H. Any other significant benefit or impairment which might be incurred to the Delaware River Basin because of the proposed transfer.



**WATER/WASTEWATER TREATMENT**

**9. Method of Treatment (all applicants):** Will the water withdrawn receive any treatment prior to use?  Yes  No. If yes, describe below:

**10. Water Treatment Plant Information:** If raw water is conveyed to a water treatment plant prior to entering the distribution system, please provide the following information:

Name or Owner of Treatment Plant: \_\_\_\_\_

NPDES Permit No. for Discharge of Backwash: \_\_\_\_\_

DRBC Docket No. for Discharge of Backwash: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Hydraulic Design Capacity: \_\_\_\_\_ mgd

**11. Wastewater disposal information:**

a. Describe the method of treatment and disposal of wastewater from the project service area:

Conveyed to a treatment plant  On-lot septic system  Other:

b. If wastewater is discharged to a treatment plant, please provide:

Treatment Plant 1:

Name or Owner: \_\_\_\_\_

NPDES Permit No.: \_\_\_\_\_

DRBC Docket No.: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Hydraulic Design Capacity: \_\_\_\_\_ mgd

Treatment Plant 2:

Name or Owner: \_\_\_\_\_

NPDES Permit No.: \_\_\_\_\_

DRBC Docket No.: \_\_\_\_\_

Location: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Hydraulic Design Capacity: \_\_\_\_\_ mgd

**ADDITIONAL INFORMATION**

**12. Prior or pending state or federal permits:**

Type of State Permit(s) Required for Project	Status <sup>1</sup>	Agency	Issue Date (m/d/yyyy)	Permit Number

<sup>1</sup> If not applicable, list (NA); if approved, (A); if pending, (P); if required but not applied for, (R).

**Attach a copy of the application submitted to the appropriate state agency (if applicable), or if wells/intakes have already been approved by the state, copy of permit for new wells/intakes from the appropriate state agency**

**13. Location Map:** All applicants must attach a map (preferably USGS Quadrangle) which indicates the location of all new and existing project water sources, including wells, surface water intakes and interconnections.

**14. Flood Plain Map:** All applicants must submit a site map showing the locations of the 100-year flood plain and floodway boundaries (as indicated by the Flood Insurance Study for the project municipality) in relation to all structures (wells, pump houses, and water treatment facilities). If a Flood Insurance Study has not been completed for the project municipality, supply a copy of the Official Flood Hazard Boundary Map of the site and indicate the locations of all structures (For more information see the Commission’s Flood Plain Regulations).

***Note:*** Neither the pump house, water treatment facilities, well, nor ancillary equipment may be located within the 100-year floodway. If the pump house is located in the flood fringe area, submit a drawing indicating that the pump house floor and all critical equipment are located at least one foot above the 100-year flood elevation, or flood-proofed to that elevation.

**15. Wetlands Map and Certification:** All applicants must identify all wetlands that may be impacted by the project on a map. Wetlands are defined in the Commission’s *Water Code* (Section 2.350.1) as those areas which are inundated by surface or ground water with a frequency sufficient to support a prevalence of vegetative or aquatic life that requires saturated soil conditions for growth and reproduction or are delineated as wetlands by a signatory state. It is the policy of the Commission to support the preservation and protection of wetlands in accordance with Section 2.350.2 of the *Water Code*. Each application shall include a signed statement that the project is or is not located within a wetland as defined by

applicable state and federal regulations.

Information on determining the presence or absence of wetlands can be obtained from the Army Corps of Engineers Philadelphia District Regulatory Branch:

[http://www.nap.usace.army.mil/cenap-op/regulatory/wetlands\\_guidance.html](http://www.nap.usace.army.mil/cenap-op/regulatory/wetlands_guidance.html)

16. **Drought Management and Contingency Plan:** (All projects with a total system water withdrawal in excess of 1.0 mgd or any withdrawal project in the Southeastern Pennsylvania GWPA.) A drought management and contingency plan shall be prepared by each person, firm, corporation or other entity withdrawing groundwater or surface water for purposes of municipal or public, industrial, or commercial water supply. The plan shall provide the necessary actions the applicant will execute to reduce demand and assure water supplies to priority uses during a declared drought emergency. The plan will include emergency water conservation measures and identify potential water use restrictions the applicant will implement to achieve a reduction in a small percentage of their normal water use. **Such plans shall be filed with this application.**
17. **Non-Point Source Pollution Control Plan (NPSPCP):** (All projects with sources or service area within the drainage area of Special Protection Waters.) The applicant shall provide a description of how the proposed project controls the new or increased non-point source loads generated within the portion of the project's service area which is also located within the drainage area of SPW. In general, a NPSPCP shall consist of an **Erosion and Sediment Control Plan (ESCP)** and a **Post Construction Stormwater Management Plan (PCSMP)**.

A NPSPCP submitted for DRBC approval must include:

- 1) an approved ESCP – usually by the County Soil/Conservation District;
- 2) a PCSMP signed and sealed by a licensed professional Engineer or Geologist;
- 3) a letter by the licensed professional stating that the NPSPCP meets the requirements of an approvable NPSPCP as described below; and
- 4) a written narrative describing the steep slope, riparian buffer, floodplain and redevelopment (if applicable) design criteria being utilized in the site design.

For each of the SPW states, a NPSPCP will be deemed acceptable if:

**Pennsylvania:** a project is designed in accordance with:

- 1) PADEP's Erosion and Sediment Pollution Control Program Manual (March 2000),  
**and**
- 2) PADEP's draft Pennsylvania Model Stormwater Management Ordinance (2006),  
**and**
- 3) PADEP's Pennsylvania Stormwater Best Management Practices Manual (December 2006).

**New Jersey:** a project is designed in accordance with:

- 1) NJ State Soil Conservation Committee's Standards for Soil Erosion and Sediment Control in New Jersey (July 1999), **and**
- 2) New Jersey Stormwater Best Management Practices Manual – Appendix D - Model

Stormwater Control Ordinance for Municipalities (April 2004).

**New York:** a project is designed in accordance with:

- 1) New York State Standards and Specifications for Erosion and Sediment Control (August 2005), published by the Empire State Chapter of the Soil and Water Conservation Society, **and**
- 2) a Stormwater Pollution Prevention Plan (SWPPP) which includes the water quality and water quantity controls in accordance with the New York State Stormwater Management Design Manual (August 2003).

**18.** Indicate the total available water system storage: \_\_\_\_\_mg, \_ days supply.

**19. **Aquifer Testing and Hydrogeologic Report.**** For all new wells, submit a Hydrogeologic Report detailing extended aquifer pumping test procedures, monitoring, results and analyses.

DRBC requires that the results of a pumping test be submitted as part of the Groundwater Withdrawal Application involving new groundwater sources or projects involving the increase in a previously approved allocation. DRBC's authority is found in Delaware River Basin Compact and Section 2.20 of the DRBC Water Code (incorporated by reference in 18 CFR PART410) relating to the preservation and protection of underground waters.

The Commission's member states have developed Aquifer Testing Guidance protocols that the Commission will rely upon when reviewing applications involving new groundwater sources. DRBC urges all applicants to follow these procedures when applying to the Commission for approval of a new groundwater source. Failure to do so may result in the rejection of the pumping test or require additional analysis.

For projects located in Pennsylvania, project sponsors should follow PADEP's Aquifer Testing Guidance for Public Water Systems (Document No. 394-2125-001), even if the groundwater source is not intended to be used as a public supply. However, certain items related solely to public water sources, i.e. new source sampling, wellhead protection areas, etc. may be omitted if the new groundwater source will not be utilized for public supply. While a pre-drilling plan or pumping test plan is not required to be submitted to the DRBC, staff recommend that a plan be submitted if the pumping test or hydrogeologic report will deviate from these procedures in a substantive way. Also, sources located in the Commission's Southeastern Pennsylvania Groundwater Protected Area (SEPA GWPA) are subject to additional requirements and require notice prior to drilling. Applicants are advised to contact Commission staff to discuss any pumping test projects that are located in the SEPA GWPA.

For projects located in New York, applicants should follow NYSDEC's Pumping Test Procedures for Withdrawal Applications (TOGS 3.2.1). Project sponsors are advised to submit aquifer testing plans to the Commission for review and approval prior to conducting a test, and must do so if the project sponsor proposed to deviate from the NYSDEC test procedures.

For projects located in New Jersey and Delaware, applicants should coordinate all aquifer testing with NJDEP and DNREC. Groundwater withdrawal projects in these states are regulated under the DRBC/NJDEP March 2015 Administrative Agreement and the Administrative Agreement between DRBC and the State of Delaware, Section IV.C.4, enacted on July 2010 and modified on May 8, 2013.

The Hydrogeologic Report must at a minimum, include a discussion of field procedures, a listing of all data gathered, an analysis of the data and an evaluation of the impact of the proposed withdrawal on the aquifer and on other groundwater and surface water users in the vicinity. All relevant data, including but not limited to a geologic map; well log; water level charts; and tables and graphs for the pumped well, monitoring wells, and nearby perennial streams, wetlands and other sensitive hydrologic features must be submitted. The pumping test may be of not less than 48 hours pumping duration unless otherwise approved in writing by the Executive Director or as a condition of the Commission's approval, at an uninterrupted, constant withdrawal rate of not less than the proposed pumping rate. Required information to be collected must include, but is not limited to the following:

- a. Date and time of all static, pumping, and recovery water level measurements.
- b. Record of pumping rate measured frequently throughout the test.
- c. Sufficient static water level measurements in all wells and at all monitoring points prior to start of pumping and following cessation of pumping to determine trends in water level changes.
- d. Pumping and recovery measurements in the pumped well and observation wells.
- e. Monitoring of wells sufficient to determine all possible interference.
- f. The final hydrogeologic report must include appropriate calculations using the collected data to determine: all relevant aquifer parameters, including without limitation, transmissivity, storage coefficients, hydraulic conductivity, specific yield, etc., and an extrapolated drawdown prediction at the tested rate in the pumping well and all affected wells over an assumed six-month period of no recharge.
- g. Groundwater discharge from the proposed production well during the pumping test must be directed an adequate distance from the pumping well, observation wells, and monitoring locations such that recirculation or artificial recharge does not occur. Recirculation and artificial recharge may invalidate the pumping test and may require re-testing.
- h. Discharges of groundwater and groundwater laden with drill cuttings must be controlled in such a way as to prevent erosion and sediment pollution of waterways. The project sponsor must obtain any and all approvals required by state and local water management

agencies and soil conservation districts before conducting any drilling or aquifer pumping tests.

- i. Records of precipitation, measurements or observations of nearby stream flows, and weather conditions throughout the test.
- j. A map identifying all nearby water wells owned by others that could be affected by pumping of the new well(s) and the following information for each well if available.

Name of Owner: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Well No.: \_\_\_\_\_, Type of Use: \_\_\_\_\_

Date Drilled: \_\_\_\_\_, Depth Drilled: \_\_\_\_\_ feet, Diameter: \_\_\_\_\_ inches.

Casing Type: \_\_\_\_\_, Casing Diameter: \_\_\_\_\_ inches, Casing Depth: \_\_\_\_\_ feet.

Well Screen Type: \_\_\_\_\_ Top of Screen: \_\_\_\_\_ feet, Bottom of Screen: \_\_\_\_\_ feet.

Pump Type: \_\_\_\_\_

Capacity: \_\_\_\_\_ gpm, Intake Setting: \_\_\_\_\_ feet.

Describe location of well on property: \_\_\_\_\_

Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_

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**Water Purveyors Only:**

- 20. **Service Area Map:** Enclose a service area map that includes a delineation of the existing service area and the proposed service area.
- 21. **Water Quality Data:** Include chemical and bacterial analysis of the water from the new well(s).
- 22. **Water Conservation Plan:** All purveyors seeking DRBC approval for a new or expanded water withdrawal must include a water conservation plan, addressing the following components:

Service Metering (No. 87-7 Revised, amended by Resolution No. 2001-8)

- Confirm all connections metered. If not, include schedule for 100% service metering.
- Meter types.
- Meter reading and recording procedure.

- Meter calibration, maintenance and replacement schedule.
- Water rate schedule (is billing based on metered usage?)
- \*Purveyor program to provide residential customers with information on
  - savings available through water conservation;
  - different methods of residential water conservation; and
  - availability of water conservation devices.

Leak Detection & Repair (LD&R) (No. 87-6 Revised)

- Completed Plan or Executive Summary (Pennsylvania Applicants may substitute an LD&R Compliance Report)

Water Conservation Performance Standards (No. 88-2 Rev. No. 2)

- Status of municipal regulations in applicant's service area (Pennsylvania only).
- Adopted policy to certify or verify that “no new service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision No. 2).”

Rationing Plan – Describe the water rationing plan, including triggers and implementation schedules.

Water Audit Program (Resolution No. 2009-1)

- The owners of each water supply system serving the public with sources or service areas located in the Delaware River Basin shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.
- “Non-revenue water” reported under section 2.50.3. (Reporting Requirements), subsection B.1.b.ii. of this Water Code shall be computed in accordance with IWA/AWWA Water Audit Methodology (AWWA) Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

\*Recommended.

- b. **All purveyors withdrawing 1 million gallons per day or more shall also include the following:**

Water Conservation (No. 81-9)

- Provision of information on the availability of water-conserving devices and procedures.

Retail Water Pricing (No. 92-2) (This requirement is waived if the purveyor either documents it has adopted a water conserving pricing structure or is in the process of

implementing such a pricing structure in accordance with a Commission schedule or a schedule established by the appropriate state public utilities commission.)

- An evaluation of the feasibility of implementing a water conservation pricing structure and billing program. The evaluation shall, at a minimum, consider:
  - The potential change in the quantity of water demanded for customer classes and their end uses of water during both peak and non-peak periods stemming from alternative water conservation pricing structures;
  - The potential revenue effects of the alternative pricing structures;
  - Any legal or institutional changes necessary or desirable to implement a water conservation pricing structure; and
  - How conservation pricing could be coordinated with other conservation programs and measures to reduce both average and peak water use.

**Golf Course Projects:**

**23.** All applications involving golf course irrigation must include an operations plan that addresses the components contained in the Water Conservation Guidelines for Golf Courses, available on the Commission’s website.

Additionally, the following information should be provided:

Total **property** acreage: \_\_\_\_\_ acres.      Number of Holes:

Acreage to be **irrigated** (Use zeros if not applicable. Please tab to or select another field before moving out of table to ensure proper calculation):

Fairways		acres
Tees		acres
Greens		acres
Other <sup>1</sup>		acres
Total		acres

Describe method<sup>2</sup> for estimating irrigated acreage: \_\_\_\_\_

<sup>1</sup> Other includes any other irrigated area, for example rough surrounding fairways and greens.

<sup>2</sup> The acreage to be irrigated must be an accurately represented area, and should reflect only those areas that are contained within the irrigation system.

**24.** Provide a diagram and description of the irrigation system, include all water sources, storage ponds, and meter locations.



**Agricultural Projects:**

25. If the use is agricultural, provide a description of the type of crop and the Agricultural Extension Service water requirement recommendations:

Type of crop(s):

inches/year:

**Groundwater Remediation Projects:**

26. If the withdrawal is part of a groundwater remediation project, submit copies of any engineering studies on the nature and extent of the contamination and the remediation program.

**END OF APPLICATION**



**APPLICATION FOR ELECTRIC GENERATING OR  
COGENERATING FACILITIES DESIGNED TO CONSUMPTIVELY  
USE IN EXCESS OF 100,000 GALLONS PER DAY OF WATER  
DURING ANY CONSECUTIVE 30-DAY PERIOD**

**1. General Information:** (please print or type)

Applicant Name: \_\_\_\_\_

Parent Corporation Name, if different: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Representing Attorney Name, if applicable: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facility Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Township: \_\_\_\_\_ County: \_\_\_\_\_

**2. Consultant Information:**

Name of Engineer: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**3. Certification and Signature of Applicant**

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that pursuant to Section 14.17 of the Delaware River Basin Compact, an attempt to violate a rule, regulation, or order of the Commission, including by knowingly or negligently submitting false information, may result in penal sanctions that include fines of up to \$1,000 per day.

**Name:**

**Official Title:**

**Signature:**

\_\_\_\_\_

**Date:**

4. **Exhibits to Accompany Application.** The application shall be accompanied by the following exhibits:

**A. Letter of Transmittal.** The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures.

**B. A description of the proposed/existing project which includes:**

- The design and operational characteristics of the facility including energy generating capacity, fuel supply source, and energy transmission and distribution details
- All water supply sources and capacity of connections to those sources
- Average and maximum daily water use at all expected operation levels
- Estimated total daily consumptive use of water at all operation levels
- Fate of all discharged contact/non-contact cooling water, industrial wastewater, and domestic wastewater
- Any official commitment on the part of a water supplier to make water available and affirmation that the water is available with supporting calculations and the committed volume of water.

If any water source is self-supplied water withdrawn from surface water or groundwater sources by the project sponsor or its contractors, please use instead the **APPLICATION FOR A GROUND AND/OR SURFACE WATER WITHDRAWAL IN THE DELAWARE RIVER BASIN** found at this web address <https://www.state.nj.us/drbc/programs/project/docket-app-info.html> accompanied by exhibits **(B)** above and **(E)** below in addition to those requirements in the withdrawal application.

**C.** A map section of a United States Geological Survey topographic quadrangle showing the project location, surrounding territory and watershed affected;

**D.** Plans and profiles of any proposed/existing structures and the lands they occupy which includes delineated wetlands, water bodies, and FEMA designated Flood Hazard Areas (100 year floodplain and floodway); The project may require a special permit if any structure is located within a flood hazard area. Please see the DRBC's *Administrative Manual - Part III BASIN REGULATIONS FLOOD PLAIN REGULATIONS* at this web address:  
[https://www.state.nj.us/drbc/library/documents/floodplain\\_regs.pdf](https://www.state.nj.us/drbc/library/documents/floodplain_regs.pdf)

**E. Consumptive Use Replacement Plan.** See DRBC Resolution 2018-5 here:  
[https://www.state.nj.us/drbc/library/documents/Res2018-05\\_ConsumptiveUse\\_ReplacementPolicy.pdf](https://www.state.nj.us/drbc/library/documents/Res2018-05_ConsumptiveUse_ReplacementPolicy.pdf)

**F. Permits.** A list of any required, existing, or pending permits with any state or federal agencies. Please include copies of any permit applications or approved permits.

**G. [Application Fee Form](#) and Fee**

5. **File application**

**A.** Complete this application form.

**B.** Assemble the completed application form and exhibits in one or more files.

**C.** Go to [applications.drbc.net](https://applications.drbc.net) and select "Create Account" to create a new account. Once you have established an account, return to [applications.drbc.net](https://applications.drbc.net) and "Sign in" to your account.

**D.** After you have signed in, upload the completed application and accompanying materials. You may add or remove files from your account as necessary. DRBC staff will be automatically notified that your materials have been submitted.

**E.** Payment of the Application Fee is required by a check payable to "Delaware River Basin Commission". Please follow the payment instructions on the [Application Fee Form](#). The completed fee form and payment should be mailed together to:

**Delaware River Basin Commission  
PO Box 7360  
25 Cosey Road  
West Trenton, NJ 08628-0360**

Alternatively, this completed Application, the Application Fee Form, and Fee may be printed and mailed to the above address.

DRBC Project Review staff will contact you regarding any additional materials that are required to be submitted as part of the review process.