Frequently Asked Questions (FAQs)

DRBC One Process/One Permit Program

General FAQs

1. ***What is the DRBC One Process/One Permit Program?***

The DRBC and the state environmental agencies within the Delaware River Basin share many similar mission objectives and similar regulatory programs related to water resource management. The One Process/One Permit Program promotes collaboration and will result in improved process efficiency between the DRBC and the four basin states – Delaware, New Jersey, New York and Pennsylvania – while achieving the same or improved environmental outcomes.

Currently, water resource-related projects in many regulatory programs are required to apply to both the DRBC and the state agency for permits and approvals. The One Process/One Permit Program relies upon administrative agreements between the DRBC and each state agency to identify what regulatory programs and which specific projects are eligible to be managed through a single process resulting in one decision or approval. The One Process/One Permit Program will continue to require that the more stringent of the DRBC or state requirements are included in the permit.

2. ***Which DRBC and state regulatory programs are included in the DRBC One Process/One Permit Program?***

Initially, the administrative agreements between the DRBC and the states will cover the following regulatory programs:

- DRBC water withdrawals and state water allocations/diversions programs
- DRBC wastewater discharges and state NPDES or water quality programs.

The proposed regulations and agreements will allow for other programs to be included in the future. For example, there are some opportunities to develop a One Process/One Permit Program for flood plain management with certain states. All agreements, including changes to agreements, will require Commission approval following public input.

3. ***Why are the DRBC and the state agencies making these changes?***

The principles and objectives of this program, which are outlined in the proposed DRBC rule changes and proposed administrative agreements, are as follows:

- To promote inter-agency cooperation and collaboration on shared mission objectives
- To promote regulatory program efficiencies
- To avoid unnecessary duplication of effort

It is important to note that the objective of the program is NOT to change the authority and/or regulatory standards of the DRBC or any state agency. In fact, the rules and the agreements expressly

preserve the respective authorities and standards and continue to require that the more stringent of the DRBC or state requirements be included in the permit.

4. Is the DRBC allowed to do this?

Yes. In fact, the DRBC was formed in 1961 through concurring legislation in the member states and the federal government. The statute is known as the *Delaware River Basin Compact* (DRB Compact). The DRB Compact (Sections 1.5 and 3.9) authorizes and encourages coordination and cooperation between government agencies. In addition, DRBC's Rules of Practice and Procedure (Section 2.3.3) expressly recognize and provide the DRBC with the authority to enter into administrative agreements with federal and state agencies to meet the objectives of this program.

5. Does DRBC currently have administrative agreements with the states within the Delaware River Basin?

Yes; however all of the current agreements require significant revisions to implement the One Process/One Permit Program. The new administrative agreements will supersede and replace the existing agreements, which can be found on the DRBC web site at Delaware River Basin Commission Administrative Agreements.

6. What exactly needs to be done to implement this program?

Two primary elements will be put in place to initiate the One Process/One Permit Program.

- DRBC will undertake rulemaking to provide specific authorization for and define the scope of the One Process/One Permit Program.
- The DRBC will execute a new administrative agreement with each member state agency that wishes to participate.

Once the revised rule is in place, the program can proceed wherever an agreement between DRBC and the appropriate member state agency has been executed.

7. Do these new rules and new agreements mean that DRBC or the states will no longer be involved in these programs?

No. One Process/One Permit does not mean that the DRBC or others will not be involved in the review of applications for new and renewal water withdrawal and discharge projects. It means that there will be one process that both agencies will follow and that reviews will be performed more efficiently and more collaboratively.

In some cases, as outlined in the agreements, reviews could be significantly streamlined or subject to inter-agency notifications only, such as with some simple and standard renewals of existing permits. In other cases, it will still be a one process system; however, DRBC staff will continue to provide technical review under applicable DRBC standards where they have special expertise. For example, DRBC staff will continue to perform modeling to determine "No Measurable Change" requirements for the Special Protection Waters and to calculate an alternative mixing zone for a discharge of treated industrial wastewater to the Delaware Estuary.

The principle is to eliminate unnecessary effort, not to eliminate effort needed to fully review a project that requires DRBC review. Under the terms of the new agreements and the new rules, each party continues to recognize the authority of the other to promulgate rules, regulations and standards, and this program does not change that authority.

8. If there is only one process and only one permit being issued, who is really the lead agency?

That depends. Each party recognizes the other's authority. Each agrees to use available resources to advance the One Process/One Permit principles and objectives defined above and, where feasible, to develop a single regulatory process to implement the rules, regulations, and standards applicable to basin waters. The lead will depend upon the specific regulatory program (water withdrawals, wastewater discharges, etc.) and the state agency involved.

For **wastewater discharges** under NPDES water quality programs, the states will be the lead agencies and will issue permits.

For **water withdrawals**, the authorities vary by state, and it will be necessary to refer to the specific agreements for the details. However, in general, the lead will be as follows:

Delaware - DNREC
New Jersey - NJDEP
New York - DRBC
Pennsylvania - DRBC

9. If a state agency issues the permit, can't it simply ignore the DRBC requirements?

No. The DRBC will be involved in the review, and the agreements provide for the states to include DRBC terms and conditions within the state-issued permits. In those rare instances where the parties cannot agree on the terms and conditions of a project approval, the agreements provide for a dispute resolution process that ultimately could lead to separate agency actions.

10. How can the states issue a permit instead of a required DRBC docket without the approval of the DRBC Commissioners?

Sections 1.5 and 3.9 of the Compact and existing DRBC rules allow and encourage the Commission to use the offices of existing state agencies wherever feasible and advantageous. Accordingly, the proposed rule and agreements expressly provide for permits issued by state agencies to include a finding required by the DRB Compact. After the rule and amended agreements are in place, based on the appropriate level of review and a recommendation by the DRBC staff, state permits issued under the program will include the finding that when operated in accordance with the permit terms and conditions, with respect to the activities regulated by the permit, the project will not substantially impair or conflict with the DRBC comprehensive plan.

11. Will all projects that are subject to review by the DRBC be a part of the One Process/One Permit Program?

No. First, only water withdrawal and wastewater discharge activities are currently being considered for the program. Separate DRBC approval processes for these activities will still be required in a few cases,

such as when a new project must be incorporated into the Commission's comprehensive plan. Second, certain categories of projects that are subject to DRBC review are not covered by the program. Finally, both parties retain the right to act separately, such as where the parties cannot agree on the terms and conditions of approval. The latter is anticipated to be the rare exception. The Executive Director or Commissioners will also have the ability to remove a project from the program. However, the objective of the program is to include most, if not all, elements of the process and approval in the One Process/One Permit Program.

12. When will this program start?

Implementation will occur on a state-by-state basis when the agreement for each state goes into effect – likely sometime late in 2015 for most states. The "go-live" start dates will depend upon:

- The time required for formal DRBC rulemaking, including a public comment process;
- The time required to negotiate and execute agreements with each state;
- Commission approval of the new rules and the new agreements, after a public comment process; and
- Execution of the respective agreements by state parties.

Allowing adequate time for all activities associated with notices, public input, stakeholder meetings, response to public comments, and Commission meetings, and subject to favorable decisions that do not impact schedule, the start will likely be no sooner than the 4th quarter of 2015 for most or all of the member states.

13. Is it possible to start sooner?

That is unlikely for most states; however, it is anticipated that DRBC and NJDEP will enter into an agreement that will allow for a New Jersey "demonstration" program to start sooner (see Questions 24 through 33 below).

14. If the DRBC will no longer be issuing a separate docket approval for a project, how will the public be able to provide comments and input on project applications?

Each state agency has a public comment process for permit applications, and the public and interested stakeholders will have an opportunity to make comments within that process.

15. What happens if a permittee violates a DRBC condition of a state permit? Is that a violation? Who is responsible for enforcement and compliance?

DRBC and the states retain the right to enforce their respective regulations. That said, the agency that issued the permit or docket is responsible for compliance and enforcement of all conditions and requirements under that approval. As in most cases, if the state is the lead permitting agency, the state is responsible for enforcing all conditions, even if the conditions are based on DRBC rules. If enforcement is warranted, routine enforcement actions such as notices, penalties and settlements will be the responsibility of the lead agency. On complex enforcement matters involving DRBC requirements, DRBC will collaborate and cooperate with the state agencies as applicable and as required.

16. If there is only one permit, does the applicant only have to pay one fee?

That has not yet been determined. Project review fees and other fee schedules are set by the rules and regulations of the DRBC and each state agency, and any changes to respective fees will require additional rulemaking activities. For the time being, for projects subject to DRBC review – whether or not a separate Commission docket or permit is issued – the fee schedule approved by DRBC Resolution No. 2009-2 will remain in effect. As stated earlier, while the goal is to improve process efficiency, the objective under this program is not to change the DRBC rules or standards and, in many cases, the DRBC will devote significant resources and work effort to review projects and support its regulatory programs. In principle, the DRBC regulatory program should be supported by regulatory program fees. Any changes to fees, any new fees, any elimination of fees, or any changes to fee structures would require approval by the DRBC Commissioners following a rulemaking process that would include public input.

17. Can the applicant apply online under the One Process/One Permit Program?

That depends upon the lead permit agency. Nothing in the One Process/One Permit Program will specifically change the methods used to apply for permits. If the state agency or the DRBC have systems that allow for on-line applications, then the applicant can use those systems.

18. I heard or I was told that this program is simply a way for the states to roll back DRBC's authority and begin to scale back existing environmental protection programs like the DRBC Special Protection Waters. Is that true?

No, that is not true. The new rules and the new agreements fully recognize the authority and standards of DRBC, including all the program requirements under the Special Protection Waters Program. Nothing in the One Process/One Permit Program changes the authority and standards of either party. In fact, the rules and agreements fully recognize the standards and the authorities of each party, and continue to require that the more stringent of the DRBC or state requirements are included in the permit. The One Process/One Permit Program is being used to promote equal or better environmental protection regulatory outcomes through a higher level of inter-agency collaboration and cooperation and a more efficient regulatory process.

19. What happens if DRBC and the state agency do not agree on the application, the permit conditions or the project approval?

The administrative agreements will provide for a dispute resolution process whereby the disputed matter is elevated through the senior management of each agency. If the dispute cannot be resolved, the application will no longer be considered under the One Permit/One Process Program and separate actions will be required by the DRBC and the state agency. Effectively, the agencies would operate as they do now without the new administrative agreements.

20. Will there be an administrative agreement between DRBC and the federal government?

Such an agreement is possible, but because the regulatory programs described above are administered by the basin states, no agreement with a federal agency is currently planned. Since the federal government is a member of the DRBC, all interested federal parties have been briefed on the process and

have had opportunities to provide input. Input will continue to be sought as the rulemaking and agreement approval processes continue.

21. Are there cases where an applicant can obtain state approvals for wastewater discharges and/or water withdrawals under the One Process/One Permit Program and still be required to apply for approvals from the DRBC?

The answer is "yes"; however, those cases would be the exception rather than the rule. An example of how this could happen is described below:

A new 1 million gallon per day (mgd) municipal wastewater treatment plant is being proposed within the Delaware River Basin (in any state). The DRBC and the state environmental agency will collaborate on wastewater discharge limits and construction design, and the state will issue one permit to cover all of those elements under this program. However, since the facility is new, it needs to be included in the DRBC comprehensive plan. A separate DRBC application would be required for inclusion of the project in the comprehensive plan. That review would consider issues other than discharge limits and treatment design, such as waste water treatment service areas; potential water or wastewater imports or exports; and any other significant impacts concerning water resources (flood plains, wetlands, non-point source pollution control, etc.). Likewise, the state agency might require one or more other environmental permits to construct or operate a 1 mgd wastewater treatment plant in addition to the discharge limits that would be addressed under the state issued NPDES permit.

22. Is this new program being done to keep DRBC from reviewing natural gas and other utility transmission mains?

No. As previously stated, this program does not change the authority of any agency, including the DRBC. Depending upon the specific details of each natural gas or other transmission main project, the project could be required to be reviewed and approved by DRBC. Nothing in the program changes that. However, it is feasible that if the only thresholds for review by DRBC were proposed water withdrawals, wastewater discharges, or both, a coordinated review would be performed, similar to any other withdrawal or discharge project.

23. How does this process impact the DRBC's current policies on the review of natural gas wells and infrastructure, since most of the hydraulic fracturing activities involve water withdrawals and wastewater discharges?

The One Process/One Permit Program does not alter the Commission's current policies regarding natural gas development activities. The Executive Director's Determination of May 2009, which eliminated DRBC's project review thresholds for activities associated with natural gas development, including withdrawals, discharges and diversions of water or wastewater into or out of the Special Protection Waters drainage area in connection with hydraulic fracturing, remains in place. Also unchanged is the Commission's decision in May 2010 to postpone the review of natural gas well pads pending the adoption of DRBC regulations to address these activities. Any changes to the current status of natural gas drilling within the basin would require Commission review and approval. The current history and status of natural gas regulation within the Delaware River Basin can be found on the DRBC web site's Natural Gas Drilling Index Page.

New Jersey Demonstration Program – FAQs

24. What is the New Jersey Demonstration Program under the One Process/One Permit system?

The NJ Demonstration Program is an opportunity for NJDEP and DRBC to turn commitment into early action. NJDEP and DRBC fully recognize the benefits of a higher level of collaboration and cooperation under the One Process/One Permit system, and both parties have agreed to begin many of the process improvements in advance of formal DRBC rulemaking. The demonstration program includes the following conditions and limitations:

- The demonstration program is for selected wastewater discharge permits only.
- Existing fee schedules and fee practices for DRBC and NJDEP will be used.
- If a project reaches the approval stage during the demonstration period, each agency will need to act separately to make a final approval.

25. Will every eligible project or application be included in the demonstration program?

No. NJDEP and DRBC will select certain pilot projects to demonstrate, practice and learn the new procedures.

26. Why New Jersey? Why not try this in another state?

There are several reasons that New Jersey was selected and agreed to work through a demonstration program. NJDEP and DRBC have a long and effective history of cooperation, collaboration and process efficiency under an existing administrative agreement covering the wastewater discharge and water allocation programs. It was logical to expand on this relationship. Second, the DRBC Commissioners selected New Jersey to work with DRBC staff to develop the new model administrative agreement as a template agreement for all the states. It was logical that they would also select New Jersey to conduct a demonstration project. Thirdly, the NJDEP has always fully supported the benefits of this program and wanted the opportunity to bring early implementation to their state and then to share that experience with other basin states, the DRBC, the regulated community and other stakeholders. Finally, this program is aligned with New Jersey's desire to create a more effective, understandable and streamlined regulatory climate in an effort to focus limited state resources on advancing the state's and the NJDEP's critical mission. To that end, coordinated efforts by New Jersey's executive agencies to reduce red tape, align conflicting standards, and eliminate unnecessary duplication in our regulatory process while preserving our protection of the environment and public safety serves as an integral model for this important DRBC/NJDEP collaboration.

27. How can this demonstration program be done without new DRBC rules in place?

Effectively, for the demonstration period, the DRBC and the NJDEP are agreeing to "practice" using new collaborative processes between the two agencies for review of new applications for wastewater discharges for a fixed duration or until new rules are passed. The demonstration period will end once new applicable DRBC rules are approved. Should an application reach the stage where it is ready for final approval before new DRBC rules are in place, the application will have to be acted upon by each agency independently. Once the DRBC Commissioners take an action, assuming the project is approved, the DRBC approval and conditions will be incorporated into one NJDEP permit. The DRBC and the NJDEP

coordinate now on permit applications and can revise the methods used to continue to coordinate during the demonstration period without any rule changes required.

28. How long is the demonstration period?

The demonstration program will end at the effective date of new DRBC rules for the One Process/One Permit Program. However, if new rules for the One Process/One Permit Program have not yet been promulgated, the demonstration program will end on January 1, 2016 or when eight (8) demonstration project applications have been processed under the program, whichever is later. The demonstration period can be extended with the approval of both parties.

29. What happens if the demonstration period ends and there are no new DRBC rules in place?

As noted above, the parties can extend the demonstration period. If the parties do not extend the demonstration period, the parties have agreed to work collaboratively and in good faith to develop an alternative long-term cooperative agreement to meet goals similar to those outlined in this Agreement.

30. Why is the water allocation regulatory program not included in the demonstration program?

The DRBC and NJDEP have agreed to select and focus on wastewater discharges only during the demonstration program. The wastewater discharge regulatory program has the most changes from the existing agreements that require pilot, demonstration, and "practice."

31. Do applicants still need to pay fees to both DRBC and NJDEP during the demonstration program?

Yes. DRBC project review fees will still apply during the demonstration program. Separate payment in accordance with the Commission's current fee schedule (Resolution No. 2009-2) will need to be made directly to DRBC. NJPDES fees will also still apply.

32. Do these changes mean that wastewater treatment plants in the Delaware River Basin in New Jersey will now accept fracking waste without DRBC approval?

No. The authorities, rules and requirements for DRBC have not changed. Fracking waste is not permitted to be treated or discharged at wastewater treatment plants in the basin without Commission review.

33. What if the NJ Demonstration Program is approved and I have more comments and questions about this entire process? Will it be too late to consider my comments?

No. The rule changes to provide for the One Process/One Permit Program will be proposed and published in state and federal registers during the months of May and June, and an ample comment period on the draft rules will be provided. Notice and comment will subsequently be provided for each new administrative agreement proposed under the rule. As stated earlier, under the NJ Demonstration Program the DRBC and the NJDEP are "practicing, learning and sharing" coordination steps between agencies. If a project reaches the approval stage, both agencies will need to act upon the application independently until rules are in place.

Additional Questions Added on May 1, 2015

34. What if an existing DRBC docket holder for a wastewater discharge in NJ has received an email from DRBC staff indicating that its docket is expiring in approximately 15 months, and that a renewal application and its associated fee is required 12 months prior to docket expiration? Should the docket holder disregard this notice since NJDEP and the DRBC are entering the demonstration?

No. The docket holder should file the renewal application with DRBC. The NJ demonstration is a pilot effort for selected projects only, and until such time as final DRBC rules are promulgated for the One Process/One Permit Program, separate applications and approvals are required.

35. What if I need to file a new application for a wastewater discharge in NJ during the demonstration period? Should I file an application with NJDEP only?

No. As stated above, the NJ Demonstration Program is a pilot effort for selected projects only, and until such time as final DRBC rules are promulgated for the One Process/One Permit Program, separate applications and approvals are required. Once rules have been promulgated, it is anticipated that only one application will be required. The public and the regulated community will be notified when that happens.

36. How will I know which projects the host state and the DRBC are working on in a coordinated manner under this program so that I can take advantage of the opportunity to submit comments?

After rules are promulgated, the DRBC will maintain on the DRBC web site a list of projects that are undergoing review or are expected to undergo review (based upon the project list provided by the states), through the One Process/One Permit Program. The public will know in advance which projects will be processed and can track the projects of concern. DRBC will also provide links to the state web sites that post project notices and public comment opportunities. During the NJ Demonstration Program, DRBC will continue to issue public notices of applications received and public hearing dates, as is done now.

37. Will DRBC records for projects continue to be available to the public?

Yes. The Commission's rules regarding public access to records, which can be viewed on the DRBC web site's Public Access to Records Page, will apply to projects undergoing coordinated review under the One Process/One Permit Program.

38. There was always a public hearing at DRBC. What happens if I request a public hearing and the state denies my request?

The states' public comment and hearing procedures have been in place for many years and are well tested. It is the position of the DRBC and the signatory members that the states' public input and hearing procedures can support this program and provide for adequate and fair public and stakeholder input. If you have attended many hearings at the DRBC, you know that for most water withdrawal and wastewater discharge projects, no oral comments are offered. Comments should be submitted to the state agency and can always also be submitted to DRBC staff or Commissioners through written

correspondence. In addition, members of the public will continue to have an opportunity to offer comments or requests during the Public Dialogue sessions that are included as a part of each Commission meeting. While comments offered during Public Dialogue are not a part of the official decision making record, the comments may potentially lead to further action at the state level or could lead the Commissioners to take separate action on an issue.

39. If I have an interest in a particular project, will I get less time to offer comments under the One Process/One Permit Program?

Under DRBC rules, projects are listed for public comment at least 10 days before a public hearing. The comment period can be extended; however, the comment period on most DRBC draft docket or permit approvals is about 10 days. The duration of the states' formal public comment periods will not change, and typically that period is 30 days. In effect, for coordinated reviews, the duration of the formal review period will be increasing. As noted above, projects undergoing coordinated review also will be listed on the DRBC web site. Interested parties may advise the DRBC in addition to the state agency of their concerns prior to the formal public comment period if they choose to do so.

40. If the states have the lead on this program, will the rules and agreements prevent the application of basinwide requirements and a basinwide approach?

No. All applicable DRBC requirements, including those implementing basinwide approaches, will be included as appropriate within the state permits. DRBC reviews will be conducted in a manner similar to current reviews and DRBC will provide the requirements to the states for inclusion in the state permits. In addition, DRBC recommendations to the state agency will become part of the state's decision making record. If the states and DRBC cannot agree, there is a dispute resolution process, and separate instruments may be issued.

41. Do the rules and agreements allow DRBC enough time for a proper review?

Yes, DRBC will have enough time to conduct a proper review. Notably, the NJDEP agreement requires that on or before January 31 of each year, DRBC staff will receive a list that includes a concise description of each NPDES permit that the state expects to process in the coming year. This notification will provide DRBC staff with an early opportunity to identify complex projects or issues and communicate concerns to the state. The agreement also provides for the states to advise DRBC staff when a NJPDES application is received or a pre-application meeting is scheduled, affording DRBC another opportunity for early involvement in the projects. For complex projects, such as those that involve Special Protection Waters (SPW), "sufficient time" in the agreement is defined as "notice as early as possible, preferably before the initiation of design." While there are some time-dependent expectations for routine proposed permit actions, such as standard renewals, complex actions will have a full and comprehensive DRBC review and the time needed to undertake that effort.

42. Do the DRBC Commissioners lose their ability to comment on a project if it is located in another state?

The DRBC Commissioners will continue to be advised by the DRBC staff of the projects that will be reviewed under the One Process/One Permit Program. The administrative agreements allow for any signatory party Commissioner to request that a project be reviewed and adjudicated by the DRBC. The

project will then be subject to the full review and decision making by the Commission, and the state will no longer make a determination on behalf of the Commission.

43. Does the NJ Demonstration Program include pipelines, power lines, and transmission mains?

No, the NJ Demonstration Program includes only selected wastewater discharge projects. Pipeline, power line, and transmission main projects will not be reviewed under this pilot program, even if they involve a proposed discharge.

END OF SECTION
ADDITIONAL QUESTIONS AND ANSWERS WILL BE ADDED AS REQUIRED

(Last Updated 05/1/2015)