

A RESOLUTION to adopt procedural guidelines for certain determinations made pursuant to the Commission's *Water Quality Regulations*.

WHEREAS, the DRBC *Water Quality Regulations* (“WQR”) provide for the issuance of a variety of determinations without clearly establishing whether the responsibility for issuing these determinations resides with either the Commissioners or the Executive Director or both; and

WHEREAS, historically, the decision makers and instruments for issuing such determinations have varied; for example, similar types of determinations at times have been included in docket decisions adopted by the Commission and at times have been issued in letters from the Executive Director; and

WHEREAS, the Commission finds that clarity, transparency and administrative efficiency would be improved by the adoption of written guidelines clarifying the procedures available for water quality determinations issued pursuant to the WQR concerning: total dissolved solids (TDS); color; heat dissipation; allocations of carbonaceous biochemical oxygen demand (CBOD); mixing zone dimensions and associated dilution factors for toxic pollutants, including requests for alternative mixing zones; tests, sampling and analysis procedures; and pollutant minimization plans (PMPs); now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission hereby provides guidance for Commissioners, DRBC staff and interested parties regarding the procedures that may be used for certain water quality determinations issued pursuant to the *Administrative Manual Part II – Water Quality Regulations* (“WQR”):

2. Determinations covered by this guidance (“Covered Determinations”) are listed in the accompanying table.

3. The procedures outlined below are intended to clarify existing rules and shall in no way alter substantive regulatory requirements of the Commission or the rights or methods of appeal from actions of the Commission or the Executive Director (as set forth in the Commission's *Administrative Manual Part I - Rules of Practice and Procedure*) or of the respective parties to the *Delaware River Basin Compact*. These procedures are not an adjudication or a regulation. The Commission reserves the discretion to deviate from these procedures if circumstances warrant.

4. A Covered Determination may be issued in the following ways, as applicable:

- a. By the Commission as a condition of a docket or resolution adopted by an affirmative vote of a majority of the Commissioners at a duly noticed public meeting.
- b. By the Commission through an action of the Executive Director in the form of a letter to the regulated entity or entities, sent by certified mail. Determinations

issued in this manner shall also be posted on a dedicated page of the Commission's website, www.DRBC.net.

- c. By a Signatory Party Agency as a condition of a permit or other approval issued in accordance with an Administrative Agreement between such agency and the Commission pursuant to the One Permit Program rule, section 401.42 of the Commission's *Rules of Practice and Procedure* (18 CFR Part 401). A Covered Determination issued in this manner shall have been first included by the Executive Director or his designee in a recommendation furnished to the Signatory Party Agency in accordance with the Administrative Agreement and section 401.42(d)(3) of the One Permit Program rule, identifying the conditions of approval that may be necessary or appropriate to support the finding and determination required by section 3.8 of the *Delaware River Basin Compact* that a project will not substantially impair or conflict with the Commission's Comprehensive Plan.
5. A Covered Determination is subject to appeal as follows:
- a. Like other actions of the Commission or the Executive Director, Covered Determinations issued as conditions of a docket or resolution approved by the Commission (in accordance with paragraph 4.a above) or in the form of a letter from the Executive Director (in accordance with paragraph 4.b above) may be appealed in accordance with the procedures set forth in Subparts E and F of the Commission's *Rules of Practice and Procedure*, 18 CFR Part 401.
 - b. A Covered Determination that has been included in a final permit or approval issued by a Signatory Party Agency in accordance with paragraph 4.c. above may be appealed in accordance with section 401.42(g) of the One Permit Program rule in the Commission's *Rules of Practice and Procedure*, 18 CFR Part 401.

/s/ Kara S. Coats

Kara S. Coats, Chairwoman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Commission Secretary

Adopted: June 15, 2016

Determinations Covered by Resolution No. 2016 - 4

| | Determination | WQR Section |
|---|---|---------------------------|
| 1 | TDS | 3.10.4 D.2. |
| 2 | Color | 4.30.5 A.2.c. |
| 3 | Heat Dissipation Areas | 4.30.6 F. |
| 4 | Carbonaceous Biochemical Oxygen Demand | 4.30.7 A.5.a.2 |
| 5 | Toxic Pollutants – Regulatory Mixing Zones | 4.20.5 A.1.a. through g. |
| 6 | Tests, Sampling and Analysis Procedures | 4.30.8 C., D., and E. |
| 7 | Pollutant Minimization Plans for Toxic Pollutants | 4.30.9 A.3 and 4.30.9 D.7 |