



# Administrative Agreement

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

**March 2015** [Insert Date of Execution of Amended Agreement]

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

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

This Administrative Agreement (“Agreement”) is made by and between the Delaware River Basin Commission (“DRBC” or “Commission”), a federal interstate compact agency, and the New Jersey Department of Environmental Protection (“NJDEP”) (collectively, the “Parties,” and individually, a “Party”).

## ***WHEREAS,***

1. The DRBC and the NJDEP both have authority and existing standards, rules, regulations, and programs to govern certain activities within the same geographic area within the Delaware River Basin.
2. The DRBC and the NJDEP share common mission objectives for managing and protecting water resources within the Delaware River Basin.
3. Both the DRBC and the NJDEP recognize that while the programs of each Party are often similar, they are not always the same. The Parties further recognize the authority of each other to promulgate rules, regulations and standards.
4. The DRBC and the NJDEP support the principles of: inter-agency cooperation; avoidance of unnecessary duplication of effort; and program cost efficiencies.
5. The DRBC and the NJDEP will continue to use available resources, including this Agreement, to advance the principles defined above and, where feasible, to develop one common regulatory process to implement the rules, regulations, and standards, of each Party.

***NOW THEREFORE,*** the DRBC and the NJDEP set forth the following terms and conditions to meet this Agreement as follows:

## **I. General Provisions**

### **A. Administrative Agreement Authority**

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

2. Section 3.9 of the Compact provides that the Commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the Delaware River Basin.
3. Section 2.3.3 of the Commission's Rules of Practice and Procedure ("RPP"), 18 C.F.R. 401.33, authorizes and directs the Executive Director to enter into cooperative Administrative Agreements ("AAs") with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:
  - a. To facilitate the submission and review of applications and determinations required under Section 3.8 of the Compact;
  - b. To avoid unnecessary duplication of staff functions and hearings required by law;
  - c. For such other and different purposes as he or she may deem feasible and advantageous for the administration of the Compact or any other law.
4. ~~Upon the effective date of a DRBC rule providing specific authorization for and defining the scope of the One Process/One Permit Program, this Agreement will replace all prior administrative agreements between the Parties, including those dated August 20, 1976, and December 18, 2009 (as amended), and April 14, 2015, between the Commission and the NJDEP.~~
5. Nothing in this Agreement shall be construed as a waiver of any authority possessed by the Commission or by the NJDEP.
6. Nothing in this Agreement prohibits any lawfully adopted implemented changes to the authority of each Party in the future.

B. Scope of this Agreement

1. The scope of this Agreement is limited to projects and activities that can be commonly managed and administered under the following regulatory programs of each Party:
  - a. Wastewater discharges ~~withdrawals~~
  - b. Wastewater allocations ~~discharges~~
  - ~~b.c.~~ Underground storage caverns
2. This Agreement will implement applicable sections of the Compact with respect to the review of wastewater discharge, water withdrawal ~~allocation~~, ~~and wastewater discharge~~, and underground storage cavern projects. With the exception of the limited instances described in Sections II.E., III.E., IV., VI.E. and VII. below, a final action of the NJDEP

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

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

- C. One Process and One Permit. Where applicable, under the terms of this Agreement and under the authority and responsibility of each agency, the DRBC and the NJDEP will follow a single process led by the NJDEP, and the NJDEP will issue a single permit that covers all the standards, rules, requirements, terms and conditions for each withdrawal allocation, or discharge, or underground storage cavern project or activity that can be covered by the New Jersey Pollutant Discharge Elimination System (NJPDES) Program for discharges, ~~or the state's Water Allocation Program for withdrawals allocations, or the state's Underground Storage Cavern program for underground storage caverns.~~ It should be noted that one process and one permit will may not cover all activities and applications related to projects involving withdrawals allocations, and discharges, and underground storage caverns.
- D. Agency Cooperation. The DRBC and the NJDEP will cooperate with one another to meet the objectives of this Agreement by, among other things, participating in such consultation and training as the Parties deem useful; periodic status and continuous improvement meetings; interagency training and knowledge sharing; document and information sharing; advanced planning and sharing of proposed changes to any regulatory standard, requirement or program affecting Delaware River Basin water resources; development and communication of appropriate permit terms and conditions for each Party under Delaware River Basin approvals; and report development and sharing. The NJDEP and the DRBC further agree to work cooperatively, as technology is available and allows, to provide the DRBC with reasonable access to data for water withdrawals allocations, and wastewater discharges, and underground storage caverns to fulfill Basin planning, forecasting, and compliance monitoring functions.

## **II. Review of Wastewater Discharge Projects**

- A. Scope. This Section concerns wastewater discharge projects within the Delaware River Basin that require an NJPDES permit under the Clean Water Act and state law that may also be subject to DRBC review and approval under the Compact and Commission regulations.
- B. Objectives
1. In order to eliminate, where possible appropriate, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's NJPDES permit as the single permit for all conditions necessary to ensure that discharges made

under NJPDES permits do not substantially impair or conflict with the Commission's Comprehensive Plan, and which includes the Commission's regulations relating to wastewater and stream quality objectives (also referred to as "water quality criteria").

2. The DRBC and the NJDEP will manage and maintain one permit review and approval process for wastewater discharge projects. The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific project and upon the type of project, the project applicant may ~~be interacting~~ with both the DRBC and the NJDEP to obtain review and approval through a single permit.

### ~~3. Transition to One Discharge One Permit~~

- ~~3. a. For wastewater discharge permit applications submitted to the NJDEP, after the effective date of DRBC rules providing for the One Process/One Permit Program, the One Project/One Permit Program will be used, and a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections II.E., IV., VI. and VII.C. below, also will constitute an action on behalf of the Commission.~~

- ~~b. For applications under review by either the NJDEP or the DRBC upon the effective date of this Agreement, the DRBC and the NJDEP staff will confer to determine whether the Parties should proceed with issuance of separate approvals (dockets and permits, respectively) or should instead complete their review under the One Process/One Permit Program. Wherever feasible, the transition to one permit will be implemented.~~

- ~~4. In all instances where the transition has been made, a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections II.E., V.E. and VI.C. below, also will constitute an action on behalf of the Commission.~~

### C. Project Categories. Wastewater discharge projects within the New Jersey portion of the Delaware River Basin will be divided into three categories:

1. **Category WW-1: No DRBC Review Required.** Projects within the Delaware Basin that are not subject to review under the Compact or Commission regulations as defined in Section II.E. below;
2. **Category WW-2: Standard Renewals.** Wastewater discharge projects that are subject to review under the Compact or Commission regulations and that meet the criteria set forth in Section II.F. below; and
3. **Category WW-3: Other Wastewater Discharge Projects.** Includes all ~~“Other Wwastewater Ddischarge Pprojects,”~~ as defined in Section II.H. below.



- D. Annual Notice of Permit Renewal Application Dates. On or before January 31st of each year, NJDEP will provide to DRBC a list of NJPDES applications that are targeted for permit issuance during the coming year for projects in the Delaware River Basin (“DRB-NJ Project List”). For each project on this list, NJDEP will also include information for the most recent permit action, consisting of the “Permit Overview Screen” in the New Jersey Environmental Management System (NJEMS), which offers a concise description of the permitted activity and associated information (e.g. flow values, flow types, waterbody names). The NJDEP will provide DRBC with timely notification of revisions to the DRB-NJ Project List that may be made throughout the year.
- E. **Category WW-1: No DRBC Review Required.** Under the Compact and DRBC regulations, the following wastewater discharge projects are not subject to DRBC review ~~by the Commission, except by direction of the Commission pursuant to in accordance with~~ either Section 2.3.5 B.17. ~~(determination by the Executive Director)~~ or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) or (c)) (request a Commission member agency) of the Rules of Practice and Procedure (RPP). (See Section IV of this Agreement for additional categories of projects ~~other than wastewater discharge projects~~ that are not generally subject to the Commission’s review.):
1. Wastewater discharges directed to wastewater treatment plants that are subject to the review of the NJPDES Pretreatment, Significant Indirect User, and Residuals Management Program, except where a wastewater treatment plant is proposing to import 50,000 gallons of wastewater or more per day from outside the Delaware River Basin.
  2. Wastewater discharges directly to surface or groundwater from domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day within the drainage area of interstate waters the Commission has designated as Special Protection Waters (“SPW”), or less than 50,000 gallons per day elsewhere in the basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems.
  3. Wastewater discharges directly to surface or groundwater from industrial wastewater treatment facilities when such facilities have a design capacity of less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere within the basin.
  4. ~~[Editor’s note: Paragraphs 4 and 5 are deleted because the described categories fall within II.E 3., which closely tracks language in DRBC’s regulations at 18 CFR §§ 401.35(a)(4) & (5).] Wastewater discharges—whether direct or indirect—to surface or groundwater from landfills or remediation activities, when the discharge is less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere within the basin.~~

~~5. Discharges covered by a NJPDES General Permit for hydrostatic testing, when the discharge is less than 10,000 gallons per day within the drainage area of SPW, or less than 50,000 gallons per day elsewhere in the basin.~~

~~6.4.~~ Discharges consisting exclusively of either construction dewatering or swimming pool discharges. (Such projects are determined to be “temporary or short term projects” in accordance with Section 2.3.5 A.19. of DRBC’s ~~Rules of Practice and Procedure~~ (18 C.F.R. 401.35(a)(19)) and to have no substantial effect on water resources of the basin.)

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

1. ~~a NJPDES permit and~~ a Commission docket ~~are~~ is in effect at the time of application for the NJPDES permit renewal, or for which the most recent NJPDES permit issued for the facility includes a finding, pursuant to this or a successor Agreement, that the project would not substantially impair or conflict with the Commission’s Comprehensive Plan (“Section 3.8 Finding”) ~~and regulations relating to wastewater and stream quality objectives~~; and for which, *[Editor’s note: DRBC’s regulations relating to wastewater and stream quality objectives are part of the Comprehensive Plan.]*
2. the wastewater discharge is to surface or ground waters within DRBC Water Quality Zones 2 through 6 (the Delaware River Estuary and Bay) or the tidal or non-tidal portions of tributaries thereto, and no increase is proposed to the effluent flow or pollutant load established by the facility’s current NJPDES permit or DRBC docket; or
3. the wastewater discharge is an existing discharge to surface or ground waters located within the drainage area of waters designated by the Commission as SPW; and both (a) no increase is proposed to the effluent flow or pollutant load established by the NJPDES permit or DRBC docket in effect on the date of SPW designation; and (b) no “Substantial Alterations or Additions” are proposed as that term is defined at Section 3.10.3.A.2.a.16. of the Commission’s Water Quality Regulations (“WQR”) (excerpt attached hereto for reference, as Appendix B).

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

1. For each “Standard Renewals” wastewater discharge project, NJDEP will:
  - a. act as the lead permitting agency and prepare all draft and final permits.
  - b. include in ~~each the~~ NJPDES permit ~~issued for a project within the Delaware River Basin~~ all requirements necessary to ensure that ~~with respect to effluent quality and stream quality objectives~~, the wastewater discharge project conforms to the Commission’s Comprehensive Plan.

- c. include ~~a—the Section 3.8 fFinding, based upon consistent with~~ DRBC's recommendation, ~~that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.~~
  - d. provide DRBC with a copy of the pre-draft and draft permit and give DRBC 30 days to provide input on each.
  - e. The Parties agree that after 30 days, if the DRBC staff has provided no written comments, then a-renewal of the previous Section 3.8 Finding is recommended, ~~finding that the project does not substantially impair or conflict with the Commission's Comprehensive Plan is implied~~ and the permit issuance process ~~for simple renewals~~ will proceed.
  - e.f. establish monitoring requirements for whole effluent toxicity (WET).
  - ~~f. issue determinations required by Clean Water Act Sections 316(a) (relating to thermal discharges) and 316(b) (relating to impingement and entrainment); provided, however, that the authority to replace DRBC requirements with a 316(a) determination is subject to a DRBC rule change. (In the absence of the rule change, the NJDEP will continue to issue NJPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)~~
  - g. continue to collect all NJDEP permit and review fees required under applicable rules and regulations.
  - h. Aadvise applicants and the DRBC staff at the earliest stage possible when an applicant must apply for and obtain approval from the Commission for relief from or modification of a Commission requirement. Such instances include but are not limited to those listed in Appendix C.
2. For “Standard Renewals” wastewater discharge projects DRBC will:
- a. within 30 days of receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with written comments, including any recommendations for additional requirements or clarifications necessary or appropriate to support a—the Section 3.8 fFinding included in the previous docket or permit, ~~that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.~~
  - b. provide technical assistance when NJDEP staff requests it.

- c. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
  - d. review and provide NJDEP with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.G.1.h. above.
3. Should the Parties not agree during the review process on any matter material to the Section 3.8 Finding referenced in Section II.G.2.a. and b. above, the issue will be handled in accordance with the dispute resolution process identified in Section IX.E. of this Agreement.

H. **Category WW-3: “Other Wastewater Discharge Projects” – Definition.** For the purposes of this Agreement, “Other Wastewater Discharge Projects” are wastewater discharge projects located within the area regulated by the Delaware River Basin Commission that do not fall within the categories defined at Sections II.E. (“No DRBC Review Required”) and II.F and II.G. (“Standard Renewals”) above. They include but are not limited to:

- 1. New project. A new wastewater discharge projects for which no DRBC docket or NJDEP permit exists at the time of application.
- 2. Existing project but no Section 3.8 Finding. An existing wastewater discharge projects that are-is subject to the review of both Parties but that lack either for which no Section 3.8 Finding has been made, whether in that lack either a NJPDES permit or a DRBC docket.
- 3. Change to existing effluent flow or pollutant load of a discharge in tidal area. A projects involving a wastewater discharges to surface or ground waters within DRBC Water Quality Zones 2 through 6 (the Delaware River Estuary and Bay) or the tidal or non-tidal portions of tributaries thereto, where an increase is proposed to the effluent flow or pollutant load established by the facility’s current NJPDES permit or DRBC docket.
- 4. Change to existing project in SPW drainage area. A projects involving new wastewater discharges to surface or ground waters located within the drainage area of waters designated by the Commission as DRBC SPW, where either: involving (a) a proposed n increase is proposed to the effluent flow or pollutant load established by the NJPDES permit or DRBC docket in effect on the date of SPW designation; or (b) “Substantial Alterations or Additions.” are proposed as that term is defined at Section 3.10.3.A.2.a.16. of the WQR (copy excerpt attached hereto for reference, as Appendix B).

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

1. For each “Other Wastewater Discharge Projects,” NJDEP will:

- a. act as the lead permitting agency and prepare ~~all~~ draft and final permits.
- b. advise DRBC when a NJPDES application or request for a pre-application meeting for a wastewater discharge project ~~within the New Jersey portion of the Delaware River Basin of the types listed in Section II.H. is received.~~
- c. include in ~~each the~~ NJPDES permit ~~issued for a project within the Delaware River Basin~~ all requirements necessary to ensure that ~~with respect to effluent quality and stream quality objectives, the~~ wastewater discharge project conforms to the Commission’s Comprehensive Plan.
- d. include a Section 3.8 f Finding, ~~based upon consistent with~~ DRBC’s recommendation, ~~that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.~~
- e. provide ~~the Commission DRBC~~ with copies of the ~~sufficient time for input to the~~ “pre-draft” and “draft” permits with sufficient time to provide input on each. In general:
  - i. unless the program staff mutually agree otherwise, “sufficient time” will include means 30 days ~~for review of a “pre draft” permit~~, except that,
  - ii. for projects located within the drainage area of SPW, “sufficient time” will consist of notice as early as possible, preferably before the initiation of design, to allow for an opportunity for DRBC and applicants to perform and consult on modeling for the “No Measurable Change” analysis before the project is designed.
- f. The Parties agree that after sufficient time as defined above has passed, if the DRBC staff has provided no written comments and has not asked for more time, then a Section 3.8 Finding is recommended and the permit issuance process will proceed.
- g. establish monitoring requirements for whole effluent toxicity (“WET”). *[Editor’s note: This was inadvertently omitted from the previous AA.]*
- ~~f.h.~~ make available and maintain a report on the NJDEP DataMiner website (<https://njems.nj.gov/DataMiner>) that lists Treatment Works Approval (“TWA”) applications received for the construction or modification of a water or wastewater

~~treatment facility. NJDEP's Treatment Works Approval ("TWA") program staff will notify DRBC upon receipt of any TWA application for the construction or modification of a water or wastewater treatment facility located within the Delaware River Basin. (See Section II.I.2.c. 1.2.a. below regarding identification of such facilities). Upon a request by DRBC, The~~ TWA program staff will provide also copy the DRBC Project Review Manager with a copy of ~~on~~ the application completeness letter for any such application~~when issued~~. The primary TWA program contact for purposes of this Agreement will be the Assistant Director, Municipal Finance and Construction Element.

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

~~g.i. A~~ advise applicants and the DRBC staff at the earliest stage possible when an applicant must apply for and obtain approval from the Commission for relief from or modification of a Commission requirement. ~~Such instances include~~ ing but are not limited to those listed in Appendix C.

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

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

~~ba.~~ within the time period specified in Section II.I.1.e. above, after receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with written comments, including any recommendations for additional requirements or clarifications necessary or appropriate to support a Section 3.8 Finding. standards, terms and conditions as appropriate, for implementation of either the SPW program or the Commission's regulations applicable to the Delaware River Estuary and Bay and tributaries thereto, that are necessary or appropriate to support a finding that with respect to effluent quality and stream quality objectives, the project does not substantially impair or conflict with the Commission's Comprehensive Plan.

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

~~ac.~~ provide the TWA program contact identified in Section I.1.f. above with a list of existing wastewater treatment plants within the New Jersey portion of the Delaware River Basin. This list will be periodically updated to reflect any new wastewater discharges or modifications to existing discharge locations. DRBC will also copy the TWA and NJPDES program contacts and the Water Program Director on any determination that it sends to the TWA program applicant regarding DRBC requirements related to the proposed wastewater treatment modifications.



- ed. determine if a project is required to be incorporated into the Commission's Comprehensive Plan ~~(CP)~~ and undertake the process, including a public hearing and Commission action, for incorporation of such project into the CP Comprehensive Plan as appropriate. Once the Commission has added a project to the CP Comprehensive Plan, the Commission and the NJDEP will use the state's NJPDES permit as the single permit for all conditions necessary to ensure that discharges do not substantially impair or conflict with the CP Comprehensive Plan.
  - e. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
  - f. review and provide NJDEP with determinations regarding requests for relief from or modification of Commission requirements in accordance with Section II.I.1.gi. above.
3. Should the Parties not agree during the review process on any matter material to the Section 3.8 Finding, ~~finding referenced in Section II.G.2.a. and b. above~~, the issue will be handled in accordance with the dispute resolution process identified in Section ~~VII.C.~~ IX.E. of this Agreement.

### III. Coordinated Review of Water ~~Supply Allocation~~ Projects

- A. Scope. This Section concerns water ~~withdrawals~~ allocations within the Delaware River Basin that require a water allocation permit pursuant to the New Jersey Water Supply Management Act and the implementing rules at *N.J.A.C. 7:19-1.1 et seq.* that may also be subject to DRBC review and approval under the Compact and Commission regulations. See Section VII of this Agreement for instances where an application for water allocation may require separate action by the Commission.
- B. Objectives
  1. ~~In order to~~ To eliminate, where ~~possible~~ appropriate, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's water allocation permit or agricultural certificate as the single permit for all conditions necessary to ensure that water ~~withdrawal~~ allocation projects do not substantially impair or conflict with the Commission's Comprehensive Plan.
  2. The Commission and the NJDEP will manage and maintain one permit review and approval process for water ~~withdrawal~~ allocation projects. The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific project and upon the type of project, the project applicant may ~~be interacting~~ with both the DRBC and the NJDEP to obtain review and approval of a single permit.

~~3. Transition to One Water Withdrawal Permit.~~

- ~~a. For new, major modification and renewal applications submitted to NJDEP after the effective date of this Agreement, the One Process/One Permit Program will be used, and a decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections III.E., IV. and VI.C., below, also will constitute an action on behalf of the Commission.~~
- ~~b. For applications under review by either the NJDEP or the DRBC upon the effective date of this Agreement, the DRBC and NJDEP staff will confer to determine whether the Parties should proceed with issuance of separate approvals (dockets and permits, respectively) or should instead complete their review under the One Process/One Permit Program. Wherever feasible, the transition to one permit will be implemented.~~

~~43. In all instances where the transition has been made to The One Process/One Permit Program will be used for new, major modification, and renewal applications submitted to NJDEP, and a subsequent decision by the NJDEP as to all matters covered by the NJDEP's final action, with the exception of the limited instances described in Sections III.E. and VI.C., below, also will constitute an action on behalf of the Commission. In any instance where the Commission determines that a new, major modification, or renewal application submitted to NJDEP requires an amendment to the Commission's Comprehensive Plan, the Commission reserves its authority to make such amendment in accordance with Section 13.1 of the Comprehensive Plan and Article 1 of the RPP (18 CFR Part 401, Subpart A).~~

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

1. **Category WA-1: No DRBC Review Required.** Water ~~Withdrawal-allocation~~ projects within the Delaware River Basin that are not subject to review under the Compact or Commission regulations or as defined in Section III.E. below;
2. **Category WA-2: Notification.** Water ~~withdrawal-allocation~~ projects that are subject to the Compact or Commission regulations and that meet the criteria set forth in Section III.F. below; and,
3. **Category WA-3: Notification and Review.** Includes all "Other Water ~~Withdrawal Allocation~~ Projects" as defined in Section III.H. below.

D. Notice of Applications; Water Use Data Sharing

1. NJDEP permit applications. Within 14 days of the end of any month in which NJDEP receives water allocation permit applications or requests for pre-application meetings for projects within the Delaware River Basin, NJDEP will provide to DRBC a list of such



applications and requests. The list will include any information that may reasonably assist DRBC in determining whether the project is reviewable and into which category the project falls~~might be determinative of DRBC involvement~~, including but not necessarily limited to: the applicant's name, facility name, change in the quantity of a DRBC-approved diversion into or out of the basin, withdrawal location, purpose and amount of the proposed allocation (if known).

2. Water use data. Within 90 days of the close of each calendar year, NJDEP will provide to DRBC all available water use data it has collected for water allocation projects within the New Jersey portion of the Delaware River Basin.

E. **Category WA-1: No DRBC Review Required.** Under the Compact and DRBC regulations, the following water ~~withdrawal-allocation~~ projects are not subject to DRBC ~~DRBC~~ review except by direction of the Commission in accordance with either Section 2.3.5 B.17. ~~(determination by the Executive Director)~~ or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) and 18 C.F.R. 401.35(c), respectively)~~of DRBC's Rules of Practice and Procedure (RPP)~~. (See Section IV of this Agreement for additional categories of projects that are generally not subject to the Commission's review.)

1. A water ~~withdrawal-allocation~~ from groundwater or from an ~~impoundments~~ or running streams for any purpose when the daily average gross ~~withdrawal-allocation~~ during any 30 consecutive days does not exceed 100,000 gallons.
2. Diversions into or out of the basin whenever the design capacity is less than a daily average rate of 100,000 gallons.

~~3. Withdrawals for agricultural use within the State of New Jersey.~~ *[Editor's note: Moved E.3 (Withdrawals for agricultural use) to § IV, Projects Generally Not Subject to Commission Review.]*

~~4.3.~~ Temporary dewatering permits to facilitate construction. (Such projects are determined to be "temporary or short term projects" in accordance with Section 2.3.5 A.19. of DRBC's ~~Rules of Practice and Procedure~~ (18 C.F.R. 401.35(a)(19)) and to have no substantial effect on water resources of the basin.)

~~5.4.~~ Any "minor modification of a water supply allocation permit or temporary dewatering permit," as that term is defined at *N.J.A.C. 7:19-1.5(b)*.

F. **Category WA-2: Notification – Definition**

1. For the purposes of this Agreement, "Notification" water allocation projects are existing water ~~withdrawal-allocation~~ projects as described in Section III.F.2. below. For these projects, NJDEP will provide notification to DRBC in accordance with Section III.D.1. above. However, there is a presumption that DRBC will not comment on ~~such these~~

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

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

1. ~~\_\_\_\_\_ water allocation permit renewals under N.J.A.C. 7:19-2.4 where:~~

a. ~~a Commission docket for the withdrawal is in effect at the time the renewal application is made; or~~

b. ~~the most recent NJDEP water allocation permit, issued for the withdrawal includes a finding, pursuant to this or a successor Agreement, that the project will not substantially impair or conflict with the Commission's Comprehensive Plan and regulations related to water withdrawal; and~~

2. ~~water allocation permit renewals involving no change to a diversion of water into or out of the basin that was previously approved by the DRBC;~~

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

4. ~~\_\_\_\_\_ ii. are~~ extensions of NJDEP water allocation permits.

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

1. For “Notification” water allocation projects NJDEP will:

a. act as the lead permitting agency and prepare all draft and final permits.

b. provide monthly to the Commission the list of projects for which applications were received by the NJDEP in the preceding month and a description of each application described in Section III.D.1. above.

c. include in each NJDEP water allocation permit extension or renewal ~~issued for a project within the Delaware River Basin~~ all requirements necessary to ensure that ~~with respect to water withdrawal~~ the water allocation project ~~conforms to the~~ does not

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

- for surface water ~~withdrawal~~ allocation projects, a provision that DRBC's Water Charges Regulations apply; and
  - for public water supply ~~withdrawals~~ allocations, a provision that DRBC's water auditing requirements (at Section 2.1.8 of the Water Code) apply.
- d. include (or continue to include) a Section 3.8 f ~~Finding in each NJDEP that with respect to water withdrawal, the water allocation permit extension or renewal project does not substantially impair or conflict with the Commission's Comprehensive Plan.~~
- e. provide DRBC with each final permit when issued.
2. For "Notification" water allocation projects DRBC will:
- a. review the list provided by the NJDEP in accordance with Section III.D.1 above and identify any projects that require DRBC review notwithstanding the presumption set forth at Section III.F. above.
  - b. provide technical assistance when NJDEP staff requests it, subject to resource constraints.
  - c. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.

H. **Category WA-3: "Notification and Review" – Definition.** For the purposes of this agreement, "Notification and Review" water allocation projects are water ~~withdrawal allocation~~ projects ~~located within the Delaware River Basin~~ that do not fall within the categories defined in Sections III.E. and F. ("No DRBC Review Required" projects not subject to Commission review and "Notification" projects, respectively) ~~and III.F. G. ("Notification" projects) above.~~ These include but are not limited to:

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

3. Existing project but no Section 3.8 Finding. A renewals and-or modifications of an existing water ~~withdrawal-allocation~~ projects that ~~is are~~ subject to the review of the ~~DRBC both Parties~~ but ~~for which that have never received a DRBC docket~~ no Section 3.8 Finding has been made, whether in an NJDEP permit or a DRBC docket; and
4. Major modification, as defined by NJDEP. A major modifications, ~~to-of an~~ existing projects, as defined at N.J.A.C. 7:19-1.5(a), including but not limited to any project that involves an allocation withdrawal of water -from within the Delaware River Basin in excess of the monthly or annual allocation set forth in an existing NJDEP permit or DRBC docket.
5. ~~projects that involve a change to a diversion into or out of the basin (including to or from Delaware Bay) previously approved by DRBC in accordance with Section 2.30 of the Water Code and Sections 2.3.5 A.16, 17, or 18 of the RPP~~

**I. Category WA-3: “Notification and Review” – “One Process” Responsibilities**

1. For “Notification and Review” water allocation projects, the NJDEP will:
  - a. act as the lead permitting agency and prepare all draft and final permits.
  - b. provide monthly to the Commission the list described in Section III.D.1, above, and promptly provide thereafter any corresponding pre-draft permit requested by the Commission after its review of such list.
  - c. include in each NJDEP water allocation permit issued for a project within the Delaware River Basin all requirements necessary to ensure that ~~with respect to water withdrawal,~~ the water allocation project conforms to the Commission’s Comprehensive Plan.
  - d. include a Section 3.8 Finding, consistent with DRBC’s recommendation~~based upon DRBC’s recommendation, that with respect to water withdrawal the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.~~
  - e. provide the Commission with sufficient time for input. Unless the program staff mutually agree otherwise, In general, “sufficient time” ~~will consist of means~~ 30 days for review of a pre-draft or draft permit.
  - f. advise applicants and the DRBC staff at the earliest stage possible when an applicant must obtain approval for relief from or modification of a Commission requirement.

2. For “Notification and Review” water allocation projects, DRBC will:
  - a. within 30 days of receipt of a pre-draft or draft permit from NJDEP, provide NJDEP with comments, including any additional requirements, terms or conditions necessary or appropriate to support a ~~Section 3.8 finding that with respect to water withdrawals, diversions or allocations, the project does not substantially impair or conflict with the Commission’s Comprehensive Plan.~~
  - b. if it so determines, provide a written recommendation that, subject to the conditions as set forth in the preceding paragraph, ~~with respect to water withdrawals, diversions or allocations,~~ the water allocation project does not substantially impair or conflict with the Commission’s Comprehensive Plan.
  - c. determine and advise the NJDEP if a project is required to be incorporated into the Commission’s Comprehensive Plan ~~(CP)~~ and undertake the process, including a public hearing and Commission action, for incorporation of projects into the Comprehensive Plan as appropriate. Once the Commission has added a project to the Comprehensive Plan, the Commission and NJDEP will use the state’s water allocation permit as the single permit for all conditions necessary to ensure that the water ~~withdrawals allocation~~ does not substantially impair or conflict with the Comprehensive Plan.
  - d. if it deems necessary after review of projects described in Sections III.H.2 and III.H.4 above, undertake the process, including a public hearing and Commission action, for an amendment of the Comprehensive Plan.
  - ~~e.~~ provide technical assistance when NJDEP staff requests it.
  - f. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.
  - eg. review and provide NJDEP with the determination regarding requests for relief from or modification of Commission requirements requested in accordance with Section III.I.1.f. above.
3. Should the Parties not agree during the review process on any matter material to the finding, the issue will be handled in accordance with the dispute resolution process identified in Section IX.E. of this Agreement.

#### **IV. Projects Generally Not Subject Considered to Commission Review Wastewater Discharges or Water Withdrawals Within the Scope of this Agreement**

~~For the following categories or aspects of projects, t~~The Commission conducts no review of the following categories or aspects of projects for conformity with the Commission's Comprehensive Plan, unless review is required ~~by the Executive Director~~ (in accordance with Section 2.3.5 B. ~~18~~ 17 or Section 2.3.5 C. of the RPP (18 C.F.R. 401.35(b)(17) or (c)) ~~or by the Commission~~ (in response to a federal or state agency request in accordance with Section 2.3.5 C. of the RPP), or unless technical assistance is requested by the state or federal agency:

- A. Siting, design and construction of industrial/sanitary landfills.
- B. ~~Electric generation/co-generation facilities designed to consumptively use in excess of 100,000 gpd during any 30 consecutive day period, except where the project involves a new or expanded water withdrawal or discharge.~~ Allocations for agricultural use in the state of New Jersey.

#### **V. Review of Underground Storage Cavern Projects**

A. Scope. This Section concerns underground storage caverns within the Delaware River Basin that require a construction or operating permit pursuant to N.J.S.A. 58:10-35 *et seq.* and the implementing rules at N.J.A.C. 7:1F-1.1 *et seq.* that may also be subject to DRBC review and approval under the Compact and Commission regulations.

##### B. Objectives.

1. In order to eliminate, where appropriate, the requirement for separate Commission docket approvals, the DRBC and the NJDEP will use the state's underground storage cavern construction and/or operating permits, as applicable, as the permit(s) for all conditions necessary to ensure that underground storage caverns do not substantially impair or conflict with the Commission's Comprehensive Plan, including the Water Quality Regulations, pursuant to 18 C.F.R. 401.42 (DRBC's One Permit Program). The process will have the objective of avoiding duplication and improving efficiency; however, depending on the specific project and the activities proposed, the project applicant may interact with both the DRBC and the NJDEP to obtain review and approval of a single project. Notably, projects of this type also may require multiple permits from the NJDEP.

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

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

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

D. Notice of Applications, Approvals, and Decommissionings.

1. NJDEP permit applications.

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

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

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

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



#### **E. Category UC-1: Notification – Definition**

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

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

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



- a. review the information provided by the NJDEP in accordance with Section V.D.1. above, and identify any projects that require DRBC review, including as the result of changes made to the Comprehensive Plan since the previous determination that the project would not substantially impair or conflict with the Comprehensive Plan.
- b. provide technical assistance when NJDEP staff requests it, subject to resource constraints.
- c. consistent with Section IX.B. below, collect all applicable DRBC fees in accordance with DRBC rules and regulations in effect at the time of application.

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

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

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

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

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

## **VI. Review of General Permits**

- A. Projects eligible for an NJDEP Master General Permit (MGP) and related authorization (“MGP-Authorized Projects”) shall ~~not~~ be covered under this Agreement ~~unless and until at~~ such time as the Commission, after reviewing the applicable MGPs ~~at the time of MGP renewals by NJDEP or the development of new MGPs~~, has found and determined that the MGP contains all terms and conditions necessary to ensure that MGP-Authorized Projects do not impair or conflict with the DRBC Comprehensive Plan (“the Section 3.8 Finding ~~and Determination~~”).
- B. The NJDEP will provide DRBC with an opportunity to review and provide input in accordance with procedures outlined in Section II.GH. (“~~Standard Renewals~~ Other Wastewater Discharge Projects”) on the renewal of any NPDES MGPs that could potentially apply to projects that are also subject to DRBC review. It is understood by both parties that depending upon the complexity of the MGP, more than 30 days may be needed for DRBC to review and comment on ~~the a~~ new draft MGP.

- C. The NJDEP and the Commission agree that as the resources of each Party permit, the Parties may undertake a review of each existing MGP at any time prior to the time of the MGP renewal, in order for the Commission to provide input and/or make the Section 3.8 Finding ~~and Determination~~ as appropriate.
- D. All NPDES MGPs for which the Commission has made the Section 3.8 Finding ~~and Determination~~ shall be listed in Appendix D of this Agreement. For all projects authorized by an MGP that has been added to Appendix D, there will be no DRBC review prior to issuance of the authorization by NJDEP.
- E. For projects within the Delaware River Basin that are authorized by an MGP that has not been added to Appendix D, the applicant may still require DRBC approval pursuant to the Compact and existing DRBC rules. The burden shall be on the applicant and/or the DRBC to determine the need for a separate application to DRBC.
- F. NJDEP will provide DRBC with a copy of all MGP authorizations issued within the DRB at the time they are sent to the applicant.

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

- ~~A. By means of a docket or resolution following a duly noticed public hearing and those additional consultations and actions required by Section 13.1 of the Compact, the Commission will incorporate into the Comprehensive Plan any new or existing project required by the Compact to be incorporated into such plan.~~
- A. In connection with any project covered by this Agreement, the Commission shall, as it deems necessary, by docket, resolution, or other instrument, undertake the process, including a public hearing and Commission action, for amendment of the Comprehensive Plan.
- B. Water ~~withdrawals~~ allocations from the main stem and Delaware Bay below the Delaware Memorial Bridge or from the tidal portions of tributaries to these waters shall be subject to the full review and decision making by the Commission.
- C. If at any point prior to the issuance of the NJPDES permit or water allocation permit the Executive Director or any Signatory Party determines that a project for which the NJDEP's final action would constitute a decision on behalf of the Commission pursuant to this Agreement should be reviewed and adjudicated by the Commission, the Executive Director will so notify the NJDEP in writing, at which time the project shall be subject to the full review and decision making by the Commission. -New Jersey will no longer make a determination on behalf of the Commission in this circumstance.

## **VIII. Other Requirements**

### **A. Compliance**

1. To the extent authorized by state law, NJDEP will be responsible for compliance monitoring and enforcement of all permit standards, terms, and conditions in the single permit including those designed to implement DRBC requirements. Any and all funds secured by NJDEP through an enforcement action shall be payable to the State of New Jersey. As set forth below, NJDEP will notify or consult with DRBC regarding enforcement actions relating to facilities within the Delaware River Basin.
  - a. Notification. NJDEP will notify DRBC of automatic or inspection-based enforcement relating to wastewater discharges, and water withdrawals, allocations, and underground storage caverns included in this Agreement, within the Delaware Basin.
  - b. Consultation. When NJDEP in its discretion pursues an Administrative Consent Order (“ACO”) as defined by applicable New Jersey regulations for violation of a DRBC requirement, NJDEP will consult DRBC and will give due consideration to any comment that DRBC furnishes. If the Commission does not respond to NJDEP within two weeks of receipt of such request or draft, then NJDEP at its discretion will proceed with the ACO. NJDEP will bear all costs of enforcement and will exercise its discretion in collecting, settling or adjudicating enforcement actions involving facilities within the Delaware River Basin.
2. Nothing in this Agreement limits the Commission’s authority under the Compact and Commission regulations to issue an order or orders, impose administrative penalties, or pursue civil penalties against upon any entity which the Commission determines to be in violation of the Compact or any rule, regulation or order of the Commission duly made or Comprehensive Plan.

### **B. Water Supply and Wastewater Planning**

The NJDEP and the Commission agree to confer during the development and amendment of the New Jersey water supply and area wide water quality management plans, including amendments associated with adopted ~~T~~total ~~M~~maximum ~~D~~daily ~~L~~loads ~~(TMDLs)~~. The NJDEP will copy the Commission on annual updates of the statewide sewer service area maps and permitted surface water dischargers. The Commission may adopt the state and regional water supply and statewide and area wide water quality management plans into the Commission’s Comprehensive Plan.

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

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

## **VIII. NJ Demonstration Program**

- ~~A. Purpose. The NJ Demonstration Program is an opportunity for NJDEP and DRBC to begin the coordinated review process described in this Agreement while the Commission proceeds with formal rulemaking to provide for such process.~~
- ~~B. Eligible Projects. DRBC and NJDEP will jointly determine a list of pilot projects based on in-house applications for new or renewing wastewater discharge projects to proceed under the NJ Demonstration Program. The review of such projects will conform to the procedures described herein at Section II.G. (for "Standard Renewals") and II.I. (for "Other Wastewater Discharge Projects").~~
- ~~C. Approval. If a project reviewed under the NJ Demonstration Program reaches the DRBC or NJDEP approval stage before DRBC has adopted a final rule providing for the One Process/One Permit Program, then NJDEP and DRBC will work collaboratively and cooperatively to:~~
- ~~1. Obtain a finding, based upon action by the Commission, that the project does not impair or conflict with the DRBC Comprehensive Plan ("the Section 3.8 Finding and Determination") before the NJDEP issues the final permit~~
  - ~~2. Include the finding along with other DRBC input to support the finding and all other NJDEP terms and conditions into a single NJPDES permit.~~
  - ~~3. NJDEP and DRBC reserve the right to issue separate approval or decision actions during the demonstration period, if required, at the discretion of either party.~~
- ~~D. Term of Demonstration Program~~
- ~~1. The Demonstration Program will end and Section VIII of this agreement will terminate on the effective date of new DRBC rules for the One Process/One Permit Program; provided however, that~~

- ~~2. if new rules for One Process/One Permit Program have not yet been promulgated, the Demonstration Program will end on January 1, 2016 or when eight (8) demonstration project applications have been processed under the program, whichever is later.~~
- ~~3. If the Demonstration Program ends without new One Process/One Permit rules in effect, the Parties may:~~
  - ~~a. jointly agree to extend the demonstration period to allow more time for DRBC to promulgate new One Process/One Permit rules; or~~
  - ~~b. work collaboratively and in good faith to amend or terminate this Agreement and to develop an alternative long term cooperative agreement to meet goals similar to those outlined in this Agreement.~~

## **IX. Administrative Provisions**

- A. Amendment. This Agreement may be amended by the mutual written agreement of both ~~p~~Parties.
- B. Project ReviewRegulatory Program Fees. ~~Unless and until the Commission adopts a new fee schedule, a~~Any project subject to this Agreement ~~in project categories WW-2, WW3, and WA3,~~ will be subject to the applicable fee(s) set forth ~~in DRBC Resolution No. 2009-2, which is posted on the Commission's website at <http://www.state.nj.us/drbc/library/documents/Res2009-2.pdf> at 18 C.F.R. § 401.43, and as that section may periodically be amended. In particular, see 18 CFR 401.43(b)(1)(iii)(A) (waiver of DRBC application fee for certain applications where a DRBC signatory party serves as lead under the One Permit Program) and (b)(2) (DRBC annual monitoring and coordination fee applicable to active water allocation and wastewater discharge approvals).~~ NJDEP fees ~~likewise remain are~~ unchanged by this Agreement.
- C. Termination on Written Notice. This Agreement may be terminated by either the NJDEP Commissioner or the Commission upon thirty days (30) written notice to the other Party.
- D. Reservation of Authority. The Commission and the NJDEP have and may exercise their independent authorities under their respective statutes and regulations to take appropriate actions to ensure compliance with the terms and conditions of their respective decision making documents and regulations.
- E. Dispute Resolution. The Commission's ~~Water Resources Management Branch~~Project Review Manager and the NJDEP's appropriate Division Director will work together to resolve any issues regarding a subject project. If the issues cannot be resolved, such issues will be elevated to the Executive Director and the state's DRBC Commissioner before the draft permit is released for public comment or before the permit is issued, depending upon



the stage at which DRBC comment is solicited under this Agreement. If the Parties are unable to agree, then each will issue an approval instrument or other determination.

- F. No Third-Party Rights or Enforceability. This Agreement does not create any rights in any person or entity not a party hereto and is not enforceable except by the NJDEP or the Commission.
- G. Severability/Waiver. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by a competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein. Should one or more covenants or conditions be waived by either party, such waiver shall not be deemed to waive or render unnecessary the consent or approval of the waiving party to or of any subsequent similar act by the other party.
- H. Choice of Law. ~~This Agreement is being executed and is intended to be performed in the State of New Jersey, and as to a~~ All aspects of this Agreement that ~~are within the scope of state law~~ pertain to New Jersey's authority or its state-administered programs; shall be governed in all respects by the laws of the State of New Jersey. All aspects of this Agreement that pertain to the DRBC's authority or to Commission-administered programs shall be governed in all respects by the Compact and any other applicable federal law.
- I. Entire Agreement. The Agreement contains all the terms and conditions agreed upon by the Parties and supersedes all prior agreements between DRBC and the NJ DEP and all other negotiations, representations, and understandings of the Parties, oral or otherwise, regarding the subject matter of the Agreement. The Agreement represents the entire agreement between the Parties; all negotiations, oral agreements and understandings are merged herein.
- J. Binding Effect. All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.
- K. Authority. By the signatures below, the Parties execute the Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.
- L. Effective Date. This Agreement shall take effect on the date of execution by the last signing Party.

*IN WITNESS* thereof, the Commission, through its duly authorized Executive Director, and NJDEP, through its Commissioner, as authorized by the Compact and the laws of the signatory party, have executed this Agreement by affixing their respective signatures thereto:

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

DRAFT



## APPENDIX A – Wastewater Program - Specific Implementation Procedures

Technical Topic	Implementation Agreement
Substantial Alterations or Additions (SPW only)	<p>SPW requirements must be considered in project design when a project involves either (a) increases in the effluent flow or pollutant load established by the NJPDES permit or DRBC docket that was in effect at the time of SPW designation; or (b) “Substantial Alterations or Additions” (SAA) as defined in the DRBC Water Quality Regulations. (For complete definition of SAA, see Appendix B.) DRBC modelers will develop the SPW effluent requirements* and NJDEP will include them in its NJPDES permits if they are more stringent than NJDEP limits.</p> <p>*DRBC provides SPW effluent limits for wastewater treatment facilities required to meet SPW no measurable change requirements for Ammonia (NH<sub>3</sub>-N), Dissolved Oxygen, Fecal Coliform, Nitrate (NO<sub>3</sub>-N), Total Nitrogen, Total Phosphorous and Total Suspended Solids in the Lower Delaware River SPW and for BOD<sub>5</sub>, Fecal Coliform, Ammonia + Ammonium, Total Kjeldahl Nitrogen, Nitrite+ Nitrate and Total Phosphorous in the Upper and Middle Delaware River SPW.</p> <p><u>SPW Mixing Zone Analysis:</u> For discharges within the drainage area of waters designated by the Commission as SPW and the tributaries thereto, the NJDEP or the permittee may request that DRBC staff perform a mixing zone analysis when the discharge is new or is an existing discharge subject to the requirement for “No Measurable Change to Existing Water Quality” or when an increased flow or load or “Substantial Alterations or Additions” are proposed.</p> <p>In the event that the time for DRBC’s SPW review and analysis exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application, the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener</p>

Technical Topic	Implementation Agreement
	<p>clause to approve the SAA and associated SPW requirements at a future date.</p>
Import/Export Regulations	<p>The existing rules at Section 2.30 of the Water Code and Sections 2.3.5 A. 16-18 of the RPP require that the Commission approve and incorporate into the <u>Comprehensive Plan</u> imports and exports of water and wastewater for amounts of 50,000 gallons a day or more (as a daily average) for wastewater and 100,000 gallons per day or more (as a daily average) for water.</p> <p>Within 30 days of the DRBC's receipt of an NJDEP pre-draft permit, DRBC will identify and provide to the NJDEP the water and wastewater requirements for inclusion in the NJDEP permit. In-basin effluent limitations will be adjusted by subtracting 100% of the imported load (lbs./day) from the in-basin allocation. In Zones 2-5, percent removal of <u>CBOD20</u>, as provided in the DRBC's "Status of Wasteload Allocations" will also be required.</p>
Mixing Zone Review	<p>DRBC requirements apply to discharges to the main stem Delaware River, Estuary and Bay (Water Quality Zones 2 – 6); the more stringent of NJDEP and DRBC requirements apply in the tidal portions of the tributaries. DRBC will take the lead in developing mixing zone requirements and the dilution factor for discharges to Zones 2-6 and the tidal portions of the tributaries. NJDEP will include these requirements in the NJPDES permit as appropriate. DRBC technical assistance may require interfacing with the applicant and the applicant's consultant in determining the size of the mixing zone and the dilution factor for acute toxicity and TDS.</p> <p>Applicants may choose to apply to the DRBC for an Alternative Mixing Zone (AMZ) determination under the DRBC Water Quality Regulations. DRBC will provide the determination to the applicant and the NJDEP.</p> <p>In the event that the time for DRBC's review and analysis for a mixing zone, dilution factor or an AMZ exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application,</p>

Technical Topic	Implementation Agreement
	the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to include, as appropriate, a mixing zone, dilution factor or an AMZ at a future date.
Total Dissolved Solids	DRBC's basin-wide effluent limit of 1000 mg/L will be included in NJPDES permits, except that if an applicant requests an alternate TDS limit, DRBC staff will review and develop an alternate limit (a "TDS Determination"), consistent with DRBC regulations. In the event that there are no available effluent data for TDS, NJDEP will allow for a maximum of five years of data collection prior to imposing a TDS requirement.
CBOD20	DRBC will establish CBOD20 allocations and percent removal requirements as provided in the DRBC's "Status of Wasteload Allocations" for discharges to Water Quality Zones 2 – 5 and the tidal portions of the tributaries, and NJDEP will include these in its NJPDES permits.
Color	DRBC regulations provide for a color limit of 100 PtCoU. If an applicant demonstrates the need for a higher limit, DRBC will provide a determination establishing an alternate limit consistent with Section 4.30.5 of the WQR. NJDEP will include the determination in its NJPDES permits.
Temperature	DRBC will provide NJDEP with heat dissipation areas and associated temperature limits for certain power plants discharging to the main stem Delaware River or tidal portions of tributaries (DRBC Water Quality Zones 2-6) thereto, including: <del>PSEG's Mercer, Hope Creek and Salem plants, and the Chemours (formerly Dupont) Deepwater plant. DRBC staff is also developing draft amendments to the WQR to provide for deference to Section 3-16(a) variances approved by NJDEP. (In the absence of the rule change, the NJDEP will continue to issue NJPDES permits in accordance with federal and state rules and DRBC will continue to issue dockets in accordance with the Compact and DRBC regulations.)</del>

Technical Topic	Implementation Agreement
	<p>In the event that the time for DRBC's review and analysis exceeds 6 months after NJDEP notifies DRBC of its receipt of a technically complete application, the NJDEP will consult with DRBC to determine next steps. NJDEP may, at its discretion, issue a NJPDES permit renewing the conditions of approval for the existing facilities, with a re-opener clause to include the heat dissipation area at a future date.</p>
Whole Effluent Toxicity (WET)	<p>NJDEP will assign WET limits in accordance with NJDEP and DRBC Water Quality Regulations and EPA guidance. The most sensitive species will be utilized in the monitoring requirements. Dual species (fish and invertebrate) testing will be required at least every 10 years to confirm the most sensitive species. DRBC will provide input as necessary in accordance with Section II.G.-I. above.</p>
Toxic Limits	<p>NJDEP will assign limits for toxics criteria in accordance with Commission's Water Quality Regulations and EPA TSD guidance and applicable state regulations.</p>

**APPENDIX B: Excerpt from: ADMINISTRATIVE MANUAL – PART III WATER QUALITY REGULATIONS, With Amendments through December 4, 2013, 18 CFR Part 410, (FR Mar 2014)**

**ARTICLE 3**

**WATER QUALITY STANDARDS FOR THE DELAWARE RIVER BASIN  
[COMPREHENSIVE PLAN, SECTION X]**

**Section 3.10 Basinwide Surface Water Quality Standards.**

\* \* \* \* \*

**3.10.3 Stream Quality Objectives.**

**A. Antidegradation of Waters.**

\* \* \* \* \*

**2. Special Protection Waters.**

**a. Definitions**

\* \* \* \* \*

- 16) “Substantial Alterations or Additions” are those additions and alterations resulting in: (a) a complete upgrade or modernization of an existing wastewater treatment plant, including substantial replacement or rehabilitation of the existing wastewater treatment process or major physical structures such as headworks, settling tanks, and biological/chemical treatment and filtration tanks, whether conducted as a single phase or a multi-phased project or related projects; or (b) a new load or increased flow or loading from an existing facility that was not included in a NPDES permit or docket effective on the date of SPW designation. Among other projects, modifications made solely to address wet weather flows; and alterations that are limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal are not deemed to be “Substantial Alterations or Additions.”

\* \* \* \* \*

## **APPENDIX C: List of DRBC Waivers/Variations from Stream Quality Objectives and Effluent Limitations**

NJDEP will advise applicants and the DRBC staff at the earliest stage possible when an applicant must apply for and obtain approval from the Commission for relief from or modification of a Commission requirement. Such instances include but are not limited to the following:

1. approval for exportation of wastewater from or importation of wastewater to the basin in accordance with Sections 2.3.5 A.16 and 2.3.5 A.18 of the RPP and Section 2.30 of the Water Code.
2. determination in accordance with Section 2.3.5 A.19 of the RPP that a project otherwise subject to review is short-term or temporary and will have no substantial impact on water resources of the basin.
3. waiver of a rule by the Commission for good cause shown, in accordance with Section 2.9.3 of the RPP.
4. TDS determination in accordance with Section 3.10.4 D.2. of the WQR
5. alternative mixing zone for a toxic pollutant in accordance with Section 4.20.5 A.1.f. of the WQR.
6. color variance in accordance with Section 4.30.5 A.2.c. of the WQR
7. temperature variance in accordance with Section 4.30.6 F. of the WQR.

**APPENDIX D: NJDEP General Permits ~~Approved or Conditionally Approved by the~~  
Commission Covered by this Administrative Agreement**

Consolidated School General Permit (ASC)

Consolidated Potable Water Treatment Plant (BPW)

General Groundwater Remediation Clean-up (BGR)

[TO BE DEVELOPED]