

## FREQUENTLY ASKED QUESTIONS

### **Draft 2023 Amendments to the Administrative Agreement between the Delaware River Basin Commission and the New Jersey Department of Environmental Protection**

#### **1. What is the driver for the proposed amendments to the Commission's 2015 administrative agreement with the New Jersey Department of Environmental Protection (NJDEP)?**

The Commission's primary purpose in amending its 2015 Administrative Agreement ("AA") with the NJDEP is to add certain underground storage cavern projects to the classes of projects that may be reviewed in accordance with the DRBC's One Permit Program, regulations for which are set forth at Section 2.3.11 of the Commission's *Rules of Practice and Procedure* (RPP), [18 CFR 401.42](#).

On April 6, 2023, the NJDEP issued a final rule governing the "construction, operation, modification, and decommissioning of underground storage cavern systems used for the underground storage of any natural or artificial gas, or any petroleum product or derivative of any petroleum product, excluding liquefied natural gas." [55 N.J.R. 905\(a\)](#) (May 1, 2023). These comprehensive regulations, designed to prevent "the pollution, contamination, diversion, or depletion of subsurface and percolating waters" and other environmental media, are more focused and detailed than DRBC's regulations for the protection of water resources from such activities. The NJDEP permitting and operational standards for storage caverns include, but are not limited to, provisions governing operation and maintenance, emergency response, decommissioning, and environmental and health impacts.

#### **2. What will be the effect on the Commission's project review process of adding storage cavern projects to the One Permit Program through the Commission's AA with NJDEP?**

Adding storage cavern projects to the DRBC's One Permit Program through the proposed AA amendments will allow the DRBC and NJDEP to follow a single process led by the NJDEP for review of these projects. As for certain classes of wastewater discharge and water allocation project applications that have been processed under the One Permit Program for the past eight years, the changes provide for NJDEP to issue a single permit that covers all the standards, rules, requirements, terms and conditions for each covered storage cavern project, including those conditions required, in accordance with Section 3.8 of the Delaware River Basin Compact ("Compact"), to ensure the project does not substantially impair or conflict with the Commission's Comprehensive Plan.

Under the One Permit Program and the implementing AA with NJDEP, when an application for a project subject to review by both agencies is filed with the NJDEP, the DRBC staff is notified. For those categories of projects identified in the AA as requiring DRBC input, the DRBC staff provides the input, including where specified by the AA, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the determination required by Section 3.8 of the Compact. Unless the NJDEP disapproves the project or the AA provides for separate Commission action, the NJDEP includes in the permit issued to the project sponsor the finding required by Section 3.8 of the Compact and any associated conditions of approval. With respect to underground storage caverns, the Commission would ordinarily review new underground storage cavern projects, renewals and modifications of existing underground storage cavern projects subject to the Commission's review but not previously reviewed by the

Commission, and major modifications of existing underground storage cavern projects. Under the AA, the DRBC staff would provide input during NJDEP's review of such projects.

Notably, pursuant to Section 2.3.11 F. of the RPP (18 CFR 401.42(f)), Section VI.C. of the 2015 AA, and Section VII.C. of the proposed amended AA, the Commission's ability to exercise its review and enforcement authorities is expressly retained. Thus, by regulation, and under the current AA and the AA as proposed, the Executive Director or any signatory party to the Compact may exercise their discretion to require that a project be "subject to the full review and decision making by the Commission."

### **3. How will the DRBC notify the public that a cavern project is pending under the One Permit Program?**

In accordance with Section 2.3.11 D.5 of the RPP (18 CFR 401.42(d)(5)), when DRBC staff are notified that the NJDEP has received an application for any project covered by the One Permit Program, the Commission staff add the application to a list on DRBC's [One Permit Program status page](#). The public is thus provided with notice that an application is pending and can seek additional information on the application from the Commission and the lead agency. In the case of storage cavern projects in the New Jersey portion of the basin, interested members of the public can comment on the application in accordance with the procedures and practices of the NJDEP.

### **4. What are the reasons for the proposed amendments to the AA unrelated to NJDEP's underground storage cavern program?**

In addition to "(i) including within the categories of projects managed under the Commission's One Permit Program underground storage caverns as contemplated by NJDEP's regulations codified at Title 7, Chapter 1F of the New Jersey Administrative Code," the proposed amendments would "(ii) remov[e] provisions that are no longer necessary or applicable concerning the transition to the One Permit Program; and (iii) update[e] certain citations, language and procedures to align with recent regulatory changes and with current terminology and practice, and to eliminate redundancy." [Draft Resolution](#) authorizing the Executive Director to amend the Commission's administrative agreement with the New Jersey Department of Environmental Protection.

*Provisions no longer necessary or applicable.* The 2015 AA included a Section VIII, "New Jersey Demonstration Program," under which the two agencies agreed to select certain new or renewing wastewater discharge projects to be reviewed in accordance with the AA on a pilot basis. Since the program has now been implemented under the Commission's regulations and the 2015 AA for eight years, the provisions for a "Demonstration Program" and references to them are no longer needed or relevant and are proposed to be deleted.

*Updates to citations.* The Commission's regulations were originally codified as parts of an "Administrative Manual" in accordance with a numbering system unique to the Commission. Except for the DRBC's *Water Code* and *Water Quality Regulations*, which are incorporated by reference in the *Code of Federal Regulations* ("CFR") at 18 CFR Part 410, all of the Commission's regulations are also set forth in full in the *Code of Federal Regulations* ("CFR"). Because the CFR is now available in a convenient online format as the [eCFR](#), and because its numbering system is far more compact and widely used than that of the Administrative Manual, we have added CFR citations in parentheses to all citations of DRBC regulations in the AA.

In some instances, updates to citations to the RPP are needed because the Commission has made rule changes since the AA with NJDEP was adopted in 2015. By [Resolution No. 2021-01](#) in February of 2021, after an extensive notice and comment rulemaking process, the Commission adopted final rules that in relevant part revised the language of section 2.3.5 B.18 (401.35(b)(18)) of the RPP, renumbered sections 2.3.5 B. 15-18 of the RPP (18 CFR 401.35(b)(15)-(18)) (which became (b)(14) – (b)(17)), and revised section 2.3.5 C. of the RPP. Accordingly, multiple references to sections 2.3.5 B.17 (18 CFR 401.35(b)(17)) and 2.3.5 C. (18 CFR 401.35(c)) in the 2015 AA are proposed to be updated.

*Updates to language and procedures to align with current terminology and practice, and to eliminate redundancy.*

- The One Permit Program underway pursuant to the 2015 AA has worked smoothly and will continue with no material changes for wastewater discharge and water allocation projects.
- The 2015 AA used the terms “water allocation” and “water withdrawal” interchangeably. Because NJDEP’s program uses the former term, the proposed amendments include consistent replacement of the term “water withdrawal” with “water allocation.”
- Section 3.8 of the Compact establishes that any project having a substantial effect on water resources of the basin may be approved only if it “would not substantially impair or conflict with the [Commission’s] comprehensive plan.” Compact, § 3.8. Because the finding that a project would not substantially impair or conflict with the Comprehensive Plan is referenced repeatedly in the AA, the proposed revisions define the term “Section 3.8 Finding” once at Section II.F.1., and again at Section VI.A., and otherwise use it throughout the agreement in place of lengthier restatements of the provision.
- Because the NJDEP’s staff have routinely accommodated the needs of the DRBC’s staff regarding adequate time to review pre-draft and draft permits, proposed revisions include an assumption that adequate time for review means 30 days unless the staff of the respective agencies mutually agree otherwise.
- At Section II.H. of the AA, defining the types of projects classified as “Other Wastewater Discharge Projects” under the agreement, captions have been added for each project type, and language has been revised to improve clarity.
- Similarly, at Sections III.F. and III.H, defining the types of water allocation projects classified as “Notification” and “Notification and Review” projects, respectively, language has been revised for clarity. In Section III.H., defining “Notification and Review” water allocation project types, the project types have been consolidated and descriptive captions added for each type. In neither instance are substantive changes proposed to the types of projects included in the classification.
- At Section III.I.2., identifying DRBC’s responsibilities with respect to “Notification and Review” water allocation projects, an obligation has been added that reads, “consistent with Section IX.B. below, the collection of all applicable DRBC fees in accordance with rules and regulations in effect at the time of

application.” This responsibility was already included under Section IX of the 2015 Agreement and was inserted here as well for the convenience of users of the Agreement.

- Similarly, the proposed amendments include additional references in several locations as appropriate to provisions of Section VII “Separate Action by the Commission” (Section VI in the 2015 AA). These provisions reference, for example, the Commission’s continuing responsibility, through a notice and comment process, to amend the Comprehensive Plan as appropriate in connection with any project covered by the AA, and its reservation of authority to conduct a separate review and decisionmaking process for any project covered by the AA. No substantive changes to the provisions of Section VII (Section VI of the 2015 AA) are proposed.
- A change to the process for sharing information about NJDEP Treatment Works Approvals (TWA) for wastewater discharge projects reflects NJDEP’s intention to create and maintain a report listing TWA applications received on the NJDEP DataMiner website. Because DRBC staff and the general public will have access to this report, NJDEP will not need to provide DRBC with this information by other means. DRBC will coordinate with the TWA staff on any applications for TWA approvals within the Basin. Revisions to Sections II.I.1.h. and II.I.2.c. of the AA are proposed accordingly.
- Section VI, “Review of General Permits” of the proposed AA (Section V of the 2015 AA) continues to provide that an NJDEP Master General Permit (MGP) and the projects authorized by that permit will be covered under the AA at such time as the Commission has reviewed the MGP and determined that it “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’).” 2015 AA, sec. V.A; prop. AA, sec. VI.A. The AA further provides that “All NPDES MGPs for which the Commission has made the Section 3.8 Finding shall be listed in Appendix D of this Agreement.” 2015 AA, sec. V.D.; prop. AA, sec. VI.D. The proposed amendments include the addition to Appendix D of three MGPs: those known as the “Consolidated School General Permit (ASC),” the “Consolidated Potable Water Treatment Plant (BPW),” and the “General Groundwater Remediation Clean-up” MGPs. Under the proposed amendments, on the recommendation of the Commission’s Project Review staff and with the concurrence of the NJDEP, the Section 3.8 Finding will be included in authorizations issued under the Consolidated School General Permit at § IV.H.3.b.iv. and in the Consolidated Potable Water Treatment Plant permit at § IV.D.3.d. The Section 3.8 Finding will also be included in individual permits issued under the General Groundwater Remediation Clean-Up permit.

## **5. How will the proposed amendments to the AA affect the environment and communities?**

The proposed amendments to Commission’s AA are procedural; they do not alter the substantive requirements applicable to projects. The proposed amendments provide for ongoing implementation of existing environmental protections, including those provided by NJDEP’s robust storage cavern program, in a streamlined manner. The impact of the proposed amendments on communities is thus minimal. Interested parties will continue to have notice of projects that are subject to review under the Compact and New Jersey law through Commission and NJDEP notification processes. When applications are processed under the One Permit Program, the NJDEP permit, if issued, will be the single instrument of approval unless, pursuant to the authorities cited in response to Question 2 above, the Executive Director or any signatory party to the Compact requires the project to be subject to the full review and decision

making by the Commission, or unless separate action by the Commission is otherwise required by Section VII of the proposed amended AA (for example to incorporate projects into the Commission's Comprehensive Plan).

**6. How can the public find out more about the DRBC One Process One Permit Program?**

For additional information about the One Permit Program, please see the pertinent rulemaking documents at <https://www.nj.gov/drbc/programs/project/#3> and the program status page at <https://www.nj.gov/drbc/programs/project/opop-status-page.html>.

**7. How can the public review and comment on the draft resolution and proposed amendments to the 2015 AA between the DRBC and NJDEP?**

Links to the [draft Resolution](#) authorizing the Executive Director to amend the Commission's administrative agreement with the NJDEP and the [text of the proposed amendments](#) are available here and on the Commission's website at: <https://www.nj.gov/drbc/meetings/upcoming/index.html>. The latter page also includes links to register to attend and provide oral comment during the Commission's public hearing on Wednesday, November 8, 2023, at 1:30 p.m., and to submit written comments on the proposed resolution and amendments. The comment period, originally set to close on Tuesday, November 14, 2023, at 5:00 p.m., has been extended through Monday, November 20, 2023, at 5:00 p.m.