

10/25/2024 9:05

**DOCKET NO. D-1980-025-3**

**DELAWARE RIVER BASIN COMMISSION**

**Located in Drainage Area to Special Protection Waters**

**WestRock Converting, LLC  
Surface Water Withdrawal  
Smithfield Township, Monroe County, Pennsylvania**

**PROCEEDINGS**

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on September 29, 2023 for renewal of an allocation of surface water and review of a surface water withdrawal project (Application).

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Monroe County Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on November 6, 2024.

**A. DESCRIPTION**

- Purpose.** The purpose of this docket is to renew the approval of an allocation of 15.438 million gallons per month (mgm) of surface water from the Mill Intake on Brodhead Creek for non-contact cooling and industrial processes at the docket holder's paper board mill.
- Location.** The surface water intake is located on Brodhead Creek in the Lower Brodhead Creek Watershed in Smithfield Township, Monroe County, Pennsylvania within the drainage area to the Middle Delaware, which the Commission has designated as Special Protection Waters (SPW). Brodhead Creek at the project site is designated by the Pennsylvania Department of Environmental Protection (PADEP) as Trout Stocking and Migratory Fishery (TSF, MF).

Specific location information has been withheld for security reasons.

- Area Served.** Water from Brodhead Creek is used only for non-contact cooling and industrial processes at the docket holder's paper board mill. For the purpose of defining Area

Served, the Application is incorporated herein by reference consistent with conditions contained in Section C. DECISION of this docket.

**4. Design Criteria.** The docket holder manufactures coated recycled paper board in their Stroudsburg Mill. Existing average and maximum surface water demands are 0.3101 million gallons per day (mgd) and 0.5459 mgd, respectively. Approximately 60 percent of the water withdrawn is used for non-contact cooling purposes and the remainder is used for industrial processes. The docket holder expects no increases in water demands within the next 10 years.

Water used for non-contact cooling water (NCCW) and industrial purposes is supplied by the Mill intake on Brodhead Creek. Water from the Brodhead Creek intake enters the pump house after passing through gross contaminant screens to prevent branches, leaves and ice from damaging the processing equipment. Two pumps within the Mill Pump House (one active pump, one emergency backup pump) convey the water approximately 300 feet through a 10-inch stainless steel pipe to additional screens to remove finer debris.

The docket holder also maintains a separate intake approximately 350 feet upstream from the Mill Intake on Brodhead Creek for fire suppression purposes only. The intake transfers water to a 1.08-million-gallon capacity impoundment adjacent to the Brodhead Creek. The fire suppression system is tested annually and although not metered, the docket holder estimates that approximately 50,000 gallons of water is used for this testing.

Potable water is supplied by the Warehouse Well. The Boiler House Well serves as an emergency backup to the Warehouse Well but has not been operated since 1984. The maximum potable water demand is 6,000 gpd and is not expected to increase within the next 10-years. This withdrawal rate is less than the Commission’s threshold for review.

**5. Facilities.** The existing project intakes have the following characteristics:

<b>INTAKE ID.</b>	<b>WITHDRAWAL WATER BODY</b>	<b>PUMP CAPACITY (GPM)</b>	<b>7Q10 FLOW AT INTAKE (CFS)</b>	<b>YEAR CONSTRUCTED</b>
Mill	Brodhead Creek	1,215	51	1940
Fire	Brodhead Creek	2,000	51	unknown

The Mill Intake is metered.

Prior to entering the distribution system, surface water is chlorinated on an as needed basis.

A portion of the subject property including the surface water intake is located within the 100-year flood plain of Brodhead Creek.

6. **Other.** Process wastewater is conveyed to the docket holder’s industrial wastewater treatment plant most recently approved by DRBC Docket No. D-2006-041-4 on March 6, 2024. The PADEP issued National Pollutant Discharge Elimination System (NPDES) Permit No. PA0012963 for this discharge. The treatment facility has adequate capacity to continue to receive wastewater from the project. NCCW is discharged along with treated wastewater to Brodhead Creek. Sanitary wastewater is pumped to a holding tank, which is pumped out when full.

## B. FINDINGS

### 1. Special Protection Waters

In 1992, the DRBC amended its *Water Quality Regulations (WQR)* by the addition of regulations for the protection of Special Protection Waters (SPW), designed to maintain the quality of interstate waters where existing quality is better than the established stream quality objectives. As the result of its initial classifications and subsequent amendments, the Commission has designated the entire non-tidal main stem Delaware River from Hancock, New York to Trenton, New Jersey as SPW. DRBC’s SPW regulations apply within the designated reaches and their drainage area.

The surface water intakes providing water supply to the docket holder are located within the drainage area to SPW. Sections 3.10.3A.2.e.1) and 2) of the *WQR* state that projects subject to review under Section 3.8 of the *Compact* that are located within the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan (NPSPCP) that controls the new or increased non-point source loads generated within the portion of the docket holder’s service area which is also located within the drainage area of SPW. Since this project involves the renewal of an approval for existing activities and does not entail additional construction or expansion of facilities or create new or increased non-point source loads, the NPSPCP requirement is not applicable at this time.

However, even if it was applicable at this time, as noted above in A.3. the docket holder’s project and area served is located entirely in Smithfield Township. This municipality has enacted and is actively implementing a non-point source/stormwater control ordinance adopting the Brodhead-McMichael Creek Watershed Act 167 Plan. Compliance with the Brodhead-McMichael Creek Watershed Act 167 Plan, approved by the PADEP on December 2, 2022 and Smithfield Township Ordinance No. 246, enacted October 11, 2023 generally meet the requirements of Article 3.10.3.A.2.e.1 of the Commission’s *Water Quality Regulations for the Area Served* as described in A.3. above within Smithfield Township. Prior to allowing connections from any new service areas or any new developments not in compliance with these Ordinances the docket holder shall submit and have approved by the Executive Director of the DRBC a Non-Point Source Pollution Control Plan (NPSPCP) in accordance with Section 3.10.3.A.2.e. (See Section C. DECISION Condition C.22.).

2. **Surface Water Charges**

The docket holder shall pay for surface water use in accordance with Basin Regulations-Water Supply Charges 18 C.F.R. Part 420. See Section C. DECISION condition C.3.

3. **Other Findings**

The docket holder estimates that the project withdrawals used for the purpose of industrial cooling and industrial processes result in a consumptive use of 0 percent and 61 percent, respectively. Based on average use records, the total consumptive use at the facility is approximately 26 percent of the total water use. The DRBC definition of consumptive use is defined in Basin Regulations-Water Supply Charges 18 C.F.R. 420.1(d).

The project is designed to conform to the requirements of the *Water Code (WC)* and *Water Quality Regulations (WQR)* of the DRBC.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

**C. DECISION**

Effective on the approval date for Docket No. D-1980-025-3 below, Docket No. D-1980-025-2 is terminated and replaced by Docket No. D-1980-025-3. The project and appurtenant facilities as described in in Section A.4. (Design Criteria) and A.5. (Facilities) are approved subject to the following conditions, pursuant to Section 3.8 of the *Compact*:

**Monitoring and Reporting**

1. The docket holder shall continue to report to the PADEP all surface and groundwater sources described in this docket in accordance with the Pennsylvania Regulations (Title 25 - Environmental Protection, [25 PA. CODE CH. 110], Water Resources Planning).

2. The project withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted for surface water withdrawals by the designated agency (PADEP) if maintenance of the 5 percent performance is not technically feasible or economically practicable. Meters or other methods of measurement shall be subject to approval and inspection by the PADEP as to the type, method, installation, maintenance, calibration, reading and accuracy. A record of daily withdrawals shall

be maintained, and monthly totals shall be reported to the PADEP annually and shall be available at any time to the Commission if requested by the Executive Director.

3. The docket holder shall pay for surface water use in accordance with *Basin Regulations – Water Supply Charges 18 C.F.R. Part 420*.

**Other Conditions**

4. During any month, the withdrawal from the Mill Intake shall not exceed 15.438 million gallons. The intake shall not be pumped above the maximum rate and monthly allocation as indicated below:

<b>INTAKE ID</b>	<b>MAXIMUM RATE (GPM)*</b>	<b>MONTHLY ALLOCATION (MGM)</b>
Mill Intake	875	15.438
Fire Intake	Fire Suppression Purposes Only	

\* Based on a 24-Hour Average

5. In accordance with 18 C.F.R. 401.8. of the Commission’s *Rules of Practice and Procedure (RPP)*, if at any future time the Project is changed materially from the Project as described in this docket, it will be deemed to constitute a new and different project for the purposes of Article 11 of the Delaware River Basin Compact and will require Commission amendment of the Comprehensive Plan. In accordance with the same section of the RPP, whenever a change to the Project is made, the sponsor must advise the Executive Director, who will determine whether the change is deemed materially for purposes of this provision.

6. This approval shall expire on the expiration date set forth below unless prior thereto the docket holder has applied to the Commission to renew or extend this approval.

7. The docket holder is responsible for timely submittal to the DRBC of a docket renewal application on the appropriate application form including the appropriate docket application filing fee (see 18 C.F.R. 401.43) at least 6 months in advance of the docket expiration date set forth below. The docket holder will be subject to late filed renewal surcharges in the event of untimely submittal of its renewal application whether DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. If the docket holder has not applied to renew the docket or the DRBC is unable to reissue the docket before the expiration date below, the terms and conditions of the current docket will remain fully effective and enforceable pending the renewal of the docket.

8. The surface water intakes and operational records shall be available at all times for inspection by the DRBC.

- 9.** The surface water intakes shall be operated at all times to comply with the requirements of the *WC* and *WQR* of the DRBC.
- 10.** No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).
- 11.** The docket holder shall implement to the satisfaction of the PADEP, a drought or other water supply emergency plan.
- 12.** No new water service connections shall be made to premises connected to sewerage systems which are not in compliance with all applicable effluent limits contained in State permits and the *Water Quality Regulations* of the Commission.
- 13.** Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.
- 14.** The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.
- 15.** The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 CFR 401.43).
- 16.** This approval is transferable by request to the DRBC Executive Director provided that the project purpose and area served approved by the Commission in this docket will not be materially altered because of the change in project ownership. The request shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).
- 17.** The docket holder shall request a name change of the entity to which this approval is issued if the name of the entity to which this approval is issued changes its name. The request for name change shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 C.F.R. 401.43).
- 18.** The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder to ensure the proper control, use and management of the water resources of the Basin.
- 19.** If the monitoring required herein or any other relevant data or information demonstrates that the operation of this project is interfering with or otherwise impairing existing uses of ground or surface water, or if the docket holder receives a complaint from an existing ground or surface

water user within the zone of influence of the withdrawal alleging such interference or impairment, the permit holder shall immediately notify the Executive Director, and unless excused by the Executive Director, shall investigate the demonstrated or alleged impacts. For purposes of this condition, notification shall mean either (a) electronic transmittal of written notice to the Executive Director via email (using addresses posted on the DRBC website); or (b) written notice to the Executive Director and a telephone call to the Project Review Section at 609-883-9500, ext. 216. (Oral notification must always be accompanied by immediate written notification directed to the Executive Director.) In addition, the docket holder shall provide written notice to all potentially affected water users of the docket holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the docket holder's project withdrawal shall be repaired, replaced or mitigated at the docket holder's expense.** The scope of the options to consider for repair, replacement and/or mitigation shall not be limited solely to those that are owned, operated, or controlled by the project sponsor. An investigation report and/or mitigation plan prepared and certified by a licensed professional engineer and/or a licensed professional geologist shall be submitted to the Executive Director as soon as practicable following notice of the demonstrated or alleged impairment consistent with this paragraph. The Executive Director shall make the final determination regarding the scope and sufficiency of the investigation and the extent of any mitigation measures that may be required. Where ground and surface waters are rendered unavailable, unusable, or unsuitable for the pre-existing use, the Executive Director may direct the docket holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement, or mitigation.

**20.** The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

**21.** For the duration of any drought emergency declared by either Pennsylvania or the Commission, water service or use by the docket holder pursuant to this approval shall be subject to the prohibition of those nonessential uses specified by the Governor of Pennsylvania, the Pennsylvania Emergency Management Council, PADEP, or the Commonwealth Drought Coordinator to the extent that they may be applicable, and to any other emergency resolutions or orders adopted hereafter by the Commission.

**22.** Compliance with the Brodhead-McMichael Creek Watershed Act 167 Plan, approved by the PADEP on December 2, 2022 and Smithfield Township Ordinance No. 246, enacted October 11, 2023 generally meet the requirements of Article 3.10.3.A.2.e.1 of the Commission's Water Quality Regulations for the Area Served as described in A.3. above within Smithfield Township. Prior to allowing connections from any new service areas or any new developments not in compliance with these Ordinances the docket holder shall submit and have approved by the Executive Director of the DRBC a Non-Point Source Pollution Control Plan (NPSPCP) in accordance with Section 3.10.3.A.2.e.

**23.** Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the *Rules of Practice and Procedure*. In accordance with Section 15.1(p) of the *Delaware River Basin Compact*, cases and controversies arising under the *Compact* are reviewable in the United States district courts.

**BY THE COMMISSION**

**APPROVAL DATE:**

**EXPIRATION DATE: December 5, 2034**

**DRAFT**