

DOCKET NO. D-2012-012 CP-2

DELAWARE RIVER BASIN COMMISSION

**Kimberly-Clark Corporation
Kimberly-Clark Chester Cogeneration Facility
Surface Water Withdrawal
City of Chester, Delaware County, Pennsylvania**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on May 28, 2022 for a renewal and approval of an allocation of surface water and review of a surface water withdrawal project.

The Application was reviewed for continuation of the project in the Comprehensive Plan and approval under Section 3.8 of the *Delaware River Basin Compact*. The Delaware 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 9, 2022.

A. DESCRIPTION

1. **Purpose.** The purpose of this project is to renew the approval of an existing surface water withdrawal with a decrease in allocation from 341.00 mgm to 225.15 mgm to provide water to the docket holder's Chester facility for industrial cooling and process purposes. This reduction in water use is due to the replacement of its coal fired cogeneration facility with a natural gas fired system.

2. **Location.** The project is located in the Delaware River Watershed within Water Quality Zone 4, in the City of Chester, Delaware County, Pennsylvania. The Delaware River near the project site is designated by the Pennsylvania Department of Environmental Protection (PADEP) as supporting Warm Water Fishes (WWF) and Migratory Fishes (MF).

Specific location information has been withheld for security reasons.

3. **Area Served.** The docket holder's cogeneration facility provides steam and electricity to support production operations at their Chester facility. Water withdrawn via Intake No. 1 services only the docket holder's Chester facility. The service area is outlined on a service area map entitled "Layout Site Preparation" submitted with the previous withdrawal Application. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. **Design Criteria.** The docket holder continues to operate their Cogeneration Facility, which supplies steam and electricity to the Kimberly-Clark Chester facility. The docket holder has replaced its coal fired Cogeneration Facility with a natural gas fired system.

The Kimberly-Clark facility has an existing average and maximum water demand of 3.501 mgd and 7.505 mgd, respectively. The docket holder does not project an increase in average and maximum water demand over the next 10 years (2032). The allocation of 225.15 mgm should be sufficient to meet the future demands of the docket holder's facility.

The facility has an interconnection with the Chester Water Authority (CWA) which is used on a regular basis. The docket holder purchases on average 1.0 million gallons per day (mgd), which is used for potable, sanitary and to supplement their industrial cooling water use.

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

INTAKE	WITHDRAWAL WATER BODY	PUMP CAPACITY (GPM)	7Q10 FLOW AT INTAKE (CFS)	YEAR CONSTRUCTED
1	Delaware River	13,900	3,255	1954

Surface water Intake No. 1 is metered.

Prior to entering the distribution system, withdrawn water is filtered to remove suspended solids.

6. **Other.** Wastewater is conveyed to the Delaware County Regional Water Quality Control Authority (DELCORA) sewage treatment facility most recently approved by DRBC Docket No. D-1992-018 CP-5 on September 8, 2022. The PADEP issued NPDES Permit No. PA0027103 for this facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

Non-contact cooling water (NCCW) is conveyed from the docket holder's facility to Outfall No. 3 and discharged to the Delaware River. Outfall No. 3 was most recently approved by DRBC Docket No. D-1984-053-3 on March 13, 2019. The PADEP issued NPDES Permit No. PA0013081 for this discharge.

7. **Relationship to the Comprehensive Plan.** The docket holder's Delaware River Intake was previously included in the Comprehensive Plan by the Commission in Docket No. D-2012-012 CP-1 approved on December 5, 2012 on account of the relationship with water imported from the Susquehanna River Basin (CWA interconnection). Issuance of this docket will continue the project in the Comprehensive Plan.

B. **FINDINGS**

The purpose of this docket is to continue the existing Cogeneration facility in the Comprehensive Plan with a decrease in allocation from 341 mgm to 225.15 mgm to provide water to the docket holder's Chester facility for industrial cooling and process purposes.

1. Drought Management and Contingency Plans (DMCPs) for Water Withdrawal greater than 1 mgd

The docket holder shall implement the DMCP submitted on August 2, 2017 and approved by DRBC on October 25, 2017 upon direction by the Executive Director (see Section C. DECISION condition C.7.).

2. Consumptive Use

The docket holder estimates that the project withdrawals, used for the purpose of cooling associated with power generation, result in a consumptive use of approximately 93.5% of the total water use.

The docket holder estimates that the project withdrawals, used for the purpose of industrial process, result in a consumptive use of 6.5 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).

3. Consumptive Use Replacement Plan (CURP)

The energy from waste facility will continue to consumptively use up to 225.15 mgm of water provided by their existing surface water intake and their interconnection with CWA.

In its DMCP, submitted on August 2, 2017 and approved by DRBC on October 25, 2017, the docket holder identified that it will utilize water from CWA as its consumptive use replacement source during a Commission declared critical hydrologic condition. The CWA interconnection qualifies as a suitable replacement source as the water from the interconnection originates from outside of the Delaware River Basin. As directed by the DRBC, for the duration of a critical hydrologic condition the docket holder shall implement its CURP contained within its DMCP and utilize only water from CWA for electric generating or cogenerating purposes (see Section C. DECISION condition C.8).

4. 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).

The project is designed to conform to the requirements of the *Water Code* 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-2012-012 CP-2 below, the project(s) described in Docket No. D-2012-012 CP-1 is removed from the Comprehensive Plan to the extent that they are not included in Docket No. D-2012-012 CP-2; Docket No. D-2012-012 CP-1 is terminated and replaced by Docket No. D-2012-012 CP-2; and the project and the appurtenant facilities described in in Section A.4. (Design Criteria) and A.5. (Facilities) shall be continued in the Comprehensive Plan. 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. 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.

4. The docket holder shall implement to the satisfaction of the PADEP, a continuous program to encourage water conservation in all types of use within the facilities served by this docket approval. The docket holder will report to the PADEP, on the actions taken pursuant to this program and the impact of those actions as requested by the PADEP.

Other Conditions

5. During any month, the combined withdrawal from the intake source shall not exceed 225.15 million gallons. The intake shall be pumped above the maximum rate and monthly allocation as indicated below:

INTAKE	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
Delaware River	5,208	225.15

* Based on a 24-Hour Average

6. During any month, consumptive use at the electric generating facility may not exceed 225.15 mgd.

7. The docket holder shall implement the DMCP submitted on August 2, 2017 and approved by DRBC on October 25, 2017 upon direction by the Executive Director.

8. As directed by the DRBC, for the duration of a critical hydrologic condition the docket holder shall implement its CURP contained within its DMCP and utilize only water from CWA for electric generating or cogenerating purposes.

9. Section 2.3.10 of the Commission's *Rules of Practice and Procedure (RPP)* (18 C.F.R. 401.41), limiting the Commission's approval to three years in the absence of an expenditure of substantial funds by the project sponsor in reliance on the approval, is hereby waived for good cause shown in accordance with Section 2.9.3 (18 C.F.R. 401.123) of the same regulations. 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.

10. 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 or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. If a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, 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 grant or denial of the application for docket approval.

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

12. The surface water intake shall be operated at all times to comply with the requirements of the *WC* and *WQR* of the DRBC.

13. Each new water service connection shall include a water meter in accordance with the DRBC's Resolution No. 87-7 (Revised).

14. 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).

15. The docket holder shall implement to the satisfaction of the PADEP, a drought or other water supply emergency plan.

16. 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.

17. 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.

18. 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*.

19. The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 C.F.R. 401.43).

20. 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 C.F.R. 401.43).

21. 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).

22. 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.

23. 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.

24. 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.

25. 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: December 7, 2022

EXPIRATION DATE: December 7, 2032