

ADMINISTRATIVE AGREEMENT
between
Delaware River Basin Commission
and
Delaware Department of Natural Resources and Environmental Control

Project Review
Program Procedures

Introduction

To implement Article 1.5 of the Delaware River Basin Compact, with a view toward avoiding duplication of staff functions and to effectuate inter-governmental cooperation, the Executive Director of the Delaware River Basin Commission has entered into administrative agreements with agencies of the signatory parties concerned with the review of projects having a substantial effect upon the water resources of the Delaware River Basin. On February 25, 1976, the Commission directed that existing administrative agreements be revised to reflect desired procedural changes designed to increase the flexibility of the project review process and provide a more efficient allocation of staff resources.

Pursuant to the provisions of the Delaware River Basin Compact, and to the Commission's Rules of Practice and Procedure (Administrative Manual -- Part II), this revised administrative agreement is hereby entered into by and between the Delaware River Basin Commission and the Delaware Department of Natural Resources and Environmental Control.

A. General provisions.

1. Definitions. For the purpose of this agreement, unless otherwise required by the context:

(a) "Commission" shall mean the governing body of the Delaware River Basin Commission.

(b) "Compact" shall mean the Delaware River Basin Compact (53 Delaware Laws, Chapter 71, May 26, 1961.)

(c) "Comprehensive Plan" shall mean the plan developed and adopted by the Commission for use of the water resources of the Delaware River Basin in accordance with Section 13.1 of the Compact.

(d) "DRBC" shall mean the staff organization of the Delaware River Basin Commission.

(e) "Department" shall mean the Delaware Department of Natural Resources and Environmental Control and its divisions, bureaus and regional offices.

(f) "Reviewable project" shall mean a project as defined in the Compact and described in Section 2-3.5 of the Commission's Rules of Practice and Procedure, as amended, and not exempt from review by the terms of that section.

(g) "Sponsor" shall mean any person or organization intending to initiate, construct or administer a project, or the authorized representative thereof.

(h) "Substantial project" shall mean a reviewable project determined by the Executive Director of DRBC to have a substantial effect upon the water resources of the Delaware River Basin in accordance with the terms of this agreement (including Attachment A hereof.)

2. Submission of application. Applications for review and approval of reviewable projects shall be submitted to the Department in accordance with its requirements and procedures as amended from time to time. Stage 1 reports, concept designs and other pre-application submissions by sponsors will also be made in accordance with the procedures of the Department.

In the event that a sponsor should make first inquiry to the DRBC he will be referred by DRBC to the appropriate office of the Department.

3. Notification of DRBC. Upon receipt of an application, or a pre-application submission of concept design reports pertaining to a reviewable project, the Department will immediately notify DRBC. Notification of DRBC shall consist of sending to DRBC copies of the application or other materials submitted by the sponsor, or a written summary of the proposed project prepared by the Department. The Department will at the same time notify the sponsor that the proposed project has been brought to the attention of DRBC and may be subject to decision by the Commission pursuant to Section 3.8 or Article 11 of the Compact. Where appropriate the Department will provide the sponsor with copies of the DRBC project review environmental information form.

4. Determination of substantiality. Upon receipt of the project description and response to the environmental form, the Executive Director of DRBC will determine whether the proposed project could have a substantial effect upon the water resources of the basin within the meaning of the Compact, the Commission's Rules of Practice and Procedure, and the following judgment factors:

(a) The impact of the project on environmentally sensitive land areas or species of plant or animal life.

(b) The potential of the project and its distribution or collection systems to induce significant changes in numbers, distribution or character of population or economic activity.

(c) The magnitude of proposed water withdrawal or waste discharge in relation to minimum stream flow, aquifer yield, or water quality.

(d) The size of the project and distribution or collection system and areal extent and duration of its environmental impact.

(e) The effect of the project on public health, safety or general welfare, and historic and cultural properties.

(f) The effect of the project on surface or ground waters in another state.

(g) The effect of the project on transfers of water into or out of the basin or from one sub-basin to another.

(h) The cost of the project and nature and magnitude of resources required for its implementation.

(i) The effect of the project on flood flows and stormwater runoff.

(j) Any other factors which in a particular case may be relevant to the protection of the integrity of the Comprehensive Plan.

DRBC will advise and consult with the sponsor, Department and other public and private organizations concerned with the project to the extent required to make a determination of the project's effects. DRBC may request further information from the Department or from the sponsor, and may hold an informal conference or public hearing to assist in making a finding as to the project's substantiality. The applicability of the Commission's project review fee requirements, and the need for an environmental report, will be determined by DRBC at this time in accordance with the Commission's Rules of Practice and Procedure.

5. Effect of determination. The Executive Director of DRBC will notify the Department and the sponsor as to his determination concerning the

substantiality of the project. Projects found not to have a substantial effect on the water resources of the basin will not be subject to approval by the Commission, and DRBC shall have no further involvement in the technical review of such projects unless a request for assistance is made to DRBC by the Department. The Executive Director of DRBC will give public notice of his determination that a project does not have a substantial effect. Any interested party objecting to such a determination may appeal to the Executive Director for reconsideration of his decision. The Executive Director shall notify the Department, the applicant and the objectors of the results of his reconsideration which shall be subject to appeal to the Commission by any interested party within 14 days. Any such appeal will be acted upon by the Commission at its next regularly scheduled meeting at which time the Commission will decide if the project, in its judgment, would have a substantial effect. Project proposals determined by the Executive Director to have a substantial effect will be subject to approval by the Commission pursuant to Section 3.8 and Article 11 of the Compact (where applicable.)

6. Final action and reporting. DRBC will notify the Department of the Commission's approval or disapproval of any project located in Delaware that has come before it for decision pursuant to this administrative agreement and will provide copies of the Commission's docket action to the Department.

The Department will notify DRBC of its final permit approving or disapproving all reviewable projects regardless of whether the project was acted upon by the Commission. Such notification shall include information about the project as requested by DRBC for purposes of resource monitoring, data inventory and planning.

7. Coordination with other agencies of the State of Delaware.

DRBC will notify the Department of all reviewable project applications received from sponsors subject to the regulatory jurisdiction of agencies of the State of Delaware other than the Department. DRBC will perform the technical review of such projects and will coordinate with the Department in the course of such review. The Department will designate a project review contact person to facilitate this coordination.

B. Review of projects.

1. Technical review by the Department. Except for those projects to be reviewed by DRBC, as noted below, technical review of all reviewable projects subject to this administrative agreement shall be made by the Department. The Department will keep DRBC closely advised throughout the course of its review of all reviewable projects and may call upon DRBC for assistance in the technical review of those projects which the Executive Director has determined to have a substantial effect upon the water resources of the basin. For those projects that the sponsor proposes to develop in stages, or as part of a master plan for a sequence of contemplated projects, review by the Department shall encompass the overall concept or plan of which the project is a part.

2. Technical review by DRBC. DRBC shall perform the technical review work for any project found to have a substantial effect upon the water resources of the basin when the Department itself is the sponsor; when requested by the Department; or in those cases where the Department may lack the necessary regulatory jurisdiction. The DRBC shall also perform such technical review work on those projects subject to an environmental assessment or environmental impact statement as required by the Commission's Rules of Practice and Procedure and the National Environmental Policy Act.

3. Action reports. At the completion of the technical review by the Department of each reviewable project found to have a substantial effect upon the water resources of the basin, the Department shall prepare and send to DRBC an action report which will set forth the agency's findings and recommendations. The action report will include a section describing the project's compliance with the Commission's Comprehensive Plan and regulations. Action reports shall be prepared according to a format acceptable to the Department and the Executive Director of DRBC. The Executive Director of DRBC will prepare a memorandum of comment stating his concurrence or non-concurrence with the findings and recommendations of the action report. The action report and the Executive Director's memorandum of comment will be sent to the Commission. The Commission may refer an application back to the Department for further review and analysis if it finds the action report to be incomplete for purposes of its decision. The Commission will render a docket decision based upon the action report and memorandum of comment. The Commission will approve or disapprove a project, or may require modification of a project and approve it as modified. The Commission will condition its action upon satisfactory compliance with the requirements of the Department and may impose such conditions as may be necessary to protect the integrity of the Comprehensive Plan or to assure the development and completion of the project in accordance with the Plan or other applicable Commission regulations.

4. Notification of DRBC action. DRBC will furnish a copy of the Commission's docket decision to the Department and the sponsor immediately following action by the Commission. Each docket decision will state that it does not determine any matters within the jurisdiction of any other state or

federal agency and that the sponsor is not relieved of the necessity to abide by such other approvals as may be required by law.

5. Enforcement. The Commission will be responsible for enforcement of any conditions that it imposes upon a sponsor as a part of its docket action. The Department will be responsible for enforcement of any conditions that it imposes upon a sponsor as a part of its final permit. Each agency will cooperate with the other to the extent necessary to effectuate prompt and effective enforcement.

6. Commission planning requirements. The Department will cooperate with the DRBC in furtherance of the consultative planning requirements of Article 11 of the Compact. DRBC will provide information to the Department concerning the substance of the Commission's Comprehensive Plan, its standards and criteria and other regulations affecting the review of water resources projects, and will consult periodically with the Department as to any amendments or revisions in these requirements. As part of its technical review the Department will screen projects against the Commission's requirements, and the conclusions of that screening will be reflected in the Department action reports on those projects having a substantial effect upon the water resources of the basin. The Department and DRBC will consult on any problems involving an interpretation of the Commission's planning requirements.

7. Department coordination with Comprehensive Plan. The Department recognizes the Commission's Comprehensive Plan as Delaware Basin policy applicable to all public and private agencies subject to the Compact. The Department will encourage project sponsors to coordinate their plans with the basin Comprehensive Plan even though a particular project may not be subject to approval by the Commission. Reviewable projects determined by the Executive

Director of DRBC not to have a substantial effect on basin water resources will be referred back to DRBC by the Department for further consideration if, in the judgment of the Department, the concept or design of the project has significantly changed subsequent to the Executive Director's original determination.

8. Comprehensive Plan and Section 3.8 action. A docket action by the Commission may either amend the Comprehensive Plan by the addition of a proposed project or approve a project pursuant to Section 3.8 of the Compact, or accomplish both purposes simultaneously. Addition of a project to the Comprehensive Plan represents Commission approval of the sponsor's general concept and is not equivalent to final approval pursuant to Section 3.8 of the Compact. Construction of a project subject to Commission approval may not be initiated prior to clearance by the Commission under Section 3.8 of the Compact, and the Department will not issue final permits prior to such clearance except with the prior consent of the Executive Director of DRBC.

9. Public hearings. Whenever either party to this agreement plans to conduct a public hearing with respect to any project subject to approval by the other party, it will promptly advise the other party of its intention to conduct such hearings and of the time and place. Joint hearings may be held whenever such procedure will meet the requirements of both the Department and DRBC and provide more efficient scheduling of review and action on a project.

10. Wastewater treatment plans. The Department shall consult with DRBC concerning the delineation of study areas for wastewater treatment planning projects pursuant to the Federal Water Pollution Control Act. Completed wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act shall be considered reviewable projects subject to

approval by the Commission pursuant to this Administrative Agreement in accordance with Article 11 of the Compact.

11. Water quality certification. The Department will be responsible for granting such water quality certification as may be required for projects pursuant to the Federal Water Pollution Control Act as amended.

C. Amendment and effective date.

1. Amendment and termination. This Agreement may be amended at any time by mutual agreement of the parties, and may be terminated by either party upon thirty days' notice in writing to the other party.

2. Effective date. This Agreement shall take effect upon its execution by both parties.

IN WITNESS WHEREOF, the Commission through its duly authorized Executive Director, and the Department, through its Executive Officer, as authorized by the Compact and the laws of the signatory party, have executed this Agreement by affixing their respective signatures thereto this 20th day of August, 1976.

DELAWARE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

ATTEST:

Sarahy H. McDaniel

By

John C. Bryson
John C. Bryson, Secretary

DELAWARE RIVER BASIN COMMISSION

ATTEST:

W. Binton Whitall

By

James F. Wright
James F. Wright, Executive Director

ATTACHMENT A

The following projects are deemed not to have a substantial effect on the water resources of the Delaware River Basin for the purposes of this Agreement:

1. mine drainage projects;
2. sanitary landfills;
3. maintenance and repairs to existing projects; and
4. extensions of existing water distribution systems.

The Department will notify DRBC of its permit action on the above-listed categories of projects in accordance with paragraph A 6 of this Agreement.