

# **ADMINISTRATIVE AGREEMENT**

**Between**

**Delaware River Basin Commission  
and  
Delaware Department of  
Natural Resources and Environmental Control**



**Delaware River Basin Commission**  
**DELAWARE · NEW JERSEY**  
**PENNSYLVANIA · NEW YORK**  
**UNITED STATES OF AMERICA**



**July 2010**

**As Amended through May 2013**

## **Background**

The Delaware River Basin Commission (DRBC or Commission) directed the Executive Director, in consultation with their respective state environmental agencies and the Commission's Water Quality and Water Management advisory committees, to examine current Administrative Agreements (AAs) between the Commission and state environmental agencies including among others the Delaware Department of Natural Resources and Environmental Control (the "Department" or "DNREC") for the review and approval of projects in accordance with Sections 1.3, 1.5, 3.8, and Articles 10 and 11 of the Delaware River Basin Compact (*Compact*) and to develop recommendations for updating these agreements. The current AA's were made during the 1970s and no longer reflect current or best practices.

The majority of the projects reviewed by the Commission involve ground and/or surface water withdrawals and discharges to the ground or surface waters of the Basin. Following the creation of the Commission and the execution of the existing AAs, numerous state and federal laws were enacted, regulations were promulgated and state and local programs were established to regulate water withdrawal and discharge projects. In addition, the Commission has promulgated and implemented regulations and programs consistent with the *Compact*. As a result of these statutory and regulatory changes and the experience gained in implementing the existing AAs and programs the Department and the Commission desire to enter into a revised Administrative Agreement (Agreement) to establish practices and procedures to promote intergovernmental cooperation and avoid unnecessary duplication of staff functions. The revised Agreement will minimize burdens on the regulated community while allowing resources from both the Department and the Commission to be redirected to other critical Basin priorities.

The Commission staff in consultation with staff of the state environmental agencies including the Department has completed its review of relevant statutes and regulations of the Commission and the respective state agencies; its evaluation of current practices of the Commission and state agencies in implementing Section 3.8 and Articles 10 and 11; and in particular, its consideration of the methods used to coordinate the review of projects by state agencies and the Commission. DRBC staff also has consulted with the Commission's Water Quality and Water Management advisory committees on the matter of coordinated reviews and has reported its progress periodically at Commission meetings.

This Agreement has been developed by the Commission and the Department in response to the directive by the Commissioners.

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## **I. Introduction**

The purpose of this Administrative Agreement (Agreement) is to implement Sections 1.3, 1.5, 3.8, 3.9, 10.1, and 11.2 of the Delaware River Basin *Compact (Compact)* in the context of the project reviews. Section 1.3 in pertinent part provides for the “planning, conservation, utilization, development, management, and control of water resources of the basin [and] cooperative planning and action by the signatory parties with respect to such water resources.” Section 1.5 provides that the Commission should “preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the compact” and authorizes and directs the Commission “to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.” Section 3.8 of the Compact provides in pertinent part: “No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission.” Section 3.9 of the Compact provides in pertinent part: “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 basin.” Section 10.1 pertaining to regulation of withdrawals and diversions authorizes the Commission to “enter into agreements with the signatory parties relating to the exercise of such power or regulation or control” and to “delegate to any of them such powers of the commission as it may deem necessary or desirable.” Section 11.2 provides with respect to state and local agencies: “The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission.” In keeping with and pursuant to these Compact provisions, the Commission and the Delaware Department of Natural Resources and Environmental Control (DNREC or Department) enter into this Agreement to coordinate their functions and to eliminate unnecessary duplication of effort. This Agreement replaces the Administrative Agreement dated August 20, 1976 between the Commission and the Department.

In accordance with the provisions of Sections 1.3, 1.5, 3.8, 3.9, 10.1 and 11.2 of the *Compact* and the Commission’s Administrative Manual - Rules of Practice and Procedure, the Executive Director and the Commissioner of the Department do hereby agree as follows:

This Agreement sets forth the practices and procedures to be followed by the Commission and the Department for the planning, review and approval of projects subject to Section 3.8 and/or Articles 10 & 11 of the Delaware River Basin *Compact*.

## **II. Definitions**

1. “Basin” shall have the meaning set forth in Section 1.2(a) of the Compact and shall be synonymous with the Delaware River Basin consisting of the area of drainage into the Delaware River and its tributaries, including Delaware Bay which is comprised of that geographic area designated on Attachment I.
2. “Commission” shall have the meaning set forth in Section 1.2(b) of the *Compact*: “the Delaware River Basin Commission created and constituted by [the] *Compact*.”

3. "Commissioner" shall mean the Governors of the States of Delaware, New York and New Jersey, the Commonwealth of Pennsylvania or their designated alternates and the federal representative or designated alternate appointed by the President of the United States.
4. "Commission Flood Plain Regulations" shall mean the standards of flood plain use in the Basin adopted in the Commission's *Administrative Manual Part III Basin Regulations – Flood Plain Regulations* as it may be amended from time to time.
5. "Commission Review and Decision Making Process" shall mean any docket, permit or resolution issued by the Commission or determination by the Commission Executive Director in accordance with Sections 3.8, 10.3 or 11.2 of the *Compact*.
6. "Commission Rules of Practice and Procedure" shall mean the rules contained in the Commission's *Administrative Manual – Rules of Practice and Procedure*, as they may be amended from time to time.
7. "Commission Water Quality Regulations" shall mean the regulations set forth in the Commission's *Administrative Manual Part III – Water Quality Regulations*, 18 CFR Part 410 (a portion of which are also codified as Article 3 and Section 4.30.9 of the Commission's *Water Code*), as they may be amended from time to time.
8. "Commission Water Supply Charges" shall mean the charges, presently for surface water usage, in the Basin adopted in the Commission's *Administrative Manual Part III Basin Regulations – Water Supply Charges* as it may be amended from time to time.
9. "*Compact*" shall mean the *Delaware River Basin Compact*, enacted by the United States as Public Law 87-328, 75 Statutes at Large 688 (1961), and by concurrent legislation in the states of New York, New Jersey, Pennsylvania and Delaware.
10. "Comprehensive Plan," in accordance with Article 13, Section 13.1 of the *Compact*, shall mean a plan "for the immediate and long range development and use of the water resources of the basin" and "shall include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs." The Comprehensive Plan shall include Commission regulations that have been added to the plan by express action of the Commission taken in accordance with the procedural requirements of the *Compact*.
11. "Comprehensive Plan Projects" shall mean projects or facilities of federal agencies or of state and local agencies as defined in Article 11 of the *Compact* and any other public and private projects and facilities that the Executive Director or one or more of the Commissioners determine should be presented to the Commissioners for review and inclusion in the Comprehensive Plan.
12. "Department" shall mean Delaware Department of Natural Resources and Environmental Control (a/k/a DNREC).
13. "Department Decision Making Process/Document" shall mean any permit (e.g., NPDES, RCRA), authorization, or other final decision issued by the Department for a project that is also subject to Commission review in accordance with Sections 3.8, 10.3 or 11.2 of the *Compact*.

14. "Directly impacted shared interstate waters" shall mean those Sections 3.8, 10.1 or 11.2 reviewable projects that either directly withdraw water from or discharge to shared interstate waters, as defined below, or are identified by the Executive Director in writing to have the potential for substantial effect on the shared interstate waters.
15. "DRBC Project Review Fees" shall mean the DRBC fee schedule for the review of projects in accordance with Section 3.8 and Article 10 of the Compact as set forth in DRBC Resolution No. 2005-1 as amended by Resolutions Nos. 2007-16 and 2009-2 as it may be further amended from time to time.
16. "Executive Director" shall mean the Executive Director of the Commission.
17. "Facility" shall have the meaning set forth in Section 1.2(e) of the *Compact*: "any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the beneficial use of water resources or related land uses including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them."
18. "Federal government" shall have the meaning set forth in Section 1.2(f) of the *Compact*: "the government of the United States of America, and any appropriate branch, department, bureau or division thereof, as the case may be."
19. Major NPDES Modification - See 7 Del Admin. Code 7201 Section 6.51.5
20. Minor NPDES Modification – See 7 Del Admin. Code 7201 Section 6.51.6
21. "Project" shall have the meaning set forth in Section 1.2(g) of the *Compact*: "any work, service or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken within a specified area, for the conservation, utilization, control, development or management of water resources which can be established and utilized independently or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation."
22. "Reviewable project" shall mean a project, as defined above, falling within one or more of the categories of Section 2.3.5B of the Rules of Practice and Procedure (RPP), specially directed by the Executive Director for review pursuant to the RPP, referred by a state or federal agency to the Commission under the RPP and/or determined by the Executive Director of DRBC to have a substantial effect upon the water resources of the Delaware Basin in accordance with the terms of this Agreement.
23. "Secretary" shall mean the Secretary of the Delaware Department of Natural Resources and Control
24. "Shared Interstate Waters" shall mean the Delaware River Mainstem (tidal and non tidal), the West Branch of the Delaware River, and Delaware Bay (Zones 1-6, see DRBC Water Quality Regulations) and the tidal portions of the tributaries.

25. "Signatory Party" shall have the meaning set forth in Section 1.2(h) of the Compact: "a state or commonwealth party to this compact, and the federal government," which state and commonwealth parties include the State of New York, the State of New Jersey, the State of Delaware, and the Commonwealth of Pennsylvania.
26. "Special Protection Waters" (SPW) shall mean those waters classified by the DRBC now and in the future as Outstanding Basin Waters or Significant Resource Waters pursuant to Article 3 of the DRBC's *Administrative Manual - Part III Water Quality Regulations and Water Code*.
27. "Sponsor" shall mean any person or organization that plans, initiates, constructs or administers a project.
28. "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." (Section 3.10.3A.2.a.16 of the Commission *Water Quality Regulations (WQR)*)
29. "Water resources" shall have the meaning set forth in Section 1.2(i) of the *Compact*, which states that "water resources shall include water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control."

### **III. Principles**

This Agreement is designed to: effectuate intergovernmental cooperation, minimize the efforts and duplication of Department and Commission staff resources where consistent with Commission and state legal requirements, ensure compliance with Commission approved Basin-wide requirements, enhance early notification of the public and other concerned interests of proposed projects in the Basin and clarify the relationship and project review decision making processes of the Department and the Commission for projects subject to review by the Department under its authorities and the Commission under Section 3.8 and Articles 10 and 11 of the *Compact*. In furtherance of these goals, the Commission and the Department agree as follows:

1. The practices and procedures included in this Agreement for the intergovernmental review process will result in a benefit to the Basin community, help achieve the goals and principles of the *Water Resources Plan for the Delaware River Basin*, and enhance the protection of the water resources of the Basin.

2. Appendices A, B and C outline the practice for review of projects that are subject to the jurisdiction of both the Department under its authorities and the Commission under Section 3.8 and/or Articles 10 or 11 of the *Compact*.

#### **IV. General Provisions**

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

Section 2.3.3 of the Rules of Practice and Procedure authorizes and directs the Executive Director to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

1. To facilitate the submission and review of applications and the determinations required under Section 3.8 of the *Compact*;
2. To avoid unnecessary duplication of staff functions and hearings required by law;
3. For such other and different purposes as the Executive Director may deem feasible and advantageous for the administration of the *Compact* or any other law.

##### **B. Section 3.8 of the *Delaware River Basin Compact***

Section 3.8 of the *Compact* is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the *Compact* provides:

"No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with the Comprehensive Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

##### **C. Pathways for Project Review**

The Matrix contained in Appendix A identifies specific categories of projects for which the Commission and the Department have generally issued separate but coordinated approvals over the years. Essentially, there are six potential pathways for projects in the Basin that are subject to the jurisdiction of the Department, the Commission or both agencies.



1. Projects that are subject to the statutory jurisdiction of the Commission and the Department, are reviewable projects as defined above, and in the judgment of the Commission are required under the Compact to be incorporated into the Commission's Comprehensive Plan shall remain subject to the separate, formal review and decision making processes of the Commission and the Department. However, once a project has been entered into the Comprehensive Plan by the Commission, the review and decision making regarding project renewals and/or modifications shall be managed by the Department or the Commission as provided in the Matrix in Appendix A (Category A projects, Matrix in Appendix A).
2. Projects that are subject to the statutory jurisdiction of the Commission and the Department and are reviewable projects as defined above, and that shall remain subject to separate decision making processes of the Commission and the Department as provided for in this Agreement. (Category B, C & E projects, Matrix in Appendix A).
3. Projects that are subject to the statutory jurisdiction of the Commission and the Department, are reviewable projects as defined above, and for which as provided in this Agreement the Department's final action will constitute a decision by the Department as to all matters covered by the Department's final action and by the Commission under Section 3.8, 10.3 and/or 11.2 of the Compact as to those requirements applicable to Commission review. The Department will submit these projects to the Commission for review and comment (Category D projects, Matrix in Appendix A).
4. Projects that are subject to the statutory jurisdiction of the Commission and the Department and are reviewable projects as defined above, but as a result of this Agreement the projects are reviewed by the Department only without Commission comment. The Department's final action will constitute a decision by the Department as to all matters covered by the Department's final action and by the Commission under Section 3.8, 10.3 and/or 11.2 of the Compact as to those requirements applicable to Commission review. (Category F & G projects, Matrix in Appendix A).
5. Projects that are subject to the statutory jurisdiction of the Commission under Section 3.8 or Articles 10 or 11 of the Compact and as defined, but are not subject to the jurisdiction of the Department.
6. Projects not subject to the statutory jurisdiction of the Commission under Section 3.8 or Articles 10 or 11 of the Compact or are not reviewable projects as defined above, but are subject to the jurisdiction of the Department.

**D. Notice by the Executive Director to the Department Regarding Reviewable Projects**

In the event that the Executive Director or any Signatory Party determines that a reviewable project for which the Department's final action would constitute a decision by the Commission pursuant to this Agreement should be reviewed and adjudicated by the Commission, the Executive Director shall so notify the Department in writing, at which

time the project shall be subject to the full review and decision making by the Commission.

## **V. Enforcement**

The primary goals of the respective enforcement programs of the Commission and the Department are:

1. to protect the water resources of the Basin achieved in part through full compliance with the terms and conditions of their respective decision making documents (e.g. permits, dockets, approvals, etc) and the provision of the applicable regulations; and,
2. to ensure that there is a level playing field for all of the regulated users of the Basin's water resources.

The Commission and the Department have independent authorities under their respective statutes and regulations to take appropriate enforcement actions to ensure compliance with the terms and conditions of their respective decision making documents and regulations. In the event of a violation of any Commission specific requirement that has been incorporated into a Department decision making document (e.g. NPDES permit, water allocation permit, etc.), the Department shall determine whether to bring an enforcement action and shall advise the Commission's Water Resource Management Branch (WRMB) of its decision and any subsequent actions.

The Department may enforce any violation of its rules, regulations, permits or approvals, and any violation of any statute over which it has jurisdiction, in accordance with its state enforcement authorities. The Commission may enforce any violation of its rules, regulations, dockets, permits or approvals, and any violation of the *Compact*, in accordance with its enforcement authorities under the Compact and implementing rules and regulations. The Department and the Commission agree to advise the other party of enforcement actions taken on reviewable projects as described in this Agreement. For those activities regulated by a Department and falling within the scope of paragraphs C.3 or C.4 above, the Commission will first request the Department to take enforcement action regarding any violations of Commission requirements contained in state permits or approvals before initiating enforcement action of its own. The Commission may require the project sponsor and/or project owner to obtain a Commission docket or permit if deemed necessary by the Commission to aid in the enforcement of Commission requirements.

The Department will consult with the Commission's WRMB whenever there is any request to impose or alter a Commission or Department requirement, if such action would result in a less stringent requirement than is provided under the *Compact*, the Comprehensive Plan or the Commission's regulations. The Commission reserves the right to require a project sponsor or project owner not otherwise obligated to obtain a Commission docket or permit to apply to the Commission for a docket or permit if the Commission disagrees with a proposed or final decision by the Department, regarding the imposition of or alteration to a Commission requirement or enforcement thereto.

Disputes between the Commission and the Department will be resolved by the disputes resolution identified in Section X of this Agreement.

## **VI. Commission Planning Requirements**

The Department agrees to cooperate with the Commission in furtherance of the consultative planning requirements of Articles 3.8, 3.9 and Articles 10 and 11 of the Compact.

The Department and the Commission agree to work cooperatively in the development of long-range water supply and wastewater management plans, consulting at critical junctures in the planning process (e.g., scoping, initial draft, pre-public review stages) where major decisions are being made to ensure that Department and Commission plans are consistent to the maximum extent practicable. The Commission will review and may adopt the state and regional water supply and wastewater plans as part of the Commission's Comprehensive Plan.

The Department shall also consult with the Commission concerning the delineation of designated planning areas under Section 208 of the Federal Water Pollution Control Act (Clean Water Act) and the 7 Del. C. Chapters 60 and 65, 7 Del. Admin. Code 7201, 7401 and 7403. Wastewater management 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. The Commission may review wastewater management plans as part of the Comprehensive Plan. The Department may request that the Commission review Total Maximum Daily Loads (TMDLS) developed by the Department pursuant to the Federal Water Pollution Control Act. Such projects may be considered reviewable projects subject to approval by the Commission pursuant to this Administrative Agreement in accordance with Article 11 of the Compact. The Commission may review and adopt TMDLs as part of the Comprehensive Plan. Where, during the wastewater management plan preparation, an increased interbasin transfer of wastewater is identified, any increase in a discharge to tidal water or tributaries to Special Protection Waters (SPW) is indicated, or a TMDL may affect water quality at any SPW Boundary Control or Interstate Boundary Control Point, the Department shall initiate coordination with the Commission as soon as practicable.

## **VII. State/Commission Issued Approvals**

The Department and the Commission agree to provide to each other copies of the non-agricultural approvals issued for projects located within both the Department's jurisdiction and the geographic boundary of the Basin within 30 calendar days of such approvals.

## **VIII. State Issued Approvals**

Except for Category G projects, the Department agrees to provide copies of water allocation decisions to the Commission for those Delaware projects located within the geographical boundary of the Basin within thirty calendar days of such decisions. With respect to Category G projects, notice shall be given to the Commission in accordance with Appendix A, Matrix item G.

**IX. Water Usage Data**

The Department agrees to provide monthly water usage data for all Category F & G projects to the Commission in an electronic format compatible with the Commission data systems on an annual basis.

**X. Dispute Resolution**

The Commission’s Water Resource Management Branch Manager and the Department Designee 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 DRBC Commissioner (DE) in which the project is located prior to the project being noticed by the Department or the Commission.

**XI. Amendment And Termination**

This Agreement may be amended by the mutual written agreement of the DNREC Secretary and the Executive Director. This Agreement may be terminated by either the DNREC Secretary or the Executive Director upon thirty days (30) written notice to the other party.


**XII. 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 Department or the Commission.

**XIII. Effective Date**

This Agreement shall take effect on the date of execution by the last signing Party.

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

  
\_\_\_\_\_  
Carol R. Collier, Executive Director  
Delaware River Basin Commission

  
\_\_\_\_\_  
Collin O'Mara, Secretary  
Delaware Department of Natural Resources and  
Environmental Control

Date 7/14/10

Date 28 July 2010

**APPENDIX A  
CATEGORIES OF PROJECTS**

For the purpose of this Agreement, the Matrix below describes the Commission projects that will remain subject to the formal review and decision making process of the full Commission (e.g. docket, permit, or resolution) and those Commission reviewable projects within the definition and thresholds contained in Article 3, Section 2.3.5 B of the Rules of Practice and Procedure, for which the Department’s review and decision making process will be used in lieu of the Commission’s process.

**MATRIX**

<b>PROJECT CATEGORIES</b>	
<b>First time Comprehensive Plan approval (any project)</b>	A
<b>Discharges to:</b>	
Non SPW main stem Delaware River and tidal portions of tributaries (head of tide) (Zones 4,5 -6) and all projects that are processed as new, renewal and major NPDES modifications	B
Non SPW main stem Delaware River and tidal portions of tributaries (head of tide) (Zones 4,5-6) and all projects that are processed as minor NPDES modifications	C
Non tidal/non SPW tributaries to the Delaware River (e.g. Christina,).	D
Interbasin transfers (in/out of Basin)	E
<b>Withdrawal:</b>	
Shared Interstate Waters	B
Non-tidal portions of tributaries to Shared Interstate Waters (all surface water and groundwater)	F
Interbasin transfers (in/out) (all surface water and ground water)	E
Agricultural withdrawals (all groundwater and surface water except directly from Shared Interstate Waters).	G
<b>Electric Generation/Co-generation Facilities:</b>	
Designed to consumptively use in excess of 100,000 gpd of water during any 30-day period, when no other aspect of the project subjects it to separate DRBC review in accordance with the RPP and this Agreement.	F
<b>Significant impact to shared waters</b>	B

<b>PROJECT CATEGORIES</b>	
<b>Requested by Commissioner or Executive Director</b>	<b>B</b>
<b>Commission does not review:</b>	
Industrial / sanitary landfills (siting or design/construction, but does review discharge/withdrawal if Category A, B, C, or E project)	<b>G</b>
Extensions to existing water distribution systems not involving a change in service area except Category B and C projects.	<b>G</b>

**Categories:**

- A. In general, DRBC reviews/approves a docket incorporating the project into the Comprehensive Plan prior to the Department’s final action. However, the Department’s final action may proceed in advance of the Commission’s action. (Section IV.C.1 and Appendix A- Paragraph I.1.)
- B. Commission retains review/approval and issues docket. Commission reviews Department draft action and may provide comments to the Department for incorporation into the final Department action. The Department’s final action may proceed in advance of the Commission’s action. (Section IV.C.2 and Appendix A- Paragraphs I (2, 3, 4, 5 and 7).
- C. Commission retains review/approval and issues docket. The Department’s final action may proceed in advance of the Commission’s action. (Section IV.C.2 and Appendix A- Paragraph I. 2, 3, 4, 5 and 7.)
- D. Commission reviews Department draft action and may provide comments to the Department for incorporation into the final Department’s action. Commission does not issue docket (Section IV.C.3 and Appendix A- Paragraph II.1).
- E. Commission retains review/approval authority Section IV.C.2 and Appendix A- Paragraph I.6.
- F. Commission conducts no review unless review and/or docket action or technical assistance is requested by the DRBC Commissioner from the state in which the project is located. Department will send copies of Department’s actions/final approvals to Commission. (Section IV.C.4 and Appendix A, Paragraphs II. 2, 3 and 7.)
- G. Commission conducts no review unless review, comment and/or docket action or technical assistance is requested of Commission by the DRBC Commissioner from the state in which the project is located. Commission does not receive copies of the Department’s actions/final approvals. (Section IV.C.4 and Appendix A, Paragraphs II.4).

**I. Category A, B, C and E projects (see Matrix above), are subject to the formal review and decision making process of the Commission. Examples of such projects include:**

1. First Time Comprehensive Plan Projects. Projects that in the judgment of the Commission are required to be incorporated into the Comprehensive Plan will be subject to the formal review and decision making process of the Commission. However, once a project has been entered into the Comprehensive Plan by the Commission, the review and decision making regarding project renewals and/or modifications shall be managed by the Department or the Commission as provided in the Matrix above (Category A).
2. Projects that withdraw surface water from shared interstate waters and tidal tributaries to shared interstate waters to the point of tidal action. Basically this means all projects that withdraw water from the Delaware River Mainstem (tidal and non tidal), the West Branch of the Delaware River, and Delaware Bay (Zones 1-6, see DRBC Water Quality Regulations) and the tidal portions of the tributaries (Category B).
3. Projects that withdraw groundwater within the geographical boundary of one Signatory state that directly impacts another Signatory state or within the geographical boundary of an area delineated and declared to this date or in the future by the Commission as a ground water protected area (Category B).
4. Projects that discharge to shared interstate waters and tidal tributaries to shared interstate waters to the point of tidal action. Basically this means all projects that discharge the Delaware River Mainstem (tidal and non tidal), the West Branch of the Delaware River, and Delaware Bay (Zones 1-6, see DRBC Water Quality Regulations) and the tidal portions of the tributaries Categories B and C).
5. Projects that discharge within the tributary watersheds to Special Protection Waters (SPW) that are new or are proposing substantial alterations and additions as defined in Section 3.10.3A.2.a.16 of the *Commission Water Quality Regulations* (WQR) (Category B).
6. Projects involving in or out of Basin transfers (import or export) of ground and/or surface waters and or wastewater (Category E).
7. Any project for which the review and decision making has been transferred to the Department but that the Executive Director has determined or one or more Signatory Parties has directed the Executive Director in writing should be reviewed (whether or not the project is within the geographical boundaries of the requesting Signatory Party making the request) and be subject to the full decision making process of the Commission. The Executive Director's determination may but need not be based on the finding that the Department is unable or unwilling to impose on the project sponsor a Commission requirement that is determined by the Executive Director to be more stringent than that of the Department and is necessary to protect the water resources of the Basin (Category B).
8. Any project that is not included in Paragraph II below.

**II. Category D, F and G projects, see Matrix above, will not be subject to the formal review and decision making process of the Commission and for which the Department's review and decision making process will be used in lieu of Commission's approval. Examples of such projects include:**

1. Projects that discharge to surface or ground waters tributary to non SPW waters and are not tidal tributaries to shared interstate waters (Category D).
2. Projects that withdraw surface water from intrastate or stacked interstate waters (Category F).
3. Projects that withdraw groundwater within the geographical boundary of the Signatory state but that do not directly impact another Signatory state and are not located in a Commission designated groundwater protected area Category F).
4. Agricultural withdrawal projects within the geographical boundary of the Signatory state but do not directly impact another Signatory state (Category G).
5. Industrial and sanitary landfills located within the geographical boundary of the Signatory state (Category G).
6. Acid mine drainage projects located within the geographical boundary of the Signatory state (Category G).
7. Extensions to existing water distribution systems not involving a change in service areas (Category F).

*NOTE:* A project that falls into one or more of the categories of the Matrix but as a result of a separate project activity also falls into one or more of the categories in paragraph I of this Appendix requires Commission review and approval.



**APPENDIX B  
FORMAL REVIEW AND COORDINATION PROCEDURES**

**Formal Review and Coordination Procedures For Projects That Remain Subject To The  
Formal Review And Decision Making Process Of The Full Commission**

This Appendix describes the coordination practices to be followed by the Department and Commission regarding the review of **projects that remain subject to the formal review and decision making process of the full Commission (Category A, B, C, and E projects, see Matrix, Appendix A and also Appendix D – project review Process for Project Categories as Defined in the Administrative Agreements)**. Changes may be made to this Appendix by the Department DESIGNEE and the Commission Water Management Branch Manager to reflect administrative or organizational changes. For this subset of projects that remain subject to the coordinated but separate Commission and Department review and decision making process, the Commission and the Department will coordinate their review processes in accordance with the following:

**I. Notification**

The Department and the Commission agree to provide each other with early written notification of a pre-application and /or an application (no later than monthly) received subject to this agreement. Upon receipt of a pre-application and/ or an application from a project sponsor that appears not to have also been submitted to the Department, the Commission Water Resources Management Branch (WRMB) will notify the Department in writing (email notification is acceptable). Upon receipt of an application from a project sponsor that appears not to have also been submitted to the Commission, the Department Designee will advise the applicant that it is also required to submit an application to the Commission and copy the Commission.

**II. Commission Determination of Reviewability**

Upon receipt of the project application from the project sponsor, the WRMB will review the project in accordance with the applicable regulations and requirements of the Commission and the terms of this Agreement. The DRBC will also post the receipt of the application on its Project Application Status Page (see Paragraph IV. below). In the event that the proposed project is determined not to be reviewable by the Commission, the Branch Manager of the Commission's WRMB will notify the project sponsor in writing and copy the Department. The DRBC will also include such notification on its Project Application Status Page. For those projects determined not to be reviewable by the Commission, the Commission will have no further involvement with the project, unless its comments or technical assistance is requested in writing by the Department or one or more of the Signatory Parties requests Commission review.

**III. Project Review Fees**

Category A, B, C and E projects are subject to the Project Review Fees as provided for in Resolution 2009-2. Category D, F and G projects are subject to Commission Project Review Fees if the Commission is requested by the Department to provide comments or technical assistance to the Department in its review of a project or the Executive Director has determined

or one or more of the Signatory Parties has directed the Executive Director that the project be subject to the full decision making authority of the Commission. The Commission staff will submit its comments to the Department for projects regarding which Commission review and comment is required under this agreement or the Department requests Commission technical assistance.

#### **IV. Project Review and Coordination with the Department**

- i. Commission determinations are usually made at regularly scheduled Commission hearings that are scheduled in conjunction with Commission business meetings. Currently, the Commission meets 5 times each year, usually in March, May, July, September and December. From time to time a separate public hearing may be scheduled for a complex and controversial project. However, the Commission determination will still ordinarily be made at a regularly scheduled Commission meeting.
- ii. Approximately every two months WRMB will send a copy of the Project Application Status Page (PASP) to the Department for its information. The PASP is also available on the Commission website. The Department may elect to provide comments to the WRMB on the PASP.
- iii. Upon receipt of the project application, WRMB will contact the Department via email to determine if there are any issues in the Department that may impact the processing of the application. In addition, the Department will be requested to identify its approximate processing timeframe, any priority of processing and any suggested entries to the Commission's Interested Parties List (IPL).
- iv. During the processing of the application, the WRMB will periodically update its PASP and provide it to the Department. The Department will advise the WRMB in writing (via email) of any issue that results in its requesting a postponement of Commission decision making or the potential elevation of the priority of Commission review of the application. The Commission will notify the project sponsor whenever the Department requests a postponement or priority review from the Commission.
- v. The WRMB will prepare a draft Commission determination (generally a draft docket) and will send it to the Department Designee (via email) on the sixth Monday prior to the hearing date at which the draft determination will be put before the public and the Commissioners. The Department will submit its written (email) comments to the WRMB by the second Friday after the draft determination has been submitted to the Department. The WRMB will work with the Department Designee to resolve any comments by the Department.
- vi. If the Commission's decision precedes that of the Department, the Commission approval will be contingent upon the project sponsors receipt of the Department's approval. Similarly if the Department's approval precedes that of the Commission, the Department's approval will be conditioned upon the project sponsors receipt of the Commission's approval.

- vii. The WRMB Manager and the Department Designee 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 DRBC Commissioner (DE) in accordance with Section X of this Agreement in which the project is located prior to the project being noticed by the Commission.

## **V. Emergency Approvals**

Article 3, Section 2.3.9 in the Commission's Rules of Practice and Procedure provides for "Emergency Approval". However, such approvals are expected to be infrequent and are limited to those actions:

1. "requiring immediate action to protect the public interest, or to avoid substantial and irreparable injury to any private person or property; and,
2. the circumstances do not permit a review, hearing and determination in the regular course of the regulations."

Decisions regarding requests for "Emergency Approvals" are made by the Executive Director after consultation with the DRBC Commissioner for the state in which the project is located and the receipt of concurrence from the Chair of the Commission. The Department and the project sponsors should consider the Commission hearing schedule and the application processing time and avoid reliance on emergency approvals. The WRMB will coordinate with the Department's Designee prior to any recommendation to the Executive Director, Commission Chair or DRBC Commissioner in which the project is located regarding a request for an emergency approval.

## **VI. Post Project Approval Coordination**

As necessary the WRMB will coordinate post project review with the Department Designee.

**APPENDIX C  
COORDINATION PROCEDURES**

**Coordination Procedures For Projects For Which The Department Review And Final Action Will Be Used In Lieu Of The Commission's Approval**

This Appendix describes the coordination practices to be followed by the Department and Commission regarding the review of **projects for which the Department review and decision making process will** be used in lieu of the Commission's approval (**Category D, F and G projects, see Matrix, Appendix A and also Appendix D – Project Review Process for Project Categories as Defined in the Administrative Agreements**). Changes may be made to this Appendix by the Department DESIGNEE and the Commission Water Resources Management Branch Manager to reflect administrative or organizational changes. For this subset of projects, the Commission and the Department will coordinate their review processes in accordance with the following:

**I. Notification of the Commission**

The Department will notify the Commission's Water Resources Management Branch (WRMB) (no less than monthly) of the receipt of a pre-application and/or an application for Category D, E, or F projects and any agricultural surface water or groundwater withdrawal projects in Delaware that below River Mile 78<sup>1</sup>, withdraw directly from the Delaware River main stem below River Mile 78<sup>2</sup>, (tidal and non tidal), the West Branch of the Delaware River, and Delaware Bay (Zones 4,5-6, see DRBC Water Quality Regulations) and the tidal portions of the tributaries or impact the surface or ground waters in another of the Signatory Parties states. (Section IV.C.4 and Appendix A, Paragraphs II.1, 2, and 3). Upon receipt of such notification, the DRBC will also post the receipt of the application on its Project Application Status Page (PASP, see Paragraph II below). The PASP will include the categorization of the project (Category A through F).

**II. Commission notification of the Signatory Parties, Public Notification and Status Page**

- i. The Commission will notify the other Signatory Parties in writing that the Department has notified the Commission that a **Category D or F** reviewable project was received by the Department for which in accordance with the terms of this Agreement, the Department's review and decision making process will be used in lieu of the Commission's approval. Signatory Parties will be advised that they have 15 calendar days to advise the Commission's WRMB that they are requesting that a project(s) from the list to be required to file an application with the Commission.
- ii. The Executive Director will notify the Department that a project(s) is (are) required to file an application with the Commission as a result of: a.) the receipt by the Commission of a request by one or more of the Signatory Parties that the project(s) be subject to Commission review and decision making; or b.) the Executive Director determination

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<sup>1</sup> Pennsylvania-Delaware State Line

<sup>2</sup> Pennsylvania-Delaware State Line

that the project(s) will be subject to Commission review and decision making. In addition the Executive Director will notify the project sponsor(s) of such projects that an application must be filed with the Commission.

- iii. Commission staff will include such notification on its PASP. The PASP will indicate that a pre-application and/or an application has been received by the Department and in accordance with the terms of this Agreement, the Department's review and decision making processes will be used in lieu of the Commission's approval. It will also indicate that any comments should be submitted to the Department. If a project is required to file an application with the Commission the Project Status Page will be revised to reflect this requirement.

### **III. Projects to be incorporated into Commission's Comprehensive Plan**

The *Compact* requires that certain projects be entered into the Commission's Comprehensive Plan. In accordance with Section IV.C.1 of this Agreement, such projects are required to be submitted to the Commission for inclusion in the Comprehensive Plan. The Department will notify applicants for such projects that they are required to submit an application to the Commission's WMRB and copy the Commission on such notification. The Commission's WMRB will be responsible for the review of such applications in accordance with Appendix B. Once a project is incorporated into the Commission's Comprehensive Plan subsequent modifications and alterations of the project(s) may be subject to the Department's review and decision making process in lieu of the Commission's approval if :

1. the project falls within category D, F or G in the Matrix in Appendix A; and,
2. a modification of the Comprehensive Plan is not required.

### **IV. Project Review Fees**

Applicants for category D, F and G projects are subject to Commission Project Review Fees as provided for in Resolution 2009-2 if:

1. the Commission is requested by the Department to provide comments or technical assistance to the Department in its review of a project: or,
2. the Executive Director has determined or one or more of the Signatory Parties has directed the Executive Director that the project be subject to the full decision making authority of the Commission.

The Commission staff will submit its comments to the Department for projects regarding which Commission review and comment is required under this agreement or the Department requests Commission technical assistance.

## **V. Projects subject to water supply charges by the Commission**

The Department will notify (copy to the Commission's WRMB all surface water withdrawers (except agricultural users) below the drainage area to the Montague gage and above River Mile 38 (the mouth of the Cohansey River, NJ and 4 miles north of the mouth of the Leipsic River, DE) that they may be subject to annual water supply charges in accordance with the Commission's Basin Regulations Administrative Manual III Water Supply Charges. The Commission's WRMB will be responsible for notifying project sponsors that its surface water withdrawals are subject to water supply charges by the Commission and any follow up actions that are required to have such project sponsors comply with Commission water supply charge requirements. Failure of the WRMB or the Department to notify a project sponsor will not relieve the sponsor of its regulatory obligation to pay water supply charges.



APPENDIX D

# Project Review Process for Project Categories as Defined in Administrative Agreements



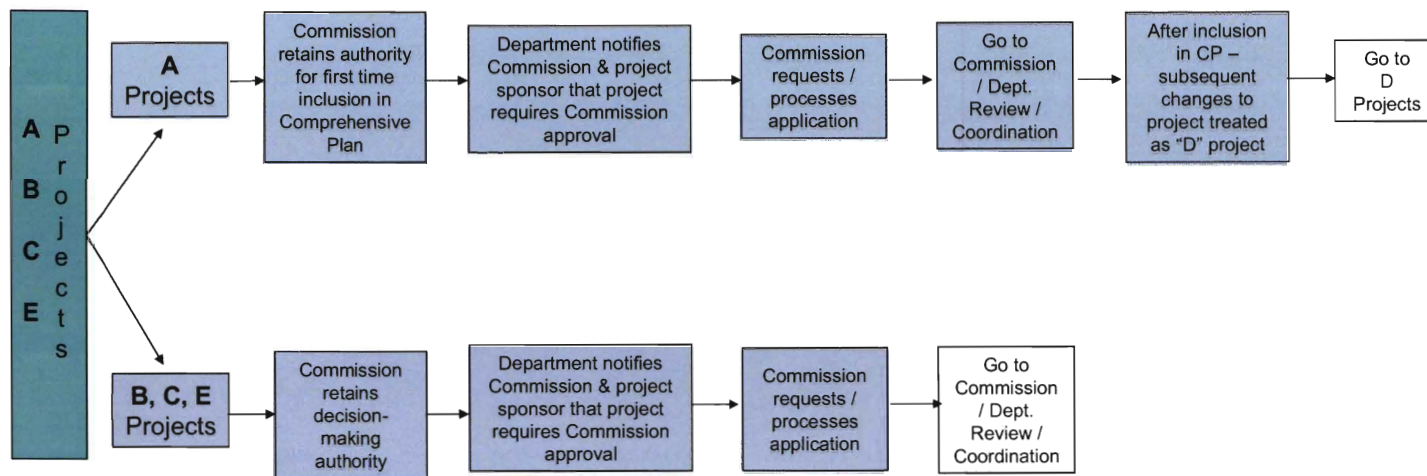
**Delaware River Basin Commission**

**DELAWARE • NEW JERSEY  
PENNSYLVANIA • NEW YORK  
UNITED STATES OF AMERICA**

**July 2010**

Administrative Agreement  
DRBC & DNREC (2010)  
Appendix D

## Flow Chart for Project Categories A, B, C, and E

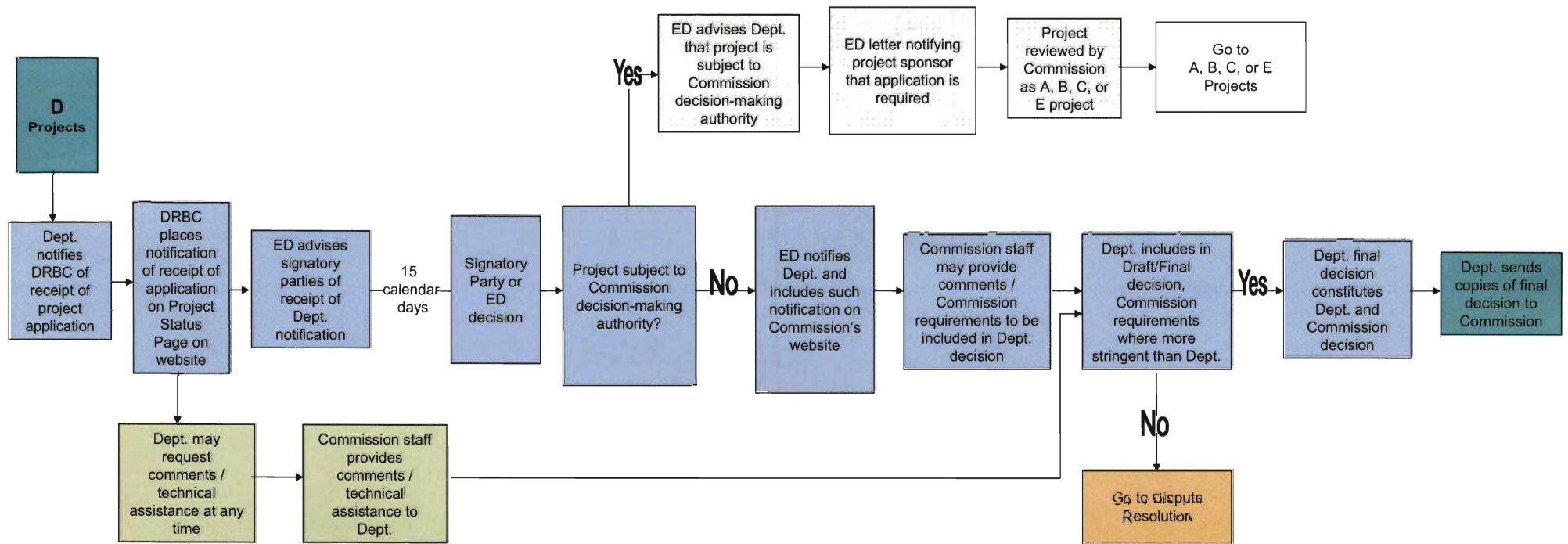


**A** Projects that are subject to the statutory jurisdiction of the Commission and the Department, are reviewable projects as defined in the Administrative Agreement, and in the judgment of the Commission are required under the Compact to be incorporated into the Commission's Comprehensive Plan shall remain subject to the separate, formal review and decision making processes of the Commission and the Department. However, once a project has been entered into the Comprehensive Plan by the Commission, the review and decision making regarding project renewals and/or modifications shall be managed by the Department or the Commission as provided in the Matrix in Appendix A.  
 -- Includes discharges to and water withdrawals from the Delaware River mainstem, the Delaware Estuary and tidal portions of tributaries unless it is a new (not included in the Commission's approved Comprehensive Plan) publicly or privately owned public water supply and publicly owned wastewater treatment plant.

**B** Projects that are subject to the statutory jurisdiction of the Commission and the Department and are reviewable projects as defined in the Administrative Agreement, and that shall remain subject to separate decision making processes of the Commission and the Department as provided for in the Agreement.

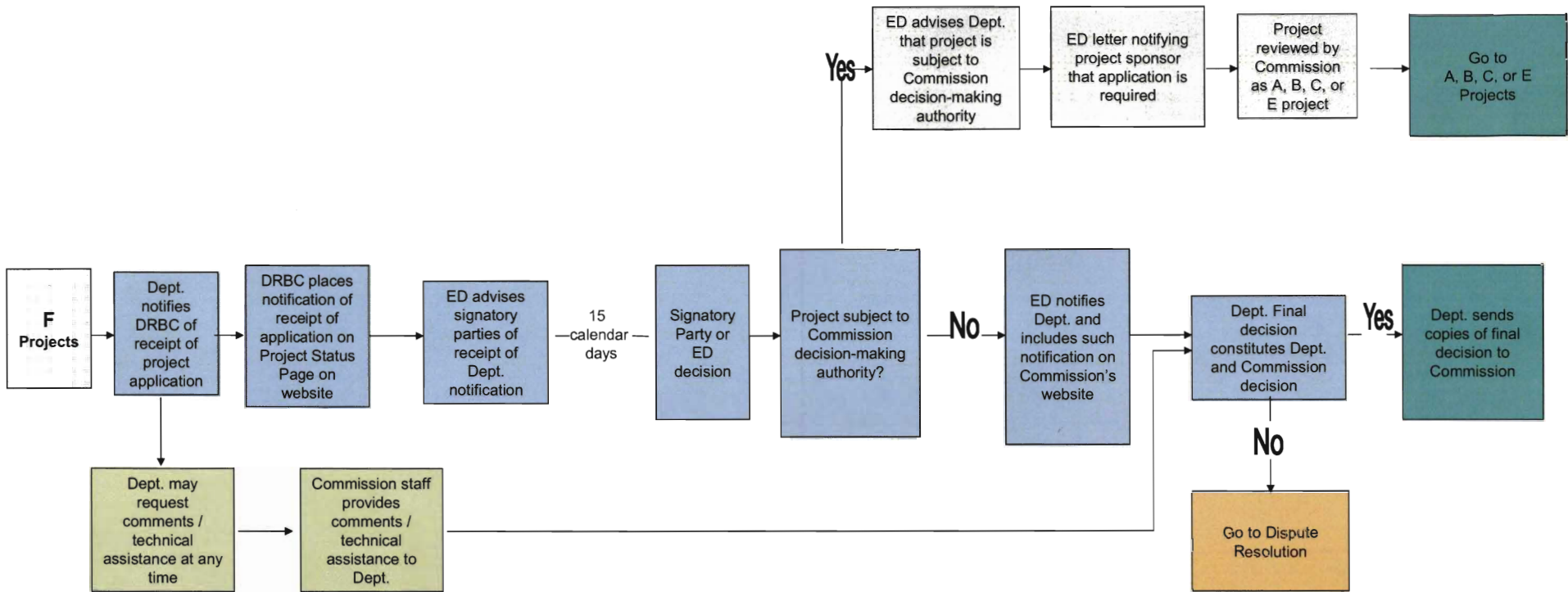


# Flow Chart for Project Category D



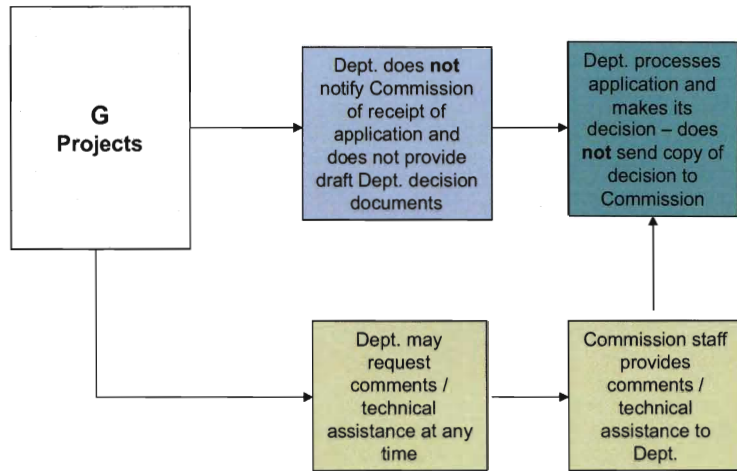
**D** Projects that are subject to the statutory jurisdiction of the Commission and the Department, are reviewable projects as defined in the Administrative Agreement and for which as provided in the Agreement the Department's final action will constitute a decision by the Department as to all matters covered by the Department's final action and by the Commission under Section 3.8, 10.3 and/or 11.2 of the Compact as to those requirements applicable to Commission review. The Department will submit these projects to the Commission for review and comment.  
 -- Includes discharges to non-tidal portions of tributaries and groundwater unless it is a new (not included in the Commission's approved Comprehensive Plan) publicly owned wastewater treatment plant.

# Flow Chart for Project Category F



**F** Projects that are subject to the statutory jurisdiction of the Commission and the Department and are reviewable projects as defined in the Administrative Agreement, but as a result of the Agreement the projects are reviewed by the Department only without Commission comment. The Department's final action will constitute a decision by the Department as to all matters covered by the Department's final action and by the Commission under Section 3.8, 10.3 and/or 11.2 of the Compact as to those requirements applicable to Commission review.  
 -- Includes water withdrawals from non-tidal portions of tributaries and groundwater unless it is a new (not included in the Commission's approved Comprehensive Plan) publicly owned wastewater treatment plant.

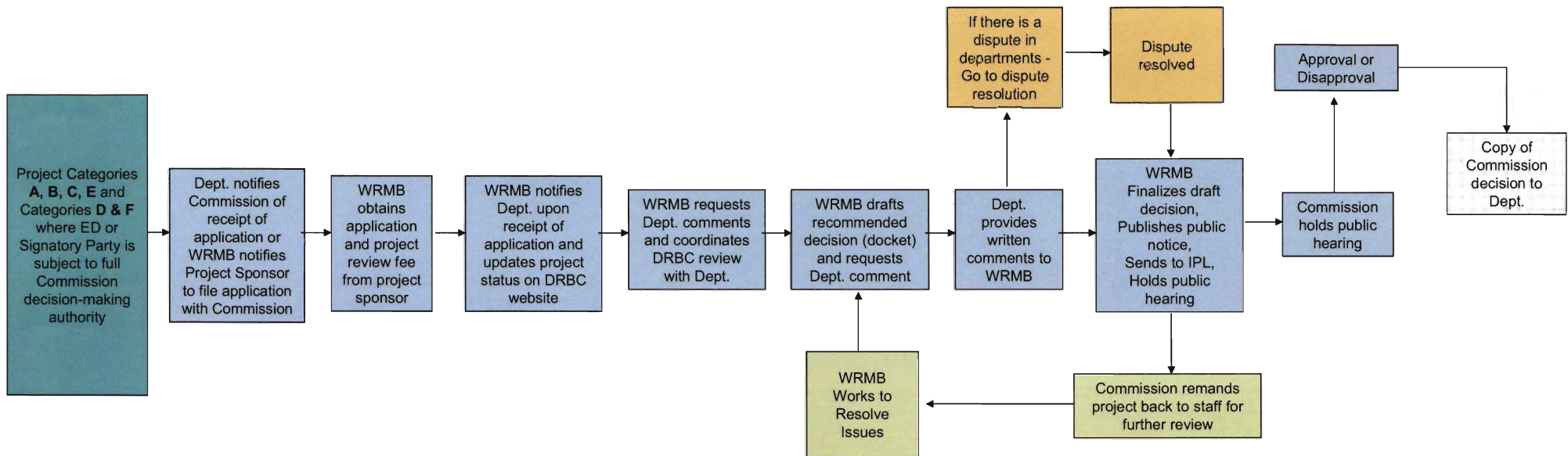
## Flow Chart for Project Category G



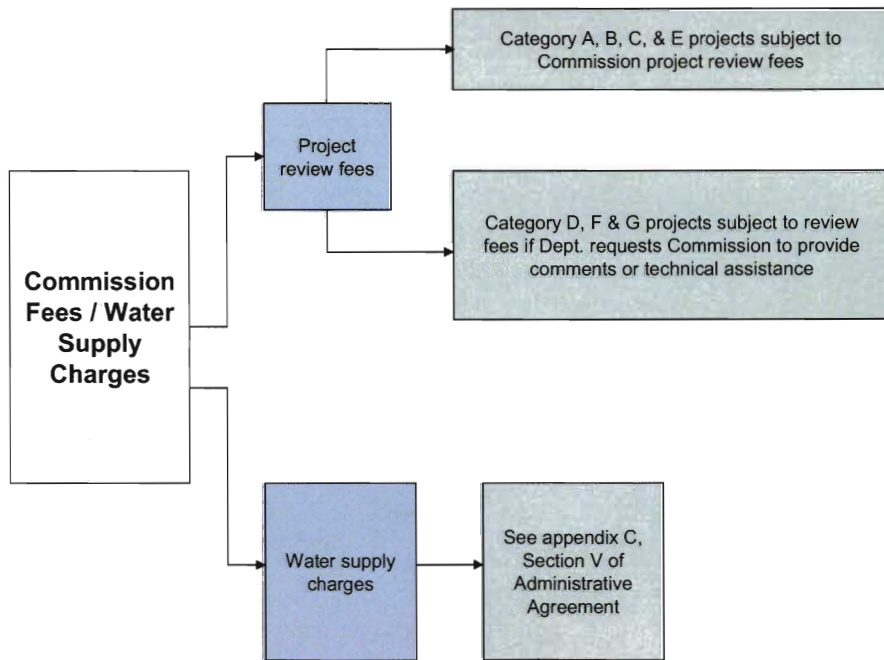
G

Projects that are subject to the statutory jurisdiction of the Commission and the Department and are reviewable projects as defined in the Administrative Agreement, but as a result of the Agreement the projects are reviewed by the Department only without Commission comment. The Department's final action will constitute a decision by the Department as to all matters covered by the Department's final action and by the Commission under Section 3.8, 10.3 and/or 11.2 of the Compact as to those requirements applicable to Commission review.

# Flow Chart of Project Review Process for Projects Where Commission Retains Review and Decision-Making Authority



# Flow Charts for Dispute Resolution and Commission Fees



**AMENDMENT NO. 1**

**Administrative Agreement of July 2010 between Delaware River Basin Commission and Delaware Department of Natural Resources and Environmental Control**

In accordance with Section XI, “Amendment and Termination” of the Administrative Agreement of July 2010 between the Delaware River Basin Commission (DRBC or “Commission”) and the Delaware Department of Natural Resources and Environmental Control (DNREC or “Department”) (hereinafter, “Agreement”), by mutual agreement of the Secretary of DNREC and the Executive Director of the Commission, the Agreement is hereby amended as follows:

1. Appendix A is modified by the addition to “Category F” as defined therein of the category of projects consisting of electric generation and co-generation facilities that are designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period (hereinafter “the Category”), when no other aspect of a project in the Category subjects it to separate DRBC review in accordance with the RPP and this Agreement. Projects in the Category currently are subject to DRBC review and issuance of a docket in accordance with Section 2.3.5 B.17 of Article 3 of the Commission’s Rules of Practice and Procedure (RPP).<sup>3</sup>

2. Accordingly, the Matrix in Appendix A is hereby amended by the insertion immediately above the row containing the phrase “Significant impact to shared waters” of a new row as follows:

<b>Electric Generation/Co-generation Facilities:</b>  Designed to consumptively use in excess of 100,000 gpd of water during any 30-day period, when no other aspect of the project subjects it to separate DRBC review in accordance with the RPP and this Agreement.	F
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3. Whenever DNREC approves a project within the Category in accordance with the Agreement as amended, DNREC hereby further agrees to require such project to obtain DNREC’s approval of (1) water conserving procedures and technology considered and/or to be implemented by the project sponsor; and (2) a contingency plan that includes emergency conservation measures to be implemented in the event of a drought or other water shortage, consistent with the terms of Section 2.3.5.1.C of the RPP, “Water Supply Projects – Conservation Requirements”.

4. The Parties find that this Amendment No. 1 advances the objective set forth in Section III, “Principles” of the Agreement, which provides in relevant part that the Agreement is designed to: “...effectuate intergovernmental cooperation, minimize the efforts and duplication of Department and Commission staff resources where consistent with Commission and state

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<sup>3</sup> Section 2.3.5 B.17 makes subject to review in accordance with Section 3.8 of the Delaware River Basin Compact, “[e]lectric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period”.

legal requirements, [and] ensure compliance with Commission approved Basin-wide requirements .....”.

5. This Amendment No. 1 shall be effective upon the date of execution by the last signing Party.

IN WITNESS THEREOF, the Commission through its duly authorized Executive Director and the Department through its Secretary, consistent with the Delaware River Basin Compact and the laws of the State of Delaware, respectively, have executed this Agreement by affixing their respective signatures thereto:



\_\_\_\_\_  
Carol R. Collier, Executive Director  
Delaware River Basin Commission



\_\_\_\_\_  
Collin P. O'Mara, Secretary  
Delaware Department of Natural Resources  
and Environmental Control

Date: 5/20/13

Date: 5/29/13