

DELAWARE RIVER BASIN COMMISSION

FINAL

ORDER

Notice of Final Rulemaking: Regulatory Program Fees and Water Supply Charges

Amendments to the Rules of Practice and Procedure Concerning Regulatory Program Fees and to the Basin Regulations - Water Supply Charges Concerning Rates

Proposed: Delaware *Register of Regulations* (19 DE Reg. 1052-1057 (06/01/2016)) on June 1, 2016.

Adopted: December 14, 2016 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary.

Filed: December 29, 2016 as a final regulation.

Effective: January 1, 2017.

Summary: The Commission amends the *Rules of Practice and Procedure and the Basin Regulations - Water Supply Charges*, respectively, to adopt a new project review fee structure and provide for automatic inflation adjustments. These changes are also incorporated into the Commission's Comprehensive Plan.

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Supplementary Information:

Background. The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York and Pennsylvania - and on behalf of the federal government, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

By Resolution No. 2016-9 on December 14, 2016 the Commission approved a comprehensive revision of its project review fee structure, including an automatic annual indexed inflation adjustment for most fees. An inflation adjustment was also approved for DRBC's water supply charges rates applicable to consumptive and non-consumptive surface water withdrawals. The changes to DRBC's regulatory program fees are designed to provide a more predictable and sustainable source of revenues and to close the annual gap in funding needed to support DRBC's project review program. They also adjust the fees program to better align with the One Process/One Permit Program instituted earlier in 2016. The changes to DRBC's water supply charges regulations are designed to help revenues assigned to DRBC's Water Supply Storage Facilities Fund keep pace with inflation.

Public Process. A Notice of Proposed Rulemaking and Public Hearing was posted to the Commission's website on May 9, 2016. A detailed set of questions and answers about the proposal ("FAQs") and a press release accompanied the May 9, 2016 web posting. On May 10, 2016, an email alert, including a link to the notice and supporting documents, was transmitted to all parties subscribed to DRBC's list serve. Notice of the proposed rules was published in the *Federal Register* at 81 FR 35662, June 3, 2016 and appeared in the *Delaware Register of Regulations*, 19 DE Reg. 1052, June 1, 2016; *New Jersey Register*, 48 N.J.R. 949, June 6, 2016; *New York State Register*, May 25, 2016 (page 1); and *Pennsylvania Bulletin*, 46 Pa.B. 2967, June 11, 2016. DRBC staff hosted a public informational meeting on the proposal on Wednesday, June 15, 2016 in Washington Crossing, Pa., including presentations by staff and informal questions and answers. The FAQs posted on the Commission's website were thereafter supplemented with questions and responses offered during the informational meeting. A public hearing on the proposed amendments took place at the Commission's office building in West Trenton, N.J. on July 27, 2016 and written comments were accepted through August 12, 2016.

In response to the written and oral comments submitted on the draft rules, staff developed a detailed comment and response document, including modest changes to the rule text. After careful consideration and consultation with staff on the comments and proposed changes to the draft rules, the Commissioners determined that the changes were appropriate, responsive to the public's concerns and a logical outgrowth of the rules as proposed. The changes and the staff response to comments were adopted by unanimous vote of the Commissioners to approve Resolution No. 2016-9 at the Commission's public business meeting on December 14, 2016.

Additional materials. The following additional materials can be found on the Commission's web site, www.drbc.net:

- Resolution No. 2016-9, at http://www.nj.gov/drbc/library/documents/Res2016-09_Fee-Rule.pdf. Attachments to the resolution include a redline version of the regulatory program fees rule text, showing changes between the

draft and final versions of the new rule; and a redline version of the schedule of water charges, comparing the text that has been in place since 2011 with the text of this final rule.

- The detailed comment and response document prepared by staff and adopted by the Commission when it approved the final rule on December 14, 2016, at http://www.nj.gov/drbc/library/documents/regs/CR_fees-rulemaking121416.pdf.
- A questions and answers document ("FAQs") prepared by staff to explain the purpose and effect of the rule changes, at http://www.nj.gov/drbc/library/documents/FAQ_fees-charges121416.pdf.
- The Commission's press release dated December 14, 2016, announcing adoption of the project review fees restructuring and amendment of the schedule of water charges, at http://www.nj.gov/drbc/home/newsroom/news/approved/20161214_newsrel_fees.html.
- Updated versions of the *Rules of Practice and Procedure* and the *Basin Regulations - Water Supply Charges*, at <http://www.nj.gov/drbc/about/regulations/>.

For the reasons set forth in the preamble, the Delaware River Basin Commission has amended parts 401 and 420 of title 18 of the Code of Federal Regulations as set forth below:

PART 401 – RULES OF PRACTICE AND PROCEDURE

[18 CFR 401 has been amended by a new § 401.43 which reads as follows:]

§ 401.43 Regulatory program fees.

(a) Purpose. The purpose of this section is to provide an adequate, stable and reliable stream of revenue to cover the cost of the Commission's regulatory program activities, an important means by which the Commission coordinates management of the shared water resources of the Basin. Activities to be covered by the fees include the review of applications for projects that are subject to review under the *Delaware River Basin Compact* and implementing regulations; and ongoing activities associated with such projects, including but not limited to, effluent and ambient monitoring, data analysis, hydrodynamic and water quality modeling, and coordination with state and federal agencies.

(b) Types of fees. The following types of fees are established by this section:

(1) Docket Application Fee. Except as set forth in paragraph (b)(1)(iii) of this section, the docket application fee shall apply to:

(i) Project requiring a DRBC-issued docket or permit. Any project that, in accordance with the *Delaware River Basin Compact* and DRBC regulations, requires a Commission-issued docket or permit, whether it be a new or existing project for which the Commission has not yet issued an approval or a project for which the renewal of a previous Commission approval is required.

(ii) Project requiring inclusion in the comprehensive plan. Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is changed substantially from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

(iii) Exemptions. The docket application fee shall not apply to:

(A) Any project for which the Signatory Party Agency serves as lead under the One Permit Program rule (§ 401.42), unless such project must be added by the Commission to the Comprehensive Plan.

(B) Any project for which an agency, authority or commission of a signatory to the *Compact* is the primary sponsor. Projects sponsored by political subdivisions of the signatory states shall not be included in this exemption. For purposes of this section "political subdivisions" shall include without limitation municipalities, municipal utility authorities, municipal development corporations, and all other entities not directly under the budgetary and administrative control of the Commission's members.

(2) Annual monitoring and coordination fee. -- (i) Except as provided in paragraph (ii) below, an annual monitoring and coordination fee shall apply to each active water allocation or wastewater discharge approval issued pursuant to the *Compact* and implementing regulations, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the One Permit Program rule (§ 401.42). The fee shall be based on the amount of a project's approved monthly water allocation and/or approved daily discharge capacity.

(ii) For any withdrawal or diversion covered in part by a certificate of entitlement issued pursuant to 18 CFR § 420.31-32 of the water supply charges regulations, the annual monitoring and coordination fee shall be based on the allocated amount, if any, in excess of the quantity specified in the entitlement.

(3) Alternative Review Fee. In instances where the Commission's activities and related costs associated with the review of an existing or proposed project are expected to involve extraordinary time and expense, an alternative review fee equal to the Commission's actual costs may be imposed. The Executive Director shall inform the project sponsor in writing when the alternative review fee is to be applied and may require advance payment in the amount of the Commission's projected costs. Instances in which the alternative review fee may apply include, but are not limited to, matters in which:

(i) DRBC staff perform a detailed pre-application review, including but not limited to the performance or

review of modeling and/or analysis to identify target limits for wastewater discharges.

(ii) DRBC staff perform or review complex modeling in connection with the design of a wastewater discharge diffuser system.

(iii) DRBC manages a public process for which the degree of public involvement results in extraordinary effort and expense, including but not limited to, costs associated with multiple stakeholder meetings, special public hearings, and/or voluminous public comment.

(iv) DRBC conducts or is required to engage third parties to conduct additional analyses or evaluations of a project in response to a court order.

(4) Additional fees. -- (i) Emergency approval. A request for an emergency certificate under § 401.40 to waive or amend a docket condition shall be subject to a minimum fee in accordance with paragraph (e) of this section. An alternative review fee also may be charged in accordance with paragraph (b)(3) of this section.

(ii) Late filed renewal application. Any renewal application submitted fewer than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) Modification of a DRBC approval. Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional docket application fee calculated in accordance with paragraph (e) of this section and subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) Name change. Each project with a docket or permit issued by the DRBC or by a Signatory Party Agency pursuant to the One Permit Program rule (§ 401.42) will be charged an administrative fee as set forth in paragraph (e) of this section.

(v) Change of ownership. Each project that undergoes a "change in ownership" as that term is defined at 18 CFR 420.31(e)(2) will be charged an administrative fee as set forth in paragraph (e) of this section.

(c) Indexed adjustment. On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the docket application fee and annual monitoring and coordination fee will remain unchanged. Following any indexed adjustment made under this paragraph (c), a revised fee schedule will be published in the Federal Register by July 1 and posted on the Commission's website. Interested parties may also obtain the fee schedule by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

(d) Late payment charge. When any fee established by this section remains unpaid 30 calendar days after the payment due date provided on the Commission's invoice, an incremental charge equal to 2% of the amount owed shall be automatically assessed. Such charge shall be assessed every 30 days thereafter until the total amount owed, including any late payment charges has been paid in full.

(e) Fee schedules. The fees described in this section shall be as follows.

TABLE 1 TO §401.43--DOCKET APPLICATION FILING FEE

Project Type	Docket Application Fee	Fee Maximum
Water Allocation	\$400 per million gallons/month of allocation ¹ , not to exceed \$15,000 ¹ . Fee is doubled for any portion to be exported from the basin.	Greater of: \$15,000 ¹ or Alternative Review Fee
Wastewater Discharge	Private projects: \$1,000 ¹ Public projects: \$500 ¹	Alternative Review Fee
Other	0.4% of project cost up to \$10,000,000 plus 0.12% of project cost above \$10,000,000 (if applicable), not to exceed \$75,000 ¹	Greater of: \$75,000 ¹ or Alternative Review Fee

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 2 to §401.43--ANNUAL MONITORING AND COORDINATION FEE

	Annual Fee	Allocation
Water Allocation	\$300 ¹	< 4.99 mgm
	\$450 ¹	5.00 to 49.99 mgm
	\$650 ¹	50.00 to 499.99 mgm
	\$825 ¹	500.00 to 9,999.99 mgm
	\$1,000 ¹	> or = to 10,000 mgm
Wastewater Discharge	Annual Fee	Discharge Design Capacity
	\$300 ¹	< 0.05 mgd
	\$610 ¹	0.05 to 1 mgd
	\$820 ¹	1 to 10 mgd
	\$1,000 ¹	>10 mgd

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

TABLE 3 to §401.43--ADDITIONAL FEES

Proposed Action	Fee	Fee Maximum
Emergency Approval Under 18 CFR 401.40	\$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	\$2,000	--
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	\$1,000 ¹	--
Change of Ownership	\$1,500 ¹	--

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

PART 420 – BASIN REGULATIONS – WATER SUPPLY CHARGES

[18 CFR § 420.41 has been revised to read as follows:]

§ 420.41 Schedule of water charges.

The schedule of water charges established in accordance with § 420.22 shall be as follows:

- (a) \$80 per million gallons for consumptive use, subject to paragraph (c) of this section; and
- (b) \$0.80 per million gallons for non-consumptive use, subject to paragraph (c) of this section.
- (c) On July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.¹ In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the water charges rates will remain unchanged. Following any indexed adjustment made under this paragraph (c), revised consumptive and non-consumptive use rates will be published in the Federal Register by July 1 and posted on the Commission's website. Interested parties may also obtain the rates by contacting the Commission directly during business hours.

¹ Consumer Price Index – U / Series ID: CWURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

Dated: December 29, 2016

Pamela M. Bush,
Commission Secretary

20 DE Reg. 627 (02/01/17) (Final)