



Comment from the Delaware Riverkeeper Network regarding the One Process-One Permit Program and the proposal to enter into an administrative agreement with New Jersey for demonstration of the program.

June 9, 2015

The Delaware Riverkeeper Network opposes the One Process-One Permit Program and the proposal to enter into an updated administrative agreement with New Jersey to launch demonstration of this program.

The One Process-One Permit program being presented will:

- ☛ undermine DRBC authority,
- ☛ undermine the ability of Commissioners to weigh in on water quality impacts and threats,
- ☛ undermine the watershed-based approach to decisionmaking and protection, and
- ☛ undermine public participation in the project review and decisionmaking process.

DRBC should continue as the lead agency implementing its regulatory obligations in all instances where they apply including:

- ✓ directly receiving all docket application materials,
- ✓ holding DRBC hearings and public comment periods,
- ✓ noticing receipt of applications and public comment opportunities,
- ✓ being full and final decisionmaker in the application of the DRBC Compact and its Rules of Practice and Procedure.

Different guiding missions, goals, obligations and lines of authority will result in purely state objectives overshadowing and perhaps even undermining DRBC's objectives and obligations.

DRBC and NJ DEP have different missions, goals, obligations and individuals to which agency officials and decisionmaking are answerable. NJDEP's obligation to fulfill its organizational mission and to be answerable to the Governor's office of the state will prevent it from applying the watershed-based perspective to decisionmaking, which includes an obligation to protect and serve the needs of the other watershed states of Pennsylvania, Delaware and New York, that is at the core of DRBC's legal obligations as a regulatory agency.

The DRBC Compact recognizes:

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“(b) The water resources of the basin are subject to the sovereign right and responsibility of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of such powers of sovereignty in the common interests of the people of the region. “

And that:

“In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.”

(Compact section 1.3 Purpose and Findings.)

New Jersey’s mission is to serve New Jersey, it does not include consideration of impacts to other watershed states, the watershed perspective in the decisionmaking process or avoiding controversy among states through the watershed based approach to waterway protection:

“NJDEP’s core mission is and will continue to be the protection of the air, waters, land, and natural and historic resources of the State to ensure continued public benefit. The Department’s mission is advanced through effective and balanced implementation and enforcement of environmental laws to protect these resources and the health and safety of our residents. At the same time, it is crucial to understand how actions of this agency can impact the State’s economic growth, to recognize the interconnection of the health of New Jersey’s environment and its economy, and to appreciate that environmental stewardship and positive economic growth are not mutually exclusive goals: we will continue to protect the environment while playing a key role in positively impacting the economic growth of the state.”

Application of regulatory requirements is not a purely objective exercise, there are assumptions, qualitative considerations, and subjective determinations that affect how regulations are implemented in particular permits to particular facilities and projects. And so it does make a difference what is the target mission, guidance and goals of the regulatory entity overseeing application of the DRBC regulations. In the case of the DRBC and the four watershed states, the mission and goals of each is fundamentally different and as such the states cannot implement DRBC rules, regulations and program objectives and fulfill their purely state obligations as well.

The One Process-One Permit Program diminishes the level of expertise and understanding on the part of the regulatory reviewer regarding appropriate application of DRBC regulatory requirements resulting in varying applications of the law.

One of the primary objectives of the DRBC is to ensure “equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.” By placing the primary decisionmaking authority in the hands of each state agency, each guided by their own political and organizational obligations, you are preventing the accomplishment of this important DRBC objective.

State agency staff are trained, hired and work daily to implement their own state regulations, policies and programs and to comply with the political leadership in the Governor’s office – this appropriately

and necessarily impacts how they interpret and apply regulations to facility operations and permit applications. Once the program is fully implemented, there will be multiple reviewers from each of the four different watershed states all applying their own understanding of the DRBC regulations through the lens of their individual state perspectives, obligations and goals and so necessarily resulting in different interpretations and applications of DRBC's regulations. In addition, these individuals will not have the same level of experience and expertise with the DRBC regulations, and won't have the same level of access to experienced DRBC reviewers, thereby diminishing the level of understanding of how to most appropriately apply DRBC regulatory obligations in addition to and/or in lieu of state obligations.

By keeping the state and DRBC reviews separate you are ensuring the highest level of review, understanding and application of the law for each of the states and the DRBC – it is actually a more efficient and effective approach than the One Process-One Permit Program. DRBC staff are going to be much more familiar with, and better understand the requirements, policies and programs of the DRBC and will be looking to accommodate the mission and goals of River protection for the DRBC thereby enhancing the accurate and informed application of the DRBC compact and rules of practice and procedure.

The One Process-One Permit Program is not, as is being suggested, preventing duplication of effort – having complimentary reviews by the DRBC and the state is not duplicative in that each regulatory entity is applying their own standards with their own expertise.

The One Process-One Permit Program also removes the checks and balances that help ensure full compliance with the higher standards obligation, this is a loss of value to the regulatory program from the perspective of environmental and public protection, it is not an enhancement.

The One Process-One Permit Program empowers individual state agencies to directly exercise DRBC authority and thereby to bind all four watershed States and the Federal Government to decisions that may not be in their collective best interests.

Provision I. B. (2) of the proposed Administrative Agreement says “a final action of the NJDEP under this Agreement will also constitute an action on behalf of the Commission.” This is dangerous and confusing language. It is important that the DRBC Commissioners maintain the final authority to approve or disapprove dockets. In fact, to give this power to one state or the other under these agreements undermines the authority of the other states as participants in the Commission, and undermines the authority of the Commission itself.

One of the values of the DRBC is to bring the interstate focus to decisionmaking on both the regulatory scale but also the project by project scale; ceding authority to each of the state agencies for decisionmaking on behalf of the DRBC undermines this important role, function and perspective of the DRBC. While DRBC has articulated that there will be a level of DRBC review, comment and input to NJ DEPs decisions, giving input has quite a different affect from providing leadership review and decisionmaking.

In addition, the DRBC hearing process before the Commissioners ensures that all Commissioners have direct knowledge and notification of dockets that are advancing and/or being approved – removing this direct presentation to the Commissioners will result in Commissioners being much less aware, and in some cases not aware at all, of the dockets and decisions that are being approved under their

watch. Paper notifications to the offices of the Commissioners is vastly different than verbal communication at Commission meetings.

The abdication of authority provided by One Process – One Permit is particularly problematic for Pennsylvania that has a constitutional obligation to exercise informed decisionmaking in protecting the rights of Pennsylvania’s people to pure water, clean air and a healthy environment. Pursuant to the language of Article I, Section 27, Pennsylvania cannot blindly abdicate its decisionmaking authority for protecting the water resources of the state, including the shared Delaware River, to other states for whom fulfillment of this constitutional obligation holds no sway.

If One Process – One Permit were to advance we would urge that there still be verbal presentations at Commission quarterly meetings of all applications proposed and decisions being made to ensure Commissioners are directly notified of decisions that are being made so they can be quickly and easily alerted to issues that may be of concern to their state but that fell through the cracks during electronic or paper transmission.

The One Process-One Permit Program proposal puts an undue burden on the public and other states for determining when proposed projects and permits are undergoing review for compliance with DRBC obligations and creates and exacerbates public confusion regarding how and when to participate.

When DRBC is reviewing proposals for compliance with DRBC regulations there is clarity for the public about when that review is happening, who is doing it, from whom to secure materials and information, and where to turn to participate in the public process regarding a particular application or proposal being subject to DRBC authority. The One Process-One Permit Program proposal provides much less clarity for the public about when reviews subject to DRBC regulatory obligations are happening, who is doing the review, who the public should be commenting to, and when and on what body of regulations they should be commenting. The regulatory process is not more clear for the public, it is less clear.

The One Process-One Permit Program as proposed will require all states and all residents to review all state public notice publications to determine when a project subject to DRBC regulations is undergoing regulatory review and/or decisionmaking. It is too great a burden to expect the public and other watershed states to have to review the NJ bulletin for all permit notifications that may involve DRBC regulatory obligations if they want to be informed and to be engaged in the decisionmaking process on projects that may affect the Delaware River. The DRBC was established in order to ensure watershed based protections and decisionmaking for the benefit of all watershed residents. PA, DE and NY Commissioners, agencies and residents should not have to review NJ’s bulletin to become aware of a proposal that could directly impact the Delaware River and therefore their states or themselves. Once the One Process-One Permit Program is implemented in all of the watershed states it will be an even greater undue burden to expect all watershed Commissioners, all watershed state agencies and all watershed residents to review all state notification bulletins in order to identify permits and proposals that impact the watershed. The Delaware River is important for the drinking water it provides as well as the impacts all watershed residents, and many outside the watershed economically, recreationally, from flooding, for art, history, education, property values and quality of life. DRBC notification of all permit applications subject to DRBC jurisdiction is irreplaceable.

While in section VI the agreement allows for the DRBC or any signatory state to request that the DRBC take jurisdiction over review and approval of a proposed discharge or water allocation permit that is subject to the agreement, it fails to provide the information mechanism necessary to ensure the DRBC, its staff, its Commissioners or the signatory states, or the public, are aware of all projects that are moving through the NJ review process, therefore preventing the knowledge necessary for any of the parties to make such a decision and notification. Nor is there a mechanism to make sure the public is fully aware and so therefore has the ability to approach the DRBC or any of the signatory states to consider making such a determination.

If One Process – One Permit were to advance, DRBC should commit itself, in the Resolution passed and the Administrative Agreement signed to publicly notice on a special page of the DRBC website, all regulatory steps and actions being taken, including notices of applications received, comment period deadlines, links to relevant materials and/or instructions on how to obtain materials for review, and details on what agency and individuals the public is to submit comment.

It is also important that there be a clearly articulated path for the public to comment directly to the DRBC about concerns it has regarding application of any DRBC regulatory obligations in order to ensure DRBC staff and Commissioners can be directly and quickly alerted to concerns that require more detailed attention and intervention.

And there should be, as noted above, regular reporting at the DRBC quarterly Commissioner meetings of the projects and decisions advancing through the process and being made by New Jersey that are binding DRBC in its application of DRBC's Compact and Rules of Practice and Procedure.

To advance these needs, applicants in any state for approvals that require application of DRBC rules, regulations or requirements, should be required to submit a copy of their application to both NJDEP and to the DRBC to ensure that DRBC gets immediate notification of the proposal, to allow anticipation of potential watershed concerns and so the public and other DRBC states can continue to depend upon the DRBC for timely notification of upcoming projects being subject to review and allow for a clear point of access to information regarding projects, facilities and proposals that has implications for the Delaware River and all the basin states.

DRBC should receive full, complete and timely copies of all application materials in order to help identify deficiencies, plan for agency resources, ensure access to such information by other DRBC states and the public.

The statement in Provision I. D. of the Administrative Agreement that DRBC will have reasonable access to data for purposes of basin planning, forecasting and compliance monitoring functions “as technology is available and allows” is a high concern and demonstrates one of the pitfalls of the One Process-One Permit Program, DRBC should not be promised access to information as technology allows, DRBC must be ensured full access to all data and information.

If the One Process-One Permit Program is to advance the Resolution and Administrative Agreement must make clear that DRBC is entitled to full access to all data and information as it is received by the states, whether that be by technological access or paper copy.

DRBC needs to be the designated lead reviewer and decisionmaker in a number of areas where currently the proposed Resolution and Administrative Agreement makes NJ the lead.

It is important that DRBC be given the role of lead agency when:

1. there are new projects proposed that will impact, or have the potential to impact, the main stem Delaware River directly (whether being built for discharge into or withdraw from the

- main stem River or whether discharging to or withdrawing from a tributary in such a location or to such a degree that the impact on the main stem will be direct),
2. for projects that will be impacting, or have the potential to impact, Special Protection Waters,
 3. for any proposals that involve the import of wastewater from outside the Delaware River basin, and
 4. for any project where the applicant is seeking relief from or modification of a DRBC requirement.

While in all instances we believe DRBC direct review and leadership on permit/docket decisionmaking are important, in these four instances the need for DRBC leadership in reviewing and applying DRBC's Compact and Rules of Practice and Procedure are particularly important.

- New projects will have new impacts, individually, cumulatively, and synergistically, and so their impacts to water resources are in need of a higher level of scrutiny from an interstate perspective and therefore DRBC is the more appropriate lead.
- The Special Protection Waters program is intended to provide a higher standard of protection and care and is an important anti-degradation measure for, particularly, three of the watershed states. Given the higher standards and the unique elements of the SPW program, DRBC leadership in meeting its standards is critical.
- Projects that involve the import of contaminated waste for treatment and/or disposal within the watershed boundaries has always been widely recognized by the watershed public as being of concern; DRBC's leadership and watershed perspective in review and decisionmaking in these situations is irreplaceable. The irreplaceable need for DRBC to be the lead agency for any project, permit or docket (whether new application or a renewal application) that involves the import of 50,000 gallons or more of wastewater per day for treatment and/or disposal within the watershed is made more pronounced and obvious given the potential and reality of dangerous fracking wastewater, including wastewater contaminated with radioactive materials, being imported for treatment and/or disposal in our watershed, and given the scientific research documenting the water quality harms of frack wastewater discharges, whether they be intentional discharges or accidental discharges, and whether the wastewater has been treated or not.
- Given that DRBC's regulatory mandates and requirements are carefully crafted to protect the rights and values of all watershed residents and beneficiaries, DRBC should be the lead on any and all proposals that seek "relief" from, reduction of or modification of DRBC requirements to ensure that the goals of the DRBC and the rights of all watershed beneficiaries are protected by such modification and to secure any mitigation or other beneficial action that will provide counterweight to the adverse impacts that such regulatory "relief", reduction or modification results in.

If One Process – One Permit advances, the term Lead Agency needs definition for clarity and should ensure the key lead agency role for DRBC where new projects; projects impacting Special Protection Waters; new projects or renewal applications involving the import of 50,000 gallons or more per day of wastewater for treatment and/or disposal are involved; and any projects where the applicant seeks relief from or modification of a Commission requirement.

Equal access and weight for all commenters to any state agency on a proposal that involves DRBC regulatory authority must be explicitly assured.

Because One Process – One Permit will involve the state application of DRBC authority, there needs to be a clear mandate in the Resolution and the Administrative Agreement regarding providing equal access and weight to all comments regardless of the home state of the commentor.

One of the important aspects of DRBC decisionmaking and authority is that it is focused on watershed protection for the benefit of all watershed residents and users, and as a result all commenters, regardless of where they live, where they work, or how they engage in benefitting from the watershed's waterway resources, are given equal time and equal weight in the decisionmaking process. To the extent that One Process – One Permit is giving primary DRBC review and decisionmaking authority to state representatives, it is critical that there be absolute and enforceable clarity that all commenters are to be given equal access and equal weight and that no preference can be, or is, given to residents or businesses of the decisionmaking state.

If One Process – One Permit is to advance the Resolution and Administrative Agreement needs to provide clear and enforceable mandates that all commenters are to be given equal access and equal weight and that no preference can be, or is, given to residents or businesses of the decisionmaking state.

The proposed NJ Administrative Agreement, by its terms, accepts conflict with and impairment of the DRBC Comprehensive Plan and or regulatory requirements, this agreement to undermine the authority and protections of the DRBC is a flagrant violation of DRBC's obligations to protect the water resources of our watershed for the benefit of all states and all people.

According to the proposed Administrative Agreement, for Category WW2 and WW3 waters NJDEP is required to include a finding that wastewater discharges in this category do “not substantially impair or conflict with the Commissions' Comprehensive Plan”.

Decisions that impact the water resources of our watershed must fully support and positively advance the goals of the DRBC and the Comprehensive Plan. To include a statement in this proposed agreement with NJ that not only fails to fulfill that positive objective but by its terms accepts that the Comprehensive Plan of the DRBC could be impaired and conflicted with as long as a subjective standard of “not substantially” is deemed to be met is simply unacceptable and is fraught with peril for the health of our watershed and achievement of DRBC's mission, goals and regulations.

While provision 6 of the proposed Resolution makes absolutely clear the proposed One Process-One Permit Program cannot impair or affect the diversion and releases of the reservoirs and the rights of the decree parties, it is striking that it does not make clear in a separate provision that the program cannot “impair, diminish or otherwise adversely affect” application of any of DRBC's regulations for protecting the water resources of the basin. This would suggest that in fact there can be a degrading level of protection explicitly allowed under the One Process-One Permit Program.

The proposed Resolution asserts that the program will ensure that “equal or better environmental outcomes are obtained.” Given the concerning language noted in previous paragraphs and the multitude of reviewers with varying levels of understanding of DRBC regulations and given their differing state obligations, that will also guide their determinations, the One Process-One Permit Program is actually less likely to ensure better environmental outcomes. In addition, the law currently requires that the most stringent protections between the DRBC and the states apply,

therefore the obligation for higher environmental outcomes currently exists – sadly it is an obligation that is undermined and to a degree rescinded by the One Process-One Permit Program.

If One Process-One Permit Program were to advance, it is important that all language necessary be modified, and that provisions as necessary be added, to ensure that in every instance the program applies that decisionmaking, permits and dockets issued cannot “impair, diminish or otherwise adversely affect” application of any of DRBC’s regulations or requirements for protecting any and all of the water resources of the basin, both in terms of quality and quantity.

The proposed Resolution and Administrative Agreement threaten, and potentially strip, DRBC of its authority with unreasonable time obligations.

Administrative Agreement section II. G. 1. D provides a mere 30 days for DRBC input into a pre-draft permit – this time frame is unacceptably low and will place pressures and stressors upon the DRBC staff that this agreement was supposed to alleviate. Administrative Agreement section II. I. also imposes a 30 day truncated time for review for WW3 pre draft and draft permits, with only the addition of unspecified additional time for SPW waters to accommodate the no measurable change analysis. Administrative Agreement section III.I. imposes a 30 day review limitation on WA-3 waters which includes new withdrawals, diversions, consumptive uses or importation of waters, major modifications of water withdrawal projects and more.

Such a short time frame as 30 days to review and respond to pre draft and draft permits, withdrawals, diversions, consumptive uses or discharge of out of basin waters regardless of the number of drafts and/or proposals that may already be before the DRBC in a given time and regardless of the complexity of a pre-draft, draft or proposal, or the volume of associated information for any such proposal, is clearly designed to benefit the permit applicants and project proposers, not the public or the DRBC. Standing alone, for a single permit or proposal of any of these kinds, 30 days is a limited review period for complex projects, but when put in the context of additional work obligations and multiple permit deadlines it is certain to encourage truncated reviews that will undermine the review process and the opportunity for public awareness and input.

A 30 day time limit that results in assumed DRBC support/approval in the absence of comment (as is included at least in section II.G.d) will allow the advance of deficient projects and permits – it is not appropriate to presume that a lack of DRBC response reflects approval or support -- there are any number of reasons why a response may not have been received, none of which have anything to do with approval or support of a proposal. In addition, giving NJDEP decisionmaking authority on behalf of DRBC even when there has been no indication of DRBC review of a project presumes they have properly reviewed a project with DRBC obligations in the forefront of their mind -- it is simply not good enough to presume that NJDEP will get it right, it is DRBC’s obligation to make sure DRBC’s rules are complied with and the public expects they will be the ones to fulfill this obligation.

In addition the truncated time frames for reviews ensured by these time limitations, will deny the public a full and fair opportunity to become aware of a project and to offer early input to best effect DRBC’s decisionmaking. Thirty days is not enough time for a community to become properly notified, secure access to public files and documents, procure expert analysis, and craft and submit informed comment. The public often provides helpful facts, science, documentation, information and considerations that inform and enhance an agency’s decisionmaking process. It is important DRBC continue to have the opportunity to benefit directly from public input prior to supporting, denying or

acquiescing to a proposed permit or project – 30 days denies DRBC the benefit of this input. Inhibiting meaningful public participation denies us all the benefit of public input.

While for WW3 waters DRBC, according to the agreement, receives notification of a permit application, why too is there no such notification to DRBC for all permit applications subject to DRBC jurisdiction? Failure to do so is a failure to allow DRBC to prepare to fulfill its obligations under the agreement but also denies the public the opportunity for clear notification and to prepare to participate in the public process.

The presumption in Section III. F. that DRBC will not comment on WA2 water withdrawal projects is misplaced – there are many changing conditions in the watershed and in subwatersheds that would mandate DRBC review and comment. DRBC comment, even if it is just to state that they will not be providing substantive comment, should be mandated.

If One Process-One Permit were to move forward, there should be a mandate that:

- ✓ DRBC receive notification of all permit applications received by the state that are subject to this program, and that notification should be included on DRBC's website so the public can also be notified and aware and therefore also be able to properly prepare to review and comment as needed.
- ✓ That there be DRBC documented response to any proposal made that goes before a state agency in the first instance, there should be a minimum 120 days allowed for DRBC review and response, and there should be the opportunity to extend this time frame upon simple request.
- ✓ That for WW3 projects in the drainage area of SPW, "sufficient time" is defined as mandatory notification before the initiation of project design and ensuring the time necessary (regardless of how long) for DRBC and applicants to perform and consult on modeling for the SPW No Measureable Change analysis prior to project design.
- ✓ DRBC should receive complete copies of all permit applications and project requests submitted to NJDEP to ensure complete and timely notification that a project is being proposed and to ensure the public and other Commission states also have the opportunity to be aware, and copies of all of these materials and how to receive copies of them, should be noticed on the DRBC website.
- ✓ DRBC is designated as the lead agency for Category WW3 and WA3 projects given the water resources at issue – these are proposals that are impacting specially designated areas or resulting in new or expanding impacts of significant concern, it is appropriate that DRBC be the lead in these situations if this proposal is to advance.
- ✓ DRBC is designated as the lead agency for projects proposing to import more than 50,000 gallons per day of wastewater.

Annual notification to DRBC of anticipated permit issuance is insufficient and burdensome.

Annual notification from NJDEP to DRBC of NJPDES Wastewater applications (as per Section II. D.) targeted for issuance in the coming year is deficient; the additional promise to make undefined "timely notification of revisions" is deficient and unenforceable, and when there is a failure to provide these notifications there is little opportunity or ability for DRBC to become aware of the failure and to remedy it. Annual notification coupled with the monthly notifications proposed for water withdrawal projects is more rational.

If One Process – One Permit is to advance, the monthly notifications process should apply to wastewater applications as well as to water withdrawal projects in addition to the annual notification.

Income from enforcement actions should be shared with the DRBC, particularly for states that are not providing their full fair share of the DRBC budget.

It is not appropriate that all enforcement proceeds accrue to the state of NJ. DRBC should be entitled to a portion of the enforcement funds secured by the state – DRBC has a significant role in the permitting process, in the creation of regulations, in monitoring the health of the river and implementing actions to protect water quality and as such is entitled to a portion of any enforcement fees for violation of DRBC requirements that is secured. Enforcement proceeds are not intended merely to reimburse an agency for the costs of enforcement, but are intended to reimburse the public for the damage done to shared natural resources – to the extent those resources are within the boundaries of the Delaware River watershed and the violation includes violation of DRBC Compact, Comprehensive Plan and/or Rules of Practice and Procedure, a portion of the collected proceeds should be contributed to the DRBC to further advance protection of the water resources of the basin.

It also seems highly inappropriate and inequitable for NJ to get proceeds from all enforcement actions when it is not contributing its full fair share of the DRBC budget.

If One Process – One Permit were to advance the Resolution and Administrative Agreement should mandate that all enforcement proceeds received by NJ for violations that involve DRBC regulations are shared equally with the DRBC.

State Agreements to implement and/or notify DRBC of project reviews already a demonstrated failure; why recreate a broken wheel?

DRBC already has agreements with the watershed states regarding shared responsibilities and notification obligations, and they are already known to fail; it is a mistake to enter into new agreements that increase state responsibilities in the face of these pre-existing failures and to do so in a way that will make it even more difficult to identify lapses in fulfilling these legal obligations.

Similar efforts to share responsibilities for DRBC regulatory oversight, and to share information obligations, with signatory states have not been honored and the failures have not been uncovered by the DRBC or disclosed by the signatory party. As a result, the violations of commitment have gone unaddressed for an unknown period of years allowing an unknown quantity of projects to pass through the state regulatory review process without the application of DRBC regulations or review.

For example, despite that the existing Administrative Agreement in affect with Pennsylvania, in which PA agrees to notify DRBC when they receive applications or pre-applications pertaining to reviewable projects, and to in certain instances undertake technical reviews for purposes of DRBC regulatory requirements and the Comprehensive Plan, we now know, as the result of depositions secured by the Delaware Riverkeeper Network, that these obligations have not been honored or even recognized by PADEP staff, thereby undermining all of the other provisions of the agreement regarding project review and application of DRBC regulatory requirements.

According to the deposition of a PADEP official (Section Chief, Sewage Facilities Planning and Biosolids Section) notification is not given to DRBC and technical reviews for purposes of DRBC regulatory requirements are not in fact undertaken by agency staff, nor has the staff notified DRBC when they are aware of projects subject to DRBC review, nor does the state ensure that DRBC review

is in fact undertaken and so an unknown number of projects have evaded DRBC regulatory requirements as a result.

According to depositions, when a DRBC interest or regulatory interest is identified by PA DEP staff they merely tell the applicant to approach DRBC, but there is no effort to apply DRBC rules, to ensure more strict DRBC requirements are applied, or to notify DRBC staff when projects/applications subject to DRBC authority have been submitted to DRBC.

For example:

- We “tell the consultants or Applicants when they come in that they should consult with DRBC early on in the process so they know what DRBC’s requirements are....”
- “The Department does not take on the responsibility of implementing DRBC’s rules or in --- how should I say ----? The Department does not get involved in conveying their requirements.”
- Q “So the application of the standards, of DRBC standards, is a process that’s done by DRBC and not by the Department?” A “Yes....”
- “...we do not enforce or review the DRBC rules or regulations for them.”

There needs to be crafted and articulated a mechanism for reviewing and reporting on the application of the One Process – One Permit Program.

Because this is a new program which such potential far reaching impacts, and because it is a program that DRBC is looking to apply in all four watershed states and potentially to other areas of DRBC authority if it is deemed a success, it is important there is a clear mechanism for evaluating its impacts on decisionmaking and waterway protection in the Delaware River watershed and a clearly identified time when this review will be shared with the DRBC Commissioners and the public. Reporting of the evaluation findings, including an opportunity for Commissioner and public review and comment, needs to be undertaken before the program is allowed to continue or advance after the initial trial period.

If One Process – One Permit is to advance, there needs to be a clear mechanism for review and reporting on its affects. This evaluation should include, for example, both qualitative and quantitative measures of success; should evaluate the success at having states fully and fairly apply DRBC Compact obligations and Rules of Practice and Procedure; should evaluate the affect on the public process; should evaluate the program’s ability to keep Commissioners and other states informed and engaged on decisions that impact their watershed resources and states; should evaluate the impacts on water quality and waterway health. This review, once complete, should be reported to the DRBC Commissioners as well as the public and should provide opportunity for public and Commissioner review and input. All of this needs to happen before the program is allowed to continue or advance after the initial demonstration period with NJ.

The Delaware Riverkeeper Network opposes the One Process-One Permit Program and the proposal to enter into an updated administrative agreement to enter into this program with New Jersey. To the extent the program does advance for the trial period we respectfully urge that you make the modifications suggested in this comment letter.

Respectfully,



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the Delaware Riverkeeper