

the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.

(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies of photographic prints or reproduction may be used.

§ 401.40 Informal conferences and emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in this part.

§ 401.41 Limitation of approval.

(a) Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.

§ 401.42 One Permit Program.

(a) *Purpose.* The purpose of the One Permit Program set forth in this section is to provide the opportunity for the environmental agency and/or other administrative agency of a Signatory Party ("Signatory Party Agency") and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement under paragraph (d) of this section.

(b) *Scope.* This section applies to all projects that:

(1) Are reviewable under the Compact;

(2) Meet the thresholds for review set forth in § 401.35 of these *Rules of Practice and Procedure*;

(3) Are subject to review by a Signatory Party Agency under its own statutory authorities; and

(4) Are within regulatory programs that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this section. For any project that requires an approval under the Compact that is outside the scope of the Signatory Party Agency's approval issued in accordance with an Administrative Agreement under this section, the project sponsor shall apply to the Commission in accordance with procedures established by the Commission.

(c) *Regulatory programs.* Regulatory programs eligible for administration under the One Permit Program may include but are not limited to those concerning: Basin discharges, Basin water withdrawals, and Basin flood plain requirements.

(d) *Procedure.* The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing

Delaware River Basin Commission

§ 401.42

and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

(1) Except as provided in paragraphs (b) and (e) of this section or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.

(2) To enable the Commission to compile and make available to the public a current list of pending applications for projects within the Basin subject to Commission jurisdiction, the Signatory Party Agency shall notify the Commission at least monthly of applications the Signatory Party has received during the preceding month that may be eligible for review under the One Permit Program.

(3) For those categories of projects identified in the Administrative Agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the Administrative Agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under Section 3.8 of the Compact as to those regulatory programs identified in an Administrative Agreement in accordance with paragraph (b) of this section.

(4) Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under Section 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under Section 3.8 of the Compact, as specified in the Administrative Agreement, as to the regulatory program covered by the Signatory Party Agency's approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor. If in accordance with the applicable Administrative Agreement the determination under Section 3.8 of the Compact is made by the Commission,

the Signatory Party Agency may include the determination together with any associated conditions of approval in its permit or other approval instrument covering the project.

(5) The Commission will maintain on its Web site a list of all projects being administered pursuant to the Program.

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

(f) *Retention of Commission review and enforcement authorities.* Notwithstanding any other provision of this section, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this section shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this section may include collaborative and cooperative compliance and enforcement procedures, nothing in this section shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

(g) *Exhaustion of Signatory Party administrative remedies prerequisite to appeal.* Before commencing an action in a

§ 401.43

18 CFR Ch. III (4–1–23 Edition)

court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency under this section, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

(h) *Fees.* The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this section. The applicable fee(s) for Commission services rendered pursuant to this section shall be those set forth in DRBC Resolution No. 2009-2 (available at <http://www.nj.gov/drbc/library/documents/Res2009-2.pdf>) for the review and renewal of project approvals. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the current schedule and applicable rules.

(i) *Effect of One Permit Program on Commission dockets.* (1) Unless the Executive Director or Commission otherwise directs, if a docket holder submits, or has submitted, a timely application to a Signatory Party Agency for a project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, the most recent docket for the project shall, upon expiration, be deemed administratively continued until final action is taken in accordance with paragraph (i)(2) of this section.

(2) Unless the Executive Director or Commission otherwise directs, upon a Signatory Party Agency's final action on an application for a project subject to the One Permit Program:

(i) Any existing or administratively continued docket for such project shall terminate as to all of its provisions and conditions that pertain to regulatory programs administered by the Signatory Party Agency under the Administrative Agreement ("the Covered Programs"); and

(ii) The docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs, including, as applicable, the incorporation of the project in the Commission's Comprehensive Plan.

(j) *Modification of rules of practice and procedure to conform to this section.* Any project subject to review under an Administrative Agreement duly adopted

under paragraph (d) of this section, shall be governed by this section and not §§ 401.4, 401.5, 401.6, 401.8, 401.34(a), (c) and (e), 401.37, 401.38 and 18 CFR part 401, subpart F, where they are inconsistent with the procedures provided in this section.

(k) *No interference with Supreme Court decree.* In accordance with Sections 3.3(a) and 3.5 of the Compact, nothing in this section shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

[81 FR 5587, Feb. 3, 2016]

§ 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) *Application fee.* Except as set forth in paragraph (b)(1)(iii) of this section, the 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