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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

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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 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 (b)(2)(ii) of this section, 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 in this part, 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).

(ii) For any withdrawal or diversion covered in part by a certificate of entitlement issued pursuant to §§ 420.31 and 420.32 of the water supply charges regulations (18 CFR part 420), 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 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 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.

(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	\$469 per million gallons/month of allocation, ¹ not to exceed \$17,587. ¹ Fee is doubled for any portion to be exported from the basin.	Greater of: \$17,587 ¹ or Alternative Review Fee.
Wastewater Discharge	Private projects: \$1,172 ¹ Public projects: \$586 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 \$87,934 ¹ .	Greater of: \$87,934 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	¹ \$352 ¹ \$528 ¹ \$762 ¹ \$967 ¹ \$1,172	<4.99 mgm. 5.00 to 49.99 mgm. 50.00 to 499.99 mgm. 500.00 to 9,999.99 mgm. > or = to 10,000 mgm.
	Annual fee	Discharge design capacity
Wastewater Discharge	¹ \$352	<0.05 mgd.

¹ Consumer Price Index—U/ Series ID: CUURA102SA0/Not Seasonally Adjusted/ Area: Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD/Item: All items/Base Period: 1982–84=100.

Delaware River Basin Commission**§ 401.73****TABLE 2 TO § 401.43—ANNUAL MONITORING AND COORDINATION FEE—Continued**

	Annual fee	Allocation
	Annual fee	Discharge design capacity
	¹ \$715	0.05 to 1 mgd.
	¹ \$961	1 to 10 mgd.
	¹ \$1,172	>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 Modification of a DRBC Approval.	\$2,000. At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee.
Name change	¹ \$1,172.	
Change of Ownership	¹ \$1,759.	

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

[81 FR 95861, Dec. 29, 2016, as amended at 82 FR 7647, Jan. 23, 2017; 82 FR 26989, June 13, 2017; 86 FR 20630, Apr. 21, 2021; 87 FR 31417, May 24, 2022]

Subpart D [Reserved]**Subpart E—Appeals or Objections to Decisions of the Executive Director in Water Quality Cases**

SOURCE: 62 FR 64158, Dec. 4, 1997, unless otherwise noted.

§ 401.71 Scope.

This subpart shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered by the Executive Director under the Compact and the regulations in this chapter. Any hearings shall be conducted pursuant to the provisions of subpart F of this part.

§ 401.72 Notice and request for hearing.

The Executive Director shall serve notice of an action or decision by him under the regulations in this chapter by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for

such a hearing shall be filed with the Secretary of the Commission not more than 30 days after service of the Executive Director's determination. Failure to file such a request within the time limit shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

[62 FR 64158, Dec. 4, 1997, as amended at 63 FR 45943, Aug. 28, 1998]

§ 401.73 Form of request.

(a) A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

(b) Whenever the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 30 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required