

A RESOLUTION to amend the Commission's Administrative Procedure and Fee Schedule for the renewal of project approvals under Section 3.8 and Article 10 of the *Delaware River Basin Compact*.

WHEREAS, the review of projects in accordance with Section 3.8 and Article 10 of the *Delaware River Basin Compact* in order to ensure their consistency with the Comprehensive Plan is an important means by which the Commission coordinates management of the shared water resources of the Basin; and

WHEREAS, the submission of untimely and incomplete applications for project renewals occurs with great frequency; and

WHEREAS, late-filing applicants often request expedited approval or emergency certificates in order to continue lawful operation of their projects, or in the alternative, they continue to operate projects unlawfully past their docket expiration dates; and

WHEREAS, the Commission has determined that these occurrences place unnecessary pressures on the staff, commissioners, and public process; and

WHEREAS, in order to encourage applicants to submit timely and complete renewal applications, the Commission has determined that procedural incentives and late fees are needed; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

- 1) The Commission's fee schedule for the review of projects under Section 3.8 and Article 10 of the *Delaware River Basin Compact*, set forth in Resolution No. 2003-14, is hereby amended by the insertion of new paragraphs 11 through 14.
- 2) The amended fee schedule in its entirety is set forth below:
  1. Except as provided in paragraph 2 below, a non-refundable project review fee shall be paid in accordance with the schedule in paragraph 3 for projects requiring review under Section 3.8 or Article 10 of the *Delaware River Basin Compact*, including those categorized and described in Section 2.3.5 of the Commission's *Rules of Practice and Procedure* and those described in the *Ground Water Protected Area Regulations for Southeastern Pennsylvania*.
  2. Agencies, authorities, or commissions of the signatories to the Compact shall be exempt from such project review fee. Political subdivisions of the signatory states, however, shall be subject to the fee.
  3. Project review fees shall be in accordance with the following schedule, subject to Paragraph 8 below.

<b>Project Category</b>	<b>Fee</b>
Privately sponsored project costing \$250,000 or less*	\$500
Publicly sponsored project costing \$250,000 or less	\$250
Public or private project costing \$250,001 to \$10,000,000	0.2 percent of project cost
Public or private project costing over \$10,000,000	0.06 percent of project cost, not to exceed \$50,000
Any project resulting in an out-of-basin diversion	Double the fee calculated in accordance with the above

\*Project cost in all cases is to be calculated in accordance with paragraph 10 below.

4. Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional fee calculated in accordance with paragraph 3 above, based on the increase in project costs over the cost of the approved project, and subject to Paragraph 8 below. A substantial project revision not involving an increase in costs shall require a fee as determined by the Executive Director based upon estimated Commission costs associated with the review. Docket renewals that do not involve substantial revisions or modifications shall require a fee of \$500 for a privately sponsored project and a fee of \$250 for a publicly sponsored project.
5. A request for an emergency certificate under Section 2.3.9B of the Commission's *Rules of Practice and Procedure* to waive or amend a docket condition shall require a minimum fee of \$5,000. Additional sums may be charged in accordance with paragraph 8 below.
6. A fee of \$500 shall be charged for the transfer of a docket upon a change of ownership as defined in Resolution No. 87-15.
7. The project review fee shall be submitted to the Commission with the project application. Failure to submit payment of the fee or the submission of an incorrect fee will result in return of the application to the project applicant, or, at the discretion of the Executive Director, in a billing of the proper fee to the project applicant. The Commission shall not take action on a project application until the fee is paid in full or the Commission for good cause shown decides to waive the fee in whole or in part or to condition docket approval on payment of the fee. Application fees shall be non-refundable and shall not be reduced, nor any amount credited to the project applicant, where the Commission's docket approval is based on or leads to a project cost that is later determined to be less than that originally projected by the project applicant.
8. When the fee calculated in accordance with the foregoing is deemed by the Executive Director to be insufficient due to exceptional costs associated with review, the Executive Director may impose, in addition to the initial project review fee, a fee

in an amount equal to up to 100 percent of project review costs deemed by him or her to be exceptional. These may include but are not limited to costs associated with extensive pre-application review by staff and/or advisory committees, extended or multiple public hearings, the use of outside consultants or court stenographers, costs of sampling or modeling, and/or an unusually large amount of staff time and/or attorney time to evaluate a proposed project or to communicate with interested persons or public agencies. Exceptional costs include but are not limited to the costs of any additional analysis or evaluation that the Commission is ordered to perform as a result of judicial review.

When the Executive Director determines that in the course of reviewing a project the Commission is incurring or will likely incur exceptional costs, he or she will inform the applicant of such determination and direct staff to record all time and expenses associated with review from that point forward. The Commission shall not take action on a project until the fee is paid in full or the Commission for good cause shown decides to waive the fee in whole or in part or to condition docket approval on payment of the fee.

9. Revenues received pursuant to this resolution shall be deposited in the Commission's General Fund and may be used to support the Commission's project review activities and associated expenses.
10. The project cost shall include the estimated combined cost of land, design, materials, equipment, supervision of construction, legal services, contract administration, construction and fabrication, including without limitation all capital and labor costs.
11. Dockets and permits that expire before October 1, 2005 shall be deemed administratively continued if the docket holder or permittee submits a complete application by the earlier of 90 calendar days of receipt of a written notice from the Executive Director or September 30, 2005. To be considered complete, an application must be accompanied by the full application fee calculated in accordance with paragraph 3. If the applicant submits a substantially complete application and a written request for an extension of time by the earlier of 90 calendar days of receipt of written notice from the Executive Director or September 30, 2005, the Executive Director may, for good cause shown, extend the date for the submission of materials necessary to render the application complete.

For all dockets and permits expiring on or before September 30, 2005, the project review fees for any renewal application submitted after September 30, 2005, shall be an amount \$1000 above the amount calculated in accordance with paragraph 3 above. Any applicant that submits a complete application, including the full project review fee, on or before September 30, 2005, shall not be subject to the \$1000 increase in the fee.

The Executive Director will implement procedures to provide written notice to docket holders and permittees with dockets or permits that expire before October 1, 2005 as soon as reasonably practicable, but no sooner than six months before the

expiration date, reminding them of their docket expiration dates and the requirement that they file a renewal application. Failure of the Executive Director to send such notice or lack of receipt of such notice does not relieve the docket holder or permittee of any obligation or condition or create any defense.

12. Dockets and permits that expire after September 30, 2005 shall be deemed administratively continued if the docket holder or permittee submits a complete application at least 120 calendar days in advance of the expiration date. If the docket or permit establishes a different application submission date, the docket or permit shall be controlling. To be considered complete, an application must be accompanied by the full application fee calculated in accordance with paragraph 3. If the applicant submits a substantially complete application and a written request for an extension of time at least 120 calendar days in advance of the expiration date or on or before such other date specified in the permit or docket, the Executive Director may, for good cause shown, extend the date for the submission of materials necessary to render an application complete.

For all dockets and permits expiring after September 30, 2005, the project review fee for any renewal application submitted less than 120 calendar days in advance of the expiration date or after such other date specified in the docket or permit for filing a renewal application, shall be an amount \$1000 above the amount calculated in accordance with paragraph 3 above. Any applicant that submits a complete application, including the full project review fee, 120 calendar days or more in advance of the expiration date or by such other date specified in the docket or permit, shall not be subject to the \$1000 increase in the fee.

The Executive Director will implement procedures to provide written notice to docket holders and permittees with dockets or permits that expire after September 30, 2005 at least six (6) months in advance of the expiration date reminding them of their docket or permit expiration date and the requirement that they file a renewal application. Failure of the Executive Director to send such notice or lack of receipt of the notice by the docket holder or permittee does not relieve the docket holder or permittee of any obligation or condition or create any defense.

13. A docket holder or permittee whose docket or permit has been administratively continued as a result of the docket holder's or permittee's full compliance with the provisions of paragraphs 11 or 12 hereof shall not be subject to penalties for operating without a docket or permit during the period commencing on the date on which the docket or permit expired and ending on the date on which the Commission issues a decision on the renewal application, provided that the docket holder or permittee shall be responsible for any violations of the terms and conditions of its docket or permit to the same extent as if its docket or permit had been renewed as of the date of its expiration. Any docket holder or permittee that continues docketed or permitted activities after its docket has expired and has not been administratively continued pursuant to paragraphs 11 or 12 or who undertakes activities outside the scope of its docket or permit without prior Commission approval may be subject to Commission action under Section 14.17 of the Compact and Article 7 of the Rules of Practice and Procedure.

14. Nothing in paragraphs 11 or 12 shall limit the discretion of the Executive Director or the Commission under paragraph 7 to proceed with project review in the absence of payment in full of the project review fee and bill the applicant, waive the fee in whole or in part for good cause shown, or condition docket approval upon payment of the fee. However, when the Executive Director has not granted a fee waiver in accordance with paragraph 7, the applicant shall not have the benefit of an administrative continuance and may be subject to Commission actions as identified in paragraph 12 in the event that the Commission does not issue a renewed docket or permit before the expiration date and the applicant performs an activity that is subject to review under Sections 3.8 or 10 of the Compact after its existing docket or permit has expired.
15. This Resolution shall supersede Resolution No. 2003-14 and shall take effect immediately.

/s/ Fred Nuffer

Fred Nuffer, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esq., Commission Secretary

Adopted: January 19, 2005