

# PROPOSED RULEMAKING

## DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

### Amendments to Administrative Manual—Rules of Practice and Procedure

The Delaware River Basin Commission (Commission) will hold a public hearing on Wednesday, October 22, 1997. The hearing is open to the public and scheduled to begin at 3 p.m. The hearing is being held to receive comments on proposed amendments to its Rules of Practice and Procedure which are intended to delete obsolete provisions, to clarify certain provisions of the rules and better inform the signatory parties, applicants and the general public with regard to the Commission's practices and procedures. The proposed revisions conform the rules to existing Commission interpretations and practices.

The deadline for inclusion of written comments in the hearing record will be announced at the hearing.

The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P. O. Box 7360, West Trenton, New Jersey 08628. Persons wishing to testify are requested to notify the Secretary in advance.

For further information contact Susan M. Weisman, Delaware River Basin Commission, (609) 883-9500 ext. 203.

#### Background and Rationale

The Rules of Practice and Procedure of the Delaware River Basin Commission have been modified and changed periodically since they were originally adopted December 13, 1961. There has not been a comprehensive review of these rules, however, for more than 20 years.

The proposed revisions are summarized below.

#### 1. Deletion of Article 4, Environmental Impact Statements, and Related Sections

Existing Article 4 sets forth DRBC's requirements with regard to environmental impact statements and reviews. Although these provisions have remained in DRBC's Rules, a copy of DRBC Resolution No. 80-11 suspending those provisions of the Commission's Rules of Practice and Procedure relating to environmental assessments has been inserted at the end of the existing rules. Since the adoption of this Resolution in 1980, the Commission has not conducted environmental assessments pursuant to DRBC's rules. The continued inclusion of these suspended sections, however, has been a source of confusion and misunderstanding to many individuals and groups interested in DRBC's review requirements. For example, when DRBC recently solicited public comments concerning its regulations for controlling toxic pollutants in the Delaware River Estuary, comments were received suggesting that DRBC had not complied with the environmental review requirements under its rules.

When Resolution No. 80-11 to suspend was adopted, the Resolution would have permitted reinstatement of environmental reviews if "financial resources are developed." The experiences of the last 17 years, and the financial

constraints that have developed recently, make it clear that Federal or other funding is not likely to be available for the foreseeable future.

To avoid continuing confusion, the deletion of Article 4 is proposed. DRBC's review of projects, however, will continue to require all projects to comply with all environmental and other policies in the Commission's Comprehensive Plan.

#### 2. Review of Projects Having a Nonsubstantial Impact on Basin Waters

In 1976 the Commission adopted Resolution No. 76-20 which provided two administrative changes designed to reduce the project review activity of DRBC staff.

The first was an attempt to provide more flexibility in the determination of what constitutes substantial projects resulting in more projects determined to be nonsubstantial and not subject to Commission review. Experience with a few projects indicated the process was not cost effective and staff reverted back to strictly following the exemptions list in the Rules Section 2.3.5(a). The 1976 revisions included in Sections 2.3.4 and 2.3.5(d) which provided for this procedure have not been applied since 1978.

The second administrative change provided for in Sections 2.3.5(e), 2.3.9(b) and (c) was to have state staff review and submit a determination (called an action report) that each project forwarded to the Commission did not impair or conflict with the DRBC's Comprehensive Plan. Even though three states signed new administrative agreements to implement this procedure, state staffs did not provide the determinations and the procedure was never implemented.

Section 2.3.10 is proposed to be deleted and all rules regarding hearings are proposed to be consolidated in revised Article 6.

#### SUMMARY OF PROPOSED REVISIONS

##### 1. Introduction

In view of the changes included within the proposed revision, the Introduction has been rewritten to update the description of what is included in the Commission's Rules of Practice and Procedure.

##### 2. Article 1—Comprehensive Plan

The proposed revisions to this article clarify the meaning of Comprehensive Plan within DRBC's rules. The revisions further clarify the procedure related to application for inclusion of projects within the Comprehensive Plan and the review by the Commission of proposals for changes and additions to the Comprehensive Plan. These revisions conform with existing Commission interpretation of the provisions within Article 1.

##### 3. Article 2—Water Resources Program

No proposed revisions to this article are recommended at this time.

##### 4. Article 3—Project Review Under Section 3.8 of the Compact

(a) The proposed revisions to Article 3 relating to environmental reviews and nonsubstantial projects are discussed above.

(b) The proposed revisions would delete Section 2.3.5.1. The regionalization policy was slightly modified with the adoption of revised Water Quality Regulations in December 1992 (Section 2.30, Basin Regulation—Water Quality). Deleting these requirements eliminates confusion and allows the more recent and flexible policy to control. The revised rule would add (6) in Section 2.1.4 requiring applications to include a discussion of the alternates considered and in Section 2.3.8 (a) "Exhibits to Accompany Application," it would revise (8) to include analysis and conclusions of regional water supply and waste water investigations.

(c) The proposed revision would also delete Section 2.3.5.2. This policy was adopted in 1971, Resolution No. 71-3, when the DRBC was involved in four or five nuclear plants and several major expansions or new fossil fuel plants, all by the seven major electric utilities serving the Basin. Planning at that time centered around mega stations of 1000 to 3000 Megawatts and use of multi MGD of water. Future locations of such large single use water demands was essential for any future water resource planning. A consortium of the utilities was formed known as DRBEUG (Delaware River Basin Electric Utilities Group) to address this DRBC requirement. Between 1971 and 1989, periodic siting studies were submitted to DRBC. In 1989 DRBEUG explained that they no longer could present a comprehensive siting study since the regulators were now encouraging NUGs (Non Utility Generators) and they could not in any way appear to represent these nonutility electric generators. Essentially, the major utilities have abandoned plans for any new major stations. New applications for several years now have been nonutility projects and generally no more than 200 MW. After several meetings between DRBEUG and staff, it was concluded that the siting study would no longer serve its intended purpose for DRBC.

(d) The remaining sections are intended to clarify the Commission's procedures with regard to Section 3.8 applications and the review thereof.

#### 5. Article 4—Environmental Impact Statements

The Commission proposes deletion of the existing provisions of Article 4 as discussed above. Article 4 will be reserved for future use.

#### 6. Article 5—Review in Water Quality Cases

The proposed revisions to Article 5 clarify that this article applies to administrative actions and decisions by the Executive Director. The procedures for review, hearing and decisions of objections to the Executive Director's actions and decisions will be pursuant to Article 6. The time for requesting a hearing is extended to 30 days to conform with the 30 day period provided for in Article 6. The remaining proposed changes are to broaden the wasteload allocations section to cover allocations in general (including proposed allocations of toxics) as well as the existing allocation program of carbonaceous oxygen demand.

#### 7. Article 6—Conduct of Hearings

The proposed revisions in this article reflect the practices employed by the Commission in connection with hearings, clarify the application of Article 6 to contested hearings and codify existing practices with regard to such hearings.

8. Articles 7, 8 and 9—No changes to these articles are proposed at this time.

The subject of the hearing will be as follows:

Amendments to the Administrative Manual—Rules of Practice and Procedure

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [ **thus** ]):

#### DELAWARE RIVER BASIN COMMISSION RULES OF PRACTICE AND PROCEDURE INTRODUCTION

[ **These regulations govern the process whereby the Commission will include projects in the** ] **The Delaware River Basin Compact requires the Commission to formulate and adopt a Comprehensive Plan and [ extend them into an annual Water Resources Program. Also set forth herein are the procedures and definitions that the Commission will use in screening projects proposed by others to test their compatibility ] Water Resources Program. In addition, the Compact provides in Section 3.8 that no project having a substantial effect on the water resources of the Basin shall be undertaken unless it shall have been first submitted to and approved by the Commission. The Commission is required to approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan. [ An interrelationship among these three requirements is apparent in the Delaware River Basin Compact. ] Section 3.8 further provides that the Commission shall provide by regulation for the procedure of submission, review and consideration of projects and for its determinations pursuant to Section 3.8.**

[ **Article 13 of the Compact calls for the adoption of the Comprehensive Plan and Water Resources Program. These documents are defined as follows:**

**Comprehensive Plan. A plan that includes all public and ] The Comprehensive Plan consists of all public and those private projects and facilities which [ are required in the judgment of the Commission for ] the Commission has directed be included therein. It also includes those documents and policies which the Commission has determined should be included within the Comprehensive Plan as being needed to insure optimum planning, development, conservation, use, management[ , ] and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is [ dynamic and will be periodically revised. ] subject to periodic review and revision as provided in Sections 3.2 and 13.1 of the Compact.**

**The Water Resources Program[ . An annual presentation, ] is based upon the Comprehensive Plan[ , ]. It is required to be updated annually and to include a systematic presentation of the quantity and quality of water resources needs of the area to be served [ during the ensuing six years or ] for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs. [ , including all public and private projects to be anticipated, together with a separate statement of the projects proposed to be undertaken by the ]**

[Commission during such period.] The Commission's review and modification of the Water Resources Program is conducted pursuant to the provisions of Articles 3.2 and 13.2 of the Compact.

[To protect the integrity] The Commission's Rules of Practice and Procedure govern the adoption and revision of the Comprehensive Plan [and avoid conflicts of jurisdiction, the Compact provides generally, in Article 11, for cooperative planning of all public projects, and more specifically, in ], the Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 and other actions of the Commission mandated or authorized by the Compact.

These Rules of Practice and Procedure extend to the following areas of Commission responsibility and regulation:

**Article 1—Comprehensive Plan.**

**Article 2—Water Resources Program.**

**Article 3—Project Review Under Section 3.8 of the Compact**[, confers certain regulatory authority upon the Commission. Section 3.8 provides for a review of water resources projects to determine two matters: first, whether the project will have "a substantial effect on the water resources of the basin;" and secondly, whether a project having such an effect would "substantially impair or conflict with the Comprehensive Plan." The basic concept is thus both comprehensive and integrated planning and development. ].

[A project may enter the Comprehensive Plan in the discretion of the Commission whenever the project is ready for such action, both on its own merits and in relation to other projects which are part of the Plan. Article 1 of the Rules ]

**Article 4—Deleted (Previously suspended July 23, 1980).**

**Article 5—Appeals or Objections to Decisions of the Executive Director in Water Quality Cases.**

**Article 6—Administrative Hearings.**

**Article 7—Penalties and Settlements in Lieu of Penalties.**

**Article 8—Public Access to the Commission's Records and Information.**

**Article 9—General Provisions.**

These rules are subject to Commission revision and modification from time to time as the Commission may determine. The Commission reserves the right to waive any Rule of Practice and Procedure [develops the concept of the Comprehensive Plan and the procedure to be followed for inclusion of new projects or modification of existing ones. The Water Resources Program represents a selection of projects by the Commission taken from the Comprehensive Plan. These are projects which the Commission recommends for action during the ensuing six-year period. Procedures that the Commission will follow in developing the Water Resources Program are contained in Article 2 of these regulations. ] it determines should not be applicable in connection with any matter requiring Commission

action. All actions by the Commission, however, shall comply fully with the applicable provisions of the Compact.

[The regulatory power of the Commission under Section 3.8 of the Compact extends to all public and private projects. However, since the Compact also provides for cooperative planning of public projects (Article 11), a special procedure to accelerate Commission approval of such projects is provided as part of the process of adoption of a Water Resources Program. Under Article 2 and Article 3 of these regulations, the sponsor of a public project has a choice of routes for Commission approval: where advance approval is necessary or desirable, the sponsor may secure approval through the process of project inclusion in the Water Resources Program; and this is an opportunity that will be available at a specified time each year. Where the sponsor may for any reason prefer the alternate course, the public project may be submitted for review under Section 3.8 of the Compact. In brief, approval of a public project as ready for action within the Water Resources Program will have the effect of approval for purposes of Section 3.8, but omission of a project from the Water Resources Program will still leave the door open for the project sponsor to proceed under Section 3.8. Finally, under these regulations, private projects are required to proceed under Section 3.8. ]

**ARTICLE 1  
COMPREHENSIVE PLAN**

**Section 2.1.1 Scope.** This article shall govern the submission, consideration, and inclusion of projects into the Comprehensive Plan.

**2.1.2 Concept of the Plan.** The Comprehensive Plan[, as required in Section 13.1 of the Compact, will provide ] shall be adopted, revised and modified as provided in Sections 3.2 and 13.1 of the Compact. It is the Commission's responsibility to adopt the Comprehensive Plan, after consultation with water users and interested public bodies, for the immediate and long-range development and [use] uses of the water resources of the Basin. The Plan [will] shall include [all] the public and private projects and facilities which the Commission determines are required[, in the judgment of the Commission, ] for the optimum planning, development, conservation, [use, ] utilization, management[, ] and control of the water resources of the Basin[, in light of present and foreseeable future needs. It will consist of statements of policy, criteria, and standards, as well as the principal physical projects, objectives, and programs that will be involved in the development of the river basin. The Plan will be a body of documents expressing a systematic set of] to meet present and future needs. In addition to the included projects and facilities, the Comprehensive Plan consists of the statements of policies, and programs that the Commission determines are necessary to govern the proper development and use of the River Basin. The documents within the Comprehensive Plan expressing the Commission's policies and programs for the future, [and] including the means for carrying them out[. It will be expressed ],

may be set forth through narrative text, maps, charts, schedules, budgets[, ] and other **appropriate** means.

[ **From time to time specific** ] Specific projects and facilities and statements of policy and programs may be incorporated, deleted[, ] or modified from **time to time** to reflect changing conditions, research, results[, ] and new technology. [ **At any given time the** ] The degree of detail [ **describing** ] described in particular projects [ **will** ] may vary depending upon the [ **state** ] status of their development.

2.1.3 Other Agencies. [ **For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the signatory parties to the Compact, federal, state, and local agencies shall follow the requirements of Article 11 of the Compact.** ] Projects of the federal agencies affecting the water resources of the Basin, subject to the limitations in Section 1.4 of the Compact, shall be governed by Section 11.1 of the Compact. Projects of the signatory states, their political subdivisions and public corporations affecting the water resources of the Basin, shall be governed by the provisions of Section 11.2 of the Compact.

[ (As to Federal agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the Commission in the Comprehensive Plan.")

As to state and local agencies, the Compact provides: "No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the Commission in the Comprehensive Plan."

As to Federal, state, and local agencies, the Compact provides: "The planning of all projects related to powers delegated to the Commission by this Compact shall be undertaken in consultation with the Commission..." Each... "agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section.")

2.1.4 Amendments and Revisions. The Comprehensive Plan will be open, upon application of any interested party, for review and inclusion of new projects and for ] **Section 2.1.4 Project Applications and Proposed Revisions and Changes. Applications for inclusion of new public projects and the deletion or alteration of previously included [ projects. To this end, the Commission will ] public projects may be submitted by signatory parties and agencies or political subdivisions thereof. Owners or sponsors of privately owned projects may submit applications for the inclusion of new private projects and the deletion or alteration of previously included private projects in which the applicant has an interest. The Commission may also receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization, or group. Any [ such ] application or proposal shall be submitted**

in such form as may be required by the Executive Director to facilitate consideration by the Commission[, , and ].

**Applications for projects** shall include at least the following information:

(1) Purpose or purposes, including quantitative measures of physical [ **benefits** ] **benefit** anticipated from the proposal[ . ];

(2) [ **Approximate location, dimensions (if a structural project) and land area required.** ] The location, physical features and total area required;

[ (3) **Draft or description of a proposed standard, policy or other nonstructural measure.**

(4) ] (3) Forecast of the cost [ (if structural) ] or effect on the utilization of water resources [ (if a nonstructural measure). ]; and

[ (5) ] (4) Relation to other parts of the existing Comprehensive Plan.

[ (6) **A description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseeding and landscaping, all with particular reference to minimizing soil erosion and sedimentation in the stream.** ]

(5) **A discussion of conformance with Commission policies included in the Comprehensive Plan.**

(6) **A discussion of the alternatives considered.**

#### [ 2.1.5 Review of Proposal ]

2.1.5 **Review of Applications.** Following staff study, examination, and review of each [ **proposal, the Commission will** ] project application, the Commission shall hold a public hearing upon notice thereon as provided in paragraph 14.4(b) of the Compact and may take such action on [ **the proposal as may be appropriate, and will hold such public hearings thereon as are required by the Compact.** ] a project application as it finds to be appropriate.

[ 2.1.6 Further Action. ] 2.1.6 **Proposed Revisions and Changes.** Proposals for changes and additions to the Comprehensive Plan submitted by any agency of the signatory parties or any interested person, organization or group shall identify the specific revision or change recommended. In order to permit adequate Commission consideration of any proposal, the Executive Director may require such additional information as may be needed. Review or consideration of such proposals shall be based upon the recommendation of the Executive Director and the further direction of the Commission.

2.1.7 **Further Action.** The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan [ (Phase 1, March 28, 1962). ] (March 28, 1962). Such review may include consideration of proposals submitted by the signatory parties, agencies or political subdivision thereof or other interested parties. The amendments, additions, and deletions adopted by the Commission will be compiled and the Plan as so revised [ **will be republished annually.** ] shall be made available for public inspection.

[ 2.1.7 ] **2.1.8** Public Projects Under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and these regulations. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of these regulations.

(b) Any **public** project not having a substantial effect on the water resources of the Basin, as defined in Article 3 of these regulations, may proceed without reference to Article 11 of the Compact.

[ 2.1.8 ] **2.1.9** Custody and Availability. The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, [ **descriptions** ] **description** and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

ARTICLE 2 (No change.)

#### ARTICLE 3

#### PROJECT REVIEW UNDER SECTION 3.8 OF THE COMPACT

Section 2.3.1 Scope. This article shall govern the submission and review of projects under Section 3.8 of the Delaware River Basin Compact.

2.3.2 Concept of 3.8. Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This Section of the Compact provides:

"No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction."

2.3.3 Administrative Agreements. The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

(a) To facilitate the submission and review of applications and the determinations required under Section 3.8 of the Compact;

(b) To avoid unnecessary duplication of staff functions and hearings required by law; **and**

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law. [ ; **and**

**(d) Provided that any such Administrative Agreement shall be effective solely for purposes of inter-governmental cooperation and the failure of any applicant to comply with the provisions of any such agreement shall not prejudice his application or the consideration thereof. ]**

2.3.4 Submission of Project Required. Any project which may have a substantial effect on the water resources of the Basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to [ **whether the project will have a substantial effect on the water resources of the Basin, and, if so,** ] whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a state or federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A List" classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

2.3.5 Classification of Projects for Review under Section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any **[calendar month] 30 consecutive day period** does not exceed 100,000 gallons;

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any **[calendar month] 30 consecutive day period** does not exceed 100,000 gallons;

(4) The construction of new **[municipal] domestic** sewage treatment facilities or alteration or addition to existing **[municipal] domestic** sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

a. floating docks and anchorages and buoys and navigational aids;

b. temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as **[shown] designated** in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmis-

sion lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as **[shown] designated** in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as **[shown] designated** in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground [ , ] cover affecting water resources;

**[ (14) Landfill projects limited to disposal of solid inert wastes such as earth, rock, gravel, concrete, asphalt paving fragments, glass, plaster, plaster board, rubber products, steel mill slag, clay, clay products, plastics, asbestos shingles, and similar materials, unless such projects are located on flood plains delineated by the Commission or a signatory state; ]**

(14) Landfill projects **[which may contain organic or liquid wastes that have a substantial effect on water resources of the Basin, ]**unless, no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater; **[ and ]**

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons **[ . ]; and**

**(19) Temporary or short term projects determined to have nonsubstantial impact on the water resources of the Basin by the Executive Director.**

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to **[ whether the project will have a substantial effect on the water resources of the Basin and, if so, ]** whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

- (1) Impoundment of water;
- (2) Withdrawal of ground water;
- (3) Withdrawal of water from impoundment or streams;
- (4) Diversion of water into or out of the Basin;
- (5) Deepening or widening of existing stream beds, channels, anchorages, harbors or turning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;
- (6) Discharge of pollutants into **surface or ground** waters of the Basin;
- (7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;
- (8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;
- (9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;
- (10) Change in land cover on major ground water infiltration areas;
- (11) Hydroelectric power projects, including pumped storage projects;
- (12) Projects or facilities of federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;
- (13) Draining, filling or otherwise altering marshes or wetlands;
- (14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;
- (15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;
- (16) State and local standards of flood plain regulation;
- (17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and
- (18) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin,

such project may be referred by the state or federal agency to the Commission for action under these Rules.

(d) Except as otherwise provided by Section 2.3.8 the sponsor shall submit an application for review and approval of a project included under paragraph (b) above through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party. **[ The Executive Director will thereupon determine for the Commission whether or not the proposed project could have a substantial effect upon the water resources of the Basin within the meaning of the Compact and the Rules of Practice and Procedure. In making such determination the Executive Director shall be guided by his findings as to the following factors:**

**(1) The impact of the project on environmentally sensitive land areas or species of plant or animal life;**

**(2) The potential of the project and its distribution or collection systems to induce significant changes in numbers, distribution or character of population or economic activity;**

**(3) The magnitude of proposed water withdrawal or waste discharge in relation to minimum streamflow, aquifer yield or water quality;**

**(4) The size of the project and distribution of collection system and areal extent and duration of its environmental impact;**

**(5) The effect of the project on public health, safety or general welfare, and historic and cultural properties;**

**(6) The effect of the project on surface or ground waters in another state;**

**(7) The effect of the project on transfer of water into or out of the Basin or from one sub-basin to another;**

**(8) The cost of the project and nature and magnitude of resources required for its implementation;**

**(9) The effect of the project on flood flows and stormwater runoff;**

**(10) Any other facts which in a particular case may be relevant to the protection of the integrity of the Comprehensive Plan; and**

**(11) The impact of the project on aquatic life including fisheries.**

**(e) Projects determined by the Executive Director to have a substantial effect will be subject to approval by the Commission pursuant to Section 3.8 and Article 11 of the Compact (to the extent applicable). Projects determined by the Executive Director not to have a substantial effect on the water resources of the Basin will not be subject to further review or action by the Commission. The Executive Director shall notify the sponsor of the project, the agency of the signatory party reviewing the project, and the governing body of the municipality, and the planning board of the county in which the project is located of his initial determination on the question of substantial effect. Notice to such interested parties shall be given by certified mail, return receipt requested. The Executive ]**

[Director shall also notify by regular mail all members of the Commission and of the Federal Field Committee. He shall also cause to be published in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the Executive Director's initial determination, it shall become final ten days after publication as above. Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the Executive Director by letter for reconsideration. Following such reconsideration, if requested, the Executive Director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his final determination. Any such party may appeal such final determination to the Commission by notice in writing served upon the Executive Director within 14 days after the service of the Executive Director's decision upon reconsideration. The Commission will determine such appeal at a regular meeting thereafter.]

#### 2.3.5.1 Water Pollution Control Projects—Regional Requirements.

(a) The use of regional solutions to water pollution problems, with the least number of separate treatment plants which may be efficient in the particular circumstances, is required whenever feasible. Each waste treatment project shall be submitted to the Commission not later than the completion of preliminary engineering for review of its compliance with this and other requirements of the Comprehensive Plan.

(b) In reviewing a project for compliance with this section, the Commission will consider the following matters, comparing regional versus separate treatment systems:

(1) Construction costs and economies of various scales of development;

(2) Operating costs and economies of various scales of operation;

(3) Capability of handling industrial wastes with and without pretreatment;

(4) Capability to assimilate high peak flows and temporary shock loads or emergency conditions;

(5) Space and facilities for sludge disposal;

(6) Personnel skills required and their availability for operation and supervision;

(7) Capacity to absorb growth; and the relative times required to place a separate and a regional system in operation;

(8) Desirability of the site selection alternatives for the treatment plant in view of considerations of efficiency of land use, potential service area, and relative transmission distances;

(9) The effect for a reasonable distance downstream on the quality of the receiving waters; and

(10) Effectiveness of the proposal in identifying all sources of pollution, and in achieving a coordinated, comprehensive and orderly plan for abatement of pollution in the region.

(c) A preliminary engineering report shall accompany each application and shall include factual findings and conclusions with respect to items (1) through (10) above.

(d) For the purpose of this regulation, "a region" is defined to mean one or more drainage areas or parts thereof. A "regional solution" is one which is based upon a feasibility study of the region for which a single system of sewage collection and treatment would be physically and economically feasible.

#### 2.3.5.2 Siting Studies for Major Electric Generation Projects.

(a) An application under Section 3.8 of the Compact for approval of an electric generating project with a design capacity of 100,000 KW or more shall include, as part of the application: (1) a master siting study, (2) a site selection analysis for the project, and (3) the environmental statement otherwise required.

(b)(i) The master siting study shall describe in general terms all existing major electric generating projects of the application and of other public utilities using the water resources of the Basin, and all such projects proposed or planned for the ensuing 15-year period. The master siting study shall describe particularly the impact of each proposed project on the water resources and related land resources of the Basin. It shall include, with as much detail as is available, a description of the five-mile reach of any stream within which each proposed project is or will be located, the concept, capacity and fuel source of each project, the quantity and method of heat and moisture dissipation, the water resource requirements and water-related ecological effects of each proposed project in the study.

(ii) The master siting study will be reviewed by the Commission in relation to the Comprehensive Plan, may be employed as an input to the Comprehensive Plan, and may be considered, in whole or in part, for inclusion in the Plan. A master siting study may be amended from time to time to reflect changing power demands, technology and water resource conditions. The Commission will act in relation to a master siting study or amendment thereof only after public hearing.

(c) The site selection analysis shall demonstrate the relationship of the proposed project, and its specific location, to the master siting study. Prior to submitting the site selection analysis, the applicant shall circulate it for comment among other interested public utilities, the federal and state governmental agencies having jurisdiction over the siting of electric generating stations in the state in which the project is located, regional or county planning commissions having jurisdiction in the project area, and such major water users as the Commission shall designate, and such comments shall be appended to and submitted together with the application. Prior to acting on the application, the Commission will make the site selection analysis available for public review and comment.

(d) The Commission will review each application for major electric generating project with reference to the doctrine of equitable apportionment, including such priority of uses as will recognize alternative water resources and sites for electric generating projects, the increasing demands on the water resources of the Basin and the optimum beneficial use of the water resources of the Basin. ]



**[ (e) The Commission will not act upon an application for approval under Section 3.8 of the Compact to initiate a partial or preliminary phase of an electric generating project which is subject to this regulation unless the application conforms to requirements of paragraph (a) hereof. ]**

2.3.5. [ 3 ] 1 Water Supply Projects—Conservation Requirements. Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water-conserving devices and procedures; and

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to subsection (a) of this section shall be subject to any applicable limitations of public utility regulations of the signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water sources in excess of one million gallons per day shall contain (1) a report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and (2) a contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan shall estimate the impact of the water conservation measures upon consumptive and nonconsumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as

part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

2.3.6 Sequence of Approval. A project will be considered by the Commission under Section 3.8 of the Compact either before or after any other state or federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

2.3.7 Form of Referral by State or Federal Agency. Upon approval by any state or federal agency of any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

**(a) The Commission will rely on the appropriate agency in each state to review and regulate the potability of all public water supplies. Applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the Basin.**

**(b) The Commission will rely on signatory party reviews as much as possible and generally the Commission will not review the performance standards of individual components of treatment processes but will require compliance with all policies in the Comprehensive Plan including all applicable Water Quality Standards.**

2.3.8 Form of Submission of Projects not Requiring Prior Approval by State or Federal Agencies. Where a project does not require approval by any other state or federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) **Exhibits to Accompany Application.** The application shall be accompanied by the following exhibits: (1) abstract of proceedings authorizing project, where applicable; (2) general map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a nonstructural proposal; (3) section of the United States Geological Survey topographic map showing the territory and watershed affected; (4) maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a nonstructural project; (5) written report of the applicant's engineer showing the proposed plan of operation of a structural project; (6) map of any lands to be acquired or occupied; (7) estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and (8) **[ a description of the construction procedures to be followed in excavating, backfilling, retention of sediment, reseeded and landscaping ] analyses and conclusions of regional**

**water supply and wastewater investigations**, all with particular reference to minimizing soil erosion and sedimentation in the stream.

(b) **Letter of Transmittal.** The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, 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 or photographic prints or reproductions may be used.

**2.3.9 [ Preliminary Action; ] 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) The appropriate agency of a signatory party shall perform a technical review for the Commission, in accordance with Administrative Agreement, of each project finally determined to have a substantial effect on the water resources of the Basin; except that the Commission staff will perform the technical review: (1) whenever the agency of the signatory party is itself the sponsor, or (2) whenever the agency of the signatory party does not have the necessary regulatory jurisdiction, or (3) upon request of the agency of the signatory party, and (4) as to those projects which are subject to an environmental assessment or environmental impact statement under these Rules of Practice and Procedure and the National Environmental Policy Act.**

(c) Upon completion of its technical review, the agency of the signatory party shall, in accordance with Administrative Agreement, prepare and file with the Executive Director an action report with respect to the project. The Executive Director shall prepare a memorandum of comment stating his concurrence or nonconcurrence with the findings and recommendations of the action report. The report, memorandum, and a proposed docket decision with reference thereto shall be placed before the Commission by the Executive Director at its next regular meeting. Whenever time permits, a copy of the proposed docket decision shall be furnished to the applicant, and the applicant shall be given an opportunity to comment thereon and to consent to the conditions stated therein, before action by the Commission. The Commission will act upon the project in accordance with Section 3.8 and Article 11 of the Compact (to the extent applicable). ]

**[ (d) ]** 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 these regulations, 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 these regulations.

**[ 2.3.10 Hearings.**

**(a) The Executive Director may, and whenever any substantial objection is filed pursuant to this section shall, cause a hearing to be scheduled upon an application received under Section 2.3.8 of these regulations. He may, and at the request of the applicant shall, cause a hearing to be scheduled as to any application referred under Section 2.3.7 of these regulations. Notice of the intention of the Commission to act upon an application received pursuant to Section 2.3.8 of these regulations, or upon a request for a hearing with regard to an application received pursuant to Section 2.3.7, shall be published by the Executive Director in one or more newspapers of general circulation in the area affected, at least once a week for two successive weeks, which publications shall not be less than seven nor more than 21 days prior to the date on which action is proposed to be taken. Such notice shall direct any person objecting to the application to file his objection with the Commission not later than two days before the scheduled date of action. If the Executive Director determines that any filed objection is substantial, he shall defer consideration by the Commission, furnish a copy of each objection to the applicant, and schedule a hearing on the application to be held not less than ten nor more than 30 days after the last day for filing objections. Notice of the hearing shall be served forthwith by certified mail upon the applicant and each person filing a substantial objection. Proof of such publication and of service of notice shall be filed with the Commission on or before the date for which the hearing is scheduled.**

**(b) The application and supporting documents, maps and data, as filed or amended shall be open to inspection by any interested person prior to the hearing.**

**2.3.11 Objections. Every objection filed pursuant to Section 2.3.10 shall be in writing and shall particularly specify the ground thereof. Amendments to the objections may be permitted by the Commission. All objections and supporting documents shall be filed in duplicate in such form as the Director may prescribe. No person may be heard in opposition to an application except on objections so filed. Such objections shall be heard and determined under the procedure prescribed by Article 6 of these regulations. ]**

**2.3.1 [ 12 ] 10 Limitation of Approval.**

**(a) Approval by the Commission under these regulations 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.**

[ 2.3.13 Certificate of Compliance. The Executive Director, upon application duly made to him, and after appropriate inspection and such other proof as may be required, may certify to any applicant that the applicant has duly complied with the requirements of any action or determination by the Commission pursuant to these regulations. The Executive Director may make such certification whenever he finds and determines that there has been sufficient compliance to satisfy the purposes and objectives of the Commission's action or determination notwithstanding the existence of any technical variation or omission in the work done. All such certifications shall be reported to the Commission at its next meeting thereafter. ]

ARTICLE 4  
(Reserved.)

[ ENVIRONMENTAL IMPACT STATEMENTS

Section 2.4.1 Scope.

(a) Purpose. The National Environmental Policy Act of 1969 implemented by Executive Order 11514, mandates that all federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals. Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of federal agencies." Section 102 (2) (C) of the Act and the Council on Environmental Quality's Guidelines of April 23, 1971, (36 FR) require that all federal agencies prepare environmental statements on all major federal actions significantly affecting the quality of the human environment. The objective of the Act is to build into the agency decision-making process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects of proposed actions and to assist agencies in implementing the policies as well as the letter of the Act.

(b) Policy. The Delaware River Basin Commission will, in consultation with other appropriate federal, state and local agencies and the public, assess the environmental impacts of any proposed action concurrent with initial technical and economic studies in order that adverse effects will be avoided, and environmental quality will be maintained, restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impacts will be explored and both the long and short-range implications to man, his physical and social surroundings, and to nature, will be evaluated in order to avoid, to the fullest extent practicable, undesirable consequences as they relate to the quality of the human environment. This assessment shall take place as early as possible and in all cases prior to any decision that may significantly affect the environment and, where required, a draft environmental impact statement will be prepared and circulated in accordance with these regulations.

(c) Definitions.

(1) Action is a resolution by the Commission approving, disapproving, modifying or otherwise disposing of a project, program, legislation or any part thereof.

(2) Applicant is proposed action's sponsor including the Commission when it sponsors an action.

(3) Environment for the purposes of this regulation is the major natural, man-made or affected environment as implied by the National Environmental Policy Act of 1969.

(4) Environmental Assessment is an analysis by the Commission prior to the preparation of an environmental impact statement, of an Applicant's environmental report or of a Commission-sponsored action to determine whether the action proposed will have a significant effect involving the quality of the human environment.

(5) Environmental Impact Statement is a document prepared by the Commission which identifies and analyzes in detail the environmental impacts of a major action by the Commission having significant effects involving the quality of the human environment.

(6) Environmental Report is a document to be submitted by Applicants proposing an action which requires an environmental assessment.

(7) Negative Declaration is a determination by the Executive Director, based upon an environmental assessment, that a proposed action will not require an Environmental Impact Statement.

(8) Notice of Intent is an announcement to other federal, state and local agencies and to the public that the Commission will be preparing an Environmental Impact Statement for a given action.

(9) Responsible Official is the Executive Director or his designee of the Delaware River Basin Commission.

(10) Significant Effect is that degree of impact upon the quality of the human environment determined by the Commission or the Executive Director as sufficient to justify an environmental impact statement.

2.4.2 Actions Requiring an Environmental Report. The applicant, for any action within the following classifications, shall submit not later than the completion of preliminary engineering or feasibility studies, an environmental report.

(a) All action required by the regulations to include an Environmental Impact Statement;

(b) Major action the Commission may wish to initiate;

(c) Action to include in the Commission's Comprehensive Plan the following:

(1) major policy or regulations significantly affecting the quality of the human environment; and

(2) master plans including a sequence of the contemplated projects which together may have a significant effect upon the quality of the human environment; and

(d) When requested by the Executive Director based upon an environmental review of the action.

2.4.3 Applicant's Environmental Report. Upon receipt of the report, the Executive Director shall prepare an environmental assessment of the action. Additional information, studies, maps, etc., may be requested from the Applicant. The environmental assessment will be the basis for the determination of the need for an environmental impact statement. ]

[A supplemental guideline covering the substantive contents of an environmental report will be made available to all applicants. In brief, an environmental report will include the following:

(a) A description of the proposed action including the decision-making process, discussing alternatives to illustrate why the proposed action was chosen.

(b) A description of the existing environmental setting without the proposed action.

(c) The probable anticipated environmental impact primary and secondary, including both beneficial and unavoidable adverse effects from the proposed action and the basis for the conclusion. Resources irreversibly and irretrievably committed should be identified.

(d) All reasonable alternatives to the proposed action that have been considered including that of no action.

(e) An evaluation of environmental benefits, costs and risks, including short-term uses versus long-term productivity, weighing the proposed action and the alternatives considered against the quality of the human environment.

(f) Any other information, data, maps, charts, etc., which may be requested by the Commission for use in its analysis of the proposed action.

**2.4.4 Environmental Assessment.** An environmental review will be made for those actions requiring an environmental report. The assessment is made to identify and evaluate the expected and potential environmental impacts of the action and the alternatives considered. The assessment will determine whether significant impact upon the environment can be anticipated from the proposed action. The results of an environmental assessment will be either the preparation of the environmental impact statement or a negative declaration.

The contents of an environmental assessment will include the following:

(a) Description of the project;

(b) Analysis of significant impacts;

(c) Summation of any objections;

(d) Agencies consulted and their concerns, including interested state, regional, county and local agencies. The Environmental Protection Agency will be consulted in all instances; and

(e) Conclusions.

#### 2.4.5 Negative Declaration.

(a) A negative declaration may be issued by the Executive Director prior to taking any official action on a project which, as a result of an environmental assessment (Section 2.4.4 above), has been determined will not cause significant environmental impacts. The assessment will become a part of the project's records and be available for public inspection.

(b) Prior to the issuance of a negative declaration, the Executive Director shall publish notice of his intent to do so unless good cause to proceed with an environmental impact statement is submit-

ted in writing by any interested person or agency within 15 days from the date of the notice publication.

(c) The negative declaration will include the environmental assessment, copies of any relevant correspondence and the official determination by the Executive Director that the proposed action is not a major action significantly affecting the quality of the human environment.

(d) Once a negative declaration has been made, the proposed project may immediately proceed to Commission action.

(e) When a negative declaration has been made for a proposed action ordinarily requiring the preparation of an environmental impact statement under the provisions of Section 2.4.6, the declaration, complete with the environmental assessment, will be made available to the public.

**2.4.6 Actions Requiring an Environmental Impact Statement.** The list of general classifications which require an environmental impact statement is based upon the reviewable projects activity of the Commission. These actions have been identified by an analysis of environmental impacts typically associated with the principal types of Commission action. Where an environmental impact statement is prepared for a master plan or program having a chain of contemplated projects, subsequent statements on major components will be required only where significant impacts were not adequately evaluated in the overview statement relating to the total plan or program. Inclusion of the action in the Comprehensive Plan prior to January 1, 1970 does not exempt the action from an environmental impact statement.

Actions identified as requiring an environmental impact statement include the following:

(a) Any project, plan, regulation or policy identified via the process of an environmental assessment as having significant effect upon the quality of the human environment;

(b) Major large-scale programs or master plans involving a sequence of contemplated projects including new towns, watershed programs, wastewater and water supply plans and recreation plans;

(c) Impoundments;

(d) Diversions;

(e) Fossil-fueled electric generating stations;

(f) Liquid petroleum products pipelines;

(g) Draining or filling or otherwise altering marshes or wetlands;

(h) Substantial encroachments upon a stream or upon the 100-year flood plain of the Delaware River or its tributaries; and

(i) Any other action which the Executive Director, in his discretion, determines is a major action which may have a significant effect upon the quality of human environment and/or environmental impact of which is substantially controversial.

**2.4.7 Lead Agency.** The Executive Director shall review the proposed action with other federal agencies to determine whether DRBC should be lead agency for the preparation of the environmental ]

[ impact statement. Cooperative and/or joint agency efforts will be taken whenever practicable. When any action requiring an environmental impact statement under these regulations is also required to have an environmental impact statement by regulations of another federal agency, the Executive Director will consult with such agency and establish appropriate lead agency arrangements that will meet the requirements of the National Environmental Policy Act and the revised (June 1973) Council on Environmental Quality Guidelines, to avoid duplication.

If another federal agency, in its role as lead agency, has determined that, after an environmental assessment, any project listed in these regulations does not require an environmental impact statement, the Executive Director shall request from the lead agency a letter to that effect and after a review of the project may exempt the project from this section of the rules.

**2.4.8 Early Notice.** Once the determination has been made that a project requires an environmental impact statement, a public announcement, hereinafter called Notice of Intent, shall be issued to the Council on Environmental Quality, appropriate federal, state and municipal agencies, and be publicly posted in the Commission headquarters. The Notice of Intent shall also be sent to citizens and citizens organizations identified as having an interest in the project. The Notice of Intent shall define the Commission as lead agency and request comments which may be helpful in the preparation of the draft statement. A current list of administrative actions for which environmental impact statements are being prepared will be available for public inspection upon request.

**2.4.9 Pre-draft Consultation with Appropriate Agencies.**

(a) Consultation with federal agencies. When the Commission is considering an action requiring an environmental impact statement, it will, prior to the preparation of the draft statement, consult with federal agencies having jurisdiction over reasonable alternatives to the proposed action or jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action and reasonable alternatives.

(b) Consultation with state and local agencies. In every case in which implementation of the proposed action or its reasonable alternatives would require exercise of authority by a state or local agency, that agency will be consulted prior to the preparation of the draft statement. Use will be made of the state and local A-95 clearinghouses.

**2.4.10 Draft Environmental Impact Statement.** The Executive Director shall prepare a substantive draft environmental impact statement as soon as practicable after the decision that the statement is necessary. Where a plan or program has been developed, the relationship between the plan and the subsequent projects or phases encompassed by it shall be evaluated to determine the preferable and most meaningful point in time for preparing a statement. Where practicable the statement will be drafted for the total program at the completion of the overall planning stage. Individual actions included in the plan will not require separate state-

ments except where significant change has occurred. A supplemental statement will be issued covering only that change.

The discussion of alternatives to the proposed action and their impact on the environment will accompany the proposed action through the Commission's entire review process. Generally the content of an environmental impact statement will include the following: (Substantive description of the content is available in supplemental guidelines upon request).

(a) Summary;

(b) Description of the proposed action, statement of its purpose and its components in detail commensurate for an assessment of potential environmental impact;

(c) A succinct description of the environmental setting without the proposed action;

(d) The relationship of the proposed action to water and land use plans, policies, and controls for the affected area;

(e) The probable impact of the proposed action on the environment, beneficial and adverse, including secondary or indirect, as well as primary or direct, consequences;

(f) Any probable adverse environmental effects which cannot be avoided, summarizing those effects discussed in (e) above that are adverse and unavoidable;

(g) All reasonable alternatives to the proposed action that have been considered including that of no action, with an objective evaluation of the environmental impacts from each;

(h) An evaluation of the proposed action in relation to short-term use of man's environment and the maintenance and enhancement of long-term productivity;

(i) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented;

(j) An indication of other interests and considerations of federal policy thought to offset the adverse environmental effects of the proposed action; and

(k) When determined by the Executive Director as necessary, an evaluation of environmental benefits, costs and risks of the proposed action compared to the alternatives considered against the quality of the human environment.

**2.4.11 Processing the Draft Environmental Impact Statement.**

(a) The Executive Director shall distribute ten copies of the draft environmental impact statement and two completed National Technical Information Service (NTIS) accession notice cards to the Council on Environmental Quality.

(b) The Executive Director shall announce to other agencies and the general public via the Federal Register and in accordance with other chapters and sections of the Administrative Manual, both the availability of the draft environmental impact statement and the date of a public hearing on environmental factors which will be held not ]

[less than 15 days after the draft environmental impact statement has been made available to the public.

(c) Concurrent with the announcement of availability, the Executive Director shall provide copies of the draft environmental impact statement to the Environmental Protection Agency and to appropriate field offices of reviewing federal agencies that have special expertise or jurisdiction by law with respect to any impacts involved as listed in Appendix 11 of the Council on Environmental Quality's guidelines. At the same time, copies shall also be provided to the appropriate state and local agencies and to interested organizations and persons.

(d) All comments made upon the draft environmental impact statement should be submitted to DRBC within 45 days after the date of publication in the Federal Register announcing the availability of the draft. Extensions of review time will be at the discretion of the Executive Director.

**2.4.12 Final Environmental Impact Statement.** Following receipt of comments on the draft environmental impact statement and public hearing, the Executive Director shall prepare a final environmental impact statement responding to written and/or recorded suggestions, criticisms, and comments raised through the review of the draft statement. Distribution will be to the Council on Environmental Quality, the Environmental Protection Agency and those who responded to the draft statement and to written requests.

**2.4.13 Public Availability of Statements.** All draft and final environmental impact statements, including comments received thereon, shall be available for public examination as per the Freedom of Information Act in the Commission's offices and such other offices as the Executive Director may designate.

**2.4.14 Earliest Date for Commission Action.** As directed by the Commission the Executive Director will forward the final environmental impact statement to the Council on Environmental Quality. The Commission will act upon a project that is subject to the requirements of this section not less than 90 days after a draft environmental impact statement has been released for public comment and not less than 30 days (which may run concurrently within the 90 days) after the final environmental impact statement has been received by the Council on Environmental Quality. The Commission will include or refer to the environmental assessment or the environmental impact statement, and will make specific findings and conclusions with respect to the environmental effects of the project.

**2.4.15 Emergency Circumstances.** In the event of emergency circumstances those projects requiring an environmental impact statement as provided for in Section 2.3.9 of these Rules, the Executive Director will consult with the Council on Environmental Quality with respect to waiver, suspension or deferment of the requirements of this Article before any action is taken.

**2.4.16 Adequacy of Draft and Final Environmental Impact Statements.** The draft and final environmental impact statements will represent the Commission's independent evaluation of the environmental impacts of the action and the appropriate

alternatives to the proposed action. Redraft statements will be prepared if, prior to the submission of a final statement to the Council on Environmental Quality, the original draft is inadequate because significant information relevant to the total action was omitted from the original draft or only came to light after circulation of the original draft. All redraft statements shall be circulated for comment in the same manner as original draft environmental impact statements.

**2.4.17 Procedure for Commenting upon Environmental Impact Statements.**

(a) Comments prepared on draft environmental impact statements authored by other agencies will be based upon the relationship of the action proposed to the Commission's Comprehensive Plan.

(b) Comments will be organized consistent with the structure of the draft statement and will be as specific, substantive and factual as possible.

(c) Five copies of all comments made thereon will be furnished to the Council on Environmental Quality. ]

ARTICLE 5  
APPEALS OR OBJECTIONS TO DECISIONS OF  
THE EXECUTIVE DIRECTOR [ REVIEW ] IN  
WATER QUALITY CASES

**Section 2.5.1 Scope.** This article 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 Basin Regulations. **Any hearings shall be conducted pursuant to the provisions of Article 6.**

**2.5.2 Notice and Request for Hearing.** The Executive Director shall serve notice of an action or decision by him under the Basin Regulations 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 [ 20 ]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.

**2.5.3 Form of Request.** 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.

**[ 2.5.4 Report. ]** 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 [ 20 ]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 by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

2.5. [ 5 ] 4 Form and Contents of Report.

(a) Generally. A request for a report under this article may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) Waste Loading. In cases involving objections to an allocation of the assimilative capacity of a stream, **wasteload allocation for a point source, or load allocation for a new point source**, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics **and outfall configuration** in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any in-plant control or recovery process for which credit is claimed;

**(5) The chemical and toxicological characteristics including the processes and/or indirect discharges which may be the source of the chemicals or toxicity;**

[ 5 ] 6 An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Basin Regulations, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

[ 6 ] 7 Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

[ 7 ] 8 Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

2.5. [ 6 ] 5 Protection of Trade Secrets; Confidential Information. No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by these Rules shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

"Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his

employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791."

2.5. [ 7 ] 6 Failure to Furnish Report. The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

2.5. [ 8 ] 7 Informal Conference. Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

2.5. [ 9 ] 8 Consolidation of Hearings. Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

#### ARTICLE 6

#### [ Conduct of ] Administrative Hearings

##### Section 2-6.1 Hearings Generally.

(a) Scope of Article. This article shall apply to [ **hearings** ] **contested cases** required [ **for the purposes of** ] **to be held under** Articles [ - ] 3 and 5 of these regulations [ **and** ], to the [ **extent applicable, to the** ] conduct of **other** administrative hearings [ **for which no other provision is made by statute or regulation.** ] **involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this article.**

[ (b) **Timely Request.** Any person aggrieved by any ] (b) **Definition of Contested Case.** "Contested case" means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted rule or regulation of the Commission.

(c) **Requests for Hearings.** Any person seeking a hearing to review the action or decision of the [ **Executive Director taken under any Basin Regulation shall be entitled upon timely filing of a request therefor, to a hearing in accordance with these regulations.** ] **The Commission or the Executive Director may request a hearing pursuant to the provisions of this article provided such a request is received by the Commission within thirty (30) days**

of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this article, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

**[(c)](d) Optional Joint Hearings.** Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this article may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation **[. The hearing officer ]** and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

**[(d)](e) Schedule.** The Executive Director shall cause the schedule for each hearing to be listed in advance upon a 'hearing docket' which shall be posted in public view at the office of the Commission.

**(f) Notice of Hearing.** Notice of any hearing to be conducted pursuant to this article shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

#### Section 2.6.2 Authorization to Conduct Hearings.

**(a) Written Requests for Hearings.** Upon receipt of a written request for a hearing pursuant to this article, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a hearing pursuant to this article if it determines that an adequate record with regard to the action or decision is not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commission or that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

**(b) Commission Directed Hearings.** This article shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions hereof.

#### 2.6.3 [ 2.6.2 ] Hearing Officer.

**(a) Generally.** Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the chairman may designate, except as provided in paragraph (b) below.

**(b) Wasteload Allocation Cases.** In cases involving the allocation of the assimilative capacity of a stream:

**(1)** The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;

**(2)** A quorum of the board for purposes of the hearing shall consist of two members; and

**(3)** Questions of practice or procedure during the hearing shall be determined by the chairman.

#### [ 2.6.3 ] 2.6.4 Hearing Procedure.

**(a) Participation in the Hearing.** In any hearing, the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure. In addition, any person whose legal rights may be affected by the decision rendered in a contested case shall be deemed an interested party. Interested parties **[ The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, and to hold conferences for the settlement or simplification of issues.**

**(b) The hearing officer shall cause each witness to be sworn or to make affirmation.**

**(c) Any party to a hearing ]** shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning a contested case or desiring to present comments concerning the subject matter of the Hearing for inclusion in the record may submit a written statement to the Commission. Any interested party may request the right to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all written statements submitted shall be included within the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

**(b) Powers of the Hearing Officer.** The Hearing Officer shall:

**(1) Rule upon offers of proof and the admissibility of evidence, regulate the course of the hearings, hold conferences for the settlement or simplification of procedures or issues, and shall schedule submission of documents, briefs and the time for the hearing.**

**(2) Cause each witness to be sworn or to make affirmation.**



**(3) Limit [ (d) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit ]** the number of times any witness may testify, **[ the ]** limit repetitious examination or cross-examination of witnesses[, ] or the extent **[ of ]** to which corroborative or cumulative testimony shall be accepted.

**(4) Exclude**

**[ (e) The hearing officer shall exclude ]** irrelevant, immaterial[, ] or unduly repetitious evidence, but the interested parties shall not be bound by technical rules of evidence[, ] and all relevant evidence of reasonably probative value may be received.

**[ (f) Any person entitled to be heard may appear and be heard in person or be represented by an attorney at law or, if the applicant is a corporation, by its corporate officer, an authorized employee, or by an attorney at law.**

**(g) Briefs and oral argument may be required by the hearing officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be ](5) Require briefs and oral arguments to the extent determined necessary which shall be included as part of the record unless otherwise ordered by the [ hearing officer ] Hearing Officer.**

**[ 2.6.4 ] 2.6.5 Staff and Other Expert Testimony.**

**(a) Presentation on Behalf of the Commission.** The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

**(b) [ A party to the hearing may submit the ] Expert Witnesses. An interested party may submit in writing to the Hearing Officer the report and proposed testimony of an expert witness.[, to be made part of the record, whether or not the expert is present, provided that such testimony has been reduced to writing, sworn, and copies thereof distributed to all parties appearing at the hearing. Such ] No expert report or proposed testimony, however, shall [ not be admitted whenever ] be included in the record if the expert is not [ present and ] available for [ cross- ]examination [ at the hearing ] unless the report and proposed testimony shall have been [ made available to all parties of record at least five days ] provided to the Commission and all interested parties prior to the hearing and [ all ] the Commission and interested parties have waived the right of cross-examination.**

**(c) The Executive Director may designate for inclusion in the record those records of the Commission which the Executive Director deems relevant to a decision in a contested case or to provide an understanding of applicable Commission policies, regulations or other requirements relating to the issues in the contested case. The designation of such Commission documents shall be provided to all interested parties prior to the hearing.**

**2.6.6 [ 2.6.5 ] Record of Proceedings.** A record of the proceedings and evidence at each hearing shall be made

by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

**[ 2.6.5.1 ] 2.6.7 Assessment of Costs [ . ]; Appeals.**

**(a) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the Hearing Officer to the Hearing applicant unless apportioned between the interested parties where cost sharing is deemed fair and equitable by the Hearing Officer.** For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of **[ the hall ] a hearing room** and other related expenses.

**(b) Upon scheduling of a matter for [ adjudicatory ] hearing, the Secretary shall furnish to the applicant and/or interested parties a reasonable estimate of the costs to be incurred under this section. The applicant and/or interested parties may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.**

**(c) An appeal of the assessment of costs may be submitted in writing to the Commission within ten (10) days of the assessment. A copy of the appeal shall be filed with the Secretary and served on all interested parties. The filing of said appeal shall not stay the Hearing.**

**[ 2.6.6 ] 2.6.8 Findings, and Report and Commission Review.**

**(a) The Hearing Officer shall prepare a report of his findings and recommendations. In the case of an objection to a waste load allocation, the hearing officer shall make specific findings of a recommended allocation [ of carbonaceous oxygen demand, ] which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the Hearing Officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.**

**(b) The Executive Director, in addition to any submission to the Hearing Officer, may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other recommended Commission action. Interested parties shall be served with a copy of such submission and may have not less than ten (10) days to respond before action by the Commission.**

[ 2.6.7 ] 2.6.9 Action by the Commission.

(a) The Commission will act upon the findings and recommendations of the Hearing Officer pursuant to law.

(b) Commission Counsel shall assist the Commission with its review of the hearing record and the preparation of a Commission decision to the extent directed to do so by the Chairman.

(c) The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the Hearing Officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. [ Subject to the provisions of Section 2-4.6, all ] All such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

**6.10 Appeals from Final Commission Action; Time for Appeals.**

Any party participating in a hearing conducted pursuant to the provisions of this article may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

ARTICLE 7  
PENALTIES AND SETTLEMENTS IN LIEU OF  
PENALTIES (No change.)

ARTICLE 8  
PUBLIC ACCESS TO RECORDS AND INFORMATION  
(No change.)

ARTICLE 9  
GENERAL PROVISIONS (No change.)

[ RESOLUTION NO. 80-11: SUSPENSION OF RULES RELATING TO ENVIRONMENTAL REVIEWS

A RESOLUTION suspending the Rules of Practice and Procedure relating to environmental reviews.

WHEREAS, the Compact of the Delaware River Basin Commission authorizes the Commission to promote and aid the coordination of the activities and programs of the signatory parties concerning water resources administration; and

WHEREAS, the Commission, pursuant to its Compact powers adopted Resolution No. 70-23 amending its Rules of Practice and Procedure to require environmental assessments and the preparation of environmental impact statements under certain circumstances; and

WHEREAS, by Resolutions Nos. 71-7, 73-15 and 76-20, the Commission further amended its Rules of Practice and Procedure to extend the requirements relating to environmental assessments and impact statements; and

WHEREAS, the provisions concerning environmental assessments and the preparation and processing of environmental impact statements are

now generally set forth in Article 4 of the Commission's Rules of Practice and Procedure as revised; and

WHEREAS, for the past two budget periods the Commission has been unsuccessful in obtaining adequate financial support for the continued implementation of the environmental impact statement program from the signatory parties as is evidenced by the reports prepared and submitted to the Commission by its Executive Director; and

WHEREAS, efforts to obtain financing from the U.S. Congress for the fiscal period 1980 did not succeed and the sum of \$126,000 included by the U.S. House of Representatives for this purpose was specifically eliminated by congressional action; and

WHEREAS, Commission efforts to obtain financial support from the U.S. Congress for fiscal period 1981 has also not succeeded; and

WHEREAS, the signatory state members have not been provided adequate funds from their appropriations for this purpose; and

WHEREAS, the Commission does not have available to it sufficient financial resources to permit the continuation of this program at the present time and to carry out its responsibilities mandated by the Compact; and

WHEREAS, an appropriate agency of the executive branch of the federal government can assume the "lead agency" and other environmental assessment functions for significant projects within the basin involving federal loans, grants or permits; and

WHEREAS, the Commission continues to be sensitive to, and recognizes the importance of, environmental aspects of projects which it reviews, and intends to continue to consider such issues within the procedures established by the Compact, consistent with budget and staff constraints; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Rules of Practice and Procedure are hereby suspended as follows:

(a) Except to the extent hereafter provided, Article 4 and the provisions of Sections 2-3.5 and 2-3.9 of the Commission's Rules of Practice and Procedure relating to environmental assessments are hereby suspended until further action of the Commission. To the extent that federal law may require the conduct of environmental assessments and the preparation of environmental impact statements, the Commission shall request appropriate agencies of the signatory parties to prepare such assessments and to make available all their findings and conclusions to the Commission. The Commission shall not act as lead agency for environmental assessments and the preparation of environmental impact statements unless funding therefor is expressly provided by Commission action or otherwise approved by the Commission.

(b) The provisions of Article 3 and Article 4 which would otherwise be suspended by paragraph 1 of this resolution shall remain in full force and effect in connection with the Level B Study, and the Merrill Creek and Point Pleasant projects and shall ]

[be applicable to the environmental assessments which are now in process and any environmental impact statements which such assessments may require or which are now being prepared. Such assessments and statements shall be completed in accordance with the Commission's Rules of Practice and Procedure concerning environmental matters.

(c) All reviews of projects under Section 3.8 of the Delaware River Basin Compact conducted while the suspension provided for in this resolution remains in effect shall be without reference to the requirements of the Comprehensive Plan established in Resolution No. 71-6 (Section 1.10.2 of the Water Code) except to the extent that environmental information is otherwise available from agencies of the signatory parties.

2. The Executive Director and Commission staff are hereby directed to review those sections of the Rules of Practice and Procedure which are hereby suspended, and to prepare proposed revisions of such sections as might permit the Commission to reinstate environmental assessments on an amended basis provided necessary financial resources are developed.]

DIRK C. HOFMAN, *pro tem*  
Chairman

W. BRINTON WHITALL,  
Secretary

SUSAN M. WEISMAN,  
Secretary

**Fiscal Note:** 68-35. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART V. DELAWARE RIVER BASIN COMMISSION

#### CHAPTER 901. GENERAL PROVISIONS

#### § 901.1. Rules of practice and procedure.

The rules of practice and procedure as set forth in 18 CFR part 401 ([ 1994 ] 1997) are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 97-1473. Filed for public inspection September 12, 1997, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 21]

### State Forests

The Department of Conservation and Natural Resources (Department) proposes to amend Chapter 21 (relating to general provisions). The proposed amendments would modernize the State Forest regulations which have not been updated in more than 25 years. The proposed revisions will allow the Department to better manage the use of State Forest land and to protect fragile ecosystems.

#### A. Effective Date

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rule-making.

#### B. Contact Persons

For further information contact Warren A. Ely, Chief, Division of State Forest Management, P. O. Box 8552, Rachel Carson State Office Building, Harrisburg, PA 17105-8552, (717) 787-2014, or Susan Wood, Assistant Counsel, P. O. Box 8767, Rachel Carson State Office Building, Harrisburg, PA 17105-8767, (717) 772-4171. Information regarding submitting comments on this proposal appears in Section I of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 313 of the Conservation and Natural Resources Act (71 P. S. §§ 1340.102—1340.1103) which directs the Department to formulate, adopt and promulgate regulations regarding conduct on State Forest land.

#### D. Background and Purpose

The regulations which govern conduct on State Forest land have not been revised for more than 25 years. In their current form, they are badly outdated and are no longer sufficient to allow the Department to protect and control the use of State Forest land. The recreational and commercial use of State Forest land has increased dramatically in the last quarter century and these revisions are sorely needed. The Department's Advisory Council has reviewed the revisions and generally agrees that they are needed.

#### E. Summary of Regulatory Requirements

The following is a summary, by sections, of the significant changes:

*Section 21.1 (Definitions):* Definitions of the following terms are added: "State Forest land," "commercial activity," "group activity," "pack animal" and "State Forest designated hiking trail."

*Section 21.12 (Mooring and launching):* Subsection (d) allows boaters to launch small watercraft such as canoes and rubber rafts from any point on the shoreline. However, to protect the environment, boats on trailers must be launched from designated launch areas.

*Section 21.21 (Motor vehicles):* Subsection (b) prohibits operating motor vehicles on roads, trails and other areas not designated for their use. From a practical standpoint, this section will have little impact on the using public. However, it will make enforcement more efficient and will cause the Department's rules and regulations to be identical to the Game Commission's thereby reducing confusion among visitors to both agencies' lands.

The proposed added wording in subsection (d) will allow adjoining landowners to receive commercial deliveries, such as fuel oil, without the necessity of obtaining a Road Use Agreement.

*Section 21.23a (All-terrain vehicles):* This proposed new section cites the law under which all-terrain vehicles may be operated and, reflecting existing practice, states the times of year they may be operated. All-terrain vehicles are prohibited from April 2 until the Friday before Memorial Day in order to protect the forest resource

during the spring when soils are saturated and also to avoid possible conflict with spring gobbler season.

*Section 21.23b (Trail bikes and other motorized off-road vehicles):* New language is proposed to be added to address the possibility that, in the future, facilities may be provided for trail bikes and other motorized off-road vehicles.

*Section 21.24 (Spark arrestors):* Needless technical language is proposed to be deleted and replaced with a simple statement that functional spark arrestors on all motorized vehicles including all-terrain vehicles, trail bikes and other off-road motor vehicles are required.

*Section 21.25 (Parking):* This is a new proposed section that replaces paragraph (4) of § 21.21. It expands the areas where parking is prohibited. It will allow State Forest Officers to issue parking tickets instead of requiring a citation to be issued or filed. This will have the benefit of avoiding court costs for the person who parks in prohibited areas. This section is also found in the regulations of the Bureau of State Parks.

*Sections 21.26 and 21.27 (Horses, pack animals; bicycles, person-powered vehicles):* These proposed new sections prohibit horses, pack animals and bicycles from the two National hiking trails and the 18 State Forest designated hiking trails unless posted as open to the use. Those specific trails are maintained by volunteers from the hiking community and horses and bicycles have the capability to cause severe damage where the trails pass through fragile ecosystems.

*Section 21.31 (Prohibitions):* The language in this section is proposed to be expanded to provide for protection of a broader array of products of the forest. Also, the provisions of former § 21.70 (relating to removal of plants) have been included here.

*Section 21.61 (Camping permit):* This proposed revision would require that a camping permit be acquired by all campers on State Forest land. This will allow the Department to do a better job in monitoring camping activity. In addition, since camping continues to increase dramatically, it may be necessary in the future to control numbers. Requiring a camping permit will allow the Department to do that. At present, camping permits are free. There is no plan to charge for them in the near future.

*Section 21.62 (Open fires):* Since the spring and fall are normally the times of year when the danger of wildfires is at its highest, open fires are prohibited during these periods unless authorized by the District Forester.

*Section 21.65 (Target shooting):* Pennsylvania game laws do not define "approved targets." Therefore, the proposed new wording in this section prohibits target shooting whenever there is a possibility of injuring or damaging people, animals, trees or property.

*Section 21.67 (Posting and soliciting):* Soliciting is proposed to be added as being prohibited on State Forest land without the permission of the Department.

*Section 21.69 (Swimming):* Reserved. The prohibition against swimming is proposed to be deleted as being too restrictive and, for the most part, unenforceable.

*Section 21.70 (Removal of plants):* This section is proposed to be incorporated into § 21.31 (relating to prohibitions) and is therefore reserved.

*Section 21.70a (Snow plowing):* This is a proposed new section. It prohibits snow plowing without the written permission of the District Forester or a representative because many State Forest roads also serve as snowmobile trails. In addition, plowing earthen roads can lead to damage due to increased traffic on wet roads.

*Section 21.73 (Pets):* This is a proposed new section that permits pets on State Forest land, but requires that they be kept under control at all times. This is to insure the safety of State Forest visitors and wildlife.

*Section 21.74 (Disorderly conduct):* This is a proposed new section that allows State Forest officers to take action when disorderly conduct occurs.

*Section 21.75 (Sanitation):* This is a proposed new section that is intended to protect the waters on State Forest land and to protect the health of State Forest visitors.

*Section 21.76 (Feeding of wildlife):* This is a proposed new section that limits wildlife feeding in compliance with 34 Pa.C.S. (relating to Game and Wildlife Code).

*Section 21.77 (Commercial activity):* This new proposed section prohibits selling, distributing, delivering, servicing, guiding or renting any equipment, material or commodity or otherwise engaging in commercial activity on State Forest land without the approval of the District Forester.

*Section 21.78 (Group activities):* This proposed new section reflects the Department's current policy of prohibiting group activities on State Forest land without the written permission of the District Forester.

*Section 21.79 (Structures):* This proposed new section prohibits building or erecting structures or memorials or engaging in construction or excavation activity without the written authorization of the Department. This language reflects current State Parks' regulations.

*Section 21.80 (Trespass):* This proposed new section adds a trespass provision and the means to enforce it. It corrects the current situation in which State Forest officers are sometimes severely hampered in the performance of their duties. A similar provision is included in the regulations of the Bureau of State Parks.

No companion Federal regulations exist.

Beginning in January 1998, the Department will hold a series of informational public meetings across this Commonwealth. In addition, copies of the proposed revisions will be mailed to special interest and user groups such as hiking, snowmobiling and equestrian user groups. Finally, a press release concerning the proposed amendments will be prepared.

#### F. Benefits, Costs and Compliance

##### Benefits

The revisions to the State Forest regulations will provide for improved protection of the forest resource and to the public recreating on State Forest land. Therefore, all citizens will benefit from their adoption.

##### Compliance Costs

Visitors to State Forest land will be required to comply with the regulations governing conduct. However, there will be no cost to them arising from compliance. There will be a minimal cost to the Department in that it will be necessary to revise some existing signs and create a few new ones.

*Compliance Assistance Plan*

Not applicable.

*Paperwork Requirements*

There will be a modest increase in the number of camping permits issued.

*G. Sunset Review*

These proposed amendments will be reviewed in accordance with the sunset review schedule to be developed by the Department to determine whether the proposed amendments effectively fulfill the goals for which they were intended.

*H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the regulations.

*I. Public Comments*

Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Bureau of Forestry, P. O. Box 8552, Harrisburg, PA 17105-8552. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Department by November 12, 1997.

*J. Public Meetings*

The Department will hold four public meetings for the purpose of explaining the proposed rulemaking and responding to questions. They will be held at 7 p.m. on the following dates and locations:

September 22, 1997, at the Landisburg Fire Company off of Route 850 in Landisburg, PA.

September 24, 1997, at the Wellsboro Fire Company on East Avenue in Wellsboro, PA.

September 25, 1997, at the Ramada Inn at Exit 10 of the Pennsylvania Turnpike in Somerset, PA.

September 29, 1997, at the Delaware Forest District Office located on Route 611 in Swiftwater, PA.

No formal record of questions or comments will be kept for these meetings.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Warren A. Ely directly at (717) 787-2014 or

through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN C. OLIVER,  
*Secretary*

**Fiscal Note:** 7B-1. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 17. CONSERVATION AND NATURAL RESOURCES****PART I. DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES****Subpart C. STATE FORESTS****CHAPTER 21. GENERAL PROVISIONS****PRELIMINARY PROVISIONS****§ 21.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise

[ **Bureau**—The Bureau of Forestry of the Department. ]

**Commercial activity**—An activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation.

**District Forester**—The Department's Bureau of Forestry employe so designated.

**Group activity**—An organized activity occurring as a scheduled event and requiring a large land area or unique land formation and which may conflict with normal or traditional uses or pose a potential environmental problem.

**Pack animal**—A horse, mule, donkey or other heavy beast of burden.

**State Forest designated hiking trail**—Any trail on State Forest land which is listed as a major named hiking trail in the State Forest resource plan and posted as a State Forest designated hiking trail.

**State Forest land**—Land which is owned or leased by the Commonwealth and which is administered by the Bureau of Forestry.

**§ 21.2. Scope.**

This chapter applies to State [ **forests in the Commonwealth under the jurisdiction of the Department** ] Forest land.

**§ 21.3. Violations.**

(a) A person is guilty of a summary offense under 18 Pa.C.S. § 7505 (relating to violation of governmental rules regarding traffic) if that person commits an act which is prohibited by § 21.21 (relating to [ **licensed** ] motor vehicles).

\* \* \* \* \*

**BOATING****§ 21.11. Use.**

Unless posted otherwise, all waters on State Forest land [ **shall be** ] are open for the operation of watercraft. Operation of watercraft in waters posted against [ **such** ] this operation [ **shall be** ] is prohibited.

**§ 21.12. Mooring and launching.**

(a) Overnight mooring or storage of watercraft from November 15 through March 31 **[ shall be ]** is prohibited **except on lands leased from the Commonwealth.**

(b) The launching or mooring of watercraft on **[ waters ] lakes and ponds** in State Forests requires the appropriate valid State Recreation Area Watercraft Permit affixed aft of amidship on the starboard—right-side.

\* \* \* \* \*

(d) **[ Fees are as follows:**

- (1) Mooring Permit \$15/year**
- (2) Launching Permit \$5.00/year**
- (3) Boat Dock Permit \$5.00/year ]**

**Small, hand-carried boats, rafts and canoes may be launched from any point on the shoreline. Boats on trailers may be launched only at designated launch areas.**

(e) **[ Boat launching shall be prohibited at other than designated launching areas.**

(f) **[ (e) Boat mooring [ shall be ] is prohibited at other than designated mooring areas.**

**§ 21.13. Motorized boats.**

Use of motors, except electric motors, for the propulsion of watercraft **[ shall be ]** is prohibited.

**MOTORIZED VEHICLES**

**§ 21.21. [ Licensed motor ] Motor vehicles.**

(a) **This section pertains to motor vehicles other than those addressed in §§ 21.22, 21.23a and 21.23b (relating to snowmobiles; all-terrain vehicles; and trail bikes and other motorized off-road vehicles).**

(b) **[ Licensed motor vehicles shall be permitted on State Forest roads open to public travel. ]** Operation of motor vehicles on State Forest land in the following manners **[ shall be ]** is prohibited:

(1) Operation of **[ any ] a motor vehicle in [ a reckless or negligent manner, ]** careless disregard for the safety of persons or property, or in excess of posted speed limits or, where no speed limit is posted, in excess of 25 miles per hour.

(2) **Driving on roads, trails or other areas not specifically designated and posted for motor vehicle traffic unless authorized in writing by the District Forester or a designee.**

**[ (2) ] (3) Driving on roads, trails[ , ] or other areas closed to [ vehicular traffic ] motor vehicles by posted signs or barriers.**

**[ (3) ] (4) The use of State Forest roads for commercial purposes without a Road Use Agreement from the Department. An individual or corporation whose property adjoins State Forest land is not required to obtain a Road Use Agreement to use State Forest roads for incidental commercial purposes to make deliveries to the property.**

**[ (4) Parking a vehicle in front of gates or on roads in such a manner as to interfere with the free use of the gate or the road. ]**

(5) Operating unlicensed **[ or ]**, unregistered **or uninspected** motor vehicles on State Forest **[ roads open to public travel ]** land.

**§ 21.22. Snowmobiles.**

(a) Snowmobiling **[ shall be ]** is permitted in accordance with 75 Pa.C.S. Chapter 77 (relating to snowmobiles) **and this section.**

(b) Snowmobiles may be operated on designated snowmobile roads, designated trails[ , ] and designated **and posted** areas on State Forest land from the day following the last day of **regular or extended** antlerless deer season as established by the Game Commission until the following April 1, **inclusive**, or earlier, as determined by **[ snow conditions ] the District Forester.**

(c) Operation of snowmobiles on **[ any ]** a road, trail[ , ] or area not **[ specially ] specifically** designated **and posted** for snowmobile use or at any time of year in which snowmobiling **[ shall ]** is not **[ be ]** permitted under this section **[ shall be ]** is prohibited.

**§ 21.23. Trail bikes[ , ] and other motorized off-road vehicles.**

**This section pertains to motorized off-road vehicles other than those addressed in §§ 21.22 and 21.23a (relating to snowmobiles; and all-terrain vehicles).**

**[ (a) ] (1) Trail bikes[ , ] and other motorized off-road vehicles [ , and all other similar motorized recreation vehicles ]** may be operated only on **[ designated ]** roads, **[ designated ]** trails[ , ] or **other** areas **[ which ]** that have been **specifically** designated **and posted** for their use.

**[ (b) ] (2) [ Unless authorized in writing by the Bureau, all such vehicles are excluded from State Forest land between September 25 and the day following the last day of antlerless deer hunting season, inclusive, as established by the Game Commission. ] Trail bikes and other motorized off-road vehicles may be operated only during the times of year authorized by the Department's Bureau of Forestry by posted signs.**

**[ (c) ] (3) Operation of trail bikes[ , off-road vehicles, ] and [ all ] other [ similar ] motorized [ recreation ] off-road vehicles on any road, trail[ , ] or other area not [ specially ] specifically designated and posted for their use, or at any time of the year in which their use is excluded under this section [ shall be ], is prohibited.**

**§ 21.23a. All-terrain vehicles.**

(a) **The operation of all-terrain vehicles is permitted in accordance with 75 Pa.C.S. Chapter 77 (relating to all-terrain vehicles) and this section.**

(b) **All-terrain vehicles may be operated on designated and posted roads, trails and other areas from the Friday before Memorial Day until September 24, inclusive, and from the day following the last day of the regular or extended antlerless deer season as established by the Game Commission until April 1, inclusive.**

(c) **Operation of all-terrain vehicles on a road, trail or area not specifically designated and posted**

for all-terrain vehicle use, or at any time of year in which all-terrain vehicle use is excluded under this section is prohibited.

§ 21.24. Spark arrestors.

[ (a) All trail bikes, off-road vehicles, and other similar motorized recreation vehicles operating in, on, or through State Forest land shall have an approved, properly installed spark arrestor which shall meet and be qualified to either of the following:

(1) The United States Department of Agriculture, Forest Service Standard 5100-1a.

(2) The 80% efficiency level when determined in accordance with the appropriate SAE recommended practices J335 or J350 noise level restrictions.

(b) The United States Forest Service publication, *Spark Arrestor Guide*, will be used as the reference sources in determining whether or not a spark arrestor is approved.

(c) Operation of any trail bike, off-road vehicle, or other similar motorized recreation vehicle in, on, or through State Forest land without an approved spark arrestor shall be prohibited. ]

Operation of any motorized vehicle, all-terrain vehicle, trail bike or other motorized off-road vehicle in, on or through State Forest land without a fully functional spark arrestor is prohibited.

§ 21.25. Parking

(a) Parking a motor vehicle, all-terrain vehicle, snowmobile, trail bike, other motorized off-road vehicle, boat trailer, camp trailer or other equipment which obstructs a gate, road, trail, footpath, bicycle path, access way, drinking fountain, entrance, exit or road turnaround on State Forest land is prohibited.

(b) Violations of this section will be handled as follows:

(1) Prior to the filing of a citation charging a summary offense under this section, the Department may issue a parking ticket, which will be handed to the violator or placed on the windshield of the violator's vehicle. The violator may avoid criminal proceedings by paying a charge to the Department, equivalent to the maximum fine as provided in 18 Pa.C.S. § 7505 (relating to violation of governmental rules regarding traffic), within 5 days of the violation in the manner specified on the ticket.

(2) When a parking ticket has been issued, the Department may institute criminal proceedings only upon failure of the violator to pay the charge in accordance with the time limit specified in paragraph (1) and in the manner specified on the ticket.

(3) When a parking ticket has not been issued, the Department may institute criminal proceedings by issuing a citation.

**ANIMALS AND NONMOTORIZED VEHICLES**

§21.26. Horses and pack animals.

Horses and pack animals are permitted on State Forest land with the following exceptions:

(1) National and State Forest designated hiking trails unless posted as being open to their use.

(2) A road, trail or other area posted against the use of the animals.

§ 21.27. Bicycles and person-powered vehicles.

Bicycles and person-powered vehicles are permitted on State Forest land with the following exceptions:

(1) National and State Forest designated hiking trails unless posted as being open to their use.

(2) A road, trail or other area posted against the use of the vehicles.

**[ FUEL WOOD ]**

**FOREST PRODUCTS**

§ 21.31. [ Permit ] Prohibitions.

[ Cutting and removing any wood from State Forest land without a permit issued by the District Forester or his designee shall be prohibited. ] The following activities are prohibited:

(1) Cutting, picking, digging, damaging or removing, in whole or in part, a living or dead plant, vine, shrub, tree or flower on State Forest land without written authorization of the District Forester or a designee, except that berries, nuts, leeks and mushrooms may be gathered without authorization if they are gathered for one's own personal or family consumption.

(2) Removing rocks, shale, sand, clay, soil or other mineral products from State Forest land without written authorization of the District Forester or a designee.

(3) Removing peat, sawdust, bark, mulch or other products from State Forest land without written authorization of the District Forester or a designee.

(4) Removing or disturbing historical or archeological resources from State Forest land without written authorization of the District Forester or a designee.

§ 21.32. Designated trees.

Cutting or removal of other than designated or marked trees [ shall be ] is prohibited.

§ 21.33. Cutting practices.

(a) The stump height of cut trees [ shall ] may not exceed the diameter of the stump or 12 inches whichever is smaller.

(b) All tops and slash shall be removed 25 feet from streams, roads, trails and State Forest boundaries.

(c) [ The use of unauthorized cutting practices or the ] The blocking of drainage ditches [ along forest roads or streams ], pipes and other structures with tops and slash [ shall be ] is prohibited.

§ 21.34. Removal.

[ (a) ] The removal of fuel wood and other forest products from the forest by [ means ] the use of tractors, skidders or any method other than hand carrying [ shall be ] is prohibited [ unless otherwise authorized in writing by ] without written authorization of the District Forester or a designee.

[ (b) All wood of greater than 4-inch diameter from a felled tree must be removed. ]

§ 21.35. [ Liability ] (Reserved).

[ The Commonwealth will not be liable for any accidents, injuries or damages incurred by or caused by the permittee in cutting and removing fuel wood. ]

MISCELLANEOUS PROVISIONS

§ 21.61. Camping permit.

Camping is defined as overnight lodging using standard camping equipment. Camping without a current camping permit issued by the District Forester or [ his ] a designee is prohibited. [ ; provided, however, that primitive backpack campers not using developed facilities shall not need a permit if they stay no more than one night at any campsite. ]

§ 21.62. Open fires.

(a) [ Small fires for cooking or warming purposes shall be ] Subject to the prohibition in subsection (b), small campfires are permitted only [ at places ] where adequate precautions are taken to prevent the spread of fire into the forest [ ; all ]. All other fires are prohibited. Campfires shall be attended at all times.

(b) [ All open ] Open fires [ of any kind shall be ] are prohibited when the forest-fire danger is [ posted as ] determined by the District Forester to be High, Very High or Extreme and from March 1 to May 25, inclusive and from October 1 to December 1, inclusive, without authorization from the District Forester or a designee.

(c) A person causing a wildfire, in addition to possible criminal penalty, [ shall be ] is liable for all damages, costs of extinction [ , ] and fines.

§ 21.63. Hunting and trapping.

(a) Hunting [ shall be ] and trapping on State Forest land are permitted in accordance with current Pennsylvania game laws [ on all areas ] and regulations unless otherwise posted.

(b) Hunting and trapping in violation of posted closure or special restriction notices [ shall be ] are prohibited.

§ 21.64. Fishing.

(a) Fishing [ shall be ] in waters on State Forest land is permitted in accordance with current Pennsylvania fish and boat laws and regulations, unless otherwise posted.

(b) Fishing in violation of posted closure or special restriction notices [ shall be ] is prohibited.

§ 21.65. Target shooting.

Target shooting with firearms [ or ], bows and arrows [ at other than protected and approved targets and in conformity with the Pennsylvania game laws shall be prohibited ] or devices capable of launching projectiles and causing injury to persons or property is prohibited at any location where it could cause or threaten injury, damage or disturbance to a person, animal, living tree, sign, structure or equipment.

§ 21.66. Destruction of property.

Damaging, defacing or removing any sign, structure, equipment or other material [ shall be ] is prohibited.

§ 21.67. Posting and soliciting.

Posting of signs or soliciting without [ the permission of the Department ] written authorization of the District Forester or a designee is prohibited.

§ 21.68. Littering and disposal.

Littering [ of areas with ] or disposal of garbage, paper, household refuse, waste or other [ waste ] material of any kind is prohibited.

§ 21.69. [ Swimming ] (Reserved).

[ Unless otherwise authorized, swimming shall be prohibited in all dams, ponds, lakes and streams on State Forest lands. ]

§ 21.70. [ Removal of plants ] (Reserved).

[ Picking, digging, cutting, damaging or removing any living plant, vine, shrub or tree or flower thereof shall be prohibited unless authorized by written permit from the Department. ]

§ 21.70a. Snow plowing.

The plowing or removal of snow from State Forest land without written authorization of the District Forester or a designee is prohibited.

§ 21.71. Closure.

(a) Areas or portions of a State Forest or State Forest facilities may be closed or restricted to certain [ specified ] uses by the [ Department ] District Forester or a designee.

(b) [ Restricted areas or facilities will be conspicuously posted to inform the public of the restricted use of the area. ] The public will be informed of the closed or restricted areas or facilities by any form of communication, which may include posted signs, or by fencing or other enclosure manifestly designed to exclude intruders.

(c) Violation of the closure or restriction notices under subsection [ (a) ] (b) is prohibited.

§ 21.72. Closure because of fire danger.

(a) [ In the event ] If the forest-fire danger rating is Very High or Extreme, [ the Director of the Bureau may close ] all or portions of the State Forest may be closed to certain specified uses.

\* \* \* \* \*

§ 21.73. Pets.

Pets are permitted on State Forest land if they are kept under control and attended at all times.

§ 21.74. Disorderly conduct.

The following are prohibited:

(1) Fighting, threatening, violent or tumultuous behavior.

(2) The possession or consumption of alcoholic beverages by persons under 21 years of age.



**§ 21.75. Sanitation.**

The use of water outlets, springs, lakes or waterways for washing purposes, or the discharge of trailer, camper or motor home sewage, sink water or bath water on or into the ground or surface waters, is prohibited.

**§ 21.76. Feeding of wildlife.**

(a) Feeding of wildlife, except for elevated song-bird feeders of less than one-half bushel capacity, is prohibited on State Forest land from 30 days prior to the beginning of spring gobbler season until the day following the last day of flintlock muzzleloader deer season.

(b) Placing of wildlife feeders of more than one-half bushel capacity on State Forest land without the authorization of the District Forester or a designee, is prohibited.

**§ 21.77. Commercial activity.**

Selling, distributing, delivering, servicing, guiding or renting any equipment, material or commodity or otherwise engaging in commercial activity on State Forest land without written authorization of the District Forester or a designee is prohibited.

**§ 21.78. Group activities.**

Group activities are prohibited without written authorization of the District Forester or a designee.

**§ 21.79. Structures.**

Building or erecting a structure or memorial, or engaging in construction or excavation activity, without written authorization of the Department is prohibited.

**§ 21.80. Trespass.**

(a) A person who violates this chapter or disregards instructions or warnings given by a State Forest officer or interferes with a State Forest officer in the performance of the duties of the officer may be ordered to leave State Forest land.

(b) A person who refuses to leave State Forest land, after receiving an order to leave from a State Forest officer, commits an act of criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass).

[Pa.B. Doc. No. 97-1474. Filed for public inspection September 12, 1997, 9:00 a.m.]

## DEPARTMENT OF REVENUE

[61 PA. CODE CH. 93]

### Inheritance Tax; Disclaimers of Nonprobate Taxable Assets

The Department of Revenue (Department), under the authority contained in section 2103 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 9103), proposes to add § 93.81 (relating to disclaimers of nonprobate taxable assets), to read as set forth in Annex A.

Section 2103(a) of the TRC provides that the Department may adopt and enforce rules and regulations for the

just administration of Article XXI of the TRC (72 §§ 9101—9106) Inheritance Tax.

#### *Purpose of Regulation*

Based on the decision and order received from Commonwealth Court in *In Re Estate of Bernecker*, 654 A.2d 246 (Pa. Cmwlth. 1995), the Department is revising its policy on the effectiveness of disclaimers of nonprobate taxable assets for Commonwealth Inheritance Tax purposes.

#### *Explanation of Regulatory Requirements*

Section 93.81(b) sets forth specific conditions which the Department will utilize in determining whether a disclaimer executed in regard to nonprobate taxable assets and nontrust assets of resident decedents is valid for Commonwealth Inheritance Tax purposes when made either by the disclaiming party or the personal representative of the deceased individual or the guardian or attorney-in-fact of the incapacitated person or minor to whom the interest, absent the disclaimer, would have devolved.

#### *Fiscal Impact*

The Department has determined that the revenue impact of the proposed regulation may be a nominal loss to the Commonwealth. In most cases, disclaimers are used to reduce the beneficiary's Federal Estate Tax, rather than Pennsylvania Inheritance Tax. Use of disclaimers would most likely be by beneficiaries whose rate or level of taxation would exceed that of parties receiving assets through probate. It is believed that disclaimers from lower rates of tax to higher rates of tax through the estate would be rare.

#### *Paperwork*

The proposed regulation will not generate significant additional paperwork for the public or the Commonwealth.

#### *Effectiveness/Sunset Date*

The proposed regulation will become effective upon final publication in the *Pennsylvania Bulletin*. The proposed regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

#### *Contact Person*

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed regulation to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days of the date of the publication of this notice in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 3, 1997, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed regulation, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria

which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,  
Secretary

**Fiscal Note:** 15-390. (1) General Fund; (2) Implementing Year 1997-98 is \$Minimal Revenue Loss; (3) 1st Succeeding Year 1998-99 is \$Minimal Revenue Loss; 2nd Succeeding Year 1999-00 is \$Minimal Revenue Loss; 3rd Succeeding Year 2000-01 is \$Minimal Revenue Loss; 4th Succeeding Year 2001-02 is \$Minimal Revenue Loss; 5th Succeeding Year 2002-03 is \$Minimal Revenue Loss; (4) FY 1995-96 \$Non-Applicable; FY 1994-95 \$; FY 1993-94 \$; (8) recommends adoption. This proposed regulation is in response to a Commonwealth Court decision that makes disclaimers of nonprobate taxable assets valid in certain instances. Properly executed disclaimers could result in a minimal loss of revenue to the General Fund.

#### Annex A

### TITLE 61. REVENUE

#### Part I. DEPARTMENT OF REVENUE

#### Subpart B. GENERAL FUND REVENUES

#### ARTICLE IV. COUNTY COLLECTIONS

#### CHAPTER 93. INHERITANCE TAX DIVISION

#### Subchapter B. ENTRY INTO SAFE DEPOSIT BOX PENALTIES

#### § 93.81. Disclaimers of nonprobate taxable assets.

(a) *General.* The Department is revising its policy on the validity of disclaimers of nonprobate taxable assets for Pennsylvania Inheritance Tax purposes to reflect the decision and order received from the Commonwealth Court in *In Re Estate of Bernecker*, 654 A.2d 246 (Pa. Cmwlth. 1995).

(b) *Scope.*

(1) Disclaimers executed with regard to nonprobate taxable assets of resident decedents, including rights of survivorship interests in multiple-party accounts, titled tangible personal property or real estate, beneficial interests in third-party beneficiary contracts (that is, retirement benefit plans, annuity contracts, individual retirement accounts, Keogh plan proceeds, matured endowment insurance policies and certain out-of-State government lottery contracts) and inter vivos gifts are valid for Pennsylvania inheritance tax purposes if the following apply:

(i) They are made either by the disclaiming party or the personal representative of the deceased individual or the guardian or attorney-in-fact of the incapacitated person or minor to whom the interest, absent the dis-

claimer, would have devolved.

(ii) The applicable conditions in paragraphs (3)—(7) have been met.

(2) The same rule applies to nonresident decedents with nonprobate taxable assets subject to Pennsylvania Inheritance Tax.

(3) The disclaimer shall be in writing and shall satisfy the requirements of 20 Pa.C.S. Chapter 62 (relating to disclaimers) in effect at the time the disclaimer is made.

(4) The disclaimer shall be signed and dated within 9 months of the date of death of the decedent whose interest is being disclaimed. (*See In Re Pomerantz' Estate*, 28 D. & C.3d 521 (Montg. 1983)).

(5) The disclaimer shall be signed and dated by the individual, his personal representative if the individual seeking to disclaim has died, or the guardian or attorney-in-fact of an incapacitated individual or minor.

(6) If the disclaimer is made by the personal representative, the guardian of an incapacitated or minor person, or the attorney-in-fact of the person whose interest is being disclaimed, the petition required by 20 Pa.C.S. § 6202 (relating to disclaimers by fiduciaries or attorneys-in-fact) shall be filed with the applicable county orphans' court within 9 months of the date of death of the decedent whose interest, absent the disclaimer, would have devolved. (*See, McGrady Estate*, 42 D. & C.2d 519, 17 Fiduc. Rep. 408 (O.C. Phila. 1967) and *In Re Pomerantz' Estate*, 28 D. & C.3d 521 (O.C. Montg. 1983)).

(7) A personal representative may make a disclaimer on behalf of a decedent without court authorization if the following apply:

(i) The will of the decedent authorizes the personal representative to do so (*See* 20 Pa.C.S. § 6202).

(ii) A copy of the probated last will and testament is attached to the Inheritance Tax return filed with the Department.

(iii) The disclaimer is signed and dated within 9 months of the date of death of the decedent as provided in section 2116(c) of the TRC (72 P.S. § 9116 (c)) and paragraph (4).

(8) Notice of the filing of an estate's first and final account and of its call for audit or confirmation shall include notice of the disclaimer of the decedent's devolved interest, including the written disclaimer of any nonprobate taxable assets of the decedent, under section 2116(c) of the TRC. The notice shall be given to Office of Chief Counsel, Pa. Dept. of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

[Pa.B. Doc. No. 97-1475. Filed for public inspection September 12, 1997, 9:00 a.m.]