

**COORDINATION PROCESS
FOR REGULATORY PROGRAM ACTIVITY**

**New York State Department of Environmental Conservation
&
Susquehanna River Basin Commission**

This document is intended to memorialize the process to be utilized to effectuate coordination between the New York State Department of Environmental Conservation (NYSDEC) and the Susquehanna River Basin Commission (Commission) in the exercise of their respective water resource regulatory authorities in the New York State portion of the Susquehanna River Basin (basin), as committed to in the Memorandum of Understanding (MOU) executed by the two agencies. This coordination process is intended to promote intergovernmental cooperation, avoid unnecessary duplication of staff functions, minimize burdens on the regulated community, and generally allow for the efficient use of agency resources in protecting the water resources of the basin.

The majority of New York State's portion of the basin lies within NYSDEC Regions 7 and 8, with smaller portions located with NYSDEC Regions 4, 6, and 9. (Figure 1: Map of NYSDEC Regions and SRBC basin).

The coordination process identified below is intended to facilitate communication and coordination on projects in any of the categories identified in Paragraph 5 of the MOU, but it will primarily be used for water withdrawal and consumptive use projects under review by the Commission. Many of these projects would otherwise be subject to regulation by NYSDEC, except that the statute (§ 15-1501(7)(b)) and the implementing regulations, 6 NYCCR § 601.9(b), exempt from permitting any withdrawals for which an approval has been issued by the Commission.

Beyond project review, the coordination process will also be used to facilitate data sharing, including but not limited to water use registration and withdrawal/ use data.

All references to NYSDEC Regional Permit Administrator in this document shall include the Administrator's designee. All references to Project Review Manager in this document shall include the Manager's designee.

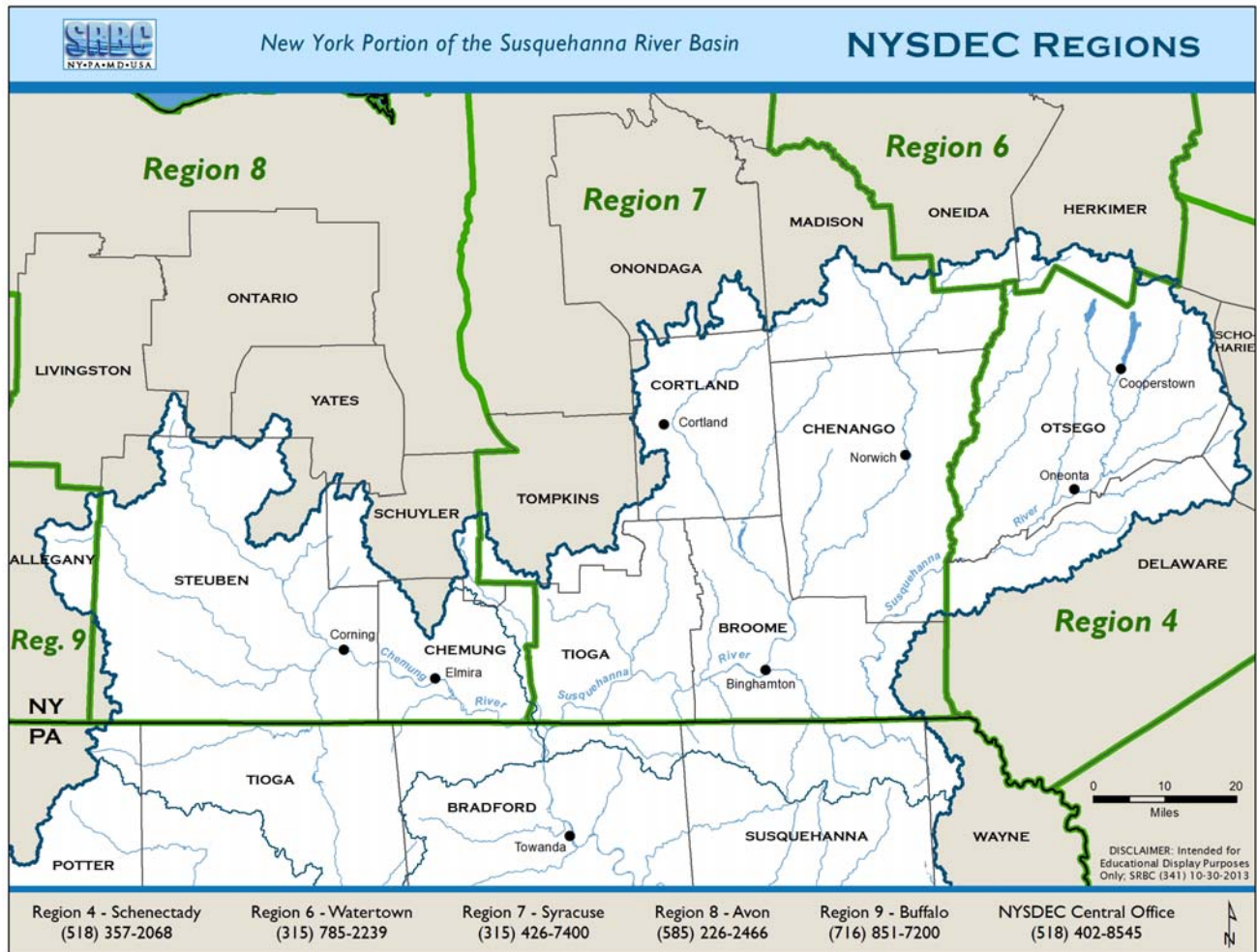


Figure 1. Map of NYSDEC Regions and SRBC basin

Project Application Review

The official record for the project, including but not limited to the project application, will be retained by the Commission pursuant to Policy No. 2010-01, Records Retention Policy. Docket files, containing materials related to the Commission's approval of water resource projects, are retained permanently under that policy. Records shall be made available to NYSDEC pursuant thereto.

Pre-application notifications

Prior to preparing an application, both NYSDEC and the Commission strongly recommend that a project sponsor request a pre-application meeting. The Commission reinforces this recommendation when applicants register to use the online application system.

NYSDEC (Regional Permit Administrator) and the Commission (Project Review Manager) will provide each other with early written notification (email notification is preferred) of a pre-application meeting with a project sponsor. At such meetings, both agencies will advise the project sponsor of authorities of the other agency (information could be guidance, fact sheets, or other written materials) and provide contact information for the other agency. To facilitate early communication about projects, participation by staff representatives from both agencies (in person, or via video or teleconferencing) in such meetings is encouraged. As appropriate, minutes or notes from these meetings should be transmitted to the other agency within 30 days.

Aquifer testing/pumping test results

Commission regulations require that aquifer test results be submitted as part of any groundwater withdrawal application. Note that the Commission also requires the submittal for review and approval of testing plans prior to conducting a test.

The Project Review Manager will provide the Commission's Aquifer Testing Guidance to all parties interested in developing a groundwater source.

The Commission will provide the NYSDEC Regional Permit Administrator with written notification (commonly via email notification) when a project sponsor submits an aquifer testing plan, and will share such plans with NYSDEC's staff upon written request. NYSDEC staff will transmit any relevant comments on the testing plan to the Commission within 30 days of receipt of the plan.

The Commission will review the aquifer testing plan in accordance with applicable regulations and requirements of the Commission and the terms of this coordination agreement. For those plans determined to be incomplete, the Commission will notify the project sponsor in writing of the deficiencies and copy the appropriate NYSDEC designee. Commission staff will also copy NYSDEC on correspondence to the project sponsor approving a testing plan.

Application requirements and Project Review fees

Project sponsors for water withdrawal and use projects that are subject to regulation by the Commission, but not by NYSDEC, or subject to regulation by both agencies, will be expected to make application on forms provided by the Commission and available online. For most project types, the entire application process takes place online. The projects are also subject to the Commission's Project Review Fees.

New York SEQR Process

NYSDEC regulations provide that certain projects or activities proposed or permitted by a state agency or local governmental unit require an environmental impact assessment as prescribed by 6 NYCRR Part 617 State Environmental Quality Review (SEQR). SEQR requires the sponsoring or approving governmental body to identify and mitigate the significant environmental impacts of the activity it is proposing or permitting. The Commission is not a state or local agency subject to SEQR.

The Commission and NYSDEC acknowledge that a project may be subject to SEQR. Responsibility to comply with SEQR for such actions remains with the appropriate state or local agency.

At a pre-application meeting, or after a sponsor submits a project application, or otherwise as soon as reasonably possible, NYSDEC staff will provide written notification if it appears that the project is subject to SEQR. NYSDEC staff will thereafter apprise the Commission of the status and completion of the SEQR review. When NYSDEC is an involved agency in the SEQR review, it will notify the Commission within five days of completion. When NYSDEC is not an involved agency in the SEQR review, it will notify the Commission as soon as reasonably possible.

To the extent possible, the Commission's review of withdrawal applications should be coordinated with the lead agency for SEQR review.

Application receipt

Upon receipt of the project application from the project sponsor, the Commission will post notice on its Water Resources Portal and electronically notify NYSDEC staff via RSS feed¹, which is capable of screening project applications by location (county and state). This posting occurs upon receipt of a complete application, which follows the publication of public notice by the project sponsor (approximately 30 days following submittal of the draft application).

Major portions of the application, including the project sponsor name, project location, and requested quantity of the proposed use or withdrawal, are viewable by NYSDEC on the Commission's Water Resources Portal. After administrative review is complete, the entire application, including supplemental materials and all documents uploaded by the project sponsor, will be made available to NYSDEC through a private (secure) website managed by the Commission, or other secure manner. To access the website, NYSDEC staff must sign in by user name and password.

For those projects determined by the Commission to be administratively incomplete, the Project Review Manager will notify the project sponsor in writing and copy the appropriate NYSDEC Regional Permit Administrator.

Application review

The Commission will review the project in accordance with applicable regulations and requirements of the Commission and the terms of this coordination agreement.

NYSDEC may provide comments and technical assistance to the Commission in its review of a project by submitting such to the Commission.

¹ RSS (Rich Site Summary) is a format for automatic delivery of regularly changing web content. The Commission syndicates its project application content on the Water Resources Portal as an RSS Feed to whoever wants to receive it.

The Project Review Manager may provide comments and technical assistance to NYSDEC in its review of a water withdrawal project in the basin not regulated by the Commission by submitting such to the NYSDEC.

For those projects determined to be technically deficient by the Commission or if additional information is necessary, the Project Review Manager will notify the project sponsor in writing and copy the appropriate NYSDEC Regional Permit Administrator.

During technical review, the Project Review Manager will contact the appropriate NYSDEC Regional Permit Administrator via email to determine if there are any issues that may impact the processing or priority of processing of the application.

NYSDEC staff may choose to accompany Commission staff during site evaluations. At the earliest practicable time, the Project Review Manager will notify the appropriate NYSDEC Regional Permit Administrator of the following:

- any site investigation (these are conducted for all applications);
- inspections of aquifer test monitoring network;
- aquatic resource survey(s); and
- public informational meeting(s).

Routine review activities such as aquatic resource surveys and site evaluations are scheduled in advance and these schedules may be posted on the secure website to facilitate coordination and participation by NYSDEC staff. However, note that all field activities are subject to possible scheduling changes, thus all arrangements for joint inspection of specific projects must be confirmed in advance.

The Project Review Manager may request to accompany NYSDEC staff during site evaluations. At the earliest practicable time, the appropriate NYSDEC Regional Permit Administrator will provide notice of field surveys and facility inspections.

Participation in joint field surveys and site evaluations by staff of the two agencies shall be governed by the legal authority for the same of the respective agencies, either statutory or regulatory, and otherwise by any policy adopted thereunder by the respective agencies. Nothing contained herein shall supersede, preempt, or be inconsistent with such authorities.

The Project Review Manager and the appropriate NYSDEC Regional Permit Administrator will work together to resolve any issues regarding a subject project prior to the project being noticed for action by the Commission.

Pre-decisional coordination

Commission determinations for most projects are made at regularly scheduled Commission business meetings. The Commission meets four times each year, usually in March, June, September, and December. The Commissioners have delegated authority for some actions, including Approvals by Rule, to the Executive Director.

The Project Review Manager will notify NYSDEC of active applications on a quarterly basis, approximately 8-10 weeks prior to a Commission business meeting. This commonly will be in the form of a spreadsheet that contains summary information for each active project in the New York State portion of the basin.

The Project Review Manager will provide to NYSDEC for review and comment the results of Commission staff's technical analysis, including any recommendations for passby and other determinations for active project applications as they become available. The NYSDEC Regional Permit Administrator will notify the Commission if there are any issues that may impact the processing or priority of processing of the application as soon as practicable.

Approximately 4 weeks prior to a Commission business meeting, the Project Review Manager will provide proposed final recommendations/determinations and conditions for the projects scheduled for action. NYSDEC will endeavor to submit any and all docket comments in writing (or requests for additional review time) to the Project Review Manager within 10 days. The Commission will work with NYSDEC in the development of standard conditions that should be included in all dockets for projects located in the New York State portion of the basin, consistent with the Commission's project review regulations. The agencies will review such conditions periodically and make any necessary modifications as deemed appropriate. The Project Review Manager will work with the NYSDEC Regional Permit Administrator to resolve any comments submitted by NYSDEC. In the event consensus is not reached concerning low flow protection, the NYSDEC Regional Permit Administrator shall request in writing that the Commission incorporate alternate provisions consistent with NYSDEC's adopted regulatory requirements and technical guidance, as more particularly described in the MOU.

The Project Review Manager will prepare recommendations for a Commission determination (Technical Review Memorandum) and draft docket for "Mailout" which occurs approximately 3 weeks prior to a Commission business meeting.

NYSDEC/Commission issued approvals

NYSDEC and the Commission agree to provide to each other copies of water withdrawal approvals issued for projects located within New York State and the geographic boundary of the basin within 30 days of the issuance of such approvals.

Public water supply applications

Public water supply permitting has been incorporated into NYSDEC's Water Withdrawal Permitting regulations and, as such, is covered by the general procedures previously identified.

The appropriate NYSDEC Regional Permit Administrator will review applications submitted by public water suppliers and conduct any necessary coordination with the New York Department of Health (NYDOH), copying the Project Review Manager on all correspondence. NYSDEC will coordinate with NYDOH and its principal staff contact to the extent required.

Consumptive water use Approval by Rule (ABR)

Upon receipt of a source application from a natural gas project sponsor under the ABR program, the Commission will notify NYSDEC staff. NYSDEC will review the request for bulk purchase from the public water supplier and conduct any necessary coordination with NYDOH, copying the Project Review Manager on all correspondence.

Data Sharing

NYSDEC approvals

For those water withdrawal projects subject to regulation by NYSDEC but not by the Commission, NYSDEC will provide the Commission with project data and copies of approvals issued for projects located within the New York State portion of the basin within 30 days of the issuance of such approvals.

Water use data

NYSDEC will supply all project water use data for use occurring in the basin to the Commission annually, as soon as practicable following the March 31 reporting deadline. Due to the potential adverse cumulative impact of smaller withdrawals on basin water resources, NYSDEC will also assist the Commission in acquisition of data for other withdrawals and uses from its sister agencies, such as that for public water supplies with capacities less than 100,000 gpd regulated by NYDOH.

NYSDEC will notify the Commission of projects that report water withdrawal/use capability of greater than 100,000 gpd and are not currently approved by the Commission, and will assist the Commission in identifying projects that may have sources grandfathered under the Commission's regulations. NYSDEC will also help in determining the historic use of such sources.

The Commission will make available to NYSDEC, upon its request, water use data for the basin in a form compatible with data from New York State's 15 other major basins.

NYSDEC and the Commission will exchange information on water use data analysis methods, including estimates for consumptive water use by sectors, for enabling enhanced future data comparisons between each agency's data.

Daily reference gage (passby) reporting

The Commission will make available upon request its daily streamflow gage (passby) reports to the NYSDEC Regional Water Engineer via email.

Water quality data

Commission and NYSDEC staff will continue to improve coordination for field data collection and analysis activities for water quality data. Examples of areas of collaboration include the exchange of information on biological data collection methods, side-by-side sample collection and analysis for enabling future data comparisons between Commission and NYSDEC data, and an ongoing exchange of information on the Commission's water quality studies conducted in New York State watersheds.

Compliance Activity

The Commission and NYSDEC have independent authorities under their respective statutes and regulations to take appropriate enforcement actions to ensure compliance with terms and conditions of their respective regulations, approvals, and permits. Each agency will cooperate with the other to the extent necessary to effectuate prompt and effective enforcement of the terms and conditions of each other's approvals.

Each agency will supply information and assistance to the other in connection with their respective compliance reviews.

Enforcement notifications

NYSDEC and the Commission agree to advise the other party of enforcement actions taken on projects having regulated water withdrawals and/or uses in the basin.

Joint inspection opportunities

In its routine inspections of facilities it regulates, NYSDEC will note and inform the Commission (Manager of Compliance) of any instances of possible non-compliance for projects approved by the Commission.

The Compliance Manager may request to accompany NYSDEC staff during facility inspections. At the earliest practicable time, the appropriate NYSDEC Regional Permit Administrator will provide notice of facility inspections.

To the extent practicable, NYSDEC and the Commission may conduct joint site compliance inspections.

Participation in joint inspections by staff of the two agencies shall be governed by the legal authority for the same of the respective agencies, either statutory or regulatory, and otherwise by any policy adopted thereunder by the respective agencies. Nothing contained herein shall supersede, preempt, or be inconsistent with such authorities.

Coordination Outreach

To initiate this coordination process, the agencies will convene one or more technical sessions involving Commission and NYSDEC Regional Office staff to familiarize all with respective jurisdictional programs, key personnel, and the coordination process in general.

Thereafter, at least annually, the agencies will convene a regulatory coordination meeting to review procedures and any intervening program modifications, address issues of concern, and orient new staff to the coordination process.

On an ongoing basis, active communication between those involved in the coordination process should result in effective and efficient utilization of the staff resources of both agencies.

Agency Contacts

The agencies will maintain and share active contact lists, identifying key personnel and contact information for all relevant program areas. At a minimum, those lists will be updated for each annual regulatory coordination meeting.

Changes to the Coordination Process

The Coordination Process outlined above will be reviewed annually. Changes may be made to this process description to reflect administrative and organizational changes as well as revision/amendment to either NYSDEC's or the Commission's regulations.