

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA CODE CH. 901]

Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters

Summary

The Delaware River Basin Commission (Commission or DRBC) will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the "Lower Delaware" and to assign this reach the SPW classification "Significant Resource Waters" (SRW). The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.4 to the head of tide at Trenton, New Jersey, RM 133.4. The Lower Delaware River has carried the SPW-SRW classification on a temporary basis since January of 2005, making this reach and its drainage area subject for the past three years to those provisions of the Commission's SPW regulations that do not depend for implementation upon the use of numeric values for existing water quality. The amendments that currently are proposed would make projects within the Lower Delaware drainage subject to all applicable SPW requirements, including those for "no measurable change" to existing water quality as defined by the rule. The amendments also would incorporate language intended to clarify aspects of the SPW regulations that have been a source of confusion for some DRBC docket holders and applicants since the program was originally adopted in 1992 for point sources and in 1994 for non-point sources. Notably, a new term—"substantial alterations or additions"—is proposed to be added to the Definitions section of the regulations and to be inserted in other sections of the rule to clarify which types of additions or alterations to existing wastewater treatment facilities will trigger certain SPW requirements that are deemed appropriate in connection with capital investment projects. A new paragraph also is proposed to expressly authorize effluent trading between point sources to satisfy the requirement for no measurable change to existing water quality under certain circumstances.

Dates

The public hearing will be held on December 4, 2007, at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website, www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC. The hearing will begin at 2:30 P.M. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at (609) 883-9500, Ext. 224. Written comments will be accepted through the close of business on December 6, 2007. Written comments may be submitted by email to paula.schmitt@rbc.state.nj.us; by fax to

Commission Secretary at (609) 883-9522; by United States Mail to Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment document and include "SPW" in the subject line.

Supplementary Information

The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Commission's *Water Quality Regulations*, are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They include rules that discourage new and increased discharges to designated waters. Where such discharges are permitted, the rules ensure that incremental pollutant loadings and visual impacts are minimized, that minimum standards of treatment are applied, and that new loadings cause no measurable change from existing water quality, as defined by the rule, except toward natural conditions. The SPW regulations currently include a table establishing the numeric values that define existing water quality in the stream reaches permanently designated by the Commission as SPW in 1992. These reaches include the main stem Delaware River from Hancock, New York, to the downstream boundary of the Delaware Water Gap National Recreation Area as well as the portions of intrastate tributaries to the Delaware located within the boundaries of the Upper Delaware Scenic and Recreational River Corridor and the Middle Delaware Scenic and Recreational River (Delaware River between River Miles 250.1 and 209.5). The locations of water quality control points between Hancock and River Mile 209.5 are provided in a second table. The water quality control points are the locations used to assess water quality for purposes of defining and protecting it. No changes are proposed to the permanent designations and water quality control points that were established in 1992.

Since 2005, the SPW regulations have listed the Lower Delaware River as "Significant Resource Waters" (SRW) on a temporary basis and have applied to this reach only a portion of the SPW regulations, pending the development of numeric values for existing water quality in the Lower Delaware; a determination as to whether the SRW classification should be assigned to the entire reach or whether the alternative classification, "Outstanding Basin Waters" (OBW), should be used for those portions eligible for that classification by virtue of their inclusion in the National Wild and Scenic Rivers System; and resolution of a number of questions relating to implementation of the program. The proposed amendments would permanently classify the entire Lower Delaware reach as SRW. By incorporating into the regulation numeric values for existing water quality at a set of Lower Delaware River water quality control points, the amendments also would allow all applicable provisions of the SPW regulations to apply to projects within the Lower Delaware drainage.

Key provisions of the SPW regulations that will continue to apply within the drainage area to the Lower Delaware River if the proposed amendments are approved include the following: sections 3.10.3 A.2.c.1. through 3., in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as SPW until all non-discharge-load reduction alternatives have

been fully evaluated and rejected because of technical or financial infeasibility; sections 3.10.3 A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and sections 3.10.3 A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a non-point source pollution control plan approved by the Commission.

If the proposed amendments are adopted, numeric values for twenty parameters will be established, defining existing water quality by rule for purposes of the SPW program at 24 water quality control points in the Lower Delaware River. The parameters include: ammonia-ammonium $\text{NH}_3\text{-NH}_4$ (mg/l), chloride (mg/l), chlorophyll a (mg/m^3), dissolved oxygen (mg/l), dissolved oxygen saturation (%), E. coli (colonies/100 ml), enterococcus (colonies/100 ml), fecal coliform (colonies/100 ml), nitrate $\text{NO}_3\text{-N}$ (mg/l), orthophosphate (mg/l), pH, specific conductance (umhos/cm), total dissolved solids (mg/l), total Kjeldahl nitrogen (mg/l), total nitrogen (mg/l), total phosphorus (mg/l), total suspended solids (mg/l), turbidity (NTU), alkalinity (mg/l), and hardness (mg/l). The proposed values are based upon five years of ambient water quality monitoring, from 2000 through 2004.

Adoption of numeric values for existing water quality and creation of a set of Boundary Control Points in the Lower Delaware River will mean that applicants seeking approval to construct new facilities or to expand existing facilities in the Lower Delaware drainage will be required for the first time to demonstrate that their new or increased discharges will cause no measurable degradation of existing water quality at the established water quality control points (sections 3.10.3 A.2.b.2. and 3.10.3 A.2.f.). As in the upper and middle portions of the non-tidal Delaware, the "no measurable change" requirement will apply whether a project discharges directly to the main stem or to a tributary. For certain main stem discharges, if minimum treatment standards alone do not ensure no measurable change at the downstream water quality control point, additional treatment may be required (section 3.10.3 A.2.b.2. in combination with section 3.10.3A.2.d.6.).

Importantly, the proposed amendments, if approved, will add language to clarify that for projects involving existing facilities discharging to SPW—whether in the upper, middle or lower portion of the Delaware River—only substantial additions or alterations as defined by the rule will trigger the requirements that no such project may be approved until (1) all non-discharge load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility (section 3.10.3.A.2.c.1.) (OBW and SRW discharges); (2) the applicant has demonstrated the technical and/or financial infeasibility of using natural wastewater treatment technologies for all or a portion of the incremental load (section 3.10.3.A.2.d.5.) (OBW, SRW and tributary discharges); (3) the Commission has determined that the project is demonstrably in the public interest as defined by the rule (section 3.10.3.A.2.c.3.) (SRW discharges); and (4) the minimum level of treatment to be provided for such projects is Best Demonstrable Technology as defined by the rule (section 3.10.3.A.2.d.6.) (direct OBW and SRW discharges). The proposed amendments further clarify that alterations limited to changes in the method of disinfection and/or the addition of treatment works for

nutrient removal at existing facilities are not deemed to be "substantial alterations or additions" triggering the foregoing requirements.

The proposed amendments also include clarification as to the baseline to be used in measuring predicted changes to existing water quality, and the effect of discharge/load reduction alternatives and/or natural treatment alternatives for projects that involve substantial alterations or additions to existing facilities.

Previous register notices concerning designation of the Lower Delaware River as Special Protection Waters include notices published in the Federal Register on September 23, 2004 (69 FR 57008) (proposed designation), August 22, 2005 (70 FR 48923) (proposed extension), August 21, 2006 (71 FR 48497) (proposed extension), and August 22, 2007 (72 FR 46931) (proposed extension); and in the *Pennsylvania Bulletin* at 34 Pa.B. 5557 (October 9, 2004) (proposed designation), 35 Pa.B. 5005 and 5013 (September 10, 2005) (temporary amendment and proposed extension), 36 Pa.B. 4726 (August 26, 2006) (proposed extension), and 37 Pa.B. 4620 (August 15, 2007) (proposed extension). The proposed and final versions of the initial temporary designation, approved by Resolution No. 2005-2, and the subsequent extensions approved by Resolutions Nos. 2005-15 (extension through September 30, 2006) and 2006-22 (extension through September 30, 2007) also were published on the Commission's website, www.drbc.net. The final rules have been filed in accordance with Section 14.2(a) of the Delaware River Basin Compact, Pa. Acts of 1961, Act No. 268.

Further Information, Contacts:

The proposed amendments, with the exception of proposed Table 2, defining Existing Water Quality in the Lower Delaware River, are set forth below. The current rule and the full text of the proposed amendments, including Table 2, are posted on the Commission's website, www.drbc.net, along with supporting data, reports, maps and related documents. Copies may also be obtained by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. The Commission will hold two informational meetings on the proposed rulemaking. The first will be held on Thursday, October 25, 2007 from 7:00 to 9:00 P.M. at the office of the Delaware and Raritan Canal Commission at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. The second will be held on Thursday, November 1, 2007 from 7:00 to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located at High Street, Easton, Pennsylvania. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

It is proposed to amend Section 3.10.3 A.2. of the *Water Quality Regulations* and *Water Code* as set forth below. Material proposed to be added is printed in **bold face** and material proposed to be deleted is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of rule text retained without change. Explanatory text is printed in ordinary style face and enclosed in brackets [].

3.10.3 A.2.a. Definitions

* * * * *

[§ 3.10.3 A.2.a.3), the definition of "Existing Water Quality," is proposed to be replaced by the text below. Because much of the deleted definition appears later in this notice as a proposed footnote to Table 1, the deleted text is not reprinted here.]

3) "Existing Water Quality" in waters classified as Special Protection Waters is defined in Table 1 for stream reaches between Hancock, New York and the Delaware Water Gap and in Table 2 for stream reaches between the Delaware Water Gap and Trenton, New Jersey. Where existing water quality is not defined in Tables 1 and 2, existing water quality may be defined by extrapolation from the nearest upstream or downstream Interstate Special Protection Waters Control Point, from data obtained from sites within the same ecoregion, or on the basis of best scientific judgment.

4) "Measurable Change" is defined as an actual or estimated change in a mean or median [(annual or) seasonal or non-seasonal) in-stream pollutant concentration that is outside the range of the two-tailed upper and lower 95 percent confidence limits that define existing water quality. [In the absence of adequate available data, background concentrations will be assumed to be zero and "measurable change" will be based on in-stream concentrations greater than the detection limit for each parameter, based on the lowest limit of the most sensitive technique specified in 40 CFR Part 136.]

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[The definition of "Detection Limit" at § 3.10.2 A.2.a.8 is proposed to be deleted because the term is not used anywhere within the text of the current or proposed rule. Accordingly, the definitions numbered 8 through 16 are proposed to be re-numbered 7 through 15.]

[16] 15) An "Expanding Wastewater Treatment Project" is [refers to] a project involving either (a) alterations or additions to an existing wastewater treatment facility [facilities] that result in a reviewable project in accordance with the Commission's Rules of Practice and Procedure; or (b) a [any] new load or increased flow or loading from an existing facility that was not included in a NPDES permit or docket effective on the date of SPW designation [anticipated at the time of NPDES permit issuance].

* * * * *

16) "Substantial Alterations or Additions" are those additions and alterations resulting in: (a) a complete upgrade or modernization of an existing wastewater treatment plant, including substantial replacement or rehabilitation of the existing wastewater treatment process or major physical structures such as headworks, settling tanks, and biological/chemical treatment or filtration tanks, whether conducted as a single phase or a multi-phased project; or (b) an increased flow or loading from an existing wastewater treatment plant that was not included in a NPDES permit or docket effective on the date of SPW designation. Among other projects, alterations that are limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal are not deemed to be "Substantial Alterations or Additions."

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§ 3.10.3 A.2.b. Policy of No Measurable Change to Existing Water Quality [Water Quality Management Policies]

* * * * *

2) Significant Resource Waters shall not be degraded below existing water quality as defined in these Regulations, although localized degradation of water quality may be allowed for initial dilution if the Commission, after consultation with the state NPDES permitting agency, finds that the public interest warrants these changes. Point [and non-point] sources of pollutants originating from outside the boundaries of stream reaches classified as Significant Resource Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at Boundary and Interstate Special Protection Waters Control Points. If localized degradation of water quality is allowed for initial dilution purposes, the Commission, after consultation with the state NPDES permitting agency, will designate mixing zones for each point source and require the highest possible point [and non-point] source treatment levels necessary to limit the size and extent of the mixing zones. [Mixing zone size will be based on] The dimensions of the mixing zone will be determined by the Commission after consultation with the state NPDES permitting agency based upon an evaluation of (a) site-specific conditions, including channel characteristics; (b) the cost and feasibility of treatment technologies; and (c) the design of the discharge structure. [In general, mixing zones should not exceed a radial distance equal to 1/4 of the width of the river under low flow design conditions] Mixing zones will be developed using the wastewater treatment facility design conditions and low ambient flow conditions unless site-specific characteristics indicate otherwise. Non-point sources shall be subject to the requirements of Section 3.10.3 A.2.e. for the implementation of non-point source control plans.

* * * * *

§ 3.10.3 A.2.c. Policy on Allowable Discharges

1) Direct discharges of wastewater to Special Protection Waters are discouraged. [No new or expanded wastewater discharges shall be permitted in waters classified as Special Protection Waters until] The following categories of direct discharges to Special Protection Waters may be approved only after all non-discharge/load reduction alternatives have been fully evaluated and rejected because of technical and/or financial infeasibility: new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities. The evaluation of non-discharge/load reduction alternatives shall consider alternatives to any and all loadings—both existing and proposed—in excess of actual loadings at the time of SPW designation.

[In order to place within one section of the rule all provisions concerning analyses required prior to consideration of a proposed discharge, the following reorganization is proposed: Section 3.10.3 A.2.d.5), requiring an analysis of natural treatment alternatives, is proposed to be moved to subsection A.2.c. and re-numbered as § 3.10.3. A.2.c.2). Section 3.10.3 A.2.c.2), requiring the consideration of regional resource management plans for future wastewater discharges to OBW, is proposed to be re-numbered as § 3.10.3. A.2.c.4), with no proposed text changes. The proposed sequence of the paragraphs in § 3.10.3 A.2.c. tracks the sequence of the analyses performed or required of applicants by the Commission. Accordingly, the proposed text of paragraphs 2) and 3) of § 3.10.3 A.2.c. follows:]

2) The following categories of discharges within the drainage area of Special Protection Waters may be approved only after natural wastewater treatment technologies have been fully evaluated and rejected because of technical and/or financial infeasibility: new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities. The evaluation of natural treatment alternatives shall consider alternatives to any and all loadings—both existing and proposed—in excess of actual loadings at the time of SPW designation. [All applicants seeking wastewater treatment project approval under Section 3.8 of the Compact shall satisfactorily prove the technical and/or financial infeasibility of using natural wastewater treatment technologies.]

3) The following categories of [D] discharges to Significant Resource Waters may be approved only following a determination that the project is [shall only be allowed for circumstances which are demonstrably] in the public interest as that term is defined in Section 3.10.3.A.2.a.5): new wastewater treatment facilities and substantial alterations or additions to existing wastewater treatment facilities.

§ 3.10.3 A.2.d. Policies Related to Wastewater Treatment Facilities

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[Because paragraph 5 of § 3.10.3 A.2.d. is proposed to be moved to § 3.10.3 A.2.c., paragraphs 6 and 7 of § 3.10.3 A.2.d. are proposed to be re-numbered 5 and 6. The text of paragraph 6 (proposed to be re-numbered as 5), with proposed changes, follows.]

[6] 5) The minimum level of wastewater treatment for the following categories of projects will be “Best Demonstrable Technology” as defined below: all new wastewater treatment facilities and projects involving substantial alterations or additions to existing wastewater treatment facilities [all new and expanding wastewater treatment projects discharging to Special Protection Waters, including projects approved by the Commission after September 1988, will be “Best Demonstrable Technology”]. Equivalent effluent criteria for industrial facilities and seasonal limits, if any, will be developed on a case-by-case basis. The following 30-day average effluent criteria define Best Demonstrable Technology*:

5-day CBOD:	10 mg/l or less
Dissolved oxygen:	6.0 mg/l or greater
Total suspended solids:	10 mg/l or less
Ammonia-nitrogen:	1.5 mg/l or less
Total nitrogen:	10.0 mg/l or less
Total phosphorus:	2.0 mg/l or less
Fecal coliform:	50/100 ml or less

*The effluent criteria that define Best Demonstrable Technology (BDT) were established by these Regulations in 1992 when DRBC originally promulgated the Special Protection Waters regulations for point source discharges. Although treatment technologies have advanced since that year, these “BDT” criteria have been retained for the limited purposes of the SPW program. BDT as defined herein may be superseded, however, by applicable federal, state or DRBC criteria that are more stringent.

* * * * *

[A new paragraph 7 is proposed to be added to § 3.10.3 A.2.d., as follows.]

7) For point source discharge projects that satisfy applicable requirements of Sections 3.10.3 A.2.b. through d. above, the Commission may approve effluent trading on a voluntary basis between point sources within the same watershed or between the same Interstate Boundary Control Points to achieve no measurable change to existing water quality. Applicants seeking the Commission’s approval for a trade must demonstrate equivalent load and pollutant reductions and the ability (through contracts, docket conditions, NPDES effluent limits or other legal instruments) to ensure continuous achievement of the required reductions for a term of not less than five (5) years or the time required for the point source(s) to install the treatment needed to demonstrate no measurable change to Existing Water Quality, whichever term is longer. States will be encouraged to incorporate appropriate conditions in the next NPDES permits issued to the trading dischargers.

§ 3.10.3 A.2.e. Policies Concerning the Control of Non-Point Sources

[Section § 3.10.3 A.2.e.1) consists of six un-numbered paragraphs, followed by five sub-paragraphs, labeled (a) through (e). The fifth un-numbered paragraph of the section and sub-section (a) of the section are proposed to be revised as follows:]

1)

* * * * *

The [Commission] Executive Director may, upon agreement with the state, delegate review and approval responsibilities under this section to the appropriate state environmental agency.

* * * * *

(a) Public authorities, other special purpose districts, and private corporations that do not have the legal authority to implement non-point source controls in their new or expanded service areas. Such entities are subject, however, to the requirement set forth in paragraph e.2) below, that no new connection may be approved unless the area(s) served is (are) regulated by a non-point source pollution control plan approved by the Commission.

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§ 3.10.3 A.2.g. Classified Special Protection Waters

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3) The definitions of Existing Water Quality for waters classified in Sections 3.10.3 A.2.g.1) and 2) above are presented in Part A of Table 1 for the Upper Delaware Scenic & Recreational River and in Part B of Table 1 for the reach from Milrift, Pa. to the Delaware Water Gap, including the Middle Delaware Scenic and Recreational River; and in Table 2 for the reach between the Delaware Water Gap and Trenton, N.J. [Definitions of Existing water quality for waters classified in 1) and 2) above are presented in Table 1.]

4) The locations of Boundary and Interstate Special Protection Waters Control Points are described in Part C of Table 1 for the reach between Hancock, N.Y. and

the Delaware Water Gap and in Table 2 for the reach between the Delaware Water Gap and Trenton, N.J.

* * * * *

[Section 3.10.3 A.2.g. 6), which is applicable only as long as SPW designation of the Lower Delaware remains temporary, is proposed to be deleted in its entirety.]

Table 1. Definition of Existing Water Quality in the Delaware River Between Hancock, New York and the Delaware Water Gap*

[The asterisk proposed to be added to the title of Table 1 is a footnote reference.]

* * * * *

[Part C:] *Notes on [Statistics] the Derivation of Values Used to Define Existing Water Quality

[By deleting the label "Part C" of Table 1, the paragraph currently constituting Part C is proposed to become the second paragraph of a footnote to Table 1. The paragraph set forth immediately below is proposed to be inserted as the first paragraph of the footnote. The text of this paragraph was removed from the definition of Existing Water Quality at § 3.10.3 A.2.a.3). Proposed changes from the original (definition) text are shown in bold face type. Proposed changes to the first sentence of the paragraph that currently comprises Part C are also shown below.]

[Proposed note to Table 1.] **The numeric values for Existing Water Quality set forth in Parts A and B of Table 1 were developed through** field measurements and laboratory analysis of data collected over a time period determined by the Commission to adequately reflect the natural range of the hydraulic and climatologic factors which affect water quality. Existing water quality in Table 1 **[shall be]** is defined in terms of (a) an annual or seasonal mean of the available water quality data, (b) two-tailed upper and lower 95 percent confidence limits around the mean, and (c) the 10 and 90 percentiles of the data set from which the mean was calculated.

[The definitions of Existing Water Quality presented in Parts A and B of this table were developed by performing p] Parametric statistical analyses was performed using logarithmic transformation of available water quality data to derive normality. The numbers **presented in the table** represent the anti-log of the statistical results and, thus, will differ from numbers generated by using non-transformed data. . . .

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[Table 2.] Part C: Boundary and Interstate Special Protection Waters Control Points for the Delaware River Between Hancock, New York and the Delaware Water Gap

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Table 2. Definition of Existing Water Quality in the Delaware River Between the Delaware Water Gap and the Head of Tide at Trenton, New Jersey, Including the Lower Delaware National Wild and Scenic River*

[The asterisk is a footnote reference. The text of the proposed footnote follows:]

***Note on the Derivation of Values Used to Define Existing Water Quality. The definitions of Existing Water Quality set forth in Table 2 were developed through field measurements and laboratory analy-**

sis of data collected over a time period determined by the Commission to adequately reflect the natural range of the hydraulic and climatologic factors which affect water quality. Existing water quality in Table 2 is defined in terms of (a) a median of water quality data; and (b) the two-tailed upper and lower 95 percent confidence limits around the median.

[Table 2, Parts A through Z, are available on the Commission's website, www.drbc.net, or in hard copy from the listed contacts.]

PAMELA M. BUSH, Esq.,
Secretary

Fiscal Note: 68-50. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehension Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A (2007) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 (2007) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 07-1862. Filed for public inspection October 12, 2007, 9:00 a.m.]

**SUSQUEHANNA RIVER
BASIN COMMISSION**

[25 PA. CODE CHS. 806 AND 808]

Review and Approval of Projects

Summary

This document contains proposed rules that would amend project review regulations to clarify the definition of "agricultural water use" and to provide a qualified exception to the consumptive use approval requirements for agricultural water use projects. In addition, this proposed rule would make a technical correction to an error in the "Authority" citation for Part 808.

Dates

The Commission has scheduled a public hearing on the proposed rules on Wednesday, November 7, 2007, at 2 p.m. Comments on these proposed rules may be submitted to the Susquehanna River Basin Commission (Commission) on or before November 15, 2007.

The location of the public hearing is listed in the address section of this document. Additionally, individuals wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given.

Addresses

Comments may be mailed to: Richard A. Cairo, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391, rcairo@srbc.net.

The public hearing will be held in the Goddard Conference Room, Department of Environmental Protection, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given.

For Further Information Contact:

Richard A. Cairo, General Counsel, (717) 238-0423, fax (717) 238-2436, rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at www.srbc.net.

Supplementary Information:

Background and Purpose of Amendments

The Commission adopted final rulemaking on December 5, 2006, published at 71 FR 78570 (December 29, 2006) establishing: (1) the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. No. 91-575; 83 Stat. 1509 et seq. (the compact); (2) special standards under Section 3.4(2) of the compact governing water withdrawals, consumptive use of water; diversions of the basin's waters, water conservation and water use registration; and (3) procedures for hearings and enforcement actions.

The December 2006 rulemaking made extensive revisions to project review regulations that were promulgated in May 1995. Since 1995, the Commission has continued to suspend the application of its consumptive use regulation to agricultural water uses pending the implementation of a mitigation method that is more suited to agriculture's unique circumstances.

The Commission's member states have taken definitive steps to support projects that will provide storage and release of water to mitigate agricultural water use in their jurisdictions and thus satisfy the standards for consumptive use mitigation set forth in 18 CFR 806.22. The proposed rulemaking would amend 18 CFR 806.4(a)(1) to provide an exception for agricultural water use projects from the consumptive use review and approval requirements of 18 CFR 806.4(a)(1) and (3), unless water is diverted for use beyond lands that are at least partially in the basin, and provided the Commission makes a determination that the state-sponsored projects are sufficient to meet the consumptive use mitigation standards contained in 18 CFR 806.22.

A second amendment clarifies the definition of "agricultural water use" in 18 CFR 806.3, 806.4 and 806.6 by inserting the word "products" after the word "turf." This will clarify that the maintenance of turf grass as part of a project or facility, such as a golf course, does not constitute an agricultural water use. Only the raising of turf products for sale such as sod would constitute an agricultural water use with this clarification.

A third amendment corrects an error made as part of the December 5, 2006, rulemaking in the "Authority" citation to Part 808 by replacing the erroneous Sec. 3.5(9) with the correct Sec. 3.4(9).

List of Subjects in 18 CFR Part 806: Administrative practice and procedure, Water resources.

For the reasons set forth in the preamble, the Commission proposes to amend 18 CFR Part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3, revise the definition of "agricultural water use" to read as follows:

§ 806.3 Definitions.

* * * * *

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock and poultry. The term shall include aquaculture.

* * * * *

3. In § 806.4, revise paragraphs (a)(1) introductory text, (a)(3) introductory text and (b)(3) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(1) *Consumptive use of water.* Any consumptive use project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 806.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided below, agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

* * * * *

(3) *Diversions.* Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1), the projects described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals.

* * * * *

(b) * * *

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

* * * * *

3. In § 806.6, revise paragraph (b)(3) to read as follows:

§ 806.6 Transfers of approval.

* * * * *

(b) * * *

(3) A project involving the transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

* * * * *

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Hearings

Subpart B—Compliance and Enforcement

5. Revise the authority citation for Part 808 to read as follows:

Authority: Secs. 3.4(9), 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

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Dated: September 21, 2007.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: 72-4. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IV. SUSQUEHANNA RIVER BASIN COMMISSION

CHAPTER 806. REVIEW AND APPROVAL OF PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 (2007) (relating to review and approval of projects) are incorporated by reference and made part of this title.

CHAPTER 808. HEARINGS AND ENFORCEMENT ACTIONS

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 (2007) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 07-1863. Filed for public inspection October 12, 2007, 9:00 a.m.]
