

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CHS. 806 AND 808]

Review and Approval of Projects

Summary: This document contains amendments to Susquehanna River Basin Commission (Commission) project review regulations currently published at 18 CFR Part 806, Subpart A, General Provisions, §§ 806.3, 806.4 and 806.6. These amendments include language: 1) clarifying the definition of “agricultural water use;” and 2) providing a qualified exception to the consumptive use approval requirements for agricultural water use projects. Also, an error in the “Authority” citation for Part 808 is corrected.

Dates: These rules shall be effective March 15, 2008.

Addresses: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

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 final-form rulemaking, visit the Commission’s web site at www.srbc.net.

Supplementary Information:

Background and Purpose of Amendments

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 final-form rulemaking will 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).

The Commission convened a public hearing on November 7, 2007 in Williamsport, PA and held the comment period open until November 15, 2007. No public comments were received.

List of Subjects in 18 CFR Parts 806 and 808: Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, under the authority of Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806 and 808 are amended as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions.

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 paragraph (a)(1) and (3) introductory text and paragraph (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.

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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.

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PART 808—HEARINGS AND ENFORCEMENT ACTIONS

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. No. 91-575, 84 Stat. 1509 et seq.

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Dated: December 17, 2007.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: 72-4 remains valid for the final adoption of the subject regulation.

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 (2008) (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 (2008) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

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