



7040-01

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) dealing with the mitigation of consumptive uses. These rules are designed to enhance and improve the Commission's existing authorities to manage the water resources of the basin.

DATES: The Commission will hold an informational webinar explaining the proposed rulemaking on October 1, 2019. Instructions for registration for the webinars will be posted on the Commission's website.

Comments on the proposed rulemaking may be submitted to the Commission on or before November 12, 2019. The Commission has scheduled a public hearing on the proposed rulemaking to be held on October 31, 2019 in Harrisburg, PA. The location of the public hearing is listed in the **ADDRESSES** section of this document.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net. The public hearing location is at the Commission Headquarters at the above address.

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

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: The Commission undertook a more comprehensive overhaul of its regulations that were proposed in September of 2016 and adopted as final in June of 2017. As a part of that final rulemaking, the Commission reserved the changes it had proposed pertaining to its regulation of the consumptive use of water. It had also proposed a draft Consumptive Use Mitigation Policy as a companion to that rulemaking, which was also reserved. The Commission has performed a more comprehensive analysis of the comments received on that rulemaking and policy, and changes to the consumptive use regulation are proposed herein as a follow up to that effort. In addition, as a companion to this rulemaking, the Commission is also releasing a revised draft policy for Consumptive Use Mitigation to be open for public comment simultaneously with this proposed rulemaking.

Standards for Consumptive Uses of Water—18 CFR § 806.22

Section 806.22 (regarding standards for consumptive uses of water) will be revised. The proposed revisions in § 806.22(b)(1) and (2) lower the 90-day standard for consumptive use mitigation to 45 days and require that any alternative water source or storage will not likely impact nearby surface waters. The purpose of these changes is to reduce the barriers to project sponsors providing their own mitigation. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow events in the Basin are adequately covered by a continuous 45-day consumptive use

mitigation standard. Further, the prior standard that alternative supplies or storage have no impact was too rigid for projects to find suitable alternative supplies.

Section 806.22(b) is also revised to clarify that discontinuance includes reduction of water consumption to less than 20,000 gallons per day (gpd). This was the Commission's policy from 1992 until 2006 when the present rule was adopted. In practice, complete discontinuance was found to be impractical and unrealistic for many projects; however, some projects have demonstrated the ability to reduce usage to 20,000 gallons per day when necessary. This practice allows continued operations at a locally *de minimis* consumptive use level while reducing mitigation demand on either the project or the Commission. Accordingly, this change is designed to increase the feasibility of projects being able to select discontinuance as a mitigation option. Discontinuance of use is the most effective method of mitigation because it reduces and/or eliminates the water use during Commission designated low flows periods and does not depend on any further action by the Commission or project sponsor to be effectuated.

Section 806.22(e) is amended to allow a project sourced by reuse of stormwater, wastewater or other reused or recycled water to be eligible for an Approval by Rule for consumptive use.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin 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. 91-575, 84 Stat. 1509 et seq.

2. Amend § 806.22 by revising paragraphs (b)(1) and (e)(1) to read as follows:

§ 806.22 Standards for consumptive use of water.

* * * * *

(b) * * *

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(ii) Release water for flow augmentation, in an amount equal to the project's consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(iii) Discontinue the project's consumptive use, which may include reduction of the project sponsor's consumptive use to less than 20,000 gpd during periods of low flow. In any case of failure to provide the specified discontinuance, such project shall provide mitigation in accordance with paragraph (b)(3) of this section, for the calendar year in which such failure occurs, after which the Commission will reevaluate the continued acceptability of the discontinuance.

* * * * *

(e) * * *

(1) *General rule.* Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project that is solely supplied water for consumptive use by public water supply, stormwater, wastewater, or other reused or recycled water, or any combination thereof, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

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Dated: September 9, 2019.

Jason E. Oyler

General Counsel and Secretary to the Commission.

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