

§ 381.403 [Amended]

6. Section 381.403 is amended by removing "\$5,440" and inserting "\$5,740" in its place.

§ 381.505 [Amended]

7. In § 381.505, paragraph (a) is amended by removing "\$9,400" and inserting "\$9,930" in its place and by removing "\$10,640" and inserting "\$11,240" in its place.

§ 381.801 [Amended]

8. Section 381.801 is amended by removing "\$1,350" and inserting "\$1,020" in its place.

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SUSQUEHANNA RIVER BASIN COMMISSION**18 CFR Parts 803, 804 and 805****Review and Approval of Projects; Special Regulations and Standards; Hearings/Enforcement Actions**

AGENCY: Susquehanna River Basin Commission (SRBC)

ACTION: Final rule.

SUMMARY: This action finalizes adoption of a reorganized and revised set of regulations and procedures for review of projects. These regulations implement the commission's general project review authority set forth in Section 3.10 of the Susquehanna River Basin Compact and its authority under other portions of the compact to set standards for the operation of projects and to enforce its regulations. Other regulations cover registration of water withdrawals and water conservation.

EFFECTIVE DATE: May 11, 1995.

ADDRESSES: 1721 N. Front Street, Harrisburg, Pa. 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo or John D. Graham, 717-238-0422.

SUPPLEMENTARY INFORMATION:**History**

These regulations were first proposed on May 12, 1994 and appeared in the **Federal Register** on June 8, 1994 at p. 29563. They replace the commission's existing project review regulations found in Part 803 of the Code of Federal Regulations. Their purpose is to improve the overall precision and clarity of the regulations; to reorganize the regulations into an integrated format that is more readily understood by the regulated community; and to address subject matter not addressed or

inadequately addressed in the existing regulations.

A series of eight public hearings were held throughout the river basin during the summer of 1994. The hearings produced a large number of comments, most of which were directed to the revised consumptive use regulation. Agriculture and public water suppliers provided most of these comments. After considering these comments and making a number of changes in the originally proposed regulation, the commission held a final hearing on March 9, 1995. Additional changes were made in response to the comments received at this hearing. A copy of a document showing all of these changes may be obtained upon request to the commission at the above address or phone.

Due to the many comments and questions raised on the consumptive use portion of the regulations, and because of the complexity and potential regulatory impacts of that particular regulation, the Commission determined that further consultations and discussions with the regulated community will be needed before final action. At the same time, the Commission feels that the remaining portion of the regulations will greatly improve the Commission's regulations and procedures for review of projects and should be adopted as soon as possible. Therefore, the Commission is proceeding with final rulemaking on these regulations, except for the proposed revisions to the regulation on the consumptive use of water which are deferred. The current consumptive use regulation found at 18 CFR 803.61 is substantially retained and renumbered as § 803.42. The Commission will continue the consultation process with the regulated community in an effort to develop a future strategy for the management of agricultural and public water supply uses. The current suspension of the consumptive use regulation with respect to agricultural consumptive uses under Commission Resolution 94-05 also remains in effect.

The comments relating to the non-consumptive use portion of the regulations are summarized below and responses provided.

Comments/Responses

1. Public water suppliers do not have the legal authority to enforce water conservation requirements.

Response: The water conservation standards which are set forth in the omnibus package have been in effect since 1979 without burdening public water suppliers on the issue of enforcement of conservation measures.

The regulation says that such measures shall be implemented "as circumstances warrant." We see no real difficulty for water suppliers to distribute literature to customers describing water conservation techniques and implementing a water pricing structure that encourages conservation. As for requiring installation of conservation devices, at least this could be implemented as a requirement for hookups to the system if not directly mandated.

2. The duration of approvals should be the same as that of accompanying permits issued by the state. If no state permit duration is specified, the SRBC approval should be perpetual. Making the approval duration retroactive to projects already approved by SRBC is unfair and perhaps an unconstitutional taking of a vested right. Twenty-five years may not enough time to amortize investments some in big, complex plants where large sums of money were invested.

Response: The proposed regulation does tie permit duration to any accompanying permit issued by a signatory party. We feel that 25 years is a reasonable duration to otherwise give to a project sponsor so that the investment he has made in the project can be sufficiently amortized. To cover those situations where, for some good reason, 25 years is not appropriate, we propose to add a sentence to § 803.30(a) stating, "The Commission, upon its own motion or that of a project sponsor, may modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors." To address the concern over the retroactive application of the 25 year duration to projects already approved by the Commission, we propose to now add five years to this permit duration from the time of the Commission's initial approval. This will help to mitigate the effects of the retroactive application of the permit duration and stagger the time periods when these previously approved projects come up for renewal.

3. Three years is not enough time for a project sponsor to implement an approved project. This should be extended to four years.

Response: The proposed regulation (§ 803.3(b)) already allows the extension or renewal of an approval upon the request of the applicant. The Commission is not likely to refuse any reasonable request for an extension.

4. Hydroelectric projects should be specifically exempted from § 803.44,