

and electric generating plants in general should be exempted from § 804.20. Such plants do not properly fit into the category of projects covered by these sections.

Response: In most cases, run of river hydroelectric projects, by their very process of passing water through, will not be considered a withdrawal of water. But what if there is a scenario wherein a hydroelectric facility is somehow conveying water that would normally pass directly into the tail race to supply another water use? The commission needs to be able to deal with such an eventuality.

We therefore propose to add a provision exempting hydroelectric projects from § 803.44 except to the extent that such projects constitute a withdrawal as defined in § 803.3. Hydroelectric sponsors should keep in mind the fact that, while hydro projects will generally be exempt under § 803.44, they may still be subject to commission approval under the general project review requirements of Section 3.10 of the Compact and these regulations.

With respect to § 804.20 on water conservation standards, electric generating (fossil-nuclear) facilities are basically industrial type activities. The current proposal does allow sufficient flexibility for the calculations in lieu of metering if indeed metering is impractical for an electric generating station. We recognize that the utilities have undertaken practices such as recirculation which have contributed to water conservation efforts. The commission is willing to work with the utilities to identify other conservation techniques that would be considered unique to utility operations.

5. Under §§ 803.43 & 803.44, the commission should not require metering for water use by electric generating facilities and should require only monthly reporting.

Response: We agree that more flexibility is needed on surface withdrawals, so we would propose to add the words "or other suitable methods of measurement" to § 803.44 (c). We also agree to allow the commission to designate, on an ad hoc basis, whether daily, weekly, or monthly records shall be kept. (§ 803.44 (d)).

With respect to § 803.43, the commission has the ability to waive any requirements of the regulations so long as the purposes of the regulations are not violated. If there are good reasons for not doing the normal metering or for having only monthly data reported, the commission will listen and is not likely to refuse any reasonable request. Meanwhile, the commission generally

feels that some interval more frequent than one month is desirable for ground water management.

6. The regulations should not be applied on a retroactive basis. This may even be illegal and is unfair to the owners of existing facilities.

Response: The consumptive use regulation has been retroactive since 1976. The only new retroactive application in proposed revisions to Part 803 is the approval durations. However, we are not proposing to revise it at this time. The ground water and conservation regulation effective dates, which were previously established, are simply preserved. The surface water regulation is made only prospectively effective. There is nothing inherently illegal with a retroactive effective date so long as proper safeguards are included.

7. In Section 803.3, a better definition of trigger flow is needed to provide clarification of the intent and purpose of trigger flow, relative to what becomes triggered.

Response: The definition of trigger flow relates to Section 803.42 and has been removed for the present time.

8. SRBC should not place the onus of responsibility for notifying the public of an application on the applicant. The regulation calling for notification of municipalities needs clarified. It sounds like an applicant must notify every municipality in the county.

Response: Agree that the wording on municipal notification needs revised to make clear that SRBC is not requiring that every municipality in the county be notified, only those in which the project is situated. As for notification responsibilities, agree that the portion of the regulation requiring project sponsor to notify other interested parties known to the project sponsor and SRBC is a vague requirement and we would agree to delete it.

9. In Subpart D—Standards for Review and Approval of Projects, the factors for disapproval of a project by the SRBC are too broad and allow too much discretion on the part of the Commission. Approval/disapproval should be based on evidentiary standards.

Response: The standards for review and approval of projects set forth in Subpart D come directly from the Susquehanna River Basin Compact, Section 3.10.

10. Water conservation standards need to be strengthened. For example, the type of water conservation devices mentioned in § 804.20 could be specified.

Response: We agree that the water conservation requirement could be

made more specific. As an interim measure, we will retain the existing language and develop more specific criteria for future consideration.

11. Ten days notice in a state bulletin, as required in § 805.1 is not sufficient time before a public hearing regarding rulemaking.

Response: The notices in state bulletins will not be the only means of publishing such hearings. There will be a 20-day notice in the **Federal Register**, a publication that is distributed generally throughout all three signatory states. Such hearings will also be announced in various Commission news releases, the Guardian newsletter and the meeting minutes. The news releases alone receive widespread dissemination throughout the basin to media and other interested parties who have expressed an interest in Commission activities. Staff has found that, unlike the **Federal Register**, the state bulletins and registers appear only weekly and are slower in publishing hearing notices. The lead times for publishing in the state bulletins 20 days in advance of hearings can be difficult to meet; hence, the 10-day requirement for state registers and bulletins.

12. The project review procedures set forth in Part 803 are too closely tied to the project review authority under Section 3.10 of the compact. There needs to be a clearer statement that this part is also intended to implement the Commission's authority under Section 3.4 of the compact to set standards for the operation of projects and facilities.

Response: Staff agrees and is inserting language to make it clear that Part 803 also covers the setting of standards under Section 3.4 of the compact and that neither Section 3.10 of the compact nor anything else in the proposed regulations should be construed as a limitation on the exercise of Section 3.4 powers.

13. The Commission's authority to set standards for the operation of projects under § 3.4 (2) of the Compact does not give the commission authority to "approve" such projects unless they also fall into the category of projects listed in § 3.10—Review and Approval.

Response: We disagree. Both sections 3.4 (9) and 15.2 provide authority to the commission to make rules and regulations to implement, effectuate and enforce the compact. If an agency sets standards for the operation of projects, it may adopt procedures whereby it can review the project and confirm that the project sponsor has complied with the standards set for the project. We would also point to § 3.10 (2) which states that "(a)approval of the commission shall be