

27. Some farmers, particularly those in New York State, expressed opposition to water use registration as increasing their paper work loads and setting them up for future regulation. It was suggested that the commission either withdraw the registration regulation or apply it only in the signatory states who desired such registration.

Response: The Commission believes that registration will give farmers equitable standing with the SRBC and perhaps with the courts if use conflicts develop with another water user. Registration will also help the Commission do a better job of managing the resource. The State of Maryland's experience with registering agricultural water uses has been very positive and has won the support of Maryland farmers. Pennsylvania farmers also support registration for this reason. Because support for registration does not appear universal, however, the commission is adding language to § 804.1 making the requirement for the registration of water withdrawals exceeding 10,000 gpd subject to the consent of the affected signatory state.

28. With respect to § 803.24 (b)(2)(vi) and § 803.43, the PF&B believes that the use of the word "substantial" before "adverse impact" in each of these sections introduces potentially unintended ambiguity to the regulations. No where is the term "substantial" defined.

Response: The use of the word "substantial" is intended to prevent the application of these sections to the most de minimis effects. The word "substantial," though not defined, is used to describe the level of evidence that must be present for an administrative agency to justify a regulatory action. Under the "substantial evidence" criteria, only a relatively small amount of evidence is needed to justify agency action. Thus, we do not believe that the word "substantial" introduces ambiguity anymore than the widespread use in thousands of statutes and judicial decisions of the word "reasonable."

29. With respect to § 803.44(d), new subsection should be added which would require the immediate reporting of violations of release or flow-by conditions along with documentation of the reasons for the violations.

Response: The commission does not wish to suggest to such users that it may be acceptable to violate the flow by requirements. If they do so, there are sanctions available to deal with such violations.

30. The commission should permit an applicant to by pass a request for

determination under § 803.22 when it is fairly certain that approval will ultimately be required. The need for a project to submit a "request for determination" and an application for approval is duplicative.

Response: In fact, the Commission would not require that an applicant submit a "request for determination" in all cases. If an applicant's project falls into one of the categories listed in § 803.4 (Projects requiring review and approval), the applicant then submits an application directly to the commission.

The "request for determination" proceeding is provided largely for the benefit of potential applicants whose projects fall into the category of projects listed in § 803.5 (Projects which may require review and approval). The "request for determination" procedure could possibly remove the need for them to make a formal application.

The level of information to be provided to the Executive Director in a request for determination will be far less than that required for an application so that duplication should be minimal. Nevertheless, to accommodate applicants who feel that their projects are likely to be classified as requiring the commission's approval, the commission is adding a clause allowing the Executive Director, at an applicant's request, to waive the "request for determination" and proceed directly to the filing of an application for approval.

31. The definition for "withdrawal" in § 803.3 is inconsistent with the definition of withdrawal in the Susquehanna River Basin Compact.

Response: Agreed. The definition of "withdrawal" in the compact should be substituted for the proposed definition of withdrawal.

32. A phrase should be added to § 803.28, Application/monitoring fees, indicating that a public hearing shall be held prior to the imposition of such fees.

Response: Under Section 3.9 of the compact, such hearings are already required.

List of Subjects

18 CFR Part 803

Administrative practice and procedure, water resources.

18 CFR Part 804

Water resources.

18 CFR Part 805

Administrative practice and procedure.

Dated: June 9, 1995.

Paul O. Swartz,

Executive Director.

Accordingly, Chapter VIII of title 18 of the Code of Federal Regulations is amended as set forth below:

1. Part 803 is revised to read as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Sec.

803.1 Introduction.

803.2 Purposes.

803.3 Definitions.

803.4 Projects requiring review and approval.

803.5 Projects which may require review and approval.

803.6 Concurrent project review by signatory parties.

803.7 Waiver/modification.

Subpart B—Application Procedure

803.20 Purpose of this subpart.

803.21 Preliminary consultations.

803.22 Request for determination.

803.23 Submission of application.

803.24 Contents of application.

803.25 Notice of application.

803.26 Staff review/action/recommendations.

803.27 Emergencies.

803.28 Application/monitoring fees.

Subpart C—Terms and Conditions of Approval

803.30 Duration of approvals.

803.31 Transferability of approvals.

803.32 Reopening/modification.

803.33 Waiver/modification.

803.34 Interest on fees.

Subpart D—Standards for Review and Approval/Special Standards

803.40 Purpose of this subpart.

803.41 General standards.

803.42 Standards for consumptive uses of water.

803.43 Standards for ground-water withdrawals.

803.44 Standards for surface-water withdrawals.

Authority: Secs. 3.4, 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

§ 803.1 Introduction.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91-575, 84 Stat. 1509 *et seq.*, (the compact) and establishes special standards under Section 3.4 (2) of the compact governing water withdrawals and the consumptive use of water. The special standards established pursuant to Section 3.4 (2) shall be applicable to all water withdrawals and