

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final Rule.

SUMMARY: This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) dealing with the mitigation of consumptive uses.

DATES: This rule is effective on April 1, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

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

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the *Federal Register* on September 13, 2019; *New York Register* on October 2, 2019; *Pennsylvania Bulletin* on September 21, 2019; and *Maryland Register* on October 11, 2019. The Commission convened a public hearing on October 31, 2019 in Harrisburg, Pennsylvania. A written comment period was held open through November 12, 2019. Concurrent with the proposed rule, the Commission also released a draft Consumptive Use Mitigation Policy for public review and comment.

The Commission received four comments on the proposed rule and policy. Two of the comments were fully supportive of the rule and policy and offered no suggested changes. The additional two comments were supportive but offered a few suggestions for revisions to the rule and/or the policy.

One commenter sought clarification of the term “present” low flow conditions in § 806.22(b)(1)(i) and offered alternative phrasing. The Commission believes the phrasing of the rule is not ambiguous and provided clarification in the comment response document. Two commenters asked for the Commission to further amend § 806.22(b)(1)(iii) related to discontinuance. One commenter wanted discontinuance to be limited to a 45 day period. This would be a new requirement and a change to the current practice that requires discontinuance to endure for the entire Commission declared low flow period, and the Commission declines to make this change. Another commenter suggested that 20,000 gallon per day threshold for discontinuance be on an average 30 day basis instead of a peak day basis established in the rulemaking. The Commission was purposeful in the discontinuance revision to be based on a peak day rate. The use of a 30-day average rate would be inappropriate given it would allow an exceedance of the Commission’s regulatory threshold that could introduce impacts during Commission-designated low flow periods, which do not have a set minimum or maximum duration.

Accordingly, after thorough review and analysis of the comments, the Commission has not made any changes to the rulemaking as proposed. To the degree the comments seek clarification of the rules or explanation how they will be implemented, the Commission believes that can be addressed through explanation or clarifications in fact sheets, application instructions and other implementation documents. A more

detailed comment response document has been prepared and is available upon request and also at the Commission's website listed above.

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 amends 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: March __, 2020.

Jason E. Oyler

General Counsel and Secretary to the Commission.