

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: Proposed rule.

SUMMARY: This document contains extensive amendments to project regulations concerning standards and hearings/enforcement actions. Because revisions are too numerous to show within the original regulations, proposed parts 803, 804 and 805 are being published here *in their entirety*, with an explanation of changes in the **SUPPLEMENTARY INFORMATION** section below. These regulations provide the procedural and substantive rules for SRBC review and approval of water resources projects and the procedures governing hearings and enforcement actions. These amendments include additional due process safeguards, add new standards for projects, improve organizational structure, incorporate recently adopted policies and clarify language.

DATES: Comments on these proposed amendments may be submitted to the SRBC on or before September 1, 2006. The Commission has scheduled public hearings on the proposed rules as follows:

- a. August 8, 2006, 6:30 p.m.—Owego Treadway Inn, Owego, NY.
- b. August 10, 2006, 8:30 a.m.—PA Bureau of Topographic and Geologic Survey, Middletown, PA.
- c. August 10, 2006, 6:30 p.m.—Kings College, Snyder Room, Wilkes-Barre, PA.

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

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391; rcairo@srbc.net.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary, 717-238-0423; Fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking action, visit the Commission's Web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background

The SRBC adopted a final rule on May 11, 1995, published at 60 FR 31391,

June 15, 1995 establishing: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91-575; 83 Stat. 1509 et seq. (the compact); (2) special standards under Section 3.4 (2) of the compact governing water withdrawals and consumptive use of water; and (3) procedures for hearings and enforcement actions.

Need for Amendments

After 11 years of experience with these regulations, the SRBC has uncovered many provisions that require strengthening, reorganization and clarification. In addition, the Commission has since adopted several important policies relating to the management of the basin's water resources and the enforcement of these regulations. As a matter of sound legal practice, these policies need to be incorporated into the language of the regulations.

Highlights of Major Amendments

18 CFR PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

1. Section 803.3 Definitions.—A definition for “change in ownership” has been included because of modifications proposed in § 803.4, related to certain grandfathered uses or withdrawals.

2. Section 803.4 Projects requiring review and approval.—This section reorganizes and expands what projects require review and approval and whether any exemptions apply. In part, this section consolidates provisions currently contained in various sections of the existing regulations. A significant addition is that to the extent that a consumptive water use project involves a withdrawal from ground or surface water, the withdrawal will also be subject to review.

Additionally, the current 100,000 gallons per day (gpd) threshold for withdrawals has been expanded to include any combination of ground or surface water withdrawals exceeding that threshold. This section also will end the recognition of “pre-compact” or “grandfathered” consumptive uses or withdrawals upon a change of ownership, and will end the practice under existing § 803.31 of allowing the transfer of project approvals when a change of ownership occurs.

Exceptions are contained in the definition of the term “change of ownership” for the transfer of projects involving corporate reorganizations, transfers to certain family members, and

transfers of agricultural land for so long as it continues to be used for agricultural purposes.

(The existing project review and approval requirements are currently suspended for projects involving agricultural water use and the Commission intends to continue the suspension as its member jurisdictions actively pursue alternative consumptive use compliance options for agricultural operations in cooperation with the Commission.)

Subpart B—Application Procedure

3. Section 803.12 Constant-rate aquifer testing.—Requirements regarding constant-rate aquifer tests are set forth in a new section and expanded to incorporate a time limit for testing to occur.

4. Section 803.14 Contents of application.—This section is reorganized to include a comprehensive list of information that a project sponsor must provide when making application to the Commission.

5. Section 803.16 Completeness of application.—This section replaces § 803.26 and sets out a procedure for dealing with incomplete project applications pursuant to existing Commission practice.

Subpart C—Standards for Review and Approval

6. Section 803.21 General standards.—This section covers the criteria for approval of a project by the Commission. Also, in accordance with current policy, provisions are added to allow the Commission to suspend the processing of a project application if a signatory party or a political subdivision of a signatory party exercising lawful authority over the project has disapproved the project, and to suspend an approval itself if a project sponsor fails to maintain such approvals.

7. Section 803.22 Standards for consumptive uses of water.—This section replaces the current § 803.42. Several changes are made, including the removal of a specific low flow criterion (Q7-10) and inclusion of an approval by rule provision for certain consumptive use projects that obtain their water from public water supplies. These types of projects would no longer have to be individually approved by the Commission.

8. Section 803.23 Standards for water withdrawals.—This section consolidates existing §§ 803.43 (Standards for ground-water withdrawals) and 803.44 (Standards for surface water withdrawals) into a single section covering standards for all withdrawals, and clarifies the

conditions or limitations that can be imposed on withdrawals to avoid adverse impacts on the environment or other users. Application standards for constant-rate aquifer tests for proposed groundwater withdrawals have been moved to § 803.12. Monitoring requirements are moved to new § 803.30 (Monitoring), where details on measuring and recording, reporting, and monitoring methodology are set forth.

9. Section 803.24 Standards for diversions.—This section sets standards for the approval of diversions by incorporating a Commission policy applying to out-of-basin diversions of water and also sets standards for in-basin diversions. As permitted under the terms of section 3.10 of the compact, this new section exempts “out-of-basin” diversions up to 20,000 gpd. In-basin diversions of any quantity continue to be subject to review and approval.

10. Section 803.25 Water conservation standards.—The water conservation standards currently set forth in part 804, subpart B, are moved to § 803.25. While no substantive changes are being made now in these proposed revisions, the Commission considers water conservation to be a vital component of water resources management and will revisit these standards in the near future in close coordination with the member jurisdictions.

Subpart D—Terms and Conditions of Approval

11. Section 803.30 Monitoring.—This section consolidates existing provisions and Commission practice related to monitoring, removes triennial water quality monitoring requirements, sets a daily quantity measurement standard unless otherwise set by the Commission, certifies the accuracy of measurement devices every 5 years, sets quantity reporting as the requirement unless otherwise specified, and special reporting of violations and loss of measurement capabilities.

12. Section 803.31 Duration of approvals and renewals.—This section would be a modification of the existing § 803.30. Approval durations are reduced to a general term of 15 years instead of 25 years, though exceptions for cause are provided. Other changes relate to the expiration and extension of approvals for uninitiated uses of water, the abandonment or discontinuance of a water use, and the renewal of expiring approvals.

13. Section 803.32 Reopening/ modification.—The application process for reopening has been simplified for interested parties. Other changes

address certain actions now currently imposed as docket conditions, such as:

a. Modify or revoke docket approvals for failure to comply with docket conditions, and failure to obtain or maintain approvals from other federal, state, or local agencies;

b. Require a project sponsor to provide a temporary source of water if interference occurs; and

c. Reopen any approval upon its own motion to make corrective modifications.

14. Section 803.34 Emergencies.—This section expands the current § 803.27, dealing with the issuance of emergency certificates by the Executive Director. It incorporates the details of existing Commission policy and details the procedure for obtaining an emergency certificate to protect the public health, safety, and welfare, or to avoid substantial and irreparable injury.

15. Section 803.35 Fees.—This section makes it clear that project sponsors have an affirmative duty under the Commission’s regulations to pay such fees as may be established by the Commission.

18 CFR PART 804—WATER WITHDRAWAL REGISTRATION

16. Section 804.2 Time limits.—The only substantive change in this part is the addition of language clarifying that compliance with a registration or reporting requirement, or both, of a member jurisdiction that is substantially equivalent to the Commission registration requirement shall be considered in compliance with the Commission requirement.

18 CFR PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

17. Section 805.1(a) Public hearings.—This section remains largely intact, with revisions to clarify the rules governing standard public hearings before the Commission on such matters as rulemaking, comprehensive plan additions, and project review.

18. Section 805.2 Administrative appeals.—This is a new section providing an administrative appeal procedure for persons aggrieved by any action or decision of the Commission or the Executive Director. Hearings under this section provide another administrative appeal option prior to an appeal to the United States District Court. Also included are provisions for stays and intervention of parties.

19. Section 805.3 Hearing on administrative appeal.—This section adds detailed procedures for hearings to be held on administrative appeals,

currently contained in section 805.2 for adjudicatory hearings. Included are the powers of the hearing officer, provisions for recording the hearing proceedings, provisions for staff and other expert testimony, provisions for the inclusion of written testimony, rules for assessing costs, and an in forma pauperis procedure.

Subpart B—Compliance and Enforcement

20. Section 805.11 Duty to comply.—New section affirming the existing duty of any person to comply with any provision of the compact or rules, regulations, orders, approvals, and conditions of approval.

21. Section 805.12 Investigative powers.—This new section sets forth the powers of agents or employees of the Commission to inspect or investigate facilities to determine compliance with any provisions of the compact or the regulations of the Commission. These requirements are currently set forth as conditions in docket approvals. Owners and operators of facilities are also directed to provide true and accurate information as requested by the Commission and are subject to the “falsification to authorities” statutes of the member jurisdictions.

22. Section 805.13 Notice of Violation.—This section provides a procedure for the issuance of a Notice of Violation to an alleged violator of any rule, regulation, order, approval, or docket condition, consistent with current Commission practice.

23. Section 805.14 Orders.—This is a section explicitly stating the authority of both the Executive Director and the Commission to issue various orders, including requiring a project to cease and desist any action or activity to prevent harm and enforce the provisions of the compact, regulations, docket conditions, or any rules or regulations of the Commission.

24. Section 805.15 Show cause proceeding.—This section establishes the basic procedural device for enforcement of Commission regulations and docket conditions through the imposition of penalties or other sanctions on violators pursuant to section 15.17 of the compact. To insure the integrity of this process, provisions are included to separate adjudicatory and prosecutorial functions of the Commission. The provisions of this section also preserve the opportunity for the alleged violator to present testimony for consideration prior to action by the commissioners.

25. Section 805.18 Settlement by agreement.—Paragraph (b) incorporates the standard language of all Commission

settlement agreements that the Commission may reinstitute a civil penalty action if the violator fails to carry out any of the terms of the settlement agreement.

List of Subjects in 18 CFR Parts 803, 804, and 805

Administrative practice and procedure, Water resources.

Accordingly for the reasons set forth in the preamble, 18 CFR parts 803, 804, and 805 are proposed to be revised as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

- Sec.
- 803.1 Scope.
- 803.2 Purposes.
- 803.3 Definitions.
- 803.4 Projects requiring review and approval.
- 803.5 Projects that may require review and approval.
- 803.6 Transferability of Project Approvals.
- 803.7 Concurrent project review by member jurisdictions.
- 803.8 Waiver/modification.

Subpart B—Application Procedure

- 803.10 Purpose of this subpart.
- 803.11 Preliminary consultations.
- 803.12 Constant-rate aquifer testing.
- 803.13 Submission of application.
- 803.14 Contents of application.
- 803.15 Notice of application.
- 803.16 Completeness of application.

Subpart C—Standards for Review and Approval

- 803.20 Purpose of this subpart.
- 803.21 General standards.
- 803.22 Standards for consumptive uses of water.
- 803.23 Standards for water withdrawals.
- 803.24 Standards for diversions.
- 803.25 Water conservation standards.

Subpart D—Terms and Conditions of Approval

- 803.30 Monitoring.
- 803.31 Duration of approvals and renewals.
- 803.32 Reopening/modification.
- 803.33 Interest on fees.
- 803.34 Emergencies.
- 803.35 Fees.

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

§ 803.1 Scope.

(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 consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10. This part, and every other part of 18 CFR Chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

(b) When projects subject to Commission review and approval are sponsored by governmental authorities, the Commission shall submit recommendations and findings to the sponsoring agency, which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The Commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan, if so required by the compact. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the member jurisdictions, no expenditure or commitment shall be made by any governmental authority for or on account of the construction, acquisition or operation of any project or facility unless it first has been included by the Commission in the comprehensive plan.

(c) If any portion of this part, or any other part of 18 CFR Chapter VIII, shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(d) Except as otherwise stated in this part, this part shall be effective on _____.

(e) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

(f) Any forms or documents referenced in this part may be obtained from the Commission at 1721 North Front Street, Harrisburg, PA 17102–2391, or from the Commission's Web site at <http://www.srbcc.net>.

§ 803.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include, but are not limited to:

- (1) The promotion of interstate comity;
- (2) The conservation, utilization, development, management and control of water resources under comprehensive, multiple purpose planning; and
- (3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 803.22, 803.23 and 803.24 of this part contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of ground and surface waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part and all subsequent parts is to ascertain and effectuate the purposes and the intention of the Commission set out in this section. These regulations shall not be construed in such a way as to limit the authority of the Commission, the enforcement actions it may take, or the remedies it may prescribe.

§ 803.3 Definitions.

For purposes of parts 803, 804 and 805, unless the context indicates otherwise, the words listed in this section are defined as follows:

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock and poultry. The term shall include aquaculture.

Application. A written request for action by the Commission including without limitation thereto a letter, referral by any agency of a member jurisdiction, or an official form prescribed by the Commission.

Basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

Change of Ownership. A change in ownership shall mean any transfer by sale or conveyance of the real or personal property comprising a project. A change of ownership shall not include:

(1) A corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation, that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation.

(ii) Where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership and/or control.

(2) Transfer of a project to the transferor's spouse or one or more lineal descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(s) and their spouses, continues to be 51 percent or greater.

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock, poultry or aquaculture, for so long as such agricultural use and its associated agricultural water use continues.

Commission. The Susquehanna River Basin Commission, as established in Article 2 of the compact, including its commissioners, officers, employees, or duly appointed agents or representatives.

Commissioner. Member or Alternate Member of the Susquehanna River Basin Commission as prescribed by Article 2 of the compact.

Compact. The Susquehanna River Basin Compact, Pub. L. 91-575; 84 Stat. 1509 *et seq.*

Comprehensive plan. The comprehensive plan prepared and adopted by the Commission pursuant to Articles 3 and 14 of the compact.

Consumptive use. The loss of water transferred through a manmade conveyance system or any integral part thereof (including such water that is purveyed through a public water supply or wastewater system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, injection of water or wastewater into a subsurface formation from which it would not reasonably be available for future use in the basin, diversion from the basin, or any other process by which the water is not returned to the waters of the basin undiminished in quantity.

Diversion. The transfer of water into or out of the basin.

Executive Director. The chief executive officer of the Commission appointed pursuant to Article 15, Section 15.5, of the compact.

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

Governmental authority. A federal or state government, or any political subdivision, public corporation, public authority, special purpose district, or agency thereof.

Groundwater. Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations, and regardless of whether the result of natural or artificial recharge. The term includes water contained in quarries, pits and underground mines having no significant surface water inflow, aquifers, underground water courses and other bodies of water below the surface of the earth. The term also includes a spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow.

Member jurisdiction. The signatory parties as defined in the compact, comprised of the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

Member state. The States of Maryland and New York, and the Commonwealth of Pennsylvania.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural. The term shall include a governmental authority and any other

entity which is recognized by law as the subject of rights and obligations.

Pre-compact consumptive use. The maximum average daily quantity or volume of water consumptively used over any consecutive 30-day period prior to January 23, 1971.

Project. Any work, service, activity, or facility undertaken which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Project sponsor. Any person who owns, operates or proposes to undertake a project. The singular shall include the plural.

Public water supply. A system, including facilities for collection, treatment, storage and distribution, that provides water to the public for human consumption, that:

(1) Serves at least 15 service connections used by year-round residents of the area served by the system; or

(2) Regularly serves at least 25 year-round residents.

Surface water. Water on the surface of the earth, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial.

Water or waters of the basin. Groundwater or surface water, or both, within the basin either before or after withdrawal.

Water resources. Includes all waters and related natural resources within the basin.

Withdrawal. A taking or removal of water from any source within the basin.

§ 803.4 Projects requiring review and approval.

Except for activities relating to site evaluation or as otherwise allowed under § 803.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

(a) **Consumptive use of water.** The consumptive water use projects described below shall require an application to be submitted in

accordance with § 803.12, and shall be subject to the standards set forth in § 803.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 803.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section.

(1) Except for projects previously approved by the Commission for consumptive use and projects that existed prior to January 23, 1971, any project involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(2) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(3) Any project that will involve an increase in a consumptive use that existed prior to January 23, 1971, by an average of 20,000 gpd or more in any consecutive 30-day period.

(4) Any project that involves a consumptive use that will adversely affect the purposes outlined in § 803.2 of this part.

(5) Any project involving a consumptive use of an average of 20,000 gpd or more in any 30-day period, and undergoing a change of ownership.

(b) *Withdrawals.* The projects described below shall require an application to be submitted in accordance with § 803.12, and shall be subject to the standards set forth in § 803.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 803.23, or 18 CFR part 801.

(1) Except for projects previously approved by the Commission and projects existing prior to the dates specified in paragraph (4) below, any project withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water

source, or a combination of such sources.

(2) With respect to projects previously approved by the Commission, any project that increases a withdrawal above that amount which was previously approved and any project that will add a source or increase withdrawals from an existing source which did not require approval prior to

(3) Any project which involves a withdrawal from a groundwater or surface water source and which is subject to the requirements of paragraph (a) of this section regarding consumptive use.

(4) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

(5) Any project involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership.

(c) *Diversions.* The projects described below shall require an application to be submitted in accordance with § 803.12, and shall be subject to the standards set forth in § 803.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. This requirement shall apply to diversions initiated on or after January 23, 1971.

(1) Any project involving the diversion of water into the basin and any project involving a diversion of an average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin.

(2) With respect to diversions previously approved by the Commission, any project that will increase a diversion above that amount which was previously approved.

(3) Any project involving the diversion of water into the basin that existed prior to January 23, 1971, that will increase the diversion by any amount, and any project involving the diversion of water out of the basin that will increase the diversion an average of 20,000 gpd or more in any consecutive 30-day period.

(4) Any project involving the diversion of water into the basin and any project involving a diversion of an

average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin, and undergoing a change of ownership.

(d) Any project on or crossing the boundary between two member states.

(e) Any project in a member state having a significant effect on water resources in another member state.

(f) Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(g) Any other project so determined by the commissioners or Executive Director pursuant to § 803.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

§ 803.5 Projects that may require review and approval.

(a) The following projects, if not otherwise requiring review and approval under § 803.4, may be subject to Commission review and approval as determined by the Commission or the Executive Director:

(1) Projects that may affect interstate water quality.

(2) Projects within a member state that have the potential to affect waters within another member state. This includes, but is not limited to, projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water resources of interstate streams designated by the Commission under separate resolution.

(3) Projects that may have a significant effect upon the comprehensive plan.

(4) Projects not included in paragraphs (a)(1) through (a)(3) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin, provided that the project sponsor is notified in writing by the Executive Director.

(b) Determinations by the Executive Director may be appealed to the commissioners by filing an appeal with the Commission within 30 days after receipt of notice of such determination as set forth in § 805.2.

§ 803.6 Transferability of Project Approvals.

(a) Existing Commission approvals of projects undergoing a change in ownership as defined in § 803.3 of this part may not be transferred to the new project sponsor(s). Such project sponsor(s) shall submit an application for approval as required by § 803.4(a)(5), (b)(5) or (c)(4) of this part, and may

operate such project under the terms and conditions of the existing approval, pending action by the Commission on the application, provided such project sponsor satisfies the requirements of § 803.13(b) of this part.

(b) Existing Commission approvals of projects excluded from the definition of change of ownership in § 803.3 of this part may be transferred to the new project sponsor(s), provided such project sponsor(s) notify the Commission in advance of the transfer of such project approval, which notice shall be on a form and in a manner prescribed by the Commission and under which the project sponsor(s) certify their or its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

§ 803.7 Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the Commission may develop agreements of understanding, in accordance with the procedures outlined in this part, with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. Permits issued by a member jurisdiction agency shall be considered Commission approved if issued pursuant to an agreement of understanding with the Commission specifically providing therefor.

§ 803.8 Waiver/modification.

The Commission may, in its discretion, waive or modify any of the requirements of this or any other part of its regulations if the essential purposes set forth in § 803.2 continue to be served.

Subpart B—Application Procedure

§ 803.10 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4, 803.5, and 18 CFR part 801.

§ 803.11 Preliminary consultations.

(a) Any project sponsor of a project that is or may be subject to the

Commission's jurisdiction is encouraged, prior to making application for Commission review, to request a preliminary consultation with the Commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the project sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures, anticipated water needs, and the environmental impacts.

(b) Preliminary consultation shall be optional for the project sponsor (except with respect to aquifer test plans, see § 803.12) and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 803.12 Constant-rate aquifer testing.

(a) A project sponsor submitting an application pursuant to § 803.13 seeking approval to withdraw or increase a withdrawal of groundwater shall perform a constant-rate aquifer test prior to submission of such application.

(b) The project sponsor shall prepare a constant-rate aquifer test plan for prior review and approval by Commission staff before testing is undertaken.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring at any time (both before an approval and after).

§ 803.13 Submission of application.

(a) Project sponsors of projects subject to the review and approval of the Commission under § 803.4 shall, prior to the time the project is undertaken, submit an application to the Commission.

(b) Project sponsors submitting an application for approval due to a change in ownership of a project as required by § 803.4(a)(5), (b)(5) or (c)(4) of this part shall be permitted to continue operation of the project under an existing Commission approval pending action on the application by the Commission, provided that:

(1) On or before the date of transfer under which a change of ownership occurs, such project sponsor(s) certify an intention to comply with the terms and conditions of the existing Commission approval and assume all associated obligations, including the requirements of the Commission and the compact, which certification shall be on

a form and in a manner prescribed by the Commission; and

(2) The application(s) required for approval are submitted to the Commission within ninety (90) days of the date of the transfer.

(c) To be deemed administratively complete, the application must include all information required and the applicable fee.

§ 803.14 Contents of application.

(a) Applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of project and site in terms of:

- (i) Project location.
- (ii) Project purpose.
- (iii) Proposed quantity of water to be withdrawn.

(iv) Proposed quantity of water to be consumed, if applicable.

(v) Constant-rate aquifer tests. The project sponsor shall provide the results of a constant-rate aquifer test with any application which includes a request for a groundwater withdrawal. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(vi) Water use and availability.

(vii) All water sources and the date of initiation of each source.

(viii) Supporting studies, reports, and other information upon which assumptions and assertions have been based.

(ix) Plans for avoiding or mitigating for consumptive use.

(x) Copies of any correspondence with member jurisdiction agencies.

(3) Anticipated impact of the proposed project on:

(i) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics).

(ii) Threatened or endangered species and their habitats.

(iii) Existing water withdrawals.

(4) Project estimated completion date and estimated construction schedule.

(b) The Commission may also require the project sponsor to submit the following information related to the project, in addition to the information required in paragraph (a) of this section, as deemed necessary.

(1) Description of project and site in terms of:

(i) Engineering feasibility.
 (ii) Ability of project sponsor to fund the project or action.
 (iii) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the project sponsor should include information that may be required by § 803.25 or any policy of the Commission relating to diversions.

(iv) Compatibility of proposed project with existing and anticipated uses.

(v) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones.

(B) Recreation potential.

(C) Fish and wildlife (habitat quality, kind and number of species).

(D) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers).

(E) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities).

(F) Historical, cultural and archaeological impacts.

(2) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(3) Any other information deemed necessary by the Commission.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

§ 803.15 Notice of application.

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify each municipality in which the project is located, the county planning agency of each county in which the project is located, and each contiguous property owner that an application has been submitted to the Commission. The project sponsor shall also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of

submission. All notices required under this section shall contain a sufficient description of the project, its purpose, requested water withdrawal and consumptive use amounts, location and address, electronic mail address, and phone number of the Commission.

(b) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the municipal notification under (a) and a proof of publication for the newspaper notice required under (a). The project sponsor shall also provide certification on a form provided by the Commission that it has made such other notifications as required under paragraph (a) of this section, including a list of contiguous property owners notified under paragraph (a). Until these items are provided to the Commission, processing of the application will not proceed.

§ 803.16 Completeness of application.

(a) The Commission's staff shall review the application, and if necessary, request the project sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project.

(b) An application deemed incomplete in accordance with § 803.13(b) will be returned to the project sponsor, who shall have 30 days to cure the administrative deficiencies. An application deemed technically deficient may be returned to the project sponsor, who shall have a period of time prescribed by Commission staff to cure the technical deficiencies. Failure to cure either administrative or technical deficiencies within the prescribed time may result in termination of the application process and forfeiture of any fees submitted.

(c) The project sponsor has a duty to provide information reasonably necessary for the Commission's review of the application. If the project sponsor fails to respond to the Commission's request for additional information, the Commission may terminate the application process, close the file and so notify the project sponsor. The project sponsor may reapply without prejudice by submitting a new application and fee.

Subpart C—Standards for Review and Approval

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth general standards that shall be used by the Commission to evaluate all projects subject to review and approval by the Commission pursuant to §§ 803.4 and 803.5, and to establish special

standards applicable to certain water withdrawals, consumptive uses and diversions. This subpart shall not be construed to limit the Commission's authority and scope of review. These standards are authorized under Sections 3.4(2), 3.4(8), 3.4(9), and 3.10 of the compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

§ 803.21 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) Disapprovals—other governmental jurisdictions.

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated docket by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

§ 803.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 803.4 of this part shall comply with this section.

(b) *Mitigation*. All project sponsors whose consumptive use of water is subject to review and approval under § 803.4 of this part shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one, or a combination of the following:

(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 or greater than the project's total 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 90 days without impact to surface water flows.

(ii) Release water for flow augmentation, in an amount equal to the project's total 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 90 days without impact to surface water flows.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (3), below for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for annual consumptive use, in an amount and manner prescribed by the Commission.

(4) Provide documentation to the Commission demonstrating that all requirements enumerated in the approval are satisfied within 90 days from the date of Commission action, unless specified otherwise. These items may include, but are not limited to:

(i) Installation of water conservation release structures.

(ii) Evaluation of water loss due to system leakage.

(iii) Installation of measuring devices.

(iv) Operational plans and/or designs.

(5) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation*. The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 803.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation*. The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 803.2, as applicable.

(e) *Approval by rule for consumptive uses*.

(1) Any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) *Notification of Intent*: No fewer than 90 days prior to construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this permit by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) *Metering, daily use monitoring and quarterly reporting*. The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 803.30.

(3) *Standard conditions*. The standard conditions set forth in § 803.21 above shall apply to projects approved by rule.

(4) *Mitigation*. The project sponsor shall comply with mitigation in accordance with § 803.22 (b)(2) or (b)(3).

(5) *Compliance with other laws*. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(6) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire 15 years from the date of such notification, shall be deemed to rescind any previous consumptive use approvals, and shall be nontransferable.

(8) The Commission may, on a case-by-case basis, revoke or suspend an approval by rule hereunder if it determines that the project sponsor is not in compliance with the approval by rule or to avoid adverse impacts to the water resources of the basin or otherwise protect public health, safety, welfare or water resources.

§ 803.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under § 803.4 of this part shall comply with the following standards, in addition to those required pursuant to § 803.21.

(b) Limitations on withdrawals.

(1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; rendering competing supplies unreliable; affecting other water uses;

causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; or affecting low flow of perennial or intermittent streams.

(3) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown.

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, and support existing and proposed future withdrawals.

§ 803.24 Standards for diversions.

(a) The project sponsors of all diversions subject to review and approval under § 803.4 of this part shall comply with the following standards.

(b) For projects involving out-of-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Demonstrate that they have made good faith efforts to develop and conserve sources of water within the importing basin, and have considered other reasonable alternatives to the diversion.

(ii) Adhere to all Commission rules, regulations or orders of any kind issued under the authority of the compact.

(iii) Comply with the general standards set forth in §§ 801.3, 803.21, and 803.22, and the applicable requirements of this part relating to consumptive uses and withdrawals.

(2) In deciding whether to approve a proposed diversion out of the basin, the Commission shall also consider and the

project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future water needs.

(ii) The location, amount, timing, purpose and duration of the proposed diversion and how the project will individually and cumulatively affect the flow of any impacted stream or river, and the freshwater inflow of the Chesapeake Bay, including the extent to which any diverted water is being returned to the basin or the bay.

(iii) Whether there is a reasonably foreseeable need for the quantity of water requested by the project sponsor and how that need is measured against reasonably foreseeable needs in the Susquehanna River Basin.

(iv) The amount and location of water being diverted to the Susquehanna River Basin from the importing basin.

(v) The proximity of the project to the Susquehanna River Basin.

(vi) The project sponsor's pre-compact member jurisdiction approvals to withdraw or divert the waters of the basin.

(vii) Historic reliance on sources within the Susquehanna River Basin.

(3) In deciding whether to approve a proposed diversion out of the basin, the Commission may also consider, but is not limited to, the factors set forth in paragraphs (i) through (v) of this paragraph (b)(3). The decision whether to consider the factors in this paragraph (b) and the amount of information required for such consideration, if undertaken, will depend upon the potential for the proposed diversion to have an adverse impact on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future needs.

(i) The impact of the diversion on economic development within the Susquehanna River Basin, the member states or the United States of America.

(ii) The cost and reliability of the diversion versus other alternatives, including certain external costs, such as impacts on the environment or water resources.

(iii) Any policy of the member jurisdictions relating to water resources, growth and development.

(iv) How the project will individually and cumulatively affect other environmental, social and recreational values.

(v) Any land use and natural resource planning being carried out in the importing basin.

(c) For projects involving into-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Provide information on the source, amount, and location of the waterbody being diverted to the Susquehanna River Basin from the importing basin.

(ii) Provide information on the water quality classification, if any, of the Susquehanna River Basin stream to which diverted water is being discharged and the discharge location or locations.

(iii) Demonstrate that they have applied for or received all applicable withdrawal or discharge permits or approvals related to the diversion, and must demonstrate that the diversion will not result in water quality degradation that may be injurious to any existing or potential ground or surface water use.

§ 803.25 Water conservation standards.

Any project sponsor whose project is subject to Commission approval under this part proposing to withdraw water either directly or indirectly (through another user) from ground or surface water sources, or both, shall comply with the following requirements:

(a) *Public water supply.* As circumstances warrant, a project sponsor of a public water supply shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users.

(ii) Prepare and distribute literature to customers describing available water conservation techniques.

(iii) Implement a water pricing structure which encourages conservation.

(iv) Encourage water reuse.

(b) *Industrial.* Project sponsors who use water for industrial purposes shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) *Irrigation.* Project sponsors who use water for irrigation purposes shall utilize irrigation systems properly

designed for the sponsor's respective soil characteristics, topography and vegetation.

(d) *Effective date.* Notwithstanding the effective date for other portions of this part, this section shall apply to all ground and surface water withdrawals initiated on or after January 11, 1979.

Subpart D—Terms and Conditions of Approval

§ 803.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, be accurate to within 5 percent, and shall be subject to inspection by the Commission at any time.

(a) Project sponsors of projects that are approved under this part shall:

(1) Measure and record on a daily basis, or such other frequency as may be approved by the Commission, the quantity of all withdrawals, using meters or other methods approved by the Commission.

(2) Certify, at the time of installation and no less frequently than once every 5 years, the accuracy of all measuring devices and methods to within 5 percent of actual flow, unless specified otherwise by the Commission.

(3) Maintain metering or other approved methods so as to provide a continuous, accurate record of the withdrawal or consumptive use.

(4) Measure groundwater levels in all approved production wells, as specified by the Commission.

(5) Measure groundwater levels at additional monitoring locations, as specified by the Commission.

(6) Measure water levels in surface storage facilities, as specified by the Commission.

(7) Measure stream flows, passby flows or conservation releases, as specified by the Commission, using methods and at frequencies approved by the Commission.

(b) Reporting.

(1) Project sponsors whose projects are approved under this section shall report to the Commission on a quarterly basis on forms and in a manner prescribed by the Commission all

information recorded under paragraph (a) of this section, unless otherwise specified by the Commission.

(2) Project sponsors whose projects are approved under this section shall report to the Commission:

(i) Violations of withdrawal limits and any conditions of approvals, within 5 days of such violation.

(ii) Loss of measuring or recording capabilities required under paragraph (a)(1) of this section, within 1 day after any such loss continues for 5 consecutive days.

§ 803.31 Duration of approvals and renewals.

(a) After _____, approvals issued under this part shall have a duration equal to the term of any accompanying member jurisdiction license or permit regulating the same subject matter, but not longer than 15 years. If there is no such accompanying license or permit, or if no term is specified in such accompanying license or permit, the duration of a Commission approval issued under this part shall be no longer than 15 years. A project approved by the Commission prior to May 11, 1995, which did not specify a duration, shall have a duration of 30 years commencing on the date of initial approval, except, if there is an accompanying member jurisdiction license or permit regulating the same subject matter and specifying a duration of no more than 25 years, then the duration of the Commission approval shall be equal to the duration of the initial member jurisdiction approval.

(b) Commission approval of a project shall expire 3 years from the date of such approval if the withdrawal, diversion or consumptive use has not been commenced, unless extended in writing by the Commission upon written request from the project sponsor submitted no later than 120 days prior to such expiration. The Commission may grant an extension, for a period not to exceed 2 years, only upon a determination that the delay is due to circumstances beyond the project sponsor's control and that there is a likelihood of project implementation within a reasonable period of time. The Commission may also attach conditions to the granting of such extensions, including modification of any terms of approval that the Commission may deem appropriate.

(c) If a withdrawal, diversion or consumptive use approved by the Commission for a project is discontinued for a period of 5 consecutive years, the approval shall be null and void, unless a waiver is granted in writing by the Commission, upon

written request by the project sponsor demonstrating due cause, prior to the expiration of such period.

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may rescind the approval for such withdrawal, diversion or consumptive use.

(e) Project sponsors shall apply for renewal of an approval no later than one year prior to the expiration of such approval. Such applications for renewal shall be submitted and reviewed in accordance with the same procedures and standards as for newly proposed projects. If a complete application is submitted in accordance with this requirement, the existing approval will be deemed extended until such time as the Commission renders a decision on the application unless the Commission notifies the project sponsor otherwise in writing.

§ 803.32 Reopening/modification.

(a) Once approved, the Commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project docket and make additional orders that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever an application for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a substantial adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking its approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) For any previously approved project where interference occurs, the Commission may require a project sponsor to provide a temporary source of potable water at its expense, pending a final determination of causation by the Commission.

(d) The Commission, upon its own motion, may at any time reopen any project docket and make additional corrective modifications that may be necessary.

§ 803.33 Interest on fees.

The Executive Director may establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the Commission.

§ 803.34 Emergencies.

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, or other form of written communication. This notification must be followed within one (1) business day by submission of the following information:

(1) An emergency application form or copy of the State or Federal emergency water use application if the project sponsor also is requesting emergency approval from either a state or federal agency.

(2) As a minimum, the application information shall contain:

- (i) Contact information.
- (ii) Justification for emergency action (purpose).
- (iii) Location map and schematic of proposed project.
- (iv) Desired term of emergency use.
- (v) Source(s) of the water.
- (vi) Quantity of water.
- (vii) Flow measurement system (such as metering).
- (viii) Use restrictions in effect (or planned).
- (ix) Description of potential adverse impacts and mitigating measures.
- (x) Appropriate fee.

(c) *Emergency certificate issuance.*

The Executive Director shall:

(1) Review and act on the emergency request as expeditiously as possible upon receipt of all necessary information stipulated in paragraph (b) (2) of this section.

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission.

(3) Include conditions in the emergency certificate which may include, without limitation, monitoring of withdrawal and/or consumptive use amounts, measurement devices, public notification, and reporting, to assure minimal adverse impacts to the environment and other users.

(d) *Post approval.* Actions following issuance of emergency certificates may include, but are not limited to, the following:

(1) The Commission may, by resolution, extend the term of the emergency certificate, upon presentation of a request from the project sponsor accompanied by appropriate evidence that the conditions causing the emergency persist.

(2) If the condition is expected to persist longer than the specified extended term, the project sponsor must submit an application to the Commission for applicable water withdrawal or consumptive use, or the emergency certificate will terminate as specified. If the project sponsor has a prior Commission approval for the project, the project sponsor must submit an application to modify the existing docket accordingly.

(e) *Early termination.* With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, the Executive Director may terminate an emergency certificate earlier than the specified duration if it is determined that an emergency no longer exists and/or the certificate holder has not complied with one or more special conditions for the emergency withdrawal or consumptive water use.

(f) *Restoration/mitigation.* Project sponsors are responsible for any necessary restoration or mitigation of environmental damage or interference with another user that may occur as a result of the emergency action.

§ 803.35 Fees.

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission.

PART 804—WATER WITHDRAWAL REGISTRATION

Sec.

- 804.1 Requirement.
- 804.2 Time limits.
- 804.3 Administrative agreements.
- 804.4 Effective date.
- 804.5 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

§ 804.1 Requirement.

In addition to any other requirements of Commission regulations, and subject to the consent of the affected member state to this requirement, any person withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period, from ground or surface water sources, as defined in part 803 of this chapter, shall register the amount of this withdrawal with the Commission and provide such other information as requested on forms prescribed by the Commission.

§ 804.2 Time limits.

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of initiation of the water withdrawal or diversion, whichever is later; provided, however, that nothing in this section shall limit the responsibility of a project sponsor to apply for and obtain an approval as may be required under part 803 of this chapter. All registered withdrawals shall re-register with the Commission within five years of their initial registration, and at five-year intervals thereafter, unless the withdrawal is sooner discontinued. Upon notice by the Executive Director, compliance with a registration or reporting requirement, or both, of a member state, that is substantially equivalent to this requirement shall be considered compliance with this requirement.

(b) Project sponsors whose existing agricultural water use projects (i.e., projects coming into existence prior to March 31, 1997) withdraw or divert in excess of an average of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall register their use no later than March 31, 1997. Thereafter, project sponsors of new projects proposing to withdraw or divert in excess of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall be registered prior to project initiation.

§ 804.3 Administrative agreements.

The Commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through

the offices of member jurisdictions. Forms developed by the Commission shall apprise registrants of any such agreements or arrangements, and provide appropriate instructions to complete and submit the form.

§ 804.4 Effective date.

This part shall be effective on May 11, 1995, and shall apply to all present and future withdrawals or diversions irrespective of when such withdrawals or diversions were initiated.

§ 804.5 Definitions.

Terms used in this part shall be defined as set forth in § 803.3 of this chapter.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

Sec.

- 805.1 Public hearings.
- 805.2 Administrative appeals.
- 805.3 Hearing on administrative appeal.
- 805.4 Optional joint hearing.

Subpart B—Compliance and Enforcement

- 805.10 Scope of subpart.
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Authority: Secs. 3.5 (9), 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearings

§ 805.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by Section 14.1 of the compact.

(2) Rulemaking, except for corrective amendments.

(3) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(4) Hearing requested by a member jurisdiction.

(5) As otherwise required by the compact or Commission regulations.

(b) A public hearing may be conducted by the Commission in any form or style chosen by the Commission when in the opinion of the Commission, a hearing is either appropriate or necessary to give adequate consideration to issues relating to public health, safety and welfare, or protection of the environment, or to gather

additional information for the record or consider new information, or to decide factual disputes in connection with matters pending before the Commission.

(c) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. In the case of hearings held in connection with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.*

(1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10 days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing.

The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.*

Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the Commission offices such plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

§ 805.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director, may file a written appeal requesting a hearing. Such appeal shall be filed with the Commission within 30 days of that action or decision.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing, and a summary statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request filed more than 30 days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless upon due cause shown the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner or an intervener may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected jurisdiction.

(2) The request for a stay shall include:

(i) Affidavits setting forth facts upon which issuance of the stay may depend.

(ii) An explanation of why affidavits have not accompanied the petition if no supporting affidavits are submitted.

(iii) The citations of applicable legal authority, if any.

(3) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner or intervener.

(ii) The likelihood that the petitioner or intervener will prevail on the merits.

(iii) The likelihood of injury to the public or other parties.

(e) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(f) If administrative review is granted, the Commission shall refer the matter for hearing, to be held in accordance with § 805.3, and appoint a hearing officer.

(g) Intervention.

(1) If a hearing is scheduled, a notice of intervention may be filed with the Commission by persons other than the petitioner no later than 10 days before the date of the hearing. The notice of intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance.

(2) Any person filing a notice of intervention whose legal rights may be affected by the decision rendered hereunder shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning the subject matter of any hearing scheduled hereunder for inclusion in the record may submit a verified written statement to the Commission. Any interested party may submit a request to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all verified written statements submitted shall be included with the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(h) Notice of any hearing to be conducted pursuant to this section shall comply with the provisions of Section 15.4 (b) of the compact relating to public notice unless otherwise directed by the Commission. In addition, both the petitioner and any interveners shall provide notice of their filings under this section to the list of additional interested parties compiled by the Commission under § 803.14 (a).

(i) Where a request for an appeal is made, the 90-day appeal period set forth in Section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

§ 805.3 Hearing on administrative appeal.

(a) Unless otherwise agreed to by the Commission and the party requesting an administrative appeal under § 805.2 of this part, the following procedures shall govern the conduct of hearing on an administrative appeal.

(b) *Hearing procedure.*

(1) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate

the course of the hearing, to set the location or venue of the hearing, to hold conferences for the settlement or simplification of issues and the stipulation of facts, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, to delineate the hearing issues to be adjudicated, and to take notice of judicially cognizable facts and general, technical, or scientific facts. The hearing officer may, with the consent of the parties, conduct all or part of the hearing or related proceedings by telephone conference call or other electronic means.

(2) The hearing officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence, to examine and cross-examine witnesses, submit rebuttal evidence, and to present summation and argument.

(4) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received provided it shall be founded upon competent, material evidence which is substantial in view of the entire record.

(6) Any party may appear and be heard in person or be represented by an attorney at law who shall file an appearance with the Commission.

(7) Briefs and oral argument may be required by the hearing officer and may be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(8) The hearing officer may, as he/she deems appropriate, issue subpoenas in the name of the Commission requiring the appearance of witnesses or the production of books, papers, and other documentary evidence for such hearings.

(9) A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the petitioner, or any other person who is a party to the appeal proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those

instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The petitioner or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

(c) *Staff and other expert testimony.* The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he/she may deem necessary or desirable, to be incorporated in the record to support the administrative action, determination or decision which is the subject of the hearing.

(d) *Written testimony.* If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the Commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least 10 days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) *Assessment of costs.*

(1) Whenever a hearing is conducted, the costs thereof, as herein defined, shall be assessed by the presiding officer to the petitioner or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the Commission, including, but not limited to, hearing officer and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for hearing, the hearing officer shall furnish to the petitioner a reasonable estimate of the costs to be incurred under this section. The project sponsor may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a member state.

(3) A party to an appeal under this section who desires to proceed *in forma pauperis* shall submit an affidavit to the Commission requesting the same and showing in detail the assets possessed by the party, and other information indicating the reasons why that party is unable to pay costs incurred under this section or to give security for such costs. The Commission may grant or refuse the request based upon the contents of the affidavit or other factors, such as

whether it believes the appeal or intervention is taken in good faith.

(f) *Findings and report.* The hearing officer shall prepare a report of his/her findings and recommendations based on the record of the hearing. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel. Any party may file objections to the report. Such objections shall be filed with the Commission and served on all parties within 20 days after the service of the report. A brief shall be filed together with objections. Any replies to the objections shall be filed and served on all parties within 10 days of service of the objections. Prior to its decision on such objections, the Commission may grant a request for oral argument upon such filing.

(g) *Action by the Commission.* The Commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the Commission will be in writing and shall be filed in Commission records together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 805.4 Optional joint hearing.

(a) The Commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters at issue in such hearings.

(b) Whenever designated by a department, agency or instrumentality of a member jurisdiction, and within any limitations prescribed by the designation, a hearing officer designated pursuant to § 805.2 may also serve as a hearing officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the hearing officer nor the Susquehanna River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a member jurisdiction (other than the compact).

Subpart B—Compliance and Enforcement

§ 805.10 Scope of subpart.

This subpart shall be applicable where there is reason to believe that a person may have violated any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The said person shall hereinafter be referred to as the alleged violator.

§ 805.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

§ 805.12 Investigative powers.

(a) The Commission or its agents or employees, at any reasonable time and upon presentation of appropriate credentials, may inspect or investigate any person or project to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. Such employees or agents are authorized to conduct tests or sampling; to take photographs; to perform measurements, surveys, and other tests; to inspect the methods of construction, operation, or maintenance; to inspect all measurement equipment; and to audit, examine, and copy books, papers, and records pertinent to any matter under investigation. Such employees or agents are authorized to take any other action necessary to assure that any project is constructed, operated and maintained in accordance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(b) Any person shall allow authorized employees or agents of the Commission, without advance notice or a search warrant, at any reasonable time and upon presentation of appropriate credentials, and without delay, to have access to and to inspect all areas where a project is being constructed, operated, or maintained.

(c) Any person shall provide such information to the Commission as the Commission may deem necessary to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The person submitting information to the Commission shall verify that it is

true and accurate to the best of the knowledge, information, and belief of the person submitting such information. Any person who knowingly submits false information to the Commission shall be subject to civil penalties as provided in the compact and criminal penalties under the laws of the member jurisdictions relating to unsworn falsification to authorities.

§ 805.13 Notice of Violation.

When the Executive Director or his/her designee issues a Notice of Violation (NOV) to an alleged violator, such NOV will:

- (a) List the violations that are alleged to have occurred.
- (b) State a date by which the alleged violator shall respond to the NOV.

§ 805.14 Orders.

(a) Whether or not an NOV has been issued, where exigent circumstances warrant, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

§ 805.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to appear before the Commission and show cause why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The order to the alleged violator shall:

- (1) Specify the nature and duration of violation(s) that is alleged to have occurred.
- (2) Set forth the date and time on which, and the location where, the

alleged violator shall appear before the Commission.

(3) Set forth any information to be submitted or produced by the alleged violator.

(4) Identify the limits of the civil penalty that will be recommended to the Commission.

(5) Name the individual(s) who has been appointed as the enforcement officer(s) in this matter pursuant to paragraph (b) of this section.

(b) Simultaneous with the issuance of the order to show cause, the Executive Director shall designate a staff member(s) to act as prosecuting officer(s).

(c) In the proceeding before the Commission, the prosecuting officer(s) shall present the facts upon which the alleged violation is based and may call any witnesses and present any other supporting evidence.

(d) In the proceeding before the Commission, the alleged violator shall have the opportunity to present both oral and written testimony and information, call such witnesses and present such other evidence as may relate to the alleged violation(s).

(e) The Commission shall require witnesses to be sworn or make affirmation, documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions or oral presentations from any other persons as to whether a violation has occurred and any resulting adverse consequences.

(f) The prosecuting officer(s) shall recommend to the Commission the amount of the penalty to be imposed. Based upon the record presented to the Commission, the Commission shall determine whether a violation(s) has occurred that warrants the imposition of a penalty pursuant to Section 15.17 of the compact. If it is found that such a violation(s) has occurred, the Commission shall determine the amount of the penalty to be paid, in accordance with § 805.16.

§ 805.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission shall consider:

(1) Previous violations, if any, of any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(2) The intent of the alleged violator.

(3) The extent to which the violation caused adverse consequences to public health, safety and welfare or to water resources.

(4) The costs incurred by the Commission or any member jurisdiction relating to the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom.

(6) The extent to which the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission was economically beneficial to the violator.

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty recommended by the prosecuting officer under § 805.15(f) should it determine, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

§ 805.17 Enforcement of penalties/abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with § 805.15(f) shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 805.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement proceeding by agreement. The Executive Director shall submit to the Commission any offer of settlement proposed by an alleged violator. No settlement will be submitted to the Commission by the Executive Director unless the alleged violator has indicated, in writing, acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement, including advance payment of any settlement amount or completion of any abatement or remedial action

within the time period provided or both. If the Commission determines not to approve a settlement agreement, the Commission may proceed with an enforcement action in accordance with this subpart.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: June 14, 2006.

Paul O. Swartz,

Executive Director.

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