

**Water Resources Planning  
25 Pa Code, Chapters 109 and 110  
36 Pa.B. 7260 (December 2, 2006)**

**Comment and Response Document**

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## General

1. At a minimum, the enforcement mechanisms and benefits set forth in the statute should be referenced in the regulations, and the regulations should also elaborate on these enforcement mechanisms and benefits so that the regulated community will clearly understand both the consequences of noncompliance and the potential benefits of voluntary cooperation. (7)

Response: Since Section 3133 (Enforcement orders) and Section 3134 (Civil remedies) of the Act address these issues, they have not been repeated in the regulations.

2. Some sections in the proposed regulation require the completion of a form or forms prescribed by DEP. Will these forms be available on DEP's website? If not, how will affected parties obtain copies? (8)

Response: Yes. The forms will be available on DEP's website or by request from DEP at 717-772-4048.

## Section 110.1

3. DEP should clarify how the average water withdrawal rate is to be determined, i.e., is it the average for the actual days of withdrawal during a 30-day period or is it the total withdrawal divided by 30 days. (1)

Response: A definition of "Average rate" has been added to Section 110.1 to clarify that it is the total withdrawal in gallons during any period of time divided by the number of days in the period.

4. The definition of "System" may exclude certain facilities that were intended to be covered by the regulations. The definition creates a loophole whereby a facility could outsource part of its water withdrawal functions to another facility that it does not own, manage or operate, and thereby avoid the requirements of the regulations. Recommend revising the definition to read, "Two or more facilities that are adjacent or geographically proximate to each other, operated concurrently or sequentially for use in a common operation and owned, managed or operated by or for the same person." (7)

Response: The definition of "System" has been revised to clarify this point.

5. Some of the definitions in this section restate verbatim the statutory definitions from

Section 3102 of Title 27 Pa.C.S.A. Chapter 31 (relating to water resources planning) (Act) (27 Pa.C.S.A. § 3102) while others cross-reference defined terms in Section 3102 of the Act. The Environmental Quality Board (EQB) should consistently use one method for defining terms in the regulation. It should either restate each statutory definition verbatim or provide a cross-reference to the statutory citation for each definition. (8)

Response: The definitions have been revised to consistently reference the definitions in Section 3102 of the Act.

6. The regulatory definition for "water conservation project or practice" is practically identical to the statutory definition for the term "water conservation practices and measures" in Section 3102 of the Act. The regulation should use the term "water conservation practices and measures" from the Act rather than new words for a term defined by the statute. (8)

Response: The Act defines one term but uses both terms, so the regulations have been revised to incorporate the use of both terms.

7. The definition of "Statewide Committee" should reference the specific section of Chapter 31 (27 Pa.C.S.A. § 3114), which establishes the Committee and requirements for its membership. (8)

Response: The suggested changes have been made.

### Section 110.2-3

8. If a policy decision is made to require some or all customers of a public water system to register and report, then the requirement should be signaled in the purposes and general requirements sections. (3)

Response: Sections 110.2 and 110.3 have been modified and the registration requirement has been clarified in Section 110.201. Please see the response to Comment 18.

### Section 110.3

9. Subsection (b)(2) states that a person that submits information and claims it is confidential should provide justification for its confidential nature. What criteria and process will DEP use to determine whether the justification is valid? (8)

10. If DEP determines the justification is insufficient, how will it notify the person of the basis for its determination? Will that person have an opportunity to offer additional information or appeal DEP's determination? (8)

11. If DEP agrees that the information submitted should be confidential, what steps will it take to protect the confidentiality of the information? We recommend that the proposed regulation reference the statutory provisions for confidential information in Section 3119 of the Act. (8)

Response for Comments 9, 10, and 11: Section 110.3 has been modified to indicate that DEP will use its established protocols and procedures for submission and protection of confidential information and processing challenges to such designations. The procedures are outlined in DEP's "Confidential Security Information Guidance" document, which can be accessed on DEP's website. The title of the section has been modified to more accurately reflect the content of the section.

### Section 110.4

12. This section requires registrants to provide records and grant access to DEP "upon request." Under what circumstances will DEP make such a request? Will this request be in writing? The final-form regulation should include this information. (2, 8)

Response: The section has been modified to indicate that DEP will ask for records and access in order to determine compliance with the Act as well as the regulations in accordance with Section 3131 (c) of the Act. While DEP may make such request in writing, the Act does not require written notice of an inspection. Both the Act and this section of the regulations require that DEP conducts the inspection during reasonable hours and upon reasonable notice.

### Section 110.5

13. The Council supports the proposed rulemaking and its avoidance of duplication in reporting requirements. (2)

Response: DEP appreciates the comment and your support.

14. Neither the language in Section 110.5 nor the preamble addresses the requirement of Section 3118(b)(4) of the Act which states *"To avoid duplication of efforts, regulations implementing the periodic reporting requirements of this subsection shall provide that the requirements may be satisfied by the filing of Discharge Monitoring Reports prepared under the Clean Streams Law..."*. In fact, coordination responsibility is placed upon the regulated community, instead of on DEP. (1)

15. The provisions of this section in the proposed regulation are not consistent with Section 3118(b)(4) of the Act (27 Pa.C.S.A. § 3118(b)(4)). For example, Section 110.5(b) of the proposed regulation requires persons to file "...joint reporting forms developed by the Department to facilitate the submission of information required under other statutes and regulations administered by the Department, compact basin commissions, and other Federal and state agencies...." On the other hand, Section 3118(b)(4) of the Act reads:

To avoid duplication, regulations implementing the periodic reporting requirements of this subsection shall provide that the requirements may be satisfied by the filing of discharge monitoring reports prepared under the Clean Streams Law, water supply reports prepared under the Safe Drinking Water Act, water withdrawal and use reports prepared and submitted pursuant to regulations adopted by the Delaware and Susquehanna River Basin Commissions, or other reports submitted under other applicable statutes and regulations....

The statute directs that the regulation provide that reporting requirements may be satisfied via existing reports. The statute does not direct DEP to develop new "joint reporting forms." If DEP already has access to this information via other required reports, then there is no need to create new forms for persons to complete and file. The final-form regulation should identify the existing reports that will fulfill the reporting requirements. (8)

Response for Comments 14 and 15: There is additional language in Section 3118(b)(4) that indicates reports submitted under other applicable statutes and regulations may satisfy reporting under the Act "to the extent that the reports provide the required information." Information on Discharge Monitoring Reports (DMRs) is not sufficient to comply with the data requirements of the regulations. Furthermore, few withdrawers are required to submit DMRs. Joint reporting forms have been developed to avoid duplication of reporting among DEP, compact basin commissions, and other Federal and State agencies and to reduce costs to the submitter. Section 110.5 requires the regulated community to cooperate with coordinated submission of information in accordance with those forms. There were no existing reports that fulfilled all the reporting requirements.

16. Subsections (a) and (b) both contain the phrase "...required under other statutes and regulations administered by the Department, compact basin commissions, or by other Federal and State agencies." It is not clear what "other statutes and regulations" are included in this reference. The final-form regulation should identify and cross-reference these other regulatory and statutory requirements. (8)

Response: The regulations have been modified to delete the phrase "other statutes and regulations" and to clarify that only water use reports required by compact basin commissions will require coordination.

## Section 110.6

17. Subsection (a) appears to be a narrative statement describing the potential benefits of registration. Its need or purpose as a substantive rule or procedure for water suppliers or users is unclear. The language of this subsection is more appropriate for the narrative in the Preamble. Subsection (a) should

be deleted in the final-form regulation. The letter "(b)" for the second subsection would also be deleted and the single sentence in Subsection (b) would be the only content in Section 110.6. (8)

Response: DEP agrees and has deleted Subsection (a) as suggested.

## Section 110.201

18. References throughout the regulations to "withdrawal or withdrawal use from a point of withdrawal" imply that the rule is addressing only those who directly draw their water from a ground or surface water source. It is only via the exceptions clauses that the reader is made aware that those who obtain their water from public water supply agencies are required to comply with the rule. (3)

Response: DEP agrees with the commentator that the referenced language was confusing. The term "withdrawal use" and the so called "exception clauses" have been replaced with language to clarify who is subject to registration, record keeping, reporting and monitoring. For instance, changes have been made to the language and structure of Sections 110.201, 110.203, and 110.501.

19. The requirement of Subsection 110.201 (3) that persons who obtain their water from a public water supply agency and have a consumptive use exceeding 100,000 gallons per day record and report their consumptive use would require the public water supplier to monitor, track and notify its customers of the registration and reporting requirement. (2)

Response: This subsection imposes no requirement on the public water supply agency to monitor, track, or notify its customers. Furthermore, the final regulation no longer uses consumptive use as a trigger for registration. Rather, it imposes upon the large water user who obtains more than 100,000 gallons per day of water through interconnection with another person the requirement to register.

20. The requirement of Subsection 110.201 (3) that persons who obtain their water from a public water supply agency and have a consumptive use exceeding 100,000 gallons per day record register under the regulations does not appear in Act 220, was not included in the original Act 220 registration program, would potentially affect hundreds of enterprises and commercial buildings including virtually every high-rise building with air conditioning units, and is of questionable value for the purposes of water resources planning. (1, 2, 3, 5)

21. Including public water supply interconnections as a source at facilities that have multiple sources including wells and/or surface water withdrawals, is redundant and would appear to "double-count" this withdrawal, because it would already be captured in the public water supply report and consumptive use would be the difference between withdrawal and that discharged via associated sewage systems. The EQB should state its reason for requiring this extra reporting or delete the provision from the final-form regulation. (5, 8)

Response for Comments 20 and 21: The statute authorizes the registrations of those who obtain water through interconnection with a public water supply agency. The terms "withdrawal" and "withdrawal use(s)" both appear in Section 3118 of the Act. Subsections 3118(a) and (b) both require persons to report their "withdrawal or withdrawal use." Taken together, the Act's definitions of "Withdrawal" and "Withdrawal use" clearly indicate that withdrawal uses include use of water that is withdrawn by another entity and transferred through interconnections. The definition of "Withdrawal" includes the phrase "whether or not returned to the water source", which implies that water not returned to the source but purveyed or transferred to another entity and consumed remains "water that is withdrawn." The term "Withdrawal use" is defined as "any use of water that is withdrawn", which would then logically include water purveyed through a public water supply system. Section 3118(b) requires all users subject to the

registration requirement to report the amount of "consumptive use." The Act defines "consumptive use" to include "such water that is purveyed through a public water supply system." Section 3118(b) requires those users to register and report directly to DEP.

When implementing the interim registration provisions of Act 220, DEP did not require the registration of large users of water who obtained all their water from public water suppliers; however, that was not intended to, nor does it, indicate that the Act exempted such users from the registration and reporting requirements. At the time of interim registration, such information was not essential to the early stages of statewide water resources planning and water use assessment. However, collection of such information from large water users who obtain water through interconnection is necessary for water use planning. In particular, the consumptive and nonconsumptive use information applicable to large users on public water supply systems may be of significant value in assessing potential Critical Water Planning Areas and in the development of Critical Area Resource Plans.

The analyses done for the State Water Plan, including the water budget process, are designed to account for such uses and to avoid redundancy and double-counting.

Changes have been made to Section 110.201 to clarify that only those persons who obtain more than 100,000 gallons per day of water through interconnection with another person are required to register.

### Section 110.202

22. This section states that registrations must be submitted by March 16, 2004, or 90 days following the initiation of a water withdrawal. The phrase "March 16, 2004 or" should be deleted. (8)

Response: The Act established the deadline of March 16, 2004 for the interim registration for then-existing withdrawals. The Act also established a 30-day period for submission of registration applicable to all withdrawals and uses initiated after March 16, 2004. The final form regulation has been revised to conform to the Act's 30-day requirement.

### Section 110.203

23. Section 110.203 is not clear with respect to level of detail required in providing information on certain items, such as consumptive and nonconsumptive use and water returned. The water user will generally not know the sources and locations of returns for water obtained from public water supply agencies or discharged through public wastewater systems. The section appears to require information on each individual consumptive or nonconsumptive use; whereas, only the total amount of consumptive and nonconsumptive use is relevant to water resources planning. What is the EQB's rationale for requiring reporting of each consumptive and nonconsumptive use? (1, 3, 8)

Response: This section has been modified to delete the requirement to provide information in the registration related to consumptive and nonconsumptive uses and water returned and discharged, and the term "as appropriate" has been similarly deleted. The obligation to report those items has been added to Section 110.304 (relating to general contents of report). The effect of these revisions is to simplify and clarify the registration contents.

Section 3118(b)(1) of the Act requires water users subject to the registration requirements to monitor, maintain records and submit to DEP periodic reports that include the amount of consumptive and nonconsumptive uses. Such information is essential for water resources planning. These items have appropriately been moved to Section 110.304 and included in the content of the annual reports.

24. The specific location of a public water supplier's intakes should be considered confidential information, and therefore protected from public disclosure by DEP, per Act 156 of 2006. (2, 8)

Response: The Act requires registrants to provide location information. DEP follows its sensitive information policy with regard to not disclosing location of a public water supplier's intake. As stated in response to comments in Section 110.3, DEP will follow its established protocols and procedures for submission and protection of confidential information. This section has been modified to delete Subsection (3) because the subject matter is covered by Section 110.3.

### Section 110.206

25. Under Section 110.206(d), DEP will terminate a registration if the registered withdrawal is zero for a seven-year period, based upon submitted annual reports. Sources may not be used for long periods of time for a variety of reasons, and owners could face the burden of re-registering, which seems quite inefficient. Perhaps, in lieu of termination, it would be simpler to include an area on the reporting forms where a registrant could indicate that the source wasn't used for the year, and when a source is actually terminated, the registrant could notify DEP. (5)

Response: In order to properly plan for water resources, it is essential to have accurate reliable databases, reflecting current water uses. DEP recognizes some sources may not be used for a certain period of time, which will be reflected on the reporting form. The regulation assigns a reasonable period of seven years to keep such records and requires termination of a registration after this period. It is the responsibility of registrants to reregister a source when its use is resumed. Re-registration is not a burden on the registrant.

### Section 110.301

26. Does a detailed annual report required under Sections 110.301-305 need to be submitted by a registered user if the threshold withdrawal rate of 10,000 gallons per day is not exceeded during the year? (1)

Response: For clarity, Section 110.301 has been modified to state that a report is required irrespective of the quantity of withdrawal or use during the reporting year.

### Section 110.302

27. Section 110.302 states that reports shall be submitted to DEP on an annual basis "...or less frequently as may be prescribed by DEP...." In what instance would a report be filed less frequently than on an annual basis? What are the criteria for determining the frequency of submittals? How will the registrant know if DEP changes the frequency for filing the report? This information should be clearly set forth in the final-form regulation. A similar concern applies to Section 110.603. (8)

Response: Per the commentator's suggestion, the phrase "or less frequently as may be prescribed by DEP" has been deleted from Sections 110.302 and 110.603.

28. Because Section 110.302(2) uses the term "including," the phrase "Other user" in Subsection (2)(viii) is not necessary. It should be deleted in the final-form regulation. (8)

Response: Per the commentator's suggestion, the words "other user" have been deleted in Subsection (2)(viii).



## Section 110.305

29. Section 110.305 is vague in describing the information that is required to be submitted as part of the annual reports. The item in Section 110.305(2)(iv) regarding storage can mislead registrants to believe that storage tanks other than water storage tanks, such as oil storage tanks, are also subject to the regulation. The information required to be submitted needs to be fleshed out, in an open dialogue with stakeholders, and the forms need to be developed and shared with stakeholders, with clear provision for public comment. (3, 5, 8)

Response: DEP has added the word "water" before the word "storage" in Section 110.305 in response to commentator's concern. In accordance with Section 3114(c)(4), the draft proposed regulations were presented to the Statewide Committee for review and comment. The drafts of the regulations contained considerable detail on the data requirements for reporting contained in Section 110.305. DEP received comments questioning the level of detail being required. Upon consideration of the comments, the proposed regulation was revised to eliminate the details and to incorporate the concept that the specific data requirements would be in accordance with forms prescribed by DEP. The forms will be developed in consultation with the Statewide Committee, with provision for public comment.

30. Employment information required to be reported under Section 110.305 is of no use in water resources planning and should be deleted. (1, 8)

Response: Employment data is central to projections of water use in certain water use sectors, and thus is of significant use to water resources planning.

31. Form 3920-FM-WM0290 (Primary Facility Report, Non-Public Water Supply) requires the estimation or measurement of the amount of water disposed of in each of ten different methods. This level of detail has no beneficial use in water resources planning. Forms 3920-FM-WM0048 (Water Withdrawal and Use Registration) and 3920-FM-WM0291 (Sub-Facility Report, Non-Public Water Supply) require extensive detailed information on groundwater well construction, pumping capacities, the type of meter used and disposal method(s). None of this information is relevant to water resources planning. (1)

Response: Water resources planning is based upon knowledge of where and how much water is being withdrawn and discharged. It is essential to know whether water is being returned or not returned to the watershed from which it was withdrawn. DEP agrees that the level of detail can be reduced and these forms are being revised to address this comment.

The information referenced in the question regarding well construction and pumping capacity is required by the Susquehanna and Delaware River Basin Commissions as part of their registration programs. The compact basin commissions have authority to delegate to DEP their registration and reporting programs. In order to eliminate redundancy of registration and reporting programs, the rulemaking has been designed to accommodate the compact basin commission requirements, thereby making DEP a one-stop registration and reporting agency. See Section 110.5. DEP and the Commissions need water well, meter, and disposal information for water resources planning purposes.

32. Regarding Section 110.305, we question the statutory authority of the EQB to include these provisions in this regulation. Part of Section 3118(b)(1) of the Act (27 Pa.C.S.A §3118(b)(1)) describes the reporting requirements:

...Such regulations shall require water users subject to the registration requirements of this section to monitor, maintain records and submit to the department periodic reports regarding the source, location

and amount of withdrawals or uses or both from surface waters and groundwaters, including the amount of consumptive and nonconsumptive uses, the locations and amounts of any waters returned and discharged and the amounts of water transferred between public water supply agencies via interconnections. Such regulations shall not require submission of periodic reports more frequently than annually.... [Emphasis added.]

The specific language of the statute requires that these reports include the "source, location and amount of withdrawals or uses." There is no mention of employment data, storage information, irrigation information or other details regarding the business using the water. In other words, the focus of the Act is location, source, and amount of water being used. There is no mention of documenting other information. The EQB and DEP should justify the need for this information and explain the statutory authority for requiring its submittal. If these data requirements are retained in the final-form regulation, this section should include specific details describing the type of data that must be included in the reports. (8)

Response: This section has been modified to exclude the information that is not needed for water planning purposes. The statutory language quoted by the commentator authorizes collection of information "including" which term means "but not limited to" only the source, location, and amount. The introductory language to Section 3118(b) of the Act indicates that the purpose for adopting regulations and establishing requirements for reporting is "to provide accurate information for water resources planning." The information requested in Section 110.305 is necessary to make "an assessment and projection of existing and future withdrawal use demand and nonwithdrawal use needs" as required by the Act, 27 Pa.C.S. Section 3112 (relating to plan contents).

### Section 110.402

33. This section states that records must be maintained for five years. In what format must these records be maintained? Do they need to be maintained on paper or can they be retained electronically or by other media? This should be clearly stated in the final-form regulation. (8)

Response: Section 110.402 has been modified to clarify that records shall be kept "in any format that allows the reproduction of the record."

### Section 110.501

34. It is unclear whether commercial and industrial users would be required to measure or calculate both their withdrawals and their consumptive and nonconsumptive uses accurate to within 5% of actual flow. The measurement of withdrawal volumes is usually a more direct process; whereas, the quantification of consumptive use is much more challenging, particularly in multiple "loop" systems with complex inputs and outputs. It would be preferable to recognize in the regulations the distinction between consumptive use evaluations and withdrawal reporting. (3, 5, 8)

Response: Section 110.501(c) has been revised to indicate that only persons whose withdrawals equal or exceeds 50,000 gallons per day and persons who obtain water through interconnection in excess of 100,000 gallons per day shall measure or calculate their withdrawals and purchased water by meter or other method, accurate to within 5% of actual flow and their consumptive use, by methods accurate to within 10% of actual flow.

35. Section 110.501 requires meters to be installed on each point of withdrawal. The Act states that for withdrawals of less than 50,000 gallons per day, "the regulations shall provide for the use of alternative methods to obtain a reasonable estimate or indirect calculation of such in lieu of direct metering or

measurement." To require a meter on an individual point of withdrawal that uses less than 50,000 gallons per day solely because it is part of a larger system is burdensome and unnecessary. (1)

Response: Section 110.501(c) has been revised and does not require meters on each point of withdrawal. Revised Section 110.501(c) allows for measuring or calculating withdrawals by means of a meter "or other method."

36. Nothing in the rulemaking attempts to identify in-lieu-of methods that water users may employ to comply with their requirements for quantifying and documenting water use. Section 3118(b)(1) of the Act requires these alternative methods be identified and specified in regulations. We recommend that the final rulemaking identify and incorporate these methods and recognize that these methods will meet all of the quantification and documentation requirements that the Act imposes on smaller water users. (4, 8)

Response: Section 3118(b)(1) requires the regulations to "allow for use of the alternative methods to obtain a reasonable estimate or indirect calculation of such..." There is no requirement in the Act to identify alternative methods. Subsection 110.501(e) has been revised to recognize methods based upon "established scientific principles, design or manufacturer's product specification, or research results."

37. Subsection 110.501(e) appears to authorize DEP to apply and regulate the more stringent standard that the water user may need to meet under the river basin compact. The commentator believes that the Water Resources Planning Act does not give DEP such authority, except in the very limited situation when a water user is attempting to comply with the Act's requirements for quantifying and documenting water use through application of the method that the water user is required to perform under a river basin compact. The commentator recommends that the requirements of the subsection be limited to those water users who are attempting to comply with the Act through observance of applicable compact basin commission requirements for quantification and documentation of water use. (4)

Response: The proposed Subsection 110.501(e) has been deleted.

38. The commentator appreciates the inclusion of Section 110.501(d) recognizing that DEP may grant exceptions to the 5% accuracy standard if maintenance of the standard is not technically feasible or economically practicable. (5)

Response: DEP appreciates the comment and your support.

## Section 110.502

39. Section 110.502 would require that public water supply systems record both withdrawal amounts and consumptive uses on a daily basis, while most industries would be required to record both withdrawals and consumptive uses on a weekly basis. We believe a distinction should be made between recordkeeping for withdrawals and recordkeeping for consumptive uses. Monthly recording of consumptive uses should be more than adequate. And, section 110.502 does not clearly prescribe the recording frequency for withdrawals and uses subject to more than one of the metering and measuring requirements set forth in Section 110.501. In addition the regulations should provide that a person who is subject to the compact basin commission requirements demanding greater recording frequency than provided for in Section 110.502 should follow the compact basin commission requirements. (3, 5, 7, 8)

Response: The regulations have been modified to provide for monthly recording of consumptive uses and clarify the requirements.

40. Annual reporting for nonconsumptive and consumptive use must be on a system or facility basis, not source-by-source. (3)

Response: DEP agrees. The annual reporting forms request facility-based reporting of uses.

### Section 110.503

41. Section 110.503 provides that DEP may impose more accurate methods for measuring and documenting water use in critical water areas. We strongly believe that the Act does not provide DEP with any authority to impose additional mandates to quantify and document water use within critical water areas than it does outside critical water areas. We recommend that this section be deleted. If this section is retained, the process and criteria for this determination need to be described. Also, the regulation should state that the "written notice" will include an explanation of the basis for DEP's determination. (4, 8)

Response: Section 3118(b) of the Act authorizes the adoption of the regulations, establishing the requirements for reporting and record keeping in order to obtain accurate information for water resources planning. Section 110.503 has been revised and now provides that in a critical water planning area, DEP may require registrants in such areas to use more accurate measuring methods and to record measurements more frequently only when DEP issues a written notice including the explanation of the basis for determination that more accurate and frequent measurements are necessary to develop a critical area resource plan.

### Section 110.604

42. The regulations should develop the Water Resources Technical Assistance Center (Center) and the other benefits of voluntary water conservation to encourage the highest level of participation possible. (7)

Response: In the public notice for the proposed rulemaking, DEP specifically asked for input from the public regarding the nature of the Center. No comments on this subject were received. Therefore, DEP chose not to develop the regulations regarding the Center at this time, but rather wait for recommendations from the State Water Plan advisory committees that are currently working on this issue.