

Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code Chapter 110)
(Water Resources Planning)

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code Chapter 109 (relating to Safe Drinking Water) and Chapter 110 (relating to Water Resources Planning). The amendments add a new chapter establishing the requirements for registration of water users and record keeping and reporting of water withdrawal and use information, as required by the Water Resources Planning Act. The regulation specifies who is required to register, keep records and report information related to withdrawals of water in the Commonwealth and details the information that is to be recorded and reported to the Department of Environmental Protection (DEP). The information collected under this regulation is essential to development of the State Water Plan, which is mandated by the Water Resources Planning Act.

This order was adopted by the Board at its meeting of _____.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Susan K. Weaver, Chief, Division of Water Use Planning, P.O. Box 8555, Rachel Carson State Office Building, Harrisburg, PA 17105-8555, (717) 783-8055, or Pamela G. Bishop, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The final-form rulemaking is being made under the authority of Section 4 of the Pennsylvania Safe Drinking Water Act (35 P.S. §721.4) and Section 3118 of the Water Resources Planning Act (27 PA C.S. §3118), which directs the Board to adopt regulations pertaining to reporting by public water suppliers and establishing requirements for the registration, periodic reporting and record keeping of water withdrawals and uses and under the authority of section 1920-A of The Administrative Code, April 9, 1929 (P.L. 177, No. 175), as amended, 71 P.S. Sec. 510-20, authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of DEP.

D. Background of the Amendments

The Water Resources Planning Act requires DEP to complete a State Water Plan and establishes a water withdrawal registration program to collect data necessary to support the planning process. DEP does not currently know how much water is used, needed or available in the Commonwealth. The regulation will provide the data necessary to help answer those questions. The State Water Plan will provide a framework for managing Pennsylvania's water resources to most effectively provide for public health and safety, while protecting aquatic resources. All citizens will benefit from the development of a State Water Plan, which will provide decision-makers with a valuable tool to guide investment, development and land use management in a manner that is sustainable and will avoid water shortages and concomitant dislocation. The data collected by this regulation will help create economic opportunity by assisting state and local decision makers to identify water resources available to support sustainable development and will help to avoid unwise investments.

The regulation will require each public water supply agency and each hydropower facility, irrespective of the amount of withdrawal, and each person whose total withdrawal or withdrawal use from one or more points of withdrawal within a watershed operated as a system either concurrently or sequentially exceeds an average rate of 10,000 gallons of water a day in a 30-day period to register, periodically report and keep records of their water use. In addition, each person who obtains water through interconnection with another person in an amount that exceeds an average rate of 100,000 gallons per day in any 30-day period will be required to register, periodically report and keep records of their water use. To avoid duplication of reporting requirements, the proposal recommends amending one section of Chapter 109 to indicate that compliance by Public Water Supply Agencies with Chapter 110 will fulfill compliance with the Chapter 109 annual water supply reporting requirements.

The Act establishes a Statewide Water Resources Committee (Statewide Committee) to assist DEP in developing the State Water Plan. The Statewide Committee is also charged with reviewing and commenting on regulations proposed by DEP under the Act. The Statewide Committee considered the final-form regulation at their public meeting on April 18, 2008, at which time there were no public comments on the final-form regulations. There were several minor comments from the Statewide Committee on the final-form regulations, including two that identified a typographical error and a dated citation of the Right To Know Law. The Statewide Committee has recommended moving these final-form regulations to the EQB for consideration and has indicated in writing their support of the regulatory package.

In accordance with the Agricultural Advisory Board Act, DEP presented the final-form regulations to the Agricultural Advisory Board at that Board's meeting on April 16, 2008. The Board was satisfied with DEP's presentation of the final-form regulation and presented no issues of concern regarding the final-form regulations.

The proposed regulations were published at 36 Pa.B. 7260 (December 2, 2006) with a thirty-day comment period. No public meetings or hearings were held on the proposed regulations. During the thirty-day public comment period, comments were received from eight commentators, including the Independent Regulatory Review Commission.

E. Summary of Changes to the Proposed Rulemaking

No companion federal regulations exist.

Chapter 109

§ 109.701. (Reporting and recordkeeping)

This section explains the reporting and recordkeeping requirements for Public Water Systems.

Chapter 110

There were several comments of a general nature regarding enforcement and form content. One commentator suggested elaborating on enforcement provisions in the regulations. Since Section 3133 (Enforcement orders) and Section 3134 (Civil remedies) of the Act address these issues, they have not been repeated in the regulations. One commentator questioned the location of the referenced forms. The forms will be available on DEP's website or by request from DEP at 717-772-4048.

Subchapter A.

§ 110.1. (Definitions)

Several commentators requested clarification of terms used in the proposed rulemaking and requested consistency in referencing definitions from the Act. The section has been revised by adding several new definitions and revising proposed definitions to aid in clarifying the intent of the regulation. In addition, the definitions have been revised to consistently reference the definitions in Section 3102 of the Act.

§ 110.2. (Purpose)

One commentator stated that if all customers of public water suppliers are to register and report, the requirement should be added to the purpose and general requirements sections. This section has been revised to clearly state the purpose without the duplicating registration requirement language that is contained in Section 110.201. This section explains that the Chapter establishes registration, monitoring, record keeping, and reporting requirements for purposes of obtaining accurate information for water resources planning.

§ 110.3. (Confidential Information)

Several commentators suggested that criteria and a process would aid in the determination of confidential information. 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.

§ 110.4. (Inspection Authorization)

Several commentators requested clarification of the circumstances when DEP would ask for records and access. 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.

§ 110.5. (Coordination with other water use reports)

Several commentators requested clarification on how DEP intends to avoid duplication of efforts for reporting. This section requires persons subject to Section 110.201 to cooperate with DEP in its coordination of the submission of reports under this Chapter with water use reports required by DEP and Compact Basin Commissions. 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.

§ 110.6. (Effect of registration)

One commentator questioned the appropriateness of the narrative statement description of potential benefits of registration and reporting water use. DEP agrees and Subsection (a) has been deleted. This section explains that registration of a withdrawal or use under this Chapter shall not be construed as either a determination of a person's water rights or approval of a withdrawal or use by DEP, another agency of the Commonwealth or a Compact Basin Commission.

Subchapter B.

§ 110.201. (Registration requirements)

Several commentators questioned the authority to collect withdrawal use information of those who obtain water through interconnections as well as the potential double-counting that may occur with the collection of such water use information. The terms "withdrawal" and "withdrawal use(s)" both appear in Section 3118 of the Act and specifically, 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 statute authorizes the registrations of those who obtain water through interconnection with a public water supply agency.

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, rather than only those with a consumptive use greater than 100,000 gallons per day. This revision captures a larger group of users, however, by eliminating the consumptive use requirement, it will be easier to calculate.

§ 110.202. (Submission of registrations)

One commentator requested the removal of the March 14, 2004 deadline. 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.

This section establishes the deadlines for submittal of registrations to DEP as not later than March 16, 2004, or 90 days following initiation of a water withdrawal or withdrawal use, whichever is later.

§ 110.203. (Content of registration)

Several commentators questioned the level of detail required, in particular the amounts of consumptive and non-consumptive uses and water returned. In addition, several commentators stated that source location should be considered confidential security information under Act 156.

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.

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. This section establishes the required content of a registration, including registrant identification and description information; and for each source the name, description, location, and amount.

§ 110.204. (Voluntary registration)

This section provides for voluntary registration by persons not subject to the regulation and minor revisions were made to clarify.

§ 110.205. (Transfer of registration)

This section provides for transfers of registrations and establishes the prerequisites for transfers and there were no revisions made to this section.

§ 110.206. (Termination of registration)

One commentator stated that sources may not be used for long periods of time and owners could face a burden of re-registering. This section provides for termination of registrations and establishes the prerequisites for termination.

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

Subchapter C.

§ 110.301. (Reporting requirements)

This section establishes the requirement for reporting. One commentator requested clarification on whether an annual report must be submitted if the registered user does not exceed the threshold 10,000 gpd during the reporting year.

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.

§ 110.302. (Submission of reports)

This section establishes the dates for required submission of reports to DEP.

One commentator questioned under what circumstances that reporting would be less frequent than annual and whether the phrase “Other user” is necessary when the term “including” is used.

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. In addition, per the commentator's suggestion, the words "other user" have been deleted in Subsection (2)(viii).

§ 110.303. (Reporting period)

This section establishes the reporting period for reports required to be submitted to DEP and no revisions were made.

§ 110.304. (General content of reports)

This section prescribes the general contents of reports and was revised to include the information previously requested under section 110.203.

§ 110.305. (User-specific contents of report)

This section prescribes user-specific contents of reports.

Several commentators stated that the term “storage” was vague and misleading. Two commentators questioned the statutory authority and water resources planning benefit of collecting employment data, as well as other details such as storage and irrigation information. One commentator suggested that the well construction information was not relevant to water resources planning.

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.

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 River Basin Commission (SRBC) and Delaware River Basin Commission (DRBC) 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.

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

Subchapter D.

§ 110.401. (Recordkeeping requirement)

This section establishes the requirements for record keeping and a minor revision was made to clarify the language.

§ 110.402. (Retention of records)

This section establishes the requirement for retention of records and supporting data to be a period of no less than five years. One commentator requested clarification on the format to be used for maintaining records. Section 110.402 has been modified to clarify that records shall be kept "in any format that allows the reproduction of the record."

Subchapter E.

§ 110.501. (Metering and measuring requirement)

This section establishes the requirements for metering and measuring. Several commentators requested clarification on the 5% accuracy requirement.

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.

Two commentators requested clarification on the alternate methods used for quantifying water use.

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."

One commentator expressed concern that DEP is applying more stringent requirements to those water users in river basin commissions.

The proposed Subsection 110.501(e) has been deleted.

One commentator suggested 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.

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."

One commentator expressed support for the inclusion of a provision for granting exceptions to the 5% accuracy standard if maintenance of the standard is not technically feasible or economically practicable.

§ 110.502. (Recording frequency)

This section establishes the recording frequency of withdrawals and withdrawal uses subject to the regulation.

Several commentators requested clarification on recording and record keeping frequencies for withdrawals and uses, as well as including provisions acknowledging river basin requirements.

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

One commentator suggested annual reporting for non-consumptive and consumptive use be made on a facility basis, rather than by source.

DEP agrees and the annual reporting forms request facility-based reporting of uses.

§ 110.503. (Measuring requirement in critical water planning area)

This section provides DEP authority to require more accurate measurement of withdrawals or withdrawal uses in critical water planning areas and establishes the criteria for imposing such requirements.

Two commentators questioned DEP's authority for imposing additional requirements within critical water planning areas.

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.

Subchapter F.

§ 110.601. (Registration)

This section provides that a person who has implemented a water conservation project or practice may register such project or practice with DEP and no revisions were made.

§ 110.602. (Registration information)

This section establishes the required information for registration of water conservation projects or practices. The Act defines one term but uses both terms and this section was revised to incorporate the use of both terms.

§ 110.603. (Reporting)

This section requires each person who has registered a water conservation project or practice to submit annual reports to DEP documenting the continuing effectiveness of the project or practice. The term "or less frequently" was removed.

§ 110.604. (Water Resources Technical Assistance Center)

This section requires DEP establish a water resources technical assistance center to promote voluntary water conservation and to provide technical assistance on water resources uses issues. This section was revised to reflect the correct citation of the Act.

F. Benefits, Costs and Compliance

Benefits

All citizens will benefit from the development of a State Water Plan, which will provide decision-makers a valuable tool to guide investment, development and land use management in a manner that is sustainable and will avoid water shortages and concomitant dislocation. The data collected under this regulation is necessary to development of the State Water Plan.

This regulation will help create economic opportunity by assisting decision makers in identifying water resources available to support sustainable development and will help to avoid unwise investment in unsustainable resources. The Commonwealth does not currently know how much water is used, needed or available. The regulation will provide the data necessary to help answer those questions.

Compliance Costs

All persons who withdraw or use 10,000 gallons of water or more per day and all public water suppliers and hydropower facilities will be required to register and report under the regulations. One-time metering costs, for meter equipment, for a limited number of public water suppliers who don't currently meter their sources, may range from \$50 to \$2,000 per registered source. Annual costs for record keeping and reporting may range from 1 to 12 work-days per year per registrant. Many users, including most that are currently regulated by either DEP or the SRBC or DRBC, already have the necessary record keeping and reporting processes in place and should incur no additional costs. Consolidation of reporting requirements may result in reduced costs for some of those users.

Compliance Assistance Plan

Registration workshops were held across the state in 2004 to assist in the initial registration required by the Act. No additional workshops are planned.

Paperwork Requirements

Persons subject to the regulation will be required to submit an initial registration form for each source of water withdrawal, describing the location and quantity of withdrawal and type of use. Annually, thereafter, they will be required to submit a report of their monthly total withdrawals from each source and their total monthly water use. Under the regulations, the registration and reporting requirements of DEP, including the Annual Water Supply Report under the Safe Drinking Water Act, and the SRBC and DRBC will be consolidated in single registration and reporting forms to be submitted solely to DEP.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

Water conservation practices encouraged and fostered by these regulations will result in decreased withdrawals of water and discharges of wastewater. Reduced energy consumption and chemical use will also be realized. Less diminution of stream flows, particularly during periods

of low flows is pollution prevention as recognized by the courts. In addition, reductions in wastewater discharges will reduce pollution of our water resources.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by DEP to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 17, 2006, DEP submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 7260 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under Section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, DEP has considered all comments from IRRC, the Committees, and the public.

Under Section 5.1(j.2) of the Regulatory Review Act, on (blank) , these final-form regulations were deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 36 Pa.B. 7260 (December 2, 2006).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 109 are amended by amending §109.701(b)(2) and by adding Chapter 110, Water Resources Planning, to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(2) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(4) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(5) This order shall take effect immediately.

BY:

JOSEPH R. POWERS
Acting Chairman
Environmental Quality Board