

<b>Regulatory Analysis Form</b>		This space for use by IRRC	
(1) Agency Department of Environmental Protection		<b>RECEIVED</b> <b>AUG 29 REC'D</b> INDEPENDENT REGULATORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) #7-403		IRRC Number: <b>2585</b> 11:00 AM	
(3) Short Title Water Resources Planning			
(4) PA Code Cite 25 PA Code Chapters 109 and 110		(5) Agency Contacts & Telephone Numbers Primary Contact: Michele Tate, (717) 783-8727 Secondary Contact: Kelly Jean Heffner, (717) 783-8727	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The Environmental Quality Board (EQB) proposes to amend 25 Pa. Code Chapter 109 (relating to Safe Drinking Water) and to add Chapter 110 (relating to Water Resources Planning). The final rulemaking will 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 establishes 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 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.			
9) State the statutory authority for the regulation and any relevant state or federal court decisions.  The final 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 EQB 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 EQB to adopt regulations necessary for the proper performance of the work of DEP.			

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is mandated by Section 2 of the Act of December 16, 2002 (P.L. 1776, No. 220), known as the Water Resources Planning Act, 27 Pa. C.S. § 3118(b)

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

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.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The Commonwealth does not currently know how much water is used, needed or available for providing for public health and safety, while ensuring adequate protection of aquatic resources. The State Water Plan will provide a framework for managing Pennsylvania's water resources to most effectively address public health and safety, while protecting aquatic resources. Development of the State Water Plan depends upon the collection of data that will be provided under this regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

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.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

Persons who withdraw or use more than 10,000 gallons of water per day, and who are not currently regulated by either DEP or the Delaware River Basin Commission (DRBC) or Susquehanna River Basin Commission (SRBC), will be subjected to new registration, record keeping and reporting requirements. We estimate that there may be about 2,500 such unregulated water users.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Approximately 2,200 public water supply agencies, 5,000 industrial/commercial users, 1,000 agricultural users and 250 facilities that obtain water through an interconnection exceeding 100,000 gallons per day will be subject to this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The statewide committee, created under the statute, and the Agriculture Advisory Board have reviewed the final form regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

All persons who withdraw or use 10,000 gallons of water or more per day and all public water suppliers and hydropower facilities and facilities that obtain water through an interconnection exceeding 100,000 gallons per day will be required to register and report, under the regulations. One time metering costs, for meter equipment, for the public water suppliers, who don't currently meter their sources, may range from \$50 to \$2,000 per registered source. The total one-time metering costs are estimated to be \$600,000. Annual costs for record keeping and reporting may range from 1 to 5 workdays 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. The total annual record keeping and recording costs are estimated to be \$450,000. Savings are estimated to be \$1,460,000 per year.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

To the extent that local governments may own or operate public water supply systems or recreational facilities such as golf courses, their costs will be similar to those of owners of other similar facilities, as described in the previous question. The costs to local government are included in the costs listed in the previous question.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures, which may be required.

To the extent that state government may own or operate public water supply systems or recreational facilities such as State Park facilities or fish hatcheries, their costs will be similar to those of owners of other similar facilities, as described in the previous question. The costs to state government are included in the costs listed in the previous question.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	1.46 M	1.46 M	1.46 M	1.46 M	1.46 M	1.46 M
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	1.46 M	1.46 M	1.46 M	1.46 M	1.46 M	1.46 M
<b>COSTS:</b>						
<b>Regulated Community</b>	1.0 M	0.4 5M	0.45 M	0.45 M	0.45 M	0.45 M
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	1.0 M	0.4 5M	0.45 M	0.45 M	0.45 M	0.45 M
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

One time capital costs:

Estimated 1,200 public water supply sources would need to install meters at an average cost of \$500 per meter.

1,200 sources x \$500 per source per meter = \$600,000

Annual costs:

Estimated 2,250 sources will now spend approximately 1 workday on record keeping activities.

2,250 sources x \$200 per day = \$450,000

Savings:

After meters have been installed and record keeping is in place, it is estimated that public water supply systems will be able to reduce the amount of water lost due to leakage and unaccounted for water loss by 5%. The public water supply system finished water treatment cost is estimated to be \$4 per 1,000 gallons. 800 systems x 25,000 gallons per system per day x 0.05 amount of water saved x \$4 per 1,000 gallons of water x 365 days per year = \$1,460,000 saved per year

### Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 (2004 – 2005)	FY-2 (2005 – 2006)	FY-1 (2006 – 2007)	Current FY (2007 – 2008)
General Government Operations (181-10390)	\$18,824,000	\$18,262,000	\$18,329,000	\$18,915,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The estimated cost savings to the regulated community in the current fiscal year of 1.46 million outweigh the estimated costs to the regulated community of 1 million dollars. The estimated net benefit (the difference between the estimated cost savings and the estimated costs) of the regulation in the current fiscal year to the regulated community is 460 thousand dollars. After the current fiscal year the annual net benefit increases from an estimated 460 thousand dollars to an estimated 1.06 million dollars.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Since the statute requires the EQB to adopt regulations for registration, record keeping and reporting, no nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no applicable federal standards.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Similar registration, record keeping and reporting requirements exist in Maryland, Delaware, and New Jersey. To the extent that the Delaware and Susquehanna River Basins are located in adjacent states, their record keeping and reporting requirements apply in New York, Maryland, Delaware and New Jersey.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Safe Drinking Water regulations at 25 PA Code Chapter 109 are being revised to reflect compliance with this regulation's record keeping and reporting requirements that will, in part, satisfy those requirements for Annual Water Supply Reports in that Chapter.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No, the final regulations were reviewed by the Statewide Water Resources Committee, whose meetings are open to the public.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

The regulation will consolidate other reporting requirements of DEP as well as registration and reporting requirements of both the DRBC and SRBC. Changes will be minimal, as the requirements of those programs have been incorporated into the regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Persons using less than 50,000 gallons per day, including small businesses and farmers, will not be required to meter their withdrawals or use, but will be allowed to use alternate measuring or calculating methods acceptable to DEP.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

January 1, 2009

(31) Provide the schedule for continual review of the regulation.

By terms of the Water Resources Planning Act, the State Water Plan is required to be updated on a five-year cycle. It is anticipated that this associated regulation will be reviewed on a similar basis.



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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(Pursuant to Commonwealth Documents Law)

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AUG 29 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSION

11:00 Am.

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL \_\_\_\_\_

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-403

DATE OF ADOPTION August 19, 2008

BY Joseph R. Powers

TITLE JOSEPH R. POWERS  
ACTING CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive of Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL AUG 27 2008

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Water Resources Planning

25 Pa. Code Chapters 109 and 110



**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 adds 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 August 19, 2008.

**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. The Department 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 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 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.

Pursuant to 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 Community 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 (or 110.301?) 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.

§ 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

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

\* \* \* \* \*

(b) *Reporting requirements for community water systems.* In addition to the reporting requirements for a public water system, a community water supplier shall comply with the following requirements:

\* \* \* \* \*

(2) The water supplier shall [submit by March 31 an annual water supply report for the prior calendar year on forms provided by the Department or in a form acceptable to the Department. This report shall include information relating to water use, connections, distribution system and storage] comply with the applicable requirements of registration, reporting, recordkeeping and monitoring in Chapter 110, Subchapters B--E, regarding registration, reporting, recordkeeping and monitoring.

\* \* \* \* \*

CHAPTER 110. WATER RESOURCES PLANNING

Editor's Note: Chapter 110 is new and is printed in regular type to enhance readability.

Subchap.

- A. GENERAL PROVISIONS
- B. REGISTRATION
- C. REPORTING
- D. RECORDKEEPING
- E. MONITORING
- F. WATER CONSERVATION

## Subchapter A. GENERAL PROVISIONS

Sec.

110.1. Definitions.

110.2. Purpose.

110.3. General requirements.

110.4. Inspection authorization.

110.5. Coordination with reports under other statutes.

110.6. Effect of registration.

### § 110.1. Definitions.

The following words and phrases, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*--27 Pa.C.S. Chapter 31 (relating to water resources planning).

**AVERAGE RATE—TOTAL QUANTITY IN GALLONS OF WATER WITHDRAWN OR USED DURING A PERIOD OF TIME DIVIDED BY THE NUMBER OF DAYS IN THE PERIOD.**

*Basin*--As defined in section 3102 of the act (**RELATING TO DEFINITIONS**).

*Calculate or calculation*--Mathematical computations, or the act of computing, for the purposes of water use registration or reporting, or both, usually based on pump intake rate and duration of pumping or similar factors.

*Compact basin commission*--An interstate commission having jurisdiction with respect to the planning, development or regulation of water resources within a basin in this Commonwealth, created by interstate compact or Federal-interstate compact.

*Confidential information*--(i) As defined in section 3102 of the act. (ii) **THE TERM ALSO INCLUDES CONFIDENTIAL SECURITY INFORMATION, AS DEFINED IN THE PUBLIC UTILITY CONFIDENTIALITY SECURITY INFORMATION DISCLOSURE PROTECTION ACT, WHICH HAS BEEN DESIGNATED BY A PUBLIC UTILITY IN ACCORDANCE WITH THAT ACT.**

*Consumptive use*--As defined in section 3102 of the act.

**CRITICAL AREA RESOURCE PLAN—AS DEFINED IN SECTION 3102 OF THE ACT.**

*Critical water planning area*--As defined in section 3102 of the act.

*Deep well injection*--~~[Injection of waste or wastewater substantially below aquifers containing fresh water]~~ **AS DEFINED IN SECTION 3102 OF THE ACT.**

~~[Department--The Department of Environmental Protection of the Commonwealth.]~~

*Groundwater*--As defined in section 3102 of the act.



*Hydropower facility*--A facility that produces electricity by the action of water, not including steam, passing through a turbine.

~~[Municipality--As defined in section 3102 of the act.]~~

*Nonconsumptive use*--As defined in section 3102 of the act.

NONWITHDRAWAL USE—AS DEFINED IN SECTION 3102 OF THE ACT. *Person*--As defined in section 3102 of the act.

*Public water supply agency*--As defined in section 3102 of the act.

*Source*(i) The point of withdrawal. ~~[of water within a watershed. If the withdrawal use includes the transfer of water through interconnections, the source is the point of the]~~(ii) THE TERM INCLUDES POINT OF interconnection THROUGH WHICH WATER IS OBTAINED.

*Statewide Committee*--The Statewide Water Resources Committee ESTABLISHED UNDER SECTION 3114(A) OF THE ACT (RELATING TO STATEWIDE WATER RESOURCES COMMITTEE).

*Surface water*--As defined in section 3102 of the act.

*System*--Two or more ~~[facilities]~~ POINTS OF WITHDRAWAL 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 the same person].~~

USE—THE TERM MAY INCLUDE WITHDRAWAL USE, NONWITHDRAWAL USE, CONSUMPTIVE USE OR NONCONSUMPTIVE USE, OR A COMBINATION OF ANY OF THESE.

*Water conservation project or practice*-- (i) AS DEFINED IN SECTION 3102 OF THE ACT, AS “WATER CONSERVATION PRACTICES AND MEASURES.” (ii) THE TERM INCLUDES THOSE PROJECTS AND PRACTICES IDENTIFIED IN SECTION 3112(A)11 OF THE ACT (RELATING TO PLAN CONTENTS). ~~[A project or practice which is technically feasible and economically practicable and which is designed to accomplish any of the following:~~

- ~~—(i) Reduce the demand for water.~~
- ~~—(ii) Improve efficiency in water use and reduce leakage, losses and waste of water.~~
- ~~—(iii) Improve reuse and recycling of water.~~
- ~~—(iiii) Improve land management practices to conserve water or to preserve or increase groundwater recharge.~~

~~Watercourse--As defined in section 3102 of the act.]~~

*Water resource*--As defined in section 3102 of the act.

*Watershed*--As defined in section 3102 of the act.

*Withdrawal*--As defined in section 3102 of the act.

*Withdrawal use* [~~or use~~]*--As defined in section 3102 of the act.*

## § 110.2. Purpose.

This chapter establishes the registration, monitoring, recordkeeping and reporting requirements ~~[that apply,] for purposes of [developing data for the State Water Plan]~~ **OBTAINING ACCURATE INFORMATION FOR WATER RESOURCES PLANNING** ~~[, to each person who owns a public water supply agency or hydropower facility and each person whose total withdrawal or withdrawal use from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed exceeds an average rate of 10,000 gallons per day in any 30-day period].~~

## § 110.3. ~~[General requirements]~~ **CONFIDENTIAL INFORMATION.**

~~[(a) *Registration requirements.* Each person who owns a public water supply agency or hydropower facility and each person whose total withdrawal or withdrawal use from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed exceeds an average rate of 10,000 gallons per day in any 30-day period shall register, monitor, maintain records and submit reports to the Department regarding withdrawals or uses of water in accordance with this chapter.~~

~~[(b) *Confidential information.*]~~

~~[(1)a] Except as provided in [paragraph] **SUBSECTION (2)b**, information required to be submitted to the Department under this chapter shall be subject to ~~the act of June 21, 1957 (P. L. 390, No. 212), known as the Right-to-Know [Act]~~ **LAW, 65 P.S. §§ 67.101 - 67.3104.**~~

~~[(2)b] Each person who submits information under this chapter that the person claims is confidential information **UNDER EITHER THE ACT OR PUBLIC UTILITY CONFIDENTIALITY SECURITY INFORMATION THE DISCLOSURE PROTECTION ACT, 35 P.S. §§ 2141.1 - 2141.6**, shall identify **OR DESIGNATE** the confidential information and provide a justification for its confidential nature[-], **IN ACCORDANCE WITH PROTOCOLS AND PROCEDURES FOR SUBMITTING CONFIDENTIAL INFORMATION AND ADDRESSING CHALLENGES TO THE DESIGNATIONS AS ESTABLISHED BY THE DEPARTMENT.**~~

## § 110.4. Inspection authorization.

The Department, its employees and authorized agents are authorized, during reasonable hours and upon reasonable notice, to make inspections and conduct tests or sampling, or examine books, papers and records, including electronic records, pertinent to a matter under investigation, to determine compliance with **THE ACT AND** this chapter, as it deems necessary. The persons subject to § 110.~~3(a)~~**201** (relating to ~~[general]~~**REGISTRATION** requirement[s]) shall grant access to, and make available upon request of, the Department, its employees and authorized

agents, ~~and~~THE facilities and records necessary for conducting the inspections, tests, sampling or examinations.

### **§ 110.5. Coordination with OTHER WATER USE reports~~[under other statutes]~~.**

(a) The persons subject to § 110.~~3(a)~~201 (relating to ~~[general]~~ REGISTRATION requirement[s]) shall cooperate with the Department in its coordination of the submission of reports under this chapter with WATER USE reports required ~~[under other statutes and regulations administered]~~ by the Department~~[-]~~ AND compact basin commissions~~[- or by other Federal and state agencies]~~.

(b) The persons subject to § 110.~~3(a)~~ 201 shall submit information in accordance with joint reporting forms developed by the Department to facilitate the submission of WATER USE information required ~~[under other statutes and regulations administered]~~ by the Department AND compact basin commissions~~[- and other Federal and state agencies]~~, to reduce duplicate and repetitious reporting requirements. The joint forms shall be used in lieu of individual forms for the required reports.

### **§ 110.6. Effect of registration.**

~~[(a) Registration of a withdrawal or use under this chapter will provide knowledge of existing uses, essential in the State water planning process to the development of accurate watershed water budgets, which are the foundation of comprehensive regional water plans and critical area resource plans. Registration will provide the Department and compact river basin commissions information regarding locations and quantities of existing uses, that can be used to help protect those uses when new projects are under consideration for approval.~~

~~-(b)]~~Registration ~~[of a withdrawal or use]~~ under this chapter will not be construed as either a determination of a person's water rights or approval of a withdrawal or use by the Department, another agency of the Commonwealth or a compact basin commission.

## **Subchapter B. REGISTRATION**

Sec.

- 110.201. Registration requirement.
- 110.202. Submission of registrations.
- 110.203. Content of registration.
- 110.204. Voluntary registration.
- 110.205. Transfer of registration.
- 110.206. Termination of registration.

### **§ 110.201. Registration requirement.**

The following persons shall register the information specified in § 110.203 (relating to content of registration) with the Department:

- (1) Each owner of a public water supply agency.

(2) Each owner of a hydropower facility.

(3) Each person whose total withdrawal [~~or withdrawal use~~] from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed exceeds an average rate of 10,000 gallons per day in any 30-day period [~~, except if all water is supplied by a public water supply agency and the average consumptive use is less than 100,000 gallons per day over any 30-day period~~].

**(4) 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.**

**(5) WITHIN AN AREA DESIGNATED AS A CRITICAL WATER PLANNING AREA, EACH PERSON WHO OBTAINS WATER THROUGH INTERCONNECTION WITH ANOTHER PERSON IN AN AMOUNT THAT EXCEEDS AN AVERAGE RATE OF 10,000 GALLONS PER DAY IN ANY 30-DAY PERIOD.**

#### **§ 110.202. Submission of registrations.**

Registrations shall be submitted to the Department by March 16, 2004, or ~~[90]~~30 days following initiation of a water withdrawal or withdrawal use **SUBJECT TO § 110.201 (RELATING TO REGISTRATION REQUIREMENT)**, whichever is later.

#### **§ 110.203. Content of registration.**

A registrant shall provide information, on forms prescribed by the Department and developed in consultation with the Statewide Committee, including:

(1) Registrant identification and description information.

(2) **FOR EACH SOURCE:**

(i) ~~[Identification]~~ **NAME, DESCRIPTION AND LOCATION**

(ii) ~~[, description, including location, and a]~~ **Amount OF WATER WITHDRAWN OR [; as appropriate, of the following: source, withdrawal or withdrawal use, or both, consumptive and nonconsumptive uses, water returned and discharged and water transferred between public water supply agencies via interconnection] OBTAINED THROUGH INTERCONNECTION WITH ANOTHER PERSON, OR INSTREAM HYDROPOWER USE.**

~~[—(3) Identification and justification of confidential information.]~~

#### **§ 110.204. Voluntary registration.**

(a) A person, not subject to ~~[the registration requirements of]~~ § 110.201 (relating to registration requirement), ~~[who withdraws or uses water,]~~ may voluntarily register with the Department the water withdrawal or **WITHDRAWAL** use, in accordance with the registration provisions of this subchapter.

(b) Notwithstanding §§ 110.301 and 110.401 (relating to reporting requirement; and monitoring and ~~recordkeeping~~ requirement), voluntary registrants shall monitor, maintain records and report to the Department in accordance with the other provisions of Subchapters C--E **(RELATING TO REPORTING; RECORD KEEPING; AND MONITORING)**.

### **§ 110.205. Transfer of registration.**

The Department will transfer a registration, if the following conditions are met:

- (1) The registrant and transferee are in compliance with this chapter.
- (2) No later than 30 days subsequent to the transfer, the transferee submits the following to the Department:
  - (i) A request for transfer of the registration, on a form prescribed by the Department.
  - (ii) A written statement signed by the registrant and the transferee, containing the date of the transfer of registration and acknowledging the transferee's recordkeeping and reporting responsibilities.

### **§ 110.206. Termination of registration.**

(a) Except for a public water supply agency or hydropower facility, when a ~~registered withdrawal or use~~ **PERSON'S COMBINED WITHDRAWALS FROM ALL SOURCES** ~~over a~~ **DECREASE FOR A** 12-month period ~~continues to be an amount less than the 30-day average threshold amount requiring registration as specified in~~ **SUCH THAT THE PERSON IS NO LONGER SUBJECT TO** § 110.201~~(3)~~ (relating to ~~registration~~ **REGISTRATION** requirement), the person ~~responsible for the withdrawal or use~~ may file with the Department, on forms provided by the Department, a written **NOTICE OF REDUCTION AND** request for termination of registration.

(b) When a registered withdrawal **FOR A SOURCE** or use over a 12-month period is zero, or if a withdrawal or use has been ~~abandoned~~ **TERMINATED**, the person responsible for the withdrawal or use may file with the Department, on forms provided by the Department, a written **NOTICE OF TERMINATION AND** request for termination of registration **RELATED TO THAT SOURCE OR USE**.

(c) Upon receipt of proper written request for termination, the Department will terminate the registration and notify the registrant.

(d) When a registered withdrawal or use over seven consecutive 12-month periods is zero, based upon reports submitted in accordance with Subchapter C (relating to reporting), the Department will terminate the registration and notify the registrant.

## **Subchapter C. REPORTING**

Sec.

110.301. Reporting requirement.

110.302. Submission of reports.

110.303. Reporting period.

110.304. General contents of report.

110.305. User-specific contents of report.

### **§ 110.301. Reporting requirement.**

Each person subject to § 110.201 (relating to registration requirement), **IRRESPECTIVE OF THE QUANTITY OF WITHDRAWAL OR USE DURING THE REPORTING YEAR,** shall submit reports to the Department in accordance with this subchapter, regarding the withdrawal and use, ~~[except for]~~ **UNLESS THE** registration~~[s-that have]~~ **HAS** been terminated in accordance with § 110.206 (relating to termination of registration).

### **§ 110.302. Submission of reports.**

Reports shall be submitted **ANNUALLY** to the Department, on forms prescribed by the Department and developed in consultation with the Statewide Committee, ~~[annually or less frequently as may be prescribed by the Department,]~~ no later than:

- (1) March 31--Public water supply agency.
- (2) June 30--Any user except a public water supply agency, including:
  - (i) Power generation facility.
  - (ii) Manufacturing industry user.
  - (iii) Mineral industry user.
  - (iv) Bulk, vended, retail and bottled water systems.
  - (v) Agricultural user.
  - (vi) Golf course user.
  - (vii) Ski resort.

### ~~[—(viii) Other user.]~~ **§ 110.303. Reporting period.**

Reports must provide information for the calendar year preceding the date of submission.

### **§ 110.304. General contents of report.**

A report must include **THE FOLLOWING:**

- (1) ~~[the i]~~ Items under § 110.203 (relating to content of registration).
- (2) **AMOUNT OF CONSUMPTIVE AND NONCONSUMPTIVE USES.**
- (3) **LOCATIONS AND AMOUNTS OF ANY WATERS RETURNED OR DISCHARGED.**

**(4) AMOUNTS OF WATER TRANSFERRED BETWEEN PUBLIC WATER SUPPLY AGENCIES BY MEANS OF INTERCONNECTIONS.**

**§ 110.305. User-specific contents of report.**

In addition to the contents specified in § 110.203 (relating to content of registration), registrants shall submit user-specific information, including:

- (1) *Public water supply agency.*
  - (i) Connections and water transfers.
  - (ii) Service area map.
  - (iii) Metering.
  - (iv) [~~Storage~~] WATER STORAGE information.

**(v) CUSTOMER TYPE INFORMATION**

- (2) *Power generation facility including hydropower and thermo-electric.*

~~[(i) Energy source type.]~~

- (i) ~~(i)~~ Generating capacities.
- (ii) ~~(i)~~ Generating units.
- (iii) ~~(v)~~ [~~Storage~~] WATER STORAGE information.

- (3) *Manufacturing industry.*

- (i) Employment.
- (ii) [~~Storage~~] WATER STORAGE information.

- (4) *Mineral industry.*

- (i) Types of operations.

~~[(ii) Water quality.]~~

- (ii) ~~(i)~~ Employment.
- (iii) ~~(v)~~ [~~Storage~~] WATER STORAGE information.

- (5) *Bulk, vended, retail and bottled water.*

- (i) Employment.
- (ii) [~~Storage~~] WATER STORAGE information.

- (6) *Agriculture.*

- (i) Irrigation water use.
- (ii) Animal water use.
- (iii) [~~Storage~~] WATER STORAGE information.

(7) *Golf course.*

- (i) Irrigated areas and water use by tees, greens, fairways and other land coverages.
- (ii) Irrigation system information.
- (iii) Employment.
- (iv) [~~Storage~~] WATER STORAGE information.

(8) *Ski resort.*

~~[(i) Number and acreage of slopes and trails.]~~ (i[i]) [~~Areas covered by s~~] Snowmaking ACREAGE.

~~[(iii) Snowmaking capacities, and water use.]~~

(ii[~~v~~]) Employment.

(iii[~~v~~]) [~~Storage~~] WATER STORAGE information.

### Subchapter D. RECORDKEEPING

Sec.

110.401. Recordkeeping requirement.

110.402. Retention of records.

#### § 110.401. Recordkeeping requirement.

A person subject to § 110.201 (relating to registration requirement) shall make and maintain a record of the items required under Subchapters B and C (relating to registration; and reporting), including supporting data, [~~except for registrations that have~~] UNLESS THE REGISTRATION HAS been terminated in accordance with § 110.206 (relating to termination of registration).

#### § 110.402. Retention of records.

Records [~~created~~] REQUIRED TO BE MAINTAINED under § 110.401 (relating to recordkeeping requirement), including supporting data, shall be kept for at least 5 years IN ANY FORMAT THAT ALLOWS REPRODUCTION OF THE RECORD.

### Subchapter E. MONITORING

Sec.



110.501. Metering and measuring requirement.

110.502. Recording frequency.

110.503. Measuring requirement in critical water planning areas.

**§ 110.501. Metering and measuring requirement.**

(a) Each public water supply agency shall measure its withdrawals ~~[or uses]~~ **AND WATER TRANSFERRED THROUGH INTERCONNECTION WITH ANOTHER PUBLIC WATER SUPPLY AGENCY** by means of a continuous-recording device or flow meter, accurate to within 5% of actual flow.

(b) Each hydropower facility shall measure its withdrawal ~~[or]~~ **AND INSTREAM HYDROPOWER** use by means of a continuous-recording device or flow meter or shall calculate its withdrawal ~~[or]~~ **AND** use based upon electrical generation or turbine flow rates or other method, accurate to within 5% of actual flow.

(c) ~~[The following persons]~~ **EACH PERSON WHOSE TOTAL WITHDRAWAL FROM A POINT OF WITHDRAWAL, OR FROM MULTIPLE POINTS OF WITHDRAWAL OPERATED AS A SYSTEM EITHER CONCURRENTLY OR SEQUENTIALLY, WITHIN A WATERSHED EQUALS OR EXCEEDS AN AVERAGE RATE OF 50,000 GALLONS PER DAY IN ANY 30-DAY PERIOD AND 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 SHALL MEASURE OR CALCULATE:**

(1) ~~[measure or calculate their w]~~ **Withdrawals, AND WATER OBTAINED THROUGH INTERCONNECTION WITH ANOTHER PERSON** ~~[or uses]~~ by means of a continuous-recording device or flow meter or other method, accurate to within 5% of actual flow

(2) **CONSUMPTIVE USES BY A MEANS OR METHOD ACCURATE TO WITHIN 10% OF ACTUAL FLOW** ~~[- each person whose total withdrawal or withdrawal use from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed equals or exceeds an average rate of 50,000 gallons per day in any 30-day period, except if all water is supplied by a public water supply agency and the average consumptive use is less than 100,000 gallons per day over any 30-day period].~~

(d) ~~[The]~~ **UPON WRITTEN REQUEST FROM A REGISTRANT, THE** Department may grant exceptions to the 5% **OR 10%** performance standards, if maintenance of the ~~[5% performance]~~ standard is not technically feasible or economically practicable.

~~[-(c) A person who is subject to compact basin commission requirements more stringent than those provided in this section shall measure the withdrawal or use in accordance with the more stringent requirements.]~~ ~~[(f)e]~~ **[The following] ANY [persons] PERSON WHO IS SUBJECT TO §110.204(B) (RELATING TO VOLUNTARY REGISTRATION) OR § 110.301 (RELATING TO REPORTING REQUIREMENT) BUT IS NOT SUBJECT TO SUBSECTIONS (a)-(c) shall measure or calculate [their] THE withdrawals or uses by a means OR METHOD, WHICH IS BASED UPON ESTABLISHED SCIENTIFIC PRINCIPLES,**

**DESIGN OR MANUFACTURER'S PRODUCT SPECIFICATIONS, OR RESEARCH RESULTS. [acceptable to the Department:]**

~~[(1) A person, who is not subject to subsections (a)–(e), whose total withdrawal or withdrawal use from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed exceeds an average rate of 10,000 gallons, but is less than 50,000 gallons, per day in any 30-day period.~~

~~–(2) A person who has voluntarily registered.]~~

**§ 110.502. Recording frequency.**

Withdrawals and uses subject to § 110.501(a) and (b) (relating to metering and measuring requirement) shall be recorded on a daily basis. Withdrawals ~~[and uses]~~ **AND WATER OBTAINED THROUGH INTERCONNECTION WITH ANOTHER PERSON** subject to § 110.501(c) shall be recorded on a weekly basis. **USES SUBJECT TO § 110.501(C) SHALL BE RECORDED MONTHLY.** Withdrawals and uses subject to § 110.501(e) ~~[and (f)]~~ shall be recorded monthly.

**§ 110.503. Measuring requirement in critical water planning areas.**

(a) The Department may require persons **SUBJECT TO §110.201 (RELATING TO REGISTRATION REQUIREMENT) LOCATED** within a critical water planning area ~~]; whose total withdrawal or withdrawal use from a point of withdrawal, or from multiple points of withdrawal operated as a system either concurrently or sequentially, within a watershed exceeds an average rate of 10,000 gallons per day in any 30-day period,]~~ to measure or calculate their withdrawals **AND USES** by means of a more accurate measuring method (but not more accurate than 5%) and record the measurements on a more frequent basis (not to exceed daily) than required in accordance with §§ 110.501 and 110.502 (relating to metering and measuring requirement; and recording frequency), if the Department determines that more accurate data is required for the development of a critical area resource plan in a watershed within a critical water planning area. Upon receipt of written notice from the Department, **INCLUDING AN EXPLANATION OF THE BASIS FOR THE DETERMINATION,** those persons shall begin the measurements or calculations within 180 days.

(b) In making the determination, the Department will consider the necessity of requiring more accurate data and having it recorded more frequently than required by §§ 110.501 and 110.502, from various categories of water users, for effective critical area resource planning in the specific watershed and the costs to registrants of providing the accuracy and frequency.

**Subchapter F. WATER CONSERVATION**

Sec.

110.601. Registration.

110.602. Registration information.

110.603. Reporting.

110.604. Water Resources Technical Assistance Center.

**§ 110.601. Registration.**

A person who has implemented a water conservation project or practice may register the project or practice with the Department.

**§ 110.602. Registration information.**

Registration of water conservation projects or practices ~~[shall]~~ **MUST** be on forms, prescribed by the Department, containing information including the following:

(1) The registrant name and address.

(2) A 7.5-minute ~~[U.S.G.S.]~~ **UNITED STATES GEOLOGICAL SURVEY** Quadrangle map, or acceptable substitute, showing the location of the project or practice.

(3) A description of the project or practice, including information detailing a description of:

(i) Project or practice prior and subsequent to implementation of water conservation program.

(ii) Quantity of **DEMAND AND WITHDRAWAL** ~~[water use]~~ prior and subsequent to implementation of water conservation program, **SHOWING A REDUCTION IN DEMAND OR WITHDRAWAL.**

(iii) Quantity of consumptive use prior and subsequent to implementation of water conservation program, **SHOWING A REDUCTION IN CONSUMPTIVE USE.**

**(iv) IMPROVEMENTS IN WATER USE EFFICIENCY, INCLUDING PLUMBING RETROFIT PROGRAMS.**

**(v) REDUCTION OF WATER LEAKAGE, LOSS AND WASTE.**

~~(iv)~~ **(vi) [Reuse]IMPROVEMENT IN REUSE [or] AND** recycling of water.

**(vii)** Increase of supply or storage of water.

~~(vii)~~ **(viii) IMPROVEMENTS IN LAND MANAGEMENT PRACTICES TO CONSERVE WATER OR TO PRESERVE OR [Increase of]INCREASE** groundwater recharge.

~~(viii)~~ **(ix)** Conservation-based rate structure.

~~(ix)~~ **(x) Water use efficiency, including plumbing retrofit programs.**

~~(x)~~ **(ix) Reduction of water loss.** (x) Water provided to offset water use during drought periods.

**§ 110.603. Reporting.**

Each person who has registered a water conservation project or practice in accordance with this subchapter shall submit **ANNUALLY** to the Department, on forms prescribed by the

Department and developed in consultation with the Statewide Committee, a report documenting the continuing effectiveness of the project or practice [~~annually or less frequently as may be prescribed by the Department~~].

**§ 110.604. Water Resources Technical Assistance Center.**

The Department will establish a Water Resources Technical Assistance Center to promote voluntary water conservation and to provide technical assistance on water resources uses issues, including programs identified in [~~27 Pa.C.S. §~~ SECTION 3120(a) OF THE ACT] (relating to water conservation).

**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.





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-403  
SUBJECT: Water Resources Planning  
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

**RECEIVED**

**AUG 29 REC'D**

INDEPENDENT REGULATORY  
REVIEW COMMISSION

11:00 Am.

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
8/29	<i>D. Neundorfer</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/29	<i>Jessica R. Paine</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/29	<i>C. S. Laidenslager</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/29	<i>A. R. Bartz</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/29/08	<i>Kathy Coon</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

