

The proposed revisions and additions to section 18 CFR 401.35 relating to project review classifications are as follows:

§ 401.35 Classification of projects for review under Section 3.8 of the Compact.

(a) Except as the ~~Executive Director~~ Commission may specially direct by notice to the project owner or sponsor, ~~or as a state or federal agency may refer under paragraph (c) of this section,~~ a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

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(2) A withdrawal from ground water ~~for any purpose~~ when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

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(4) ~~Except as provided at (18 CFR 401.35(b)(18) (RPP § 2.3.5 B.18.),~~ the construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) ~~Except as provided at 18 CFR 401.35(b)(18) (RPP § 2.3.5 B.18.),~~ the construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

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(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action ~~(i) where neither a state nor a federal level review and permit system is in effect; requiring action by the Commission, or (ii) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30 day period inform any permit holder, signatory party or other~~

~~interested party that the Commission will decline to undertake review and action concerning any such project;~~

(16) ~~Except as provided at 18 CFR 401.35(b)(19) (RPP § 2.3.5 B.19.),~~ the diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

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(18) ~~Except as provided at 18 CFR 401.35(b)(18) (RPP § 2.3.5 B.18.),~~ the diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

~~(19) To the extent allowed in the basin (see prohibition at 18 CFR 440.3(b)), projects involving hydraulic fracturing, unless no state-level review and permit system is in effect;~~

~~(1920)~~ Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph ~~A-(a)~~ of this section):

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~~(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;~~

~~(145) Leachate treatment and disposal projects associated with landfills and solid waste disposal facilities in the basin; Landfills and solid waste disposal facilities affecting the water resources of the basin;~~

(156) State and local standards of flood plain regulation;

(167) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and

(178) Any other project that the ~~Executive Director~~ Commission may especially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

~~(18) The importation, treatment, or discharge to basin land or water of "produced water" or CWT wastewater as those terms are defined in 18 CFR 440.2.~~

(19) The transfer, diversion or exportation of water from the basin at any volume or rate for uses related to “hydraulic fracturing” as that term is defined in 18 CFR 440.2.

(c) Regardless of whether expressly excluded from review by paragraph (a) of this section, any project or class of projects that in the view of the Commission could have a substantial effect on the water resources of the basin may, upon special notice to the project sponsor or landowner, be subject to the requirement for review under section 3.8 of the Compact. Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state or federal agency to the Commission for action under these Rules.

~~(d) — Except as otherwise provided by § 401.39 the sponsor shall submit an application for review and approval of a project included under paragraph B. above through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executive Director, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.~~