

§ 415.43

a part. To assist in achieving this objective the Commission staff will periodically provide to the various interested governmental agencies and others Q 100 data as developed by the Delaware River Basin Commission Hydrology Coordinating Committee for key locations in the Delaware River Basin. These will be based on a Log Pearson Type 3 analysis of data from the U.S.G.S. gaging stations using station skew, regional skew, or weighted skew, depending on the scope of data at each station.

§ 415.43 Mapped and unmapped delineations.

(a) Whenever an official flood plain map providing the pertinent information is available with respect to a given project, the map shall be used for the delineation of the flood hazard area, floodway, flood fringe and determination of flood protection elevation.

(b) Whenever an official flood plain map providing the required information is not available with respect to a given project, the administrative agency shall require the project landowner to submit details concerning the proposed uses as needed to determine the floodway and flood fringe limits at the proposed site, including: cross-sections of the stream channel and overbanks, stream profile, and factors involved in determining obstructions to flow. From the data submitted, soil surveys, historic flood maps, high water marks and other empirical data, the applicant, subject to verification by the administrative agency, shall calculate flood hazard areas, and establish the flood protection elevation for the particular site.

(c) Pending the preparation and completion of flood plain mapping, a "general flood plain" area shall be prescribed by the administrative agency to delineate for public guidance the areal limits of site locations which are required to be submitted for review under this regulation.

ENFORCEMENT

§ 415.50 General conditions.

On and after January 1, 1978, where:

(a) The flood hazard at the site is clear, present and significant, or the

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local government having jurisdiction has special flood hazard areas identified pursuant to the National Flood Insurance Act; and

(b) The site is not subject to an approved state or municipal regulatory system having the same or similar effect on the flood hazard as this regulation, the Commission may condition its approval on any local governmental project under section 3.8 of the Compact upon the adoption and enforcement of flood plain regulations, approved hereunder, by the state or local government having jurisdiction.

§ 415.51 Prior non-conforming structures.

A structure which was lawful before the adoption of this regulation but which is not in conformity with the provisions hereof, shall be subject to the following conditions (to be enforced by the appropriate authority as to Class I and Class II projects, respectively, under §§ 415.40 through 415.43 of this part):

(a) A non-conforming structure in the floodway may not be expanded, except that it may be modified, altered or repaired to incorporate flood proofing measures provided such measures do not raise the level of the 100-year flood.

(b) A non-conforming structure in the floodway which is destroyed or damaged by any means, including a flood, to the extent of 50 percent or more of its market value at that time may not be restored, repaired, reconstructed or improved except in conformity with the provisions of these regulations.

§ 415.52 Violations.

Any violation of this regulation shall be subject to penalties imposed by the Compact.

**PART 420—BASIN REGULATIONS—
WATER SUPPLY CHARGES**

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AUTHORITY: Delaware River Basin Compact, 75 Stat. 688.

SOURCE: 42 FR 13544, Mar. 11, 1977, unless otherwise noted.

GENERAL

§ 420.1 Definitions.

For the purposes of this part 420, except as otherwise required by the context:

Person means any person, corporation, partnership, association, trust, or other entity, public or private.

Water user means any person who uses, takes, withdraws or diverts surface waters within the Delaware River Basin.

Executive Director means the Executive Director of the Delaware River Basin Commission.

Consumptive use means the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the surface waters of the basin undiminished in quantity.

WATER SUPPLY POLICY

§ 420.21 Policy.

The provisions of this part 420 implement Commission Resolution No. 71-4 (Comprehensive Plan) relating to water supply charges.

§ 420.22 Prohibition; sanctions.

Any person, firm, corporation or other entity, including a public corporation, body or agency, who shall use, withdraw or divert surface waters of the basin, shall pay such charges therefor as may be required by this resolution. Any violation of this resolution shall be subject to penalty as prescribed under Article 14.17 of the Compact. The Commission may also recover the value (according to the established water pricing schedules of the Commission) of any such use, withdrawal or diversion, and invoke the jurisdiction of the courts to enjoin any further use, withdrawal or diversion, unless all charges under this resolution are paid in full when due.

§ 420.23 Exempt uses under the Compact.

(a) Section 15.1(b) of the Delaware River Basin Compact provides that "no provision of section 3.7 of the Compact shall be deemed to authorize the Commission to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the Compact; * * *" In compliance with this provision: There shall be no charge for water withdrawn or diverted in quantities not exceeding the legal entitlement of the user, determined as of October 27, 1961. Each water user may submit proof satisfactory to the Commission of the factors constituting legal entitlement, as defined in paragraph (b) thereof. In the absence of such proof of these conditions as of October 27, 1961, the quantity of water exempt from charge to each user will be the legal entitlement of the user determined as of March 31, 1971.

(b) For the purposes of paragraph (a) of this section:

(1) *Legal entitlement* means the quantity or volume of water expressed in million gallons per month determined by the lesser of the following conditions:

(i) A valid and subsisting permit, issued under the authority of one of the signatory parties, if such permit was required as of October 27, 1961, or thereafter;