

# Susquehanna River Basin Commission Proposed Rulemaking

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# Introduction of Proposal

- The Commission's regulations have not undergone a thorough review since the last comprehensive rulemaking in 2006.
- Since initial implementation, the Commission recognizes the need for clarity in some sections and statement of procedure in others.
- This rulemaking was developed through a comprehensive internal review by staff and review by the Commission's member jurisdictions.

# Proposed Rulemaking Schedule

- Proposal was published in the *Federal Register* on September 21, 2016.
- Webinars providing an overview and explanation of the proposed rulemaking were held on October 11 and 17, 2016 and January 5, 2017.

# Proposed Rulemaking Schedule

- Four public hearings were held to receive oral comments on the Proposed Rule:
  - November 3, 2016, in Harrisburg, PA.
  - November 9, 2016, in Binghamton, NY.
  - November 10, 2016, in Williamsport, PA.
  - December 8, 2016, in Annapolis, MD.
- **Written Comment period ends January 30, 2017.**

# Summary of Proposal

- The proposed rule would:
  - Add a subpart to provide for registration of grandfathered projects;
  - Amend the rules dealing with the mitigation of consumptive uses;
  - Clarify application requirements and standards for review of projects; and
  - Revise requirements dealing with hearings and enforcement actions.

# Registration of Grandfathered Projects

- A grandfathered project is:
  - Groundwater Withdrawal prior to July 13, 1978.
  - Surface Water Withdrawal prior to Nov. 11, 1995.
  - Combination of Sources prior to Jan. 1, 2007.
- A grandfathered project must still be large enough to be regulated by the Commission (100,000 gpd for withdrawals).

# Registration of Grandfathered Projects

- These projects pose challenges to the proper management of the Basin's water resources:
  - Knowing who these projects are.
  - Knowing how much water they are withdrawing or consumptively using.
  - Establishing historical amounts of usage.
  - The Commission's analysis estimates a total of 760 grandfathered projects with an estimated water use of 970 million gallons per day.

# Registration of Grandfathered Projects

- A new Chapter 806, Subpart E is proposed to outline a registration process, along with changes in § 806.4(a)(1)(iii) and (a)(2)(iv).
- New § 806.40 defines the scope of grandfathered projects.
- Generally, a project will have to operate above the applicable threshold in order to be a grandfathered project.

# Registration of Grandfathered Projects

- Section 806.41 provides that a grandfathered project must register with the Commission within two years in order to maintain the grandfathering exemption.
- Projects that may have lost their grandfathering exemption under the current regulations (i.e., had a change of ownership or added a new source) will not be eligible to register.

# Registration of Grandfathered Projects

- Section 806.42 describes the needed elements for registration:
  - Project description and identification of sources.
  - Current metering methods.
  - Quantity data for the most recent five years.
  - Ownership changes.
  - Project's requested grandfathered quantity.

# Registration of Grandfathered Projects

- Focusing on recent data increases
  - (1) the availability of data and
  - (2) the reliability of data to make a determination.
- The Commission is seeking to avoid the costly evaluation of determining the projects' historical withdrawals (i.e., pre-1978 groundwater withdrawals).

# Registration of Grandfathered Sources

- Under § 806.43, the Commission will review the project's current metering and monitoring for its grandfathered withdrawals.
- The Commission may require the project to follow a metering and monitoring plan to ensure that withdrawal quantities are accurate and reliable.
- This section also provides for ongoing reporting of quantities for grandfathered withdrawals. The Commission may accept quantities reported under the requirements of the applicable member jurisdiction in lieu of additional data.

# Registration of Grandfathered Sources

- For each registration under § 806.44, the Executive Director shall determine the grandfathered quantity for each withdrawal based on:
  - Most recent data.
  - Reliability and accuracy of the data.
  - Genuine and reasonable usage.
  - Other relevant factors.
- This determination is appealable to the Commission under Part 808.

# Registration of Grandfathered Sources

- Sections 806.4(a)(1)(iii) and (a)(2)(iv) will be amended to provide when a project will be subject to review and approval:
  - A project registered under Subpart E that increases its consumptive use or withdrawal as determined under § 806.44 by any amount.
  - A project that increases its withdrawals to 100,000 gpd or more.
  - A project that fails to register its grandfathered consumptive use or withdrawal with the two year window provided under § 806.41.

# Registration of Grandfathered Sources

- Registration is a one-time event and the only ongoing obligation of a registration is to report the quantity of water withdrawn on an ongoing basis.

# Registration of Grandfathered Projects

- The preamble to the rulemaking notes that the Commission seeks to implement a tiered fee for registration during the two-year registration window.
  - First six months, the registration fee would be \$0.
  - Second six months, the registration fee would be \$500.
  - During the last year, the registration fee would be \$1,000.

# Mitigation of Consumptive Uses

- If the current regulations do not require review and approval for a class of projects, they do not need to register for grandfathering purposes.
- For example, Public Water Supplies are not required to seek review and approval for consumptive use under section 806.4(a)(1), the consumptive use must be applied for by their customers that use water above the Commission's threshold.
- Therefore, Public Water Supplies would only need to register grandfathered withdrawals and **not consumptive use**.

# Consumptive Use Mitigation Policy

- As a companion to this rulemaking, the Commissioners authorized the publication of a proposed Consumptive Use Mitigation Policy Document.
- The Policy has a public comment period that ends on January 30, 2017.

# Project Review Standards

- Project Review regulations are revised to:
  - Clarify aquifer testing requirements.
  - Align the contents of applications to our current practices.
  - Provide flexibility for review of withdrawals that are related to mining, construction dewatering or remediation.
  - Align project review standards with application requirements.

# Project Review Standards

- Section 806.12 clarifies that aquifer testing is applicable to new projects, renewals, and increases in groundwater withdrawals.
- Subsection (f) is added to provide clear authority for the Commission to terminate review of an aquifer testing plan under § 806.16 if the applicant becomes unresponsive or fails to correct deficiencies.

# Project Review Standards

- Section 806.14 is rewritten to better align to the current application requirements, as well as provides required items specific to each type of approval (i.e., groundwater withdrawal, surface water withdrawal, consumptive use, diversion).
- For surface water withdrawals, an alternative analysis is required in settings with a drainage area of 50 square miles or less or waters with exceptional water quality.

# Project Review Standards

- Section 806.23 related to standards for withdrawals is amended to clarify that the Commission can establish conditions based on:
  - the project's effect on groundwater and surface water availability, including cumulative uses; and
  - effects on wetlands (now defined in § 806.3).
- This section is clarified to expressly include the Commission's practice of establishing and requiring a total system limit on projects.

# Hearings, Appeals, and Enforcement

- Section 808.1 is revised as follows:
  - 808.1(a). Public hearings shall be held where required by the Compact.
  - 808.1(b). Public hearings may be conducted in all other instances. No changes are contemplated to how the Commission currently conducts its hearings.
  - 808.1(c). Notice requirements are revised.
  - 808.1(d)-(i). Public hearing procedures have been updated to reflect current practices.

# Hearings, Appeals, and Enforcement

- Section 808.2 is revised as follows:
  - Current non-mandatory appeal of Commission actions is removed.
  - A mandatory appeal to the Commission is added for all actions undertaken by the Executive Director under the regulations.
  - All appeals of the actions taken by the Commissioners (i.e., adoption of dockets) must be directly appealed to Federal Court.

# Hearings, Appeals, and Enforcement

- Several revisions are made dealing with Compliance allowing the Executive Director to take action to correct and remedy enforcement matters:
  - Staff directives are formally recognized in § 808.11.
  - Ability to issue all orders, including entering Consent Orders and Agreements - § 808.14.
  - Determine the assessment of civil penalties under § 808.15.
  - Enter into settlement agreements for compliance matters - § 808.18.

# Hearings, Appeals, and Enforcement

- The civil penalty criteria under § 808.16 are amended to include consideration of the “punitive effect of a civil penalty.”

# Questions?

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Written comments on the proposed rulemaking and the Consumptive Use Mitigation Policy may be submitted by e-mail to [regcomments@srbc.net](mailto:regcomments@srbc.net) on or before January 30, 2017.