

**Susquehanna River Basin Commission
Proposed Rulemaking – September 2016**

SUPPLEMENTARY INFORMATION:

Project Review Application Procedures—18 CFR Subpart B

Section 806.11 is revised to include a specific reference to § 801.12(c)(2), noting that preliminary consultations, or pre-application meetings, are encouraged but not mandatory except for electric power generation projects.

Section 806.12 is revised to clarify when project sponsors will perform a constant-rate aquifer test and to clarify that reviews of aquifer test plan submittals are subject to termination of review under § 806.16.

Section 806.14 detailing the contents of applications to the Commission is rewritten. The new section as proposed better aligns to the actual items sought in the Commission's applications, as well as provides required items specific to each type of approval (i.e., groundwater withdrawal, surface water withdrawal, consumptive use). The proposed regulation includes new requirements specific to projects such as mine and construction dewatering, water resources remediation, and gravity-drained acid mine drainage (AMD) remediation facilities to align with the newly proposed standards for these types of projects under § 806.23(b)(5). The proposal also includes specific requirements for renewal applications.

This section as rewritten retains the requirement for an alternatives analysis for new projects, if prompted by a request from the Commission. However, for new surface water withdrawal projects, an alternatives analysis must be performed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality.

Section 806.15 regarding notice requirements for applications is revised to provide notice to appropriate county agencies, removing the specific reference to county planning agencies. Appropriate county agencies include the county governing body, county planning agencies and county conservation districts.

Section 806.15(b)(3) is added to allow the Commission or Executive Director to allow notification of property owners by other means where the property is served by a public water supply.

Standards for Review and Approval—18 CFR Subpart C

Section 806.21 is revised to mention that a project must be "feasible" to align it with the standard presently used for projects during review to determine that they are feasible from both a financial and engineering perspective.

Section 806.22 regarding standards for the consumptive use of water is revised. The proposed revisions lower the 90-day standard for consumptive use mitigation to 45 days and require a mitigation plan that can have several elements and encourages blended mitigation options. The purpose of these changes is to reduce the barriers to project sponsors finding their own mitigation and to correspondingly reduce the number of projects paying the consumptive use mitigation fee. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow/drought events in the Basin are adequately covered by a 45-day consumptive use mitigation standard.

Section 806.22(b) is also revised to clarify that when a project is subject to review and approval and also has an element of pre-compact consumptive use, the project sponsor will be required to provide mitigation going forward for this consumptive use if the project is located in a water critical area. The location of a project in a water critical area will also be a factor used by the Commission in determining the manner of acceptable mitigation under paragraph (c). A definition of water critical area is included in § 806.3 that will rely on both the existing member jurisdiction designations and the ongoing efforts by the Commission to identify areas where water resources are limited or the demand for water has exceeded or is close to exceeding the sustainable supply. Any action to identify a water critical area will be taken by a separate action of the Commission and may be subject to a public hearing under the revisions to § 808.1(b)(4).

Paragraph 806.22(e)(1) is amended to allow a project sourced by more than one public water supply to be eligible for an Approval by Rule for consumptive use as long as the public water supplies are the sole source of water for the project. New § 806.22(e)(2) and (3) were added so both the Approvals by Rule in paragraph (e) and (f) had matching procedures. The time frame for making notice was extended to 20 days in § 806.22(f)(3) to match the changes previously made to § 806.15, related to notice, during the last Commission rulemaking.

Section 806.23 related to standards for withdrawals is amended to include elements that presently form the basis of conditions to approvals for withdrawals. The proposal clarifies 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. This section is clarified to expressly include the Commission's practice of establishing and requiring a total system limit on projects.

A new § 806.23(b)(5) is added to provide special review provisions for projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD

facilities. Because the nature of these types of facilities is fundamentally different from the other withdrawal projects that come before the Commission and because they are heavily regulated by our member jurisdictions, the Commission may appropriately limit consideration of adverse impacts of these projects on groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels.