

Focusing on What Matters: Revised Regulations and Policies to Make the Regulatory Process More Efficient

Key Personnel:

Jason Oyler	General Counsel and Secretary
Todd Eaby	Manager, Project Review
Mike Appleby	Supervisor, Groundwater
Curtis Sebastian	Assistant Counsel
Dave Haklar	PWSAP Coordinator



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What to Expect Today

- Webinar is 60 minutes
- Presentation (~45 minutes)
 - Adopted rulemaking
 - Three groundwater-related policies
 - This presentation will be recorded/ posted on our website
- Questions from attendees (~15 minutes)
 - Please utilize chat box



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How to Access New Reg. & Policies

- SRBC Website: <https://www.srb.net/>

What's New

SRBC Held Business Meeting in Harrisburg, Pa. - The Commission conducted its quarterly business meeting on Friday, September 17, 2021, in Harrisburg, Pennsylvania. In addition to the actions taken on projects, the following items were also acted upon at the business meeting: adoption of final rulemaking and three groundwater-related policies; adoption of current expense budget and member jurisdictions' allocations for FY2023; ratification of a grant and letter of understanding; acceptance of a settlement offer for poultry violations; and an emergency certificate extension for Mott's LLP.

[NEWS RELEASE](#)
[FINAL RULEMAKING](#)

[AQUICLASS TESTING](#)
[PINE DRILL REVIEW](#)

[ALTERNATIVE HYDROGEOLOGIC EVALUATION](#)

The Commission's Regulations

The Commission's regulations, codified at 28 Code of Federal Regulations (28 CFR) Parts 801, 802, 803, 804, 805, 806, 807, and 808, contain the standards and procedures used by the Commission for the review and approval of water resources projects and related enforcement and oversight activities.

[The regulations are effective on April 1, 2020 and published in the CFR.](#)

[The regulations are available on the Commission's website.](#)

Policies

- [Law Enforcement Policy - Policy No. 2012-01](#)
- [Technical Guidance](#)
- [Technical Guidance List of Attachments](#)
- [Emergency Flow Recommendations for the Susquehanna River Basin](#)
- [Alternative Hydrogeologic Evaluation \(AHE\) - Policy No. 2021-01 NEW](#)
- [Alternative Test Data Guidance - Policy No. 2021-02 NEW](#)
- [The Pine Drilling Guidance - Policy No. 2021-03 NEW](#)
- [Guidelines for Poultry on Agricultural Land - Policy No. 2017-01](#)

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Rulemaking Timeline

- The Rule and Policies were adopted by the Commission on September 17, 2021 after a lengthy public comment period
 - Policies effective on September 17, 2021
 - Regulations effective October 1, 2021



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Why These Changes and Why Now?

- Commission expects 200+ groundwater withdrawal renewal applications over the next 5 years
- Responsive to requests to reduce costs for project sponsors, especially smaller and economically challenged projects
- The Grandfathering Registration window is closed allowing the Commission to leverage that program and data

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Rulemaking Overview

- A more efficient mechanism for reviewing Groundwater Renewals by leveraging the use of existing long term operations data and the new Alternative Hydrogeologic Evaluation (AHE)
- More effectively deal with Small and Medium Capacity Withdrawals
- Rely on the registration process to eliminate most triggers for loss of Grandfathering
- Build upon successful program changes with the Commission's natural gas consumptive use Approval by Rule(f) program and its minor modification regulation

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Approval by Rule Program Revisions

- Definitional changes and clarifications for the Commission's Approval by Rule program for regulating consumptive water use for unconventional natural gas extraction and for projects sourced primarily by Public Water Supply



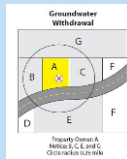
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Notice Provisions § 806.15

- Revised property owner public notice requirements for renewal projects
 - Property owner notices are now only required for new projects, major modifications, and renewals requesting an increase in quantity
- Notice radius reduced to ¼ mile
- New notice instructions are available at: <https://www.srbc.net/regulatory/policies-guidance/docs/public-notice-guidelines.pdf>



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Minor Modification § 806.18

Modified and added new categories that would qualify as Minor Modifications

- Adjustment a term of an approval to align with a state approval or another docket approval by the Commission
- Changes to the method of consumptive use mitigation to payment of the mitigation fee, providing for discontinuance, use of storage or an adequate conservation release in accordance with a previous Commission determination
- Addition of stormwater as a source of consumptive use, (including a related increase to the total consumptive use)
- Extension of the date of commencement of a withdrawal, diversion or consumptive use under § 806.31(b)

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Diversions for Municipalities on the Basin Divide § 806.4

- The diversion of drinking water and/or municipal wastewater **out of/into** the basin to a municipality on or straddling the basin divide if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion or as a consumptive use

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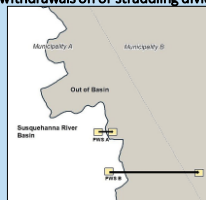
Diversion of Water

Into Basin Diversion of public water and/or wastewater



- Regulated by partner agencies (Water Quality)
- Exempt from Commission review and approval (Supplier A&B)
- Avoids Duplication

Out-of-Basin Diversion for water withdrawals on or straddling divide



- Project's withdrawal, not CU/DIV, is subject to Commission review and approval (Supplier A)
- Project's withdrawal, CU, and DIV is subject to Commission review and approval (Supplier B)
- Ensure protection of the Basin's water resources

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Grandfathering § 806.4

- The Grandfathering Registration Program has successfully been filling in data gaps and providing accountability to grandfathered sources
- The regulations have always had pathways where grandfathering could be lost and those pathways had been expanded over the decades
- The new rules eliminate two pathways to lose grandfathering
- The previous pathways for a project to lose grandfathering were:
 - The addition of a new source.
 - Increasing a non-grandfathered source for previously approved projects
 - Increasing a grandfathered source
 - Change of ownership
- Under new rules, only the following pathways remain:
 - Increasing a grandfathered source above the quantity in its grandfathering certificate
 - Only that source would come in rather than all sources associated with the project
 - Change of Ownership

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Consumptive Use

- **806.4(a)(2):** Eliminated the consumptive use trigger for projects withdrawing less than 100,000 gpd
- Sources, individually or combined, below 100,000 gpd that serve a regulated consumptive use, do not require withdrawal applications
- Any needed review of the withdrawal will occur within the review of the consumptive use application

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Small and Medium Capacity Sources

- **Add Definitions:** Small (20,000 gpd or less) and Medium (more than 20,000 but less than 100,000 gpd) Capacity Sources
- **New § 806.12(j):** Small capacity sources are not subject to aquifer testing or AHE requirements absent a specific determination
- **New § 806.23(b)(7):** Focused standards for small capacity sources

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Aquifer Testing and the AHE (§ 806.12)

- Revisions to § 806.12 are designed to encourage the use of existing data and to review projects commensurate with the level of risk posed by a withdrawal



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18 CFR § 806.12

- A hydrogeologic evaluation is required—An aquifer test or an alternative evaluation.
 - New well or increased quantity from existing well (likely an aquifer test)
 - Existing well, either renewal or grandfathered well under review (likely an AHE)
- Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or an approved prior waiver by the Commission may meet the requirements of § 806.12 for that previously approved source.

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18 CFR § 806.12

- The alternative evaluation could be a determination by Commission staff under new § 806.12(h) that a prior Commission approved test or waiver is sufficient, even without completing a formal AHE
 - Important to schedule a pre-application meeting with Project Review staff prior to your renewal to see what existing information the Commission has on file
 - Projects that take and report daily water levels of their wells are likely to be more successful in this process

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18 CFR § 806.12

- In lieu of an aquifer test, the project can submit an AHE under § 806.12(g) that provides supporting information equivalent to that which would be obtained through an aquifer test, including:
 - Prior testing data
 - Withdrawal setting and location
 - Existing site specific operational data
 - Prior Commission approved waivers of testing requirements
- The Commission developed an AHE Policy to provide guidance in navigating this new process

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Groundwater Policies & Technical Guidance



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Policy Number: Policy No. 2021-01
Title: Alternative Hydrogeologic Evaluation Policy
Effective Date: September 17, 2021
Authority: Public Law 91-575, 84 Stat. 1589 or sup., and 19 CFR §§ 906.11, 906.12 and 906.25



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Policy Number: Policy No. 2021-02
Title: Aquifer Testing Guidance
Effective Date: September 17, 2021
Authority: Public Law 91-575, 84 Stat. 1589 or sup., and 19 CFR §§ 906.11, 906.12 and 906.25



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Policy Number: Policy No. 2021-03
Title: Pre-Drill Well Site Review
Effective Date: September 17, 2021
Authority: 1001 Compact, § 5.5 Public Law 91-575, 84 Stat. 1589 or sup., and 19 CFR §§ 906.11, 906.12 and 906.25

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Alternative Hydrogeologic Evaluation (AHE)

- New look, same great taste?
 - New and improved?
- Replaces, but is similar to, Waiver
 - >75% of renewals currently seek waiver of aquifer testing
- Provides more certainty/ guidance for the process
 - >90% of Waivers were approved
- Emphasis on existing data to complete hydrogeologic evaluation
 - Long-term may be better than short-term aquifer test
 - Long-term water level and withdrawal data extremely important
 - Cheaper than aquifer testing



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AHE VS. Waiver

AHE

- Defined policy
- Certainty provided by regulation
- Emphasis on historical data
- Existing sources
- Qualitative risk-based evaluation
- Lower costs/ less time intensive

Waiver

- Very little guidance provided; no separate policy
- Required a waiver of regulation
- Emphasis on historical data
- Existing sources
- Broader approach
- Lower cost than ATP, but more than AHE

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Objectives of the AHE

- Streamline the renewal process
- Expand on use of historical data/ tests
 - Old test may not meet current standards, but may be useful
 - Put water level data to use
- Help identify data gaps so operational monitoring or testing is needed instead of ATP
- Qualitative risk-based approach
 - Assess areas of greatest need and focus efforts on those
 - Not all projects have the same risk factors, so not all projects require the same level of evaluation

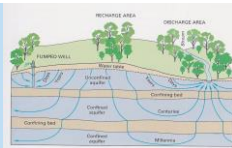
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Principal Risk Factors

- Sustainability
 - Reliability of the requested rates
 - Does not consider impacts, just if the water can be pumped
 - Compare historical testing to operational data
- Impacts to other users
 - Look within 2,500 feet or 90-Day area of influence
 - Can be simple if no groundwater users, small AOI, or low drawdown
- Impacts to the environment
 - RTE species
 - Water quality designations
 - Prior testing should consider surface water/ ecological impacts



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Transition from Waiver to AHE

- Utilizing Waiver forms, for now
 - Superficial changes (e.g replace Waiver with AHE)
- Convert existing Waivers to AHE
 - Nothing required by projects to convert to AHE
 - Includes those in progress but not submitted
- By about January, the online forms will be further revised
 - Better align with policy (e.g. Principal Risk Factors)
- AHE's submitted from now until new forms are available should specifically address risk factors in Section 4

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Aquifer Testing Plan Guidance

- Updated version of Policy No. 2007-01 – Aquifer Testing Guidance
- Intended to supplement existing requirements; does NOT constitute a new regulatory requirement
- Structured to offer administrative procedures for PS use
- Provide detailed technical guidance and criteria for consultants' use in developing a complete Plan
- Recognizes AHE and Pre-drill Well Site Review

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ATP Guidance - What Has Changed?

- Explanation of waivers and project modifications removed
 - Waiver process to be replaced by the AHE process
 - Modifications should be discussed with staff
- Guidance for using the online forms provided
 - Policy reorganized to be consistent with online forms
 - Paper forms eliminated
 - Checklist eliminated
- Reorganized
- Addresses common/recurring problems with submittal and implementation of Plans
 - Clarifications provided regarding monitoring and testing procedures
 - Operation of other existing sources during all phases of testing



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Pre-Drill Well Site Review

- New guidance, but technical service has been offered since 2013
- Screening-level review of potential well site locations
- Designed to outline Commission's technical assistance prior to PS expending resources in drilling, constructing and testing a potential production well
- Intended to identify potential water resources management limitations or conflicts at the well site prior to drilling

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Pre-Drill Well Site Review

- Use of the Policy is completely voluntary; NOT a regulatory requirement
- Designed to provide guidance to the regulated community and Commission staff
- Should also allow the public to gain insight into the process employed by the Commission to provide technical assistance prior to water withdrawal application submittal
- Intended to be a cooperative process

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Additional Staff Resources

General Project Review Questions

- Todd Eaby, teaby@srbc.net

Groundwater Projects

- Mike Appleby, mappleby@srbc.net
- Todd Eaby, teaby@srbc.net

Questions for Legal

- Jason Oyler, Esq., joyler@srbc.net
- Curtis Sebastian, csebastian@srbc.net

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Up Next

- Training for AHE
 - Webinar series, possibly followed by virtual classroom
 - Dates TBD, but thinking December through February
 - Similar to in-person training from 2016
- Intended for consultants, but open to all
 - More in-depth than today
 - Will review expected elements of AHE
- Virtual classroom may be limited in size
 - Detailed discussions
 - Example projects

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Key Takeaways

- Reduce costs and improved efficiency for project sponsors
- Reduced regulatory requirements
- Meet the aquifer testing requirements once
- Contact Commission staff

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