

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CHS. 806 AND 808]

Review and Approval of Projects

Summary: This document contains final rules that amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include subsidiary allocations for public water supply systems under the scope of withdrawals requiring review and approval; improve notice procedures for all project applications; clarify requirements for grandfathered projects increasing their withdrawals from an existing source or initiating a new withdrawal; refine the provisions governing transfer and re-issuance of approvals; clarify the Executive Director's authority to grant, deny, suspend, rescind, modify, or condition an Approval by Rule; include decisional criteria for diversions into the basin; amend administrative appeal procedures to broaden available remedies and streamline the appeal process; and make other minor regulatory clarifications to the text of the regulations.

Dates: Effective November 1, 2010.

Addresses: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

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Supplementary Information:

Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published in the *Federal Register* on June 25, 2010; the *New York Register* on July 7, 2010; the *Pennsylvania Bulletin* on July 10, 2010; and the *Maryland Register* on July 16, 2010. The Commission convened public hearings on July 27, 2010, in Binghamton, New York and on July, 2010, in Harrisburg, Pennsylvania. A written comment period was held open until August 10, 2010. Comments on the proposed rulemaking were received at both the hearings and during the comment period. A summary of the comments and the Commission's responses thereto follows.

Comments by Section, Part 806

Section 806.4. Projects requiring review and approval.

Comment: With respect to gas well development and hydrofracking operations, there is a need for the Commission to evaluate the cumulative impacts of water withdrawals and to require flow monitoring at water withdrawal sites.

Response: The Commission does employ cumulative impact analysis in its review and approval of projects. Flows are monitored at all sites where passby flow requirements have been imposed either directly or through the use of reference gages. Commission field inspectors verify that users required to cease taking water at given flow levels are in fact abiding by passby limitations. In addition, the Commission has implemented a Remote Water Quality

Monitoring Network with 30 monitoring stations in the areas where drilling in the Marcellus Shale formation is most active.

Comment: The Commission should exercise greater regulatory authority over drilling operations in the Marcellus Shale formation, including assuming jurisdiction over water quality related matters.

Response: The Commission's current regulatory authority extends only to water withdrawal and consumptive use by gas drilling operations. As established in Section 3.2 of the Susquehanna River Basin Compact, the Commission is directed to utilize the existing agencies of federal and state government who currently exercise regulatory authority on water quality, underground injection, and on the extraction of mineral resources. At this point, the member states are asserting their regulatory authority and it would not be appropriate for the Commission to interpose its authority and duplicate the plenary authority exercised by the states in this area. If, at some point in the future, the Commission concludes, after public hearing, that it must assume jurisdiction in order to effectuate the terms of the comprehensive plan or implement the terms of the Compact, it may then do so.

Section 806.6. Transfer and re-issuance of approvals.

Comment: Allowing "transfer of approvals" under 18 CFR 806.6 is inappropriately treating water as a "commodity" instead of as a "common resource" of the basin.

Response: Under 18 CFR 806.6, the instances where approvals may be transferred with only administrative approval of the Executive Director are limited. Transfers of approvals more than ten years old, those changing the quantity or use of the water, or having pre-compact or pre-regulation elements will require a subsequent application for approval, thus phasing out grandfathered uses and bringing these projects under the authority of the Commission, where the water used can be better managed as a "common resource" of the basin. We would also note that transfer of approvals is not limited to the gas drilling industry. Other transfers occur, such as the transfer of water withdrawal approvals from municipalities to municipal authorities, whenever a project using the waters of the basin is sold to a new owner.

Section 806.15. Notice of Application.

Comment: Notification of property owners within one-half mile of a withdrawal is insufficient. Notice should be provided to all property owners in the watershed or even to all basin residents because of the high volumes of water withdrawals for gas production and the contents of fracking water. Also, people farther than a half mile may experience impacts to their water, air, and soil quality.

Response: The one-half mile notification requirement for withdrawals provides more effective notice than the current contiguous property owner requirement that is based on proximity, not science. Ongoing scientific evaluations indicate that a one-half mile notice will cover the vast majority of areas affected by groundwater and surface water withdrawals. Thus, the Commission believes this new standard is both reasonable and appropriate. If data is collected during the aquifer test that indicates that the influence of the withdrawal extends beyond a half mile radius, the staff has the discretion to direct project applicants to send notification to property owners in these extended areas. Because newspaper notice is also required and because the Commission

publishes an advanced notice for all withdrawal applications in the *Federal Register* and state notice publications prior to taking action, other interested parties throughout the watershed and the basin will have notice and opportunity to comment on such applications. Similar information is also provided to the public by the Commission through its web-based Water Resources Portal.

Comment: In amending its notification requirements for project applications, the Commission is properly focusing on those persons who are actually affected and who have a real interest in participating in the approval process.

Response: Agreed

Comment: The Commission's proposed rules are scientifically based and therefore sound.

Response: Agreed

Comment: The notice sent to landowners within one-half mile of a groundwater withdrawal should include an opportunity for the property owner to comment on the project application.

Response: 18 CFR 806.15 (a) specifies that all notices required under this section contain the address, electronic mail address, and phone number of the project sponsor and the Commission, and comments are therefore welcome from any landowner or other interested party who wishes to do so. Also, the form of notice sent to landowners contains information concerning the submission of comments and providing relevant contact information.

Comment: The notice sent to property owners within one-half mile of a groundwater withdrawal should include information on how the 72-hour testing will be done, when it will occur, and other information concerning the evaluation and approval of the groundwater withdrawal project. Follow-up information should be provided to property owners receiving notifications such as the results of water withdrawal testing.

Response: The Commission readily understands that landowners may have an interest in aquifer testing information at the application stage. Under current Commission procedures, however, applicants submit testing plans and conduct tests prior to the filing of an application that triggers the notice requirement. At this pre-application stage, applicants may also submit information supporting a request for a waiver of the testing requirements, which may or may not be granted. The Commission believes that the requirement for pre-application submission of test information is a conservative management approach helping to ensure that applications are supported by science. Rather than modifying this procedure, the Commission feels that the legitimate concerns expressed in this comment can best be addressed by providing landowners with a right of access to the information sought.

Comment: For applications to use wastewater discharge sources, in addition to the newspaper notice, any property owner within 1,000 feet of the use (or some other appropriate distance compatible with other resource agencies) should be notified by mail.

Response: Newspaper notices noting the use of a wastewater discharge source will be required in every area where the water will be used for natural gas development. The Commission believes that this form of notice will be sufficient. Also, all approved water sources that a natural gas developer may use on a given site are available for viewing on line by interested landowners at the Commission's web based Water Resources Portal.

Section 806.24. Standards for Diversions.

Comment: The meaning of the "catch all phrase" in the proposed revision to 18 CFR 806.24 requiring consideration of the "extent to which the proposed diversion satisfies all other applicable standards set forth in subchapter C of this part," is not clear. It is recommended that this phrase be struck.

Response: While the Commission agrees that a clarification is needed, it is important that the sponsors of diversion projects understand that they must also abide by the Commission's general and specific standards set forth in subchapter C of Part 806 governing withdrawals and consumptive use. The Commission has modified this language in the final rule to add more clarity.

Comment: For projects involving a diversion of water out of the basin, the in-basin public should be noticed and have an opportunity to provide written comments. This notice should tell the public where the water is being diverted and why.

Response: The proposed regulations do provide for newspaper publication in the in-basin area, plus since the diversion will also involve a withdrawal of some kind in the in-basin area, property owners within one-half mile will also receive notifications in accordance with 18 CFR 806.15.

General Comments

Comment: The Commission should institute a moratorium on approval of any unconventional gas drilling related water withdrawals until the completion of certain studies that will assess the environmental impacts of drilling and fracking activity.

Response: The Commission can find no evidence linking its approval of water withdrawals and consumptive uses by gas drilling operations in the Marcellus Shale formation with a threat of harm or of injury to the public justifying a moratorium on all approvals. Ultimately, a moratorium based on supposition rather than science cannot be legally justified or defended. It is also far more appropriate for the states and the federal government, who exercise broader authority with respect to water quality, underground injection and mineral extraction, and who have such studies underway, to inform the Commission's regulatory program as that science develops. In the interim, the Commission continues to study and evaluate the cumulative impact of these withdrawals and consumptive use on the water resources of the basin.

Comment: The idea of allowing water withdrawals for any other reason than to support life is abhorrent.

Response: The Susquehanna River Basin Compact and the Commission Comprehensive Plan do place importance upon the conservation of water to support the living resources of the basin and the Chesapeake Bay, and the Commission devotes a major part of its mission to protecting those resources; however, the purposes of the Compact and the goals of the Comprehensive Plan also include the utilization and development of the basin's water resources to make secure and protect developments within the states (i.e. economic development). Managing the basin's waters to protect living resources and developments within the states are not mutually exclusive efforts.

Comment: The Commission did not give sufficient public notice of the public hearings on these proposed rules.

Response: The Commission followed the notice requirements of its own regulations found at 18 CFR 808.1,

publishing well in advance of public hearings the text of the proposed rules in the *Federal Register* and in the member state notice publications, and including in those notices the date, time and place of two public hearings held in Binghamton, N.Y. on July 27, 2010, and Harrisburg, Pa. on July 29, 2010. Written comments were also invited through August 10, 2010. The Commission gave further notice of the proposed rulemaking contents, the public hearings, and the comment period via its web site and in a news release sent to media throughout the basin. These are the same notice procedures followed by the Commission on past proposed rulemaking actions as well. The Commission is, nevertheless, considering ways that it can improve notice procedures in future rulemaking actions and welcomes this comment.

Comment: The Pennsylvania Department of Environmental Protection (PADEP) is permitting gas drilling on lands subject to frequent inundation, creating a danger that toxic materials or waters stored on such land will be washed away and contaminate streams and rivers.

Response: 18 CFR 806.21 provides that the Commission may suspend the review of any project that has not been approved by a member jurisdiction or a political subdivision thereof. The Commission may also modify, suspend, or revoke a previously granted approval where the project sponsor fails to obtain or maintain the approval of member jurisdiction or political subdivision thereof. All land uses in Pennsylvania in flood prone designated communities are subject to the provisions of the Pennsylvania Flood Plain Management Act and local ordinances adopted pursuant thereto. If a project sponsor is not in compliance with these local ordinances, they run the risk of having their Commission approval suspended or revoked.

Comment: The Commission has been blocking participation of landowners in the approval process for gas drilling consumptive use and withdrawal approvals by withholding information on pending project applications.

Response: The Commission disagrees with this comment. The Commission has historically welcomed and encouraged public comment on applications submitted to the Commission for its review and consideration. It continues to improve its notice requirements, as witnessed by the modifications being made to 18 CFR 806.15 of this final rule, and has taken considerable steps to build its online Water Resources Portal web application to facilitate that end.

Comment by Section, Part 808

Section 808.2. Administrative Appeals.

Comment: There is a need to improve some of the provisions of the proposed changes to the administrative appeal provisions of 18 CFR 808.2 by removing certain unneeded language, defining a standard for granting nunc pro tunc appeals, providing for a direct notice of hearing to the petitioner and project sponsor, and specifying a deadline for filing an appeal for consideration at the next regular Commission meeting.

Response: Agreed. These changes have been made to the text of 18 CFR 808.2 in the final rulemaking document.

List of Subjects in 18 CFR Parts 806 and 808:

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR Parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart C—Standards for Review and Approval

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.4, revise paragraphs (a)(2) introductory text, (a)(2)(iv), and (c) to read as follows:

§ 806.4. Projects requiring review and approval.

(a) * * *

(2) *Withdrawals.* Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

* * * * *

(iv) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source, or initiate a withdrawal from a new source, or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

* * * * *

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part within 90 days of the date change of ownership occurs and the project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

3. In § 806.6, revise paragraphs (a), (b) introductory text, (b)(1), (c) introductory text and (d) introductory text, and add paragraph (e) to read as follows:

§ 806.6. Transfer and re-issuance of approvals.

(a) An existing Commission project approval may be transferred or conditionally transferred to a new project sponsor upon a change of ownership of the project, subject

to the provisions of paragraphs (b), (c) and (d) of this section, and the new project sponsor may only operate the project in accordance with and subject to the terms and conditions of the existing approval pending approval of the transfer, provided the new project sponsor notifies the Commission within 90 days from the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be conditionally transferred, subject to administrative approval by the Executive Director, upon a change of ownership and the new project sponsor may only operate such project in accordance with and subject to the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization where the project property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

* * * * *

(c) An existing Commission approval of a project that satisfies the following conditions may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) of this section:

* * * * *

(d) An existing Commission project approval for any project not satisfying the requirements of paragraphs (b) or (c) of this section may be conditionally transferred and the project sponsor may only operate such project in accordance with and subject to the terms and conditions of the conditionally transferred approval, pending action by the Commission on an application the project sponsor shall submit to the Commission, provided that:

* * * * *

(e) An existing Commission project approval may be re-issued by the Executive Director at the request of a project sponsor undergoing a change of name, provided such change does not affect ownership or control of the project or project sponsor. The project sponsor may only continue to operate the project under the terms and conditions of the existing approval pending approval of its request for re-issuance, provided it submits its request to the Commission within 90 days from the date of the change, which notice shall be on a form and in a manner prescribed by the Commission, accompanied by the appropriate fee established therefore by the Commission.

4. In § 806.7, revise paragraph (a) to read as follows:

§ 806.7. Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review and approval authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to

assure compatibility between jurisdictional review and Commission review.

* * * * *

5. Revise § 806.15 to read as follows:

§ 806.15. Notice of application.

(a) Any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member state, each municipality in which the project is located, and the county planning agency of each county in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (e) of this section, if applicable. All notices required under this section shall be provided or published no later than 10 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn obtained from for sources other than withdrawals or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2), the project sponsor shall also provide the notice required under paragraph (a) of this section to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any property that is located within a one-half mile radius of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within a one-half mile radius of the proposed withdrawal location.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) For applications submitted under § 806.22(f)(12)(ii) to use a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(12)(ii) to use a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member states,

municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

6. In § 806.22, revise paragraphs (e)(1), (e)(6), (f)(3), (f)(9), and (f)(12) to read as follows:

§ 806.22. Standards for consumptive uses of water.

* * * * *

(e) * * *

(1) Except with respect to projects involving natural gas well development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to the construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

* * * * *

(f) * * *

(3) Within 10 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4 (a).

* * * * *

(12) The following additional sources of water may be utilized by a project sponsor in conjunction with an approval by rule issued pursuant to paragraph (f)(9) of this section:

(i) Water withdrawals or diversions approved by the Commission pursuant to § 806.4(a) and issued to persons

other than the project sponsor, provided any such source is approved for use in natural gas well development, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission, and provides a copy of same to the appropriate agency of the member state. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s). The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(ii) Sources of water other than those subject to paragraph (f)(12)(i) of this section, including public water supply or wastewater discharge, provided such sources are first approved by the Executive Director pursuant to this section. Any request to utilize such source(s) shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be further subject to any approval or authorization required by the member state to utilize such source(s).

7. In § 806.24, add paragraph (c)(2), to read as follows

§ 806.24. Standards for diversions.

* * * * *

(c) * * *

(2) In deciding whether to approve a proposed diversion into the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the Susquehanna River Basin, or any portion thereof, as a result of the introduction or potential introduction of invasive or exotic species that may be injurious to the water resources of the basin.

(ii) The extent to which the proposed diversion satisfies all other applicable general and specific standards set forth in subpart C of this part pertaining to withdrawals and consumptive use.

8. Revise § 806.35 to read as follows:

§ 806.35. Fees.

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission to cover its costs of administering the regulatory program established by this part, including any extraordinary costs associated with specific projects.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

10. The authority citation for Part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

Subpart A—Conduct of Hearings

11. In § 808.2, revise paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) to read as follows:

§ 808.2. Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive

Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the *Federal Register*. In the case of records access determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination. Appeals filed later than 20 days prior to a regular Commission meeting will be considered at a subsequent Commission meeting. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal form.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the *Federal Register*. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member state. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(g) If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(h) *Intervention.* (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the *Federal Register*. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with federal case law.

(2) Intervenors shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

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Dated: September 29, 2010.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: Fiscal Note 72-8 remains valid for the final adoption of the subject regulations.

Editor's Note: The regulations of the Commission, 25 Pa. Code Chapters 806 and 808, are amended by amending §§ 806.1 and 808.1 to read as set forth in Annex A.)

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART IV. SUSQUEHANNA RIVER BASIN COMMISSION

CHAPTER 806. REVIEW AND APPROVAL OF PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 (2010) (relating to review and approval of projects) are incorporated by reference and made part of this title.

CHAPTER 808. HEARINGS AND ENFORCEMENT ACTIONS

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 (2010) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 10-2099. Filed for public inspection November 5, 2010, 9:00 a.m.]