

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### SUSQUEHANNA RIVER BASIN COMMISSION

[ 25 PA. CODE CH. 806 ]

#### Review and Approval of Projects

*Summary:* This document contains final rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include definitions for new terms and an amended definition; provide for administrative approval of interbasin transfers of flowback and production fluids between drilling pad sites that are isolated from the waters of the basin; provide for administrative approval of out-of-basin transfers of flowback or produced fluids from a Commission approved hydrocarbon development project to an out-of-basin treatment or disposal facility; insert language authorizing renewal of expiring approvals, including Approvals by Rule (ABRs); delete specific references to geologic formations that may be the subject of natural gas development using hydrofracture stimulation and replace with a generic category—"unconventional natural gas development;" broaden the scope of ABRs issued to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development; memorialize the current practice of requiring post-hydrofracture reporting; and provide further procedures for the approval of water sources utilized at projects subject to the ABR process.

*Dates:* Effective April 1, 2012.

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

*For Further Information Contact:* Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306; fax (717) 238-2436, rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at [www.srbc.net](http://www.srbc.net).

*Supplementary Information:*

*Comments and Responses to Proposed Rulemaking*

Notice of proposed rulemaking was published in the *Federal Register* on July 13, 2011; the *New York Register* on July 27, 2011; the *Pennsylvania Bulletin* on July 23, 2011; and the *Maryland Register* on July 29, 2011. The Commission convened public hearings on August 2, 2011, in Harrisburg, Pennsylvania and on August 4, 2011, in Binghamton, New York. Public information meetings were also held on October 25, 2011 in Williamsport, Pennsylvania, and on October 27, 2011, in Camp Hill, Pennsylvania. The original 60-day comment period first established on June 23, 2011, was extended until November 10, 2011, pursuant to an action taken by the Commission on September 15, 2011. Comments on the proposed rulemaking were received at both the hearings and during the comment period. The comments can be divided into two categories: (1) General Comments—These comments are not directed to specific language of the proposed rulemaking, but rather address perceived environmental and policy impacts; and (2) Comments by Section—These comments are directed at the specific language of the proposed rulemaking, often offering further revisions to this language. A summary of both categories of comments and the Commission's responses thereto follows.

#### *General Comments*

*Comment:* The Commission should more clearly explain the scientific basis for the proposed rulemaking. Also, the Commission should conduct a full life cycle cumulative impact study of the basinwide impacts of unconventional natural gas extraction prior to issuing this rulemaking.

*Response:* The proposed rulemaking is administrative in nature and involves no substantive change in the review standards applied to projects. Therefore, the basis of the rulemaking does not involve the analysis, evaluation or re-evaluation of scientific principals. On the whole, it is an attempt to codify within the rules certain definitions, existing practices and policies, and to establish certain procedures related to implementation of the Commission's regulatory authority.

*Comment:* The more extensive use of the Approval by Rule (ABR) process in this proposed rulemaking will weaken the Commission's regulatory oversight and will simply make it easier for gas well developers using hydrofracture stimulation methods to withdraw the waters of the basin.

*Response:* The Commission believes that this comment indicates a basic misunderstanding of the scope of the ABR process and the fact that all withdrawal projects will continue to be docketed and acted on by the full Commission. Through the docketing process, the Commission actively manages the use of the basin's waters and mitigates impacts on surface and ground waters through appropriate conditions limiting use. The ABR process then provides an efficient monitoring system for waters that are consumptively used. The Commission applies the same approval standards to all approvals, no matter the form they take. It exercises continuing jurisdiction and oversight to ensure compliance, and can reopen approvals and issue new orders or conditions if warranted.

*Comment:* Use of the ABR process to oversee the interbasin transfer of flowback and produced fluids and for the out of basin diversion of such fluids for treatment poses a danger to the waters of the basin due to its toxic content and the potential for spillage. The ABR process also bypasses the usual analysis given to proposed diversions of water.

*Response:* The proposed rules simply formalize practices that are already in place for the transfer of such fluids. These procedures will provide a net benefit to the basin by encouraging the use and reuse of lesser quality water instead of unimpaired water from streams or ground water sources. Furthermore, unlike the typical diversion of water out of the basin where the consumptive loss occurs and is evaluated in the context of the proposed diversion activity, the consumptive loss in this situation is considered to have occurred at the time of the initial withdrawal from the system, before its first use within the basin and prior to being diverted out of the basin. For into-basin diversions, the existing standards are focused on limiting any introduction of contaminated sources into the waters of the basin. The final rulemaking, as structured, provides that same standard. What it changes is the form of the approval, not the standard that should be applied.

*Comment:* The Commission places too much reliance on allegedly inadequate state water quality laws relating to wastewater disposal and residual waste. For example, the Commission cannot rely on such state laws and regula-

tions to isolate from the waters of the basin the flowback and production fluids whose interbasin transfer the Commission proposes to approve administratively. Therefore, it is incumbent on the Commission to invoke its own water quality regulatory authority and ensure that wastewater is indeed handled in a manner that isolates it from the waters of the basin.

*Response:* The Susquehanna River Basin Compact, Public Law 91-575, Section 5.2(b) gives specific emphasis to the primary role of the states in water quality management and control. Member states are already exercising or preparing to exercise their water quality authority with respect to gas drilling activity and are also strengthening their laws and regulations. At this stage, there appears to be no justification for the Commission to assume water quality jurisdiction. As noted in response to a comment below, the Commission is taking steps to replace the term “isolate from the waters of the basin” with language that references the standards and requirements of member jurisdictions.

*Comment:* The Commission’s refusal to promulgate water quality regulations relating to gas well development will allow the non-uniform treatment of water users throughout the basin and therefore not conform to the purposes of the Susquehanna River Basin Compact.

*Response:* The compact purpose of “uniform treatment of water users” does not require that the Commission exclusively regulate all aspects of water resources in the basin. If state regulations and standards are compatible with the Commission’s Comprehensive Plan and do an adequate job of fulfilling the purposes of the plan, the Commission will not attempt to duplicate those regulations and standards. Where it does act, it does so in a manner that provides for uniform treatment of all water users.

*Comment:* The expanded use of the ABR process lessens the opportunity for public input and scrutiny on project approvals.

*Response:* The Commission disagrees. The ABR applications must be noticed by applicants and there is an opportunity for interested citizens to comment on these applications before an approval is issued. ABRs are also subject to the same approval standards as docketed approvals, and may be reopened and modified by the Executive Director should unforeseen problems arise. Furthermore, notice of issuance of an ABR is published in the Federal Register and any such approval is subject to appeal pursuant to § 808.2.

*Comment:* The Commission should not be extending the scope of the ABR program to include other forms of hydrocarbon development without first determining if the ABR program is suitable for these other forms of development.

*Response:* The ABR process has proven to be a valuable tool for monitoring consumptive use related activity on pad sites. This rulemaking, which as noted above is administrative in nature, would extend the use of this valuable tracking tool to other forms of hydrocarbon development. Water withdrawals by any water user, including that undertaken for use in other forms of hydrocarbon development, will still undergo the full docket approval process, and be subject to all applicable Commission standards and requirements.

*Comment:* The Commission is a federal agency under the Susquehanna River Basin Compact and is subject to the National Environmental Policy Act (NEPA). It must

therefore complete all NEPA requirements in connection with this proposed rulemaking action.

*Response:* The Commission categorically rejects any suggestion that it is subject to NEPA. This is consistent with the position the Commission has taken on NEPA since the 1980s. Instead of a federal agency, the Commission is a federal-interstate compact agency representing all four of its member jurisdictions. The federal government is only one voting member of the Commission and any action of the Commission requires the vote of a majority of the members. Therefore, the actions of the Commission are not the actions of the federal government, but the joint actions of the member jurisdictions. Also, Congress has specifically exempted the Commission from the provisions of the federal Administrative Procedures Act (APA). Federal court decisions have taken a consistent view, namely that agencies not subject to the APA are not federal agencies in the conventional sense and are therefore not subject to NEPA or similar laws imposing requirements on “federal agencies.”

*Comments by Section, Part 806*

*Section 806.3—Definitions*

*Comment:* The 30-day rule in the proposed definition of flowback means that fluid produced from the well bore from the 31st day until the well is placed in production is neither flowback or production fluid within the definition (unless the well is placed into production during the initial 30-day period).

*Response:* Agreed. The proposed definition is modified to remove the 30-day reference and to make clear that return flow recovered post-hydrofracture and pre-production is defined as flowback.

*Comment:* The word “siting” in the definitions of “hydrocarbon development” and “unconventional natural gas development” is inconsistent with the “initiation of construction” standard in the Commission’s project review regulations. The regulations specify the “spudding of the well” to be the initiation of a well project.

*Response:* Agreed. The word “siting” is deleted from this definition to avoid the inconsistency.

*Comment:* The definition of “project” does not make clear that “unconventional natural gas development” is a subset of “hydrocarbon development activity.”

*Response:* Language is inserted in the definition to clarify that the term is a sub-category of hydrocarbon development.

*Comment:* Several comments expressed disagreement with the proposed definition of “tophole water,” with one suggesting use of Pennsylvania’s definition instead and another claiming that the definition is too vague.

*Response:* The tophole water definition is replaced with a modified version of the Pennsylvania definition. The modification, notably removing the reference to surface water, makes it generally consistent with New York’s interpretation of the term and allows for more basinwide consistency.

*Section 806.4—Projects Requiring Review and Approval Paragraphs 806.4(a)(3)(v) & (vi)*

*Comment:* The phrase “in such manner as to isolate it from the waters of the basin” is too vague and should be replaced with a reference to the actual controls exercised by the member states. Also, because the industry may mix the waters of the basin withdrawn from surface and ground water sources with flowback or production fluids

in preparation for hydrofracture use, it is not possible to isolate it from the waters of the basin if read strictly.

*Response:* The “isolate” terminology is replaced with “provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdictions.” The same language has also been inserted in Paragraph 806.4(a)(3)(vi), which similarly addresses diversions of flowback or production fluids, and is substituted in Paragraph 806.22(f)(11)(iii) for the same reason.

*Comment:* There is no clear requirement that project sponsors keep track of interbasin transfers of flowback and production fluids.

*Response:* Language is added to paragraphs 806.4(a)(3)(v) and (vi) reinforcing the requirement that all monitoring and reporting requirements applicable to the pad site ABR must be met. Similar language is added to paragraph 806.22(f)(11) to meet the same concerns about tracking.

*Paragraph 806.4(3)(vi)*

*Comment:* The use of the phrase “the same” implies that each tank load of flowback or production fluid would require separate approval.

*Response:* The language is replaced with “flowback or production fluids” to remove any uncertainty.

*Section 806.13—Submission of Application*

*Comment:* The phrase “Project sponsors of projects subject to review and approval” should properly be changed to read “Sponsors of projects subject to review and approval.”

*Response:* Agreed. The suggested change is incorporated into the final rulemaking.

*Section 806.14—Contents of Application*

*Paragraph 806.14(a)*

*Comment:* With respect to renewal applications, there is no clear indication that they will be made subject to any approval standards.

*Response:* To remove any ambiguity, and to further clarify the original intent concerning renewal standards, the phrase “shall be subject to the standards set forth in Subpart C—Standards for Review and Approval of this Part” is added to this paragraph.

*Section 806.15—Notice of Application*

*Paragraph 806.15(e)*

*Comment:* The requirement for a newspaper notice in areas where a wastewater discharge source is to be used is unworkable where such water is mixed with other water sources at the initial destination and is then redistributed, oftentimes to other locations not contemplated at the time notice is given.

*Response:* The word “initially” is added before the phrase “used for natural gas development” to limit this requirement to the initial location(s) where this water is contemplated for use at the time of application.

*Section 806.22—Standards for Consumptive Use of Water*

*Paragraph 806.22(f)(10)*

*Comment:* Extension of ABR approval terms to 15 years will essentially lessen or weaken the oversight that the Commission exercises over gas drilling activities.

*Response:* Though the Commission feels that there is a fundamental misunderstanding by some who commented

about the ongoing oversight that it exercises over approved projects, and the ability of the Commission to reopen approvals, it is willing to retain the current approval term with the addition of procedures for renewal of ABRs. Therefore, the proposed change is removed from the final rulemaking.

*Paragraph 806.22(f)(11)*

*Comment:* Need to make clear that this paragraph applies to the use of sources in addition to those sources approved for use by the project sponsor pursuant to § 806.4.

*Response:* Wording is added to the beginning of this paragraph to make the suggested clarification.

*Paragraph 806.22(f)(11)(i), (ii), and (iv)*

*Comment:* Tophole water, precipitation and storm water collected on the pad site or water obtained from a hydrocarbon storage facility can be contaminated, so there is a need to appropriately limit its use.

*Response:* Language is added limiting the use of this water to drilling or hydrofracture stimulation only, or in the case of paragraph 806.22(f)(11)(iv), limiting the use to that provided for in the approval.

*Paragraph 806.22(f)(11)(iii)*

*Comment:* As defined, flowback and production fluids do not cover all fluids encountered in the drilling process that serve as a water source under current practice. For example, water can be recovered from drilling muds. Also, such fluids can be recovered from production well sites, in addition to drilling pad sites or hydrocarbon water storage facilities. Current Commission policy allows for the reuse of such fluids.

*Response:* Drilling fluids and formation fluids are added to this paragraph to cover all fluids recovered during the drilling process and used under current practice for hydrofracture stimulation. The term “production well site” is also added to clarify the sites from which such fluids can be recovered. The word “only” is also added to this paragraph to make clear that these fluids may only be used for hydrofracture stimulation. Language is also added clarifying that all such fluids must be handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

*Paragraph 806.22(f)(14)*

*Comment:* The provisions of the proposed paragraph 806.22(f)(13) pertaining to hydrocarbon water storage facilities need to be separated from provisions relating to public water supply and wastewater sources because of the possible application of the terms to third party water purveyors building hydrocarbon water storage facilities that may not be associated with ABRs.

*Response:* The changes incorporated into the final rule break out a separate paragraph 806.22(f)(14), clarifying the scope and intent, but make no substantive changes to the provisions contained in the proposed rulemaking. The rule is intended to provide for the approval of such facilities (not otherwise associated with an ABR) to provide a mechanism for monitoring, reporting and tracking associated with such facilities, and to allow for the industry to efficiently register such sources for use.

*Paragraph 806.22(f)(15)*

*Comment:* The language in paragraphs 806.22(f)(12)(i) and (ii) relating to providing a copy of any registration or source approval to the appropriate agency of a member state, etc., is repetitive.

Response: Language related to registrations and source approvals that is repetitive is removed and restated once in new paragraph 806.22(f)(15).

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

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

Part 806—Review and Approval of Projects

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.

Subpart A—General Provisions

2. Amend § 806.3 by adding definitions for “Flowback,” “Formation fluids,” “Hydrocarbon development,” “Hydrocarbon water storage facility,” “Production fluids,” “Tophole water,” and “Unconventional natural gas development,” and revising the definition of “Project” to read as follows:

§ 806.3 Definitions.

\* \* \* \* \*

Flowback. The return flow of water and formation fluids recovered from the wellbore of an unconventional natural gas or hydrocarbon development well following the release of pressures induced as part of the hydraulic fracture stimulation of a target geologic formation, and until the well is placed into production.

Formation fluids. Fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, vugs, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.

\* \* \* \* \*

Hydrocarbon development. Activity associated with the drilling, casing, cementing, stimulation and completion of wells, including but not limited to unconventional natural gas development wells, undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations.

Hydrocarbon water storage facility. An engineered barrier or structure, including but not limited to tanks, pits or impoundments, constructed for the purpose of storing water, flowback or production fluids for use in hydrocarbon development.

\* \* \* \* \*

Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a by-product of the production activity.

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of hydrocarbon development activity, including that related to unconventional natural gas development, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are

undertaken, and all water-related appurtenant facilities and activities related thereto.

\* \* \* \* \*

Tophole water. Water that is brought to the surface while drilling through the strata containing fresh groundwater. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man induced conditions.

Unconventional natural gas development. Activity associated with the drilling, casing, cementing, stimulation and completion of wells undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

\* \* \* \* \*

3. In § 806.4, revise paragraph (a)(3) introductory text, add paragraphs (a)(3)(v) and (a)(3)(vi), and revise paragraph (a)(8), as follows:

§ 806.4 Projects requiring review and approval.

(a) \* \* \*

(3) Diversions. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (a)(3)(i) through (a)(3)(iv) of this section shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (a)(3)(v) and (a)(3)(vi) of this section shall be subject to regulation pursuant to § 806.22(f).

\* \* \* \* \*

(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f) and provided all monitoring and reporting requirements applicable to such approval are met.

(vi) The diversion of flowback or production fluids from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided all monitoring and reporting requirements applicable to the Approval by Rule are met and it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

\* \* \* \* \*

(8) Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

\* \* \* \* \*

**Subpart B—Application Procedure**

4. Revise § 806.13 to read as follows:

**§ 806.13 Submission of application.**

Sponsors of projects subject to review and approval of the Commission under §§ 806.4, 806.5 or 806.6, or project sponsors seeking renewal of an existing approval of the Commission, shall submit an application and applicable fee to the Commission, in accordance with this subpart.

5. In § 806.14, revise paragraph (a) introductory text to read as follows:

**§ 806.14 Contents of application.**

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, shall be subject to the standards set forth in Subpart C—Standards for Review and Approval of this part, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

\* \* \* \* \*

6. In § 806.15, revise paragraphs (d), (e) and (f) and add paragraph (g), as follows:

**§ 806.15 Notice of application.**

\* \* \* \* \*

(d) For applications submitted under § 806.22(f)(13) for 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)(13) for 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 initially be used for natural gas development.

(f) For applications submitted under § 806.22(f)(14) for a hydrocarbon water storage facility, 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 in which the facility is located.

(g) 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.

**Subpart C—Standards for Review and Approval**

7. In § 806.22, revise paragraphs (e)(1), (e)(6), (f) introductory text, (f)(1), (f)(4), (f)(6), (f)(8), (f)(9), (f)(11), and (f)(12), and add paragraphs (f)(13), (f)(14) and (f)(15), to read as follows:

**§ 806.22 Standards for consumptive uses of water.**

\* \* \* \* \*

(e) \* \* \*

(1) Except with respect to projects involving hydrocarbon 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.

\* \* \* \* \*

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

\* \* \* \* \*

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development.

(1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

\* \* \* \* \*

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

\* \* \* \* \*

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

\* \* \* \* \*

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, 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). Any sources of water

approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

\* \* \* \* \*

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Precipitation or stormwater collected on the drilling pad site, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(iv) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section, provided it is used only for the purposes authorized therein, and in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, 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 the manner prescribed by the Commission.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a

form and in the manner 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.

(14) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize water obtained from a hydrocarbon water storage facility that is not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director and are constructed and maintained in compliance with all standards and requirements of the applicable member jurisdiction. The owner or operator of any such facility shall submit a request for approval on a form and in the manner 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.

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. 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 or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements as may be contained in such approval or otherwise required by this part.

Dated: March 6, 2012.

PAUL O. SWARTZ,  
*Executive Director*

**Fiscal Note:** Fiscal Note 72-9 remains valid for the final adoption of the subject regulation.

*(Editor's Note: The regulations of the Commission, 25 Pa. Code Chapter 806, are amended by amending § 806.1 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 (2011) (relating to review and approval of projects) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 12-733. Filed for public inspection April 20, 2012, 9:00 a.m.]