

PROPOSED RULEMAKING

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CH. 806]

Review and Approval of Projects

Summary: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to simplify and clarify the process for transferring approvals and to add sections dealing with general permits and modifications to approvals. These rules are designed to improve the Commission's administrative processes and add regulatory clarity.

Dates: Comments on the proposed rulemaking may be submitted to the Commission on or before November 9, 2015. The Commission has scheduled a public hearing on the proposed rulemaking, to be held October 29, 2015, in Grantville, Pennsylvania. The location of the public hearing is listed in the Addresses section of this document.

Addresses: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net.

The public hearing will be held on October 29, 2015, at 7:00 p.m., at the East Hanover Township Municipal Building, Main Hall, 8848 Jonestown Road, Grantville, PA. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

For Further Information Contact: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at www.srbc.net.

Supplementary Information: The Commission is proposing to make regulatory changes to improve its administrative processes and add regulatory clarity. The major focus of these changes is to revise and simplify the Commission's transfer regulation, explicitly add provisions for the modification of a Commission approved project, and establish a process for the Commission to develop general permits.

1. *18 CFR 806.6. Transfer of approvals.* The Commission proposes to delete the current section and replace it with simplified and easier to understand regulatory language. This revision still allows the Executive Director to approve transfers of approvals. For approvals greater than 10 years old, the current regulation requires the project sponsor to submit entirely new applications in order to transfer the project. The Commission has received complaints that this requirement is onerous and has the effect of cutting short the term of the approval solely because ownership is changing, despite no changes to the project itself or the use of the water. The revised language will allow the transfer to occur conditioned on the submission of an updated metering and monitoring plan consistent with 18 CFR 806.30. For projects undergoing a change of ownership that have an unapproved withdrawal, consumptive use and/or diversion associated with them, usually referred to as grandfathered aspects of the project, the current requirement to submit applications for these grandfathered aspects contained in 18 CFR 806.6(c) and 18 CFR 806.4(a)(1)(iv), (a)(2)(v) and

(a)(3)(iv) is retained. However, the revised language removes the requirement that these applications must be made within 90 days of the date of a change in ownership. The Commission found that it was difficult for project sponsors to meet this deadline. The revised language will allow the Executive Director to approve the transfer with a condition requiring these applications to be made. This will allow the Commission to consider the complexity and number of grandfathered sources that will be subject to the application requirements and establish an appropriate and realistic timeframe in the condition for these applications to be submitted. Due to the revision of the language in 18 CFR 806.6, a corresponding revision was required to 18 CFR 806.4(c).

2. *18 CFR 806.15. Notice of Application.* In paragraph (a), the Commission proposes to amend the time for notices to be published from 10 days to 20 days. The Commission has received feedback that the 10 days is not always sufficient, especially when newspaper notices are required. Extending this time frame allows project sponsors more time to complete the notices without compromising the public's opportunity to provide comment. New paragraphs (h) and (i) were added to provide specific requirements for the newly proposed 18 CFR 806.17 (regarding general permits) and 18 CFR 806.18 (regarding minor modifications), respectively.

3. *New 18 CFR 806.17. General Permits.* Currently, the Commission does not have a process to establish general permits. The Commission is proposing a new section that would provide the Commission the ability to develop, issue and administer general permits. The new regulation provides procedures for issuance and administration of permits, as well as standards for denial of coverage and when an individual approval would be required. In crafting this regulation, the Commission looked to similar regulations of its member jurisdictions for guidance. In addition, changes to 18 CFR 806.4 and 806.14 were necessary to accommodate the addition of this new section.

4. *New 18 CFR 806.18. Approval modifications.* The Commission is proposing to add a section specific to modifications of approvals. The Commission currently accepts applications for modification, but does not have a clear process set forth in the regulations. The proposed section also establishes the concept of minor and major modifications. The process for minor modifications provides a process for minor changes to approval conditions that are more likely to be administrative in nature and have a low degree of controversy, and therefore can appropriately be authorized by the Executive Director. In addition, a change to 18 CFR 806.14 is necessary to provide specific application requirements for minor modifications. Minor modifications are specifically listed. All modifications that are not specifically listed as a minor modification are major modifications. As a part of the rulemaking, the Commission has included a non-exhaustive list of common major modifications to provide guidance to the public and the regulated community.

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 proposes to amend 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.

2. Amend § 806.4 by adding paragraph (a)(9) and revising paragraph (c) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) * * *

(9) Any project subject to coverage under a general permit issued under § 806.17.

* * * * *

(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 on a transfer application under § 806.6.

3. Revise § 806.6 to read as follows:

§ 806.6 Transfer of approvals.

(a) An existing Commission approval may be transferred to a new project sponsor by the Executive Director provided:

(1) The application for transfer is submitted within 90 days of a transfer or change in ownership of a project.

(2) The new project sponsor operates the project subject to the same terms and conditions of the existing approval pending approval of the transfer application.

(3) Any noncompliance by the existing project sponsor associated with the project or by the new project sponsor associated with other projects is resolved to the Commission's satisfaction.

(4) If the existing approval is greater than 10 years old, the transfer shall be conditioned to require the submission of an updated metering and monitoring plan consistent with the requirements of § 806.30.

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b), the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14.

(6) Any modifications proposed by the new project sponsor shall be subject to a separate application and review process under §§ 806.14. and 806.18.

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) of this section include:

(1) The project has an associated pre-compact consumptive water use that has not been subject to approval or had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) The project has an associated groundwater withdrawal that was initiated prior to July 13, 1978 and that has not been approved by the Commission.

(4) The project has an associated surface water withdrawal that was initiated prior to November 11, 1995 and that has not been approved by the Commission.

(5) The project has a consumptive water use approval and has an associated withdrawal that has not been approved by the Commission.

(c) Upon undergoing a change of name that does not affect ownership or control of the project, the project sponsor must request a reissuance of the project's approval by the Executive Director within 90 days from the date of the change.

4. Amend § 806.14 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 806.14 Contents of applications.

(a) Except with respect to applications to renew an existing Commission approval and Notices of Intent for approvals by rule and general permits, 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.

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(d) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

- (1) Description of the project;
- (2) Description of all sources, consumptive uses and diversions related to the project;
- (3) Description of the requested modification;
- (4) Statement of the need for the requested modification;
- (5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin; and
- (6) Any other information that the Commission or Executive Director deems necessary.

5. Amend § 806.15 by revising paragraph (a) and adding paragraphs (h) and (i) 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 (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 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.

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(h) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide the NOI to the appropriate agency of the member State and each municipality and county planning agency in which the project is located and any additional notice identified in the general permit.

(i) For applications for minor modifications, the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county planning agency in which the project is located.

6. Add § 806.17 to read as follows:

§ 806.17 General permits.

(a) *Coverage and purpose.* The Commission may issue a general permit, in lieu of issuing individual approvals, for a specifically described category of diversions, water withdrawals and consumptive uses that:

(1) Involve the same or substantially similar types of operations or activities,

(2) Require the same limitations or operating conditions, or both,

(3) Require the same or similar monitoring and reporting, and

(4) Will result in minimal adverse impacts.

(b) *Procedure for issuance.* (1) At least 30 days prior to the issuance of a general permit, the Commission shall publish notice in the *Federal Register* and the member jurisdiction administrative bulletins of the intent to issue a general permit.

(2) At least 30 days shall be provided for interested members of the public and Federal, State and local agencies to provide written comments on a proposed general permit.

(3) The Commission or Executive Director may, in its discretion, hold a public hearing on a proposed general permit.

(4) The issuance of a general permit adopted by the Commission will be published in the *Federal Register* and the member jurisdiction administrative bulletins. This notice shall set forth the effective date of the general permit.

(c) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this section.

(1) Any general permit issued under this section shall set forth the applicability of the permit and the conditions that apply to any diversion, withdrawal or consumptive use authorized by such general permit.

(2) The Commission may fix a term to any general permit issued.

(3) A project sponsor shall obtain permission to divert, withdraw or consumptively use water in accordance with a general permit by filing a Notice of Intent (NOI) with the Commission, in a form and manner determined by the Commission.

(4) Approval of coverage under a general permit shall be determined by the Executive Director or by any other manner that the Commission shall establish for any general permit.

(5) The Commission may set a fee for NOIs to any general permit.

(6) A project sponsor shall provide notice for NOIs in accordance with § 806.15(h) and any additional notice requirements that the Commission may adopt for any general permit.

(7) The requirements of § 806.16 apply to the review of NOIs to any general permit.

(8) Upon reissuance or amendment of a general permit, all project sponsors permitted to divert, withdraw or consumptively use water in accordance with the previous general permit shall be permitted to continue to operate with the renewed or modified general permit unless otherwise notified by the Commission.

(d) *Denial of coverage.* The Executive Director will deny or revoke coverage under a general permit when one or more of the following conditions exist:

(1) The project or project sponsor does not or can no longer meet the criteria for coverage under a general permit.

(2) The diversion, withdrawal or consumptive use, individually or in combination with other similar Commission regulated activities, is causing or has the potential to cause adverse impacts to water resources or competing water users.

(3) The project does not meet the requirements of § 806.21(a) or (b).

(4) The project includes other diversions, withdrawals or consumptive uses that require an individual approval and the issuance of both an individual approval and a general permit for the project would constitute an undue administrative burden on the Commission.

(5) The Executive Director determines that a project cannot be effectively regulated under a general permit and is more effectively regulated under an individual approval.

(e) *Requiring an individual approval.* If coverage is denied or revoked under paragraph (d) of this section, the project sponsor shall be notified in writing. The notice will include a brief statement for the reasons for the decision. If coverage under a general permit was previously granted, the notice will also include a deadline for submission of an application for an individual approval. Timely submission of a complete application will result in continuation of coverage of the applicable withdrawal, consumptive use or diversion under the general permit, until the Commission takes final action on the pending individual approval application.

(f) *Action of the commission.* Action by the Executive Director denying or revoking coverage under a general permit under paragraph (d) of this section, or requiring an individual approval under paragraph (e) of this section, is not a final action of the Commission until the project sponsor submits and the Commission takes final action on an individual approval application.

7. Add § 806.18 to read as follows:

§ 806.18 Approval modifications.

(a) *General.* A project sponsor shall submit an application for modification of a current approval prior to making a change in the design, operational plans, or use as presented in the application upon which the approval was originally issued, and that will affect the terms and conditions of the current approval.

(b) *Applications for modification.* (1) A project sponsor may apply for a modification of a current approval by submitting an application for modification to the Commission.

(c) *Minor modifications.* The following are considered minor modifications:

- (1) Correction of typographical errors;
- (2) Changes to monitoring or metering conditions;
- (3) Addition of sources of water for consumptive use;
- (4) Changes to the authorized water uses;
- (5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;
- (6) Changes to the design of intakes;
- (7) Increases to total system limits that were established based on the projected demand of the project; and
- (8) Modify approval to allow the modification of extraction well network used for groundwater remediation systems.

(d) *Major modifications.* Major modifications are changes not considered to be minor modifications. Major modifications may include, but are not limited to:

- (1) Increases in the quantity of water withdrawals, consumptive uses or diversions;
- (2) Increases to peak day consumptive water use;
- (3) Increases to the instantaneous withdrawal rate or changes from a single withdrawal rate to a varied withdrawal rate;
- (4) Changes affecting passby flows requirements; and

(5) Changes that have the potential for adverse impacts to water resources or competing water users.

(e) *Notice and approval.* (1) Applications for modifications are subject to the notice requirements of § 806.15.

(2) The Commission or Executive Director may approve, approve with conditions or deny an application for minor modification, or direct that an application for major modification be made.

(3) The Commission may approve, approve with conditions or deny an application for major modification.

Dated: September 17, 2015.

ANDREW D. DEHOFF,
Executive Director

Fiscal Note: 72-12. No fiscal impact (8) recommends adoption.

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 (2015) (relating to review and approval of projects) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 15-1828. Filed for public inspection October 16, 2015, 9:00 a.m.]