



## **SUSQUEHANNA RIVER BASIN COMMISSION**

### **18 CFR Part 806**

#### **Review and Approval of Projects**

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** This document contains final rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify the water uses involved in hydrocarbon development that are subject to the consumptive use regulations, as implemented by the Approval by Rule (ABR) program.

**DATES:** Effective January 23, 2015.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, Esq., Regulatory Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: [joyler@srbc.net](mailto:joyler@srbc.net). Also, for further information on the final rulemaking, visit the Commission's website 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 September 26, 2014 (79 FR 57850); the New York Register on October 1, 2014; the Maryland Register on October 3, 2014; and the Pennsylvania Bulletin on November 1,

2014. The Commission convened a public hearing on November 6, 2014, in Harrisburg, Pennsylvania and a written comment period was held open through November 17, 2014.

### **General Comments**

Comment: The Commission received comments supportive of the changes in the terms and definitions noted in the Rulemaking. The changes are reflective of the nature of the industry and are plainly straightforward.

Response: The Commission appreciates the comments.

Comment: One commenter asked that the rulemaking not be adopted because the proposed changes restrict Commission oversight.

Response: The Commission disagrees and notes that the proposed regulations strengthen its program and clarify a greater scope of water uses by the hydrocarbon development industry subject to the Commission's ABR program.

Comment: The regulations should provide for an appeal by an impacted stakeholder before a permit is issued.

Response: The ABR process provides for a comment period during which stakeholders may raise issues of concern regarding a project before an approval is issued. This public comment period is not changed by the rulemaking. No changes to the Commission's rules related to hearings and administrative appeals were proposed and are beyond the scope of this rulemaking. Further, allowing an appeal of a Commission approval prior to the issuance of such an approval would run contrary to longstanding principles of administrative law.

### **Comments by Section, Part 806**

#### Section 806.3—Definitions

Comment: Revise the definition of “construction” to include the pad sites, access roads, rights-of-way for pipelines and intake area clearings as such project activities affect the environment.

Response: The Commission’s definition of construction is appropriate for regulation of the withdrawal and consumptive use of water and appropriate for the ABR program for the use of water by hydrocarbon development projects. The ABR program does not regulate all environmental impacts of hydrocarbon development, rather the environmental impacts to which the commenter refers are regulated by the appropriate member jurisdictions through various permitting programs, including erosion and sediment control and oil and gas management. The ABR Program supports the regulation of other aspects of hydrocarbon development projects by requiring in § 806.22(f)(7) that the project sponsor obtain all necessary permits or approvals required for the project from other federal, state or local government agencies.

Comment: The term “drilling pad site” should be changed to “well pad site” because many of the activities that are regulated on the pad site go beyond just drilling.

Response: The term “drilling pad site” is currently used in the Commission’s regulations, but was not defined. The term is used in several sections and subsections not subject to the proposed rulemaking. For this reason, the Commission declines to make this change in this final rule. However, the Commission believes the comment has merit and will consider it in a forthcoming comprehensive rulemaking that is currently under development.

Comment: In the definition of “hydrocarbon development project,” the term “hydro-seeding” is used. It is recommended to use the term “hydroseeding or other revegetation activities” instead.

Response: The Commission agrees with the comment and has made the change in the final rule.

Comment: Language should be added clarifying that all water use on-site requires Commission approval.

Response: The definition of “hydrocarbon development project” contains language that covers all water-related activities and facilities on the drilling pad site, including activities and facilities associated with the production, maintenance, operation, closure, plugging and restoration of wells or drilling pad sites that would require consumptive water usage. The use of water for these activities will be subject to Commission approval through the ABR program.

Comment: The Commission is to be applauded for revising its definitions to include water used not only for well development and drilling, but also for infrastructure.

Response: The Commission appreciates the comment. The final rule retains the language extending the ABR approvals to specific water uses off the drilling pad site, which are water used for hydro-seeding or other revegetation activities, dust suppression, and hydro-excavation of access roads and underground lines, as well as tank cleanings, related to a drilling pad site or centralized impoundments.

Comment: The Commission should extend its review to beyond the well pad.

Response: The definition of “hydrocarbon development project” includes specified facilities and activities off the drilling pad site as noted in the prior response.

Comment: A commenter opposes the Commission’s responsibility for oversight ending once a gas well has been plugged.

Response: The definition of “hydrocarbon development project” provides such a project continues “until all post-plugging restoration is completed in accordance with all applicable member jurisdiction requirements.” The Commission finds that this is an appropriate time for the Commission’s jurisdiction under § 806.22(f) to cease as the project sponsor’s consumptive water use ceases at that point.

Comment: The definition of “project” should be expanded to go beyond any “independent activity.”

Response: The Commission declines to expand the scope of the definition of “project.” The term “project” as defined matches the definition in Section 1.2 of the Susquehanna River Basin Compact, P.L. 91-575. The rulemaking provides specific definitions for “hydrocarbon development project” and “unconventional natural gas development project” to add clarity to how these activities trigger the Commission’s oversight and jurisdiction.

Comment: The definition of “project” contains a typographical error. The word “additional” should be “addition.”

Response: The Commission agrees and the correction is made in the final rulemaking.

#### Section 806.15—Notice of Application

Comment: Section 806.15(e) should be amended to require notice in a newspaper of general circulation “serving the” area which the water obtained from such source will be initially used, replacing the existing language of a newspaper of general circulation “in each” area.

Response: This specific change was not a part of the proposed rulemaking. The Commission believes the existing language is adequate.

Section 806.22—Standards for consumptive uses of water

Comment: The term for approval under section 806.22(e)(7) should be 5 years instead of 15 years.

Response: The Approval by Rule in subsection 806.22(e) relates to projects where the sole source of water is from a public water supply. This type of ABR approval currently has a term of 15 years, and the Commission did not propose or contemplate any changes to this term in the proposed rulemaking. The Commission declines to make any change to the term provided in subsection 806.22(e)(7).

Comment: The wording of subsection 806.22(f)(4) should be changed from “per gas well” to “per oil and gas well” because hydrocarbon development projects under the ABR program can relate to oil wells, gas wells or both.

Response: The Commission agrees with the comment and has made the change in this final rulemaking.

Comment: The change to subsection 806.22(f)(4) from “dust control” to “other project related activity” is an attempt to obfuscate an industry practice of using hydrofracturing wastewater by spraying it on the roads for dust suppression by folding into a broader term.

Response: The Commission disagrees with the comment. The term “dust control” in subsection 806.22(f)(4) has been replaced with the broader term “other project related activity” to appropriately reflect the broader scope of the consumptive water uses regulated by the Commission. The final regulations clarify that any consumptive uses of

water for dust control on roads related to a drilling pad site must be accounted for under the project sponsor's ABR approval. Whether a project sponsor can use waste water for dust suppression on roads is a matter regulated by the Commission's member jurisdictions, and is beyond the scope of this rulemaking.

Comment: In subsection 806.22(f)(10), the Commission noted that it was considering whether to change the duration of approvals issued under the ABR program from 5 years to a longer term of up to 15 years and specifically sought public comment regarding such change. Some commenters expressed support for a change to 15 years out of interest in greater flexibility for the industry in planning and suggested that a longer term would potentially result in fewer sources being permitted for use. One commenter recommended an initial term of five year and renewal terms of 15 years. Other commenters opposed any extension of the current 5-year term noting: Shorter terms allow the Commission to better consider evolving technologies and changes in industry practices; longer terms reduce opportunities for public input into ABRs; and shorter terms allow the Commission to more frequently adjust necessary management practices, procedures and reporting requirements.

Response: The rulemaking as proposed retained the 5-year term currently in subsection 806.22(f)(10). Based on its deliberations, including the public comment, the Commission has decided to retain the 5-year term in this final rulemaking.

### **Transition Issues**

This rulemaking takes effect on January 23, 2015. The Commission recognizes that project sponsors may have let ABRs expire for currently operating projects that, based on the clarifications provided in this final rule, will need to be covered under an ABR

approval. The Commission encourages project sponsors to submit applications for these previously approved hydrocarbon development projects in a timely fashion. If application is made prior to June 30, 2015, the application may be made at the fee for ABR renewals. Any applications made after June 30, 2015, for currently operating projects that allowed their ABR approvals to expire will be made at the fee for new ABR applications and will be subject to active compliance efforts by the Commission, up to and including the assessment of civil penalties.

### **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. In § 806.3:

- a. Revise the definition for “Construction”;
- b. Add, in alphabetical order, a definition of “Drilling pad site”;
- c. Remove the definition for “Hydrocarbon development” and add in its place, in alphabetical order, the definition of “Hydrocarbon development project”;
- d. Revise the definition of “Project”; and

e. Remove the definition for “Unconventional natural gas development” and add in its place, in alphabetical order, the definition of “Unconventional natural gas development project”.

The revisions and additions read as follows:

**§ 806.3 Definitions.**

\* \* \* \* \*

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility, involving or intended for the withdrawal, conveyance, storage or consumptive use of the waters of the basin. For purposes of unconventional natural gas development projects subject to review and approval pursuant to § 806.4(a)(8), initiation of construction shall be deemed to commence upon the drilling (spudding) of a gas well, or the initiation of construction of any water impoundment or other water-related facility to serve the project, whichever comes first.

\* \* \* \* \*

Drilling pad site. The area occupied by the equipment or facilities necessary for or incidental to drilling, production or plugging of one or more hydrocarbon development wells and upon which such drilling has or is intended to occur.

\* \* \* \* \*

Hydrocarbon development project. A project undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations, including but not limited to the drilling, casing, cementing, stimulation and completion of unconventional natural gas development wells, and all other activities and facilities associated with the foregoing or with the production, maintenance, operation, closure, plugging and restoration of such

wells or drilling pad sites that require water for purposes including but not limited to, re-stimulation and/or re-completion of wells, fresh water injection of production tubing, use of coiled tubing units, pumping, cement hydration, dust suppression, and hydro-seeding or other revegetation activities, until all post-plugging restoration is completed in accordance with all applicable member jurisdiction requirements. The project includes water used for hydro-seeding or other revegetation activities, dust suppression and hydro-excavation of access roads and underground lines, as well as cleaning of tanks, related to a drilling pad site and centralized impoundments.

\* \* \* \* \*

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.

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Unconventional natural gas development project. A hydrocarbon development project undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

\* \* \* \* \*

3. In § 806.15, revise paragraph (e) to read as follows:

**§ 806.15 Notice of application.**

\* \* \* \* \*

(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 hydrocarbon development.

\* \* \* \* \*

4. In § 806.22, revise paragraphs (e)(7), (f) introductory text, (f)(1), (f)(4), (f)(10), (f)(11) introductory text, and (f)(12) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(7) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire 15 years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

\* \* \* \* \*

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

(1) Any unconventional natural gas development project subject to review and approval under § 806.4(a)(8), or any other hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6, 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 oil or gas well or drilling pad site, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and other project-related activity. 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.

\* \* \* \* \*

(10) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire five years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, 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:

\* \* \* \* \*

(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 hydrocarbon 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 the manner prescribed by the Commission.

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Dated: December 12, 2014.

**Stephanie L. Richardson,**  
Secretary to the Commission.

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