

## 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 rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to update the requirements and standards for review of projects, amend the rules dealing with groundwater withdrawals, and revise the regulatory triggers related to grandfathered sources.

**DATES:** This rule is effective on October 1, 2021.

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

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, Esq., General Counsel and Secretary, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; email: [joyler@srbc.net](mailto:joyler@srbc.net). Also, for further information, including a comment and response document, visit the Commission's website at <http://www.srbc.net>.

**SUPPLEMENTARY INFORMATION:** Notice of proposed rulemaking was published in the *Federal Register* on March 26, 2021; *New York Register* on April 14, 2021; *Pennsylvania Bulletin* on April 10, 2021; and *Maryland Register* on April 9, 2021. The Commission held two informational webinars explaining the proposed rulemaking on April 6 and April 14, 2021. The Commission convened a public hearing held by telephone on May 6, 2021. A written comment period was held open through May 17, 2021. Concurrent with the proposed rule, the Commission also released three draft groundwater related policies for public review and comment.

Three comments were received during the comment period. One commenter appreciated the Commission's proposal to eliminate some of the triggers for the loss of grandfathering under § 806.4(a)(2). The commenter offered amended language for § 806.4(a)(2)(ii) and (iii) for the Commission's consideration that would change the Commission's intent and would limit any review of a grandfathered source increasing its quantity to only the increased withdrawal amount and not to the entire withdrawal. This would be a substantial change of the Commission's current practice for the loss of grandfathering triggered by an increase

in quantity from a grandfathered source. The Commission declines to make this change. The preamble to the proposed rule makes the Commission's intent for the regulations clear, and the regulations reflect that intent. This rulemaking is intended to change the Commission's overall policy regarding the number and scope of the triggers for losing grandfathering; however, it is not intended to provide a permanent exemption from eventual regulation of grandfathered sources or withdrawal quantities.

A second commenter commended the Commission for acting upon the need for regulatory clarification, simplification, and recalibration of project review based on the scale and quantity (potential impact) of the project. The commenter specifically appreciated the proposed changes regarding the consideration of small and medium capacity sources; the elimination of potential triggers for loss of grandfathered source status; the addition of the Alternative Hydrogeologic Evaluation (AHE) process; and the further development of the minor modification process. In addition, the commenter suggested that the Commission create a redefined docket appeal process under 18 CFR 808.2 and 808.3. This final aspect of the comment is outside the scope of the proposed rulemaking that was noticed and subjected to public comment. Therefore, the Commission cannot make any changes to these sections as a part of the final rule.

A third commenter expressed concerns about the addition of § 806.4(a)(3)(viii) and (ix) that would allow the diversion of drinking water or wastewater into or out of the basin without Commission approval for municipalities on the basin divide if the diversion occurs by or through a publicly or privately owned public water supplier or wastewater treatment works. The commenter opined that this change is not justified or supported by sufficient rationale. The Commission disagrees and declines to make the change requested. The regulation of into-basin diversions is focused on water quality coming into the Basin and the protection of the Basin's water resources. Drinking water quality and wastewater quality are regulated solely by partner agencies and the Commission does not have water quality standards, in an effort to not duplicate partner agency regulatory authorities. The final regulation simply exempts, from Commission review, the movement across Basin boundaries of treated public water or wastewater that has been managed for water quality

concerns by partner agencies. The final regulation does not pose any new threats or exacerbate existing threats to the quality of the Basin's water resources. Withdrawals that supply out-of-basin diversions by communities straddling the Basin divide will still be subject to the Commission's review and application of its standards. Those standards, as for all withdrawals, are at 18 CFR 806.23 and are equivalent to, if not broader, than those in § 806.24. Thus, the concerns raised in the comment are addressed by the Commission's review standards to the withdrawal that supports the diversion.

#### 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.*

■ 2. In § 806.3:

- a. Add in alphabetical order a definition for "Captured stormwater";
- b. Remove the definition of "Hydrocarbon water storage facility"; and
- c. Add in alphabetical order definitions for "Medium capacity source" and "Small capacity source".

The additions read as follows:

#### § 806.3 Definitions.

\* \* \* \* \*

**Captured stormwater.** Precipitation or stormwater collected on the drilling pad site, including well cellar water, waters from secondary containment, and water collected from post construction stormwater management features.

\* \* \* \* \*

**Medium capacity source.** A ground or surface water source with a withdrawal of more than 20,000 but less than 100,000 gallons per day over a consecutive 30 day-average.

\* \* \* \* \*

**Small capacity source.** A ground or surface water source with a withdrawal of 20,000 gallons or less per day over a consecutive 30-day average.

\* \* \* \* \*

■ 3. Revise § 806.4 to read as follows:

#### § 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under

§ 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) *Consumptive use of water.* Any consumptive use project described in this paragraph (a)(1) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water except a small capacity source, shall also be subject to the standards set forth in § 806.23 as the Commission deems necessary. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided in this paragraph (a)(1), agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects with pre-compact consumptive use:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its consumptive use in accordance with subpart E of this part.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) *Withdrawals.* Any project, including all of its sources, described in this paragraph (a)(2) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 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 (a)(2) 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.

(i) Any project initiated on or after July 13, 1978 for groundwater or November 11, 1995 for surface water withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or any project initiated after January 1, 2007 withdrawing a consecutive 30-day average of 100,000 gpd or more from a combination of sources.

(ii) Any new source added to projects with previously approved withdrawals by the Commission.

(iii) Any withdrawal increased above that amount which was previously approved by the Commission.

(iv) With respect to projects with grandfathered withdrawals:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or in combination from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its withdrawals in accordance with subpart E of this part.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination

from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(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 (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 (vi) of this section shall be subject to regulation pursuant to § 806.22(f).

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin by any amount, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by any amount.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin by any amount or involving a diversion of water out of the basin by an average of 20,000 gallons of water per day or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(v) The interbasin diversion of any flowback or production fluids, tophole water and captured stormwater 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, tophole water and captured stormwater 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.

(vii) The diversion of any flowback or production fluids, tophole water and captured stormwater from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (a)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(viii) The diversion of drinking water and/or municipal wastewater out of the basin to a municipality on or straddling the basin divide if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3) of this section or as a consumptive use under paragraph (a)(1) of this section.

(ix) The diversion of drinking water and/or municipal wastewater into the basin to a municipality if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3).

(4) *Crossing state boundaries.* Any project on or crossing the boundary between two member states.

(5) *Significant effect.* Any project in a member state having a significant effect on water resources in another member state.

(6) *Comprehensive plan.* Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) *Determination.* Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

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

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

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v), or (a)(3)(iv) of this section if it is a:

(1) Transfer of a project to the transferor's spouse or one or more lineal descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(s) and their spouses, continues to be 51 percent or greater; or

(2) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

■ 4. Amend § 806.6 by revising paragraphs (a)(5) and (b) and by adding paragraph (d) to read as follows:

**§ 806.6 Transfer of approvals.**

(a) \* \* \*

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, 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 and paragraph (d) of this section.

\* \* \* \* \*

(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 had mitigation approved by the Commission.

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

(3) Projects registered under subpart E of this part.

\* \* \* \* \*

(d) Any unapproved activities associated with a transferred project shall be subject to the following:

(1) The transfer approval shall be conditioned to include monitoring requirements under § 806.30 for all previously unapproved sources and activities.

(2) The transfer approval may include any other conditions consistent with this part deemed necessary by the Executive Director.

(3) The approved transfer will act as the unapproved activity's temporary approval for a period of five years, at which point, the project sponsor shall submit an application for review and approval consistent with subpart B of this part.

(4) The Executive Director may require hydrogeologic evaluation under § 806.12 and/or formal review and approval of any of the previously unapproved sources sooner if those sources show a substantial likelihood of environmental harm, interference with other water users or water availability issues.

■ 5. Revise § 806.12 to read as follows:

**§ 806.12 Hydrogeologic evaluation.**

Evaluation of groundwater withdrawal projects requires a hydrogeologic evaluation, which may be an aquifer test in accordance with an approved plan or an alternative hydrogeologic evaluation in conformance with this section.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform an aquifer test.

(b) Unless an alternative hydrogeologic evaluation method is approved, the project sponsor shall prepare an aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide

temporary water supply if an aquifer test results in interference with an existing water use.

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

(g) This section does not apply to withdrawals related to mine dewatering, water resources remediation or AMD facilities, provided the activity is governed by another regulatory agency.

(h) Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or documentation of an approved prior waiver by the Commission may meet the requirements of this section for that previously approved groundwater source.

(i) In lieu of completing a Commission-approved aquifer test, the project sponsor may submit an Alternative Hydrogeologic Evaluation (AHE) that provides supporting information equivalent to that which would be obtained from completing an approved aquifer test under paragraph (a) of this section. This supporting information includes, but is not limited to, prior aquifer testing data, the withdrawal setting and location, existing site specific operational data, and prior Commission approved waivers of aquifer testing requirements. Commission staff may approve an AHE for a project or require completion of a Commission approved aquifer test in accordance with paragraph (a) of this section.

(j) This section does not apply to withdrawals from a small capacity source, unless otherwise determined by the Executive Director.

■ 6. Amend § 806.14 by:

■ a. Revising paragraphs (a)(2) and (3), (b)(1) and (2), and (c)(2), (3), and (5);

■ b. Adding paragraphs (c)(10) and (11); and

■ c. Revising paragraph (d).

The revisions and additions read as follows:

**§ 806.14 Contents of application.**

(a) \* \* \*

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and description of all sources,

consumptive uses and diversions related to the project.

\* \* \* \* \*

(b) \* \* \*

(1) *Surface water.* (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a water with exceptional water quality, or as required by the Commission.

(2) *Groundwater.* (i) With the exception other projects which are addressed in paragraph (b)(6) of this section, the project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) An interpretive report that includes the results of a Commission approved aquifer test and an updated groundwater availability estimate if changed from the aquifer test plan,

(B) An approved AHE,

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met along with an updated groundwater availability estimate.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

\* \* \* \* \*

(c) \* \* \*

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: Purpose, proposed quantity to be withdrawn or consumed if applicable, description of all sources, consumptive uses and diversions related to the project and any proposed project modifications.

\* \* \* \* \*

(5) An as-built and approved metering plan that conforms to § 806.30.

\* \* \* \* \*

(10) Changes to the facility design.

(11) Any proposed changes to the previously authorized purpose.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.* (i) Description and as-built of intake structure.

(ii) For renewals seeking to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater.* (i) The project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) Provide an interpretive report that includes the results of a Commission approved aquifer test and an updated GW availability estimate if changed from the aquifer test plan;

(B) An approved AHE; or

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met.

(ii) An interpretive report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed materials to demonstrate satisfaction of § 806.12, which may include a hydrogeologic report from previous aquifer testing, an approved AHE or prior determination of waiver of aquifer testing.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year drought recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (*i.e.*, other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use.* (i) Consumptive use calculations.

(ii) Mitigation plan, including method of consumptive use mitigation.

(4) *Into basin diversion.* (i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(c).

(ii) Identification of the source and current water quality characteristics of the water to be diverted.

(5) *Out of basin diversion.* (i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(b).

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) In lieu of a hydrogeologic evaluation, a copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

\* \* \* \* \*

■ 7. Revise § 806.15 to read as follows:

**§ 806.15 Notice of application.**

(a) Except with respect to paragraphs (e), (f), and (g) of this section, 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 and the appropriate county agencies 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 (d) 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 be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2) for new projects, major modifications, and renewals requesting an increase, 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-quarter 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.

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

(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) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities, counties and appropriate county agencies required under 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. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

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

(f) For applications for minor modifications and approvals by rule under § 806.22(e), the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county and appropriate county agencies in the which the project is located.

(g) For NOIs seeking an approval pursuant to § 806.22(f), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality,

county and appropriate county agencies, and the owner of the property on or in which the drilling pad site is located. For requests for approval submitted under § 806.22(f)(13), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies in which the public water supply is located.

■ 8. Amend § 806.18 by revising paragraph (c) to read as follows:

**§ 806.18 Approval modifications.**

\* \* \* \* \*

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

(1) Correction of typographical or other errors;

(2) Changes to monitoring or metering conditions;

(3) Addition, amendment or removal of sources of water for consumptive use or project descriptions;

(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 and minor changes to the location of intakes;

(7) Increases to total system limits that were established based on the projected demand of the project; and

(8) Modifications of extraction well network used for groundwater remediation systems.

(9) Adjustments to a term of an approval to align the approval with a member jurisdiction approval or another docket approval by the Commission.

(10) Changes to the method of consumptive use mitigation to payment of the mitigation fee, providing for discontinuance, use of storage or an adequate conservation release in accordance with a previous Commission determination.

(11) Addition of stormwater as a source of consumptive use, including an increase to the total consumptive use related to the stormwater use.

(12) Extension of the date of commencement of a withdrawal, diversion or consumptive use established under § 806.31(b).

\* \* \* \* \*

■ 9. Amend § 806.22 by revising paragraphs (e)(6) and (8) and (f)(4) and (11) through (13), and removing and reserving paragraph (f)(14).

The revisions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(6) *Mitigation*. The project sponsor shall comply with mitigation in accordance with paragraph (b)(1)(iii) or (b)(2) or (3) of this section.

\* \* \* \* \*

(8) *Decision*. The Executive Director may grant, deny, suspend, revoke, 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. Use of small capacity sources or sources used only for supply of potable water may be appropriately included as a part of this approval by rule in the discretion of the Executive Director.

\* \* \* \* \*

(f) \* \* \*

(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. The project sponsor shall submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

\* \* \* \* \*

(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) Captured stormwater, 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.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water, except a public water supply, 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 unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use and the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission. Use of the registered source shall not commence until the Commission acknowledges in writing that the registration is proper and complete.

(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, water withdrawals or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), public water supplies, or another 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.

\* \* \* \* \*

■ 10. Amend § 806.23 by revising the paragraph (b) subject heading and paragraph (b)(4) and adding paragraphs (b)(6) and (7) to read as follows:

**§ 806.23 Standards for water withdrawals.**

\* \* \* \* \*

(b) *Limitations on and considerations for withdrawals.*

\* \* \* \* \*

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources, interconnections or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, including interconnections, and support existing and proposed future withdrawals.

\* \* \* \* \*

(6) Notwithstanding this paragraph, existing withdrawals that successfully complete the process in § 806.12(h) and (i) shall satisfy the standards in

paragraph (b)(2) of this section. Further, evaluation of the withdrawal shall include reasonably foreseeable need and the need for total system limits, compliance with § 806.21, and any changes to the project or project location and setting.

(i) Approval of withdrawal limits on existing sources will not be set above the amount supported by the existing historical and current operating data or otherwise supported by the evaluation under § 806.12, and may be set at a different rate if supported by the evaluation required in this paragraph.

(ii) Any approvals shall include metering and measurement of parameters consistent with § 806.30, and may include conditions requiring monitoring of surface water features or other withdrawal sources.

(iii) If any reported metering or monitoring data or other information show a significant adverse impact to any consideration in paragraph (b)(2) of this section, the Commission may take actions necessary to eliminate the significant adverse impact, including but not limited to requiring the project to undertake more data collection and analysis, aquifer testing and/or conditioning the docket approval.

(7) Notwithstanding this paragraph, small capacity sources shall be subject to any withdrawal limit, including total system limit, set by the Commission and shall include metering and measurement of parameters consistent with § 806.30.

■ 11. Amend § 806.34 by revising paragraph (c)(2) to read as follows:

**§ 806.34 Emergencies.**

\* \* \* \* \*

(c) \* \* \*

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission where the extension of the certificate may be included in the notice for the next regularly scheduled public hearing for that business meeting.

\* \* \* \* \*

Dated: September 20, 2021.

**Jason E. Oyler,**

*General Counsel and Secretary to the Commission.*

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