

Susquehanna River Basin Commission

a water management agency serving the Susquehanna River Watershed



Notice of Determination for Natural Gas Well Development Projects Issued August 14, 2008

Effective October 15, 2008, all natural gas well development projects in the Susquehanna River Basin targeting the Marcellus, Utica, or other shale formations and involving the withdrawal or consumptive use of waters of the basin are subject to Susquehanna River Basin Commission (Commission) review and approval.

For purposes of this determination, please be advised that a “project” is defined to encompass the drilling pad upon which one or more target formation exploratory or production gas wells are undertaken, and all appurtenant facilities and activities related thereto. Pursuant to 18 CFR §806.3, a project is deemed to be undertaken upon the “initiation of construction or the operation of a new or expanded project, or the operation of an existing project.” This would include the commencement of drilling (spudding) of a well on or after October 15, 2008, or the hydrofracture treatment of a well on or after that date, regardless of when drilled.

This determination is being made pursuant to Section 3.10 of the Susquehanna River Basin Compact (Pub. L. 91-575, 84 Stat. 1509 *et seq.*) and the authority vested in me by 18 CFR §806.5, on the basis that such natural gas well development activity could have an adverse, cumulative adverse, or interstate effect on the water resources of the basin. Specifically, the quantity, rate, and location of groundwater or surface water withdrawals and consumptive use associated with such projects, either individually or cumulatively, or both, have the potential to cause such effects. Furthermore, they have the potential to alter the physical, biological, chemical, or hydrological characteristics of the water resources of the basin and may affect interstate water quality.

As a result of this determination, please note that review and approval are required prior to undertaking such projects, notwithstanding the fact that the anticipated amount of water withdrawal or consumptive water use may not trigger the Commission’s existing regulatory thresholds set forth in 18 CFR §806.4.

In addition to this determination, the Commission will consider proposed rulemaking to further address the water resource aspects and procedures for review of natural gas well development projects at its next scheduled meeting at 1:00 p.m. on September 11, 2008, at the Elaine Langone Center, Center Room, Bucknell University, Lewisburg, Pennsylvania. It is anticipated that the proposed rulemaking, if approved, will likely incorporate a public hearing and comment period, after which final rulemaking would be anticipated at the Commission’s December 4, 2008, meeting. A copy of the draft proposed rulemaking is attached for informational purposes only.

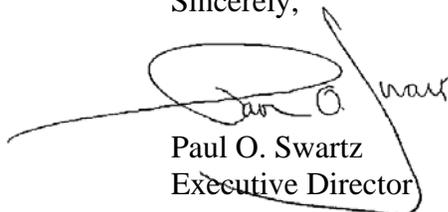
If adopted as recommended, the proposed rulemaking would modify the process for review and approval of natural gas well development projects currently subject to 18 CFR §806.4(a):

- The scope of projects subject to review under 18 CFR §806.4(a) would be expanded to include those now becoming subject to review and approval as a result of the determination noted above.
- For purposes of natural gas well development, projects would be regulated on a drilling pad basis.
- All consumptive use approvals would occur pursuant to an Approval by Rule (ABR) process substantially similar to the existing ABR process contained in 18 CFR §806.22(e).
- The new ABR process would be applicable to all water sources utilized for consumptive use, not just public water supply systems.
- Flowback or produced fluids, including brines, would be separately accounted for, but would not be included in the calculation of consumptive use amounts.
- Projects would be required to demonstrate compliance with state and/or federal law for the treatment and disposal of flowback or produced fluids, including brines.
- Approvals would have a term of five (5) years.
- Any withdrawal approval issued by the Commission after issuance of the ABR could be added as a source for the project by registering it with the Commission.

As provided in 18 CFR §806.5(b), please note that this determination may be appealed to the Commission within thirty (30) days, in the manner prescribed by 18 CFR §808.2.

If you have any questions, please contact Michael G. Brownell, Chief of the Water Resources Management Division, at (717) 238-0423.

Sincerely,



Paul O. Swartz
Executive Director

Attachment

SUSQUEHANNA RIVER BASIN COMMISSION

-- DRAFT --

FOR INFORMATION PURPOSES ONLY

PROPOSED RULEMAKING NATURAL GAS WELL DEVELOPMENT PROJECTS

AUGUST 14, 2008

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A -- General Provisions

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, revise the definition of “project” to read as follows:

§806.3 Definitions.

* * * * *

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 natural gas well development activity, 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.*

* * * * *

3. In §806.4, amend paragraph (a) to add paragraph (a)(8) to read as follows:

Sec. 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation or those authorized under Sec. 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 and shall be subject to the applicable standards in subpart C.

* * * * *

(8) Any natural gas well development project in the basin targeting the Marcellus, Utica or other shale formations for exploration or production of natural gas involving a withdrawal or consumptive use of waters of the basin, regardless of the quantity of such withdrawal or consumptive use. The project sponsor shall submit the appropriate application(s) in accordance with subpart B and the project shall be subject to the applicable standards set forth in subpart C.

4. In §806.22, revise paragraph (e)(1), and insert a new paragraph (f) to read as follows:

§806.22 Standards for consumptive uses of water.

* * * * *

(e) * * *

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

(i) * * *

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

* * * * *

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under Sec. 806.4, 806.5, or 806.6 of this part shall be subject to review and approval under this paragraph (f) regardless of the source or sources of water being used consumptively.

(i) Notification of Intent: No fewer than 60 days prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and location and the sources, quantities and peak day use of water to be used consumptively by the project. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in Sec. 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 and fluids, including additives, flowback and brines, utilized by the project.

(3) The standard conditions set forth in Sec. 806.21 above shall apply to projects approved by rule, as well as any special conditions incorporated into such approvals.

(4) The project sponsor shall comply with mitigation in accordance with Sec. 806.22 (b)(2) or (b)(3).

(5) Any produced flowback fluids or brines 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 Sec. 806.22(b).

(6) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(7) The project sponsor shall demonstrate to the satisfaction of the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(8) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire five years from the date of such

notification, and rescind any previous consumptive use approvals to the extent applicable to the project.

(10) Water withdrawals approved by the Commission pursuant to §806.4(a)(2) after the date of issuance of the approval by rule may be utilized as a source for the consumptive use authorized for the project provided such withdrawal source is approved for such use and is registered with the Commission at least 10 days prior thereto on a form and in a manner as prescribed by the Commission.

(11) Approvals issued under this paragraph (f) shall not be transferable under Sec. 806.6.