

**Comment Response for 2020 Rulemaking and Policies
Susquehanna River Basin Commission
06/30/2021**

Commenter	Date	Section	Comment	Response
Andrew Swope Pennsylvania American Water	05/17/21	§ 806.4	PAWC appreciates the Commission’s objectives in seeking to clarify language in §806.4(a)(2)(ii) and (iii) concerning what may trigger a loss of “grandfathering.” PAWC has expressed concerns over some previous staff interpretations of the existing language suggesting that, in the context of a water system with multiple long-standing surface and groundwater sources, some or all of which were “grandfathered,” the development of any new source or any increase in withdrawal rates at any system source would cause a loss of grandfathering and application of project review standards to all such existing sources.	The Commission thanks Pennsylvania American Water for the comment. This rulemaking is intended to mark a change in the Commission’s overall policy regarding the number and scope of the triggers to lose grandfathering.
Andrew Swope Pennsylvania American Water	05/17/21	§ 806.4	We are encouraged by the statements made in the preamble regarding the intent of the proposed rule changes in §806.4(a)(2)(ii):	The Commission thanks Pennsylvania American Water for the comment.
Andrew Swope Pennsylvania American Water	05/17/21	§ 806.4(a)(2)(ii)	The revised § 806.4(a)(2)(ii) provides that a regulated project that adds a new source must make an application for review and approval of that source, but it does not serve as a trigger for loss of grandfathering and subject the entire project to review, as it previously did.	The Commission thanks Pennsylvania American Water for the comment. This rulemaking is intended to mark a change in the Commission’s overall policy regarding the number and scope of the triggers to lose grandfathering.

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			<p>Similarly, revised § 806.4(a)(2)(iii) provides that any previously approved withdrawal that increases above its approval amount must make an application for review and approval of the increased amount. However, this increase does not subject the entire project to review and approval, as it previously did, which was also a trigger for loss of grandfathering.</p> <p>86 Fed. Reg. at 16143 (emphasis in original). If that intent is actually implemented by the language changes, we would strongly support it.</p>	
Andrew Swope Pennsylvania American Water	05/17/21	§ 806.4(a)(2)(ii)	<p>It would be preferable for the rule to contain language that tracks the stated intent reflected in the preamble. Such language might read along the following lines:</p> <p>(ii) Any new source added to projects with previously approved withdrawals by the Commission, in which only the new source shall be subject to project review and the application of the standards set forth in §§ 806.21 and 806.23.</p>	<p>The preamble to the proposed rule states the Commission's intent for these changes, and the Commission does not find the amended language necessary. The proposed language would also 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 trigger related to an increase in quantity from a grandfathered source. This is not an outcome the Commission intends. This rulemaking is intended to mark a change in the</p>

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			(iii) Any withdrawal increased above that amount which was previously approved by the Commission, in which only the increased withdrawal among shall be subject to project review and the application of the standards set forth in §§ 806.21 and 806.23.	Commission's overall policy regarding the number and scope of the triggers to lose grandfathering; however, it is not intended to provide a permanent exemption from eventual regulation of grandfathered sources or withdrawal quantities.
Andrew Swope Pennsylvania American Water	05/17/21	AHE	PAWC supports the concept of allowing an alternative hydrogeologic evaluation, particularly in relation to project approval renewals. Repetitive performance of aquifer pumping tests, which by their nature are of short duration, imposes substantial expense and is less meaningful than the data and experience gains over multiple years of actual source operation and observation.	The Commission thanks Pennsylvania American Water for the comment.
Andrew Swope Pennsylvania American Water	05/17/21	AHE	In section II of the policy, it needs to better describe how data review and assessment of data gaps will fit into the overall timeline and process of preparing for, submitting, and reviewing project approval renewal applications. If the data is submitted with the project approval renewal application, will SRBC be providing a temporary extension of the existing approval as it reviews data and the applicant addresses data gaps and for how long? It is recognized that drought and dry conditions don't occur every year, so it	<p>The Commission generally does not include review process or timing in policy, as procedures need to retain flexibility for individual projects with unique circumstances. Where procedures are fixed, they can, and are, included in the drafted policy.</p> <p>The Commission recommends ongoing assessment by the project sponsor of operational data to allow identification of performance issues and data gaps as early as possible. The Commission also encourages all projects to collect and maintain both</p>

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			<p>could take some time to obtain the requested data if data gaps are identified.</p> <p>We suggest that SRBC more clearly define and provide guidance on the period of time in advance of a renewal application when data needs to be submitted. SRBC should provide for review of that data as part of the groundwater application process without a separate review fee.</p> <p>Further, we would request that SRBC commit to a reasonable response time (we would suggest within 3 months of data submission), in order to provide adequate time for the applicant to obtain additional data.</p>	<p>water level and withdrawal records if not already required, so that data is available for use during renewal efforts. Collection and maintenance of these data for the duration of the project increases the likelihood that sufficient data will be collected during drought and dry periods.</p> <p>The requirements and timing of completing a hydrogeologic evaluation prior to submission of a renewal application is clearly established in 806.12 (a) which includes the option of completion and approval of an AHE in 806.12(b). Commission regulations require submittal of a renewal application no later than 6 months prior to expiration and, provided that deadline is met, the term of the expiring approval is automatically extended until an action can be taken.</p> <p>The Commission has maintained a practice since 2010 of providing advance notice to groundwater projects starting 5 years in advance of the project expiration date. These notices continue until a renewal application is received. The Commission also encourages pre-application meetings with staff. Staff provide guidance and assistance to projects including discussions on timing of reviews and potential data gaps at pre-application meetings. Staff also has,</p>

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				and will continue to provide a cursory review of preliminary data prior to submittal of renewal materials to identify potential data gaps and suggest how those gaps can be filled during pre-application meetings.
Andrew Swope Pennsylvania American Water	05/17/21	AHE	In section III, paragraph B, the requirement to submit historical operational data at the suggested maximum instantaneous and consecutive 30-day average values is very difficult, if not impossible, to achieve during normal operating conditions. For a public water system, customer demand changes significantly throughout the day/month/year. Normal operation typically does not allow for consistent withdrawals at the maximum instantaneous rate or consistent consecutive 30-day averages, and when more consistent withdrawal rates are achieved it is not always during drought or dry conditions. In addition, drought contingency plans can impose restrictions that reduce demand, thus making it difficult to withdraw at the normal 30-day average during drought and dry conditions. Maximum instantaneous withdrawals are typically associated with conditions that are not in a drought or dry period.	<p>The Commission understands the challenges for public water systems presented in the comment. Operational testing is further described in “Operational Monitoring and Operating Testing” fact sheets available on the Commission’s website. Operational monitoring and testing was also the topic of a recent webinar offered to projects as part of the Commission’s Public Water Supply Assistance Program.</p> <p>The specifics for operational testing are highly dependent on the unique aspects of the individual project and data gaps needing to be addressed. It would be ineffective to offer the numerous options and specifics in a policy. Rather, Commission staff have always been and, and will continue to be, available to discuss those types of specifics and provide guidance to projects.</p> <p>Staff will revise the policy to make it more clear when operational monitoring at or near the requested rate would be needed to eliminate a potential data gap.</p>

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			Since state agencies, such as the Pennsylvania Department of Environmental Protection, are very strict about not exceeding the maximum instantaneous withdrawal rate, PAWC and most other responsible operators limit withdrawals to slightly below the approved maximum instantaneous value to make sure the permitted rate is not exceeded.	
Andrew Swope Pennsylvania American Water	05/17/21	AHE	The draft policy refers to a process of conducting “limited operational data collection” of a well. That process is only briefly discussed in Section II, and should be more clearly outlined. SRBC should define how often and how long this “limited operational data collection” will be required. If an applicant completes this “limited operational data collection” once during the project approval term, will it be acceptable, or does this need to be completed more frequently.	The specifics for a project’s operational monitoring can vary widely from project to project. The policy outlines those items that can be prescriptive and retains flexibility for those that should be project-dependent. As has always been the case, a project sponsor can work directly with Commission staff to determine the best course of action. Operational testing is intended to be completed to address data gaps during the renewal process, as needed. Basic operational monitoring will then be required throughout the term of any new approval.
Andrew Swope Pennsylvania American Water	05/17/21	AHE	We suggest that SRBC rewrite Section III paragraph B, to read: Historical operational data should be submitted 1 to 2 years ahead of the renewal application to allow data gaps to be identified and corrected through “limited operational data collection.” The goal of the AHE is to demonstrate that the well can or has sustainably	The policy will not be revised to include a prescribed set amount of time, as suggested in the comment. This is because this particular process is project-dependent and should not be policy-bound. The policy already clearly states its goal and so the suggested revisions are not needed.

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			<p>operated at the desired withdrawal rate without significant adverse impacts to other users or the environment. The data should demonstrate how the well and aquifer responds to pumping at the requested maximum instantaneous (gpm) and consecutive 30-day average (mgd) withdrawal rates through drought or dry periods. If “limited operational data collection” is requested by SRBC to obtain data to fill data gaps it will only be required once during the project review cycle. The historical operational and “limited operational” data to be provided to the Commission may include, but not be limited to the following...”</p>	<p>The Commission doesn’t request operational testing. The agency will review data that is submitted and advise as to what withdrawal volume or rate the data will support. Collection of operational data is at the discretion of the project sponsor to support the filling of data gaps or to support a desired higher withdrawal volume or rate.</p>
<p>Christopher Finton, Senior Hydrogeologist Vice President – Water Resources ARM Group LLC</p>	<p>05/17/21</p>	<p>AHE/Rule/Policies</p>	<p>In response to a thorough review of the proposed rulemaking and three proposed groundwater review policies, ARM Group LLC (ARM) would like to commend the Susquehanna River Basin Commission (SRBC) in recognizing and acting upon the need for regulatory clarification, simplification, and recalibration of project review based on the scale and quantity (potential impact) of the project. Specifically, the consideration of small and medium capacity sources, the reduction in potential “triggers” for loss of grandfathered source status, the addition</p>	<p>The Commission thanks ARM Group LLC for the comment.</p>

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			of the Alternative Hydrogeologic Evaluation (AHE) process, and the Pre-Drill Well Site Review policy are all positive steps in improving the regulatory process, and reducing associated project costs for project sponsors while abiding by the Commission's compact. The further development of the Minor Modification process is also a welcome addition to a docket holder's options for modifying an existing Consumptive Use or Withdrawal approval.	
Christopher Finton, Senior Hydrogeologist Vice President – Water Resources ARM Group LLC	05/17/21	General Comment	In addition to these proposed rule and policy changes, we recommend that the Commission establish a redefined docket appeal process, based on existing regulations, that is performed by an independent expert review panel or a hearing board equivalent to the Pennsylvania Environmental Hearing Board (EHB). The processes presently defined in 18 CFR §808.2 “Administrative appeals” and §808.3 “Hearings on administrative appeal”, grant the responsibility and powers associated with hearings and appeals entirely to “one or more members of the Commission, or by such other hearing officer as the Commission may designate” and the Executive Director. Additionally, the Commission has the	This 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.

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			<p>power to grant or deny hearings and the power to grant or deny stays of action. Costs for the hearing(s) are assessed to the applicant or appellant and may include “all incremental costs incurred by the Commission, including, but not limited to, hearing officer and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.” Thus, the costs associated with a non-independent appeal are clearly a significant disincentive and additional financial obstacle for any dissenting project sponsors, thereby limiting the opportunity for actual implementation of a fair appeal process.</p> <p>Beyond the internal Commission hearing and appeals processes outlined in the present regulations, the only defined independent legal recourse for applicants or appellants is to file suit in United States Federal Court. This process is time-intensive, expensive, and does not ensure that the suit is being heard by a judge or jury familiar with SRBC regulations, water law, or environmental concerns in general. The lack of such a defined independent process, leaves a docket applicant or appellant with limited real opportunity for appeal, with significant financial</p>	

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			<p>implications associated with pursuing a hearing within the Commission or filing of a suit in court.</p> <p>In summary, we encourage the Commissioner's to adopt the proposed rulemaking and groundwater review processes. We also encourage the Commissioner's to consider revisions to the docket appeal process presently defined in the regulations.</p>	
Angela Kilbert Staff Attorney, PennFuture	05/17/21	86 Fed. Reg. 16,143	<p>PennFuture has concerns about the SRBC's proposed rule that would allow the diversion of drinking water or sewage into or out of the basin without applying for approval from the commission for municipalities on the basin divide if by or through a publicly or privately owned public water supplier or wastewater treatment works</p> <p>The SRBC justifies this proposed change by arguing that review by the SRBC is "unnecessary" because "any water quality concerns are fully mitigated by the regulatory oversight of the member jurisdictions."</p> <p>However, this ignores the other critical aspects of SRBC review. Generally, the standards for review and approval of a project by the SRBC serve the following purposes:</p>	<p>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 in an effort to not duplicate partner agency regulatory authorities. This draft regulation change simply exempts from Commission water quality review the movement across Basin boundaries of treated public water or wastewater that have been fully reviewed and approved for quality concerns by partner agencies. The draft regulation does not pose any new threats or exacerbate existing threats to the quality of the Basin's water resources.</p> <p>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</p>

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			<p>Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of ground and surface waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.</p> <p>18 C.F.R. § 806.2(b). In evaluating a proposed diversion, the SRBC is required to look at more than just water quality. <i>See</i> 18 C.F.R. § 806.24. For transfers out of the basin, the SRBC must consider the cumulative adverse effects of the project, how the project will individually and cumulatively affect the flow of any stream or river, and whether there is a reasonably foreseeable need for the quantity of water requested and how that need is measured against the foreseeable needs in the Susquehanna River basin, among other things. <i>See</i> 18 C.F.R. § 806.24(b)(2). The SRBC may also consider other factors such as the impact on economic development and land use in the basin. <i>See</i> 18 C.F.R. § 802.24(b)(3). The SRBC similarly must evaluate any adverse effects and cumulative adverse effects for diversions into the basin. <i>See</i> 18 C.F.R. § 806.24(c)(2).</p>	<p>withdrawals, are at 18 C.F.R. § 806.23 and are equivalent to, if not broader, than 806.24. Thus the concerns raised in the comment about cumulative impacts and foreseeable needs will continue to be addressed via application of the Commission's review standards as applied to the withdrawal that supports the diversion.</p> <p>For any diversion that would be exempt under the draft regulation, the Commission could invoke 18 C.F.R. § 806.5 and require full review if it determines that the activity poses extraordinary potential for adverse cumulative impact.</p>

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			<p>Exempting diversions into or out of the basin for municipalities on the basin divide from SRBC review forfeits the SRBC's responsibility to perform these important review functions. The oversight of member jurisdictions is no substitute for the broader review of the SRBC. The consideration of cumulative effects is particularly important for diversions between basins by municipalities on the basin divide. The regulation of water quality alone is insufficient.</p> <p>For these reasons, PennFuture respectfully calls on the SRBC to remove the proposed rule that would allow the diversion of drinking water or sewage into or out of the basin without applying for approval from the commission for municipalities on the basin divide. <i>See</i> 86 Fed. Reg. 16,143. This proposed rule change is simply not justified or supported by sufficient rationale.</p>	