

Policy No. 2016-02
June 16, 2016

**GUIDELINES FOR TERMINATING
REVIEW OF A PROJECT APPLICATION**

I. Introduction

Sponsors of projects subject to review and approval by the Commission under 18 CFR §§ 806.4, 806.5, or 806.6 are responsible for submitting a complete application and all applicable fees in accordance with Commission Regulation 18 CFR § 806.13. Requirements for a complete application are given in 18 CFR § 806.14 and on application forms, when these have been developed. To complete the application process, project sponsors, under 18 CFR § 806.15, must also submit proof that appropriate landowners and state and local government agencies are notified and that the project is advertised in a local newspaper.

Project sponsors have a duty to provide information “reasonably necessary” for technical review of the application [§ 806.16(c)]. This may include additional supplemental information requested by staff that is pertinent for a “proper evaluation” of the project [§ 806.16(a)]. Incomplete applications unnecessarily lengthen review time of a project. Further, when a project sponsor fails to cure administrative deficiencies or fails to submit adequate information to complete the technical evaluation, the efficiency of the Commission’s Project Review Program can be compromised.

Under such circumstances when a project sponsor fails to meet the various application requirements in a timely manner, the Executive Director may, at their discretion and in consideration of recommendations of staff, terminate review of the application [§ 806.16(b)(c)]. This document describes the policies and procedures for terminating review of a pending application.

II. Administrative Incompleteness in Project Applications

A. Notification of Administrative Deficiencies

Commission staff will determine whether the submitted application materials are administratively complete and will notify the project sponsor accordingly. If the Commission determines that the application is not administratively complete, Commission staff will request supplemental information. For incomplete applications, the notification (Attachment A – Sample notification) is commonly sent via e-mail and should contain the following:

1. The project name, SRBC pending number, and the date the application was received.
2. A list of administrative deficiencies and specific information necessary to address the deficiencies.
3. A prescribed timeframe (typically 30 days) to satisfy the deficiencies, pursuant to § 806.16(b).
4. A recommendation to contact staff if there are questions or anticipated difficulties with meeting the deadline.
5. Information that failure to respond and satisfy administrative deficiencies within the prescribed time period may result in termination of review.
6. The appropriate staff contact(s).

Once all deficiencies are addressed or if the application was complete upon original receipt, a courtesy e-mail (*preferred*) or letter to the project sponsor should acknowledge and give the date of administrative completeness. Upon determination of administrative completeness, technical review may commence.

B. Failure to Address Administrative Incompleteness

If the project sponsor is non-responsive or does not cure all administrative deficiencies within the prescribed time, Commission staff will notify the project sponsor of pending termination of review. The Notice of Intent to Terminate Review Due to Administrative Incompleteness (Attachment B) should be sent by first-class mail and contain the following:

1. The project name, SRBC pending number, date the application was received, date of administrative incompleteness notification, and date(s) and summary of any subsequent correspondence.
2. A prescribed timeframe (20 days from the date of the notice) for response.
3. Available options for action:
 - a. Satisfy all administrative deficiencies within 20 days.
 - b. Request an extension from the Executive Director, noting that good cause must be demonstrated for such an extension (*see Sections V and VI; 'Extensions' and 'Suspension of Review'*).
 - c. Voluntarily withdraw the application. Project sponsors who voluntarily withdraw applications during administrative review may be eligible for a refund of up to 50 percent of required application fees at the discretion of the Executive Director and in accordance with the Regulatory Program Fee Schedule.
 - d. Do nothing or otherwise fail to properly correct deficiencies. The Commission will proceed to terminate review of the application, resulting in forfeiture of all application fees.
4. The appropriate staff contact(s).

If the project sponsor does not adequately respond to the Notice of Intent to Terminate Review Due to Administrative Incompleteness, the Project Review Manager may proceed with termination of review of the application.

III. Technical Deficiencies in Project Applications

A. Notification of Technical Deficiencies

Commission staff will conduct a technical review of complete applications according to standards set forth in Part 806, Subpart C. Commission staff will notify the project sponsor in writing of any technical deficiencies and of any additional information necessary for proper review of the project, specifying a reasonable timeframe for response [§ 806.16(b)]. Commission staff should strive to identify and include all deficiencies and information requests into a single written document.

Notification by e-mail or letter is generally acceptable. Commission staff should use their judgment to determine the type and formality of correspondence; considerations may include, but are not limited to, the nature of the deficiencies, ongoing communication and cooperation of the project sponsor, a working relationship with the project consultant, and the level of public interest in the project.

The technical deficiency notification (Attachment C) should contain the following:

1. The project name, SRBC pending number, and date the application was received.
2. A list of technical deficiencies and specific materials/information necessary to address these deficiencies.
3. A reasonable time for a response to address deficiencies. Typically 60 days is a reasonable timeframe for staff consideration. Less time may be appropriate for simple information requests or to meet deadlines associated with actions at an upcoming Commission meeting. More time may be allotted if data collection or additional analysis is anticipated to delay response. Commission staff may also discuss a proposed timeframe with the project sponsor and consultant to determine a reasonable deadline.
4. A recommendation to contact staff with questions or to discuss deficiencies. The project sponsor should seek clarification about deficiencies and schedule any related meetings with Commission staff as soon as practicable (typically within 30 days from the date of the notice).
5. Information that failure to respond and satisfy technical deficiencies within the prescribed time period may result in termination of application review and forfeiture of all fees.
6. The appropriate staff contact(s).

If all deficiencies are addressed within the prescribed time period, Commission staff will resume technical review and prepare recommendations for Commission action.

B. Failure to Address Technical Deficiencies

If the project sponsor is non-responsive or does not cure all of the technical deficiencies within the prescribed time (and is not granted an extension), Commission staff will notify the project sponsor of pending termination of review. The Notice of Intent to Terminate Review Due to Technical Deficiency (Attachment D) should be sent by first-class mail and contain the following:

1. The project name, SRBC pending number, date the application was received, date of administrative (in)completeness notification, date and summary of technical deficiency correspondence, and date(s) and summary of any subsequent correspondence.
2. A prescribed timeframe (20 days from the date of the letter) for response.
3. Available options for action (stating that none allow for a refund of application fees):
 - a. Satisfy all technical deficiencies, noting that if all deficiencies cannot be cured within the allotted time, the project sponsor must request an extension.
 - b. Request an extension, noting that good cause must be demonstrated for approval of such an extension by the Executive Director (*see Sections V and VI; 'Extensions' and 'Suspension of Review'*).
 - c. Voluntarily withdraw the application.
 - d. Request that review of the project continue without complete or supplemental technical information (note that a recommendation for denial is likely).
 - e. Do nothing or otherwise fail to properly correct deficiencies which will result in termination of review of the application.
4. The appropriate staff contact(s).

If the project sponsor fails to adequately respond to the Notice of Intent to Terminate Review Due to Technical Deficiency within the prescribed time, the Project Review Manager may:

1. Begin the process of terminating review of the application (*see Section IV; 'Termination of Review'*).
2. Direct staff to complete the technical review, if requested by the project sponsor, and issue recommendations for action to the Commission.

The Project Review Manager should consider good-faith efforts of project sponsors when responses arrive late or do not fully address deficiencies. Judgment should be used in allowing a few extra days or permitting a project sponsor to request an extension prior to terminating application review.

IV. Termination of Application Review

Commission staff will make a formal recommendation for termination of application review by internal memorandum to the Executive Director. The recommendation should be supported by a summary of the application and subsequent correspondence, including dates and content of pertinent letters, e-mails, and meetings.

If application review is terminated by the Executive Director, the file will be closed and formal notification (Attachment E) will be sent by first-class mail to the project sponsor, stating the basis for termination and indicating that:

1. Termination of review of the application does not constitute disapproval of the project.

2. The project sponsor may reapply at any time, without prejudice, by submitting a new application and all applicable fees to the Commission.
3. The action of termination of application review may be appealed within 30 days pursuant to 18 CFR § 808.2.

If review is not terminated by the Executive Director, the Project Review Manager will notify the project sponsor of the status of the application – active, extended, or suspended – and will provide available options, timelines, and materials necessary for moving toward an action by the Commission.

V. Extensions

After a determination of administrative incompleteness or issuance of a technical deficiency letter, most project sponsors provide the information necessary so that review can proceed in a timely manner. If a project sponsor anticipates difficulties with meeting the deadline to resolve deficiencies, they are encouraged to contact Commission staff or arrange a meeting to discuss available options, including extensions. Extensions also may be requested by the project sponsor through correspondence. Requests for extension may be either granted by the Project Review Manager or denied for cause by the Executive Director. Note that:

1. It is incumbent upon the project sponsor to recognize its inability to meet a deadline and contact Commission staff as soon as practicable. If there is recognition by Project Review staff that deadlines likely will not be met, it is acceptable for them to contact the project sponsor in this regard.
2. Staff may inform the project sponsor that it should submit a written request for an extension, explaining the reason for the delays and proposing an alternate deadline. A request submitted by e-mail is generally acceptable; the project reviewer should use judgment in consultation with their supervisor regarding the appropriate level of formality of the request.
3. Commission staff will review extension requests on a case-by-case basis and issue a determination within 10 days. If formal correspondence is appropriate but staff is unable to issue a formal letter within 10 days, a courtesy e-mail in advance of the extension is appropriate.
4. If reasonably supported, requests for 30-day extensions may generally be honored. However, requests to defer the requirement for submitting the state application for public water suppliers shall be denied. No extensions will be granted in order to delay payment of applicable fees.

After issuance of a Notice of Intent to Terminate Review, extensions may be requested and granted; however, at this stage in the process, if the request is subject to greater scrutiny by Commission staff, the Executive Director will review staff's recommendations and issue a determination on the request for extension. Note that:

1. A formal written request for extension must be submitted to the Commission with demonstrable issues that are the cause of delay and must offer a new deadline.
2. Project Review staff will review extension requests on a case-by-case basis and make a recommendation for consideration by the Executive Director.

3. Upon the decision by the Executive Director, a letter of determination (Attachment F) should be issued by staff within 10 days.

VI. Suspension of Review

If a project has been disapproved or denied by the lawful actions of any member jurisdiction and the project sponsor provides proof of appeal of the denial, Commission staff will formally recommend to the Executive Director that review of an application be suspended under § 806.21(c) and Commission Policy No. 98-05.

The Executive Director will review staff's recommendation on a case-by-case basis. In the event that a sponsor does not appeal a denial by a member jurisdiction, the Project Review Manager will proceed with termination of review of the associated application.

Commission staff may also recommend a suspension of review if:

1. Additional technical information (reports, testing, or study) is necessary to render a sound decision, and cannot be completed within 90 days.
2. Coordination of permits with agencies of member jurisdictions will delay review.
3. A request from a project sponsor provides sufficient justification such as:
 - a. Temporary financial conditions impacting the feasibility of the project.
 - b. Permit action by a member jurisdiction is temporarily deferred or delayed.
 - c. The project is on hold due to circumstances beyond the project sponsor's control.

Commission staff will review suspension requests on a case-by-case basis and provide recommendations to the Executive Director.

Upon suspension of review of a project, the Commission will send written notification under signature of the Executive Director (Attachment G) to the project sponsor that contains the following:

1. Due to actions by a member jurisdiction or for other reasons listed above, review of the application has been suspended.
2. The suspension will last for a designated period of time. Suspension due to actions by a member jurisdiction will last until resolution of the appeal, but not more than a period of 3 years, after which review of the application may be terminated. Suspension for other reasons should last for a reasonable period as assigned by the Commission, after which review of the application may be terminated.
3. Review of the application will resume when the issues responsible for the suspension are resolved. If review was suspended due to actions by a member jurisdiction, the project sponsor must provide a certified copy of a decision reversing the disapproval or denial of a member jurisdiction.
4. The application may be voluntarily withdrawn by the project sponsor.
5. If not resolved or withdrawn, review of the application will ultimately be terminated.
6. If review is terminated, the project sponsor may reactivate the application by reapplying to the Commission (under the applicable fee schedule), providing

evidence of the receipt of all necessary governmental approvals, and updating pertinent information about the project.

Upon expiration of the suspension period, the status of the application should be evaluated. At that time, the review of the application may be terminated or review may be suspended for an additional period through recommendations to the Executive Director. All suspended applications should be listed and informally evaluated annually.

Approval, disapproval, withdrawal, or termination of review of an application is generally preferred over suspension of technical review. An application that is otherwise technically viable may have its review suspended pending other jurisdictional decisions, economic circumstances, or other circumstances beyond the project sponsor's control. All other applications will be subject to decision for approval, denial, or termination of review.

Attachment A – Sample Administrative Incompleteness Notice

To: Project Sponsor Contact

From: Project Review Staff

Subject: Notice of Application Review for Project Name; Source; Commission Pending No.
XXXX-XXX

The Susquehanna River Basin Commission (Commission) received an application from project sponsor for a surface water withdrawal/groundwater withdrawal/consumptive use in Township, County, State, on date. The application requested the surface water withdrawal/groundwater withdrawal/consumptive use (30-day average or peak day) of x.xxx million gallons per day (mgd) from source for purpose. The application is currently under administrative review by Commission staff and this notice serves to summarize initial administrative findings, identify deficiencies, and establish a path forward.

Based on the submitted information, Commission staff determined that the application is administratively incomplete. The following items are necessary to make your application administratively complete:

1. **Required Information under Commission Regulation 18 CFR § 806.14 for Contents of Application:**
2. **Public Notification Requirements under Commission Regulation 18 CFR § 806.15 :**
3. **Application Fees under Commission Regulation 18 CFR § 806.35:**
4. **Aquatic Resource Survey:**

All of the above-referenced forms and/or applications are available for download from our website (www.srbc.net) under the “Forms and Applications” tab.

In accordance with Commission Regulation 18 CFR § 806.16, please remit all of the requested information in one submittal within 30 days (**date certain**). Until these outstanding materials are received, your application remains administratively incomplete. Failure to provide the required information by the specified date may result in termination of review of the application and forfeiture of application fees.

When the administrative deficiencies are corrected, the application will be assigned to a technical reviewer. Should additional information be required upon further review of the project, you will be notified by Commission staff.

Should you have any questions regarding the review process, or if Commission staff can assist you in any way, please contact me.

Attachment B – Notice of Intent to Terminate Review Due to Administrative Incompleteness

Re: NOTICE OF INTENT TO TERMINATE REVIEW

Administrative Incompleteness of Application for Type:

Project Name – Source;

Municipality, County, State;

Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

In our notice to you of (date) (attached), Susquehanna River Basin Commission (Commission) staff provided you with a list of administrative deficiencies for the above-referenced application, received (date). We provided you with 30 days to correct these deficiencies.

The time for submission of the necessary information has now expired and the Commission notes that you have (choose one) failed to submit any response to the Commission **OR** submitted corrections on (date) that fail to satisfy all of the deficiencies noted in our first letter. The outstanding deficiencies include _____.

Due to the failure to complete your application, this letter notifies you that the Commission's Executive Director intends to terminate review of your application.

To avoid termination of review, you may choose one of the following actions by responding in writing to the Commission:

1. Satisfy all administrative deficiencies at which time normal processing of your application will resume.
2. Request an extension of time to satisfy deficiencies; however, good cause and appropriate supporting documentation are necessary for such extension. Commission staff will consider the request and present recommendations to the Executive Director.
3. Voluntarily withdraw the application without prejudice. Under this option, you may be eligible for a refund of up to 50 percent of required application fees in the discretion of the Executive Director and in accordance with the Regulatory Program Fee Schedule.

Failure to choose and complete one of these actions within **20 days** of the date of this letter will result in termination of review of the application. All application fees will be forfeited upon termination.

Should you have any questions regarding this matter or the Commission's Project Review Program, please contact me at (717) 238-0423, extension xxxx or e-mail address.

Sincerely,

Attachment C – Technical Deficiency Notification

Re: Notice of Technical Review for Project;
Application for Type;
Project Name – Source;
Municipality, County, State;
Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

The Susquehanna River Basin Commission (Commission) received an application from project sponsor for a surface water withdrawal/groundwater withdrawal/consumptive use in Township, County, State, on date. The application requested the surface water withdrawal/groundwater withdrawal/consumptive use (30-day average or peak day) of x.xxx million gallons per day (mgd) from source for purpose. The application is currently under technical review by Commission staff and this letter serves to summarize initial findings, identify deficiencies, and establish a path forward.

Based on materials submitted, Commission staff has determined that more information is necessary for a proper technical evaluation of the project. The following items are necessary to complete technical review of your project:

1. —
2. —
3. —

In accordance with Commission Regulation 18 CFR § 806.16, please remit all of the requested information in one submittal within 60 days (**date certain**). Until these outstanding materials are received, your application will not be processed. Failure to provide the required information by the specified date may result in termination of review of the application and forfeiture of submitted fees.

If/when the deficiencies are corrected, technical review will resume. Should additional information be required upon further review of the project, you will be notified by Commission staff.

Should you have any questions regarding the review process or these technical matters, or if Commission staff can assist you in any way, please contact project reviewer at (717) 238-0423, extension xxxx. If you would like to meet with Commission staff to discuss these issues, please contact the project reviewer within 30 days.

Sincerely,

Attachment D – Notice of Intent to Terminate Review Due to Technical Deficiencies

Re: NOTICE OF INTENT TO TERMINATE REVIEW:

Technical Deficiency of Application for Type:

Project Name – Source:

Municipality, County, State:

Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

The purpose of this letter is to notify you that the Susquehanna River Basin Commission (Commission) intends to terminate review of the above-referenced application, received (date), by which Project Name is requesting a surface water/groundwater withdrawal/consumptive use from source.

The basis for termination of review is your failure to properly or adequately address the technical deficiencies described in previous correspondence (*cite letters, dates, attach if necessary*).

To avoid termination of review, you may choose one of the following actions by responding in writing to the Commission:

1. Submit necessary information. If all required information cannot be submitted within the allotted time, the project sponsor must request an extension in writing as described below or be subject to termination.
2. Request an extension in writing; however, good cause and appropriate supporting information are necessary for such extension. Commission staff will consider the request and present recommendations to the Executive Director.
3. Request in writing that the Commission take action on the merits of the application with existing information at the upcoming (date) Commission meeting. If you wish to do so, please submit such notice to the Commission. Please note that Commission staff will likely recommend denial of your request as submitted.
4. Voluntarily withdraw the application, without prejudice, by so notifying the Commission in writing. If the application is withdrawn, the action will not be advertised in the meeting notice, no action will be taken by the Commission at the upcoming meeting, and the application file will be closed.

Failure to choose and complete one of these actions within **20 days** of the date of this letter will result in termination of review of the application.

Please note that due to the stage in processing of your application, you will not be entitled to any refund of the application fee, regardless of the option chosen.

Should you have any questions regarding this matter or the Commission's Project Review Program, please contact project reviewer at (717) 238-0423, extension xxxx.

Sincerely,

Attachment E – Termination of Application Review Letter

Re: NOTICE OF TERMINATION OF REVIEW:

Application for Type;
Project Name – Source;
Municipality, County, State;
Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

The purpose of this letter is to notify you that the Susquehanna River Basin Commission (Commission) has terminated review of the above-referenced application, received date, through which Project Name requested a surface water/groundwater withdrawal/consumptive use from source for the purpose of _____.

A letter providing notice of intent to terminate was sent to Project Name by both first-class and certified mail on Date. The letter documented the basis for the termination and offered options that could be pursued within twenty (20) days to avoid termination. Project Name has failed to adequately respond to that notice and, consequently, review of the application is hereby terminated. The project file will be closed and all fees are hereby forfeited.

Please be aware that termination of review of the application does not constitute disapproval of the project. Project Name may reapply at any time, without prejudice, by submitting a new application and applicable fees to the Commission.

In accordance with Commission Regulation 18 CFR § 808.2, Project Name may appeal this decision within thirty (30) days of receipt of this letter.

Please contact Project Review Manager at (717) 238-0423, extension xxxx or e-mail address, if you have any questions or concerns regarding the determination cited herein.

Sincerely,

Executive Director

Attachment F – Formal Extension Approval/Denial Letter

Re: NOTICE OF APPROVAL/DENIAL OF EXTENSION:

Application for Type;
Project Name – Source;
Municipality, County, State;
Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

This is in response to your request for extension of _____ to address _____. Upon review of the information submitted, your request is hereby granted. This extension is effective immediately and will expire in ____ days.

Please review previous correspondence and respond to all outstanding deficiencies prior to expiration of this extension. Failure to do so will result in termination of review of the application and possible forfeiture of all fees.

OR

This is in response to your request for extension of _____ to address _____. Upon review of the information submitted and a finding that the extension request is not adequately supported, your request is hereby denied (use Executive Director's signature below). Failure to address outstanding deficiencies within the previously allotted timeframe will result in termination of review of the application and forfeiture of all fees.

Should you have any questions regarding this matter or the Commission's Project Review Program, please contact Project Review Manager at (717) 238-0423, extension xxxx or e-mail address.

Sincerely,

Manager, Project Review

OR (if denied)

Executive Director

Attachment G – Suspension Letter

Re: NOTICE OF SUSPENSION:
Application for Type:
Project Name – Source:
Municipality, County, State:
Commission Pending No. xxxx-xxx

Dear Project Sponsor Contact:

The purpose of this letter is to notify you that the Susquehanna River Basin Commission (Commission) has suspended review of the above-referenced application, received date, through which Project Name requested a surface water/groundwater withdrawal from source for the purpose of _____.

The Commission has been informed that your project was disapproved or denied by the lawful actions of one of our member jurisdictions and that you have appealed the denial/disapproval. Based on this understanding, staff has recommended that review of the subject application be suspended.

OR

Commission staff has found/received request [enter statement from G. 2. a, b, or c here]. Based on this finding/request, staff has recommended that review of the subject application be suspended.

Upon review and consideration of the materials presented, I hereby suspend review of the subject application.

The suspension is effective immediately and shall remain effective for a period of (90 days - 3 years). Once the issues responsible for the suspension are resolved, please notify the Commission immediately and review of the application will resume. If resolution is unlikely, the application may be voluntarily withdrawn at this time and Project Name may be eligible for a partial refund of required fees (*include shaded section in final letter if application has not proceeded to technical review*).

If not resolved or withdrawn prior to expiration of the suspension period, the Commission may terminate review of the application, resulting in forfeiture of all fees.. If review is terminated, the project sponsor may reapply to the Commission (*under applicable fee schedule*), providing evidence of all necessary governmental approvals, and updating pertinent information about the project.

In accordance with Commission Regulation 18 CFR § 808.2, Project Name may appeal this decision within thirty (30) days of receipt of this letter.

Please contact Project Review Manager at (717) 238-0423, extension xxxx or e-mail address, if you have any questions or concerns regarding the determination cited herein.

Sincerely,

Executive Director