

MEMORANDUM OF UNDERSTANDING BETWEEN THE SUSQUEHANNA RIVER
BASIN COMMISSION AND THE PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION REGARDING COORDINATION OF PROJECT
REVIEW FUNCTIONS

THIS MEMORANDUM OF UNDERSTANDING is made by and between the Susquehanna River Basin Commission, a federal-interstate compact agency (the “Commission” or “SRBC”) and the Pennsylvania Department of Environmental Protection (“DEP”).
WHEREAS,

1. The Susquehanna River Basin Compact, P.L. 91-575, Section 3.2 declares that “It is the policy of the signatory parties to preserve and utilize the functions, powers and duties of the existing offices and agencies of government...and the Commission is directed to utilize those offices and agencies for the purposes of this compact.” And
2. Section 3.7 (2) of the Compact further declares that the Commission may employ any other agency or instrumentality of a signatory party for any purpose; and
3. Section 3.10 (1) provides that to assure that the Commission is apprised of all projects within the basin, monthly reports and listings of all permits granted or similar actions taken by officers or agencies of the signatory parties shall be submitted to the Commission in a manner prescribed by it; and
4. Section 3.10 (1) further provides that those projects which also require Commission approval shall be submitted to the Commission through appropriate offices or agencies of a signatory party; and
5. Section 3.10 (5) provides that the Commission, after consultation with the appropriate offices or agencies of the signatory parties, shall establish the procedure of submission, review and consideration of projects; and
6. Commission Regulation Section 803.6 provides that, to avoid duplication of work and to cooperate with other government agencies, the Commission may develop agreements of understanding with agencies of the signatory parties regarding joint review of projects; and
7. Such agreements may inter alia, outline the procedures for joint review and delegate SRBC approval authority to a signatory agency.

NOW THEREFORE, the parties to this memorandum set forth the following as the terms and conditions of their understanding:

I. PROJECT REVIEW APPROVAL

A. Water Withdrawals from Mines and Quarries

1. The DEP will notify the Commission of all pending applications for new surface or underground mining or quarry operations located within the Susquehanna River Basin which propose to withdraw 100,000 gallons or more of water per day, 30-day average, and shall provide the Commission with a copy of the NPDES Application for permit to discharge, Short Form C. The DEP will also provide notice to the Commission of major revisions to existing mining or quarry operations which propose to increase existing water withdrawals or significantly change water-handling procedures, provided such operations meet or exceed the 100,000 gallons per day threshold.
2. If the Commission files no objection to the proposed operation within 30 days of receipt of notification, the DEP's permit review shall be considered as adequate to meet the requirements of SRBC Regulations 803.43 and no separate approval will be required by the Commission. Pursuant to the terms of SRBC Regulation Section 803.6 (b), such projects shall be considered approved by the Commission.
3. If the Commission provides notice within the applicable time, the DEP will refer the applicant to the Commission for separate Commission approval. The Commission shall thereupon also notify the applicant of the need for separate Commission approval.

B. Surface Water Withdrawals by Public Water Supply Agencies Subject to the Provisions of the Pennsylvania Water Rights Act of 1939

1. All applicants for projects subject to both SRBC regulation and the Pennsylvania Water Rights Act of 1939 shall complete and submit to only DEP the DEP application for water allocation.
2. DEP shall forward to the Commission a copy of all applications for approval of water rights acquisitions from surface water sources located within the Susquehanna River Basin.
3. Within 30 days of receiving any such application from DEP, the Commission will provide to DEP its comments on the application and shall notify DEP whether or not separate SRBC approval is required.
4. If the Commission notifies DEP that separate SRBC approval is not required, DEP in its review of the application shall duly consider any comments provided by the Commission, and DEP's permit review and action shall be considered as adequate to meet the requirement of Commission Regulation Section 803.44. Pursuant to the terms of Commission Regulation Section 803.6 (b), DEP permits

shall therefore be subject to all of the conditions, reservations and enforcement provisions attaching to such Commission approvals. DEP shall provide the Commission with a copy of the permit as issued or a notice of denial.

5. If the Commission notifies DEP that separate SRBC approval is required, DEP shall complete its review of the application, with due consideration of any comments provided by SRBC. DEP shall forward a notice of denial or a draft permit to the Commission for separate Commission consideration of the project. DEP will withhold issuance of its permit until completion of SRBC action on the project.
6. A copy of the proposed Commission Docket approval or denial shall be provided to the office or officer designated by DEP with a notice of the date on which the Commission is expected to consider the Docket.
7. Upon Commission approval or denial of the project, or suspension of its review of the project, SRBC shall notify DEP of its action, whereupon DEP may take action on the permit application.

C. PA Safe Drinking Act Projects

1. Sponsors of projects which are subject to both the Pennsylvania Safe Drinking Water Act and the Commission's review and approval under Commission Regulations Sections 803.42, 803.43, or 803.44 shall be notified by each agency of the possible need to secure approvals from the other agency. Each agency shall notify the other agency of receipt of an application for such projects in a form acceptable to the other agency. The Commission's regulations cited above apply to projects withdrawing water from the Susquehanna River Basin with: a) consumptive use exceeding 20,000 gpd, 30-day average; b) surface withdrawal exceeding 100,000 gpd, 30-day average, except those covered under Article I, Paragraph B above; or c) ground-water withdrawals exceeding 100,000 gpd, 30-day average.
2. Within 15 days of receiving notification that an application has been accepted for review, each agency shall notify the other agency and the applicant whether that agency's approval is required for the project.
3. If the Commission notifies DEP that Commission approval is required, DEP shall complete its review of the application in coordination with the Commission. DEP shall forward a notice of denial or a draft permit to the Commission for separate Commission consideration of the project. DEP will withhold issuance of its permit until completion of SRBC action on the project.
4. If DEP notifies the Commission that DEP approval is required, the Commission shall complete its review of the application, in coordination with DEP, and shall not approve the project until DEP has completed its technical review of the

project and has submitted a notice of denial or a draft permit to the Commission for separate Commission consideration of the project.

5. A copy of the proposed Commission docket approval or denial shall be provided to the office or officer designated by DEP with a notice of the date on which the Commission is expected to consider the docket.
6. Upon Commission approval or denial of the project or suspension of its review of the project, the Commission shall notify DEP of its action, whereupon DEP may take action on the permit application.

II. ENFORCEMENT

Where DEP and the Commission have concurrent jurisdiction, each agency will cooperate with the other to the extent necessary to effectuate prompt and effective enforcement of the terms and conditions of each other's approvals. Also, in such cases, each agency will supply information and assistance to the other in connection with their respective compliance reviews.

III. GENERAL

- A. Agency Coordination – The Commission will provide information and training to DEP concerning the comprehensive plan, project review regulations and policies of the Commission. The Commission will consult periodically with DEP on any amendments or revisions to these documents. As part of its technical review of projects, DEP will provide information and training to the Commission concerning water resources management regulations and policies and will periodically consult with the Commission on amendments or revisions to these documents.
- B. Authority Retained – Nothing herein shall be construed as a waiver of any other authority possessed by the Commission or DEP, including the right to regulate consumptive uses or the right to reopen dockets or permits and make additional orders or conditions that may be necessary to protect the public health, safety and welfare or the environment. Prior to taking such actions, each agency shall notify the other agency and to the extent practicable or necessary shall coordinate such actions.
- C. Termination – This Memorandum of Understanding (MOU) shall be terminable by either party upon 30 days written notice.
- D. Previous Agreements – This Memorandum of Understanding supersedes and revokes all previous MOUs or agreements made between the parties or their predecessors concerning review of projects.

- E. Deviations From this MOU – This MOU establishes the framework within which the Commission and DEP will exercise their administrative discretion. The two agencies reserve the discretion to deviate from the procedures outlined herein if either agency determines that individual circumstances warrant and first notifies the other agency.
- F. Emergency Permits – This MOU is not intended to apply to emergency permits with a duration not exceeding 90 days; however, both agencies will coordinate on such permits.
- G. Rights and Obligations Not Created – This MOU is not intended to and does not create any contractual or other rights or obligations with respect to the signatory agencies or any other parties.

The parties hereby acknowledge the foregoing as the terms and conditions of their understanding.

Dept. of Environmental Protection

Susquehanna River Basin Commission

/s/ James M. Seif 6/18/99
 Secretary Date

/s/ Paul O. Swartz 6/2/99
 Executive Director Date