



April 27, 2022

Andrew Dehoff
Executive Director
Susquehanna River Basin Commission
4423 N. Front Street
Harrisburg, PA 17110

Re: Program Coordination Between the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection

Dear Executive Director Dehoff:

The purpose of this Letter of Understanding (LOU) is to establish the terms under which the Susquehanna River Basin Commission, a federal-interstate compact agency (Commission or SRBC) and the Pennsylvania Department of Environmental Protection (PADEP), acting through their proper officials, agree to cooperate and coordinate review of water resource projects, coordinate the collection and exchange of water use data, avoid duplication of efforts, and assure overall management and protection of water resources in the Pennsylvania portion of the Susquehanna River Basin.

BACKGROUND:

PADEP is the Commonwealth Agency under the Governor's jurisdiction with a mission to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment.

SRBC is a compact agency that provides for the conservation, utilization, development, management, and control of the water resources of the Susquehanna River Basin through a cooperative and coordinated action by the signatory bodies of the Susquehanna River Basin Compact (32 P.S. § 820.1). The Commonwealth of Pennsylvania is a signatory party to the SRBC (along with Maryland, New York and the United States).

The Susquehanna River Basin Compact, P.L. 91-575, Section 3.7, Coordination and Cooperation, authorizes the Commission to enter into cooperative agreements with its member states to avoid duplication and enhance the efficiency of water resources management in the basin. Commission Regulation 18 CFR Section 806.7(b) implements Section 3.7 of the Compact, providing, in part, as follows:

To avoid duplication of work and to cooperate with other government agencies, the Commission may develop administrative agreements or other cooperative arrangements with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements or arrangements may provide for joint

efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities.

This LOU will serve as the administrative agreement or cooperative arrangement between the Commission and PADEP.

STATUTORY AND REGULATORY AUTHORITIES OF EACH AGENCY

Commission statutory authority to regulate projects affecting the water resources of the basin, including but not limited to withdrawals, consumptive use and diversions, is set forth in Article 3 of the Compact. The classes of projects subject to regulatory review, and the standards and procedures applicable thereto, are set forth in the Commission's regulations, published at 18 CFR Parts 801 and 806-808.

For the purpose of this LOU, PADEP statutory authorities to regulate the review of projects that include water withdrawals, diversions, consumptive use and to implement water resources planning includes, but is not limited to, the following:

- a. Pennsylvania Safe Drinking Water Act 35 P.S. §§ 721.1 – 721.17, with regulations implementing that authority at 25 PA Code Chapter 109;
- b. Pennsylvania Water Rights Act of June 24, 1939, 32 P.S. §§ 631--641;
- c. Pennsylvania Water Resources Planning Act, 27 Pa. C.S. §§ 3101--3136, with regulations implementing that authority at 25 Pa. Code Chapter 110;
- d. Pennsylvania Oil and Gas Act of 2012 58 Pa. C.S. Chapters 23--35, with regulations implementing that authority at 25 Pa. Code Chapter 78a.;
- e. Noncoal Surface Mining Reclamation and Control Act, 52 P.S. §§ 3301--3326, with regulations implementing that authority at 25 Pa. Code Chapter 77;
- f. Surface Mining Conservation and Reclamation Act, 52 P. S. §§ 1396.1—1396.19, with regulations implementing that authority at 25 Pa. Code Chapters 86, 87, 88 and 89;
- g. Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§ 1406.1--1406.21, with regulations implementing that authority at 25 Pa. Code Chapters 86, 87 and 89; and
- h. The Clean Streams Law, 35 P.S. 691.1 – 691.1001, with regulations implementing that authority at Pennsylvania Code Title 25.

TERMS OF THE UNDERSTANDING

The following terms and conditions will govern the parties' understanding:

1. This LOU is not intended to and does not create any contractual rights or obligations with respect to the signatories or any third parties.

2. The Commission and PADEP recognize and acknowledge that both the statutory authorities and respective regulations of the two agencies are not identical in terms of scope, standards or procedure. As a result, projects utilizing water resources in the Pennsylvania portion of the basin fall into one of these categories:

- (a) Projects subject to regulation by both agencies.
- (b) Projects subject to regulation by PADEP, but not the Commission.
- (c) Projects subject to regulation by the Commission, but not by PADEP.
- (d) Projects not subject to regulation by either agency.

The "*Coordination Process for Program Activities*" document attached hereto, as Attachment A, and incorporated herein by reference, outlines a process that is intended to facilitate communication and coordination on projects in any of the categories identified above. In addition, this coordination process will also be used to facilitate data sharing and implementation of other water resource projects, outside of those identified in Attachment A, including but not limited to water use registration, withdrawal/use data, and water quality data. The Commission and PADEP will evaluate and, if appropriate, update the coordination process as necessary.

3. In the event the Commission or PADEP adopt new regulations, policies or guidance that change the review criteria for water withdrawal projects, the Commission and PADEP will amend this agreement, as necessary, to address said changes.

4. With regard to projects under review by the Commission, the Commission and PADEP recognize and acknowledge that a primary objective of the coordination contemplated hereunder is to obtain consensus on all issues and conditions prior to the PADEP's or the Commission's approval of any withdrawal projects in the Pennsylvania portion of the basin. In the event a dispute should arise concerning this LOU, it will be elevated to the signing parties or their designees for negotiation. Any dispute that the signatories are unable to resolve shall be submitted to the Executive Director of SRBC or his/her designee and the Pennsylvania Office of General Counsel or its designee for resolution.

5. The parties to this LOU agree that nothing contained herein shall be construed as a waiver of any other authority possessed by either the Commission or PADEP.

6. This LOU may be amended by mutual consent of the parties. It shall be effective upon execution and shall be terminable by either party upon 30 days written notice.

If the terms and conditions outlined above are acceptable to you, please sign where indicated below.

Thank you,



Patrick McDonnell
Secretary
Pennsylvania Department of Environmental
Protection

Dated: April 27, 2022

Signed:  _____ Dated: April 27, 2022

Andrew Dehoff
Executive Director
Susquehanna River Basin Commission

cc: Diana Stares, Chief Counsel, Pennsylvania Department of Environmental Protection
Jason Oyler, General Counsel, Susquehanna River Basin Commission

Attachment A

COORDINATION PROCESS FOR PROGRAM ACTIVITIES

Pennsylvania Department of Environmental Protection

and

Susquehanna River Basin Commission

Introduction

This document describes the processes to be utilized to effectuate coordination between the Pennsylvania Department of Environmental Protection (PADEP) and the Susquehanna River Basin Commission (Commission or SRBC) in the exercise of their respective water resource authorities in the Pennsylvania portion of the Susquehanna River Basin (basin), as committed to in the Letter of Understanding (LOU) executed by the two agencies. The coordination process is intended to promote intergovernmental cooperation, avoid unnecessary duplication of staff functions, minimize burdens on the regulated community, and generally allow for the efficient use of agency resources in completing the mission of each agency.

Routine coordination occurs with the commissioner and their advisors representing the Commonwealth of Pennsylvania through regularly scheduled meetings with SRBC's Executive Director, conference calls with the other commissioners and the SRBC Executive Management Team, and quarterly Commission business meetings. PADEP advisors to the Commission also participate on SRBC's Water Management Advisory Committee, which meets twice a year, and participate in the review of guidance and regulations developed to implement the Susquehanna River Basin Compact.

In addition, Commission staff regularly work in close coordination with PADEP staff in its central office headquarters and various PADEP regional and district offices. The majority of Pennsylvania's portion of the basin lies within PADEP's Northcentral, Northeast, and Southcentral Regions, with smaller portions located within the Northwest, Southwest, and Southeast Regions. District Mining Offices, as noted on the figure, are located in Pottsville, Moshannon, and Cambria and serve the various counties listed (Figure 1 – Map of PADEP Regions and SRBC Basin).

To facilitate communication, the SRBC and PADEP will maintain and share up-to-date contact lists of key personnel for all relevant program areas. This document will be reviewed periodically and may be amended by the parties by mutual agreement at the staff level as long as it remains consistent with the LOU. On an ongoing basis, active communication and cooperation between agencies should result in continuous improvement to effective and efficient utilization of the staff resources of both agencies. The public will be apprised of updates through SRBC's website.

Specific Coordination Processes

The coordination processes described below are intended to facilitate communication and coordination on projects and activities within the Pennsylvania portion of the basin between the Commission and PADEP related to information and data sharing, water quality monitoring, water resource planning, coordinated review of projects, and compliance and enforcement of permits/approvals.

Information and Data Sharing

For water use occurring in the basin, PADEP and SRBC will exchange information on water withdrawal and use data collected by the agencies, including data analysis methods, for facilitating development of water resource management strategies and informing development of policies and regulations. PADEP and SRBC will exchange public water supply system and other facility water use data on an annual basis at a minimum.

The SRBC and PADEP will work cooperatively, as technology is available and allows, to provide each other with reasonable access to appropriate data to fulfill planning, forecasting, and compliance monitoring functions.

Water Quality Monitoring

Commission and PADEP staff will continue to improve coordination for field data collection and analysis activities for water quality data. Examples of areas of collaboration include, but are not limited to, the exchange of information on chemical and biological data collection methods, side-by-side sample collection and analyses for quality assurance purposes, and sharing of trends information and other analytical results on an ongoing basis for studies conducted in Pennsylvania watersheds within the Susquehanna Basin.

Water Resource Planning

PADEP and SRBC will coordinate planning activities with regards to water availability and use throughout the Pennsylvania portion for the basin to best support sustainable water supply planning with regards to human, economic, and ecosystem needs. As population and domestic water demand in the basin continues to grow, there will be an ongoing need to increase water conservation and ensure public, commercial/industrial, livestock, and wildlife water supplies are sustainable into the future. This underscores the need to collaborate with tracking and forecasting water use to inform planning and regulatory decisions, in order to avoid future water use conflicts and impacts. Lastly, both agencies have a shared interest to incorporate planning and management principles that preserve some level of ecosystem flows for the support of healthy aquatic communities.

Coordinated Review of Projects

One of the objectives of the LOU is to establish consistent coordination processes for the review of projects subject to the regulatory review of both SRBC and PADEP. In general, SRBC will coordinate with the appropriate central, regional and district office program staff respective of the location of the project. SRBC and PADEP will work cooperatively, encouraging early communication with applicants. Preliminary consultations with agency staff provide opportunities to discuss the authorities and regulatory requirements of the agency and offer guidance concerning the application and review process. Knowledgeable professional agency staff can often advise applicants and their consultants about potential obstacles and challenges for complex projects.

Application and Technical Review

PADEP and SRBC will each review projects in accordance with that agency's applicable regulations and requirements and the terms of this coordination agreement.

Agency staff of PADEP and SRBC may provide technical assistance to each other, as requested, during the review process. Participation in joint field surveys and site evaluations by staff of the two agencies may also be coordinated and conducted as necessary.

Public Informational Meetings

The public may provide comment on applications for water withdrawal and use to both agencies. As opportunities may arise, SRBC and PADEP staff may conduct or participate in joint

informational meetings to further facilitate public participation and understanding of the proposed project.

Pre-decisional Coordination

SRBC determinations for most projects are made at regularly scheduled Commission business meetings. The commissioners have delegated authority for some actions to the Executive Director, including Approval by Rule determinations, minor modifications, and such. The SRBC Project Review Manager will notify PADEP of active applications on a quarterly basis, providing the results of Commission staff's technical analysis and proposed final recommendations and determinations for the projects scheduled for action.

In general, agency staff will work together to resolve any issues regarding a project prior to the project being noticed for action by the Commission.

Dispute Resolution

SRBC's Program Manager and PADEP's appropriate Program Manager will work together to resolve any issues regarding a project. If the issues cannot be resolved at this level, such issues will be elevated to the SRBC Executive Director and the Pennsylvania Commissioner for resolution. Any dispute that requires resolution beyond this point will follow the conditions set forth in the LOU.

Issuance, Denial or Withdrawal of PADEP Permits and SRBC Actions

Agency actions will be sequenced, as appropriate. PADEP and SRBC agree to provide to each other timely copies of permits and approvals issued for projects covered by the LOU and located within the geographic boundary of the basin in Pennsylvania.

Emergency Permit Applications

Emergency permits are issued by PADEP to alleviate situations that present an imminent threat to life, property, or the environment. PADEP and SRBC will follow a cooperative approach in their review of these projects.

Specific Coordination Procedures for Projects

For water withdrawals and consumptive use applications subject to regulatory review by both SRBC and PADEP, the practices and procedures used by the agencies for coordinated review vary by project type. Specific procedures for synchronized and consistent reviews of the following project types are described in Appendices 1 through 6:

- Appendix 1. Withdrawals Subject to Pennsylvania Water Rights Act of June 24, 1939, P.L. 842, No. 365, 32 P.S. §§ 631-641 and SRBC Regulation of Surface Water Sources for Public Water Supply
- Appendix 2. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of New Groundwater Sources for Public Water Supply
- Appendix 3a. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of Existing Groundwater Sources for Public Water Supply
- Appendix 3b. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of Existing Groundwater Sources for Public Water Supply that Request a PADEP Permit Revision
- Appendix 4. Withdrawals Subject to 25 Pa. Code §78a.69 and SRBC Regulation of Surface Water and Groundwater Sources for Unconventional Natural Gas Operations
- Appendix 5. Withdrawals Subject to SRBC Regulation of Water Withdrawals and Consumptive Use for Mining Operations
- Appendix 6. Withdrawals and Consumptive Use at PADEP Bureau of Abandoned Mine Operations

Compliance and Enforcement of Permits and Approvals

PADEP and SRBC will be responsible for compliance monitoring for all standards, terms, and conditions in their respective permits and approvals issued. Each agency will supply information and assistance to the other in connection with their respective compliance reviews as needed or appropriate. In its routine inspections of the facilities it regulates, PADEP and SRBC staff will

document and inform the other agency of instances of possible non-compliance as needed or appropriate.

Joint Inspection Opportunities

To the extent practicable, PADEP and SRBC may conduct joint facility and site compliance inspections. Participation in joint inspections by staff of the two agencies shall be governed by the legal authority for the same of the respective agencies, either statutory or regulatory, and otherwise by any policy adopted thereunder by the respective agencies.

Compliance Notifications

SRBC will continue to provide electronic notifications to its permit holders prior to the expiration date of an approval, along with notifications regarding changes in statutes, regulations, and fees that may affect a permit.

Enforcement

PADEP and SRBC have independent authorities under their respective statutes and regulations to take appropriate enforcement actions to ensure compliance with terms and conditions of their respective regulations, approvals, and permits. 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.

PADEP and SRBC agree to advise the other party of enforcement actions taken on projects having regulated water withdrawals and uses in the basin.

Appendix 1. Withdrawals Subject to Pennsylvania Water Rights Act of June 24, 1939, P.L. 842, No. 365, 32 P.S. §§ 631-641 and SRBC Regulation of Surface Water Sources for Public Water Supply

1. Public Water Supply (PWS) Applicant submits a water allocation permit application to PADEP.
2. PADEP sends a copy of an application determined to be complete, either electronically or paper, to SRBC.
3. Within 30 days of receipt of the application received under item 2, SRBC provides comments to PADEP and notifies PADEP and the PWS applicant whether or not a separate withdrawal application for an SRBC docket is required. Notification will state whether the project is also subject to SRBC diversion or consumptive use regulations and requires an SRBC docket application. If an SRBC withdrawal application is required, skip to Step 5.
4. When PADEP is the lead reviewer (no separate withdrawal application to SRBC):
 - a. PADEP completes technical review and coordination with the PWS applicant.
 - 1) If requested by PADEP, SRBC staff are available for assistance.
 - b. PADEP provides draft Water Allocation Permit (WAP) and Engineer's Report, or draft denial, to SRBC for review.
 - c. Within 20 days, SRBC reviews draft WAP and Engineer's Report and provides any comment to PADEP and PWS applicant.
 - d. PADEP and SRBC resolve comments.
 - e. PADEP issues WAP, or denial, and provides copy and final Engineer's Report to SRBC.
 - f. If WAP is not appealed and after close of time period to appeal PADEP determination, SRBC issues concurrence to PWS applicant, copying PADEP, and assigns an SRBC docket number.
 - g. If WAP is appealed, SRBC reviews Environmental Hearing Board findings or settlement agreement and final/revised WAP and either:
 - 1) Issues concurrence to PWS applicant, copying PADEP, and assigns an SRBC docket number, if appropriate; or
 - 2) Determines separate application to SRBC is required, notifies PADEP and PWS applicant of the determination and provides its rationale for application.
5. When an SRBC withdrawal application is also required, the PWS applicant completes SRBC's online application.
 - a. SRBC provides PADEP access to the online application(s) submitted to SRBC when administratively complete.
 - b. SRBC and PADEP conduct coordinated review.
 - 1) PADEP provides to SRBC the draft WAP and Engineer's Report, or draft denial.
 - 2) SRBC provides to PADEP the draft SRBC approval or denial.
 - c. SRBC and PADEP coordinate issuance of final actions:
 - 1) SRBC approves or denies the project at a Commission business meeting and provides a copy of final action to the PWS applicant, with a copy to PADEP.
 - 2) PADEP approves or denies the WAP and provides a copy of its final action and final Engineer's Report to the PWS applicant, with a copy to SRBC.

Notes:

- Designated contact staff:
 - PADEP – Regional Safe Drinking Water Program Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 2. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of New Groundwater Sources for Public Water Supply

1. Public Water Supply (PWS) applicant submits a request to PADEP for a site survey to add a new groundwater well source. PADEP provides to SRBC a notification of a PWS applicant's request for a site survey, with a copy provided to the PWS applicant. PWS applicant submits an inquiry to SRBC and SRBC determines whether the PWS applicant's proposed withdrawal triggers SRBC regulatory review.
 - a. If the PWS applicant's request does not meet SRBC regulatory triggers, PADEP coordinates the permit application processes with PWS applicant.
 - b. If the PWS applicant's request meets SRBC regulatory triggers, SRBC notifies PADEP and the PWS applicant, and begins the coordination process as outlined below.
2. PADEP conducts the site survey.
3. PADEP sends a letter to the PWS applicant indicating whether the site appears to be suitable.
4. If the site is suitable, the PWS applicant submits a pre-drilling plan to PADEP, in accordance with 25 Pa. Code Chapter 109 regulations, and PADEP provides a copy of the pre-drilling plan to SRBC.
5. If the pre-drilling plan is acceptable, PADEP issues approval of the pre-drilling plan to the PWS applicant and notifies SRBC of the approval of the pre-drilling plan.
6. After the well is drilled and constructed, the PWS applicant completes the SRBC aquifer testing plan and submits the plan to SRBC.
7. SRBC provides a copy of the aquifer testing plan to PADEP then PADEP and SRBC staff provide coordinated assistance to the PWS applicant. SRBC and PADEP coordinate on plan approval and each agency informs the PWS applicant of its determination.
8. During the aquifer test, SRBC and PADEP may conduct site inspections, to evaluate the testing and provide guidance regarding the implementation of the testing.
9. The PWS applicant will submit a Safe Drinking Water permit application and hydrogeologic report to PADEP, and a water withdrawal docket application to SRBC.
10. PADEP evaluates the permit application in accordance with the Pennsylvania Safe Drinking Water Act, 25 Pa. Code Chapter 109 requirements and other applicable statutes and policies. SRBC evaluates the water withdrawal application in accordance with the SRBC compact, regulations and policies.
11. PADEP and SRBC coordinate and conduct meetings with the PWS applicant as needed.
12. If the applications are acceptable, SRBC issues its approval. PADEP may issue a construction permit followed by an operations permit, in accordance with applicable statutes and regulations.
13. If an action of either agency is appealed, PADEP and SRBC staff will coordinate on follow-up actions to resolve any outcome of the appeal.

Notes:

- Designated contact staff:
 - PADEP – Regional Safe Drinking Water Program Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 3a. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of Existing Groundwater Sources for Public Water Supply

1. Public Water Supply (PWS) applicant submits to SRBC a renewal application for a docket or an application for a docket as a result of the loss of grandfathered status.
2. SRBC notifies PADEP of the request and coordinates with PADEP during the review, including portions of the review surrounding any aquifer testing or evaluation of existing operational data that may be required (if applicable).
 - a. If an aquifer test is required, SRBC provides a copy of the aquifer testing plan to PADEP and SRBC staff provide assistance to the PWS applicant regarding aquifer testing methods, monitoring, and implementation.
 - b. If applicable and appropriate, during implementation of testing, SRBC and PADEP may complete site inspections to evaluate the testing (SRBC) or collect samples (PADEP) and provide guidance regarding the implementation of the testing.
3. During SRBC review of the application, SRBC notifies PADEP if any significant adverse impacts, sustainability, or surface water influence issues arise from the analyses. SRBC coordinates any actions or follow-up with the PWS applicant in these or any other applicable or respective review standards to avoid adverse impacts.
4. SRBC shares any other data and information with respect to the application process.
5. SRBC coordinates and conducts meetings with the PWS applicant as needed.
6. If the application is acceptable, SRBC issues its approval of the application.
7. If SRBC action on the docket is appealed, SRBC staff will coordinate as appropriate on follow-up actions to resolve any outcome of the appeal. Once the appeal is resolved, PADEP will notify the PWS applicant of its obligation to submit an application for modification to the PWS Safe Drinking Water permit, as needed.

Notes:

- Designated contact staff:
 - PADEP – Regional Safe Drinking Water Program Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 3b. Withdrawals Subject to Pennsylvania Safe Drinking Water Act and SRBC Regulation of Existing Groundwater Sources for Public Water Supply that Request a PADEP Permit Revision

1. Public Water Supply (PWS) applicant completes the Safe Drinking Water (SDW) permit application and submits the application to PADEP.
2. When the permit application involves an increase in withdrawal amount, PADEP provides to SRBC a notification that a PWS applicant has submitted a permit application, with a copy to the PWS applicant.
3. SRBC determines whether the PWS applicant's proposed withdrawal revisions trigger SRBC regulatory review and provides a written response on determination to both the PWS applicant and PADEP.
 - a. If the PWS applicant's request does not meet SRBC regulatory triggers, PADEP coordinates the permit application process with the PWS applicant.
 - b. If the PWS applicant's request meets SRBC regulatory triggers, SRBC begins the coordination process as outlined below.
4. PADEP provides a copy of the permit application to and initiates discussions with SRBC.
5. The PWS applicant completes an aquifer testing plan, waiver, or other testing alternative request and submits it to SRBC.
6. SRBC provides a copy of the aquifer testing plan, waiver, or other testing alternative request to PADEP. SRBC issues its determination regarding plan, waiver, or other testing alternative approval or denial and informs the PWS applicant and PADEP.
 - a. If an aquifer test is required, SRBC provides a copy of the aquifer testing plan to PADEP and coordinates regarding implementation of the test.
 - b. If an aquifer test plan waiver or other testing alternative request is submitted, SRBC provides the supporting data and information to PADEP.
7. The PWS applicant submits a water withdrawal docket application to SRBC and an amended SDW permit application and hydrogeologic report to PADEP, as needed.
8. PADEP evaluates the permit application in accordance with the Pennsylvania Safe Drinking Water Act, 25 Pa. Code Chapter 109 requirements and other applicable statutes and policies. SRBC evaluates the water withdrawal docket application in accordance with SRBC regulations and policies.
9. PADEP and SRBC coordinate and conduct meetings with the PWS applicant as needed.
10. If the application is acceptable, SRBC issues approval.
11. If the SRBC approval is not appealed, PADEP may issue a construction permit followed by an operations permit, in accordance with applicable statutes and regulations.

Notes:

- Designated contact staff:
 - PADEP – Regional Safe Drinking Water Program Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 4. Withdrawals Subject to 25 Pa. Code §78a.69 and SRBC Regulation of Surface Water and Groundwater Sources for Unconventional Natural Gas Operations

1. For direct withdrawals of water from surface water or groundwater or diversions, unconventional natural gas operator, service company, or third-party source owner submits:
 - a. Water withdrawal or diversion application to SRBC; and
 - b. Water Management Plan (WMP) application to PADEP:
 - 1) In review of the WMP application, PADEP will review a Reuse Plan, Proof of consultation with the Pennsylvania Natural Heritage Program and Pennsylvania Historic and Museum Commission, and Proof of notification of the proposed withdrawal to Municipalities and Counties to meet the requirements in 25 Pa. Code §78a.69.
 - 2) PADEP may establish additional requirements as necessary to comply with Pennsylvania law in accordance with §3211(m)(3)(ii) of the 2012 Oil & Gas Act.
2. SRBC posts application summary on Water Application and Approval Viewer (WAAV) at www.srbc.net and sends notification of pending applications to PADEP:
 - a. Full SRBC application package can be provided electronically to PADEP upon request.
3. SRBC completes review:
 - a. SRBC may request specific PADEP staff assistance during review.
 - b. SRBC defers to PADEP for water obstruction and encroachment permit or authorization.
 - 1) SRBC will coordinate and advise, if requested by PADEP, for water withdrawal intake location, design, or configuration.
4. SRBC staff presents recommendations to commissioners, including Pennsylvania representative to Commission, at quarterly business meeting for approval or denial of the project and provides copy of Commission action to applicant and PADEP.
5. PADEP completes WMP review if SRBC approval is issued.
 - a. To reduce duplication, WMP application should include or be amended with SRBC docket approval.
6. PADEP issues WMP authorization to the applicant that references SRBC approval(s) and term.
 - a. PADEP provides a copy of WMP to SRBC.

Notes:

- Designated contact staff:
 - PADEP – Regional Bureau of District Oil and Gas Operations Program Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 5. Withdrawals Subject to SRBC Regulation of Water Withdrawals and Consumptive Use for Mining Operations

1. For mining projects requesting a new permit or a major revision, an applicant submits concurrently:
 - a. SRBC Mining Project Information Form 87 to SRBC.
 - b. Mining application(s) to PADEP.
2. PADEP notifies SRBC when application is determined to be complete and provides SRBC access to the application.
3. Within 60 days, SRBC notifies PADEP and the applicant of its determination, which will be either:
 - a. SRBC defers review to PADEP and no separate application to SRBC required due to water use not anticipated to exceed SRBC thresholds or all withdrawals and consumptive use are adequately covered under mining permit; or
 - b. PADEP completes review and notifies SRBC of final permit issuance or denial.
4. If SRBC requires separate review for withdrawal(s) and/or consumptive use and the process continues as outlined below.
5. PADEP completes review of its application, coordinates with SRBC as appropriate, and issues its mining permit decision.
6. Applicant submits withdrawal and/or consumptive use application(s) to SRBC.
 - a. When the application is administratively complete, SRBC sends notification of pending applications to PADEP.
 - b. SRBC conducts review and coordinates, as appropriate, with PADEP staff.
 - c. SRBC provides its draft findings to PADEP, and if applicable, works to address any issues or comments and ensure its recommendations and conditions do not conflict with PADEP's permit.
 - d. SRBC presents recommendations to commissioners, including Pennsylvania representative to Commission, at quarterly business meeting for approval or denial of the project and provides copy of Commission action to applicant and PADEP.

Notes:

- Designated contact staff:
 - PADEP – District Mining Office Manager or their designee
 - SRBC – Project Review Manager or their designee

Appendix 6. Withdrawals and Consumptive Use at PADEP Bureau of Abandoned Mine Operations

1. PADEP notifies SRBC when it intends to pursue a project that would exceed SRBC water withdrawal or consumptive use regulatory thresholds.
2. PADEP and SRBC meet to discuss project and identify key elements of the proposed project.
3. Within 30 days, SRBC notifies PADEP and the operator of its determination that either:
 - a. SRBC defers review to PADEP because water withdrawal and use is not anticipated to exceed SRBC regulatory thresholds; or
 - b. If water withdrawal and use is anticipated to exceed SRBC thresholds, SRBC waives the formal application process under 18 CFR §§ 806.7 and 806.8 and proceeds with concurrence on formulating a joint review plan with PADEP.
4. SRBC works with PADEP to formulate a joint review plan for the proposed project to include such elements as an overall timeline for project development and phases of the project during which SRBC staff may review and provide comments to PADEP on the project's development.
5. SRBC conducts review and coordinates, consistent with the joint review plan, with PADEP staff.
 - a. If the project is being pursued in partnership with SRBC as a source of consumptive use mitigation, SRBC review will have enhanced focus on any potential impacts to other water users and the environment as a result of the increased quantity proposed to be withdrawn to offset consumptive use within the basin.
6. SRBC provides its draft findings and comments, consistent with the timeline established for the applicable phases of the project as established in the joint review plan to PADEP and works to address any issues and comments and ensure its recommendations and conditions do not conflict with PADEP's plan for implementation, construction or operation of the project.
7. SRBC and PADEP develop a plan for collecting and sharing data and information associated with daily water withdrawal, use and discharge quantities on at least an annual basis for inclusion as part of the resolution approving the project.
 - a. If the project is being pursued in partnership with SRBC as a source of consumptive use mitigation, SRBC and PADEP will develop a plan outlining how the project will operate and report when low flow conditions call for consumptive use mitigation for inclusion as part of the resolution approving the project.
8. SRBC presents recommendations to the commissioners, including the Pennsylvania representative, at a quarterly business meeting for approval or denial of the project and provides copy of Commission action to PADEP.

Notes:

- Designated contact staff:
 - PADEP – Regional Office Program Manager or their designee
 - SRBC – Project Review Manager or their designee