SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to: Include definitions for new terms that are used in the proposed rulemaking; provide for administrative approval of interbasin transfers of flowback and production fluids between drilling pad sites that are isolated from the waters of the basin; provide for administrative approval of out-of-basin transfers of flowback or produced fluids from a Commission approved hydrocarbon development project to an out-of-basin treatment or disposal facility; insert language authorizing “renewal” of expiring approvals, including Approvals by Rule (ABRs); delete specific references to geologic formations that may be the subject of natural gas development using hydrofracture stimulation and replace with a generic category—“unconventional natural gas development;” broaden the scope of ABRs issued to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development; memorialize the current practice of requiring post-hydrofracture reporting; standardize at 15 years the term of ABR approvals for both gas and non-gas projects; and provide further procedures for the approval of water sources utilized at projects subject to the ABR process.

DATES: Comments on these proposed rules may be submitted to the Commission on or before August 23, 2011. The Commission has scheduled two public hearings on the proposed rules, to be held August 2, 2011, in Harrisburg, Pennsylvania, and August 4, 2011, in Binghamton, New York. The locations of the public hearings are listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391, or by e-mail to rcairo@srbc.net.

The public hearings will be held on Tuesday, August 2, 2011, at 10 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, and on Thursday, August 4, 2011 at 7 p.m., at the Holiday Inn Binghamton Downtown, 2–8 Hawley Street, Binghamton, New York 13901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717–238–0423, ext. 306; fax: 717–238–2436; e-mail: rcairo@srbc.net.

Also, for further information on the proposed rulemaking, visit the Commission’s Web site at http://www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission’s project review regulations, most of which relate to the approval of hydrocarbon development projects. New terms are used in these amendments that require further definition in 18 CFR 806.3. These include definitions for the terms flowback, formation fluids, hydrocarbon development, hydrocarbon water storage facility, production fluids, tophole water, and unconventional natural gas development.

In order to encourage the reuse of least quality water instead of fresh water for hydraulic fracturing by unconventional natural gas development, the Commission proposes to add paragraph (a)(3)(iv) to § 806.4, which would provide for administrative approval of diversions involving flowback or production fluids from hydrocarbon development projects being transferred across the basin boundary from one drilling pad site to another drilling pad site, provided this water is handled in a manner that isolates it from the waters of the basin. Such diversions would be approved administratively under the provisions of § 806.22(f), rather than § 806.4. This change would incorporate into the regulation a policy adopted by the Commission on March 10, 2011.

To encourage reuse, treatment and proper disposal, paragraph (a)(3)(iv) of § 806.4 would also be added, which would provide for diversions involving flowback or production fluids transferred to an out-of-basin treatment or disposal facility operating under separate governmental approval to be subject to administrative approval under the provisions of § 806.22(f), rather than being subject to docket approval under § 806.4.

Currently, § 806.4(a)(8) states that natural gas well development projects targeting the Marcellus and Utica shale formation, or any other shale formations identified in an Executive Director determination, involving a withdrawal, diversions or consumptive use of water in any quantity, must be approved by the Commission. Rather than attempting to name every possible geologic formation that may be the subject of development using hydrofracture stimulation (beyond Marcellus and Utica and the additional formations referenced in the Executive Director’s recent Notice of Determination issued on April 21, 2011), the specific formation references would be deleted and replaced with a generic category—“unconventional natural gas development,” which relates to the extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation and recovery techniques. The “gallon one” regulatory threshold currently applicable under the regulations to gas well development in the specifically named formations would instead be extended to this broader category.

Language is inserted into §§ 806.13 and 14 authorizing “renewal” of expiring approvals, including Approvals by Rule (ABRs). Currently, the regulations have no specific reference to a “renewal” process for expiring approvals. Renewals are also provided for in additions to § 806.22(e)(6) and (f)(9).
Adjuncts are made to § 806.15—
Notice of Application to account for
changes and additions to § 806.22(f)
described below relating to source
registrations and administrative
approvals of sources.

Currently, § 806.22(f) establishes an
ABR process for consumptive use
approvals related to natural gas well
development. The Commission
proposes to broaden the scope of ABRs
issued under § 806.22(f) to include
hydrocarbon development of any kind
utilizing the waters of the basin, not just
unconventional natural gas well
development. Rather than requiring
such projects to go through review and
docket approval under § 806.4, they
would be regulated under the
administrative ABR process for
consumptive use approvals, which has
become a very effective mechanism for
managing this type of activity. The
inclusion of “unconventional natural
gas well development” as a subcategory
of hydrocarbon development retains
coverage of well development using
unconventional stimulation or recovery
techniques such as hydraulic fracturing
under the ABR process.

Proposed § 806.22(f)(4) would clarify
that post-hydrofracture reporting is
intended to be included in the metering,
daily use monitoring and quarterly
reporting requirements specified in
§ 806.30. This would memorialize an
ongoing practice of the Commission.

Proposed § 806.22(f)(8) would
broaden the certification provided by
project sponsors on their compliance
with state and federal laws to include
“re-use” as well as treatment and
disposal of flowback and production
fluids.

Revised § 806.22(f)(9) would extend
the concept of “renewal” to an existing
ABR, where it is not explicitly
mentioned in the current regulations.

The current regulations only provide
a 4-year duration for natural gas
development project ABRs. This
relatively short approval term was
implemented to give the Commission a
near-term opportunity to evaluate the
use of an administrative approval
process for natural gas-related
consumptive use activity. Revised
§ 806.22(f)(10) would extend the term
of an approval by rule from 4 years to 15
years from the date of notification by the
Executive Director, reflecting the
knowledge and experience gained by
the Commission in reviewing natural
gas development projects. A 15-year
term is the standard approval term for
all other ABRs.

Water source approvals under the
hydrocarbon development ABR program
are restructured in three ways. First,
language would be inserted in
§ 806.22(f)(11) to identify water sources
that are authorized for use by operation
of the rule, rather than by separate
approvals. These sources would continue
to be subject to tracking, recordkeeping
and reporting requirements. The
existing provisions of § 806.22(f)(12)
would be split apart, resulting in revised
language and the creation of a new
§ 806.22(f)(13). As revised,
§ 806.22(f)(12) sets out the registration
procedure for hydrocarbon developers
to use a source of water approved by the
Commission pursuant to § 806.4(a) and
issued to persons other than the project
sponsor. The new § 806.22(f)(13)
authorizes approvals for sources,
including, but not limited to public
water supplies, wastewater, and
hydrocarbon water storage facilities not
otherwise associated with docket
approvals issued by the Commission or
ABRs issued by the Executive Director.

By issuing approvals for such
hydrocarbon water storage facilities, a
tracking mechanism would be created
authorizing use of these sources by
operation of the rule, rather than
seeking individual registrations or
approvals. Such an approach provides
the necessary management controls.

List of Subjects in 18 CFR Part 806

Administrative practice and
procedure, Water resources.

Accordingly, for the reasons set forth
in the preamble, the Susquehanna River
Basin Commission proposes to amend
18 CFR Part 806 as follows:

PART 806—REVIEW AND APPROVAL
OF PROJECTS

Subpart A—General Provisions

1. The authority citation for Part 806
continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and

2. Amend § 806.3 by adding
definitions for “Flowback”, “Formation
fluids”, “Hydrocarbon development”,
“Production fluids”, “Project”,
“Tophole water”, and “Unconventional
gas natural gas development” to read as
follows:

§ 806.3 Definitions.

Flowback. The return flow of water
and formation fluids recovered from the
well bore of an unconventional natural
gas or hydrocarbon development well
within 30 days following the release
of pressures induced as part of the
hydraulic fracture stimulation of a target
geologic formation, or until the well is
placed into production, whichever
occurs first.

Formation fluids. Fluids in a liquid or
gaseous physical state, present within
the pore spaces, fractures, faults, vugs,
caverns, or any other spaces of
formations, whether or not naturally
occurring or injected therein.

Hydrocarbon development. Activity
associated with the siting, drilling,
casing, cementing, stimulation and
completion of wells, including but not
limited to unconventional natural gas
development wells, undertaken for the
purpose of extraction of liquid or
gaseous hydrocarbon from geologic
formations.

Hydrocarbon water storage facility.
An engineered barrier or structure,
including but not limited to tanks, pits
or impoundments, constructed for the
purpose of storing water, flowback or
production fluids for use in
hydrocarbon development.

Production fluids. Water or formation
fluids recovered at the wellhead of a
producing hydrocarbon well as a by-
product of the production activity.

Project. Any work, service, activity, or
facility undertaken, which is separately
planned, financed or identified by the
Commission, or any separate facility
undertaken or to be undertaken by the
Commission or otherwise within a
specified area, for the conservation,
utilization, control, development, or
management of water resources, which
can be established and utilized
independently, or as an addition to an
existing facility, and can be considered
as a separate entity for purposes of
evaluation. For purposes of hydrocarbon
development activity, the project shall
be considered to be the drilling pad
upon which one or more exploratory or
production wells are undertaken, and
all water-related appurtenant facilities
and activities related thereto.

Tophole water. Groundwater that is
encountered collected at the surface
during drilling operations undertaken in
conjunction with hydrocarbon
development.

Unconventional natural gas
development. Activity associated with
the siting, drilling, casing, cementing,
stimulation and completion of wells
undertaken for the purpose of extraction
of gaseous hydrocarbons from low
permeability geologic formations
utilizing enhanced drilling, stimulation
or recovery techniques.

3. In § 806.4, revise paragraph (a)(3)
introductory text, add paragraphs
§ 806.4 Projects Requiring Review and Approval.

(a) [Reserved]

(3) Diversions. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (3)(i) through (3)(iv) below shall require an application to be submitted in accordance with § 806.14, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (3)(v) and (3)(vi) shall be subject to regulation pursuant to § 806.22(f).

(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, and handled in such a manner as to isolate it from the waters of the basin, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f).

(vi) The out-of-basin diversion of flowback or production fluids from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept the same, shall not be subject to separate review and approval as a diversion under this paragraph.

§ 806.14 Contents of Application.

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

(b)(i)(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, and handled in such a manner as to isolate it from the waters of the basin, shall not be subject to separate review and approval as a diversion under this paragraph.

(b)(i)(vi) Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

§ 806.15 Notice of Application.

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

§ 806.22 Standards for consumptive uses of water.

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

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

§ 806.24. The project sponsor of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (3)(v) and (3)(vi) shall be subject to regulation pursuant to § 806.22(f).

§ 806.13 Submission of Application.

Project sponsors of projects subject to review and approval of the Commission under §§ 806.4, 806.5 or 806.6, or project sponsors seeking renewal of an existing approval of the Commission, shall submit an application and applicable fee to the Commission, in accordance with this subpart.
in a form and manner as prescribed by the Commission.

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of §806.22(b).

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to §806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member State.

(10) An approval by rule shall be effective upon written notification from the Executive Director to the project sponsor and shall expire 15 years from the date of such notification.

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize any of the following water sources at the drilling pad site:

(i) Water sources approved for use by the project sponsor for unconventional natural gas development, or hydrocarbon development, whichever is applicable, pursuant to §806.4 or this section.

(ii) Tophole water encountered during the drilling process.

(iii) Precipitation or stormwater collected on the drilling pad site.

(iv) Flowback or production fluids obtained from a hydrocarbon water storage facility, provided it is used for hydrofracture stimulation only, and is handled in such a manner as to isolate it from the waters of the basin.

(v) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to §806.4(a) or by the Executive Director pursuant to this section.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to §806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission. The project sponsor shall also provide a copy of same to the appropriate agency of the member State. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply, wastewater discharge, or a hydrocarbon water storage facility not otherwise associated with an approval issued by the Commission pursuant to §806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in §806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be subject to such monitoring and reporting requirements as may be contained therein.

Dated: July 1, 2011.

Thomas W. Beaudy, Deputy Executive Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA–2011–D–0398]

Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation" (the draft guidance). The draft guidance provides guidance to egg producers and other persons who are covered by FDA’s final rule entitled “Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation” (the final rule). The draft guidance contains questions FDA has received on the final rule since its publication and responses to those questions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on the draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by September 12, 2011.

ADDRESSES: Submit electronic comments on the draft guidance to http://www.regulations.gov. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Division of Plant and Dairy Food Safety/Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or fax your request to 301–436–2632. Send one self-addressed adhesive label to assist that office in processing your request. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance.