

November 17, 2014

VIA ELECTRONIC MAIL

Andrew Dehoff, Executive Director
Jayson Oyler, Regulatory Counsel
Susquehanna River Basin Commission
1721 N. Front Street
Harrisburg, PA 17102-2391

Dear Mr. Dehoff and Mr. Oyler:

On behalf of the undersigned organizations, we thank you for the opportunity to submit comments on proposed amendments to the Susquehanna River Basin Commission's (SRBC or Commission) regulations at 18 C.F.R. §§803 and 806. The amendments were made available to the public via public notice in the Federal Register.¹ The Commission is accepting comments through November 17th, 2014.²

On the whole, we support and welcome regulatory amendments that clarify the Commission's legal and practical oversight of public water resources that are utilized by industrial operators, particularly for the purposes of hydrocarbon and unconventional natural gas development. However, **we strongly oppose the Commission's proposal to triple the length of Approval By Rule ("ABR") authorization terms from five to fifteen years**¹ This drastic and unprecedented expansion of time allowed for water use permits poses four critical problems:

- The Commission is entertaining it without having provided any scientific analysis or rationale for the change. Limited agency resources and the convenience of operators do not constitute sufficient reasons for a policy change.
- Extended permit periods reduce opportunities for Commission staff to identify impacts that are occurring and for the public to effectively participate in the Commission's work.
- By reviewing permits less frequently, the Commission's transparency and mandate—to ensure that water quality and quantity are fully protected over time—will be compromised.
- The unconventional gas industry is complex and expanding and changing rapidly, posing risks that the Commission must consider and address frequently, not rarely.

In light of the significant scientific "unknowns" of the trajectory of unconventional gas development, and in the context of *known* negative impacts of the industry, it is patently absurd to contemplate ABR authorizations at three times longer than currently is allowed. Furthermore, **it is inappropriate to extend ABR approval timeframes when the Commission has not finalized and made public Memorandums of Understanding (MOUs) with Pennsylvania**

¹ For the purposes of this letter, we are treating the idea of enlarging the ABR term to fifteen years as a proposal. We bear in mind, however, that the SRBC has not formally proposed this enlargement, only stated that it is "considering" such a change and "seeking public comment regarding a longer term." Accordingly, section 806.22(f)(10) may not be revised absent an additional formal rulemaking proposal and further opportunity for public comment.

concerning shared responsibilities, and has **has failed to conduct an analysis of the cumulative impacts** of unconventional natural gas development on water quality in the Basin.

As you are aware, our organizations have repeatedly requested information and action pertaining to both issues. **We also await response to our letter of January 15, 2014, addressed to SRBC Commissioners, detailing the negative impacts of Pennsylvania’s inability to protect water quality in the face of rampant gas development.**

We offer the following specific comments regarding the pending rulemaking.

I. Proposed Amendments to §806.3

We support the addition of appropriate definitions and the revision of others that, on the whole, better encompass the diverse components stages and aspects of hydrocarbon and natural gas development. **We recommend adding language clarifying that all water use on-site (including during post-production, site restoration, and well plugging and closure) requires Commission approval.** This is an important and necessary update that will better inform management of water resources and, incidentally, provide a second mechanism through which stakeholders can track development and production trends—which in turn can ensure the proactive management of an industry with diverse impacts on water resources.

We specifically applaud the Commission for revising its definitions to appropriately include water used not only for well development and drilling, but also for infrastructure, including but not limited to roads, dust suppression, underground pipelines, and waste storage.

II. Proposed Amendments to §806.22

The second amendment noted in the proposed rulemaking regards §806.22(e). This section concerns ABRs for consumptive uses, specifically any project in which the sole source of water for consumptive use is a public water supply. Here, the proposed rule reiterates an authorization period of 15 years in subsection (e)(7); as of April 2012 and the Commission’s last rulemaking, 15 years became the timeframe for ABR authorizations under subsection (e). As emphasized and explained above, we do not support 15-year authorization terms.

The proposed period extends water use approvals past the bounds of the Commission’s two-year Water Resource Plans, and even its five-year Comprehensive Plan updates. We see no scientific rationale for the proposal, and the Commission has provided no explanation or information supporting a *longer* authorization period for water withdrawals than for water resource and comprehensive planning. If anything, **more scrutiny of water availability and quality, not less, is merited in cases of projects using water from public water supplies.**

With regard to the proposed amendment to §806.22(f), we support the Commission’s relatively exhaustive listing of the types of consumptive uses required to obtain authorization. Conversely, the proposed rule states in subsection (f)(10) that a five-year ABR authorization limit is being proposed—with the caveat that the Commission will consider the propriety of extending approvals to 15 years. Since we do not under any circumstances support the extension of ABR

authorizations from 5 to 15 years, we cannot support this section’s proposed amendment, which would reduce opportunities for public engagement in matters concerning water resource impacts.

Furthermore, use of the ABR process to handle new and/or proposed renewals of unconventional gas development related water-use projects is premised on an important assumption: that these projects and their impacts are scientifically addressed by member jurisdiction’s regulatory programs. **Yet the Commission has not—even in the face of overwhelming documentation of negative environmental impacts arising from the development of unconventional gas resources—ever assessed the performance of any member jurisdiction in fulfilling its mandatory duties to protect water supplies and prohibit and abate water pollution.**

III. The Commission Must Perform a Cumulative Impacts Study of Hydrocarbon Development’s Impacts on Water Resources of the Basin

We are concerned that the Commission has still not taken steps to establish a mechanism and effective process by which to holistically assess and address the impacts of unconventional gas development on water resources and water resources management. Put another way, there currently exists a gap between the regulatory oversight of member states on water quality, and the Commission’s own oversight of its regulatory program—between which many detrimental impacts on water resources, both indirect and cumulative, are being left unaddressed.

As noted above, in a letter sent to SRBC Commissioners last January our organizations provided extensive and detailed documentation of such gaps and related impacts in the Pennsylvania portion of the Basin. We have not received any response or indication that the Commission is concerned about these very real and growing impacts.

Unquestionably, unconventional gas development represents consumptive uses of water within the ambit of the Commission’s authority. We acknowledge that the Commission recently highlighted this authority by addressing impacts to local waterways from water withdrawals for unconventional gas development through the new Low Flow Protection Policy (LFPP). While the LFPP is a huge step forward in protecting local waterways from quality impacts associated with dewatering—and will serve as a vital regulatory tool going forward—there is no publicly available and scientifically validated way to assess indirect and cumulative impacts to water resources from unconventional gas development.

As our organizations and many members of the public have emphasized to the Commission in meetings, letters, and hearings, water withdrawals for unconventional gas development create potentially significant direct, indirect, and cumulative effects on water quality and quantity. For this reason, **there is a need for a new study funded and designed cooperatively by member jurisdictions, the SRBC, and the public that comprehensively assesses and identifies—on a Basin-wide scale— current and potential impacts to water resources and water resources management (such as land, wildlife, and drinking water impacts, among others) that arise directly from the withdrawal and use of water for unconventional gas operations.**

Such an effort is particularly important and timely, as high-volume hydraulic fracturing,

currently practiced within the Pennsylvania portion of the Basin, could be expanded both there and potentially into other formations (such as Utica Shale) and potentially in the other SRBC Compact signatory states, Maryland and New York.

Simply put, unconventional gas development consumes not just freshwater but fundamentally alters landscapes and therefore impacts overall watershed health, aspects that the SRBC Compact recognizes and encourages the Commission to investigate. Conducting a comprehensive, Basin-wide study of water resource impacts from unconventional gas development will help aggregate critical facts and science.

As we have informed the Commission before, well sites take up an average of 3 acres of land, or nearly 9 acres when associated infrastructure (e.g., roads, water impoundments, and pipelines) are considered.³ Adjacent lands can also be impacted, especially in settings where land clearing fragments forests, creates new edges, and changes habitat conditions for sensitive wildlife and plant species.⁴ Indeed, a recent USGS report concerning fracking-related land disturbance found that well pads and associated infrastructure (roads, water impoundments, and pipelines) required nearly 3.6 hectares (ha) (9 acres) per well pad with an additional 8.5 ha (21 acres) of indirect edge effects.⁵ If just 3,845 well sites were to be constructed in the next two decades, the total forest clearing in Pennsylvania would be nearly 34,000 acres.⁶

It is also likely that gas development will occur in close proximity to nearly 30 percent of High Quality (HQ) and 5 percent of Exceptional Value (EV) streams in Pennsylvania, which are already greatly threatened by the deforestation, soil compaction, runoff, and other factors associated with well sites.⁷ In addition, a majority of the intact native brook trout watersheds in Pennsylvania are likely to be affected by gas development, making rigorous sediment controls and other protective measures essential for the survival of this and other critical species.⁸

A comprehensive study that identifies water resource impacts on a Basin-wide scale is critical to appropriately managing and preventing damaging aspects of unconventional gas development. Performing **such a study is not only within the Commission's authority but also non-duplicative of any existing state regulatory and oversight programs.** If the Commission truly intends to safeguard water resources from the impacts of energy development throughout the Basin, it must stay abreast of actual events—and the best manner to do so is to fashion a complete picture of the evolving industry and trends. The Commission has excellent monitoring protocols and is experienced in leveraging existing science to develop and implement its programs. This experience should be brought to bear through a new, qualitatively-focused cumulative impacts study.

IV. The Commission Should Revise and Allow Public Comment on MOUs With Member Jurisdictions

In its most recent update to the SRBC Comprehensive Plan, Commission staff recognized the value of up-to-date MOUs with member jurisdictions. Previous communications with Commission staff have led us to believe that the only MOU in existence, a 1999 MOU with the Pennsylvania Department of Environmental Protection (PADEP), has been under revision for at least two years, and we are not aware of a current deadline for completing the revisions. Nor

have any drafts revisions been shared with the public.

The Commission should amend the PADEP MOU to ensure that its contents address both substantive and procedural mechanisms relevant to water quality controls. Specifically, we encourage revision of the PADEP MOU to include provisions detailing precisely the how, when, and what of the coordination of water quality controls related to the Commission's authorizations of water withdrawals.

For example, the SRBC's current regulatory program is premised on the understanding that the Commission's work will not be duplicative of the water quality control programs of member states, and that those member states retain primary oversight of water quality. In the context of water withdrawals, this should mean that each state, prior to a Commission authorization being issued, performs salient quality control reviews, e.g., for special protection waters. Moreover, consistent use of MOUs will also serve the Commission in better advocating for uniform water management policies and standards, a goal the Commission's Compact specifically recognizes.⁹

In Pennsylvania, this would imply that the PADEP should perform anti-degradation reviews to ensure that an authorization will not, in fact, decrease existing water quality conditions pursuant to the mandates of the federal Clean Water Act. However, as we have detailed before for the Commission, PADEP is not doing so. Yet such review is critical to ensuring that oversight of water quality does not *decrease*, a goal that the Commission must fulfill in light of the increasing, competing demands on water resources across the Basin.

For these reasons, any revision of the PADEP MOU should clearly articulate the procedure by which the Commission will ensure the effectiveness of Pennsylvania's water quality controls and, in turn, use that data substantively to determine the propriety of authorizing or denying a water withdrawal. **Because MOUs are the proper means for ensuring non-duplicative review of proposed actions and effective use of quality controls, we urge the Commission to revise and issue the PADEP MOU, and to create MOUs with Maryland and New York.**

Thank you again for consideration of our comments. Please direct any questions to Michael Helfrich, Lower Susquehanna Riverkeeper, at lawsusriver@hotmail.com or 717-779-7915.

Sincerely,

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Jill Burke, President, Cecil Land Use Association

Eugene Williams, President, Friends of the Nanticoke River

¹ Public Notice provided via publication in the Federal Register. *See* 79 FedReg 57850, September 28, 2014.

² *Ibid.*

³ The Nature Conservancy. *Pennsylvania Energy Impacts Assessment*. November 2010. P. 10. Full report available at www.nature.org/media/pa/pa_energy_assessment_report.pdf (Hereafter referenced as TNC Report).

⁴ *Ibid.*

⁵ (Landscape Consequences of Natural Gas Extraction in Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Columbia, Huntingdon, and Luzerne Counties, Pennsylvania, 2004–2010. Available online at: <http://pubs.usgs.gov/of/2014/1089/pdf/of2014-1089.pdf>)

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *See* SRBC Compact, Article 5, Section 5.2(d).