

Susquehanna River Basin Commission

a water management agency serving the Susquehanna River Watershed



October 2, 2015

TO ALL CONCERNED:

At the September 10, 2015, Commission meeting, the draft minutes of the June 4, 2015, Commission meeting were approved as written. Please attach this notice to your copy of the June 4, 2015 minutes.

SUSQUEHANNA RIVER BASIN COMMISSION
4423 N. FRONT ST.
HARRISBURG, PA 17110

**MINUTES OF THE
SUSQUEHANNA RIVER BASIN COMMISSION
September 10, 2015
#2015-03**

The meeting was held at DoubleTree by Hilton Binghamton, 225 Water Street, Binghamton, New York. Chairwoman Heffner called the meeting to order at 9:00 a.m.

ROLL CALL

Commissioners Present

Mr. Kenneth P. Lynch, Director, Region 7, New York
State Dept. of Environmental Conservation
(NYSDEC)

Ms. Kelly Heffner, Deputy Secretary for Water
Management, Pennsylvania Dept. of Environmental
Protection (PADEP)

Ms. Virginia Kearney, Acting Director, Water
Management Administration, Maryland Dept. of the
Environment (MDE)

Col. Edward Chamberlayne, District Engineer, U.S.
Army Corps of Engineers (USACE), Baltimore
District

**Alternate Commissioners
and Advisors Present**

Staff Present

Mr. Andrew D. Dehoff, Executive Director

Mr. Andrew J. Gavin, Deputy Executive Director

Ms. Marcia Hutchinson, Director, Administration
& Finance

Ms. Stephanie L. Richardson, Secretary to the
Commission

Mr. Jason Oyler, General Counsel

Mr. John W. Balay, Manager, Planning &
Operations

Ms. Paula B. Ballaron, Manager, Policy
Implementation & Outreach

Mr. Todd D. Eaby, Manager, Project Review

Mr. Brydon Lidle, Manager, Information
Technology

Mr. Eric Roof, Manager, Compliance &
Enforcement

Ms. Gwyn Rowland, Manager, Governmental &
Public Affairs

Mr. Jamie Shallenberger, Manager, Monitoring &
Protection

Mr. Mike Appleby, Supervisor, Groundwater

Mr. Chris Southard, Compliance Specialist

Mr. Trent Knapp, Compliance Specialist

Also Present

Mr. Hank Gruber, USACE, NAD
Mr. James Campbell, USGS, Pennsylvania

Ms. Heather Cisar, USACE, Balt. Dist.
Ms. Rhonda Manning, PADEP

1. Opening Remarks from the Chair

Chairwoman Heffner opened the meeting and provided an opening statement outlining the rules of conduct for the meeting. She noted that a public hearing was previously held on August 6, 2015. The Commissioners introduced themselves and gave information regarding their respective duties in the agencies they represent.

2. Overview of Watershed Related Research and Outreach Activities at Binghamton University

Dr. Joseph Graney, Associate Director for Binghamton University's Center for Integrated Watershed Studies, provided an informational presentation focused on work in urban watersheds in the Upper Susquehanna subbasin.

3. Minutes of June 4, 2015, Commission Meeting

On a motion by Commissioner Lynch, seconded by Commissioner Chamberlayne, the minutes of the regular business meeting of June 4, 2015, were unanimously approved as written.

4. Correction of Delegation Authority

General Counsel Jason Oyler presented a resolution (Exhibit A) that identifies needed revisions to Policy 2013-11, for the purpose of correcting mistakes and typographical errors.

On a motion by Commissioner Kearney, seconded by Commissioner Lynch, the Commission unanimously adopted the resolution.

5. Proposed Rulemaking

Mr. Oyler presented a rulemaking proposal, which would amend the Commission regulations to address shortcomings in the rules for transfer of approvals, create a category for minor modifications, establish a procedure for issuing General Permits, and address other minor enhancements.

On a motion by Commissioner Chamberlayne, seconded by Commissioner Kearney, the Commission unanimously agreed to authorize staff to publish the proposed rulemaking in the member jurisdiction notice publications, schedule a public hearing, and set a comment period.

6. Comprehensive Plan Amendments

John Balay, Manager of Planning & Operations, presented a resolution (Exhibit B) to the Commission for consideration approving amendments to its *Comprehensive Plan for the Water Resources of the Susquehanna River Basin*. The proposed amendments include the Water

Resources Program (FY 2016-17) (considered at the June 4, 2015 meeting), as well as all water resources projects approved by the Commission since the last amendments to the Comprehensive Plan.

On a motion by Commissioner Lynch, seconded by Commissioner Kearney, the resolution was unanimously adopted. (Exhibit B)

7. Grants

Director of Administration and Finance Marcia Hutchinson presented the following requests:

a. Grant Ratification – Chesapeake Bay Program (Pennsylvania Department of Environmental Protection (PADEP))

A request that the Commission ratify the signing of this grant agreement. Under this grant, staff will continue to assist the PADEP in its Total Maximum Daily Load (TMDL) program and the Sediment and Nutrient Assessment component of its Chesapeake Bay Watershed program. Under this agreement, PADEP will provide \$877,387.

b. Grant Amendment Ratification – Public Water System Assistance Initiative Project (PADEP)

A request that the Commission ratify the signing of this grant amendment. Under this grant, staff is providing both general and focused education and system-specific guidance to small public water systems that meet eligibility requirements, lack financial and technical capabilities, and are subject to Commission groundwater withdrawal regulations. This amendment expands the services that staff will provide to include time spent conducting aquifer test plan reviews and evaluation of test data for groundwater withdrawal applications for qualifying small municipal public water systems. PADEP will provide \$80,000.

c. Water Quality Protection and Pollution Prevention (U.S. Environmental Protection Agency (USEPA))

A request that the Commission approve the signing of this grant. Under the grant, staff will continue to establish and maintain adequate measures for the prevention and control of surface water pollution and implement USEPA approved Clean Water Act Section 106 program activities. USEPA will provide \$608,000 and SRBC will provide \$47,847 for a total of \$655,847 to complete this project.

d. Chiques Creek Watershed Grant (PADEP)

A request that the Commission approve the signing of this grant. Under the grant, staff will analyze critical reaches of the Chiques Creek Watershed heavily impacted by nonpoint/point source stormwater runoff and legacy sediment. Staff will make recommendations for implementing riparian corridor restoration and floodplain reconnection and will also consider green infrastructure techniques consistent with Pennsylvania's runoff reduction strategy under its MS4 Program. PADEP will provide \$140,000 for the completion of this project.

On a motion by Commissioner Kearney, seconded by Commissioner Chamberlayne, the grant agreements and amendment were unanimously adopted.

8. Regulatory Program Actions

a. Compliance Actions

Regulatory Counsel Jason Oyler presented the following compliance action recommendations for the Commission's consideration:

Staff is recommending that the Commission accept the following settlement offer:

Downs Racing L.P.: \$25,000

b. Report on Delegated Settlements

Mr. Oyler reported on five delegated settlements staff completed over the previous quarter.

A settlement with **Aqua Pennsylvania, Inc.—SCI Waymart** (“Aqua”):

- These violations were determined by examining the quarterly reporting data provided to staff by the Project Sponsor in accordance with their Docket conditions.
- Aqua was issued Docket No. 20030805 for groundwater withdrawals that supply water to two prisons, SCI-Waymart and the Federal Prison at Canaan. This water is also a diversion as the prisons are located in the Delaware River Basin.
- Beginning in the fourth quarter of 2013, Aqua has been routinely exceeding the approved quantity of water from Wells 1 and 2 that serve the prisons. From October 1, 2013, to June 30, 2015, Aqua accrued 323 violation days for exceedance from these two wells.
- Aqua provided a response to the NOVs noting that they have little control over the amount of water that the prisons use and that there are constraints in what they can do from a public safety perspective. Noting that Aqua is working to develop another source (Well 6 in the Delaware River Basin), the COA sets enforceable dates for the development of this new source.
- The Commission has not documented any environmental harm from these violations because the exceedances are typically not large. However, exceedances of water withdrawal limits carry a greater potential for causing environmental harm.
- Aqua does not have any previous enforcement actions with the Commission to date.
- The settlement is for \$6,000.
- In addition, as a part of the COA, Aqua has applied for an emergency certificate to cover any potential exceedances that may occur while Aqua is developing Well 6. The emergency certificate was issued by the Executive Director on August 13 with appropriate conditions.

A settlement with **Conyngham Borough Authority** (Authority):

- The Commission approved a docket in 2007 (No. 20070301) for Wells 1, 2, 3 and 7. As a part of that Docket, a condition was included requiring the Authority to also make an application for Wells 5 and 6 within 180 days of the effective date of the Docket.
- The Authority did not submit applications for these wells and consequently has been in violation of Docket Condition 14.
- The continued use of Wells 5 and 6 absent approval was noted at a January 2015 compliance inspection and an NOV was issued.
- The Authority provided applications by June 30, 2015. The Commission and the Authority have entered a Consent Order and Agreement that allows the Authority to continue to utilize both Wells 5 and 6 at their current operational levels until the Commission acts on these applications.
- The Authority has no prior compliance and enforcement issues with the Commission.
- The settlement is for \$5,000.

A settlement with **Keister Miller Investments, LLC** (“KMI”):

- KMI operated a surface water withdrawal on the West Branch of the Susquehanna River that serves natural gas clients under Docket No. 20100605. KMI’s docket expired on June 10, 2014, because they failed to submit a timely renewal application.
- SRBC was copied on a denial of a water management plan to KMI by PADEP in February of this year. The denial was based on the fact that KMI failed to obtain a Chapter 105 Water Obstruction and Encroachment permit from PADEP for its intake structure.
- Accordingly, KMI’s withdrawals under Docket No. 20100605 were in violation of Decision Item 16 of its Docket which required all federal, state and local permits to be obtained prior to initiating its withdrawal.
- This is considered an administrative type violation.
- The settlement is for \$2,000.

A settlement with **Susquehanna Gas Field Services, LLC** (“SGFS”):

- During a compliance audit of withdrawal records under SGFS’ two dockets, compliance staff documented 33 days where SGFS failed to maintain continuous and accurate daily records of their withdrawal.
- This is considered an administrative type violation with low risk of environmental harm.
- SGFS does have one prior NOV and settlement for passby violations in 2013.
- The settlement is for \$2,500.

A settlement with **Wynding Brook, Inc. d/b/a Wynding Brook Golf Club** (“Wynding Brook”):

- During a compliance inspection in 2013, compliance staff documented violations of Wynding Brooks’ docket, including an inoperable passby device.
- Wynding Brook did not respond to the subsequently issued NOV and communication from the Commission.

- On April 29, 2015, the Executive Director issued a Cease and Desist Order to Wynding Brook until they resolved their outstanding compliance issues.
- Wynding Brook responded to the Cease and Desist Order and they have resolved their outstanding violations.
- Wynding Brook has no prior compliance and enforcement issues with the Commission.
- The settlement is for \$5,000. The settlement allows Wynding Brook to pay in installments. Wynding Brook paid \$1,500 upon execution of the settlement and is due to pay the remainder by September 11, 2015.

c. Request for Conditional Transfer: Panda Power Funds

Todd Eaby, Manager of Project Review, reported that staff recommended that the Commission conditionally transfer ownership of Hummel Station LLC (Docket Nos. 20081222 and 20081222-2) to Panda Power Funds. Transferred dockets will include modification of conditions requiring mitigation of all consumptively used water. Specific recommendations included:

- Consider the application for transfer as meeting the application requirements under 18 CFR § 806.6(c)(3) due to the recent review and modification approved on September 4, 2014.
- Take action on application for request to transfer by conditionally transferring Docket No. 20081222 to Panda Power Funds under 18 CFR § 806.6(c)(3).
- Recommended conditions of transfer:
 - Due to the change in ownership, no longer consider the pre-Compact consumptive use quantity of 4.901 mgd to be grandfathered and require mitigation for the full quantity of consumptively used water
 - Continue satisfaction of Commission’s mitigation requirements for consumptive water use set forth in 18 CFR § 806.22 by quarterly payments to the Commission

d. Emergency Certificates

Aqua Pennsylvania, Inc.: Staff recommended that the Commission extend the term of the August 11, 2015, emergency certificate. All of the terms and conditions of the emergency certificate shall remain in full force and effect. This extension shall be effective immediately and remain in effect until September 1, 2016 or terminated by the Executive Director in accordance with 18 CFR § 806.34(e). (Exhibit C)

Furman Foods, Inc.: Staff recommended that the Commission extend the term of the August 10, 2015, emergency certificate. All of the terms and conditions of the emergency certificate shall remain in full force and effect. This extension shall be effective immediately and remain in effect until December 3, 2015, unless terminated earlier by the Executive Director in accordance with 18 CFR § 806.34(e). (Exhibit D)

e. Docket Actions

As presented by Mr. Eaby, the Commission had before it a staff memorandum containing details and recommendations regarding the following list of project applications:

- 1. Caernarvon Township Authority, Caernarvon Township, Berks County, Pa. (Exhibit E1)
 - 2-3. Chetremon Golf Course, LLC, Burnside Township, Clearfield County, Pa. (Exhibit E2)
 - 4. Chief Oil & Gas LLC (Loyalsock Creek), Forksville Borough, Sullivan County, Pa. (Exhibit E3)
 - 5-7. Furman Foods, Inc., Point Township, Northumberland County, Pa.
 - 8-13. JELD-WEN, inc. Fiber Division - PA, Wysox Township, Bradford County, Pa. (Exhibit E4)
 - 14. Keister Miller Investments, LLC (West Branch Susquehanna River), Mahaffey Borough, Clearfield County, Pa. (Exhibit E5)
 - 15. Lycoming County Water and Sewer Authority, Fairfield Township, Lycoming County, Pa. (Exhibit E6)
 - 16-17. Moxie Freedom LLC, Salem Township, Luzerne County, Pa. (Exhibit E7)
 - 18-21. Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Borough, Cambria County, Pa.
 - 22. Seneca Resources Corporation (Marsh Creek), Delmar Township, Tioga County, Pa. (Exhibit E8)
 - 23.-24. Shrewsbury Borough, York County, Pa. (Exhibit E9)
 - 25. SWN Production Company, LLC (Tioga River), Hamilton Township, Tioga County, Pa.
 - 26. Talisman Energy USA Inc. (Wappasening Creek), Windham Township, Bradford County, Pa. (Exhibit E10)
 - 27. UGI Development Company. Project Facility: Hunlock Creek Energy Center, Hunlock Township, Luzerne County, Pa. (Exhibit E11)
 - 28. XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township, Clinton County, Pa. (Exhibit E12)
- Highlight = Staff recommending tabling.

All projects on the above list were recommended for approval with the exception of Nos. 5, 6, 7, 18, 19, 20, 21, and 25, which were recommended for tabling.

Commissioner Chamberlayne moved that the Commission adopt the recommendations of staff for the 28 project applications, accept the settlement with Downs Racing, approve the docket transfer to Panda Power Funds, and approve extension of the two emergency certificates. The motion was seconded by Commissioner Kearney and unanimously adopted by the Commission.

9. Adjournment

Chairwoman Heffner adjourned the meeting at 10:16 a.m. with no objection by the Commissioners.

Date Adopted

Stephanie L. Richardson