



Registration of Water Uses that Pre-Date Commission Regulations

Frequently Asked Questions (FAQs)

(Visit the Commission's website <http://www.srbc.net/grandfathering-registration/> for links to the videos of the Informational Webinars and copies of the PowerPoint slides)

General Questions and Definitions

1. What is the purpose of registering grandfathered water withdrawals and consumptive uses?

In a recent study that compiled all available data within the Susquehanna River Basin (Basin) to characterize water use and availability, the Susquehanna River Basin Commission (Commission) estimated that there are possibly more than 700 facilities exempt from oversight in the Basin with an estimated water use of nearly one billion gallons per day. If accurate, this volume of water use is roughly equal to the total amount currently accounted for, and managed by, the Commission across the entire Basin.

With such large quantities in question, the Commission decided to develop a program that would close this significant knowledge gap regarding exempt water uses to ensure the Commission's ability to effectively manage the water resources of the Basin.

2. What is a grandfathered water use?

The Commission's regulations provide that certain water withdrawals and consumptive uses that are in excess of the regulatory thresholds do not require Commission approval under Section 806.4(a) if those activities and sources predated applicable regulations, provided there is no environmental harm. This exemption from review and approval is commonly referred to as "grandfathered." Generally, the following are considered to be grandfathered:

- groundwater withdrawals of 100,000 gallons per day or more initiated prior to July 13, 1978;
- surface water withdrawals of 100,000 gallons per day or more initiated prior to November 11, 1995; and

- consumptive water uses of 20,000 gallons per day or more from any source (including a public water supply) initiated prior to January 23, 1971.

3. Was there a law that was passed to require registration?

Yes. Final rulemaking for Registration of Grandfathered Projects, Subpart E and § 806.4(a)(1)(iii) and (a)(2)(iv) was adopted by the Commission in June 2017 following a 120-day public comment period and four public hearings. The regulations require projects that are exempt from Commission review and approval – due to their operations predating regulations – to register within a two-year window in order to preserve this exemption. The final rulemaking is published in the Federal Register at <http://www.srbc.net/policies/docs/final-rulemaking-preamble-federal-register-grandfathering.pdf>.

4. Who needs to register?

If a withdrawal or consumptive use was initiated prior to the effective date of the applicable regulation and exceeds the volumes listed above in Question 2, registration is necessary to retain existing exempt status. Generally, the current volume of water withdrawal or consumptive use must exceed the threshold volume stated in regulation to register. Whether or not a withdrawal or use exceeds the threshold volume is determined by summing the actual daily withdrawal or consumptive use over the peak consecutive 30-day period, then dividing by 30. The total combined withdrawal from all sources should be considered as the qualifying volume for a facility with multiple water sources.

If your facility has an existing Commission approval, all grandfathered withdrawals and consumptive uses must be registered, regardless of the quantity of water withdrawn or used.

If a facility has never withdrawn 20,000 gallons per day or more, averaged over a consecutive 30-day period, there is no requirement to register that use or withdrawal. If your water withdrawal/use does not exceed Commission thresholds and you would like to be removed from our mailing list, please contact the Commission.

5. What does the Commission consider to be a "facility"?

Grandfathered water use registration focuses on a facility as a geographically distinct water user along with the suite of withdrawals that supply that use. For an industry, the four corners of the property would likely constitute the facility. For a public water supplier, a distinct distribution system and its connected sources would likely constitute the facility. If you are familiar with the Commission's Project Review program, you will note that we're using "facility" and "project" interchangeably.

If you have a question about how your facility/project should register, please contact the Commission for individual guidance.

6. What do you mean by consumptive use and how do you calculate it?

The Commission defines consumptive use as the loss of water due to transpiration by vegetation, incorporation into products, evaporation, injection of water or wastewater into the subsurface, or any other process by which the water is not returned to the waters of the Basin undiminished in quantity. This applies to water uses sourced by stream withdrawals, groundwater wells, stormwater capture, or from a public water supply or wastewater system. Common examples of consumptive use include cooling towers for power generation, commercial or institutional use; steam vented during a manufacturing process; water lost through fleet vehicle or facility washing; irrigation for facilities and golf courses; and bottling of beverages including bottled water.

Consumptive use by agriculture is exempt under Commission regulations (although the self-supplied withdrawals to support irrigation and livestock that exceed threshold volumes are not exempt).

Public drinking water supply systems are also exempt from consumptive use regulations, although again, consumptive users connected to a public drinking water system are subject to the regulations.

In its simplest form, consumptive use is calculated as the difference between metered inflow to the facility and metered outflow from the facility. Consumptive use also may be metered directly, as in most golf course irrigation systems. However, if the calculation of consumptive use is not straightforward, Commission staff will be able to help you with the process using insight gained from working with many types of large consumptive users.

7. What benefits are there to registering?

Grandfathering water uses registration will establish a definitive quantity of water that provides certainty on how the facility may continue to operate and retain its existing exempt status. It will also offer the security of knowing that the Commission will strive to protect those grandfathered water sources from future impacts and assist with resolving conflicts that may arise with neighboring users.

8. What is the Commission going to do with the data it collects?

The grandfathered water uses registration program will provide current data regarding the number of grandfathered facilities and the locations of their sources, and also establish the volume of withdrawals and usage exempt from regulation. The Commission will use this "baseline" data during project review when it considers applications for new water withdrawals and consumptive uses, both to determine whether the new facility would interfere with the existing water usage of the grandfathered facility and to determine the cumulative impact to the watershed. Ongoing monitoring and reporting will indicate any changes and trends in the quantity of these withdrawals and how much of that water is being used consumptively. This in

turn will improve the Commission's ability to comprehensively manage the water resources in the Basin for the benefit of all water users.

9. When does the new regulation go into effect?

The regulation requiring registration goes into effect and registration began on January 1, 2018.

10. Does grandfathering water uses registration eliminate the exemption from project review and approval as historically provided in the Commission's regulations?

No. Registration preserves the exemption from project review and approval for grandfathered withdrawals and consumptive uses provided the facility registers by December 31, 2019.

11. Why aren't grandfathered withdrawals and consumptive uses held to the same standards and requirements as regulated withdrawals and consumptive uses?

Grandfathered facilities are held to different standards because when the Commission adopted its consumptive use and withdrawal regulations, it decided to apply the new standards only to new uses and withdrawals and to exempt those already in existence. This new registration program will preserve the exemption from project review and approval for grandfathered withdrawals and consumptive uses, so they will continue to be held to different regulatory standards than regulated projects. However, the registration program does provide for continued reporting of the water withdrawn and/or used that is grandfathered, which is beneficial to the Commission's water resource management goals and more equitable among all water users in the Basin.

12. What happens if I don't register?

Facilities that fail to register their grandfathered water withdrawals and consumptive uses within the two-year window (by December 31, 2019) will forfeit their exemption from the rules and become subject to review and approval by the Commission in accordance with applicable regulations and standards.

Determining if a facility needs to register

13. My facility has multiple withdrawal sources that were in use prior to 1971. To determine if withdrawals exceed 100,000 gallons per day average, do I look at withdrawal data for each individual source or all withdrawal sources combined?

If you do not have an approval from the Commission (a Docket or Approval by Rule), review your facility's consecutive 30-day average withdrawal for all sources individually and also the combined withdrawal at the facility. If the individual or combined withdrawal quantity is 100,000 gallons per day or more, the facility should register all withdrawal sources.

If any aspect of a facility is approved in a Docket or Approval by Rule, you should register all grandfathered withdrawal sources and consumptive uses, regardless of the quantity of grandfathered withdrawals or uses.

14. What if I anticipate that my facility may consumptively use 20,000 gallons per day or more in the future?

To register a grandfathered quantity, a project must have a documented consumptive use that currently and/or historically exceeds the Commission's regulatory threshold. If in the future the consumptive use at your facility is 20,000 gallons per day or more, the facility is required to submit an application to the Commission for review and approval at that time.

15. What types of facilities are expected to require registrations? Where does agriculture fall in the process?

Eligibility for grandfathered registration is based solely on the quantities of withdrawal and consumptive use and the dates those withdrawals and uses were initiated, rather than the type of the facility or the nature of the water use. Thus, the Commission expects a wide variety of types of facilities to register, including but not limited to public water suppliers, industrial wells and consumptive uses, quarries, and recreational uses. Although agricultural operations are exempt from consumptive use regulations, those having withdrawals of 100,000 gallons per day or more over a consecutive 30-day average (individual or combined) that were initiated prior to the effective dates of the applicable regulation must register their grandfathered quantities to retain that exemption.

16. Does a facility have to submit any documentation if they do not withdraw more than any of the threshold amounts?

No, grandfathering registration does not require documentation of usage less than 20,000 gallons per day or withdrawals less than 100,000 gallons per day.

17. If a municipal system doesn't withdraw more than 100,000 gallons per day over a consecutive 30-day average, does it still have to register?

No, small municipal systems withdrawing less than threshold quantities do not need to register.

18. If a facility has a 99,000 gallons per day withdrawal permit from the Pennsylvania Department of Environmental Protection, but withdraws less than 20,000 gallons per day averaged over 30 days, are they considered grandfathered?

The Commission's jurisdiction is triggered by actual withdrawal and use. Under this scenario, the actual withdrawal is less than 100,000 gallons per day and any potential consumptive use is below 20,000 gallons per day. Therefore, the facility does not need to register because its actual withdrawal and/or use never exceeded the Commission's jurisdictional threshold. If the facility

would consumptively use 20,000 gallons per day or more of water in the future, it would be subject to review and approval by the Commission.

19. Does my facility need to register if our Docket approval says a portion of our consumptive use is grandfathered?

No. If a facility has a consumptive use approval that identifies some quantity as grandfathered for mitigation purposes, and the facility is reporting consumptive use to the Commission, you do not need to register the grandfathered portion of consumptive use. However, you may need to register water sources, if any qualify as grandfathered. Your facility would only need to register consumptive use if those uses are entirely grandfathered.

20. If a facility withdraws an average of 100,000 gallons per day or more, and currently reports withdrawal data to Pennsylvania Department of Environmental Protection, New York Department of Environmental Conservation / Department of Health, or Maryland Department of the Environment, does it need to register?

Yes. Grandfathering registration is a “one-time” activity and needs to be submitted to the Commission even if withdrawal data are being periodically reported to another agency. Your facility may provide a copy of the data submitted to another agency for the most recent five years to fulfill the data requirement in the Commission’s grandfathering registration program.

21. If I have a docket approval or previous grandfathering determination by the Commission, or have a surface water withdrawal approved under the Memorandum of Understanding (MOU) with the Pennsylvania Department of Environmental Protection, do I need to register?

Yes. A facility needs to register its unapproved withdrawals or consumptive use even if it has a docket for other aspects of the project. Some of the Commission’s more recent dockets include a grandfathering determination of all sources associated with a project, but not all dockets have done this. If the Commission has determined a grandfathered amount in a docket or letter, a facility still needs to register the grandfathered withdrawal. However, if the facility wishes to use the previous determination for registration, it would simply indicate this in the form, and there is no need to provide the most recent five years of withdrawal data. Your facility may provide additional data to have the determination reconsidered, but this is optional. Regardless – any facility that has grandfathered sources or uses and some form of an approval with the Commission will be receiving an email in early January that will assist the facility with populating the registration form.

22. Does a public water supply with surface water sources approved under a Pennsylvania Department of Environmental Protection Water Allocation Permit and currently reporting those withdrawals need to register these sources?

Yes. Grandfathering registration is a “one-time” activity. A public water supplier should register each facility having any withdrawals that are **not currently approved by the Commission,**

even if it has a Water Allocation Permit from Pennsylvania (or a permit from the New York Department of Environmental Conservation or Maryland Department of the Environment). Your facility may provide a copy of the data submitted to another agency for the most recent five years to fulfill the data requirement in grandfathering registration. If you have a question about how a facility/project should register, please contact the Commission for individual guidance.

Data & Registration Requirements

23. What fees are applicable to my registration?

Registration is free if you register between January 1, 2018, and June 30, 2018. If you register between July 1, 2018, and December 31, 2018, registration will cost \$500. If you register between January 1, 2019, and December 31, 2019, the registration fee is \$1,000. A single fee covers a facility, regardless of the number of withdrawal sources.

24. Is this a one-time fee or will I have to pay more later?

The Commission did not establish any ongoing or annual fees for registered facilities and has no plans to do so. Section 806.41(d) provides the Commission the option to establish fees for obtaining and maintaining registration in accordance with Section 806.35. The Commission enacted a Regulatory Fee Schedule on June 16, 2017, (effective July 1, 2017) that provided for a one-time registration fee. Any action to implement an annual fee on registered facilities would have to be adopted pursuant to a future fee schedule, which is published by the Commission and subject to public comment and a hearing. No other fees could be applicable to registration.

25. What kind of information will I need to provide to the Commission in order to complete the registration process?

Primary information to be submitted includes basic descriptive information about the facility and its water sources, the method of tracking or metering quantities of water, and withdrawal and/or consumptive use quantity data. For water quantity data, the Commission is requesting metered data by source for the facility's most recent five years of operation or any additional reliable information upon which a determination of quantity can be made including, but not limited to, historic data and any previous grandfathering determinations by the Commission.

26. What type of information will I need to provide to prove the facility was in operation before 1970 (or the effective date of the applicable regulation)?

The Commission will review the narrative information you provide about the dates of operation of a facility, any changes in ownership, and historic usage. If additional information is necessary, Commission staff will follow-up with the facility's point of contact.

27. Will I need to hire a consultant to help me complete the grandfathered water uses registration paperwork or process?

In an effort to minimize the costs of registration, the Commission has made every effort to design this process to avoid the need for a consultant. The registration program is designed to be simple and has flexible data requirements. The Commission is seeking only basic information that should be readily available to provide by the registrants themselves; however, a registrant is free to consult and hire any experts it believes are necessary. Commission staff is also ready and willing to assist registrants with filling out the necessary information.

28. Can a consultant register on behalf of a water facility?

If a facility wishes, it may share its user name and password with a consultant to complete the registration form. However, there is no provision for a consultant to get her or his own user name and password.

29. Does the registration program allow for filling out part of the form and returning later to input the actual data or make changes to data?

Yes. Online registration allows information to be saved so it is possible to return to complete the form at a later time. However, once the registration is submitted, the form is “locked” and it will be necessary to contact Commission staff about any changes or additions.

30. What if I don't have the past five years' worth of withdrawal or water use data?

The rule does not *require* grandfathered projects to collect or possess five years' worth of metered data. Section 806.42(a)(6) provides that if five years of withdrawal and consumptive use data are not available, then the project can provide “any information available upon which a determination of quantity could be made.” This may include information on hours of operation, pump run times or production numbers. The Commission will also accept older data or allow the collection of new data prior to December 31, 2019.

31. Can I submit data for more than the past five years for grandfathering registration?

Yes. Section 806.42(a)(6) provides the five years is a “minimum” and the project sponsor can choose to provide more data. For example, if the past 10 years of data show a higher consecutive 30-day average consumptive use or withdrawal than the past five years of data, then it would benefit the project to submit the additional data because it will lead to a higher grandfathered quantity determination.

32. What time period would a facility need to look back through to determine a 30-day average withdrawal or consumptive use?

The regulation provides for a review of the most recent five years of data to make a determination of the grandfathered quantity for a peak consecutive 30-day period. If this is not available, the rule allows for consideration of other information available for determination of quantity.

33. My project is unique and the factors used to determine grandfathered water uses quantities don't seem to fit my circumstances. What should I do?

The registration requirements allow a facility to present a variety of information regarding water withdrawals and consumptive use quantities, especially if quantity data are not available. The grandfathering determination process specifically includes a provision for "other relevant factors" to acknowledge and accommodate a variety of unusual circumstances that a particular registrant's unique situation may present. Commission staff is available to assist with these situations.

34. I don't have much current data. Can I collect data now and use that in my registration?

Yes. Because the registration period lasts two years, a registrant has the potential to collect one or two years' worth of data/information that can be used to aid in the establishment of a grandfathered quantity.

35. Will I need to submit a metering and monitoring plan with my registration?

No. For registration, a facility only needs to describe its current method for tracking or knowing its water quantities withdrawn or used. Section 806.43 could lead to a metering and monitoring plan, if the current metering is not adequate for reporting under the rule. The development of such a plan with the Commission could include flexibility to deploy new meters or identify statistical or engineering calculations to be used in lieu of meters.

Determinations, Ongoing Reporting & Other Requirements

36. What's involved in the determination of a grandfathered water uses quantity?

The Commission will review all submitted data to determine the peak consecutive 30-day average for the withdrawal from each source and, where applicable, the total consumptive use of a facility. The determination of a grandfathered quantity will be made by the Executive Director, taking into account the most reliable data and allowing for operational flexibility. In most cases, the Commission anticipates it will take four to six months to make a final determination on a facility's grandfathered water withdrawal or consumptive use quantity, depending on the volume of registrations and the quality of the submitted material. Once set, a grandfathered

determination is an unambiguous quantity of water providing certainty on how the facility may operate and retain its existing exempt status.

37. How will the Commission use the grandfathered quantity after it has been determined? Is a withdrawal limit established?

The determination of a grandfathered quantity will provide current data regarding the volume of withdrawals and usage exempt from regulation. The Commission will use this “baseline” data when it considers applications for new water withdrawals and consumptive uses, both to determine whether the new facility would interfere with the existing water usage of the grandfathered facility and to determine the cumulative impact to the watershed. The grandfathered quantity is set as an average quantity of consumptive use or withdrawal over the peak 30 consecutive days, and this quantity will function as a limit for the facility. Section 806.4 requires a facility to go through review and approval if it exceeds the grandfathered quantity of the withdrawal and consumptive use by any amount.

38. How will the Commission determine the flexibility a facility will get for operational margin of safety under the rule?

The Commission added a margin of safety factor to the final rule to allow it to set a grandfathering determination that would not put a facility in immediate jeopardy of needing review and approval subsequent to registration, absent a change to the facility’s water use. Because the grandfathered quantity will be set per source, for projects with multiple sources, the Commission believes that the registration process will allow grandfathered projects sufficient margin for operational flexibility. The Commission will consider the unique circumstances of each project before coming to a final quantity determination and will offer the project sponsor an opportunity to provide feedback.

39. Will registered facilities be subject to a consumptive use mitigation fee?

No. Grandfathered consumptive use facilities that register will not pay consumptive use mitigation fees.

40. Are there any ongoing obligations of registration?

Yes. Once registered, a grandfathered facility will report annually the quantity of the water withdrawn and/or used for each source associated with the facility’s operations. The Commission will also accept similar usage data that is currently and periodically reported to the facility’s home state. For facilities with groundwater wells, the Commission will also strongly encourage the collection of groundwater elevation data, and may in some cases require it to ensure sustainable operating conditions. The Commission will not require any new reporting prior to January 2019.

41. Will I be required to install meters?

If the current metering is not adequate for reporting under the rule, Section 806.43 could lead to a metering and monitoring plan. The development of such a plan with the Commission could include flexibility in the timing to install new meters or identify statistical or engineering calculations to be used in lieu of meters.

42. How will the Commission avoid duplicate reporting with state law reporting requirements? What reporting will be required?

The Commission strongly agrees with the concept that it is important to avoid unnecessary duplication of effort with state law requirements. Section 806.43(c) notes that if quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reporting to satisfy the requirements of this paragraph. This supports the Commission's intent to use its best efforts to accept state reporting requirements where appropriate.

43. Once my facility's grandfathered water uses quantity is set, Section 806.4 requires my facility to go through review and approval if I exceed that quantity by any amount. Could I trigger review and approval based on an accident (pipe bursting, water main break) or single exceedance?

The grandfathered quantity is set as an average quantity of consumptive use or withdrawal over 30 consecutive days. As such, an increase in this average quantity is unlikely to be the result of an accident or a single occurrence. The possibility of triggering the Commission's review and approval based on an accident or single occurrence already exists in Section 806.4 of the current regulations. However, in its history, the Commission has not based a determination that a facility must apply for review and approval based on these types of accidents or single occurrences. It has used and will continue to use its enforcement discretion in these instances to allow projects to fix any leaks or problems and return to its normal operating levels for withdrawal and consumptive uses.

44. What circumstances would require my facility to go through review and approval?

A properly registered facility can lose its grandfathered status if it were to increase its withdrawal or use above the grandfathered quantity. Under long-standing regulations in Section 806.4, a facility can lose its existing exempt status and be subject to review and approval if there is:

- a change in the nature of the use of water (e.g., irrigation for an orchard changed to irrigation for a golf course or an industrial water use changed to bottling drinking water);
- a change of ownership of the facility; or
- the addition of a new source.

45. What if my withdrawal or consumptive use is found to not be eligible for grandfathered water uses registration program? Will I be subject to penalties, retroactive collection of consumptive uses fees, or imposition of passby flow requirements?

Facilities that register but are not truly grandfathered projects (i.e., all their sources and use were initiated after the applicable dates) or were grandfathered at one point, but lost the exemption (i.e., added a new source or underwent a change of ownership) must seek review and approval because they are out of compliance with the existing Commission regulations.

These facilities will need to enter into a consent order and agreement (COA) with the Commission, which would allow operations to continue while the facility goes through the review and approval process. With regard to potential penalties, the Commission's priority will be to work with the owner to achieve compliance with Commission regulations. Out of fairness to facilities that did seek proper approvals, the Commission may seek a nominal settlement in lieu of civil penalty, depending on the cooperation demonstrated, the complexity of the project, and the sophistication of the facility manager's knowledge of the Commission's rules. Any such settlements will not be punitive, and any registration fees paid will apply towards the nominal settlement.

With regard to the COA, it is typical, and the Commission would expect, to set operational limits based on the information provided for the facility in the registration. The COA will also set a schedule for the facility to submit application(s) to the Commission. The timing of that schedule would consider both the complexity of the operations, the number of sources used by the facility, and the projected workload of the Commission's staff.

The result could be that a facility may be operating under the COA for a year or more before it will be required to submit its application(s). As such, the COA would also establish metering and reporting requirements for the interim, and apply the Annual Compliance and Monitoring Fee starting on July 1, 2020, as provided for in the Commission's Regulatory Fee Schedule.

Unlike other compliance actions, the Commission will not be seeking payment of any mitigation fees for consumptive use of water for the facility's operations prior to January 1, 2018, the effective date of the registration regulations. The facility would be responsible for consumptive use mitigation fees after the effective date of the registration regulations and these would be imposed at the time the Commission acted on their consumptive use application.