

## **Policy No. 2016-03 June 16, 2016**

# **GUIDELINES FOR EXPIRING PROJECT APPROVALS**

### **Introduction**

All Susquehanna River Basin Commission (Commission) approved projects are subject to expiration of that approval, as indicated either in conditions of the docket approval and Approval by Rule (ABR) or established by regulation (18 CFR §§ 806.31 and 806.22). The expiration of an approval and renewal process identifies those projects that are not developed and allows for the Commission's reevaluation of a project to ensure that the use of water resources continues to enhance economic growth while affording appropriate protection to the environment and avoiding conflicts with other users. Issuing updated approvals based on current regulations and policies improves the Commission's ability to effectively manage the water resources of the basin, and will help to reinforce certainty and reliability of future water supplies and avoid, when possible, conflict or interference.

### **"Automatic" Expiration**

Pursuant to 18 CFR § 806.31(b), Commission approval of a project shall expire 3 years from the date of the approval if the withdrawal, diversion, or consumptive use has not been commenced, unless an alternate period is provided for in the ABR or docket approval, or the 3-year period is extended in writing by the Commission. The project sponsor must submit its written request for the extension no later than 120 days prior to the expiration date, specify the circumstances for the delay of the withdrawal, consumptive use or diversion, and describe the likelihood of project implementation.

Pursuant to 18 CFR § 806.31(c), if an approved withdrawal, consumptive use, or diversion is discontinued for a period of 5 consecutive years, the project approval is deemed to be null and void, unless a waiver is granted in writing by the Commission. The project sponsor must submit a written request demonstrating due cause prior to the expiration of the time period. The project sponsor also must notify the member jurisdiction where the project is located.

A list of projects potentially subject to automatic expiration is generated quarterly for review by the Compliance Program. When a project of this type is identified, Commission staff will conduct a site inspection to evaluate its operational status. If there has been some site activity, Commission staff will contact the project sponsor to inform them that the withdrawal, diversion, or consumptive use must be commenced prior to its upcoming expiration date or the approval will automatically expire. If there is no evidence of activity at the site, no further

contact is made with the project sponsor prior to the automatic expiration date. Upon the date of expiration, a notice will be sent by regular mail to inform the project sponsor of the expiration of its Commission approval.

## **Renewal of Commission Approvals**

Project sponsors may submit applications for renewal of Commission approvals for withdrawal, consumptive use, and diversion. The renewal process itself is summarized for project sponsors and others in an information sheet (Attachment A) that will be posted on the Commission's website, appear as a link in e-mail notifications, and be distributed to project sponsors at meetings and during compliance inspections.

## **Process Sequence for Expiring Project Notifications**

The notification process to projects nearing the expiration date of a Commission approval consists of scheduled compliance inspections, e-mail reminders, and Monitoring Data Website (MDW) reminders, as summarized below. The critical period for most projects begins 1 year prior to the date of expiration, as the current approval for project sponsors submitting a timely and complete renewal application pursuant to 18 CFR § 806.31(e) will be deemed extended during application review period. However, the additional lead times of some notices recognize that substantial effort may be required for the renewal process and, accordingly, it is beneficial for projects to plan ahead. Many projects have approvals that are decades old and applicants for renewal may not fully understand the Commission's current application process. Proper planning and allowing sufficient time for the process will permit continued operations at approved rates (with no interruption or suspension of the withdrawal or consumptive use) until the Commission acts on the renewal application.

Based on staff's experience, project types that are likely to need a longer lead time to prepare complete applications are generally notified earlier. This may be due to the inherent complexity of the application, required aquifer testing, the need to engage a consulting team for technical expertise, the likelihood of collecting additional data for submittal, or cost of the application process that may require advance budgeting or other factors. Note that reminders and correspondence will be generated electronically with oversight by staff; reminders will be discontinued once an application is received and the Hydra database is flagged accordingly. As such, notifications for projects have been grouped into three standard timelines based on approval type.

## **Notice Timeline for Expiring Projects**

### **Renewal Track 1: Groundwater Withdrawals, Consumptive Use (self-supplied), and Out-of-Basin Diversions**

5 years prior to expiration: Begin e-mail to facility primary contact and data entry contact noting the expiration date and reminding project sponsor to apply for renewal. The notification is e-mailed annually until 18 months prior to expiration when the notice becomes quarterly. Begin pop-up reminders with logon to the MDW (Attachment B).

E-mail lists relevant information for renewal, includes a link to the information sheet (Attachment A), with suggested renewal process timeline.

6 months prior to expiration: If an application has not been received, Compliance staff may conduct an inspection to evaluate the status of the project and determine whether: (1) the project is not in operation; (2) the project is in operation and the water withdrawal or use is below regulatory thresholds; (3) the project is in operation and needs Commission approval by way of a renewal; (4) the project is operating as essentially a new project (requiring a new application); or (5) some other scenario. As needed, Compliance will begin discussions with the project regarding its proposed operations after the date of expiration and prepare to move forward with the appropriate compliance action. The compliance action may vary from project to project and will require correspondence and communications specific to the situation.

Attachment A may be provided to the project sponsor at the inspection.

Expiration date: If a timely application for renewal is not submitted, a notice (certified mail) of expiration [Attachment C(1)] and required suspension of withdrawal and/or consumptive use, or reduction to pre-regulation amount or less (if applicable).

Post expiration: Site inspection, if necessary, to determine compliance status.

### Renewal Track 2: Surface Water Withdrawals and Into-Basin Diversions

1.5 years prior to expiration: Begin quarterly e-mail to facility primary contact and data entry contact noting the expiration date and reminding project sponsor to apply for renewal; begin pop-up reminders with logon to the MDW.

E-mail lists relevant information for renewal, includes a link to the information sheet (Attachment A), with suggested renewal process timeline.

6 months prior to expiration: If an application has not been received, Compliance staff may conduct an inspection to evaluate the status of the project and determine whether: (1) the project is not in operation; (2) the project is in operation and the water withdrawal or use is below regulatory thresholds; (3) the project is in operation and needs Commission approval by way of a renewal; (4) the project is operating as essentially a new project (requiring a new application); or (5) some other scenario. As needed,

Compliance will begin discussions with the project regarding their proposed operations after the date of expiration and prepare to move forward with the appropriate compliance action. The compliance action may vary from project to project, and will require correspondence and communications specific to the situation.

Expiration date: If a timely application for renewal is not submitted, a notice (certified mail) of expiration [Attachment C(1)] and required suspension of withdrawal and/or consumptive use, or reduction to pre-regulation amount or less (if applicable).

Post expiration: Site inspection, if necessary, to determine compliance status.

### Renewal Track 3: Approval by Rule

6 months prior to expiration: Begin quarterly e-mail of letter to primary contact and data entry contact noting the expiration date and reminding project sponsor to apply for renewal. Also, except for hydrocarbon development projects subject to special reporting provisions of 18 CFR § 806.22(f), begin pop-up reminders with logon to the MDW.

Note that due to the expedited review process, renewals commonly will be issued within 30 days; hence, any extension of the current approval under 18 CFR § 806.31(e) is usually unnecessary.

Expiration date: Notice (e-mail) of expiration [Attachment C(2)] and required suspension of consumptive use, or reduction to pre-regulation amount or less (if applicable).

Post expiration: Site inspection, if necessary, to determine compliance status.

### **Outreach to Projects for the Renewal Process**

In addition to the project specific notifications described above, the Commission may undertake the following:

1. A routine compliance inspection of the project may be conducted prior to the first notification to allow closer examination of the project and to provide contact information for project review staff knowledgeable about the renewal process. This inspection could provide an opportunity to meet with the project sponsor, verify sources and their locations, identify knowledge gaps and potential considerations (such as grandfathering) that would be relevant to a renewal application, distribute information about the renewal process, and confirm current project contacts.

2. Posting on the website an information sheet (Attachment A) describing the Commission's renewal process for water withdrawal and use.
3. Posting on the website a list of expiring project dockets or developing a way for the public to create lists/displays of projects, such as sorting by year of approval, year of expiration, and the capability to map projects expiring in the next 5 years.
4. Outreach through presentations to key stakeholder organizations.
5. Outreach through coordination mechanisms with sister state agencies (Memorandum of Understanding or other administrative vehicle).
6. Outreach through the Public Water Supply Assistance Program, a program made possible by a grant from the Pennsylvania Department of Environmental Protection which assists small public water systems in meeting the Commission's regulatory requirements.

## **ATTACHMENT A**

### **Commission Renewal Process for Water Withdrawals, Consumptive Use, and Diversions**

#### **Introduction**

All Susquehanna River Basin Commission (Commission) approved projects are subject to expiration of that approval, as indicated either in conditions of the docket approval and Approval by Rule (ABR) or established by regulation. The renewal process ensures that the use of water resources continues to enhance economic growth while affording appropriate protection to the environment and avoiding conflicts or interference with other users. Updated approvals are based on current regulations, policies, and standards.

This document will familiarize you with the Commission's current application process and the steps needed to renew an approval.

#### **Planning Horizons**

Based on staff's experience, it is clearly beneficial for projects to plan ahead—sometimes far ahead—due to the nature of the project, its complexity, and other considerations such as budgeting. Proper planning and allowing sufficient time for the renewal process may allow continued operations until the Commission acts on the renewal application.

For surface water withdrawals and into-basin diversions, staff recommends beginning planning for the renewal process 18 months prior to the expiration date. Renewals for ABRs typically require less time, and you should begin the planning process 1 year in advance. Note that the ABR process is used for natural gas operators and any consumptive use approvals where a public water supplier is the exclusive source of supply.

Groundwater withdrawals, consumptive use projects with sources other than or in addition to public water supply, and out-of-basin diversions typically require additional time for application preparation due to the inherent complexity of the project. Therefore, staff recommends that a project sponsor begin planning for the renewal process much earlier—4 or 5 years prior to expiration.

#### **Steps Needed to Renew an Approval**

The Commission follows a standard permitting program for water withdrawals and uses, including for renewals of current approvals. A project sponsor prepares and submits an application no later than 6 months prior to the expiration of its existing approval, Commission staff reviews it for administrative completeness and technical merit, makes a recommendation for action by the commissioners, and the commissioners approve, approve with conditions, or deny the application. To renew an approval, a project sponsor must:

1. Prepare the appropriate application forms (most applications are online submittals).

2. Submit the application forms and required attachments with the appropriate fee, based on the Commission's Regulatory Program Fee Schedule, in a timely fashion and in consideration that if the application is complete at least 6 months prior to the expiration date, projects may enjoy continuity of operations during review.
3. Complete required public notifications.
4. Respond promptly to any questions and requests for additional information during technical review.
5. Continue to submit required monitoring data quarterly during the review period.
6. Await Commission action on the application.

### **Additional Considerations**

The Commission recommends that all project sponsors intending to renew an existing approval be proactive in developing a plan for renewal and consider scheduling a pre-application meeting, consistent with 18 CFR § 806.11, with staff in the Project Review Program to receive individualized guidance about the process based on project-specific factors. The following is a basic list of considerations as you plan for the renewal process.

1. Develop a plan for the renewal process, including the total cost of the application process.
  - a. Total costs include application review fee(s) and aquifer testing plan review fees, the organization/collection of supplemental information, and may also include an aquifer testing program, and various professional services;
  - b. Consider if advance budgeting is required; and
  - c. Develop a timeline for successful completion.
2. Determine whether you have the resources and/or technical expertise in-house to prepare the renewal application or will need to retain professional services.
  - a. Determine the needed technical expertise (some information must be submitted by licensed professional engineers or geologists); and
  - b. Engage consulting services, if necessary.
3. Determine the scope of renewal by reviewing the soon-to-expire approval, noting the type of approval, water source(s), quantity(ies), rates, and any special conditions of approval. Also consider any significant changes or expected changes to the purpose, quantity, location, or monitoring of your operation.
4. Determine the likely requested quantity for the renewal application. For example, if the source is currently being utilized at the approved rate, which can be confirmed with the monitoring data as submitted to the Commission, at a minimum, the requested quantity should be the same as that in the existing approval. If the source has been routinely used at a lesser amount, this should be considered in determining

the appropriate requested quantity for renewal. If growth or increased demand is expected over the term of the renewed approval, documentation of the reasonably foreseeable need must accompany the request.

5. Review all of the other sources in the system, and determine whether currently unapproved and backup sources may be subject to review under the Commission's regulations. If you currently have a consumptive use approval with no source withdrawal approval, you most likely will be required to submit application for the withdrawal and are strongly recommended to contact Commission staff for consultation well in advance for specific project guidance.
  - a. Consider all sources, including any "grandfathered" as defined in 18 CFR § 806.4;
  - b. Collect monitoring data to document current and historic use; and
  - c. Identify and collect other monitoring data to support the application.
6. If the project involves a groundwater withdrawal, you must also submit an aquifer testing plan, pursuant to 18 CFR § 806.12 (or request a waiver of that testing supported by relevant data under 18 CFR § 806.8, if appropriate), receive test plan approval, and conduct the testing. This requires a serious planning effort to ensure that testing results are available to be submitted with the application.

## SRBC Contacts and Resources

You are encouraged to contact Commission staff to discuss the application requirements.

Groundwater withdrawals: Mike Appleby; Supervisor, Groundwater Project Review  
(717) 238-0423, extension 1208

Surface water withdrawals: Mike College; Supervisor, Surface Water Project Review  
(717) 238-0423, extension 1238

Approval by Rule: Glenda Miller; Supervisor, Approval by Rule Program  
(717) 238-0423, extension 1227

All other projects: Todd Eaby; Manager, Project Review  
(717) 238-0423, extension 1234

Compliance Questions: Eric Roof; Manager, Compliance Program  
(570) 731-4839, extension 1501

Resources: SRBC's website ([www.srbc.net](http://www.srbc.net)) "Policies and Regulations" and "Forms and Applications" pages has information on the following:

- SRBC's Regulations and Procedures for Review of Projects
- Application Forms
- Regulatory Program Fee Schedule
- Aquifer Testing Guidance
- Low Flow Protection Policy

**ATTACHMENT B****Sample E-mail Notifications**

1. **Notification for Renewal** to primary contact for project sponsor and data entry contact(s), as recorded in Hydra.

**From:** [onlineReporting@srbc.net](mailto:onlineReporting@srbc.net) [mailto:[onlineReporting@srbc.net](mailto:onlineReporting@srbc.net)]  
**Sent:** Date  
**To:** Project Sponsor Contact  
**Cc:** compliance  
**Subject:** SRBC Notice of the Upcoming Expiration of Commission Docket No. \_\_

Dear Project Sponsor Contact:

The Susquehanna River Basin Commission (Commission) records indicate that Docket No. \_\_\_\_, approving Source for the withdrawal, consumptive use, or out-of-basin diversion of water will expire on date. As a courtesy, this notice is to inform you that, unless you take the action noted below, after date, the withdrawal and/or consumptive use of water at Source will no longer have the required Commission approval. Continued operations beyond that date may result in Project Name violating Commission Regulation 18 CFR Section 806 and subject Project Name to potential enforcement action.

In accordance with the provisions of Section 806.31(e), if the Commission receives a complete renewal application(s) and payment no later than date, the existing approval may be deemed extended until such time as the Commission renders a decision on the renewal application. This would allow Project Name to continue existing operations to Source under your existing approval (Commission Docket No. \_\_\_\_) pending final action by the Commission.

If this project involves an ABR, please submit an ABR renewal application at your earliest convenience, but no later than date. Commission staff recommends submitting the renewal application approximately 3 months prior to the expiration date of an ABR. By doing so, this should allow Commission staff adequate time to review and render a decision on the renewal application, prior to the ABR expiration date.

The Commission's Regulations and Procedures for Review of Projects and application forms can be accessed at the Commission's Website ([www.srbc.net](http://www.srbc.net)). To avoid potential violation of Commission regulations, you are encouraged to contact Commission staff to discuss the application requirements. If your project involves a groundwater withdrawal you should contact name, Supervisor of Groundwater Project Review, at (717) 238-0423, extension \_\_. If your project is an ABR you should contact name, Supervisor of Approval by Rule Program, at (717) 238-0423, extension \_\_. For all other projects, please contact name, Manager of Project Review at (717) 238-0423, extension \_\_.

Please feel free to contact me (Manager of Compliance Program) with any questions regarding the above information by phone at (717) 238-0423, extension \_\_\_ or by email at\_\_\_.

Sincerely,

2. **Monitoring Data Website Pop-up Reminder<sup>1</sup> for Renewal** (appears whenever a project sponsor opens the expiring project file in the MDW).

The screenshot displays the 'Monitoring Data Website' interface for the Susquehanna River Basin Commission. The main header is green with the title 'Monitoring Data Website' and the subtitle 'Susquehanna River Basin Commission'. Below the header, the 'Monitoring Report for: Tioga River' is shown. The 'Facility' and 'Source' dropdown menus are both set to 'Tioga River'. The 'Reporting: Approval #: 21990102' is displayed. There are two buttons: 'Source in Construction/Development' and 'Report No Usage or Withdrawal'. A large text area contains instructions: 'This form is designed for pasting Monitoring Data from Microsoft Excel ONLY. Please copy and paste your Monitoring Data into the textbox below. Ensure columns are in the correct order (Date, Amount) and do not include column headers. Please note that the Date should be formatted "MM/DD/YYYY" and the Amount should be in GPD. Click the 'Source in Construction/Development Phase' button if the source is currently under construction or will be in the near future and provide a status report/update in the 'Comments' section of this report. If you had no use or withdrawals for the entire quarter, click the 'Report No Use or Withdrawals' button.' A pop-up window titled 'Docket Expiring' is overlaid on the form, containing the text: 'This notice is to remind you that your Docket will be expiring on 4/1/2016. In accordance with the provisions of Section 806.31(e), if the Commission receives a complete renewal application(s) and payment no later than 10/1/2015, the existing approval may be deemed extended until such time as the Commission renders a decision on the renewal application. You can begin the renewal process [here](#).' At the bottom of the form, there are input fields for 'Date: (1/1/2015 - 3/31/2015)' and 'Amount (GPD):'.

<sup>1</sup> Reminder appears quarterly as a minimum until an application is received.

**ATTACHMENT C**

**Notice of Expiration**

**(1) Letter to Project Sponsor**

Re: APPROVAL EXPIRED for Commission Docket No. \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Dear **Project Sponsor Contact**:

The Susquehanna River Basin Commission (Commission) has identified that Docket No. \_\_\_\_\_, approving **Project Name** for a **consumptive water use/withdrawal/diversion** of \_\_\_\_\_ million gallons per day (mgd), expired on the above date.

Any continued **withdrawal/consumptive use/diversion** of water subject to Commission approval without prior authorization is a violation under Commission Regulations 18 CFR Parts 806-808 and may be subject to enforcement action. The Commission's regulations can be accessed at the Commission's website (<http://www.srbc.net>).

Please do not hesitate to contact me at (717) 238-0423 if you have any questions.

Sincerely,

Executive Director

**(2) E-mail Notice for Approval by Rule**

Re: APPROVAL EXPIRED for Approval by Rule No. \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Dear **Project Sponsor Contact**:

The Susquehanna River Basin Commission (Commission) has identified that Approval by Rule No. \_\_\_\_\_, approving **Project Name** for a **consumptive water use**, expired on the above date.

Any continued **consumptive use** of water subject to Commission approval without prior authorization is a violation under Commission Regulations 18 CFR Parts 806-808 and may be subject to enforcement action. The Commission's regulations can be accessed at the Commission's website (<http://www.srbc.net>).

Please do not hesitate to contact me at (717) 238-0423 if you have any questions.

Sincerely,

Executive Director