

# Susquehanna River Basin Commission

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*a water management agency serving the Susquehanna River Watershed*



## **Senate of Pennsylvania**

### **MAJORITY POLICY COMMITTEE PUBLIC HEARING ON MARCELLUS SHALE**

**Pennsylvania College of Technology  
April 9, 2009**

#### **Testimony of Thomas W. Beauduy Deputy Director & Counsel**

Chairman Pippy, members of the Majority Policy Committee (Committee), good afternoon. The Susquehanna River Basin Commission (Commission) appreciates your interest in the Marcellus Shale issue and your invitation for us to provide comments here today.

We testified at the public hearing you held at Misericordia University on November 18, 2008, and, at that time, we provided the Committee with an overview of the Commission and its role in addressing water resource issues associated with development of the Marcellus Shale. Today, I would like to update the Committee on our activity since then.

Before doing so, and for the benefit of anyone here today that does not have that background, let me just offer that the Commission is a federal-interstate compact commission vested with the authority to manage the water resources of the basin on behalf of its member jurisdictions. Approximately 50 percent of the land area of Pennsylvania is contained within the basin. The Marcellus Shale underlies 72 percent of the basin and most of the development activity has occurred in the Pennsylvania portion of our basin thus far.

With regard to the extraction of natural gas from the Marcellus, we have a limited, yet important role in this development activity. Our business is water resources management, not mineral resources development. We do not regulate drilling or the production or transmission of natural gas. What we do regulate is the withdrawal and consumptive use of water associated with this activity.

Our management objective is to have this industry avail itself of the water resources of the basin in the development of this important mineral resource, but to do it in a way that minimizes impact to the basin's water resources.

In the past nine months, the Commission has issued 70 surface water withdrawal approvals to the industry. We also have an additional 29 applications under review as of this week. Combined, that represents a total of 99 withdrawal projects, which is more than the total number we reviewed for all other industries combined over a typical two-year period. To say the least, it has challenged us.

In that same time period, we also issued 15 regional consumptive use approvals and 95 Approvals by Rule. An Approval by Rule (ABR) is an administrative approval that can be issued within 30 days of the date a Notice of Intent is filed with the Commission, rather than by the full Commission at its quarterly business meetings. The ABR is issued on a drilling pad basis and authorizes the consumptive use of water on the site, primarily for hydrofracture treatment of one or more wells developed on the pad site.

The ABR process has undergone changes since your last public hearing in November and I would like to offer comments on those changes. First, and as you may recall from the November hearing, the original ABR rule was not initially intended for use by this industry, but we deployed it as a way of expediting water sources approvals while applications for surface water withdrawal approvals were undergoing review. You may also recall that the original ABR rule was limited to public water supply systems.

The 95 ABRs we issued allowed the industry to use water from public water supply systems, but everyone quickly realized that was either a partial solution or an interim solution, or a combination of both. Last September, the Commission made a policy decision to expand the ABR process and published proposed rulemaking at that time. It went through public comment and hearing and was adopted in December 2008 as final by the Commission. That entire process occurred within a 90-day period. It was published and became effective on January 15, 2009.

We actually did not change the original ABR rule; it remains on the books. What we did was develop a new ABR rule specific to this industry that includes the following elements:

- It requires all requests for consumptive use approvals to go through the administrative ABR process, rather than the Commission's standard consumptive use application and docketing process.
- It expands the ABR process in that it would allow project sponsors to utilize a broader range of water sources as part of their approval, including public water supplies, discharges from wastewater treatment facilities and other lesser quality water sources, and withdrawals from other sources approved separately by the Commission.
- It regulates projects on a drilling pad basis, versus the previous docket approvals that address consumptive use on a company lease-area basis.
- It requires all projects to certify compliance with all state and federal laws for the treatment and disposal of flowback or produced fluids, including brines.

- It makes all Marcellus and Utica shale development activity subject to review, regardless of water quantities.
- It provides for a five-year approval term.

Our intent was to streamline the approval process for consumptive use, yet simultaneously require the monitoring, reporting and mitigation requirements that all consumptive users in the basin comply with, so as to enable the Commission to better manage the cumulative impact of such use.

As a result of the new ABR rule, the Commission also developed a transition strategy for converting all the outstanding regional consumptive use docket and the original 95 ABRs issued to the industry over to new, more flexible ABRs under the new rule. The transition will occur throughout calendar year 2009 and we will issue new ABRs to all the approved companies for all drilling pads constructed through the end of the year, at no cost to them. Thus far, we have issued 39 new ABRs under the transition strategy and we have an additional 30 pending.

The new rule does not modify any of the current standards or requirements associated with the review and approval of water withdrawals. They will continue to be subject to the same standards that all withdrawals across the basin are subject to, and we believe are appropriate to protect our water resources as we simultaneously allow for their utilization to support this important industry. A number of the comments we received during the proposed rulemaking phase expressed concerns about relaxing our standards for water withdrawals, but that is not the case. Our existing standards will continue under the new rule.

With regard to our existing water withdrawal standards, I should point out that a new issue has emerged with the industry concerning the methodology we use in evaluating cumulative impact as part of our review process. That methodology is admittedly conservative, as we think it should be, and it assumes that all water users approved by the Commission will take their peak approved amounts of water, even during low flow conditions. This can present a problem for this industry, because it wants ultimate flexibility and is asking for withdrawal approvals from multiple locations even though it does not intend to use all those withdrawal points simultaneously. We have opened a dialogue with them on this and other issues in an attempt to sort out the best approach for moving forward in a way that is both protective of the resource and gives them operational flexibility.

As I noted in November, the Commission stands ready to continue to provide value-added service to the Commonwealth as it moves forward with natural gas production issues associated with the Marcellus Shale.

Thank you again for the opportunity to appear before you and present this testimony.

I would be happy to respond to any questions or comments from the Committee.