

Registration of Water Uses that Pre-Date Commission Regulations

Frequently Asked Questions (FAQs)

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.

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.

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, 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.

What benefits are there to registering?

Grandfathered 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.

What does the Commission mean by *consumptive use* and how is it calculated?

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.

When does the new regulation go into effect?

The regulation goes into effect and registration will begin on January 1, 2018.

Does grandfathered 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.

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.

Will my facility need to hire a consultant to help 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 are also ready and willing to assist registrants with filling out the necessary information.

What information will I need to complete the registration form?

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 grandfathered determinations by the Commission.

What if my facility doesn’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.

Can my facility submit data for more than the past five years for grandfathered 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 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.

My facility is unusual 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 project sponsor 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 are available to assist with these situations.

My facility doesn’t have much current data. Can I collect data now and use that to complete 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.

Will my facility 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.

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. 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.

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. Determinations are also appealable.

Are there any ongoing obligations of registration?

Yes. Once registered, a grandfathered facility will report at least 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.

Will my facility 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.

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.

Once my 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.

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 water source.

If my facility has a docket approval or previous grandfathering determination by the Commission or a withdrawal approved under the Memorandum of Understanding (MOU) with the Pennsylvania Department of Environmental Protection, do I need to do anything to register?

A facility should register its unapproved withdrawals or consumptive use even if it has a permit (docket) or MOU approval for other aspects of the facility. Some of the Commission's more recent dockets include a grandfathering determination of all water sources associated with the facility, but not all dockets have done this. If the Commission has determined a grandfathered amount in a docket or otherwise, and the facility manager wishes to have that be their grandfathered determination, they may simply indicate so on the registration form.

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 the data during permit 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.

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, half of the registration fee is waived and registration will cost \$500. If you register between January 1, 2019, and December 31, 2019, the registration fee is \$1,000.

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

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. The Commission did not establish any ongoing or annual fees for registered facilities and has no plans to do so. 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.

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 project sponsor and knowledge of the Commission's rules. Any such settlements will not seek to be punitive.

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, as is currently 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 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.

What happens if I don't register my facility?

Facilities that fail to register their grandfathered water uses within the two-year window will forfeit their exemption from the rules and become immediately subject to review and approval by the Commission in accordance with applicable regulations and standards.