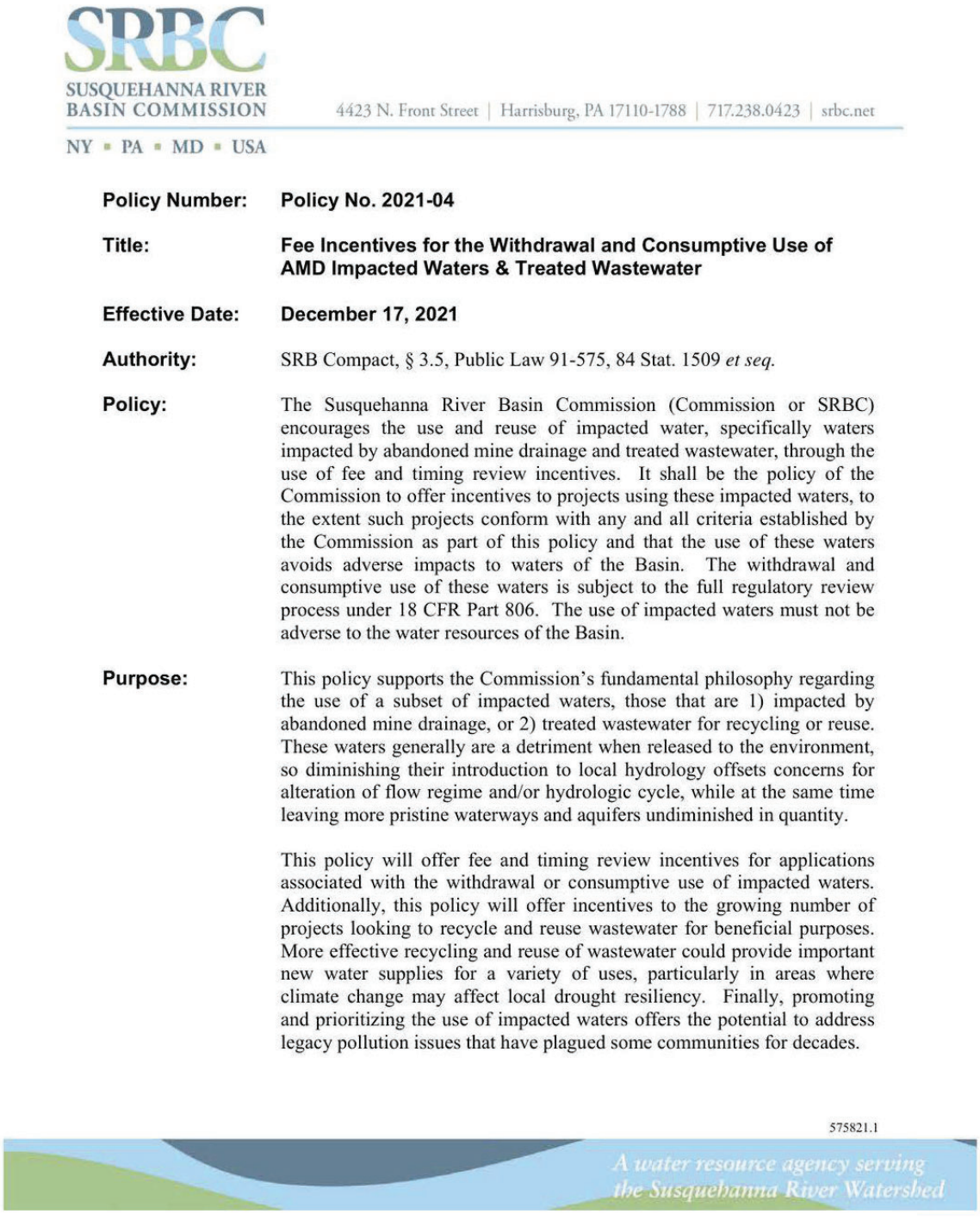
Appendix F. SRBC AMD-Impacted Water Fee-Incentive Policy Excerpt

This appendix reproduces the first four pages of SRBC Policy No. 2021-04 concerning fee incentives for withdrawal and consumptive use of abandoned mine drainage impacted waters and treated wastewater.



SUSQUEHANNA RIVER BASIN COMMISSION

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Policy Number: **Policy No. 2021-04**

Title: **Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater**

Effective Date: **December 17, 2021**

Authority: SRB Compact, § 3.5, Public Law 91-575, 84 Stat. 1509 *et seq.*

Policy: The Susquehanna River Basin Commission (Commission or SRBC) encourages the use and reuse of impacted water, specifically waters impacted by abandoned mine drainage and treated wastewater, through the use of fee and timing review incentives. It shall be the policy of the Commission to offer incentives to projects using these impacted waters, to the extent such projects conform with any and all criteria established by the Commission as part of this policy and that the use of these waters avoids adverse impacts to waters of the Basin. The withdrawal and consumptive use of these waters is subject to the full regulatory review process under 18 CFR Part 806. The use of impacted waters must not be adverse to the water resources of the Basin.

Purpose: This policy supports the Commission's fundamental philosophy regarding the use of a subset of impacted waters, those that are 1) impacted by abandoned mine drainage, or 2) treated wastewater for recycling or reuse. These waters generally are a detriment when released to the environment, so diminishing their introduction to local hydrology offsets concerns for alteration of flow regime and/or hydrologic cycle, while at the same time leaving more pristine waterways and aquifers undiminished in quantity.

This policy will offer fee and timing review incentives for applications associated with the withdrawal or consumptive use of impacted waters. Additionally, this policy will offer incentives to the growing number of projects looking to recycle and reuse wastewater for beneficial purposes. More effective recycling and reuse of wastewater could provide important new water supplies for a variety of uses, particularly in areas where climate change may affect local drought resiliency. Finally, promoting and prioritizing the use of impacted waters offers the potential to address legacy pollution issues that have plagued some communities for decades.

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Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater **December 17, 2021**

Applicability: This policy applies to the review of any consumptive use or water withdrawal application, aquifer test plan/alternative hydrogeologic evaluation, including applications for new projects, project modifications, project renewals, and notices of intent. The document has been developed to provide guidance to the regulated community and Commission staff regarding application of fee and timing of review incentives for the use of these impacted waters. It may also be used by the public to gain information and insight on the Commission's approach to incentivizing the use of impacted waters in place of more pristine/clean water sources.

Disclaimer: The policy outlined in this document is intended to supplement existing requirements. Nothing in this policy shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. This document establishes the framework within which the Commission will exercise its administrative discretion in the future and provides guidance for the public, project sponsors and Commission staff. The Commission reserves the discretion to deviate from this policy statement if circumstances warrant.

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I. Introduction

The largest category of impacted waters in the Susquehanna River Basin (Basin) results from abandoned mine drainage (AMD). Pennsylvania is home to a massive bituminous coal region in the western part of the Basin and hosts the largest anthracite coal region in the United States, located in the northeastern part of the Basin. AMD is the result of historic mining and occurs when the mineral pyrite (FeS_2), contained in many formations throughout the coal regions of the Basin, is exposed to air and water. This combination of pyrite, water, and air results in the formation of sulfuric acid and iron hydroxide, which can dissolve other harmful metals from surrounding rock formations. AMD that enters surface waters, either through drainage or as base flow from AMD-impacted groundwater, in most cases has extreme and significant impacts to water quality and aquatic ecosystem health, which has the potential to result in "dead streams" if the AMD is concentrated and not diluted by higher streamflow volumes. Both of the coal regions in the Basin bear the legacy of past mining, with close to 2,000 of the Basin's 49,000 miles of streams, and billions of gallons of groundwater, impacted by AMD.

The other source of water subject to this policy is treated wastewater from a variety of sources for recycling or reuse. A project that can use treated wastewater for facility operations reduces or eliminates a withdrawal from a higher quality water in the Basin, thus reserving such waterways or aquifers, in part, for natural ecosystem functions and recreational uses.

The SRBC has broad authority for water resources management under Articles 3, 4, 7, 14, and 15 of the Susquehanna River Basin Compact (SRBC, 1972[1]). This includes a duty to adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin. The Compact provides clear directives for the Commission pertaining to water quality, including impacted waters.

This policy fulfills a part of the Commission's mission concerning the conservation, utilization, allocation, development, and management of water resources within the Basin, through promotion of the withdrawal and use of impacted waters. The withdrawal and consumptive use of these waters that can satisfy a proposed project offers opportunities to potentially reduce a project's reliance on higher quality water, as well as encourage the use of alternative supplies to increase resiliency in the face of changing climate conditions and improve conditions for disadvantaged communities burdened by legacy industrial and mining impacts. This policy offers incentives for the use of impacted waters with respect to the management and protection of the water resources of the Basin.

A. Applicability

This policy is intended to offer fee and timing review incentives to a project that proposes to withdraw and/or consumptively use AMD-impacted water or treated wastewater for project purposes. This includes:

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[1] SRBC, 1972. Susquehanna River Basin Compact. https://www.srbc.net/about/about-us/docs/srbc-compact.pdf.

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1. Surface water and groundwater withdrawals of 100,000 gallons per day (gpd) or more over a 30-day average from any source or combination of sources within the Basin. These include:
    a. AMD-impacted surface waterbodies listed on member jurisdiction impaired waters lists or a waterbody with data that demonstrably support impacts from AMD;
    b. AMD-impacted mine pools or mine workings;
    c. AMD-impacted groundwater; and
    d. AMD-impacted surface seeps/discharges connected to (b) or (c) above.
2. Any consumptive water use of 20,000 gpd or more over a 30-day average from any AMD-impacted water source or treated wastewater from a pipe or storage;
3. Any AMD-impacted or treated wastewater from a pipe or storage water withdrawn for natural gas activities, regardless of volume.

Any project that utilizes the incentives in this policy remains entirely subject to Commission regulations and project review standards, as well as those of all member jurisdictions.

This policy does not apply to any project beyond the scope of Commission regulations nor does it allow for the treatment of AMD or wastewater in any manner different than that regulated by existing federal/state/local laws. This policy does not apply to the withdrawal or use of treated wastewater discharge within a stream channel. This policy generally will not apply to the use of AMD-impacted water or treated wastewater as sources for potable water supply, and will require a pre-application meeting prior to any application to use these sources as a public water supply.

B. Policy History

Previously, the Commission adopted a policy and resolution that encouraged the use of lesser quality waters. Over time, the Commission found that the policy was cumbersome in certain areas, rather than incentivizing, and that the resolution, while appropriate, could have included additional opportunities for the use of these waters.

In 2009 the Commission adopted Policy No. 2009-01 *Application Fee Policy for Mine Drainage Withdrawals,* which supported application fee waivers or fee reductions for projects that utilized water degraded primarily by coal mining activities. The policy prescribed a set of requirements and water quality criteria that, if met, would result in a full or partial waiver of application fees. However, in almost all cases, the requirements and criteria to be met were infeasible for project sponsors and the waiver of application fees was not formulaic or predictable. As such, the policy largely went unused by the regulated community and the Commission's goal to incentivize the use of AMD-impacted waters was not being met.

In 2012, the Commission passed Resolution No. 2012-01 establishing a policy to encourage and require the use and reuse of lesser quality water. The resolution prioritized review of applications for projects proposing to use mine-degraded and other lesser-quality

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