



**Testimony of
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Pennsylvania Department of Environmental Protection
Hearing on Chapter 102 Permit Application Review Process
House Environmental Resources & Energy Committee
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Good morning Chairman Metcalfe and members of the committee. On behalf of the Department of Environmental Protection, I'd like to thank you for the opportunity to discuss the Department of Environmental Protection's process for reviewing permit applications for earth disturbance activities under Chapter 102 of the Department's regulations.

Chapter 102 was promulgated in 1972 under the authority of The Clean Streams Law to protect the Commonwealth's water resources from the impact of sediment and other pollutants due to earth disturbance activities such as land development and agricultural plowing and tilling activities.

In 2006, the Department published the Pennsylvania Stormwater Best Management Practices Manual, also called the Stormwater BMP Manual to assist developers in implementing the PCSM requirements to meet federal and state requirements. The Department is currently working with Villanova University to improve the Manual based on the latest advances in the science of stormwater management and clarify the flexibilities that exist within the program. In 2010 Chapter 102 was amended to align with federal requirements and to codify the post construction stormwater management (PCSM) requirements for new development or redevelopment projects in Pennsylvania. Implementation of PCSM seeks to ensure that the change in stormwater runoff rate, volume and quality, as a result of development, does not cause harm to the Commonwealth's waters or increase the risk of flooding, sinkholes, landslides and other pollution.

Chapter 102 permit applications include an Erosion and Sediment Control or E&S Plan to illustrate the best management practices or BMPs that will be used during construction to minimize accelerated erosion and prevent sedimentation, and a PCSM Plan to demonstrate how the developer will use BMPs to implement PCSM requirements.

There are two types of permits in Chapter 102:

- First, if a person proposes an earth disturbance activity that involves at least one acre of earth disturbance that is not an agricultural plowing or tilling activity, animal heavy use area, timber harvesting activity, road maintenance activity or oil and gas activity, the person must obtain a National Pollutant Discharge Elimination System or NPDES permit. There is a general NPDES permit that is referred to as PAG-02, which covers approximately 85% of all earth disturbance activities requiring NPDES permit coverage in Pennsylvania. Where a person is not eligible for PAG-02, the person must apply for an individual NPDES permit. The most common reason that a person is not eligible for PAG-02 is where there will be stormwater discharges to a surface water with an existing or designated use of High Quality or Exceptional Value, including Exceptional Value wetlands. About 15% of the total number of Chapter 102 NPDES permits are individual permits.
- Second, if a person proposes a timber harvesting or road maintenance activity involving 25 acres or more of earth disturbance, or if a person proposes an oil and gas activity involving 5 acres or more of earth disturbance over the life of the project, the person must obtain an E&S permit rather than an NPDES permit. A general permit is available for oil and gas activities, referred to as the ESCGP-3. Individual E&S permits are issued for timber harvesting and road maintenance activities that involve 25 acres or more of earthmoving.

Overall, the Department and County Conservation Districts issue an average of approximately 2,000 NPDES permit authorizations. Approximately 1,700 of the NPDES permits issued are PAG-02 general permit coverages. Additionally, the Department issues approximately 500 E&S permits, 450 of which are ESCGP permit coverages for oil and gas activities.

County Conservation Districts play a large role in the Department's Chapter 102 permitting program. There are 66 Conservation Districts and 65 of them have delegation agreements with the Department to review Chapter 102 permit applications and authorize permit coverage under the general NPDES and E&S permits. Within the Department there are numerous programs involved with administering and implementing Chapter 102 permitting as well. The following is an overview of roles and responsibilities for Chapter 102 permitting:

- The Bureau of Clean Water in the Department's Central Office establishes policies and procedures for Chapter 102 permitting. The Bureau of Clean Water also provides training to Department and Conservation District Staff, issues the statewide PAG-02 NPDES general permit, and develops and maintains other permit templates and application materials.
- The Regional Permit Coordination Office in the Department's Central Office reviews Chapter 102 permit applications and issues permits for interstate natural gas pipelines requiring a FERC Certificate, non-FERC regulated transmission pipelines proposed within 3 or more counties and 2 or more Department regional office territories, linear projects such as fiber optic lines located within 3 or more counties and 2 or more Department regional areas, Pennsylvania Turnpike Commission projects, some PENNDOT projects and other large or complicated projects.
- The Office of Oil and Gas Management in Central Office and the Department's three Oil and Gas District Offices review applications for ESCGP permit coverage and issue coverage to oil and gas activities for projects other than transmission facilities.
- The Office of Active and Abandoned Mine Operations in Central Office and the Department's six district mining operations offices review applications for E&S and NPDES permit coverage and issue coverage to persons proposing activities on active or abandoned mine lands.
- The Waterways and Wetlands Program within the Department's six regional offices reviews Chapter 102 permit applications and issues individual permits for all other activities not permitted by the Department's Regional Permit Coordination Office, Office of Oil and Gas Management, and Office of Active of Active and Abandoned Mine

Operations and provides support to Conservation Districts in the review of Chapter 102 general permits.

- Delegated Conservation Districts in 65 of Pennsylvania's counties are the initial recipient of NPDES permit applications and conduct the permit application completeness reviews. Conservation districts conduct technical reviews of E&S Plans. Where a Conservation District has been delegated PCSM responsibilities by the Department, and has a professional engineer on staff, the Conservation District will conduct technical reviews of PCSM Plans. There are currently 8 Conservation Districts with PCSM delegation. Where a Conservation District has not been delegated PCSM responsibilities, the Conservation District will conduct only a completeness review of PCSM Plans. The Department's regional Waterways and Wetlands Program is the initial recipient of NPDES permit for projects that span three or more counties and projects located in Forest and Philadelphia Counties.

When a Notice of Intent or NOI is submitted to a Conservation District for PAG-02 general permit coverage, the NOI will contain an administrative fee, a disturbed acreage fee, and any other fees that are charged by the Conservation District. The Conservation District transmits the disturbed acreage fee to the Department's regional Waterways and Wetlands Program when the application is deemed complete. The Conservation District will retain the other fees. After this transmission, in general there is no additional involvement by the Department with the PAG-02 general permit NOI except:

- The Department will provide technical support when specifically requested.
- The Department will publish notice of the approval of coverage under PAG-02 in the Pennsylvania Bulletin.
- The Department would be the responsible authority if an application were to be denied.
- The Department will participate in a hearing if there is an appeal of approved coverage.

In general, the developer and their consultant deal directly with the Conservation District and the Conservation District issues approval of permit coverage.

When an application for an individual NPDES permit is submitted to a Conservation District, the Conservation District will also transmit the disturbed acreage fee to the Department's regional Waterways and Wetlands Program. After the permit application package has been deemed complete, the PCSM Plan will be forwarded to the regional Waterways and Wetlands Program. The Department publishes notice of the receipt of the application and of issuance of the permit in the Pennsylvania Bulletin. The Department coordinates with the Conservation District on the technical review of the E&S and PCSM Plans. For example, if the Conservation District determines there is a technical deficiency in the E&S Plan, the Conservation District will notify Department staff so that this deficiency may be addressed in the same correspondence that transmits notice of technical deficiencies on the PCSM Plan. Regardless of whether the Conservation District is or is not PCSM delegated, the Department ultimately issues the final individual NPDES permit.

It is noted that there are slight variations to this process when development occurs in the city of Philadelphia, in which the Philadelphia Water Department reviews the PCSM Plans to ensure adherence to their standards, and the Department conducts reviews of both E&S and PCSM Plans. There is no Conservation District for Philadelphia county.

The Department is in the process of developing an electronic permitting or "ePermitting" system for Chapter 102 NPDES permit applications. It is expected that this system will improve the efficiency of the Chapter 102 permitting program by ensuring all submissions are complete and reducing processing time for correspondence and documentation. The system will not, however, address fundamental issues that result in deficiencies. The Department is seeking to improve the technical understanding of the regulated community through the update to the Stormwater BMP Manual and new training initiatives. The Department has developed a Clean Water Academy website that serves as a resource for training Department and Conservation District Staff as well as the regulated community. At this time, all of the training resources are available only to

Department and Conservation District staff, although we plan to open this site up for the regulated community in the future.

The Department is also moving forward with plans to issue a new statewide NPDES general permit for small construction activities under 5 acres of earth disturbance, which would be in addition to the current PAG-02. This proposed general permit, which is being referred to as PAG-01, will include a standard suite of low maintenance BMPs to select from, which will streamline the development of PCSM Plans and their review.

Finally, the Department has approved a statewide alternative BMP known as the Managed Release Concept that will allow projects in sensitive environmental areas to move forward. These sensitive areas include contaminated sites, sites in karst areas, sites with limited infiltration capabilities, and for sites which otherwise cannot reduce the post-construction runoff volume.

Thank you again for inviting the Department to testify before the committee on this important topic. We look forward to continuing to work with the legislature to address these issues. I thank you for your time, and I am available to respond to any questions you may have.