

**Standard Operating Procedure (SOP)<sup>1</sup> for District Mining Operations  
PASPGP-5 Permit Submission  
SOP No. BMP-003  
June 1, 2017**

This SOP describes the methods by which the Bureau of District Mining Operations (DMO) will conduct reviews of mining permit applications to determine applicability of PASPGP-5 permit review. The process outlined below will ensure that application packages are accurate and complete, and that the Department and other agencies involved in the review can process requests in a timely manner and assist DMO staff in meeting Permit Decision Guarantee timelines.

The Pennsylvania State Programmatic General Permit - 5 (PASPGP-5) is a federal authorization issued for use in the Commonwealth of Pennsylvania under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA). The PASPGP-5 authorizes work in navigable waters of the United States under Section 10 of the RHA and the discharge of dredged and/or fill material into waters of the United States, including jurisdictional wetlands, under Section 404 of the CWA. The PASPGP-5 became effective on July 1, 2016, for a five-year period and delegated the ability to verify Federal authorization under the PASPGP-5 to PADEP in certain specific circumstances. All mining activities proposing impacts to waters of the U.S. are considered Reporting Activities and will be reviewed for authorization under PASPGP-5 by the United States Army Corps of Engineers (USACE) on a statewide basis.

The PASPGP-5 authorizes the discharge of dredged and/or fill material, and/or the placement of structures, that are part of a single and complete project, including all attendant features both temporary and permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the U.S., including jurisdictional wetlands. For purposes of this permit, the acreage of impact to waters of the U.S. (including jurisdictional wetlands) includes the direct impact (i.e., fill area) plus the area of waters of the U.S. (including jurisdictional wetlands) that are indirectly affected by flooding, excavation, or drainage as a result of the regulated activity, either permanently or temporarily.

## **REQUIRED INFORMATION**

PASPGP-5 packages are submitted to the appropriate DMO along with the mining permit application. For a PASPGP-5 request, the package must contain the following:

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<sup>1</sup> The process and procedures outlined in this Standard Operating Procedure (SOP) are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements. The process, procedures and interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weigh or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

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- Project narrative describing proposed impacts to water courses, wetlands, and/or water bodies;
- Detailed drawings and maps showing all stream and wetland impacts (including those within 1,000 ft. of the proposed permit boundary); (Maps larger than 8.5 X 11" should be submitted in digital format.)
- PASPGP-5 Reporting Criteria Checklist (3150-PM-BWEW0051);
- Aquatic Resources Impact Table (3150-PM-BWE0557);
- Wetland Delineation Report, including plans<sup>2</sup>;
- All PNDI search results and any correspondence;
- Any PHMC correspondence;
- Mitigation plans that will affect or potentially affect water courses, wetlands, and/or water bodies.

## **PREAPPLICATION**

The pre-application process should be recommended for applicants applying for anthracite, bituminous, and industrial mineral mining permits. Pre-application conferences are not required but should be strongly encouraged for those applicants affecting streams and/or wetlands. Larger and/or more complex projects may require a pre-application conference (decided on an individual case-by-case basis). For projects that will or may impact such areas, extend the invitation to attend pre-application meetings to the USACE. Every effort should be made to coordinate the date and time of meetings with all involved resource agencies as well as County Conservation Districts.

Under the PASPGP-5 guidelines, a mining activity that is proposing a discharge of dredged and/or fill material into waters of the U.S., including jurisdictional wetlands, under Section 404 of the CWA is considered a *Reporting Activity*, meaning that the Department must notify the USACE of the proposed intention to conduct mining operations. Mine operators considering activities that may impact waters and/or wetlands should plan to submit pre-applications to the DMO at least 180 days prior to anticipated submittal of formal applications to allow sufficient time for the USACE, DMOs and other Bureaus and agencies to review and comment. A complete and accurate submission of all items required to satisfy pre-application submission will pre-empt questions that may arise during the field inspection and will aid in PASPGP-5 eligibility determination.

The mining permit applicant should be instructed to consult the pre-application checklist document (Coal 5600-PM-BMP0391, Noncoal 5600-PM-BMP0389) for submittal of a complete pre-application package. For an applicant proposing to impact waters and/or wetlands, Module 14: Streams and Wetlands (Module 15 of the same name for underground mining applications) should include the USACE required wetland delineations to aid in determining the extent of wetlands and water ways that will be impacted, and providing a demonstration of how to possibly avoid and minimize those impacts. The delineations of wetland boundaries shall be accomplished in accordance with the 1987 Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1), and should include all applicable guidance and regional supplements.

## **REVIEW**

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<sup>2</sup> Delineated per the 1987 Corps of Engineers Wetland Delineation Manual [Technical Report Y-87-1].

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DMO Review

Upon receipt of the permit application package, the DMO conducts the standard acceptance review to ascertain inclusion and completeness of the required modules for the mining permit application and information for the associated PASPGP-5 request. If the application proposes work that will impact waters and/or wetlands, DMO forwards the completed items outlined on the checklist to the appropriate USACE District Office so that they can determine eligibility for a Federal determination of jurisdiction. The DMO completes the PASPGP-5 coversheet to include in the package.

Currently, submittal to the USACE office is via mail with the documentation in paper or on digital media. Future submittals may be electronic as arrangements for file sharing are developed between agencies.

Discrepancies and Deficiencies

If, during the review of the PASPGP-5, the DMO permit reviewer discovers a discrepancy in the information between the PASPGP-5 information and other mining permit application modules, the deficiency should be noted in a Technical Deficiency Letter (TDL). A copy of the TDL should also be sent to the USACE to notify them of pending issues and/or changes. Minor issues, such as illegible legends or symbols on provided maps, may be corrected by calling the providing consultant. In such cases the call(s) should be documented.

USACE Review

USACE staff will review the PASPGP-5 package promptly upon receipt to determine project eligibility under PASPGP-5 guidelines. Then, the USACE staff will do one of the following actions:

If the package is complete and meets the requirements for a PASPGP-5, the USACE will issue verification to the applicant and send a copy to the Department.

If the project is not eligible for a PASPGP-5 authorization and requires an alternative form of Section 10 and/or 404 authorizations, such as a Chapter 105 Water Encroachment Permit the USACE will notify the Applicant and DMO in writing, with the recommendations for the applicable permit application for the mining activity.

Jurisdictional Determinations

Jurisdictional Determinations are made using the Jurisdictional Determination Form Instructional Guidebook. The scope of geographic jurisdiction is defined by Federal Law under the CWA and the RHA of 1899 §§9 – 10. Nothing in this SOP nullifies or supersedes the roles and responsibilities of the USACE and/or the Environmental Protection Agency (EPA) regarding determination of the scope of geographic jurisdiction. Jurisdictional Determinations will be coordinated with the EPA as appropriate.

Mining Permit Issuance

The DMO will include notification of the permit in the conditions of the permit. Example:

*The following permits and approvals are associated with this permit:*

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*Coverage under PASPGP-5 for {description} supported by the determination made by US Army Corps of Engineers, District {name} dated {date}.*

In the case where a permit can be issued but the DMO has not yet received USACE approval, the DMO must make a professional determination as to whether the activities can be authorized without this additional approval. If reasonable activities can take place prior to affecting the streams or wetlands, the DMO may issue the mining permit with a special condition that the permittee is to obtain the PASPGP-5 coverage before commencing that work. If the mining activity cannot be performed without affecting streams or wetlands as described, then the permit will not be issued until the USACE approval is obtained. If the DMO denies a mining permit, an entirely new project must be proposed to receive USACE approval.

