



Standard Operating Procedures (SOP) for Major Modifications to the Erosion and Sediment Control General Permit (ESCGP) for Stormwater Discharges Associated with Oil and Gas Activities 5 Acres or Greater

September 10, 2013

DISCLAIMER: 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 adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weight 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.

This SOP describes the procedures and work flows associated with the review of major modifications to the Erosion and Sediment Control General Permit (ESCGP) applications for stormwater discharges associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities in accordance with the Department's Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee, (Executive Order 2012-11, Document Number 021-2100-001). Permit decisions for major modifications to ESCGP permit applications will be made within **43 business days** of the date the major modification application is considered to be complete. The 43 business days are the maximum length of time to reach a major modification permit decision. In many cases reviews will be completed in fewer days than the maximum days listed in this SOP. When reviews are completed prior to the 43 business day timeframe or other time frames as established under this SOP, appropriate permit actions should be taken at that time.

I. Pre-Application Process

*Pre-application meetings with the conservation district and the Department are voluntary but highly encouraged for applicants of projects with major modifications to their permit. The use of both informal and formal pre-application may assist in faster processing and review of the Major modification permit applications. There are two types of pre-application meetings, formal and informal. Informal pre-application meetings are for those major modification projects that are in the early planning stages and function as an educational tool for applicants; **these meetings are voluntary**. Formal pre-application meetings are for those major modification projects that are ready to apply for a permit(s) modification and function as an opportunity to ensure all regulatory requirements are clearly articulated. These meetings may be waived at the discretion of the Department and delegated conservation district. If the applicant wants to have the pre-application meetings*

the conservation district and Department staff should follow the SOP guidelines for new E&S permits section 1A and 1B.

II. Application Completeness Review

Refer to the supplemental SOP for implementing the Pennsylvania Natural Diversity Inventory (PNDI) during pre-application meetings and the review and evaluation of the permit application for a major modification to the ESCGP Permit for Stormwater Discharges Associated with Oil and Gas Activities if necessary (when extending permit boundary).

1. If a formal pre-application meeting was not held prior to application package submission, the conservation district and the regional office will meet (this can be done by conference call) within 5 business days of receipt of the application to designate the application manager for the application and determine the priority of the renewal permit application review.
2. Assign the permit application package an ESCGP permit major modification number.
3. The delegated conservation district and Department staff will process and deposit permit application fees in accordance with the Bureau's Program Clarification Memo (PCM) that provides clarification on the Department's policy for the deposit of Fees, Fines, penalties and other Revenue (Document OAM-1000-001, November 29, 2012).
4. If the delegated conservation district is processing the permit application, the district will forward the following to the Department regional office upon receipt of the application package:

A photocopy of the first page of the NOI and the check for the disturbed acre fee. (This check is based on the amount of additional disturbed acres as part of the major modification, rounded to the nearest whole number. See DEP Program Clarification Memo PCM_WET_ESS_12_001, October 17, 2012).
5. The delegated conservation district may forward the disturbed acre checks to the regional office as they are received or may bundle them and forward all disturbed acre fee checks at least once a week to the regional office. Conservation districts **should not hold** the disturbed acre fee until the application completeness check has been completed.
6. The Department regional office will provide an e-mail confirmation to the delegated conservation district upon receipt of the disturbed acre fee checks.
7. The delegated conservation district will deposit payment of the permit application administrative filing fee for the ESCGP permit major modification to the appropriate district Clean Water Fund within 10 business days of the receipt of the application package. Delegated conservation districts should not hold the permit application fee until the application completeness review is done.
8. The application manager will review the major modification application package within 15 business days of receipt to ensure that it is a complete and technically

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adequate application package. The completeness checklist submitted with the permit application should be used to complete this review. If the application is complete proceed to Section IIA; if the application is incomplete continue with this section.

9. If the application contains deficiencies that are determined to be minor, the application manager will contact the applicant by telephone to explain the deficiency and offer the opportunity to submit the necessary materials informally before the completeness review deadline expires.

A phone log will be kept by the application manager that details the name of the person contacted, the day and time of the conversation, and notes for all communications regarding the completeness and technical reviews. It is recommended that all logs be retained with the application file.

In the event the application manager is unable to contact the applicant by phone or e-mail before the completeness review deadline, the application manager will proceed in accordance with Section IIB.

10. If the applicant submits the requested information and the requested information meets the requirements for a complete application, proceed to Section IIA below.
11. If the applicant originally failed to submit the required application information, or if the submittal contents are not of sufficient soundness, or if the minor deficiencies were not addressed within the completeness review timeframe, proceed in accordance with Section IIB below.

If application is complete proceed to IIA; if the application is incomplete proceed to IIB.

IIA. Application Complete

1. If the major modification permit application is complete, the delegated conservation district should send the completeness notification letter to the permit applicant. The Permit Review Process timeframe of 43 business days will be based upon the date of that letter.
2. Proceed to section IIIA.

IIB. Application Incomplete

1. In accordance with § 102.6 (c), the delegated conservation district will send the applicant the incompleteness review letter. The applicant has 60 calendar days to provide the necessary information to make the application complete. If the applicant requests in writing to extend the time to respond beyond 60 days, the delegated conservation district will consult with the applicable permitting section chief to either grant or deny the request. The application manager will draft and sign the extension letter. Either action requires the application manager to respond to the applicant's request in writing including a specific due date for the applicant's response and language providing the applicant a notice that failure to address the deficiencies or

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respond by the due date will result in the application being determined to be incomplete and considered withdrawn.

If the applicant provides the necessary information to complete the application, return to IIA. If the applicant does not submit the necessary information, continue with this section.

2. If the applicant does not submit the necessary information to make the major modification application complete within the time frame specified including any extensions authorized in writing, the major modification permit application will be considered withdrawn. When the delegated conservation district is processing the permit renewal they will notify the applicant that the major modification permit application is withdrawn by sending the withdrawal of incomplete application letter to the applicant. This letter should be signed by the conservation district manager if the district is processing the permit. If the major modification permit is processed by the Department the letter should be reviewed by the section chief and signed by the program manager.
3. If the major modification application is withdrawn, the delegated conservation district or the Department will close the file and take no further actions. The fees associated with the filing of the permit will not be refunded.

After the application is considered complete, the reviewers should proceed to section IIIA, technical review.

IIIA. Technical Review – Initial Plan Submittal

The delegated conservation district will conduct a formal technical review of the E & S plan within 18 business days from the date the permit application is considered complete. Appropriate checklists shall be used to guide the technical review. Any technical deficiencies, in the review of the E&S plan, should be documented in a technical deficiency letter to the applicant/owner and consultant. This documentation of technical deficiencies will cite the statutory or regulatory requirement(s) that the applicant has failed to meet. The letter will offer the applicant the opportunity to meet with the conservation district to discuss the technical deficiencies. The letter will also include the requirement that revised plans should be submitted within 60 calendar days of the date of the technical deficiency letter. If the applicant requests in writing to extend the time to respond beyond 60 days, the delegated conservation district will consult with the applicable permitting section chief to either grant or deny the request. Either action requires the application manager to respond to the applicant's request in writing including a specific due date for the applicant's response and language providing the applicant a notice that failure to address the deficiencies or respond by the due date will result in the application being determined to be incomplete and considered withdrawn.

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If there are no deficiencies after technical review, the application manager should proceed to make a permit decision (section IV.).

If there are technical deficiencies, continue to technical review – plan resubmittal (Section IIIB). If the applicant does not respond within the 60 calendar day timeframe, continue to technical review, no applicant response (Section IIIC).

If the applicant upon receiving the technical deficiency letter requests the elevated review process the Department application manager will move to elevated review process (section IIID.)

IIIB. Technical Review – Plan Resubmittal

The delegated conservation district will conduct a formal technical review of the resubmitted E & S plan within 10 business days from the date of the resubmittal. Appropriate checklists shall be used to guide the technical review. If technical deficiencies remain in the E&S plan, the delegated conservation district will document the technical deficiencies in a letter attached to an e-mail to the Department regional office permits section chief. This documentation of technical deficiencies will cite the statutory and regulatory requirement(s) that the application has failed to meet. If after the second technical review any technical deficiencies still exist with the E&S plan, the district application manager, section chief and program manager will discuss the application. After that meeting the Department may decide to (1) withdraw the application, (2) deny the application, or (3) proceed with the elevated review process.

If the resubmitted plan is found to be technically adequate proceed to permit decision (section IV).

If the resubmitted plan is an incomplete submission, the application should be considered withdrawn; proceed to section IIIC and follow steps 2 and 3.

If the resubmitted plan contains technical deficiencies for any reason the application should be considered for permit denial; proceed to permit denial (section VI.)

If the resubmitted plan contains technical deficiencies, and the Department believes that these deficiencies may be corrected by using the elevated review process proceed to section IIID.

IIIC. Technical Review – No Applicant Response

1. If the applicant does not submit the necessary information to make the major modification application complete within the 60 calendar day timeframe, the permit application will be considered incomplete and will be withdrawn.
2. The delegated conservation district will send the withdrawal of technically deficient application letter to notify the applicant/owner and consultant that the

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necessary information was not submitted within the established time frames and the major modification permit application is withdrawn. This letter should be signed by the conservation district manager if the conservation district is processing the permit. If the permit is processed by the Department the letter should be reviewed by the section chief and signed by the program manager.

3. If the major modification application is withdrawn, the conservation district or the Department will close the file and take no further actions. The fees associated with the filing of the permit will not be refunded.

IIID. Elevated Review Process

When an applicant makes a request for an elevated review, or for applications that continue to be technically deficient, and for which the technical deficiencies have not been resolved satisfactorily within the established response timeframe, including any approved extension, will be subject to the elevated review process.

1. The delegated conservation district will notify the section chief and the program manager at the regional office. The Program Manager will notify the Regional Director of the elevated review and arrange a time to discuss the details of the application and the noted deficiencies. The Program Manager and the Regional Director may contact the Bureau Director and/or the Deputy Secretary for advice or assistance. In addition, complex projects involving multiple permit applications with multiple deficiencies may require a face-to-face meeting of all staff involved, including the application manager.
2. Staff will agree on a direction for final review of the permit application(s), which may include making a permit decision; having a face-to-face meeting with the applicant and the consultant(s); or having a telephone call with the applicant and consultant(s) to discuss the remaining technical deficiencies. Department staff will prepare a written summary of the meeting or phone call documenting decisions agreed to at the meeting or during the phone call.
3. If the meeting results in an agreement to resolve the outstanding issues, the regional office will inform the applicant that all remaining technical deficiencies must be corrected and revised plans submitted within 10 business days of the date of the meeting. The Regional Director may provide the applicant with an additional 10 business days to respond. If resolution cannot be reached, the deficiencies must be elevated to the Bureau Director for review. The Bureau Director will provide direction on the permit decision which may be advancing with denial of the renewal permit application.
4. The application manager, in coordination with any additional staff, will conduct the necessary review of the resubmitted plans. The review will be completed within 5

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business days of the date the revised plans were resubmitted. At the conclusion of this review, the permit decision will be made.

5. If the applicant does not submit revised plans during the elevated review process, the Department will make a permit decision based upon the permit application information available.

If the decision is made to approve the major modification to the permit go to Section V.

IV. Major Modification Permit Decision

1. Once the E&S plan is found to be technically adequate, the delegated conservation district will make a decision to either authorize the major modification to the permit or deny the major modification to the permit.

If the decision is made to approve the major modification to the permit they should move to section V. If they will be denying the major modification to the permit they should move to section VI.

V. Major Modification Permit Approval

1. The delegated conservation district will prepare the pertinent permit documents; sign the ESCGP permit; prepare the permit issuance cover letter; and distribute the ESCGP permit and copies of plans as follows:

To permit applicant (if there is more than one permittee, a copy of the permit cover letter must be sent to each co-permittee):

Copy of the permit cover letter, copy of permit cover sheet, copy of permit, one set of stamped and approved E&S plans, copy of the Visual Site Inspection Report form, copy of the Permittee/Co-Permittee form, and a copy of the Notice of Termination

To the Department regional office:

One copy of the NOI, the weekly permit activity report form, the permit authorization cover letter, and the permit authorization cover sheet.

To the plan preparer:

Copy of permit cover letter, copy of permit cover sheet.

To the municipality:

Copy of permit cover letter, copy of permit cover

sheet.

To Central Office:

Copy of pages 1-11 of the NOI (may be submitted electronically).

2. As soon as the ESCGP permit major modification is authorized, the Department will assure that the appropriate permit authorization information is sent to the Pennsylvania Bulletin for public notice of permit authorization.

VI. Major Modification Permit Denial

ESCGP permit applications for major modifications will be denied if there are continuing technical deficiencies and for which a demonstration cannot be made that all applicable regulatory and statutory requirements have been met. The following process should be followed for major modification permit denials:

1. After consultation with the delegated conservation district, the DEP regional office will send the permit applicant a permit application denial letter which is reviewed by the section chief and signed by the program manager noting that the ESCGP permit major modification is denied. All permit fees submitted with the applications that are denied will be forfeited.
2. If the applicant of a denied ESCGP permit application major modification wishes to continue to pursue approval of the project, the applicant must submit a revised major modification permit application following appropriate program requirements and procedures and will be considered a new major modification application.

VII. Recordkeeping

1. The delegated conservation district will submit the quarterly permit tracking form to the DEP central office at the end of every quarter. These forms may be mailed in or submitted electronically at the same address used for the NOI submittals.