



## **Standard Operating Procedures (SOP) for Renewals of 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 renewals of 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 renewal of ESCGP permit applications will be made within **43 business days** of the date the renewal application is considered to be complete. The 43 business days are the maximum length of time to reach a renewal 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**

*There are two types of pre-application meetings, formal and informal. Informal pre-application meetings are for those 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 projects that are ready to apply for a permit(s) and function as an opportunity to ensure all regulatory requirements are clearly articulated and Permit Decision Guarantee timeframes have been established. These meetings may be waived at the discretion of the Department and delegated conservation district.*

#### **IA. Informal Pre-Application Meeting**

1. An applicant for an ESCGP permit renewal should contact the Department or delegated conservation district as soon as possible in the conceptual

planning stages of the project and request an informal pre-application meeting. This meeting should include the delegated conservation district and the regional office.

2. If the regional office was contacted by the applicant to schedule an informal pre-application meeting, the regional office will invite the delegated conservation district to attend. If the delegated conservation district was contacted by the applicant to schedule an informal pre-application meeting, the delegated conservation district will invite the regional office to attend.

3. At the informal pre-application meeting, the Department or delegated conservation district staff should identify the type(s) of permits required for the project, an explanation of the permit application process and the interrelationship of the various permits, and provide an explanation of the Permit Review Process procedure and timelines.

4. It is useful, but not mandatory, for the Department or the delegated conservation district staff to remain available to the applicant throughout the development of the project details and technical design to ensure a thorough understanding of the plans by the Department and delegated conservation district staff, assure adherence to applicable regulatory and statutory requirements, and to gain insight into potential regulatory concerns and identify potential solutions.

#### **IB. Formal Pre-Application Meeting**

1. It is recommended that the applicant contact the regional office or delegated conservation district to schedule a formal pre-application meeting. The delegated conservation district or the Department may recommend that a formal pre-application meeting be held. If the formal meeting is held, the meeting attendees may include the applicant, the applicant's consultant, the delegated conservation district, the regional office staff, and representatives of all appropriate Department programs.

2. Department regional office and delegated conservation district staff will follow the Policy for Permit Coordination (Executive Order 2012-11, Document ID 021-2000-301) during the pre-application conference.

3. During the pre-application conference, the Department regional office or delegated conservation district staff should provide an explanation of the number and types of permits required for the project and provide the applicant with the Permit Review Process timeframes.

4. The Department regional office or delegated conservation district staff should complete the pre-application conference checklist (Appendix A in the Policy for Permit coordination, Document ID 021-2000-301) during the pre-application meeting, and maintain a record of attendance.

5. The applicant's consultant should complete a summary of the meeting which will be provided to and verified by the conservation district and the Department.

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6. The delegated conservation district will designate a conservation district application manager for the project.
7. The Department regional director will provide direction to the application manager on the priority of the permit application, as necessary.

## **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 new ESCGP General Permit for Stormwater Discharges Associated with Oil and Gas Activities.

The applicant should submit their renewal permit application at least 180 days prior to the date of permit coverage termination. If the applicant is not making any changes to the approved E&S and PCSM/restoration plan they do not need to submit the plans and letters with their permit application renewal package. However, if any changes are made to the plans the revised plans must be submitted for review and approval and all required letters must be submitted with the permit application renewal package. When the applicant has submitted a renewal permit application package to either the delegated conservation district or the Department regional office, the conservation district or the Department application manager will conduct the following:

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 renewal 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. (if not previously paid by the applicant, see DEP 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

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**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 renewal 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 renewal fee until the application completeness review is done.
8. The application manager will review the renewal application package within 15 business days of receipt to ensure that it is a complete and technically 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 renewal 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 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 renewal application complete within the time frame specified including any extensions authorized in writing, the renewal permit application will be considered withdrawn. When the delegated conservation district is processing the permit renewal they will notify the applicant that the permit renewal 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 renewal permit is processed by the Department the letter should be reviewed by the section chief and signed by the program manager.
3. If the renewal 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**

*Note: If there are no changes to the approved E&S and PCSM plan for the permit renewal the plans will not need to be submitted for the permit renewal and there will be no technical review conducted so proceed to section IV.*

*If changes are proposed, the applicant must submit the revised plans that must be reviewed and approved. The conservation district or department should follow the steps outlined in this section.*

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.

*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.

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*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 renewal 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 necessary information was not submitted within the established time frames and the renewal 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 renewal 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,

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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 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 permit renewal, go to Section V.*

#### **IV. Permit Renewal 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 permit renewal or deny the permit renewal.

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

#### **V. Permit Renewal 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:

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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 renewal 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. Permit Renewal Denial**

ESCGP permit applications 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 permit renewal 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 renewal 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 renewal wishes to continue to pursue approval of the project, the applicant must submit a revised

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renewal permit application following appropriate program requirements and procedures and will be considered a new renewal 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.