pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Waterways Engineering and Wetlands

SOP_WET_WOE_01
Standard Operating Procedure (SOP) for Chapter 105 Water Obstruction and Encroachment Program Review of Joint Permit Applications and Environmental Assessments
November 9, 2012

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 an 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 applications for Joint Permit Applications and Environmental Assessments for Water Quality Certification or Waiver of permit requirement (see Table 1) processed by the Department from receipt of the application from the applicant to final Department action. ***This SOP does not apply to General Permit processing (see SOP_WET_WOE_02 and SOP_WET_WOE_04).*** The SOP is organized sequentially by activities that will be completed. The functional roles that are responsible for the activity are identified with the name of the activity. This SOP is intended to comply with the Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee (021-2100-001).

Table 1 eFACTS Authorizations

Auth Code	Authorization Description	Appl Code	Chapter 105 Permit Type	Days
EAR	Env Assessment for Waived Activities for Water Obstruction & Encroachment	NEW	Environmental Assessment for 105.12 Waived Activities	86
		AMAJ		
WOJP	Water Obstruction & Encroachment Pmt	NEW	Individual Ch. 105 Permit	93
		AMAJ		

Preapplication Process

The Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee (Doc. ID 021-2100-001) encourages applicants to request pre-application meetings with the Department. The following general guidelines should be used by program staff when deciding which projects should require a pre-application meeting and which ones may not benefit from such meetings.

- Pre-application meetings are critical and highly recommended when large scale, multi-permitted facilities are involved and when a project meets certain criteria such as spanning multiple counties or regions or if federal permit coordination will be required.

- Pre-application meetings should be held with applicants and/or consultants that are not familiar with the permit requirements and application process.
- Program staff can use discretion with normal routine types of projects (i.e. bridge or culvert replacement, small road crossings, utility line crossings), applicants and/or consultants that are

familiar with permit requirements and have a good history of complete applications. These types of project s may not require pre-application meetings unless unusual circumstances are involved such as threatened or endangered species, exceptional value resources (i.e. streams or wetlands), etc.

The department will establish the meeting date, time, and location (i.e. in office or field). The applicant will be informed that they are responsible for coordinating any external agency involvement such as PA FBC, US FWS, ACOE, etc. Program staff should recommend agencies to include based upon the particulars of the project. Pre-application meetings that involve large complex projects that involve multiple DEP programs should be coordinated according to the **Permit Coordination Policy 021-2000-301**. The applicable Section Chief will discuss the coordination with the Program Manager and Assistant Regional Director when necessary.

NOTE: Upon receipt of an application administrative/clerical staff will have a maximum of five (5) business days to process the application (ex. opening mail, date stamping, data entry, etc.), which includes items from Steps I and II. This step is prior to and not a part of the 10 day completeness review. The applicable processing business days are the maximum length of time to reach a permit decision. In many cases, reviews will be completed in fewer days than the maximum days listed in this SOP. When the reviews are completed prior to the listed business day timeframe or other time frames as established under this SOP, appropriate permit actions should be taken at that time. There may also be circumstances when the permit application is deemed to be outside the parameters of the permit decision guarantee and there is no obligation by the reviewer to reach a permit decision within the established timeframe. In those cases, there is no guarantee to the permit applicant and no penalty to the reviewer if the permit decision is not made within the timeframe.

I. Preliminary Data Management and Fee Processing (Administrative Staff – 3 business days)

A. When new or major amendment applications are received, administrative staff will:

1. In eFACTS, locate or create the client, consultant and site records, then create the authorization record, using the authorization (Auth) types and application (Appl) types listed in Table 1 above that are covered by the PDG policy (eFACTS Abbreviated User Guides should be used for detailed steps for creating/linking records);

2. Assign the permit number according to specific program guidelines for permit number assignment related to the specific authorization type, general permit numbers should not be assigned if activities are covered under an individual permit application;

3. Enter the proper date for application received in eFACTS (Note: date received is used as the begin date for the Completeness Standard Task);

4. Assign the appropriate permitting Section Chief as the initial application manager (aka lead reviewer);

5. Create the primary facility (PF) in accordance with program guidance as necessary;

6. Update the PF Kind as necessary to reflect the program or office the application is being processed in;

7. If a major amendment, ensure the authorization has been linked to the original Master Authorization (**Note**: Do not create a new Master Auth without first searching for an existing one, most historic permits had skeleton Master Auths created);

8. Ensure the Client ID and Other ID (i.e. Permit Number) of the PF is identical to those for the authorization, otherwise update the PF; and

9. Process application fees, if applicable, according to department wide guidelines **Internal Guidance for the deposit of fees (385-0400-001)** and using eFACTS abbreviated user guides when applicable;

10. Attach permit tracking sheet to the file.

II. Coordination, Prioritization and Assignment of Application Manager (Applicable Section Chief – 2 business days)

Once Step I is completed by administrative staff, the application will be given to the applicable permitting Section Chief. The applicable permitting Section Chief will:

A. Assign an application manager (i.e., technical staff, previously known as "lead reviewer" in eFACTS), an engineer and an environmental staff to conduct the technical review of the application, if applicable. The applicable permitting Section Chief will enter the name of the application manager and assign the technical staff in eFACTS for the authorization unless previously done under Step I.4.

B. Prioritize the application in accordance with the guidelines provided by the Regional Director for implementing the "Permit Review Hierarchy" contained in DEP's Policy (021-2100-001). Chapter 105 permits may be considered necessary for the protection of public health, safety or the environment from imminent threats, or be considered necessary for economic development projects that create jobs and enhance communities depending upon the individual project circumstances.

C. Determine whether coordination with other applications is required in accordance with Permit Coordination Policy 021-2000-301.

III. Completeness Review (Application Manager, aka Lead Reviewer)

A completeness review is required for the authorization types included in Table 1; within the 10 business day review timeframe the review shall include the following:

A. The application manager will enter the begin date for the **COMP -** Completeness Review subtask under the Completeness Standard Task in eFACTS when the application manager receives the application assignment.

B. The application manager will utilize the corresponding authorization type completeness checklist to ensure all required items have been submitted and utilize any program specific guidelines for evaluating that the items are technically-adequate and are sufficient for conducting a technical review. See Appendix A for specific authorization completeness checklists. The application manager should use applicable program guidelines and the requirements of Chapter 105.13 and related Subchapters to evaluate technical adequacy of submissions.

C. If the application is complete, proceed to Step IV otherwise proceed with Step III.D below;

D. If the application is incomplete and the deficiencies are determined to be insignificant (i.e., an item that in the application manager's judgment can be corrected before the 10 business day Completeness Review Task has expired), the application manager will contact the applicant <u>by phone</u> to explain the deficiency and offer the opportunity to submit the necessary materials informally before the Completeness Review deadline expires to make the application complete. The application manager may or may not (at the application manager's discretion) follow up the phone call with an email to the applicant and/or consultant.

A phone log will be kept by each 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 until the permit is issued, or otherwise a database or spreadsheet be used and made accessible to allow others to check latest correspondence in case the application manager is out of the office.

In the event the application manager is unable to contact the applicant by phone before the 10-day Completeness Review Task has expired, the application manager will proceed with Step III.D below.

After the necessary materials have been received (receipt by email or fax is acceptable except when original signatures, plans or seals are needed), and assuming the application can then be considered complete, the application manager will then proceed to Step IV. If the submission does not correct the original insignificant deficiencies, the application manager will proceed with Step III.D below.

E. If the applicant originally failed to submit the required application information, or if the submittal contents are not technically-adequate or if the insignificant deficiencies were not addressed within the 10 business day completeness review time frame, the application manager will draft an incompleteness letter for the applicable permitting Section Chief's signature to the applicant. The letter must cite the statutory or regulatory obligations for all deficiencies that the application has failed to meet. The letter will also inform the applicant that the Permit Decision Guarantee is no longer applicable. In accordance with Chapter 105.13a, the applicant shall have 60 days (**not business days**) to complete the application and address any completeness deficiencies. The application manager will enter and begin date the **SDN** - Send Deficiency Notice/Receive Response subtask under the Completeness Standard Task using the date of the letter.

F. If the applicant submits the requested information within the 60 day deadline and the requested information meets the requirements for a complete application, the project manager shall prepare an Acceptance letter explaining the technical review process and informing them that the Permit Decision Guarantee is voided due to the submittal of an incomplete application.

G. If the applicant requests in writing to extend the time to respond beyond 60 days, the application manager 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 deemed incomplete and considered withdrawn.

H. If the applicant fails to respond within 60 days, or the established time extension due date or the information submitted is not sufficient to address the deficiencies, the project manager will notify the applicant in writing that the application is incomplete and considered withdrawn in accordance with 105.13a. The application manager will enter the end date for the **COMP** – Completeness Review subtask under Completeness Standard Task, enter the subtask of **DENC** - Application Incomplete – Denied in the Completeness Review Task, with start and end dates corresponding to the date of the letter and end date the Completeness Task. The application manager will then close the authorization in eFACTS using a disposition of **WITH** - Withdrawn. The application fee will not be returned.

I. If the applicant chooses to amend the application and resubmit the package, following program requirements and procedures, the Department will treat the resubmitted package as a new application, including any applicable fees and the application processing would start at Step I.A.

IV. Technical Review (Application Manager and Technical Staff)

Once Step III is completed by the application manager, the application manager will:

A. Determine the PA SPGP category and follow the PA SPGP standard operating procedures for coordinating the processing of PA SPGP, ensure copies are forwarded to the ACOE if applicable;

B. Ensure that the corresponding PA SPGP authorization (i.e. Corresponds to the Reporting Category) is created under the same APS record in eFACTS. The end date of the Completeness review standard task will be used as the application received date for the PA SPGP auth;

C. Notify the assigned engineer and environmental staff that the application is complete and ready for a technical review. The assigned staff will enter the start date for the **ER -** Engineering Review and **EN -** Environmental Review subtasks, if applicable under the Technical Review standard task in eFACTS when they begin their reviews.

D. Generate a project description according to program guidelines and for publishing in the ***PA Bulletin*** for public comment, provide description to designated staff that coordinates the submittals. Comments are accepted for 30 days (**not business days**);

E. Ensure that a copy of Form 1, Joint Permit Application (WOJP) or Environmental Assessment (EAR) forms are forwarded to the PA FBC per program requirements;

F. The application manager and technical staff will conduct the technical review in accordance with program guidelines and regulatory requirements related to the specific authorization type including coordination of the Submerged Lands License Agreement (SLLA) requirements when applicable. The identification of submerged lands should occur as early in the technical review as possible to provide the maximum amount of time for processing of the SLLA. The standard operating procedures for SLLA processing (**SOP_WET_WOE_005**) will be followed when applicable.

G. If the application is technically inadequate, the application manager will if necessary, transmit a technical deficiency letter:

   1. In the event, upon a detailed technical review of the application, the application manager determines that information beyond the scope of the Completeness Review is not available or otherwise there are technical deficiencies within the application or proposals therein, the application manager in consultation with the applicable permitting Section Chief and at the Section Chief's discretion the Program Manager, will make a determination on whether the deficiency is significant or non-significant. In general, non-significant deficiencies are those that can be corrected quickly by the applicant (e.g., one day) so that there is only a minimal processing delay.

   2. If the deficiencies are determined to be insignificant, the application manager will contact the applicant and/or the project consultant <u>by phone</u> and request a response by the close of the next business day. A phone log will be maintained by the application manager to record the results of all such conversations. A follow-up email may be transmitted at the application manager's discretion.

   3. If a) the insignificant deficiencies are not corrected by the timeline requested, b) four phone calls to the applicant and consultant fail to establish communication, or c) the application manager determines that the deficiencies are significant, the application manager will prepare a Technical Deficiency (TD) for the applicable permitting Section Chief's review and signature. The number of TD Letters will be limited to one in most circumstances, unless the project is determined to be a complex project. The letter must cite the statutory or regulatory obligations for all deficiencies that the application has failed to meet and request a response

within 60 days (**not business days**) in accordance with Chapter 105.13a. The letter will inform the applicant that the Permit Decision Guarantee is no longer applicable (if not already done under the completeness review process in III.D. above) and at the discretion of the application manager, offer an opportunity to the applicant to meet and discuss the deficiencies. The application manager will enter a subtask of **SDN -** Send Deficiency Notice/Receive Response into eFACTS with a start date corresponding to the date of the letter.

4. If the applicant responds to the TD letter within 60 days the application manager will enter an end date for the **SDN** subtask in eFACTS corresponding to the date the submission was received, review the submission and, assuming it addresses the concerns raised in the TD letter, proceed with Step V. If the submission does not address the concerns in the TD letter, continue to Step IV G.5 below.

5. If the applicant fails to respond to the TD letter within 60 days, or if the response fails to address the issues raised in the TD letter, the application manager will enter a subtask of "**ELEV**" (Elevated Review Process) and brief the applicable permitting Section Chief on the circumstances; and follow the Elevated Review Process in the PDG policy (Doc. ID 021-2100-001) located at Section III.B.7 (Page 11 of the policy). The elevated review process is intended to be a case by case review and decision to determine the proper action to take regarding the permit application.

6. If following the Elevated Review Process the decision is to deny the application, the application manager will enter end date for the **ELEV** subtask, create the **DENT -** App Technically Deficient – Denied subtask into eFACTS, enter start and end dates for the **DENT** subtask corresponding to the date of the decision, prepare a letter that denies the application and close the authorization in eFACTS using the disposition code **DENI** - Denied.

7. If following the Elevated Review Process the decision is to allow an additional technical deficiency response, repeat Step IV.G.3 and proceed.

V. Data Management and Final Technical Review Processing (Application Manager)

Once Step IV is completed by the application manager, or otherwise in concert with Step IV, the application manager will, within the specified authorization's processing days:

A. Ensure that the following data management tasks in eFACTS are completed:

1. Create, or otherwise review and edit, a subfacility (SF) for each proposed structure or activity according to program guidelines, run the NHD Locator Tool for each subfacility;

2. Enter, or otherwise review and edit, the inventory details for each subfacility record;

3. Create any SF to SF relationships according to program guidelines (e.g. WTIM related to WTRE or DOCK related to SLLA); link the applicable SFs to the authorization record; and

4. Create any monitoring records in eFACTS according to program guidelines.

B. Ensure the following tasks are completed:

1. The assigned engineer and environmental review staff shall complete their Record of Decisions;

2. The application manager will ensure that either a draft permit and permit issuance letter or a denial letter, when applicable is generated;

3. The project manager will check to see if there is any permit coordination required and follow up, as necessary, to inform other programs requiring permits of their anticipated permit action.

C. Ensure administrative staff receive the draft documents and prepare final versions conforming to Commonwealth standards and that the documents are printed and the package assembled.

D. The assigned environmental review staff will present their Record of Decision (ROD) to the environmental supervisor for review and sign off or override recommendation of technical staff with explanatory comments;

D. The assigned technical staff will enter an end date for the ER and EN subtasks in eFACTS to close out the Technical Review standard task.

E. Provide the package with the application to the applicable permitting Section Chief. The package will include a sign-off from the application manager on the permit tracking sheet.

VI. Completion of Technical Review (applicable permitting Section Chief)

Once Step V is completed by the application manager, the applicable permitting Section Chief will:

E. Review the application and completed permit documents or denial letter to the depth necessary for QA/QC related to the particular project;

F. Review the ROD(s) and sign off on or override recommendation of technical staff with explanatory comments;

G. Ensure the correct subfacility types and inventory details have been entered;

H. Enter the begin an end dates of the **DR** – Decision Review subtask; and

I. Sign the permit tracking sheet and submit the final permit package to the Program Manager and proceed to Step VII.

VII. Final Decision (Program Manager)

The Program Manager will complete the following tasks upon receipt of the final permit package:

A. Review the Record of Decision(s) and completed permit documents, permit issuance or denial letter;

B. Sign the permit issuance letter and the permit documents or denial letter; and

C. Sign the permit tracking sheet and return the final signed documents to administrative staff.

VIII. Final Permit Processing (Administrative Staff)

Administrative staff will complete the following tasks upon receipt of the final, signed permit package:

A. Ensure that effective and expiration dates are on the permit document, if applicable;

B. Enter the disposition status and date for the authorization and corresponding SPGP authorization in eFACTS;

C. Submit notice to publish the final action to ***PA Bulletin*** according to Department guidelines;

D. Make copies, assemble applicable attachments (e.g. SPGP, appraisal of permit conditions, etc.) and mail the copies to the recipients with a copy to ACOE, PFBC, and other appropriate staff. The attachments don't need to be mailed to the ACOE or PFBC. The approval letter will not be sent via Certified Mail; and

E. Transmit the permit application/permit files to the regional file system.

F. Receive the acknowledgement of appraisal of special conditions form and file in the permit application file.

Appendix A

Individual Permit Completeness Checklist

and

Environmental Assessment Completeness Checklist

Chapter 105 Individual Permit and Environmental Assessment Completeness Checklist

10/16/2012

Provided (Y, N, N/A)	Tech Adequate (Y, N, N/A)	**Item Description** (See Section 105.13 for additional details. If application under the Small Projects Application format, an entry in only those items prefixed by an asterisk (*) is reveiwed.
		a.* GIF and permit application properly signed, sealed and witnessed
		b. * Application Fee enclosed (see Section G.)
		c. * Copies and proof of receipt - Act 14 notification - Acts 67/68/127
		d. * Cultural Resource Notice (Notice, return receipt and PHMC review letter, as appropriate)
		e. PASPGP-4 Cumulative Impact Project Screening Form
		f. * Bog Turtle Habitat Screening: copy of "No Effect" determination from the Army Corps of Engineers **OR** copy of documented clearance from the US Fish and Wildlife Service
		g. * Pennsylvania Natural Diversity Inventory (PNDI Project Environmental Review Search Receipt including Avoidance Measures and documentation of agency coordination, as appropriate)
		h. * Plans (site plan including cross sections and profiles for Subsections 151, 191, 231, 261)
		i. * Location map
		j. * Project description narrative
		k. * Color photographs with map showing location taken
		l. * Environmental Assessment form (Use N/A if does not apply.):
		Part 1
		*Enclosure A
		*Enclosure B
		Enclosure C
		Part 2
		Enclosure D
		*Part 3
		m. Erosion and Sediment Control Plan and approval letter or proof of application
		n. Hydrologic and hydraulic analysis
		o. Stormwater Management Analysis with consistency letter
		p. Floodplain Management Analysis with consistency letter
		q. Risk Assessment
		r. Professional engineer's seal and certification
		s. Alternative analysis
		t. Mitigation plan