

Commonwealth of Pennsylvania



Expedited ESCGP-2 Process Internal Review

DECEMBER 27, 2016

Office of Oil and Gas Management
Pennsylvania Department of Environmental Protection
P.O. Box 2063
Harrisburg, PA 17105-8468
717-783-9438

www.depweb.state.pa.us

Summary

The Department of Environmental Protection's (DEP) Office of Oil and Gas Management (OOGM) conducted an internal evaluation of Authorizations for Coverage to use the Erosion and Sediment Control General Permit (ESCGP-2) reviewed by DEP under the 14 business-day expedited review process. The purpose of the internal review was to evaluate the quality of the Notices of Intent for Coverage (NOI) under ESCGP-2 submitted by applicants through the expedited review process, evaluate the effectiveness of the process, and to assist in identifying ways in which the existing expedited process can be improved. The results of the internal review indicate that the DEP should evaluate the expedited review permit authorizations and implementation of the process at regular intervals in order to achieve consistency, and to ensure that NOIs are technically adequate, that resulting permits meet applicable requirements, and that appropriate review is provided for applications that are eligible for the expedited review.

Context of Program Audit

Noting commonality in ESCGP-2 permit appeals and with interest in permitting consistency, in early 2015, DEP's Oil and Gas Management Program decided to internally review the ESCGP-2 expedited review process to evaluate consistency and effectiveness. The Office of Oil and Gas Management staff completed its review of ESCGP-2 NOIs (*i.e.*, applications) submitted for review between February 2014¹ and January 2016 under the expedited review process. This report presents the internal review results.

Background of Permit Program

The Office of Oil and Gas Management (OOGM) reviews NOIs for Authorization for Coverage under ESCGP-2 pursuant to Title 25, Chapter 102. 25 Pa. Code § 102.5(c) requires persons proposing oil and gas activities that involve 5 acres or more of earth disturbance over the life of the project to obtain an ESCGP-2 permit prior to commencing the earth disturbance activity. On December 29, 2012 DEP issued Erosion and Sediment Control General Permit No. 2 for earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities (ESCGP-2). ESCGP-2 allows projects meeting certain criteria to be eligible for a 14-day expedited review process.

¹ The ESCGP-2 program inception was February 2014.

ESCGP-2 permit and related guidance established two processes for review of NOIs:

- (1) A standard review process -- The standard ESCGP-2 NOI review entails a thorough administrative and technical review of the application materials. Pursuant to the Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee (PDG policy), OOGM guarantees that it will complete its review of complete and technically adequate applications within 60 calendar days of submission.
- (2) An expedited review process -- Applicants that qualify for the voluntary expedited review of ESCGP-2 NOIs are provided with an acknowledgement of coverage within 14 business days from the submission of a complete and acceptable NOI.²

The expedited permit process is not available for the following:

- Projects that are partially or fully located in or with the potential to discharge to waters that have a designated or existing use of High Quality (HQ) or Exceptional Value (EV) pursuant to 25 Pa. Code Chapter 93 (relating to water quality standards).
- Projects in which the area surrounding an oil or gas wellhead that is subject to earth disturbance and that is used or planned for use for the drilling, production or plugging of the well, including associated support activities (such as storage of chemicals, wastewater, drill cuttings, and equipment) will be constructed in or on a floodplain.
- Earth disturbance activities on lands that are known to be currently contaminated by the release of regulated substances as defined in Section 103 of The Pennsylvania Land Recycling and Environmental Remediation Standards Act (Act 2), 35 P.S. § 6026.103.
- Transmission facility projects.

² NOIs submitted for expedited review must be prepared and certified by a licensed professional (*e.g.* engineer, surveyor, geologist or landscape architect) who is registered in Pennsylvania and who has attended up-to-date training provided by DEP's OOGM on erosion and sediment control and post construction storm water management for oil and gas activities. The work done by licensed and trained private professionals preparing the applications can determine whether the expedited review process is available for an application; it is not available where there are technical deficiencies, missing information, or incomplete information.

The licensed professional is responsible for the development of a complete and acceptable NOI package, including an Erosion & Sediment (E&S) Control Plan that specifies E&S Best Management Practices (BMP) design, implementation and maintenance requirements and a site restoration plan with Post Construction Stormwater Management (PCSM) BMPs that meet all regulatory requirements. All E&S Plan and PCSM/Site Restoration (SR) Plan drawings and plan narratives submitted for the expedited review process must be sealed by the licensed professional that prepared the application and plans. Where NOIs do not meet applicable requirements, they may be denied or removed from the expedited review process and placed in the standard 60-day review.

Audit Scope

- ESCGP-2 NOIs (i.e., applications) submitted between February 2014 and January 2016 were eligible to be reviewed.
- 1,678 ESCGP-2 NOIs were submitted for DEP review during this period.
- 1,054 ESCGP-2 NOIs were submitted for expedited DEP review during this relevant eligible period.
- Of the 1,054 NOIs submitted for expedited review, only 436 ESCGP-2 NOIs were eligible for expedited DEP review.
- During the audit eligible period, although 63% of all NOIs received by DEP were submitted for expedited review, only 26% of the NOIs were actually subject to the 14 business-day expedited review timeframe (i.e., 436/1,678 applications were eligible to be reviewed in 14 business days).
- 1,242 NOIs were deemed to be ineligible for expedited review either because they did not meet the expedited review criteria or because the NOIs were incomplete and/or technically deficient.

Below is a chart reflecting the statistics for ESCGP-2 permit applications from February 2014 - January 2016.

Number of ESGP2 authorizations issued through 01/05/2016:		
Submitted as standard review	624	37%
Submitted as expedited review	1,054	63%
Total	1,678	100%
Of the 1,054 that were submitted as expedited review:		
Number that had an expedited review process (based upon PDG status of “Active”)	436	41%
Number that fell out of the expedited review process (based upon PDG status of “Void”)	618	59%
Total	1,054	100%

- Of the 436 NOI's that were subject to and issued under expedited review,
- DEP evaluated the expedited NOIs that proposed earth disturbance of 15 acres or more, as these tend to be more complex applications and have more potential to impact the environment. DEP subjected these 'higher risk' and more difficult permit applications to internal review.

- 190 projects proposed earth disturbance activities of 15 acres or more and were thus eligible for internal review. Of these, DEP selected 23 permit applications for the intensive internal review. The 23 applications were selected randomly without regard to applicant, consultant or project characteristics.
- Applications from each oil and gas region were included in the 23 NOIs reviewed for this evaluation.
- The 23 permit applications represent a confidence level of 90% with a confidence interval of 15% in the results of the audit.³
- DEP staff across the Commonwealth participated in the internal review. No NOI was audited by the same person who reviewed the initial application.

Summary of Audit Results

- As shown in the above chart, 59% of all ESCGP-2 NOIs submitted for expedited review were disqualified from the expedited review process because they were either administratively incomplete and/or technically deficient when submitted for review.
- 41% of all of the NOIs submitted were reviewed and issued in the expedited review process.
- The internal review results indicate that approximately 19 NOIs (83% of the applications subject of this internal review) contained technical deficiencies.
- Reviewers agreed on the adequacy of 4 (17%) of the 23 expedited NOIs reviewed. These NOIs met all of the applicable regulatory requirements (*i.e.*, administratively complete and technically sufficient).
- Consistency in review is an issue that must be addressed by DEP.
- The results described herein reflect a small subset of the most challenging permit applications. The audit results indicate the difficulty in and necessity for conducting a thorough and appropriate review, even where technical professionals prepare applications.
- DEP's ESCGP-2 program includes field inspections of ESCGP-2 sites.
- Of the 23 sites subject of the review:
 - (i) sixteen (16) sites were inspected one or more times, and one of these sites had an E&S violation noted during the inspection;
 - (ii) six (6) of the sites were never constructed;
 - (iii) one (1) site is currently under construction, and was recently inspected.
- Most sites were inspected a number of times, and overall forty-seven (47) field inspections were conducted on these sites subject of the reviewed NOIs.
- Of the forty-seven (47) field inspections of the reviewed application sites, only one inspection documented an E&S violation.

³ The confidence interval represents that there is a 90% chance that what is observed in the audit sample group would accurately reflect the same results in a larger sample group, plus or minus 15%.

Conclusions and Recommendations

The expedited permit review process is very challenging for DEP to implement and has not resulted in higher quality applications nor consistency in environmental protections statewide. The results of this compilation and review indicate that DEP cannot rely on licensed professionals to submit technically sound, legally defensible application materials in the very first submission. As a result, the 14-day expedited review process has limited applicability, but will continue to be used where applications meet the eligibility requirements. All permit applicants must satisfy all applicable regulatory requirements in order to obtain approval under any DEP permitting program.

Continuation of the practices previously expected by industry, including unquestioning reliance on sealed NOIs is not advised based upon the last 3 years of review experience, partially reflected in this internal review. Refinement of the eligibility standards and DEP's review process is needed to adequately implement the statutes and regulations DEP administers in the ESCGP-2 program permitting process.

DEP is responsible for issuance of compliant authorizations in a timely manner. To accomplish this, *where necessary*, DEP program staff must: (a) remove an expedited permit application from the expedited review process; (b) require additional information from the applicant; and (c) deny a permit application. Further, DEP must consistently apply objective standards to the expedited applications that enable reviewers to make sound permit decisions within 14 business days.

DEP's Bureau of Oil and Gas Management recommends that it refine and improve the expedited review program implementation in the following ways:

- 1) Establish more objective and clear standards for expedited permit NOI review *eligibility* so that they can be implemented consistently statewide.
- 2) Establish more objective and clear standards for DEP's *return or denial* of ESCGP-2 NOIs so that program staff can take consistent action statewide regarding permit application return and/or denials.
- 3) Create and implement *internal program staff education* to ensure that DEP staff consistently apply standards for qualification for expedited review and standards for issuance of expedited ESCGP-2 permits.
- 4) Conduct *industry and third party technical training* for those entities and persons preparing and submitting applications. Sessions should be standardized and offered in at least three locations across the Commonwealth in 2017.
- 5) Conduct *regular internal reviews* for consistency, technical sufficiency, and proper implementation on a 2-year interval beginning in 2017 (year 1) after staff training referenced in #3 above is completed. (*i.e.*, another audit should be conducted in November 2017, and internal reviews should occur in every odd year thereafter.)