

FREQUENTLY ASKED QUESTIONS

Environmental Protection Performance Standards at Oil and Gas Well Sites

Site restoration
(§ 78a.65)

The purpose of this Frequently Asked Questions (FAQ) document is to highlight changes in and address questions about the new regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa. Code Chapter 78a and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.

This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.

- 1) Why does the landowner consent form not require the landowner to accept liability for maintaining Post Construction Stormwater Management (PCSM) best management practices (BMP)? Why does the landowner consent form notify the landowner that the landowner may be liable for conditions on the landowner's property?**

It is not appropriate for this form to require a landowner that consents to waive the operator's restoration requirements to assume this liability.

The form is intended to notify the landowner of potential liability. Under Section 316 of the Clean Streams Law, if the Department of Environmental Protection (DEP) finds that pollution or a danger of pollution is resulting from a condition that exists on land in the Commonwealth, DEP may order the landowner or occupier to correct the condition. Accordingly, while the Department does not anticipate any significant environmental harm to result from well sites that are left unrestored in accordance with this section, landowners that consent to an operator not to fulfill this restoration requirement should be aware that they may be liable if future issues arise. It is reasonable and appropriate for DEP to notify landowners of this potential liability. (posted 10/11/16)

- 2) How is an operator supposed to prove that the stormwater runoff rate, volume, and quality have been restored to preconstruction conditions? Are there preconstruction measurements that have to be completed?**

Essentially there has to be a characterization of the preexisting runoff rate, volume, and water quality. Requirements for developing a PCSM Plan are included in Chapter 102.8 and the *Pennsylvania Stormwater Best Management Practices Manual*. The applicant has to ensure that the requirements of Chapter 102.8 are met through the planning and design of PCSM BMPs. (posted 10/11/16)

- 3) If a well site was built and a well not drilled, what triggers the 9-month requirement to restore the site? Does a well have to be drilled within 9-months of a site being constructed?**

Section 78a65(a)(3) restoration is triggered by the last active well permit on the well site. If the operator has a well permit on a well site, they must commence drilling within 12 months, and then another 9 months to complete restoration after the drilling is completed. Also, they may apply for a restoration extension for up to 24 months. (posted 10/11/16)

4) Why is it necessary for a landowner to receive a National Pollutant Discharge Elimination System (NPDES) permit for a well pad that they want to keep?

The landowner does not a NPDES permit for impermeable areas remaining on a site that were initially permitted by an Erosion and Sediment Control General Permit (ESCGP).

The landowner would need to complete and sign a Landowner Consent of Responsibility for Well Site Restoration form if they are going to keep the impervious area and maintain all PCSM BMPs, but no NPDES permit would be required BMPs that were part of an ESCGP. (posted 10/11/16)

5) Are there options for post-drilling (interim) restoration other than major earthmoving if a well pad is not fully drilled out? Can spreading of topsoil and planting suffice if stormwater calculations are met?

This may vary depending on conditions of the site. The best way to determine site-specific issues is to discuss with DEP district oil and gas staff familiar with the project to determine specific site related issues such as spreading of topsoil (and stabilization) in a specific part of a well site or other permitted area to appropriately address the interim stabilization requirements. The potential of spreading topsoil and stabilizing a portion of a well pad may include leaving an impervious surface under the stabilized topsoil that may not address PCSM issues related to the well site. (posted 10/11/16)

6) Please discuss DEP's expectations related to site restoration footprint after drilling versus after plugging. Is there a DEP target for well pad area after drilling or is up to operator?

There is not a specific size requirement for the footprint of a well pad after drilling. Rather, as required by 78a.65(a)(iv)(A) through (F) which address post-drilling site restoration as "areas needed to safely operate the well." The operator must reduce to well site to the size necessary to safely operate the site for production, after drilling is completed. (posted 10/11/16)

7) If an operator completes the post-drilling restoration plan, operates the well, then the ESCGP-2 expires, then the operator plugs the well and wants to complete the post-plugging restoration plan, does the operator need a new ESCGP-2 to restore the site?

The operator should apply for an ESCGP renewal prior to the permit expiring. Once a permit expires, if the project is not completed, it is a permit violation to expire without a Notice of Termination being filed and processed. All ESCGP's must be closed out with a Notice of Termination that requires a final inspection by DEP to ensure the site is properly completed and stabilized as detailed in the ESCGP. If the ESCGP expires, a

new permit would be required. It is recommended that the operator file a well site restoration extension request prior to allowing the permit to expire if it will not be restored prior to filing and receiving approval of a Notice of Termination after a final inspection by the Department. (posted 10/11/16)

- 8) Restoring a well pad as described in Chapter 78a, can require 50,000 cubic yards or more of excess earthwork that will require a large stockpile. The restoration of well pad areas to approximate original contours will often create excess soil material. The excess soil material removed from the slopes of the well pad will need to be stockpiled. How does DEP recommend such instances be addressed?**

In the development of a very large well pad if there is excess material that has to be removed, it is the responsibility of the operator to find a waste area offsite or stockpile to place the material and ensure it is stable and tributary to appropriate Erosion and Sediment BMPs until it is stabilized. Also, the operator has to be sure that any permits required for the activity related to Chapter 102 and or Chapter 105 are applied for and received prior to placing the material offsite. (posted 10/11/16)

- 9) If an operator submitted a Well Site Restoration Report form after PCSM BMPs were installed but prior to the promulgation of 78a, does the operator also need to submit the new Post-Drilling Well Site Restoration Report form for that site after the promulgation.**

No. If a well site restoration report has been completed, the operator would not have to submit the same information on the new form. However, once Chapter 78a is promulgated there may be implementation issues that will need to be addressed to achieve the most seamless transition as possible. (posted 10/11/16)

- 10) What is the formal process for restoration plan review and approval by the DEP? Is it approved with the ESCGP-2 for the well pad construction?**

Yes, a restoration plan gets submitted with the ESCGP-2 Application. (posted 10/11/16)

- 11) When submitting a Notice of Intent for Coverage under ESCGP, what should an applicant include related to the areas on a well site needed to safely operate the well after post-drilling restoration?**

An applicant submitting a Notice for Intent for Coverage under ESCGP should include an explanation, including a detailed, logical description, of the reasons areas on the well site are needed to safely operate the well after post-drilling restoration. (posted 07/06/21)

- 12) What areas of the well site constitute “areas needed to safely operate the well” for purposes of site restoration in accordance with 25 Pa. Code § 78a.65?**

The list provided in 25 Pa. Code § 78a.65(a)(1)(iv) is not an exclusive or exhaustive list of areas needed to safely operate a well. Other areas may include, but are not limited to:

- (1) Areas used for a guard shack or security.
- (2) Areas used for service vehicle and rig access, maneuverability and staging.

(3) Areas needed to accommodate rapid response equipment and activities in the event of an accident, fire, well control incident, or major spill.

(4) Areas of sufficient size to accommodate equipment spacing for fire safety.

(posted 07/06/21)

13) Are operators required to restore well sites to approximately original conditions?

On July 22, 2019, the Commonwealth Court issued an order declaring the following when the restoration period is unextended, “Subsection (b) of 25 Pa. Code § 78a.65 is hereby declared VOID and UNENFORCEABLE to the extent that it required post-drilling site restoration within the statutory 9-month period to approximate original conditions/contours.” *Marcellus Shale Coalition v. DEP*, 216 A.3d 448, 503 (Pa. Cmwlth. 2019).

As a result, operators who restore the well site within the statutory 9-month period are not required to comply with the approximate original conditions requirement in Section 78a.65(b). However, operators seeking an extension of the restoration period in accordance with Section 78a.65(c) must demonstrate “that the portions of the well site not occupied by production facilities or equipment will be returned to approximate original conditions.” (posted 07/06/21)