



**Permit Review Process and Permit Decision Guarantee Policy
Comment/Response Document
November 2, 2012**

The Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee was developed based on the authority provided in Executive Order 2012-11. This new policy sets forth a significant change in the business process the Department will employ in reviewing applications for authorizations, referred to as “permits”, from the past practice detailed in the Money Back Guarantee Policy. The purpose of this policy is not to “streamline” or “expedite” the permitting process. The purpose of both policies is to make the Department’s permitting process more predictable and efficient without compromising thorough review for environmental and public health protection.

This Permit Review Process and Permit Decision Guarantee policy establishes a standardized review process and processing times for all Department permits. For the permits contained in the Permit Decision Guarantee, the Department guarantees to provide permit decisions within the published timeframes, provided applicants submit complete, technically adequate applications that address all applicable regulatory and statutory requirements in the first submission. Staff will follow a Department-wide standard process for receiving, prioritizing, accepting, reviewing, denying, and approving applications for permits or other authorizations.

The draft technical guidance was published for comment in the *Pennsylvania Bulletin* on Sept. 1, 2012 and the 30-day comment period ended on Oct. 1, 2012. The comments received from 70 commentators during the public comment period, as well as responses from the Department are included in this Comment/Response document.

Additional information pertaining to the Department’s Permit Review Process and Permit Decision Guarantee Policy and Policy for Permit Coordination can be found on the Department’s website at www.dep.state.pa.us, keyword: Permit Decision Guarantee.

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LIST OF COMMENTERS

No.	Name	Organization	City	State
1	Daniel J. Martin	Marathon Engineering and Environmental Services, Inc.	Swedesboro	NJ
2	Mark M. McClellan	Evergeen Environmental, Inc. (EEI)	Harrisburg	PA
3	Rose A. Koufos	n/a	York Springs	PA
4	Maria Payan	n/a	Delta	PA
5	Elizabeth A. Hower	n/a	York Springs	PA
6	Lee Murphy	n/a	Spring City	PA
7	Laura Blood	n/a	New Brighton	PA
8	Rep Camille "Bud" George	Environmental Resources and Energy Commission, Pennsylvania House of Representatives	Harrisburg	PA
9	Emily E. Krafjack	n/a	Mehoopany	PA
10	Mary Ann Shaffer	Franklin County Conservation District	Chambersburg	PA
11	William McFadden	Lehigh County Conservation District	Allentown	PA
12	Karl J. Shellenberger	Buchart Horn, Inc.	State College	PA
13	Michele A. Wice	Kriebel Minerals, Inc.	Clarion	PA
14	James A. Schmid, Ph.D.	Schmid & Company Inc	Media	PA
15	Betty and Charlie Shank	n/a	Pottstown	PA
16	James E. Thompson	Allegheny County Health Department	Pittsburgh	PA
17	William C. Early	U.S. Environmental Protection Agency (EPA) - Region 3	Philadelphia	PA
18	Dr. Lewis Cuthbert	Alliance For A Clean Environment	Pottstown	PA
19	Marge Hughes	Citizens Advisory Council	Harrisburg	PA
20	Mark Kimmel	York County Conservation District	York	PA
21	Jeffrey R. Wos	Keller Engineers, Inc.	Hollidaysburg	PA
22	Ian Harrell	Butler County Conservation District	Butler	PA
23	Randall Hurst	Mette, Evans & Woodside	Harrisburg	PA
24	Susan Beecher and Scott F. Savini	Pike County Conservation District	Hawley	PA
25	Alan Novak and Glenn Gorrell	Professional Dairy Managers of Pennsylvania	Harrisburg	PA
26	Floyd A. Ciccolini Jr.	Mifflin County Conservation District	Burnham	PA
27	Stephanie Catarino Wissman	Associated Petroleum Industries of PA	Harrisburg	PA
28	Tim O'Donnell	PA Waste Industries Association	York	PA
29	John E. Kerrick	Township of Tobyhanna Board of Supervisors	Pocono Pines	PA

No.	Name	Organization	City	State
30	Brenda Reigle	NUCA of Pennsylvania	Harrisburg	PA
31	Edward Braun	City of Philadelphia - Department of Public Health, Air Management Services (AMS)	Philadelphia	PA
32	William A. Neilson	Pennsylvania Farm Bureau (PFB)	Camp Hill	PA
33	Kathryn Z. Klaber	Marcellus Shale Coalition	Pittsburgh	PA
34	Bradley J. Heigel, P.E.	PA Turnpike Commission	Harrisburg	PA
35	John R. Pippy	PA Coal Alliance (PCA)	Harrisburg	PA
36	Eric G. Madden	American Council of Engineering Companies (ACEC) of PA	Harrisburg	PA
37	David M. Jaendl	Jaendl Land Company	Orefield	PA
38	Olivia Thorne	League of Women Voters of PA	Harrisburg	PA
39	John P. Shimshock	GenOn Energy, Inc.	Canonsburg	PA
40	Preston Luitweiler, P.E.	Aqua Pennsylvania, Inc.	Bryn Mawr	PA
41	Kenneth M. Klemow, Ph.D.	Wilkes University	Wilkes-Barre	PA
42	Pamela Faggert	Dominion Resources	Parkersburg	WV
43	Mark Gutshall	Land Studies, Inc.	Lititz	PA
44	Peter T. Vlahos	Pennsylvania Aggregates and Concrete Association & Pennsylvania Concrete Promotion Council	Harrisburg	PA
45	Thomas E. Barnard, Ph.D., P.E.	Wilkes University	Wilkes-Barre	PA
46	Darrel K. Lewis, P.E.	State Industries, Inc.	Kittanning	PA
47	Clinton Riley	U.S. Fish & Wildlife Service - Pa Office	State College	PA
48	Darrel K. Lewis, P.E.	Allegheny Mineral Corporation	Kittanning	PA
49	Reid T. Clemmer, P.E.	PPL Services Corp	Allentown	PA
50	Michal Jones-Stewart, P.G.	PA Mining Professionals (PMP)	Clarion	PA
51	Lee Ann H. Murray, Esq.	Chesapeake Bay Foundation	Harrisburg	PA
52	Louis D. D'Amico	PiOGA	Wexford	PA
53	Douglas L. Biden	Electric Power Generation Association	Harrisburg	PA
54	Craig Todd and Orianna Roth Richards	Monroe County Conservation District	Stroudsburg	PA
55	Troy A. Greiss	East PENN Manufacturing Co. Inc.	Lyon Station	PA

No.	Name	Organization	City	State
56	John Brosious	Pennsylvania Municipal Authorities Association (PMAA)	Wormleysburg	PA
57	Joseph Otis Minott	Clean Air Council	Philadelphia	PA
		Responsible Drilling Alliance, Ralph Kisberg	Williamsport	PA
		Lehigh Valley Gas Truth, Julie Edgar	Bethlehem	PA
		Delaware Riverkeeper Network, Maya van Rossum	Bristol	PA
		Group Against Smog and Pollution, Lauren Burge	Pittsburgh	PA
		Luzerne County Citizens for Clean Air, Nancy Dolan	West Wyoming	PA
58	Rep Scott E. Hutchinson	Environmental Resources and Energy Committee, Pennsylvania House of Representatives	Harrisburg	PA
59	Aurel M. Arndt	Lehigh County Authority	Allentown	PA
60	Grant Gulibon	Pennsylvania Builders Association	Lemoyne	PA
61	Myron Arnowitt	Clean Water Action (on behalf of 14 PA organizations and 1 brewery)	Pittsburgh	PA
		Nadia Steinzor, Earthworks		
		Thomas Au, Sierra Club Pennsylvania Chapter		
		Karen Feridun, Berks Gas Truth		
		Patrick Greuter, Center for Coalfield Justice		
		Jim Black, Partnership for Sustainability		
		Ralph Kisberg, Responsible Drilling Alliance		
		Michael Helfrich, Stewards of the Lower Susquehanna, Inc		
		Julie Edgar, Lehigh Valley Gas Truth		
		Lynda Farrell, Pipeline Safety Coalition		
		Richard Martin, PA Forest Coalition		
		John Stephen, Three Rivers Waterkeeper		
		Erika Staaf, PennEnvironment		
		Liz Deardorff, American Rivers, Clean Water - Pennsylvania		
		Bill Covalleski, Victory Brewing Company		

No.	Name	Organization	City	State
		B. Arrindell, Damascus Citizens for Sustainability		
62	Mark Szybist	Citizens for Pennsylvania's Future	Wilkes-Barre	PA
63	Mark S. Mitman	Lehigh Valley Builders Association (LVBA)	Bethlehem	PA
64	Samuel Denisco	PA Chamber of Business and Industry	Harrisburg	PA
65	Jeff Peters	PA Chemical Industry Council	Harrisburg	PA
66	Andy Eldred, PE	Larson Design Group	Williamsport	PA
67	Jeffrey and Luann Cohick	The Willows Farm	Newville	PA
68	David L Steensen	Natural Resource Stewardship and Science U.S. National Park Service	Denver	CO
69	Bill Savage	PA Fish and Boat Commission - Division of Environmental Services	Bellefonte	PA
70	Eric Konzelmann	Berks County Conservation District	Leesport	PA

EXECUTIVE ORDER

1. **Comment:** I would like to express my objection to Gov. Corbett's executive order mandating fast track and streamlining DEP permit approvals. (3, 4, 5, 18, 67)

Response: The Executive Order does not direct the Department to either fast track or streamline the permitting process. It directs the Department to be more efficient in the review and decision making for permits that are protective of the environment.

2. **Comment:** The DEP, under the leadership of Secretary Michael Krancer, is selling out Pennsylvanians and our resources to the highest bidder without our consent. We urge the DEP to immediately abandon "The Permit Decision Guarantee". And DEP should start working to fulfill its mission statement and protect our natural resources for posterity. (15)

Response: The purpose of this policy is to make the permitting processes more efficient without compromising thorough review for environmental and public health protection.

3. **Comment:** The Alliance for a Clean Environment opposes DEP proposed reforms. Proposed reforms are biased toward reducing time and costs for polluters, but health and clean-up costs for PA residents could be astronomical from DEP decisions based on timelines and technically complete applications without comprehensive consideration of the consequences. This process suggests that both Governor Corbett and Secretary Krancer lost sight of the mission of PA DEP, to protect Pennsylvania's environment and the health and safety of its residents. (18)

Response: The purpose of this policy is to make the permitting processes more efficient without compromising thorough review for environmental and public health protection.

4. **Comment:** Executive Order 2012-11 takes as its premise that, notwithstanding Executive Order 1995-5, "delays in making permitting decisions often have significant impacts on the individual, government and business planning processes and do not enhance the ability of the Department to protect the Commonwealth's natural resources." Executive Order 2012-11 does not explain how the Governor arrived at this conclusion, or explain why Executive Order 1995-5 has failed to prevent these delays. We question the motive of and need for Executive Order 2012-11, but also commend PADEP for the work it has done so far to implement the Order. (62)

Response: A survey of DEP program staff was conducted to develop recommendations for improving the existing Money-Back Guarantee Program and related permitting/authorization policies and processes. As an added component, the survey also sought to identify inconsistencies and opportunities for gains in efficiency; maximize DEP's transparency; identify ways that would improve the quality of application submissions; and ultimately, make the review of applications and decisions more predictable. Overall, the recommendations included identification of priorities, the review

of guidance documents, MBG Program revisions, permitting improvements, outreach efforts, and technology improvements which led to creation of this new policy.

5. **Comment:** The PA chamber supports the intent of Governor Corbett’s Executive Order and encourages wise stewardship of the Commonwealth’s resources while advocating economic growth. The PA Chamber agrees that better definition of responsibilities, coordination of permits for larger projects, improve personnel feedback, and better use of technology can all reduce the amount of time needed to successfully meld environmental and economic goals. (64)

Response: DEP agrees and appreciates the comment.

6. **Comment:** The Pennsylvania Farm Bureau is very supportive of Governor Corbett’s Executive Order 2012-11 to initiate the Permit Review Process and Permit Decision Guarantee in an effort to issue certain DEP permits in a predictable and reasonable timeframe. The Permit Decision Guarantee eliminates much of the permit review “back and forth”, on the clock and off the clock scenarios, saving valuable time. (32)

Response: The Department agrees and appreciates the support.

7. **Comment:** The decision under Executive Order 2012-11 to rescind the Money Back Guarantee created under Executive Order 1995-1 removes some of the accountability on the part of the DEP to improve the permit approval process. The Permit Decision Guarantee document does not mention details on what occurs if the deadline is missed in spite of pre-application conferences and the application is found to be complete. We strongly urge DEP to develop a more robust permitting policy that includes a “Money Back Guarantee” or comparable assurance in these proposed permit decision grantee policies. (32, 58)

Response: This is a public policy document that describes the process by which DEP will review permit applications. It is not, nor is it intended to be, a management directive for DEP staff. The policy does indeed provide detail on what occurs if a guarantee is missed via fault of DEP staff. Please see section 8.(1)(a) on page 12 of the policy. Staff performance evaluations will reflect the success rate of meeting the guarantee.

8. **Comment:** Clearly, PDMP supports the goals set forth in the Executive Order and we are appreciative of your efforts and those of Deputy Secretary Kelly Heffner to engage the dairy producers and allow them to be an integral part of the discussions of the Project Syllabus. It was of paramount importance that the practices, concerns and future of the dairy industry be part of any effort to reform the Department’s permitting process. (25)

Response: The Department acknowledges and appreciates the support.

9. **Comment:** We support the intent of Governor Corbett’s Executive Order that resulted in the proposed policies and the development of defined processes that delineate roles and responsibilities, coordinate permitting of larger, more complex projects, improve personal

review and accountability, and make better use of technology. We hope that the final policies will reflect the comments received from the regulated community and anticipate that they will create more consistency and predictability for permitting across the state. (42)

Response: The Department agrees and looks forward to results of implementation.

- 10. Comment:** Indeed, aggrieved Commonwealth industries very well could favor a reinstatement of the Money Back Guarantee created under Executive Order 1995-1 that Gov. Tom Corbett rescinds in concert with the DEP proposal. Although “less than two dozen ‘money-back guarantee’ refunds” that were issued between from 1995 to 2002, at least the harmed businesses had that option to pursue. Under the DEP’s proposed Review Process and Permit Decision Guarantee, the harmed industries would rely only on the promises and self-avowed competency of the DEP. (8)

Response: This policy does not presume that DEP is the repository of all environmental expertise and competency; however, our data indicate that the level of experience of DEP employees with regard to implementation of specialized program regulations is often greater than most general consultants. The issue is not solely the competency of DEP staff; rather, it is as much the quality of the product they are asked to review. Industry is not “harmed” or “aggrieved” differently under the proposed policy if they get their permit later than promised without the return of the minimal application fee. Further, applicants who submit permits have their choice of consultants. Over the last ten years, DEP has found 42 percent of applications to be deficient. Yet the rate of application denial over that same period is a meager 1.0 percent. The data show that DEP staff spends countless hours and taxpayer dollars improving poor applications to a state in which an affirmative decision can be made. In these tight budgetary times, (as stated in the comment), DEP simply does not have the time or the resources to tutor consultants.

- 11. Comment:** The Governor’s Executive Order 2012-11 states that staff performance standards for review of permits shall be a factor in job performance evaluations. While not listed in the policy itself, this should be incorporated in job performance standards. (56, 59)

Response: New performance standards have been developed for all staff that review, supervise and manage permit applications.

- 12. Comment:** Will the webinar on the Governor’s executive order be available in archive? (70)

Response: The Governor’s Executive Order, the draft policy documents, Frequently Asked Questions (FAQs) and recordings of the webinars are available at the following website:

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21048

PERMIT REVIEW PROCESS AND PERMIT DECISION GUARANTEE

- 1. Comment:** PBA is pleased that the Department has undertaken this effort and clearly understands the Department's goals for the program, among the most important of which are to improve the quality of applications submitted by the regulated community and enhance the Department's internal performance expectations for employees working with well-prepared applications. (60)

Response: The Department appreciates this comment.

- 2. Comment:** The PA Chamber supports all efforts to improve the quality and timeliness of the overall permitting process. (64)

Response: The Department appreciates this comment.

- 3. Comment:** PCIC appreciates the DEP's efforts to address shortcomings in the review and processing of permit applications required under the Commonwealth's environmental statutes. This has been a long standing priority for the organization and its member companies. To the extent that the Draft Policy seeks to provide companies with knowable and reasonable schedules, it will provide the Commonwealth with a competitive advantage over other states seeking to attract industrial investment and growth. Overall, PCIC applauds the strides made by the Draft Policy. (65)

Response: The Department appreciates this comment.

- 4. Comment:** As you may be aware, PCIC strongly supported legislation introduced in 2011 in the Pennsylvania House of Representatives as H.B. 1659 (PN 3595). Before it was amended and as it stood and PN 2714, H.B. 1659 contained a provision that PCIC and its members view as being fundamental to the modernization of the DEP's permit review process, the Licensed Permit Review Professional program. (65)

Response: The Department appreciates this comment.

- 5. Comment:** This proposed policy reflects the need to ensure complete applications and for greater clarity and consistency in the application process. We fully support the Department in the achievement of these goals and the potential benefit that could result with regard to the accuracy of permit reviews and the use of public funds. (61)

Response: The Department agrees and appreciates this comment.

- 6. Comment:** The Department welcomes the prospect of having the entire review process occur within a defined period of time, and look forward to working with staff and partners to help achieve this goal. (40)

Response: The Department appreciates this comment.

7. **Comment:** It is common to hear statistics shared by Office of Active and Abandoned Mine Operations staff that a large non-coal permit requires in excess of 500 days to receive approval by DEP. There are also cases where similar permits have been in the permit approval queue in excess of 5 years. With that in mind, we welcome any and all efforts by Governor Corbett and the DEP to expedite permit approvals, as they translate to a greater tax base for our local communities and the Commonwealth and much needed work for unemployed Pennsylvanians during these difficult economic times. (44, 50)

Response: The Department appreciates this comment.

8. **Comment:** The objectives of this policy are commendable; however, after reviewing the new protocol, it is difficult to see how significant review-time efficiencies will be realized. Coordinating with applicants to correct minor deficiencies, writing formal deficiency letters, and increasing the number of pre-application coordination meetings will take Application Managers a considerable amount of time. These requirements may prevent Managers from being able to meet the new application review deadlines. (21, 47)

Response: Efficiencies will be achieved by this new approach through denying incomplete applications and discontinuing the endless back-and-forth technical deficiency resolution process created by the Department's previous procedures for permit reviews.

9. **Comment:** The Policy states that the PADEP's policy is "to minimize processing time while ensuring adherence to all applicable regulatory and statutory requirements and prioritizing permit applications." This statement should be rephrased so that adherence to statutory and regulatory requirements is stated as PADEP's primary goal, while the minimization of processing time is stated as a secondary goal. That is, PADEP should state that its policy is "ensure adherence to all applicable regulatory and statutory requirements while minimizing processing time." (62)

Response: The Department does not believe that adherence to regulatory and statutory requirements and efficient permit reviews are mutually exclusive, both are equal to the mission of the agency.

10. **Comment:** The Deputy Secretary for Field Operations should be abolished. An Executive Deputy position should be created to whom all Regional Directors should report as well as all Programmatic Deputy Secretaries. All Bureau Directors' formal duties and responsibility should be revised to reinstate the responsibility to conduct on-going and regular audits of all Regional permit review decisions conducted by Regional/District Offices. (2)

Response: The proposed organizational changes were implemented by DEP during the departmental reorganization concluded in late 2011 whereby an Executive Deputy Secretary for Programs was created which oversees all programs and regional offices. Additionally, during that time, the Office of Program Integration was created to ensure

consistency among all regional offices. The reorganization addressed the accountability measures recommended and DEP is one agency and no longer seven individual offices.

- 11. Comment:** Even a cursory look at the permits covered in the proposed Review Process and Permit Decision Guarantee, and accounting for different scales of complexities, suggests unfairness. A minor amendment to a Bluestone Surface Mining Permit is accorded 120 business days under the guarantee timeframe. In contrast, a new permit to drill and operate an oil or gas well operates under a 32-business-day timeframe. (8)

Response: The timeframes to review Oil and Gas permits are statutory timeframes and DEP must legally abide by that shorter timeframe. Additionally an Oil and Gas permit is a less complex application in comparison to the aforementioned Bluestone Surface Mining Permit.

- 12. Comment:** One important safeguard must be acknowledged: The proposal does not sacrifice environmental protections for expediency for most of the industries and energy concerns not accorded favored treatment. (8)

Response: No industry sector was afforded preferential treatment, and nowhere in the policy is there a directive or any encouragement to promote expediency over environmental protection.

- 13. Comment:** While the DEP seemingly admits – “Our own review confirms it” – that permitting efficiency is inadequate, its proposed solution misses finding the middle ground by a country mile. It provides great cover for DEP missteps on permitting timetables. The proposed policy leaves the Department with no incentive to adhere to the Review Process and Permit Decision Guarantee schedule. Furthermore, the Department makes clear that this is a policy, not an adjudication or a regulation, and that the Department reserves the discretion to deviate from the policy. (8, 14)

Response: DEP’s review determined that the most prevalent impediment to permitting efficiency is the quality of applications that are submitted. The incentive to adhere to the process contained in the policy is staff performance evaluation. The Department uses this disclaimer in all of its policies and guidance to make it clear that they do not contain substantive legal requirements. By their nature, policies and guidance have built-in flexibility when implemented by the Department. DEP is committed to using the procedures in both policies, to make the Department’s permitting process more predictable and efficient without compromising thorough review for environmental and public health protection.

- 14. Comment:** The “sound science” the DEP cites for basing permitting decisions is not the singular province of the DEP. As much as any administration wants competency to be its hallmark, it will always remain a goal, not a given, as suggested in the DEP proposal. (8)

Response: Reliance on sound science as referenced in the policy is not presuming DEP is the repository of all competent scientists in the area of environmental protection.

However, it must be acknowledged that the Department is the agency responsible for making decisions on permit applications. It can only make a competent decision after a thorough analysis of all input often including that of experts, outside scientists and the public.

15. Comment: The MSC supports the Department of Environmental Protection (DEP) in its effort to standardize the permit review process and the processing times for permits. We have identified three critical common goals in order for these policies to be successful:

- DEP reviewers and industry must have a thorough mutual understanding of clear and concise permit application requirements that are based in law and regulation.
- Industry must be committed to submitting high quality permit applications based on those requirements.
- The DEP must be committed to expeditiously processing them. (33)

Response: The Department agrees.

16. Comment: Overall, LVBA commends the Department for taking a constructive approach to revising its current operating procedures with an eye to improving the permit review and issuance process for the regulated community. In particular, by assuming a mindset of “how long have we had the application” versus “how much time do we have left to review an application” will hopefully produce increased efficiencies and apply downward pressure on the overall processing time. (63)

Response: The Department appreciates this comment.

17. Comment: The goals noted in the policy are noble and appear firm in their resolve to force the DEP to streamline and make more efficient their permitting processes so that all applicants can obtain permissions from the DEP in a timely manner (“timely” being defined as faster than the current turn-around times). The objectives, steps, and priorities as listed in the policy document however fall well short of supporting clearly definable accountability of DEP staff and departments, well short of clearly measurable output by DEP, and well short of creating a review process that is equitable both to non-politically driven projects and those projects receiving significant press. When DEP is serious about streamlining a permitting process, there are many stakeholders (both public and private) who would be willing to offer (and have) their services to assist. (26)

Response: This is a public policy document that describes the process by which DEP will review permit applications. It is not, nor is it intended to be, a management directive for DEP staff. Staff performance evaluations will reflect the success rate of meeting the guarantee. Further, the policy does not direct the Department to fast track or streamline the permitting process. It asks for efficiencies in the review and decision making for permits that are protective of the environment. DEP is very serious about gaining those efficiencies, and the opportunity to provide comments on this policy is the stakeholders’ opportunity to provide the suggested assistance.

- 18. Comment:** While EPGA applauds the Department’s efforts to review and approve “technically adequate and scientifically sound applications” that are eligible for the PDG, we encourage the Department to amend the policy to include the procedures and deadlines for issuance of draft permits and proposed permits for applications approved under this policy. For the purposes of this letter EPGA considers a draft permit(s) as those that are shared and reviewed by the Department and applicant only on an informal basis (e.g., email transmittals), while a proposed permit is essentially the final draft permit and is (i) issued to the applicant on a formal basis and (ii) made available to U.S. EPA and the public for review and comment. (53)

Response: Such procedures will be included in program-specific standard operating procedures being developed to assist with program-specific implementation of this overarching policy.

- 19. Comment:** DEP has also stated that it is its aim to expedite the approval process and not wait until it gets closer to the committed ‘number of business days’. We urge DEP to carefully consider how it could expedite the permit review and approval process by acceptance of modules and reports submitted by Professional Engineers, Professional Geologists or Professional Land Surveyors. DEP personnel should be directed to minimize review time of materials submitted by such professional if DEP has any hope of cutting through the review timeframe given its limited staff and resources. (44, 50)

Response: The Executive Order does not direct the Department to fast track or streamline the permitting process. It asks for efficiencies in the review and decision making for permits that are protective of the environment.

- 20. Comment:** While GenOn applauds the Department’s efforts to review and approve “technically adequate and scientifically sound applications” that are eligible for the PDG, we encourage the Department to amend the policy to include the procedures and deadlines for issuance of draft permits and proposed permits for applications approved under this policy. For the purposes of this letter, GenOn considers a draft permit(s) as those that are shared and reviewed by the Department and applicant only on an informal basis (e.g. email transmittals), while a proposed permit is essentially the final draft permit and is (i) issued to the applicant on a formal basis and (ii) made available to US EPA and the public for review and comment. (39)

Response: Such procedures will be included in program-specific standard operating procedures being developed to assist with program-specific implementation of this overarching policy.

- 21. Comment:** County Conservation Districts should be reviewing the General Permits as they did in the past. They have a better knowledge of the areas and better turn-around on review times. I hope that this is a duty that will be delegated back to the level where it is better served. (13)

Response: The Department is considering more involvement by the County Conservation Districts.

22. **Comment:** The Department may want to implement a permit review policy that is standardized and timely; however, because this policy affects such a large number of diverse state programs, the NPS is concerned that specific Department program goals cannot be met by a one-size-fits-all approach. (68)

Response: Program-specific standard operating procedures are being developed to assist with program-specific implementation of this overarching policy.

23. **Comment:** Lastly, as a matter of administrative law, certain aspects of the Draft Policy are written in a manner that implies that the Draft Policy sets forth more than a mere statement of policy, more akin to a “binding norm” that should be memorialized in a regulation. The “one strike” policy stands as the most obvious example of this, but the list set forth in Appendix A also likely crosses into the realm of a regulatory action, as it appears to be hinging upon DEP personnel. PCIC believes that the Draft Policy ought to be considered for repackaging as regulations, but notes that, in order for it to properly function in that form, it would need to be drafted more clearly to reduce the potential for varying interpretation. PCIC supported legislation to insure that permit improvements would be lasting and suggests that a regulatory process would serve a similar goal. (65)

Response: The policy is a procedural guide for processing permits, and does not contain any substantive standards or requirements. Department staff following this policy will rely on statutes and regulations when making permit decisions. Those legal requirements contain the standards under which permit decisions will be made, as well as the standards that applications for permits must meet. Even with respect to the new procedures contained in the policy, the policy provides for an elevated review process.

24. **Comment:** The U. S. Environmental Protection Agency Region III (EPA) has evaluated the materials provided to us on PADEP’s new Policy on Permit Review Process and Permit Decision Guarantee to evaluate whether there are any implications for the various delegations/program approvals/state roles under the federal environmental statutes. At this time we have no comments. If, as we learn more details, we identify any potential problems in this area, we will work with the Commonwealth to discuss and, resolve any such problems. (17)

Response: The Department appreciates this comment.

25. **Comment:** We support the goal of improved permit processing, but encourage the Department to ensure that the review process satisfactorily addresses resource objectives. The failure of the Department to meet the deadlines established in this proposed policy would result in a less thorough review—essentially a review of technical completeness, rather than a review of environmental compliance or project design merits. (47)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy. Additionally every permit review ensures thorough protection of human health, safety and the environment.

26. **Comment:** The policy provides that any incomplete or technically deficient application voids the Permit Decision Guarantee. Under the prior (Money Back) program, a return for correction “stopped the clock” with regard to the review period. Given that there are absolutely no consequences for the Department for not meeting the Guarantee processing schedule, this harsh result does not seem to be in keeping with the spirit or the terms of the Executive Order. (23)

Response: Applicants need to submit complete and technically adequate applications to avoid such results. Should the Department fail to meet a guarantee, appropriate employee performance evaluations shall be used to adjust sub-standard performance.

27. **Comment:** The Permit Decision Guarantee language in Paragraph III. B. 8. should include more specific details concerning what would occur if the Permit Decision Guarantee Timeframe is not met by the Department. If the Timeframe is not met, the draft document is worded such that applicable Managers and/or Directors would be required to make a decision within 5 days after the end of the Permit Decision Guarantee Timeframe. Please clarify how this process will work and if this is adequate time. (12, 47, 68)

Response: If the guarantee is still valid, the application is complete and meets all regulatory requirements. If at that point the guarantee time has elapsed, it should be straight-forward for the Department to issue the permit within five days.

28. **Comment:** How will the Department resolve situations where not all of the permits for a specific project are covered by the Guarantee? (52)

Response: The Permit Coordination Policy has also been updated to assist with clarification of this issue. The Department may issue permits separately, when it may be necessary or sensible.

29. **Comment:** To eliminate any ‘fox guarding the hen house’ appearance PIOGA encourages the Department to retain an independent third party to evaluate the Departments performance in reviewing permit or authorization applications. (52)

Response: The Department disagrees with this comment. The Department is the agency of the Commonwealth responsible for making decisions to authorize or deny activities that have the potential to cause pollution. The PRPDG is a public policy that establishes a process for accomplishing this responsibility in an efficient and predictable manner and is not a management directive for DEP staff. The Department has every intention to conduct performance evaluations, individual and as a whole, and during the 2011 reorganization, DEP created an Office of Program Integration that has the responsibility to review

current operations, identify improvements and audit performance of this and similar initiatives.

- 30. Comment:** The following sentence should be added to the end of the third paragraph: failure to employ consultants with expertise in the relevant areas of environmental permitting may void the Permit Decision Guarantee. (54)

Response: The Department disagrees with this recommendation.

- 31. Comment:** It is recommended that the DEP amends its proposed policy to provide timely reports on the permitting to the minority and majority chairs of the Senate and House Environmental Resources & Energy Committee. (8)

Response: This type of reporting to the legislature detracts from DEP's core functions and the agency's timeliness and ability to process permits.

- 32. Comment:** Please consider developing one webinar for each of the four broad categories of permits that would walk the audience through the process of applying for and reviewing a permit. It would provide the public with a deeper understanding of (and appreciation for) the process. You could leave them up on the website as long as they are current so that staff could refer potential applicants to them. (6)

Response: DEP agrees and each program is currently developing a webinar specifically for their procedures. These webinars will be advertised on the DEP website and will be conducted during November 2012.

- 33. Comment:** The Department should provide the public, including the regulated community, with a flow diagram for each type of permit or authorization. (42, 52)

Response: This is a good suggestion and will be considered as specific programs develop and implement the new standard operating procedures.

- 34. Comment:** We request that the Department add an introduction that provides an overview describing how the process is intended to work from the time that a permit application is submitted by the permittee until the permit is issued. This would serve to give the reader a complete picture of the process and how the pieces fit together. (42)

Response: The Department will consider adding such an introduction in future versions and updates to the policy.

- 35. Comment:** It may be wise to develop a flow chart to show how offices are broken down. For example Regional chief, application manager, reviewers, etc. (10)

Response: This is a good suggestion and will be considered as specific programs develop and implement the new standard operating procedures.

36. **Comment:** Compliance with the Permit Decision Guarantee Policy should be tracked, and evaluated annually for effectiveness. These evaluations should be published on the Department's website. (64)

Response: This is a good suggestion and one that will be considered as the Department moves forward with implementation.

APPLICABILITY AND IMPLEMENTATION

1. **Comment:** There are no references in the document relating to how mining permits already submitted and currently pending are to be addressed once this new program takes effect or if/how they will be integrated in the Permit Decision Guarantee Program. (35, 46, 48, 50)

Response: All permit applications that are received before the finalization of the Permit Review Process and Permit Decision Guarantee policy will be reviewed in accordance with existing policies and procedures. The Department has no plans to include authorizations received prior to final implementation of this policy in the Permit Decision Guarantee.

2. **Comment:** EPGA strongly recommends that the Department adopt the subject policy and permit review process on an interim basis only, and that there be a transition period of at least 12 months. After this period, the Department should review the operation and effectiveness of the new policy and process internally as well as solicit feedback from the regulated community to determine whether it is meeting its goals as outlined in Governor Corbett's Executive Order EO2012-11. (53)

Response: The Department agrees and will be reviewing the effectiveness of the new policy and processes and will make required changes to the policy at least on an annual basis. The Department will involve stakeholders as suggested.

3. **Comment:** The Permit Decision Guarantee Policy should be evaluated bi-annually in an open forum with public comment for effectiveness and potential improvement. The Policy represents a new approach that will generate new ideas and opportunities to further improve the process as it is implemented; a periodic evaluation will ensure that these ideas and opportunities are fully vetted and integrated into the Policy as appropriate. (42)

Response: The Department agrees that periodic evaluation is important and will make required changes to the policy on an annual basis. The Department will involve stakeholders as suggested.

4. **Comment:** The comment has been made by DEP staff during meetings with industry stakeholders that an applicant may request not to participate in the Permit Decision

Guarantee Program. Given the effort undertaken by DEP to craft Permit Review Hierarchy metrics within the Permit Decision Guarantee Program, it would also be imperative for applicants to understand in advance the approximate time for a permit approval if they so choose not to participate. (44, 50)

Response: The Permit Review Process is the new standard for how the Department reviews applications, and is not a new process option for permit applicants. Given the specific authorization type, an applicant may submit a permit application to the Department that does not qualify for the Permit Decision Guarantee, i.e. is not included in Appendix A of the policy.

5. **Comment:** If the MBG policy is only rescinded for those permits in Appendix A this should be clearly stated. (54)

Response: Governor Corbett's Executive Order 2012-11 rescinded the Money Back Guarantee Program. The policy reflects this order and states that the Money Back Guarantee (MBG) is rescinded in its entirety. This means for all authorizations, not just those outlined in Appendix A. Those permits in Appendix A are those permits for which the new Permit Decision Guarantee applies.

6. **Comment:** The policy states that the existing Money-Back Guarantee Policy is replaced in its entirety. This is a problem since it addresses issues beyond those covered by the new policies. For example, the Money-Back policy established a negotiated time-frame process for new and major modifications of landfill and resource recovery facilities that involved negotiations with the local municipality and county. The new Policy excludes new landfills and resource recovery facilities from the policy and in effect eliminates the current negotiate timeframe policy without any replacement. This will lead to confusion and will raise serious concerns by local host municipalities and local government organizations. DEP should reconsider this decision and perform a more thorough review of the applicability of the current Money-Back Guarantee Policy. (2)

Response: Governor Corbett's Executive Order 2012-11 rescinded the Money Back Guarantee Program after careful analysis by the Department. Due to the complexity of permits involving a Local Municipal Involvement Process or a Harms/Benefit analysis, these permits are not included in the Permit Decision Guarantee. Negotiated timeframes for the referenced permit will continue to be used as they have been in the past.

7. **Comment:** The draft policy directs staff to "follow a Department-wide standard process for receiving, prioritizing..." applications. We suggest that the task of "determining completeness" should be added to the list of tasks that will follow a standard process. (68)

Response: The policy indicates that review and acceptance of permits or authorizations is included in this standard Department-wide process, both of which relate to the Completeness review. However, a one size fits all approach to completeness cannot work as some permits and activities are much more complicated than others.

8. **Comment:** The policy does not clearly delineate between the Permit Review Process and the Permit Decision Guarantee. Throughout the document, the terms “policy” and “process” are used interchangeably and do not distinguish between the Permit Review Process and the Permit Decision Guarantee. (68)

Response: The Permit Review Process outlined in the policy applies to all authorizations reviewed by the Department. Some of those authorizations also qualify for what is being called the Permit Decision Guarantee, meaning the timeframe for permit decision is guaranteed for those authorizations. The Permit Decision Guarantee authorizations are outlined in Appendix A of the policy.

9. **Comment:** We believe it is confusing to have the Permit Review Process be applied to *all* permits, registrations and plan approvals but to have the Permit Decision Guarantee apply to only those permit programs listed in Appendix A. The assumption is that permits, regulations and plan approvals not found in Appendix A (which includes 136 permit programs) do not have a timeframe for review associated with it. (68)

Response: All authorizations reviewed by the Department have target timeframes associated with them. For those authorizations that qualify for Permit Decision Guarantee, this timeframe is guaranteed.

10. **Comment:** The NPS recommends the Department identify why some permit programs are subject to Permit Decision Guarantee and others are not. However, even though a permit program may not be subject to the Permit Decision Guarantee, it still must comply with prioritization hierarchy (II.B.), denial notification of an application to be reviewed by Section Chief/Program Manager/Permit Chiefs/Managers (III.B.5(v)), and Elevated Review Process (III.B.7.). (68)

Response: The commenter is correct. Regardless of inclusion in the Permit Decision Guarantee, all authorizations are subject to the Permit Review Process and its various provisions. The Department plans to hold webinar sessions in November 2012, during which programs will provide more specific detail about how permit authorizations were selected to qualify for the Permit Decision Guarantee.

11. **Comment:** The MSC recommends that the proposed Permit Decision Guarantee policy apply to all DEP applications. As a minimum, the Permit Decision Guarantee should apply to all general permits. (33)

Response: The Permit Review Process outlined in the policy applies to all Department authorizations; however, the Permit Decision Guarantee is currently limited to those authorizations listed in Appendix A of the policy. The Department will be reevaluating the permits included in the Permit Decision Guarantee on at least an annual basis.

12. **Comment:** This sentence states the policy is intended for “...all Department permits and authorizations.” This appears to be counter to the statement identified above in “Policy,”

which states that “certain Department permits” are contained in this policy. Please clarify, or accept our above recommendation to state directly this new policy affects 136 permit programs. (68)

Response: The Permit Review Process is, indeed, intended for all Department permits and authorizations. The Department agrees with the recommendation to edit the text in the policy section, and has done so in the final policy.

- 13. Comment:** DEP has reserved the discretion to deviate from the policy statement if circumstances warrant. This is a broad statement which could materially undermine the intent of the DEP’s Permit Review Process and Permit Decision Guarantee. (32)

Response: The Department uses this disclaimer in all of its policies and guidance to make it clear that policies and guidance do not contain substantive legal requirements. By their nature, policies and guidance have built-in flexibility when implemented by the Department.

- 14. Comment:** The Permit Decision Guarantee only applies when an applicant submits a complete and technically adequate application that addresses all applicable regulatory and statutory requirements in the first submission. Why doesn’t the guarantee apply to every permit application once they are both complete and technically adequate? (13)

Response: Correct. The Department is only able to guarantee a review timeframe for an application that is complete and technically-adequate. The guarantee does not apply to every permit application type because the Department cannot guarantee review times for every permit type for which we are responsible.

- 15. Comment:** Will all Chapter 105 general permits be put into this type of priority and time frames? (10)

Response: Yes, this Permit Review Process applies to all authorizations as defined in the policy. All General Permits have associated review timeframes and they will be subject to the policy as it relates to the hierarchy of application reviews. However, all General Permits are not in the Permit Decision Guarantee at this time. It is the intent of the Department to eventually include them, but not at this time.

- 16. Comment:** The decision timelines established in the proposed policy should apply only to applications for which DEP has already made a determination of completeness. (61)

Response: The Department agrees, and as stated in the policy, the Permit Decision Guarantee times apply to those applications that are complete and technically adequate upon submission to the Department, and the Permit Decision Guarantee timeline begins upon that determination.

- 17. Comment:** If this policy is meant to advise the public on the “administrative discretion” the Department intends to use in the future, the language as presented raises questions as

to how the Department can impose the Permit Review Process on all permits, registrations and plan approvals if this policy is not meant to be a regulatory action (page ii, Disclaimer)? (68)

Response: The process outlined in the policy is a process to be used internally by the Department to review permit applications. Internal administrative process is traditionally within the discretion of administrative agencies. The Policy is a statement by the Department explaining how it intends to exercise that discretion in the administration of its permitting responsibilities. The commenter is correct that the policy is not a regulation. It is rather a statement of policy about how the Department will generally undertake the process that leads to the regulatory action of granting or denying applications. The specific application requirements and review procedures vary by permit type and program, will be detailed in standard operating procedures.

- 18. Comment:** The policy is non-specific as to how the Department will continue to meet individual Federal statutes that may be applicable to any of the 136 permit programs that are identified in Appendix A. As a federal agency that manages federal lands and resources, we believe the federal statutes and regulations associated with each of the permit areas should be identified and the policy should include how federal regulations will be addressed, especially in cases where federal review may exceed or overlap the allotted timeframe pledged by the Department. (68)

Response: The current policy will not impact the Department's ability to meet any individual federal statutes or delegated authorities, and does not modify the applicability of federal regulations or federal review. Coordination with federal agencies will continue as is.

- 19. Comment:** Since this policy applies to Chapter 102 and 105 general permits which cannot be denied, the policy should define denial to include denial of permit coverage. Specific to PAG-02, denial of coverage typically results in reapplication as an individual NPDES stormwater permit. This would not be necessary if the PAG-02 application was denied as incomplete, and may need to be addressed in the definition of denial. (54)

Response: In general, coverage under general permits can, indeed, be denied, pursuant to specific regulatory provisions. Certain statutes and regulations require completeness review procedures other than those that are outlined in the policy. These variations from the policy will be outlined in the program-specific standard operating procedures to be shared with both staff and the public.

- 20. Comment:** We understand that the proposed policy was written as a blanket document for many regulated industries in the Commonwealth. We are opposed to the one strike and out rule for the noncoal industry due to the complexity of our permitting process. The noncoal industry's more technically complex projects should meet the footnoted criteria for projects which may receive additional deficiency letters. (44, 50)

Response: The commenter is correct that the Permit Review Process applies to all authorizations reviewed by the Department which includes the non-coal industry. However, there are some permits, many of which are mining, denoted with an asterisk in Appendix A which are considered ‘technically complex’ projects and therefore will not be subject to the one-strike-and-out provision as described above.

21. **Comment:** We are concerned that the timeframes specified in this policy may inadvertently impact a Memorandum of Understanding between the PA DEP, EPA Region 3 and the Federal Land Managers (FLMs) responsible for managing nearby Class I areas. The MOU outlines a process for FLM review of Prevention of Significant Deterioration (PSD) plan approvals that may impact these Class I areas. The MOU clarifies expectations for the types of information that will be provided for FLM review, when these pieces of information will be available, and how FLM determinations regarding Class I impacts will be addressed and made available to the public during the public comment period. The MOU ensures compliance with federal FLM notification requirements found in 40 CFR 52.21 (p) - adopted into PA DEP code - while meeting the Department’s Money Back Guarantee Permit Review Process. The proposed policy “rescinds and replaces” this previous policy. If the old policy is rescinded, what is the new review period for PSD plan approvals under the MOU? (68)

Response: The Department’s Permit Decision Guarantee does not apply to any Plan Approval Application that would be subject to the Prevention of Significant Deterioration (PSD) requirements of 40 CFR § 52.21, which are adopted and incorporated by reference in their entirety in 25 Pa. Code § 127.83. However, the Department intends to process PSD Plan Approval Applications within 275 business days. In regards to the 2006 Memorandum of Understanding (MOU) between PA DEP; the U.S. Environmental Protection Agency’s (EPA) Region III Air Protection Division; Federal Land Managers of the Shenandoah National Park, National Park Service; James River Face Wilderness, U.S. Forest Service; Dolly Sod Wilderness and Otter Creek Wilderness, U.S. Forest Service; and the Brigantine Wilderness, U.S. Fish and Wildlife, a minor amendment to the MOU may be necessary to delete any references to the recently rescinded Money-Back Guarantee Program.

22. **Comment:** It is not clear how the Permit Decision Guarantee process impacts or impedes federal statute responsibilities of the Commonwealth, because the policy language is general and broad-sweeping. The NPS recommends the Department identify what permit, registrations, and plan approvals are affected by the new Permit Review Process outlined in this policy but that are not impacted by the Permit Decision Guarantee. (68)

Response: This policy will neither impact nor impede the federal statute responsibilities of the commonwealth. All Department authorizations reviewed by the Department will be reviewed in accordance with the Permit Review Process as outlined. The current policy will not impact the Department’s ability to meet any individual federal statutes or delegated authorities, and does not modify the applicability of federal regulations or federal review. Coordination with federal agencies will continue as is.

23. **Comment:** While we agree with the need to improve the system, it must be recognized that the complexity of mining should be exempt from standards established for other forms of permitting. (46, 48)

Response: The Department disagrees. The new Permit Review Process will apply to all authorization types reviewed by the Department, regardless of industry sector. The goal of making the Department's permitting process more efficient can apply to all programs, albeit in different ways. The development of standard operating procedures for mining has already generated positive results in identifying inconsistencies within the Department that when eliminated, will result in permitting efficiency.

24. **Comment:** Perhaps most importantly, these policies creating the Permit Revision Guarantee Program should not take effect until the draft implementation tools, particularly the SOPs, are finalized and both permittee and permit reviewer have a clear understanding of what is expected from each other. (35, 46, 48, 50)

Response: The Permit Review Process and Permit Decision Guarantee policy took effect upon publication as final in the *Pennsylvania Bulletin*. At that time, standard operating procedures (SOPs), updated permit checklists and revised application forms if necessary, will be completed for those authorizations included in the Permit Decision Guarantee. Similar documents for other authorizations will be forthcoming.

25. **Comment:** If the Conservation Districts are covered by this policy, the policy should clearly define Conservation Districts role, rather than lump the Conservation District in as "the Department". This results in an unclear process for the Conservation District, as Conservation Districts are not part of the DEP hierarchy. Districts and DEP Regional Offices need real clarification on the issue well before the policy is implemented. (11, 22, 24)

Response: As stated in the policy, the Permit Review Process and Permit Decision Guarantee policy applies to County Conservation Districts that perform delegated work on behalf of the Department. Both regional and Conservation District roles will be further clarified within the program-specific standard operating procedures, which will be made available to staff and Conservation Districts prior to implementation of this policy.

26. **Comment:** We feel that the Conservation District should not be covered under this policy. The time frames for the Conservation District should be covered under the Required Output Measurements of the Delegation Agreement between the DEP and the Conservation District. (22)

Response: As stated in the policy, the Permit Review Process and Permit Decision Guarantee policy applies to County Conservation Districts that perform delegated work on behalf of the Department. For further clarification on Required Output Measures please see the response to #32 below.

27. **Comment:** If the policy applies to the County Conservation Districts then needs to follow the District's policy of plan reviews which the board of directors approves.

- Conduct pre application meeting if applicant schedules one
- Receive permit package: Log in: Assign NPDES permit #; Send DEP their disturbed acre fee
- Check for Admin completeness (this means the checklist should be providing the information for a technical review)
- If an item is missing from Admin - Call applicant to discuss follow with email of comments; applicant has 60 days to respond back, if no response – send letter that project has been withdrawn and will need to resubmit
- Once deemed Admin complete
- Project goes into the review pile, first come first review. If someone wants to have their plan moved up, then they need to call each of the applicants before him and get in writing from them that it is ok that their project gets moved up. In meantime the district continues their reviews the other plans in order as received
- The applicant has 90 days to respond to comments, if second round of comments then have 60 days to respond, if third round then send notice to DEP that permit application should be withdrawn. (14)

Response: As stated in the policy, the goal is to achieve efficiencies in permit processing. The first step in gaining efficiency is to standardize the process. The Permit Review Process and Permit Decision Guarantee policy applies to County Conservation Districts that perform delegated work on behalf of the Department. Therefore, in accordance with their Delegation Agreements the Districts will be expected to implement policies of the Department, and to follow the same process as outlined in the policy.

28. **Comment:** Does this policy include the County Conservation Districts and County Health Departments who may have a role in the permitting process? Because of their intimate knowledge of the local territory, we believe their involvement in this effort is imperative to safeguard the public and the environment. (38)

Response: The Permit Review Process and Permit Decision Guarantee, as stated in the policy, apply to those County Conservation Districts that perform delegated work on behalf of the Department. However, the situation is different for the County Health Departments. Section 12(b) of the PA Air Pollution Control Act (APCA) provides that “[t]he administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.” Consequently, the Allegheny County Health Department (ACHD) and Philadelphia Air Management Services would not be subject to the provisions of the Permit Review Process and Permit Decision Guarantee. However, the Department strongly encourages the Allegheny County Health Department and Philadelphia Air

Management Services to implement the policy to ensure consistency throughout the Commonwealth.

- 29. Comment:** To avoid confusion, the PADEP should clarify that the policy does not apply to Air Quality Permits issued by the ACHD in Allegheny County. Allegheny County operates its own air program as allowed under the Pennsylvania Air Pollution Control Act. As a result, air permits issued by the ACHD are not delegated duties by the PADEP, and the management controls specified in the proposed policy are not appropriate for these permits. That said, the ACHD will implement its own policy that is comparable to the one being proposed by the PADEP. The ACHD needs to maintain the ability to offer Allegheny County citizens and industry a permitting process tailored to their needs that fits into the ACHD's management structure and the legal requirements of the County. (16)

Response: The commenter is correct and the policy has been revised to reflect this change. Section 12(b) of the PA Air Pollution Control Act (APCA) provides that “[t]he administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.” Consequently, the Allegheny County Health Department (ACHD) would not be subject to the provisions of the Permit Review Process and Permit Decision Guarantee policy. However, the Department strongly encourages the ACHD to implement the policy to ensure consistency throughout the Commonwealth.

- 30. Comment:** Please emphasize that the PDG policy applies to the Allegheny County Health Department (ACHD) – Bureau of Air Quality (BAQ), and ensure that proper resources are provided to enable the delegated agency to implement the final policy. (39)

Response: The policy does not apply to the Allegheny County Health Department. Please see the response to #29 above.

- 31. Comment:** In response to an inquiry previously submitted by GenOn, the Department affirmed that the ACHD BAQ is considered to be a County Health Department acting on behalf of the Department, and is thus subject to the PDG policy. (39)

Response: After legal review, it was determined that the policy does not apply to the Allegheny County Health Department. Please see the response to #29 above.

- 32. Comment:** The policy appears to fail to provide a predictable or maximum plan review (processing time) from once an administratively complete application has been received to when the technical plan review has been completed. The Ch. 102 Delegation agreement between the Department and the Districts provides for a total processing time for a general NPDES permit without deficiencies of 50 calendar days. Have 102 Delegation Agreement Required Output Measures been considered in the

development of this policy? Do the Required Output Measures override this policy (Page i Applicability)? (20)

Response: There is no reference within the policy to administrative completeness – there is a completeness review as defined within the policy. Required Output Measures (ROMs) have been considered and there have been no changes to review times established under Money Back Guarantee/current ROMs to the Permit Decision Guarantee other than the conversion from calendar days to business days. Generally, those timeframes are consistent with the timeframes in this Policy, where applicable. Further, the delegation agreements with the Conservation Districts will be evaluated for revision as necessary to implement the new process and timelines.

33. **Comment:** The draft policy document states that it applies to “applications that address all applicable regulatory and statutory requirements in the first submission.” However, most other references in the remaining 26 pages do not contain the “in the first submission” phrase. We suggest deleting the “in the first submission” phrase. (68)

Response: The Department acknowledges the recommendation to edit the text in the policy; however, this is a key provision. References in the remainder of the policy refer to applications that are complete and technically adequate upon submission to the Department. Both phrases mean that the application needs to be submitted to the Department complete and technically adequate in the first submission in order for the permit authorization to qualify for the Permit Decision Guarantee, if it is an authorization included in Appendix A.

34. **Comment:** The NPS recommends the Department identify within the text where or what (state or federal) statutory or regulatory requirements may void the policy. The policy language is otherwise ambiguous and could result in varying interpretations of when and how the new policy is applicable. (68)

Response: Statutory or regulatory requirements are binding in the event of a conflict with the policy, but the Department is not aware of any provisions that may “void” the policy. There may be such requirements that do not allow strict adherence to the policy and these will be outlined in the program-specific standard operating procedures which will be shared publicly.

35. **Comment:** This section seems to indicate that there are some applications that cannot be denied because of statute or regulatory requirements. If that is the case, those particular permits should be removed from this policy. Suggest the third sentence be revised to read “Applications that fail to meet Department requirements for completeness will be denied, ~~unless stated otherwise in applicable statutes and regulations.~~” and Appendix A revised to remove those permits. (19)

Response: Correct. There are some applications that cannot be denied for being incomplete due to statutory or regulatory requirements. However, they will not be removed from this policy as the Permit Review Process applies to all Department

authorizations regardless of these outliers. Additionally, Appendix A will not be revised at this time.

- 36. Comment:** The policy states that it will only apply to those types of applications listed in Appendix A. This list excludes major “NEW” solid waste permits such as landfill and resource recovery facilities. The current permit process for these facilities is subject to excessive delays due to unnecessary requirements and administrative obstacles that are not required by statute or regulations. The actual technical review of typical landfill and resource recovery facilities should take less than 100 work days but now regularly take over three (3) years to complete. There is no basis for excluding these permits from this policy. This policy should be revised to apply to new landfill and resource recovery permits. Second, in major projects with multiple permits, some permits may be subject to this policy while others are not listed. In these cases, particularly when the project is deemed a priority for review under this policy, the policy should state that all permit applications associated with the project are subject to the applicable timeframes in Appendix A. (2)

Response: The policy statement has been revised to reflect the intent of the Department, which is that the Permit Review Process applies to all authorizations reviewed by the Department. Due to the complexity of permits involving a Local Municipal Involvement Process or a Harms/Benefit analysis, they are not included in the Permit Decision Guarantee portion of the policy.

DEFINITIONS AND CLARIFICATIONS

- 1. Comment:** For clarity, suggest the following revisions “*Applicants and their consultants are responsible for may tracking the progress of their review by accessing the Department’s publicly-available data management system. Applicants are ~~also~~ responsible for providing timely responses to requests for information and to deficiency letters. Applicants must ensure that responses provided are technically accurate and respond fully to the request for additional information. Applicants ~~should make all possible efforts~~ are responsible to ensure that responses to information requests meet all applicable regulatory and statutory requirements.*” (19)

Response: The Department recognizes the comment and has made adjustments to the policy to be clear as to the expectations the Department has for the applicant.

- 2. Comment:** Move the following sentence from the definition of “Completeness Review” to later in the policy. It is a process instruction, not a definition.” *Applications will be reviewed in no longer than ten business days of receipt of the application, unless otherwise indicated by regulatory or statutory requirements.*” (19)

Response: The Department agrees with the recommendation to edit the text, and has done so in the final policy.

3. **Comment:** The Department should provide here a definition of “more technically complex projects” with illustrative examples, so that the public and the applicants can understand what such projects would include. It also should make clear whether no design changes are going to be allowed in any “more technically complex projects’ except through refilling a new application. (14)

Response: A definition has been added to explain that those projects or authorizations that are considered to be “more technically complex” are noted with an asterisk in Appendix A.

4. **Comment:** An applicant seeks a permit. The current wording seems to suggest that permit approval is to be expected. (19, 41)

Response: The Department agrees with the recommendation and has modified the language to read “that submits an application to conduct an activity authorized by the Department.”

5. **Comment:** For clarity, revise “*Processing Time*” to read “... final action by the Department ~~barring not including the time needed to satisfy~~ the “Possible Processing ~~Delays Factors~~” as outlined in II. A below.” (19)

Response: The Department agrees with the recommendation to clarify the text, and has done so in the final policy.

6. **Comment:** It appears under section 1.B Definitions that the definitions should make a distinction between “Administrative Completeness Reviews” and “Technically Adequate” reviews. (20)

Response: The Department no longer has a strict Administrative Completeness review, unless required by statute or regulation. The new Completeness Review determines whether an application is complete (has all necessary documents) and technically-adequate (contains technical information in sufficient detail to conduct a technical review).

7. **Comment:** We recommend that the definition of a completeness review be revised to provide more clarity on the term “technically adequate application”. Since there is no definition of “technically adequate” provided in the policy, this term may create the potential for misunderstanding of the process by DEP staff and the regulated community. (33, 35, 50)

Response: The Department agrees with the recommendation to clarify the text and has done so in the final policy.

8. **Comment:** Under “Completeness Review” change to active voice to emphasize the fact that Department staff will conduct this review. (41)

Response: The Department agrees with the recommendation to clarify the text and has done so in the final policy.

9. **Comment:** Under “Permits” it may be helpful to clarify the difference between individual and general permits in the definition section. The delineation between the two is often a mystery to many individuals seeking permits. (41)

Response: For the purposes of this policy, the delineation between the two does not affect the permit review process or permit decision guarantee as outlined in the policy.

10. **Comment:** We suggest that the following terms be defined within the policy: District Manager, technically adequate, accept(ance), permit denial. (10)

Response: “District Manager” refers to the District Mining Manager and has been clarified in the text of the policy. The definition of Completeness Review has been expanded to further explain “technically adequate”. The Department does not believe a definition is needed for “acceptance”, as an application is accepted when it is determined to be complete. At this time we do not think that “permit denial” requires further explanation.

11. **Comment:** Add to the first sentence in the definition of renewal application: submitted in the timeframe required by the permit”. This is required by definition of the completeness review and bears repeating here. (54)

Response: The Department agrees with the recommendation to clarify the text and has done so in the final policy.

12. **Comment:** It should be noted that while the term “completeness review” is defined in Section I.B of the draft review policy, the same cannot be said for the term “elevated review” which is used later in the same document starting on page 11. (51)

Response: The Department agrees with the recommendation to add the definition for Elevated Review Process and has done so in the final policy.

13. **Comment:** “Processing Time” – this definition is confusing. It states that it is “the total number of business days beginning with the acceptance of a complete application and a technically-adequate application and ending with the final action” however it goes on to state, “The length of time does not begin until the application passes completeness review and it moves forward for technical review.” How is one to know that the application is technically-adequate before the technical review has been completed? (20)

Response: The Application Manager will determine whether an application is complete and technically adequate as part of the Completeness Review. The Completeness Review is not a Technical Review; rather, it is a determination as to whether all parts of the application package have been submitted and are in sufficient technical detail to conduct

a technical review. The applicant will be able to check on the status of their application throughout the process.

14. **Comment:** Add a detailed definition to Section I.B for “Substantive project or major design change(s)”. (29)

Response: The Department agrees with the recommendation to add the definition for Elevated Review Process and has done so in the final policy.

15. **Comment:** For clarity, delete the phrase “(i.-v.) above, in order” from Section 2. (i) through (v). It is unnecessary. (19)

Response: The Department acknowledges the comment; however, that phrase is necessary. Applications will be ranked first according to the hierarchy outlined in B.1. of the policy and then within those categories, according to the criteria listed in B.2. of the policy. Therefore, two applications that are both necessary for economic development would again be ranked within that category and a new application would take precedence, followed by an amendment, etc., as outlined in B.2.

16. **Comment:** The terms “technical deficiency” and “technical comment” were mentioned during the September 10th webinar. However, the difference between the two terms is unclear and is not laid out in the policy. (51)

Response: A technical deficiency is one for which an application fails to meet a regulatory or statutory requirement. A technical comment is a notation by an application manager that a potential flaw in design may not meet standards or practices, which the Department has identified through guidance or otherwise as a means to comply with applicable regulations, but is not specifically in conflict with a regulation or statute.

17. **Comment:** For clarity, the following sentence should be moved from I. A. Effective Date of Policy to the Policy Statement on the title page (page i). “*All applications for permits, registrations and plan approvals are subject to the Permit Review Process outlined in this Policy regardless of their inclusion in the Permit Decision Guarantee. The Permit Decision Guarantee shall apply only to those applications, listed in Appendix A, that are complete, technically-adequate applications and address all applicable regulatory and statutory requirements.*” (19, 62)

Response: The Department agrees with the recommendation to move the text and has done so in the final policy.

18. **Comment:** Page i, Policy, 1st sentence – We recommend the Department specifically mention that this policy will affect 136 Permit Program areas and delete the general term of “... certain Department permits...”. (68)

Response: The Permit Review Process applies to all permits and authorizations reviewed by the Department, and the Permit Decision Guarantee applies only to the Department

permits contained in Appendix A. The Department has revised the policy to provide clarity on applicability.

- 19. Comment:** For clarity, revise (Section 1. iv) to read: “Applications that have been excluded from the Permit Decision Guarantee are not listed in Appendix A, but are ...” (19)

Response: The Department has revised the Permit Review Hierarchy of the policy, specifically Section 1 (iv), to provide additional clarity.

- 20. Comment:** For clarity, revise last sentence of Permit Review and Approval to read “*It is the Department’s intention to annually review ~~annually~~, and as necessary, ~~update the applications listed in~~ revise Appendix A.*” (19)

Response: The Department acknowledges the comment, though does not feel this revision is necessary.

- 21. Comment:** Approval section, Paragraph (ii) should be amended to read “applications that are complete... with no remaining deficiencies may be approved”... to allow for possible processing delays outlined in Section IIA. (54)

Response: The Department acknowledges the comment, but does not believe this revision is necessary.

- 22. Comment:** For accuracy, the second paragraph under Department Responsibilities should be revised to read “As a ~~permitting~~ regulatory agency, the Department’s role...”. (19)

Response: The Department agrees with the recommendation to edit the text and has done so in the final policy.

- 23. Comment:** The last sentence (page 7) should be revised to read “*Department also has an obligation to provide clear expectations on public participation for the regulated community, the public and stakeholders interested in permits being reviewed.*” (19)

Response: The Department acknowledges the comment, but does not believe this revision is necessary. We believe that the term stakeholder includes the public.

POTENTIAL PROCESSING DELAYS

- 1. Comment:** This policy must hold DEP staff accountable. We are concerned with the exceptions, caveats, and disclaimers that would allow DEP personnel to avoid meeting the guaranteed timeframes. (2, 32, 44, 50)

Response: This is a public policy that outlines the process by which the Department will review permits aimed at gaining efficiency and predictability. It is not a management directive for staff. The policy states that staff performance in meeting the measures created by the new review process will be reflected in performance reviews. Staff will be held accountable for their performance.

- 2. Comment:** The Permit Decision Guarantee should include under ILA (Possible Processing Delays), an additional item indicating that a lack of sufficient resources, including staff and adequately trained staff, in the Department could result in an inability to meet the required timelines. (20, 54, 61)

Response: The Department disagrees, as we have evaluated staff levels and determined they are adequate to implement this new policy.

- 3. Comment:** recognizing the department's intent to set boundaries regarding potential processing delays, we feel those examples provided are those very issues which cause delays today (e.g. awaiting a reply from an agency related to PNDI). (34)

Response: Any delays caused by outside agency reviews are beyond the Department's control through implementation of new unilateral policy changes. We are working with resource agencies to develop more efficient processing procedures, but it must be noted that any changes to those processes must also be agreed upon by those agencies.

- 4. Comment:** The inclusion of the Possible Permit Delays section of the policy sabotages for mine operators any firm expectations on a date-certain timeframe for permit issuance. This section cites nine ancillary activities that essentially would delay the date of final permit issuance. Since most of these activities are routinely attendant with the review of mining permits, the applicability of this section renders any "guarantee" of timeframes by the Department meaningless. (35, 46, 48, 50)

Response: The Department disagrees and the Mining program has provided timeframes that include days for routine activities that occur during the review of mining permits, including public hearings.

- 5. Comment:** The Department has included "applications submitted pursuant to a Consent Order and Agreement, Department order, consent decree or an order of an Environmental Hearing Board or other judicial body." We do not understand why this is included... any permit action required as a result of a judicial order would likely have a compliance schedule associated with the order which would require actions on the part of both the

department and the recipient of the order. We suggest that this be either clarified or removed. (42)

Response: The Department agrees with the commenter’s observation that any permit action required as a result of a judicial order would likely have a compliance schedule associated with the order which would require actions on the part of both the department and the recipient of the order. This and other circumstances will usually have their own unique requirements due to their nature – an enforcement action or court/Environmental Hearing Board (EHB) direction may call for procedures and timelines not envisioned by this policy. Therefore, the Department believes that no clarification is necessary.

6. **Comment:** The draft policy document uses the phrase “delay permit issuance” when describing the various other reviews, modeling, or approvals that might apply to a permit application in addition to the DEP review. “Delay” is a pejorative term and is not appropriate for this section that lists necessary and appropriate activities that are part of the permit application review process. Therefore, we suggest that the word “delay” be replaced with “affect,” and we request that “permit issuance” be replaced with “permit decision.” (19, 68)

Response: It was certainly not the intent of the Department that these other reviews and approvals were not an important part of the review process. However, these reviews often take additional time, which is the point the Department was stating. The Department agrees with the recommendation to edit the text relating to permit issuance, and has done so in the final policy.

7. **Comment:** The draft policy identifies complex factors that may impact the Permit Decision Guarantee process, including the need for air modeling. The NPS recommends the Department identify those permit programs that may require modeling, risk assessments or harms-benefits analysis. Again, this identification would provide reasonable expectations to an Applicant. (68)

Response: Generally, complex permitting actions have been excluded from the Permit Decision Guarantee, though the Permit Review Process still applies. Therefore, it is unlikely that plan approval applications for the construction of new minor facilities will require modeling or risk assessments. Plan approval applications for new sources emitting hazardous air pollutants may require modeling and/or a risk assessment, as appropriate. However, the Department is committed to reviewing and processing all applications expeditiously and has established target timeframes for the issuance of permits requiring these types of analyses that are not covered by the Permit Decision Guarantee. For landfill permits and major modifications requiring a harms-benefits analysis, timeframes are negotiated between the applicant and the host municipality(ies).

8. **Comment:** The NPS appreciates the Department citing federal reviews as possible processing delays. The NPS recommends the Department identify those permit programs in Appendix A where federal review is statutory and may impact the Department’s

timeframe. This information would provide reasonable expectations for an Applicant as to how, or when, this new Process applies. (68)

Response: Permits, for which a federal review is statutory, already have this timeframe calculated as part of the guaranteed timeframe for those authorizations that qualify for the Permit Decision Guarantee or the target time frame for those permits that do not qualify.

9. **Comment:** Public hearings and comment periods are effective tools for the Department to engage local communities. We recommend the Department identify those permit program areas where public hearings and/or public comment periods are required and that the proposed timeframes in this process encompass those periods as well. (52, 68)

Response: Permits, for which a public comment period or public hearing is required, already have this timeframe calculated as part of part of the guaranteed timeframe for those authorizations that qualify for the Permit Decision Guarantee or the target time frame for those permits that do not qualify.

10. **Comment:** We request further explanation of the nine examples of activities that may delay final permit issuance. We recommend that these activities be incorporated into the SOPs under development. In addition, we recommend that the DEP provide applicants with an anticipated timeframe for resolution of such delays on a case by case basis. (33)

Response: The Department agrees with this recommendation to the extent that it is able to be implemented. For example, for some projects, anticipated timeframes may simply not be able to be provided with any degree of certainty.

11. **Comment:** With respect to outside agency reviews, the TGD provides that the Department “will follow existing coordination/concurrence procedures with other agencies.”² The required “consultation” process between the Department and outside resource agencies, as the Mining program itself will acknowledge has been a major impediment to the timely review of permits for years. These agencies have refused to be constrained by deadlines. (35, 46, 48, 50)

Response: The Department acknowledges the comment, and though exiting coordination and concurrence procedures currently remain unchanged, the Department is evaluating all of these relationships and will, moving forward, make changes as necessary.

12. **Comment:** The Department has the authority to act on most permits regardless of whether an outside resource agency has completed its review of a permit. While we understand the need for the Department to work together with resource agencies, simply because an outside agency does not prioritize its workload to provide input into a permit application review, does not mean the Department should adjust its timeframe and that of the permit applicant, if the outside agency fails to respond in a timely fashion. (35, 46, 48, 50)

Response: The Department disagrees with this comment, as often there are regulatory and statutory requirements that prevent the Department from making a final permit decision, whether issuance or otherwise, until all parties have reviewed and/or commented.

13. **Comment:** The Commonwealth should establish timeframes for the process and review of financial instruments and include those times in the guarantee. (52)

Response: The Department acknowledges the comment and will consider this for inclusion in the guarantee in the future.

14. **Comment:** PIOGA understands that the timeliness of outside agencies engaged in an application review is outside the control of the Department. However, in some cases, the Department retains the sole discretion to act while in others the outside agency has a statutory authority to make decisions which impact the Departments actions. Therefore, PIOGA recommends the Department should inform the public, including the regulated community, of the outside review and the degree to which the Department is bound by the outcome of the outside review. Additionally, instead of creating a loophole, the policy should establish timeframes for the portions of the Department's processes either prior to or following the review by the outside agencies. (52)

Response: The Department agrees that communications regarding other agency reviews and timeframes is important, and will include that as part of the Pre-Application Conference.

15. **Comment:** We believe these are unacceptable escape clauses. To the extent that a reviewing program requires technical information or assistance from other Department programs, the time for that assistance should be built into the process timeline. (2, 52)

Response: The Department agrees that these are unacceptable clauses; but we agree the time for assistance should be built into the process timeline, When permits are required by law to have public comment, public hearings or other resource agency review, the time for these reviews is already included in the guaranteed timeframe for Permit Decision Guarantee and in the target timeframe for those permits that do not qualify for the guarantee.

16. **Comment:** We recommend that when factors outside of the Department's control occur that the Department issue a 'force majeure' notice both the general public and those who have applications already under review. (27, 52)

Response: The Department agrees and will ensure that both the applicant and the general public are aware of those situations.

17. **Comment:** PIOGA proposes an additional processing delay related to applications that require notice to and possible review by U.S. EPA. For example, U.S. EPA will typically review proposed air permits for major sources in conjunction with the required 30 day

public review period. However, U.S. EPA has 45 days to review proposed permits and tends to use most of 45 day period to provide comments to PADEP. PADEP in many cases will ask applicants to address U.S. EPA comments directly or will request additional information to support their preparation of response comments. As with items 6 and 7 above, PIOGA recommends that known review periods be incorporated into the process timeline. (52)

Response: The timeframes for the processing and review of plan approval applications covered by the Permit Decision Guarantee provide adequate time for EPA’s review and comment on proposed plan approvals. As provided in 25 Pa. Code § 127.44(f), at a minimum, DEP will provide a 30-day comment period from the date of publication of the proposed plan approval for the submission of comments. Under the PDG Program, three plan approval applications may require the U.S. Environmental Protection Agency’s 45-day review if the facilities meet the definition of “Title V facility” as defined in 25 Pa. Code § 121.1. These applications include the following: Major Facility Plan Approval State Regulation, Major Facility Plan Approval New Source Performance Standards and Major Facility Plan Approval National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61). These applications need to be reviewed and processed within 150 business days. All other authorizations needed for plan approvals issued to minor facilities under the PDG Program need to be reviewed and processed within 130 days.

18. **Comment:** As part of this new policy, DEP should establish timeframes for resource agency reviews under PNDI (e.g. 30 days for initial review letter and 30 days for review of any required assessment). The resource agencies should be formally advised of DEP’s expectation. If Resource agencies fail to provide timely responses, DEP should proceed with a permit decision. (2)

Response: The Department is currently working with partner resource agencies to review and revise the current Pennsylvania Natural Diversity Inventory (PNDI) policy in the near future, and encourages your feedback at that time.

19. **Comment:** Please clarify why a financial assurance instrument is an issue for any type of review unless they are claiming undue hardship? (10)

Response: The Department believes the commenter has misunderstood the statement. The financial assurance instrument is a financial surety document such as a bond, letters of credit, etc. Certain statutes require these financial surety documents to be in place before a permit can be issued.

20. **Comment:** Applications requiring modeling, third party review or public comment periods should not be included in this policy, due to the time required to review the results and adequately consider public input. (16)

Response: The Department disagrees, as many permit application types that fit the above criteria are included in the Permit Decision Guarantee. Permits for which a federal review, public comment period, public hearing, etc are required, already have this

timeframe calculated as part of the guaranteed timeframe for those authorizations that qualify for the Permit Decision Guarantee or the target time frame for those permits that do not qualify.

21. **Comment:** Revise the final paragraph (page 3) to read “*Many permits decisions cannot be ~~issued~~ made until the above actions have been taken and resultant issues resolved. To the greatest extent possible, the Department will complete its review of permit applications expeditiously, however, the above ~~situations may delay~~ factors will impact the Department’s final permit ~~issuance~~-timeline”.* (19)

Response: The Department agrees with the recommendation to clarify the text and has done so in the final policy.

PRE-APPLICATION CONFERENCES

1. **Comment:** PBA also believes that Pre-application conferences are an opportunity to reinforce the need for consistent interpretation of regulatory provisions that may be discussed at these meetings. (60)

Response: The Department agrees and appreciates the comment.

2. **Comment:** Under the concepts embraced by these policies, if the summary of the pre-application conference is adhered to, a correction letter should be the exception, not the norm. (35, 46, 48, 50)

Response: The Department agrees and appreciates the comment.

3. **Comment:** It is recommended that the meetings, as outlined, be very carefully monitored to ensure there is not an overwhelming need for meetings such that they become an ineffective tool. (9)

Response: The Department agrees and appreciates the comment.

4. **Comment:** The lack of staff and budget cuts make the good concept of having pre-application meetings seem unfeasible. We do not understand how DEP will be able to hold so many pre-application meetings....they will take up additional technical staff time and resources. (21, 51)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy.

5. **Comment:** The policy should be revised to require staff to respond within 10 days to any written request of potential applicants for policy interpretations or clarification of

requirements associated with a specific project. Subsection 4. (iv) and (v) should be revised to require this to be in writing. (2)

Response: The Department disagrees. This is a public policy that describes the process by which the Department will review permit applications. It is not a management directive for staff.

6. **Comment:** The outline of encouraging applicants and their consultants to participate in pre-application conferences is recommended. That being said, this policy needs special attention placed on staffing requirements. Lacking any additional staffing may have the unintended effect of DEP staff spending an extraordinary amount of time in pre-application conferences with little time remaining for the actual permit review. This is a problem, as assumptions can be made that, because the applicant had a pre-application conference, their application is sufficient for issuance. In fact, it is probable that some applicants may participate in the pre-application conference with the sole objective of having their application processed quickly. This is not a bad idea, but Department staff must not be spending extraordinary amounts of time preparing applications for which the actual applicant is responsible. This needs to be carefully monitored especially when there are repeat applicants who are submitting deficient applications requiring routinely more time in meetings by Department staff that then have less time available for actual permit reviews. (9)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy. Further, all applications will receive the same thorough review as has always been provided. Finally, pre-application conference time is not part of the guarantee time.

7. **Comment:** EPGA concurs with the Department that issuance of such a summary letter would be an ideal procedure for forwarding the permit application checklist to the applicant. However, because the issuance of the summary letter is at the Department's discretion, EPGA suggests that the policy be amended to indicate one may be sent. The Department would have the discretion to forward the permit checklist either as part of a post-conference summary letter or via other procedures (e.g., email transmittal to the application manager). (53)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will incorporate the concept in that procedure.

8. **Comment:** We support the intent to keep the Department involved throughout the development of the project to in order to understand potential regulatory concerns and we have worked diligently to do so. However, we have been advised that any decision, guidance, etc. is not official and any such direction offered before an official application is submitted is unofficial. While understanding the non-binding nature of the guidance, when we start down a path based up on that guidance and it changes later in the process it causes delays. Such delays cost the applicant time and money. (34)

Response: The situation described is not likely to occur. While not completely out of the question, as regulations can change, required information distributed at pre-application meetings will consist of application forms, instructions, checklists, fact sheets and other information that is clear and is intended to define exactly what is required when an application is submitted. As long as that exact information is submitted in the form understood by all at the pre-application meeting, the situation described cannot occur.

9. **Comment:** The policy should be revised to encourage all applicants to send a meeting summary to DEP after a pre-application conference outlining the discussion and the requirement's (permit forms, information etc.) as they understand it as outlined by DEP in the meeting. DEP staff should be required to respond to this summary within 10 days to confirm or clarify the information. This will eliminate any potential misunderstandings of what constitutes a complete application. (2)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. We appreciate this suggestion and will incorporate the concept in that procedure.

10. **Comment:** If this is set up by DEP and the districts are not included. The districts get a copy of the meeting minutes so we know how to review the project. (11)

Response: The Districts will be included in pre-application conferences.

11. **Comment:** If a pre application meeting is requested and DEP says it is not necessary, how will the project be handled in the hierarchy procedure when the plan comes in? When this project comes in and the person who is setting the priority says they should have had a pre-application meeting will the application be slowed down. (11)

Response: Prioritization will be assigned based on the type of activity proposed and its hierarchy outlined in the policy. The same person who decides on the need for a pre-application conference will be assigning the priority, so the example cited cannot occur.

12. **Comment:** While it was acknowledged in the power point presentations, coordination with municipalities is an integral part of the NPDES permit review process. We seek to include municipalities at our pre-application meetings so everyone is on the same page. (11)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will incorporate the concept in that procedure.

13. **Comment:** In another example of a lack of clarity on key aspects, the policy only allows for pre-application meetings "when deemed necessary". The criteria for deeming a meeting necessary is not laid out in the policy. In addition, not all applicants who request

a meeting will get one and DEP does not explain how those applicants can ensure they are submitting complete applications. (51)

Response: The need for a pre-application conference is at the discretion of the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations, all who have the authority and the flexibility to make these decisions. If the Department determines that a pre-application conference is not necessary, the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations will provide an explanation as to the reason.

- 14. Comment:** The details for the new process are well-delineated; however, we question whether DEP will have adequate staff in the regional offices to handle the pre-application conferences, completeness reviews, and technical reviews in the time frames enumerated under the Permit Decision Guarantee. (56, 59)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy.

- 15. Comment:** The Department should either at the pre-application meeting, or shortly thereafter, provide the information listed in this section in writing to the applicant. This would document the meeting and preclude any misunderstandings. (52)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. We appreciate this suggestion and will incorporate the concept in that procedure.

- 16. Comment:** Please amend the policy to clearly denote that it is the Department's responsibility to forward the permit application checklist to the applicant within ten business days (suggested) following the pre-application conference. (35, 39, 46, 48, 50, 53)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion; however, we believe a better approach would be for that procedure to include a provision that has the applicant forward the pre-application meeting summary/checklist to the Department at the applicant's leisure. Many pre-application conferences do not lead to actual applications being submitted. Requiring Department staff to prepare and send a pre-application checklist to the applicant within ten business days (suggested) following the pre-application conference for a project that is never submitted would be inefficient use of resources.

- 17. Comment:** The assurance of timely decisions in the Permit Review Process and Permit Decision Guarantee and the coordination process outlined in the Policy for Permit Coordination should provide applicants with timelines necessary for project planning and assure that all authorizations that are necessary for a project are identified before any

activity occurs. This course of action will benefit operators across the state. We applaud the Department for addressing these issues. (27)

Response: The Department acknowledges the support for this provision of the policy.

18. **Comment:** Improvements to navigating the permit application coupled with pre-application meetings are significant ways to reduce the number of deficient applications and improve efficiency. The DEP has also taken the positive steps to encourage ongoing communication from the applicant and/or his consultant as the project is developed. This will help to surface any regulatory or statutory requirements that could delay the issuance of a permit. (32)

Response: The Department acknowledges the support for this provision of the policy.

19. **Comment:** Formats that allow for give-and-take among stakeholders (This would allow for dialogue and improve understanding and clarify significant matters.). (38)

Response: The Department agrees. DEP is developing a separate standard operating procedure for conducting pre-application conferences. We appreciate this suggestion and will incorporate the concept in that procedure.

20. **Comment:** Pre-application meetings and application reviews which are bound by the Permit Decision Guarantee should take priority over internal reporting requirements. (54)

Response: The Department agrees.

21. **Comment:** We support the Department's recommendation for pre-application meetings as an essential component of the application process. (9, 25)

Response: The Department acknowledges the support for this provision of the policy.

22. **Comment:** DEP needs to include all partners, state, federal and conservation district in these meetings. (10, 47, 68)

Response: The Department agrees.

23. **Comment:** The Department should take this opportunity to recommend that applicants be prepared to discuss alternatives at pre-application meetings. Appropriate language should be added to these sections to caution applicants that alternatives should be evaluated and carefully documented whenever required during permit review. (14)

Response: The Department agrees. DEP is developing a separate standard operating procedure for conducting pre-application meetings. We appreciate this suggestion and will incorporate the concept in that procedure.

24. Comment: Pre-application conferences should help provide clarity early in the application process in differentiating between minor and major permit modifications. Until the Department can establish regulations for General permits to cover a variety of minor permit modifications the application requirements for many categories of minor permit modifications should be reduced and streamlined. (40)

Response: This suggestion is beyond the scope of this policy. Nonetheless, the Department is looking for opportunities to develop additional general permits to improve efficiency.

25. Comment: The policy should be revised in sections concerning “pre-application conferences” to require DEP staff to provide applicants with a written summary of the pre-application conference that outlines in detail all permit forms and information required to be considered “complete”. (2, 68)

Response: The Department disagrees with this suggestion. The Department needs to maintain the flexibility to waive pre-application conferences for small, straightforward types of permit applications, or some general permits, when it is determined they add no value to the application process.

26. Comment: PIOGA recommends that when a pre-application conference is requested but the Department deems it unnecessary that the policy require a written explanation of the Department's rationale. In such cases, the policy should preclude the voiding of the Permit Decision Guarantee. (52)

Response: The policy does not void the guarantee if a pre-application meeting is not held. If the Department determines that a pre-application meeting is not needed, DEP will provide an explanation to the potential applicant. That explanation may be in writing.

27. Comment: Since at this point in the process an application manager has not been identified PIOGA recommends the policy specify whom the applicant should contact. (52)

Response: It is not possible at the pre-application stage for the department to assign an Application Manager. It is not until the application is submitted that DEP has an idea of workload distribution across reviewing staff.

28. Comment: This section also recommends that applicants employ consultants with expertise in the areas of environmental permitting. We estimate that in more of 95% of our projects that require Department permits, consultants prepare the applications. We consider many of them to have expertise in the permitting process and yet we receive letters from the Department stating that applications were not complete on a large number of projects. (34)

Response: Part of this policy is an effort by the Department to ensure that application forms and checklists are clearly providing direction to applicants and their consultants.

Further, the new policy requires that deficiencies be noted with the specific regulatory requirement. Finally, as part of tracking the effectiveness of this new review process, the Department plans to compile the “most common deficiencies” with the hopes of correcting this type of observation.

- 29. Comment:** We feel that if the Department (or Conservation District) requests a pre-application meeting, and the applicant declines, this action should result in voiding the Permit Decision Guarantee, with no exceptions. (22)

Response: The Department disagrees. The applicant could still submit a complete application that meets all regulatory requirements without attending a pre-application conference.

- 30. Comment:** This would appear to imply that if an applicant or its consultant does not request a pre-application conference, they have not met their obligations and may not benefit from the Permit Decision Guarantee. This provision needs to be clarified to say that, while applicants should be aware that failure to do so could result in administratively or technically incomplete application, requesting a pre-application conference is not a prerequisite for obtaining the benefits of the Permit Decision Guarantee. (23)

Response: The Department believes that the policy is clear in that regard.

- 31. Comment:** The District supports the Department’s efforts to encourage pre-application conferences. The policy should emphasize the importance of the Applicant’s attendance at these meetings along with their consultants at the concept plan phase, before significant project design has been completed. (24)

Response: The Department appreciates the comment and believes that the policy is clear in that regard.

- 32. Comment:** We recommend that the applicant’s consultant be asked to provide a summary of the pre-application conference (currently a common practice) for review by the Department prior to the Department’s issuance of a Summary Letter. To assure that information on which an applicant relies is current, the District suggests a limit on the timeframe between pre-application meeting and the permit application submittal to DEP/Districts. (24)

Response: The Department agrees. DEP is developing a separate standard operating procedure for conducting pre-application conferences. The suggestion is appreciated and we will incorporate the concept in that procedure.

- 33. Comment:** The MSC recommends that DEP provide guidance on how the department will determine when a pre-application conference requested by an applicant is necessary and which staff will be afforded this decision-making authority. (33)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

34. **Comment:** The MSC recommends that in the event a participant chooses to forego the pre-application conference, that any decision to void the Permit Decision Guarantee be reviewed and approved by the Section Chief and the Program Manager. There may be circumstances where a pre-application meeting is not required, for example, in situations where the applicant is holding regular update meetings with DEP staff on a number of active projects. (33)

Response: The policy does not void the guarantee if a pre-application conference is not held. The applicant could still submit a complete application that meets all regulatory requirements without attending a pre-application conference.

35. **Comment:** We suggest that the state of Pennsylvania commit to extending invitations to other potentially affected land owners, agencies or land managers such as the NPS, if potentially affected, in an effort to provide a better understanding of the proposed project and potentially affected resources. (68)

Response: This comment is beyond the scope of this policy.

36. **Comment:** The NPS recommends the Department clarify this language to require a pre-application meeting “upon request” or when “deemed necessary” by the Department. (68)

Response: “Upon request” means when requested by the applicant and “deemed necessary” means when the Department feels a pre-application meeting is needed.

37. **Comment:** The NPS recommends more specificity as to the information that would need to be provided at a pre-application conference, including potentially modeling protocols, or other basic technical review guidelines that may be necessary for the permit application review. (68)

Response: Each program area has developed specific standard operating procedures that include forms, checklists and fact sheets that will be provided to address this suggestion.

38. **Comment:** If a pre-application meeting is requested by a potential Applicant, the Department should be required to meet with them. If there are special circumstances for which the Department would not grant a pre-application conference, they should state it in the policy. In this regard, we recognize that the proper resource management dictates that certain, more routine permits or GPs may not warrant pre-application meetings. (35, 46, 48, 50, 64)

Response: The Department disagrees with the suggestion to require meetings. The Department needs to maintain the flexibility to waive pre-application conferences for

small, straightforward types of permit applications, and some general permits, when DEP determines they add no value to the application process.

- 39. Comment:** Pre-application Conferences. The Department clearly encourages applicants to participate in pre-application conferences. This is an appropriate and helpful step whose benefits are not confined to large scale, multi-permit projects. (14, 32)

Response: The Department agrees and appreciates the comment.

- 40. Comment:** The Department should consider holding pre-application meetings at the proposed project site or in local Conservation District offices with the applicant, plan preparer, and when possible, the site contractor. (20, 21)

Response: When appropriate, the Department agrees and appreciates the comment.

- 41. Comment:** In the statement “Upon request, the Department will schedule pre-application conferences *when deemed to be necessary*” should be clarified that it is not the DEP that deems the pre-application conference to be necessary but the applicant. The current statement infers the meaning that DEP will conduct a pre-application conference only if the Department deems it necessary. The statement should indicate that upon request, the pre-application conference will always be scheduled with the applicant. (19, 26, 32)

Response: The Department disagrees with this suggestion. The Department needs to maintain the flexibility to waive pre-application meetings for small, straightforward types of permit applications, or some general permits, when DEP determines they add no value to the application process.

- 42. Comment:** Minutes must be taken at all pre-app meetings and be made available for review and concurrence by all in attendance. (21)

Response: The Department agrees.

- 43. Comment:** A pre-application meeting occurs with one DEP reviewer and another reviewer, who was not in attendance at the meeting, does the review what was talked about at the meeting, may not be passed along to the person doing the review and could make a plan not qualify for the permit review guarantee. (11, 21)

Response: Pre-application conferences are held with supervisors and managers who assign work to their staff for review. The Department is developing a separate standard operating procedure for conducting pre-application conferences. Required information distributed at pre-application conferences will consist of application forms, instructions, checklists, fact sheets and other information that is clear and is intended define exactly what is required when an application is submitted. As long as that exact information is submitted in the form understood at the pre-application conferences, the situation described will be unlikely.

44. Comment: Indication that conferences for large, high-priority economic development projects will be led by the District Oil and Gas Office (for petroleum) or by the District Mining Office (for coal) Permits Chief or Manager, while conferences for non-petroleum or coal projects will be led by the Regional Direction, is quite significant. This suggests a clear intent to continue the present separation of Department technical staff expertise in other areas from involvement in fossil-fuel extraction project review. This will continue to provide only minimal availability to the Department's multi-disciplinary technical environmental expertise to fossil-fuel extraction project reviewers and limit the Department's ability to analyze potential impacts effectively. (14)

Response: The Department disagrees with this comment. DEP has adequate staff with the necessary expertise in Mining and Oil and Gas to perform all environmental review required by statute and regulation.

45. Comment: The policy identifies attendees for pre-application conferences and states that the applicant's consultant must attend the pre-application conference. While applicants will often require the consultant to attend, this should be at the discretion of the applicant. The primary focus of communication should be between the applicant and the DEP. (33)

Response: The Department disagrees. It is imperative that consultants are present so that applicants and their consultants hear the same message, and clearly understand the expectations from the Department.

46. Comment: I suggest that the policy include a promise that if the Applicant provides the information the Department staff will come to the meeting prepared to discuss the project and the Department's policies and procedures and includes a promise that if the Department changes its stance on any issues discussed as the prehearing conferences, it will communicate that clearly to the Applicant, providing an explanation of why the change was made and the effect it will have on the applications. (23)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

47. Comment: We suggest that a timeline for the pre-application conference be established as part of this policy. If there is a scheduling lag following the pre-application conference request, then there is little overall benefit to this policy. We recommend that the policy include a requirement that DEP respond within ten business days when an applicant requests a pre-application conference. (33)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

48. Comment: Pre-application meetings are indeed a valuable tool for the regulated community. (63)

Response: The Department acknowledges the support for this provision of the policy.

49. **Comment:** While the policies tout the importance of the pre-application process as the “...foundation for improved understanding and communication...” towards complete and technically adequate submissions, there is nothing in the documents that bind the Department to any agreements reached at these conferences relating to what the applicant must specifically submit to obtain a positive determination. (35, 46, 48, 50)

Response: Any decision, guidance or agreement is not official and any such direction offered before an official application is submitted is unofficial. With that said, the Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

50. **Comment:** In order for the pre-application conference to be meaningful in fostering a consistent and uniform review of the application for the proposed mining activity, both the applicant and DEP should come away from that meeting with a complete understanding and agreement as to what would constitute a technically adequate submittal. (35, 46, 48, 50)

Response: The Department agrees.

51. **Comment:** The Policy strongly encourages Pre-Application Conferences for every permit application. This requirement will result in both overall delays and delayed start of reviews because Applicants must await a meeting schedule and the department must divert personnel from review tasks to prepare for and attend Pre-Application Conferences. Many routine projects are straight-forward and do not require interpretations of Departmental regulations. (40)

Response: The Department disagrees. Pre-application conferences should be held before starting an application. Further, the extra time spent on preparing for, attending and following up on pre-application conferences will be more than offset by the resulting efficient review of the application once it is submitted.

52. **Comment:** Aqua and our consultants have voluntarily requested and participated in pre-application conferences with Departmental staff prior to submitting applications on many projects. We have almost always found the process to be helpful for Aqua and for Department staff. We anticipate continuing, expanding, use of pre-application conferences. Encouraging these conversations is a positive step. (40)

Response: The Department acknowledges the support for this provision of the policy.

53. **Comment:** We ask that regional offices make available additional times to schedule these meetings as desired by the applicants and as necessary to support the timely

submittal of applications; in some cases the currently allotted time for pre-application meetings is insufficient. (42)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

54. **Comment:** It is imperative that DEP personnel invest the time and resources necessary to make the pre-application conference a valuable tool especially in light of our industry's \$3375 investment per conference. What are the guarantees that all applicable state and federal regulatory entities would participate and offer necessary guidance to the applicant to ensure a complete and technically adequate application? (44, 50)

Response: The Department will invest the time and resources necessary to make the pre-application conference a valuable tool. Federal agencies have indicated through comments on this proposal that they are more than willing to be at the table for pre-applications conferences.

55. **Comment:** Upon completion of a pre-application conference, we request that a DEP report is furnished to the applicant within a 30 day window recapping key discussion points between the regulators and the regulated in order to avoid an incomplete application upon submission. Furthermore, an agreement has to be reached that issues not raised during the pre-application conference and/or lack of engagement by resource agencies in that process would not be held against the applicant by denying an application once it is accepted as complete and technically adequate in the Permit Decision Guarantee program. (44, 50)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. We appreciate this suggestion; however, DEP believes a better approach is for that procedure to include a provision that has the applicant forward the pre-application conference summary/checklist to the Department at the applicant's leisure. Many pre-application conferences do not lead to actual applications being submitted. Requiring Department staff to prepare and send a pre-application checklist to the applicant within ten business days (suggested) following the pre-application conference for a project that is never submitted is an inefficient use of DEP's resources.

Any decision, guidance or agreement is not official and any such direction offered before an official application is submitted is unofficial. With that said, the Department is developing a separate standard operating procedure for conducting pre-application conferences. Required information distributed at pre-application conferences will consist of application forms, instructions, checklists, fact sheets and other information that is clear and is intended define exactly what is required when an application is submitted. As long as that exact information is submitted in the form understood by all at the pre-application meeting, such an agreement is not necessary.

- 56. Comment:** Please amend the policy to include a requirement for the Department to document instances where a pre-application conference request is denied or unable to be supported by the Department for any reason. It is EPGA’s experience prior to this policy that pre-application conference requests by applicants or permittees are not granted by the Department for a number of reasons including, but not limited to, staff resource and workload issues. The policy should address situations where an applicant or permittee requests a pre-application conference, but this is not able to be supported by the Department. Due to the cooperative nature of the proposed policy between the Department and applicants, it is only reasonable that any denial or inability to support a pre-application conference by the Department be documented to afford applicants some latitude if an application is deemed technically deficient and this situation may have been avoided if a pre-application conference had occurred. (53)

Response: The Department disagrees with the suggestion and considers it to be unnecessary as the policy clearly stresses the importance of pre-application conferences. The need for a pre-application conference is at the discretion of the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations, and all who have the authority and the flexibility to make these decisions. If the Department determines that a pre-application conference is not necessary, the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations will provide an explanation as to the reason.

- 57. Comment:** The Department’s policy to deny the application upon a second technical deficiency letter will result in a likely shift by the regulated community to front load the design discussions with the Department to the pre-application period. The applicant will not want to risk a denial and will more frequently seek determinations from the Department prior to submission. The presumption of “perfect” initial submissions will create greater demand for access to Department reviewers. While greater communication is always a positive development, has the Department adequately evaluated its capacity to respond to applicant inquiries? (63)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy.

- 58. Comment:** The NPS supports and appreciates the Department outlining departmental activities in (v) and (vi) and agrees these activities are all good business practices. (68)

Response: The Department acknowledges the support for this provision of the policy.

- 59. Comment:** What criteria will be used to determine if such meetings are “deemed to be necessary”? What constitutes a “large scale, multi-permit project”? (34)

Response: The Department needs to maintain the flexibility to waive pre-application conferences for small, straightforward types of permit applications, or some general permits, when DEP determines they add no value to the application process. The policy states that when an application is received, the Regional Director, Director of District

Mining Operations or Director of District Oil and Gas Operations will provide direction to staff on the priority of the permit application and on what is considered to be a large project. The Department is working with the Governor's Action Team to develop more specific guidelines for staff on prioritization of permits.

60. **Comment:** It is recommended that a discussion of public participation requirements and program specific procedures occur at the pre-application conference. (33)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

61. **Comment:** Minutes of all pre-application conferences should be included in the permit file. The Department encourages applicants to participate in pre-application conferences, and appropriate and helpful step regardless of the type and scale of the proposed project. However, to ensure transparency and compliance with state Right to Know Laws, notes of any discussion of substantive and procedural aspects of permit applications and associated project plans should be taken, included in the permit file, and be publicly accessible, just as correspondence between applicants and the Department currently is. (61)

Response: The Department is developing a separate standard operating procedure for conducting pre-application conferences. DEP appreciates this suggestion and will consider incorporating the concept in that procedure.

PUBLIC PARTICIPATION AND TRANSPARENCY

1. **Comment:** We support the Department's efforts to marshal its resources more effectively by avoiding needless exchanges with permit applicants over defective permit applications. At the same time, we are concerned that the Department's emphasis on pre-application meetings with applicants will reduce the public's input and ability to comment on permit applications that, once submitted, will be subject to notice and comment. It is important that the Department continue to document the basis for its decisions, including the substance of its discussions with applicants. (57)

Response: This policy in no way impacts or limits the public's input or ability to comment on permit applications that are subject to notice and comment.

2. **Comment:** As permits are being tracked, this is a good opportunity for the Department to publish the provided maps on the website. There are good reasons for this; the public needs to be aware that both natural gas and hazardous liquid pipelines are being constructed within their municipalities, and possibly their neighborhoods. A good public service is to publish gathering line maps in a digital format on the website. (9)

Response: The Department agrees this would be a worthwhile effort, and it will be considered as the Department moves forward with electronic permitting and electronic records management.

3. **Comment:** The draft policy states that the Department "...has the obligation to provide clear expectations on public participation for the regulated community and stakeholders interested in permits being reviewed." However, a public review or comment process is not identified in the Policy or how that public review process will be accounted for in the timeframes given by the Permit Decision Guarantee. The policy should be revised to establish detailed guidance setting standard practices regarding how decisions will be made on the type and extent of public comment provided on permits and projects where it is at DEP's discretion. An additional purpose should be added indicating the public is to be informed at every step in the process. (2, 9, 45, 51, 68)

Response: The Department acknowledges the importance of public participation as a key part of the permit review process, the standards for which are outlined in the Department's Policy on Public Participation in the Permit Application Review Process. This is a separate policy document that the Department is in the process of revising. Once revised, it will be posted for public comment and the Department encourages your feedback at that time.

4. **Comment:** When will the permit applications be published in the *PA Bulletin*? (69)

Response: Applications are not published in the *Pennsylvania Bulletin*, but are available on DEP's eLibrary at: <http://www.elibrary.dep.state.pa.us/dsweb/HomePage>. Permit issuance may be published in the *Pennsylvania Bulletin*, which is done in accordance with applicable statutes and regulations.

5. **Comment:** We recommend that permit applications, draft and final permits, permit review memos, and other correspondence generated in the process of reaching a permitting decision are placed online. The information contained in *Pennsylvania Bulletin* notices rarely provides sufficient detail on the basis for the Department's decision to allow for effective comment. This would eliminate the current need for the public to travel to Department offices to review files or for staff to make and send paper copies for the commenters seeking to meet established deadlines. (14, 41, 54, 57, 61)

Response: The Department agrees and is working toward electronic permitting and electronic file review to increase public participation and transparency.

6. **Comment:** Public participation in the permitting review process is included as part of the focused training. However, unless mandated by statute or regulation, the extent of public involvement in the permit reviews should be left to the discretion of the permit applicant. (32)

Response: While the Department encourages public participation, the commentator is correct in that unless required by statute or regulation, involvement is left to the

discretion of the Department. The circumstances that are considered when the department determines the need for a public hearing are contained in the Department's Policy on Public Participation in the Permit Application Review Process. This is a separate policy document that the Department is in the process of revising. Once revised, it will be posted for public comment and the Department encourages your feedback at that time.

7. **Comment:** We'd like to understand the intent of the condition related to circumstances where public meetings or hearings are held. For projects receiving federal funding, the lead federal agency may require a public hearing under its NEPS operating procedures. Do such meeting/hearings create such a circumstance? (34)

Response: Though public meetings and public participation are encouraged, unless mandated by statute or regulation, the extent of public involvement in the permit reviews is left to the discretion of the Department. When public hearings are required, they are always held. (32)

8. **Comment:** We recommend comment periods that extend beyond the close of the hearing (This would allow adequate time for reflection and responses to issues emerging from the hearing.); and additional hearings to air unaddressed stakeholder concerns of merit as needed. Establish procedures to place all relevant documents in public places, preferably on-line, for a minimum period of time (perhaps 10 working days) prior to a hearing. (38)

Response: While the Department acknowledges the comment, this is outside of the scope of the Permit Review Process and Permit Decision Guarantee policy. The comments are more appropriate for the Department's Policy on Public Participation in the Permit Application Review Process. This is a separate policy document that the Department is in the process of revising. Once revised, it will be posted for public comment and the Department encourages your feedback at that time.

9. **Comment:** Once permits are proposed, public comment periods should be required and not be discretionary. (61)

Response: Unless required by statute or regulation, involvement is left to the discretion of the Department. The circumstances that are considered when the department determines the need for a public hearing are contained in the Department's Policy on Public Participation in the Permit Application Review Process. This is a separate policy document that the Department is in the process of revising. Once revised, it will be posted for public comment and the Department encourages your feedback at that time.

10. **Comment:** The gathering and inclusion of information on and strategies to uphold environmental justice concerns should be required. This vital aspect should not, as currently delineated in the Policy, be optional "depending on the scope of the project." Applicants proposing any projects in Environmental Justice Areas should conduct additional outreach and meetings before submitting permit applications to DEP. (61)

Response: When applicable, the Department considers Environmental Justice outreach a critical component to a successful project. DEP's current Environmental Justice Policy is being updated to address these concerns as well as to reflect our new permitting process, and your feedback is encouraged at that time.

PERMIT REVIEW HIERARCHY

- 1. Comment:** We understand the rationale behind prioritizing the issuance of permits for projects that are anticipated to have economic benefits for Pennsylvania. However, it is unclear how PADEP or local agencies should determine when a project is otherwise deemed to create/retain jobs, leverage private investment, or otherwise have significant economic benefit within Pennsylvania. Will projects producing greater economic benefit be reviewed ahead of those with lesser benefit? (9, 27, 31, 63, 68)

Response: The Department is working with the Governor's Action Team, experts in economic development, to develop more specific direction for DEP staff on prioritization of permit applications.

- 2. Comment:** When an application is received, the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations will provide direction to staff on the priority of the permit application. We recommend that DEP develop additional criteria for determining the permit priority based on the hierarchy to avoid biased interpretation and ensure regional consistency. We also recommend these additional criteria be available to the public, and what information is required to make this determination be shared with the applicant. (28, 33, 34, 56, 59, 62, 68)

Response: The Department is working with the Governor's Action Team, experts in economic development, to develop more specific direction for staff on prioritization of permits. If the Department feels moving forward that additional information is needed from the applicant to make a proper determination, then we will communicate this.

- 3. Comment:** In light of the vagueness of these categories in the processing hierarchy, it is necessary to extend the comment period to allow effective comment on these terms. (57)

Response: The Department has made slight adjustments to the hierarchy for clarification purposes and does not agree that this necessitates an extension of the comment period. Further, the Department is working with the Governor's Action Team, experts in economic development, to develop more specific direction for DEP staff on prioritization of permit applications.

- 4. Comment:** Recommend that the Department include in each application that receives prioritized treatment a memo explaining the reasons for prioritization, and identifying the person or persons who made the decision to prioritize. (62)

Response: This is unnecessary, as prioritization is a workload management tool, and thus not a final decision on a permit application by the agency. Further, such an explanation would be a burdensome administrative task for the Department contrary to the process whereby we are improving efficiency and removing steps that add no value.

5. **Comment:** The Department’s conversion from a first in-first out system to an ill-defined permit review hierarchy inappropriately allows the state to pick winners and losers among competing development activities, and without any assurance that its decisions will be made based on any required or recognized economic matrices. A first in/first out basis for all permits appears to be the most equitable, certain, and predictable. (35, 37, 50)

Response: The Department disagrees, and in conjunction with the Governor’s Action Team is developing additional direction for staff on the permit hierarchy, that will be based on recognized economic matrices. Again, prioritization is a workload management tool, and thus not a final decision on a permit application by the agency. It has no effect on a guarantee time for other permit applications under review concurrently.

6. **Comment:** Does the hierarchy apply to technical reviews or completeness reviews or both? (52, 54)

Response: The hierarchy will apply to the permit application as a whole and is not tied to a specific stage of the permit review process.

7. **Comment:** It is not clear how the Permit Decision Guarantee timeframe will be implemented. While anticipated dates are suggested, there appear to be different variations or reasons why that might slide, including the ranking of permits under the Hierarchical Review process. (56, 59)

Response: Prioritization of application review has no effect on a guarantee time for other permit applications under review concurrently. Although all permits will be assigned a prioritization based on the ranking, if a permit qualifies for the Permit Decision Guarantee, the Department has committed to a decision on that permit application within the guaranteed timeframe.

8. **Comment:** The proposed policy may wish to explicitly state that prioritizing permit reviews is strictly an internal DEP decision. Too often, applicants will ask elected officials to intervene. The value of those interventions should be mentioned. (41)

Response: Prioritization of permit reviews appears in the policy under “Department Responsibilities,” as this is solely an internal workload management tool and at the Department’s discretion.

9. **Comment:** Also, in 4(ii), it is unclear by the policy language how a permit application will be deemed a “very large, high-priority economic development project” where the Regional Director will be tasked with coordinating meetings for the Department. (68)

Response: The policy states that when an application is received, the Regional Director, Director of District Mining Operations or Director of District Oil and Gas Operations will provide direction to staff on the priority of the permit application. The Department is working with the Governor's Action Team to develop more specific direction for staff on prioritization of permits.

- 10. Comment:** I would like to address (ii) of the permit review hierarchy. I agree with the overall goal of the draft policy which is to issue permits in a more efficient and timely manner although I believe that the Department's policies should retain the mission of the DEP. See Article I, Section 27 of the amended PA Constitution. The mission does not include bolstering the economy of Pennsylvanian communities. (7)

Response: Article I, Section 27 of the amended PA Constitution does not include the Department's mission. The Department's mission is as follows: "The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment. We will work as partners with individuals, organizations, governments and businesses to prevent pollution and restore our natural resources." The commenter will note that this statement includes businesses as our partners. We will work as partners to foster business and economic development that does not cause pollution and restores our natural resources.

- 11. Comment:** In addition the assessment of job retention and economic benefit to communities needed to prioritize permit applications may be cumbersome both to the regulator and to the permittee. Referencing the world business council for sustainable development, I propose that (b)(ii) read something along the lines of "Applications which promote sustainable development and include (but are not limited to) several of the following: enhancing recyclability; minimizing the consumption of natural resources, reducing energy use; increasing use of renewable resources and reduction of waste streams." (7)

Response: The Department acknowledges the comment but disagrees that this prioritization will be cumbersome for the permittee as the prioritization is a workload management tool and at the sole discretion of the Department. Additionally, the Department is working with the Governor's Action Team to further flesh out the hierarchy categories and provide specific direction to staff.

- 12. Comment:** The District has reservations about the fairness to applicants of the proposed prioritization or hierarchy of permit applications. The proposed hierarchy will unfairly push to the back of the line smaller projects that may have importance locally but which won't have political support or otherwise meet the rather poorly defined standards for public health, safety, environmental or economic benefits. (24)

Response: The Department disagrees that the proposed hierarchy is unfair and as part of the prioritization, the Department will evaluate local importance as a factor in prioritization.

13. **Comment:** This section might as well just read that any politically important projects and those supported by someone having any influence on DEP funding streams will be given first priority. (26)

Response: The Department disagrees with this statement as nowhere in the policy or the hierarchy provision does it mention political influence or interest.

14. **Comment:** It seems that when many of DEP's permitting offices are understaffed (as they have been for years), it seems less than efficient to require the most difficult applications be reviewed before any other types of applications are processed. Where all new applications take a serious time commitment, renewals and amendments often times are literally only a paper trailing exercise. New applications allow more "stuff" to be started on the ground, but amendments, renewals, and similar allow the reviewing entity a chance to ensure compliance with updates to manuals and regulations as well as correct any problems seen with the previously permitted project. (26)

Response: The Department disagrees with the assessment that our offices are understaffed and that amendments and renewals should be processed prior to new applications simply because they may be faster reviews. This is reflected in the proposed hierarchy.

15. **Comment:** AMS agrees that review of permit applications that are necessary to protect the environment/public health, improve the environment, or otherwise needed for projects with significant economic benefits should be prioritized. (31)

Response: The Department acknowledges the support for this provision of the policy.

16. **Comment:** EO 2012-11 directs the Department to "strive to process environmentally-protective applications as expeditiously as possible," meaning that such applications should receive the highest priority. It is important that the hierarchy contained in Section (II)(B)(1) adhere to this directive. In its current form it gives highest priority only to actions protecting the environment against "imminent threats" or actions to restore the environment, which is a narrower class of actions than those that are "environmentally-protective." 12 The final Guidance should clarify that the class of applications in Section (II)(B)(1)(i) is identical to "environmentally protective" applications. Otherwise, the Department should explain why it has chosen to deviate from EO 2012-11. (57)

Response: All applications issued by the Department are environmentally-protective by the nature of their issuance and/or permit conditions. The Department's issuance of protective permits should not be confused with the permit hierarchy outlined in the policy which prioritizes the review of specific permit applications.

17. Comment: It is our assumption that the permit review hierarchy would be practiced within a given industry sector. Namely, a permit for a noncoal mine would “compete” with a permit from another noncoal operation. It would not be prudent to group together all permits across a vast regulated community for the hierarchy analysis as a new permit for a noncoal quarry could not compete with a permit for a petrochemical plant from an economic standpoint. (44, 50)

Response: The commenter’s assumption is incorrect. The hierarchy will be applied to all permits with no deference to industry sector. That being said the example provided is not accurate as the review staff that would be assigned to the example projects would likely not be the same group, and as such the above situation would not be likely to occur.

18. Comment: Dairy producers request that the permit applications for the dairy industry be processed in a manner and time equal to that of other industries and that the Department recognize the importance of expanding farm operations, particularly given the magnitude of the dairy industry to the state’s economic vitality. (25)

Response: The Department agrees as neither the hierarchy nor the policy provide deference to a specific industry sector.

19. Comment: PWIA recommends that the Department include in its operating procedures clear guidance recognizing that all applications pertaining to LFGTE projects, beneficial use of waste and recycling, solid waste disposal and operations, and pollution control equipment installation (e.g., enclosed flare replacement) be designated as within the highest prioritization for permit processing. (28)

Response: The Department will be prioritizing applications according to the hierarchy as outlined in the policy, giving no specific prioritization to industry sectors or technologies.

20. Comment: Also, we question what the phrase “prioritizing permit applications” means in this context. Over what are permit applications to be prioritized? (62)

Response: Permit applications are being prioritized against other permit applications.

21. Comment: When one considers the number of jobs the oil and gas industry has created over the past several years, all oil and gas permits should be included I Hierarchy (ii) of section II.B.1 if they are not otherwise included in Hierarchy (i). (27)

Response: The Department will be prioritizing applications according to the hierarchy as outlined in the policy, giving no specific prioritization to industry sectors or technologies.

22. Comment: Furthermore, since applications will no longer be reviewed in the order in which they were received, it may not be possible for managers to complete their reviews of projects lower in the hierarchy within the allotted timeframes. (47)

Response: The Department disagrees. Permits included in the Permit Decision Guarantee will be decided within the guaranteed timeframe regardless of their prioritization. Additionally, those permit applications in the lowest category of the hierarchy have not been assigned guaranteed timeframes and therefore managers are not held to specific review times.

23. **Comment:** Policy should be revised to require DEP to advise potential applicants in writing at the pre-application meeting but at a minimum prior to permit submittal if the project qualifies as a Priority application for Review. (2)

Response: The Department disagrees. Though prioritization of permits may be a topic of discussion at the Pre-application Conference, the Department will not be able to assign a priority to an application that has not been yet received, and has not been prioritized against applications currently accepted by the Department for review.

24. **Comment:** The term *broader environmental improvement goals* seems very vague and does not exemplify the very clear goals of public and environmental health and safety described in the beginning of priority (i). I recommend eliminating this term. These changes would divide the 2 components (i and ii) into 2 separate, clearly defined goals of health and safety and sustainable development. (7)

Response: The Department acknowledges the comment; however, we do not believe that this term requires additional clarification in the policy.

25. **Comment:** Considering the quantity of applications continually being submitted to all the programs, is there enough time available for the Regional Director, District Mining Manager and District Oil and Gas Manager to effectively review the other in-house applications with the newly submitted and determine priorities? (9)

Response: Yes, there is adequate time for these individuals to review and assign priorities to permit applications, and job descriptions have been updated to reflect this responsibility.

26. **Comment:** It almost appears that every application that could be conceived and received is a priority. Perhaps this is an incorrect interpretation; however, failing that, every application appears to fit at the top of the priority list. It is confusing how this priority evaluation will work when every permit is a priority. (9)

Response: The Department encourages the commenter to revisit the policy as every application will not be categorized as the highest priority.

27. **Comment:** Does the Department have data that provides the percentage of applications that will fall into each category and is there an allotment of time that is relegated for the professional staff to personally review each application and establish the relevant priority status? (9)

Response: The Department has no intention of tracking the percentage of applications that fall into each category. The goal of the Department is to conduct a Completeness Review of each application within ten business days of receipt of the application. This same time period would apply to establishing a permit priority.

28. **Comment:** Please clarify why the majority of the time plans are not reviewed on first come basis. Politics and the environment do not always mix and usually if you are trying to meet a politician demands then the environment ends up losing. Recommend having one or two persons that are designated the reviewers on political projects, so the other applicants can get their projects review in a timely fashion. (10)

Response: A review of permits strictly on first come basis is contrary the new Permit Review Process outlined by the Department and reflects the old and ineffective methods upon which we are trying to improve. Nowhere in the policy or the hierarchy does it mention politics or political influence. The Department is establishing its own priorities for application review as a workload management tool.

29. **Comment:** Please clarify why a transfer of ownership get higher priority of a review then permits that are waiting for renewal. This should not even go to a technical person; this is more of nature of administrative. (10)

Response: Permit renewals, especially those that are administratively extended are less of a priority. Transfers, in many instances, are necessary for property transfers and thus very important to applicants. Some may involve a review by technical staff to ensure that all regulations have been met.

30. **Comment:** Who will determine the hierarchy of general NPDES permits submitted to the Conservation Districts for review? (20)

Response: Guidance for the Conservation Districts on permit prioritization will be included in the Standard operating procedures developed by the Department and will be shared prior to finalization of the policy.

31. **Comment:** We are concerned with the “prioritized” review process. Lehigh County Conservation District (LCCD) has always had the policy of reviewing projects in the order they come through the door. We have provided an “expedited review” process at an additional fee to be done only during overtime hours so as to not disrupt the order or timeliness of the other projects we are reviewing. We are worried not only that the “prioritization” set by DEP may not equally serve all of our regulated public but will also negatively impact the ability of conservation districts to generate revenue. (11)

Response: The Department does not share this concern, and as stated in the policy, it also applies to Conservation Districts that participate in permit reviews delegated by the Department. Moving forward, Conservation Districts will be expected to follow this policy when conducting work on behalf of the Department.

- 32. Comment:** We request that DEP issue guidance on how similar, competing projects proposed by more than one applicant will be prioritized and if a submission holds its place until a final decision is made or if it's reprioritized against new submissions. (19, 33)

Response: Permit applications will be prioritized against other permit applications and may be re-prioritized based on additional permit application submissions. Nonetheless, prioritization has no effect on a guarantee time for other permit applications under review concurrently.

- 33. Comment:** We request that DEP provide a mechanism for individual applicants to indicate their own priorities when submitting multiple applications. (33)

Response: Applicants are welcome to indicate what they believe their application priority to be upon submission; however, the final determination of prioritization will be determined by the Department, as the applicant is not aware of other pending applications and their associated prioritizations.

- 34. Comment:** An Applicant may not meet a threshold as outlined but may believe his/her application qualifies for a higher ranking. It is unclear if an appeal process has been established or considered when an Applicant and the Department differ on ranking. (68)

Response: The priority assigned to the application may not be known by the applicant, nor will there be an appeal process regarding permit prioritizations. Prioritization is a workload management tool and, therefore, not a final decision on a permit application by the agency.

- 35. Comment:** The draft policy document gives a high priority to projects that provide "significant economic benefit to Pennsylvania communities." Unfortunately, many projects seemingly provide large economic benefits to communities in the short term, but may impose long-term costs on future taxpayers due to pollution, subsidence, infrastructure construction and maintenance costs such as roads and other services, aesthetic damage, or diminished residential property values. Therefore, we suggest adding the concept that only truly economically beneficial projects, where all costs are internalized by the proponent, would receive a high priority for permit processing. Other projects which have more overall costs than benefits, or that externalize costs onto taxpayers, should receive a low priority. To accomplish this, we suggest that word "net" before the words "economic benefit." (68)

Response: The Department is working with the Governor's Action Team, experts in economic development, to develop more specific direction for DEP staff on prioritization of permit applications.

- 36. Comment:** The renewal of permits is at the bottom of the proposed Department review hierarchy. Therefore, business transactions inevitable will be delayed while awaiting

permit renewals. This will preclude many real/estate/business transactions from ever occurring. (37)

Response: Permit renewals are a lower priority than other application types, especially those that can be administratively extended, meaning that operations can continue under the current permit while the renewal is pending. The Department believes that in many cases, the referenced business transactions would require a permit transfer, which is higher priority in the hierarchy.

37. **Comment:** PIOGA recommends that the Department publish in each *Pennsylvania Bulletin* the number of applications in each priority queue by regional or district office. (52)

Response: The Department has no plans to publish priority queues by region or Department. This would be an extremely cumbersome and time consuming administrative task which the Department feels would not add value, as prioritization is an internal workload management tool and not a permit decision.

38. **Comment:** Air permitting RFDs should be elevated in the permit review hierarchy. Since RFDs are almost always the first step in the air permitting process, a delay in receiving a response to an RFD results in a delay in the entire process. (42)

Response: The commenter should not assume that the lack of a specific high priority category would mean a delay. Requests for Determination will be assigned a prioritization based on the type of activity proposed and its hierarchy outlined in the policy.

39. **Comment:** The permit review hierarchy calls for new permit applications to be reviewed first; we ask that permit modifications for installation of new equipment also be at the top of the review hierarchy. (42)

Response: Modifications are the second highest priority. Not everything can be a top priority.

40. **Comment:** Commenters request clarification of the categories described in the permit review hierarchy contained in Section (II)(B)(1). Without an explanation of the types of actions each category is meant to comprise, the hierarchy is vague and gives inadequate notice to the public and the regulated community. The Department should provide examples of the types of actions falling under each category for each of its program areas and provide definitions for terms used in the categories. For instance, in the air permitting context it is unclear when, if ever, an “imminent threat” would require a permit application. The Department must define “imminent threat” and other vague terms and develop easy-to-follow standards for the Department’s regions to follow. It is also unclear whether the Department considers permit renewals that incorporate new standards as supporting “the restoration or the environment” or “broader environmental improvement goals.” The entirety of the second category is unclear. Any plan approval

application could conceivably fall within this category under a sufficiently broad reading. (57)

Response: New plan approval applications received by the DEP will be assigned priority by the Regional Air Quality Permitting Section Chief or Regional Air Program Manager based on the permit review hierarchy noted in section II.B of the Permit Review Process and Permit Decision Guarantee (Document Number: 021-2100-001 – Addendum 1). The Section Chief or Air Program Manager may seek direction on the permit review hierarchy from the Regional Director. Such determinations will be made on a case-by-case basis using application-specific information. Air quality permitting decisions will be decided on a case-by-case basis in the event of an “imminent threat” or “imminent danger.” In such circumstances, emergency declarations or orders may be issued as appropriate and necessary.

41. **Comment:** Commenters are also confused about the relationship between the fourth and second priorities. The fourth priority is for “[a]pplications that have been excluded from the Permit Decision Guarantee but are necessary for economic development projects that create jobs and enhance communities.” The criterion “necessary for economic development projects that create jobs and enhance communities” is similar to the criterion in the second priority “necessary for economic development projects that create and/or retain jobs in Pennsylvania.” The second priority appears to apply equally to permits within and without the Permit Decision Guarantee, meaning the fourth priority could overlap with the second. Clarification of the differences between the two criteria would be helpful. (57)

Response: The Department agrees with the comment, and the fourth category has been revised to read “Applications for which the Permit Decision Guarantee” is voided as to not conflict with the second prioritization.

42. **Comment:** Commenters do not understand the reasons for inclusion of the third priority in the hierarchy: “Applications within the Permit Decision Guarantee that meet any of the criteria in 1.(i.) and (ii.) above.” Commenters assume that the text should read “that do not meet any of the criteria.” Otherwise, it is unclear when this third priority would ever be implicated, since any permit (within the Permit Decision Guarantee or not) meeting one of the first two criteria would receive either first or second priority. (52, 57)

Response: The Department agrees with this clarification which is reflected in the final policy. The third criterion captures those permit applications that are part of the Permit Decision Guarantee that by their nature were not categorized into either of the two highest priorities.

43. **Comment:** We would request that the interpretation of these two highest prioritizations include the following: 1) environmental restoration projects, 2) environmental restoration projects that specifically address regulatory compliance issues related to Chesapeake Bay Watershed implementation planning efforts, and 3) environmental restoration projects

that specifically address MS4 environmental compliance measures (NPDES and MS4). (43)

Response: The policy indicates that applications necessary to support the restoration of the environment or that support broader environmental improvement goals are to be considered the highest priority. It seems that the situation described by the commenter would fit into that category.

44. **Comment:** Guidance must be consistent with Pennsylvania’s State Implementation Plan (SIP), which requires the Department to incorporate standards into revised operating permits “as expeditiously as practicable, but not later than 18 months after the promulgation of the standards or regulations.” This type of application should receive the highest priority. Being focused on reducing pollution from existing sources, they should also contribute to the “restoration of the environment” and “broader environmental improvement goals.” (57)

Response: This type of permit application will be assigned a prioritization based on the criteria outlined in the policy. However, if there is a mandated timeframe for review the Department will abide by those timeframes irrespective of assigned prioritization.

45. **Comment:** A more comprehensive and detailed plan for creating permit review priorities must be established. CBF would argue that permits involving public health, safety, and the environment are exactly the type of permits which need final review by supervisors. (51)

Response: The Department agrees and is working with the Governor’s Action team to develop more specific direction for staff on prioritization of permits. In relation to final review by supervisors, all permits receive a final review by a supervisor, regardless of their associated prioritization.

46. **Comment:** Applications that are submitted by a Consent Order should be top priority and reviewed immediately to get the problem fixed. (10)

Response: If a permit review is necessary for the protection of public health, safety or the environment from imminent threats or is necessary to support the restoration of the environment or support broader environmental improvement goals, then it would be assigned the highest priority.

47. **Comment:** LVBA has concern for the plight of a single lot owner who may require environmental permits. The small single lot property owner application will be deprioritized under the PDG policy hierarchy. And, when overall permitting activity returns to higher rates, the small property owners’ problem will be compounded as they continual get pushed to the bottom of the review pile. This is particularly problematic because most applications are apt to receive one deficiency letter, thereby rendering the PDG void and potentially keeping the small property owners’ application at the “bottom of the pile” in state of review limbo. (63)

Response: Prioritization of application review has no effect on a guarantee time for other permit applications under review concurrently. The single lot owner still gets a guaranteed time for a decision.

PERMIT APPLICATION TRACKING

- 1. Comment:** Please clarify if the Department-wide application processing system is different from the system identified as the Department's publicly-available data management system? Please identify whether or not these tracking systems exist and if they would be available to the public or only the Department. (14, 20, 34, 35, 39, 45, 46, 48, 52, 57, 68)

Response: Both of the sections are referring to the Department's eFACTS system; however, while one part references the internal data entry and tracking system, the other references the *eFACTS on the Web* portion which is accessible to the public and available at the following address: <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

The Department will be holding eFACTS on the Web webinar sessions during the month of November and at regular intervals moving forward. The Department encourages you to visit the website below to view the coming schedule of related outreach and webinars. http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21048

- 2. Comment:** An applicant's compliance history will be increasing important under the proposed policy. We request that the DEP focus more critically on closing out violations in eFACTS and work more cooperatively with applicants to do so. If eFACTS will be used to measure performance under the proposed policy, the MSC requests that this system be upgraded accordingly. (33)

Response: The Department agrees with the comment, has added additional criteria to eFACTS to note whether the applicant has an outstanding violation affecting permit issuance; has made some upgrades to the eFACTS system; and plans more upgrades for the coming months. The Department has also recently launched a quality assurance and quality control assessment of eFACTS to evaluate open permits, violations, etc. and close those pending records.

- 3. Comment:** Timeliness of communication is the burden of the applicant. The Department's eFACTS system is an excellent way to track the progress of an application. It is very easy to sign up for an alert and be notified as each step has been completed. (9)

Response: The Department acknowledges the support and has made enhancements to eFACTS that will be implemented in conjunction with the new policy to further increase transparency and streamline application tracking.

4. **Comment:** We recommend that the quarterly reports be available to the public which includes the regulated community and that the reports be discussed with both the Citizens Advisory Council and with the appropriate Advisory Committee. (19, 52)

Response: The Department's current *eFACTS on the Web* system allows the public to track permit applications and receive alerts based on search criteria. At this time, the Department is not planning to distribute summary permit tracking reports, which are generally used for internal workload management and staff performance evaluation.

5. **Comment:** Please explain how Conservation Districts will be involved with the Permit Application Tracking? Will all software, spreadsheets, and access be made available to Conservation Districts to properly carry out these requirements? (20, 22)

Response: The Department is currently reviewing technical specifications and requirements for County Conservation Districts to access the Department's eFACTS system. Some districts have this capability already, while in the interim, others send tracking information to the Department for entry.

6. **Comment:** We encourage the DEP to ensure that the system is publicly available; that it includes a record of the current status of review of permit applications, the priority assignment and the basis for assignment; and if a permit was rejected, why it was rejected. (49)

Response: *eFACTS on the Web* is a publically accessible database that includes information on the current status of a permit. For example, it indicates whether an application qualifies for the Permit Decision Guarantee, its current status and review time; and it will indicate if a permit is denied, whether that denial was the result of the Completeness Review or the Technical Review. In addition to these examples of information the system provides, the Department has made additional enhancements to the system, which will launch concurrently with the finalization of the draft policies. *eFACTS on the Web* will not show a "priority assignment," which is not a tracking mechanism but a workload management tool to be used by supervisors and managers within the agency.

7. **Comment:** The disclaimer allows DEP to deviate from this policy when unnamed circumstances warrant. A procedure needs to be established to notify all impacted parties as well as the public whenever this occurs. (45)

Response: If circumstances require that the Department deviate from this policy, notice will be provided to the impacted parties via the Department's website and eFACTS on the Web.

8. **Comment:** AMS agrees that permit applicants should have the responsibility of tracking the progress of their permits. However, local permitting agencies may not use the same publicly accessible data management system used by PADEP to track permit

applications. Policy should be modified to allow local permitting agencies to develop their own internal permit processing, tracking, review, and reporting procedures. (31)

Response: Section 12(b) of the Pennsylvania Air Pollution Control Act (APCA) provides that “[t]he administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth, which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.” Consequently, the Allegheny County Health Department (ACHD) would not be subject to the provisions of the PDG program, nor would they be expected to use eFACTS. However, the Department strongly encourages the ACHD to develop its own internal permit processing, tracking, review and reporting procedures.

9. **Comment:** Since the Department is responsible for tracking the review of federal or state agencies that may be required for some permit programs, this very important aspect of the process should be clearly assigned. (49)

Response: All tracking of the review of other state or federal agencies is the responsibility of the Application Manager, with support from the Assistant Regional Director as appropriate. The eFACTS data system has the capability to indicate and track other agency review for permit authorizations.

10. **Comment:** Asking the applicant to track permit activities on the public DEP database, which in the past has not always been current, should occur only if DEP can manage that database in an accurate and up-to-date fashion. It is likely that the Department could realize substantial savings simply by keeping eFACTS current. (56, 57, 59)

Response: The Department agrees that data must be accurate and up-to-date and has launched several initiatives to ensure data quality and integrity.

11. **Comment:** The eFACTS on the Web described in the Frequently Asked Questions document is clearly inadequate for informing the public. (45)

Response: The Department disagrees and encourages the commentator to take part in an upcoming webinar that explains the functionality of the *eFACTS on the Web* system.

12. **Comment:** The DEP has taken the positive step to provide transparency of the permit review process and makes this available electronically to the applicant. The applicant may detect delays early in the review process and communicate these concerns with DEP to help remediate any deficiencies. (32)

Response: The Department acknowledges the support as we continue to strive for additional transparency in the Permit Review Process.

COMPLETENESS REVIEW

- 1. Comment:** Dairy producers support the Department's efforts to gather the critical information for a permit review at the front-end of the process, as opposed to a gathering of the information at each stage of the review (25)

Response: The Department agrees, as a complete and technically adequate application is a cornerstone of this policy.

- 2. Comment:** If complete application is going to be required henceforth in the applications at the stage of completeness review, that is a major step forward on the part of the Department, for which the Department is to be commended. This policy appears to expand completeness from a mere clerical check off of listed topics into a genuine consideration of the technical completeness of information. (14)

Response: The Department acknowledges the support for this provision of the policy.

- 3. Comment:** We recognize that the "one-strike" policy that will result in the return of an incomplete application and forfeiture of the application fee will encourage heightened attention to detail on the part of our engineers and consultants. This should result in improved quality of applications being submitted to the Department from all applicants. We hope these decisions will be made judiciously to avoid potential appeals. (40)

Response: The Department agrees and has provisions in place to make such decisions.

- 4. Comment:** The Policy indicates that poor quality applications will be returned. However, the PADEP should publish more detailed guidance on which applications should be returned. (16, 36)

Response: Minor deficiencies will be defined by each Department program area and general guidance will be provided in the program-specific standard operating procedures. The Department encourages applicants to visit the Permit Decision Guarantee website to look for upcoming webinars which will include this as a discussion topic.

<http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

- 5. Comment:** This section indicates that incomplete applications will be "denied." We suggest that, instead, such applications should simply be deemed "incomplete" and returned to the applicant along with an explanation of where more work is needed. The NPS has adopted the latter approach with respect to proposed mining plans of operations, and has found that returning an application with suggestions for improvement is more helpful than outright denial. In addition, returning the application as incomplete, rather than denying it outright, would reduce the need for the multiple review and signature process currently described in paragraph (v). (68)

Response: The Department disagrees, as a complete and technically adequate application is a cornerstone of this policy. The process described by the commenter is the system currently employed by the Department that has proved inefficient and cumbersome.

6. **Comment:** DEP staff should be commended for placing this in print. This is one of the few areas of the policy that specifically state expectations of staff and make a clear point that paper trailing should be kept to the absolute minimum and not used as an excuse to push applications back on applicants because of inconsequential oversights (i.e. no north arrow, misspellings, etc.). (26)

Response: The Department acknowledges the support for this key provision of the policy.

7. **Comment:** Only one NPDES stormwater permit has been denied in Monroe County since 1993. This proposed policy represents a major change in permit processing and it will not succeed unless incomplete applications result in permit denials. (54)

Response: The Department agrees as a complete and technically adequate application is a cornerstone of this policy.

8. **Comment:** With a ten day policy, is it reasonable to reach all levels of management to determine whether an application can be denied due to deficiency? (9)

Response: Yes, the Department believes, that in most cases, this is an appropriate timeframe.

9. **Comment:** Promptly resolving minor deficiencies or omissions with a phone call is a reasonable customer service. There is a need for consistency when addressing applications denied due to lacking required information. Established guidelines need to be adhered to. If the goal is for a quickened permit processing, as it does appear to be, by sending this denial procedure to two management levels upward only detracts from the quicker processing time. It is not exactly clear how the requirements of these provisions 'fit' with this new policy. (9)

Response: The Department appreciates the comment on resolving minor deficiencies. Each program area is developing a standard operating procedure for their permits, which will address the recommendation for established guidelines. All denials are reviewed by management, and have been for some time. Management will continue to review denials under this policy.

10. **Comment:** The reference to minor deficiencies should include examples of things constituting minor deficiencies. (64)

Response: Minor deficiencies are not defined because they are not the same in all cases for all sites. There must be some discretion on the part of Department technical staff.

11. **Comment:** Please define the term complete and technically adequate. (13, 35, 49, 50, 60)

Response: The definition for this term has been added to the policy.

12. **Comment:** To state that an application that fails to meet Dept. requirements for completeness will be denied is contingent on the staff meeting their 10 day review requirement. (13)

Response: The Department disagrees. The ten day time frame is a target and not a requirement. An approval or denial is not contingent on staff meeting the ten day review target time.

13. **Comment:** I'm not sure that applications can be reviewed in 10 days to be sure they are complete and technically adequate addressing all applicable regulatory and statutory requirements. This time crunch will lead to more applications being denied just to meet the time frame. (13)

Response: The Department disagrees. The ten day time frame is a target and not a requirement. The Department believes that establishment of standard operating procedures, the requirement to cite statutory and regulatory citations for every denial, and the review of denial letters by supervisory staff will prevent these work "crunches".

14. **Comment:** Failure to submit a complete and technically adequate application which meets all applicable regulatory and statutory requirements will void any Permit Decision Guarantee. This should not be a blanket decision until a thorough review determines the reasons why certain information is lacking which may be beyond the control of the applicant. If it is deemed a minor deficiency by the DEP the Permit Decision Guarantee remains intact (Completeness Review, (iii)). The language could read: Failure to do so (submit a complete application according to DEP standards) could void any Permit Decision Guarantee. (32)

Response: The Department disagrees and unless a complete and technically adequate application is received by the Department, the Permit Decisions Guarantee will be voided and the application package may be denied, as determined on a case-by-case basis. If required information is lacking, it is the responsibility of the applicant to make the application package whole and ensure it meets Department requirements prior to submission.

A minor deficiency, as determined by the program area, may not void the Permit Decision Guarantee.

15. **Comment:** Acceptance of an application for technical review should be based solely on administrative completeness (i.e. contains all forms, information, fees, etc.) without attempting at such an early stage if the technical information is in sufficient detail or scope. This change will also avoid the conflict with current regulations under several programs that define and require administrative completeness only. (2)

Response: The Department disagrees, as this provision is a hallmark of the new Permit Review Process, which ensures that applications received by the Department are complete and technically adequate. The Department will grant a Permit Decision Guarantee only for complete and technically adequate applications. Where this policy conflicts with statutes or regulations, program staff will follow statutory and regulatory requirements.

16. **Comment:** The creep of technical comments occurring during a completeness review is a source of concern for LVBA. Administrative reviews should remain just that – review of the submission’s administrative completeness. The trend to incorporate technical review prematurely can short-circuit applications dealing with many variations due to, for example, unique soil conditions. (63)

Response: The Department disagrees. There is no longer an “administrative review.” The completeness review will determine if an application is complete and technically adequate but will not consist of a technical review. Permit review staff will not develop technical comments or deficiencies during a completeness review.

17. **Comment:** The NPS recommends clarifying two points: (1) here, the Application Manager is identified as the staff to determine completeness, but above in Section III.B.5.(iii) states the Program Manager or District Manager will be responsible for making that decision. (68)

Response: While the Application Manager is responsible for conducting the Completeness Review and ultimately making a recommendation regarding completeness, in the case of a denial, the appropriate Program Manager or District Manager will review the recommendation to ensure consistency and adherence to Standard operating procedures.

18. **Comment:** LVBA welcomes the Department’s change in policy regarding obtaining PNDI clearances during the review process. (63)

Response: The Department acknowledges the support for this change and continues to work with resource agencies to streamline this and other processes.

19. **Comment:** We understand that the permit review process will apply to all permits whether or not they are listed in Appendix A. NPDES IW Facility permit renewals and Title V Permit renewals are not included in Appendix A of the policy. By regulation, if the permit renewal application is complete and submitted within the regulatory time period, the permit is administratively extended whenever the Department does not issue the renewal by the expiration date of that permit. For these types of permits, the Department should ensure that completeness letters continue to be issued promptly (as this is the permittee’s documentation that they have met the requirements) and that any issues that arise during the technical review are resolved through communication with the permittee. (49)

Response: Applicants will be able to check on the status of their application packages through *eFACTS on the Web*. <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

20. **Comment:** We support including the permit application checklist mentioned in section (iii) as a component to the completeness review because it is critical to the process. Even though specific items on a checklist may not be required by statute or regulation, Chapter 102.8 requires “additional information requested by the Department.” For example, drainage area mapping is an integral part of both the Erosion and Sediment Control and Post Construction Stormwater Management Plan design process and a technical review cannot proceed if this mapping is missing or inaccurate. (54)

Response: The Department acknowledges support for this component and is in the process of developing these checklists.

21. **Comment:** Since most completeness reviews are done by conservation districts, this will place an additional workload on DEP regional offices, and may affect the timing of the completeness review. Therefore the policy should specify that the completeness review must be *addressed* within 10 business days, which means that the Application Manager with either place a telephone call to the applicant and consultant, recommend permit denial, issue an Acceptance Letter or recommend an Acceptance Letter to the ARD within 10 business days. (54)

Response: While some completeness reviews are done by Conservation Districts, the Department also conducts these reviews. The policy indicates that completeness reviews should be conducted within ten business days.

22. **Comment:** Please clarify why an application manager if making the phone call for minor project cannot decide if a letter is needed or not. This decision if the program manager or regional chief wants a letter then the application manager should review with his superiors prior to making the phone call. (10)

Response: The Application Manager may decide, based on program-specific Standard operating procedures, whether an error or omission in an application would be minor and could be addressed with a phone call or is major and does not meet a statutory requirement. If appropriate, the manager would deny the application.

23. **Comment:** To avoid circumstances where a permit application determined to be incomplete based on an honest misunderstanding or requirements, or based on a deficiency that is not material or can be quickly rectified, we suggest prompt use of email, telephone fax with the applicant or consultant be encouraged during the completeness review, and that the Department accept documents delivered electronically to address and satisfy deficiencies. (40)

Response: The Department agrees.

24. **Comment:** AMS agrees that minor deficiencies in permit applications should be addressed in an expedient manner if possible. Accordingly, Section IILB.5.(iii) should be modified to allow for PADEP and local permitting agencies to communicate with permit applicants over email, as well as telephone, to resolve such minor deficiencies. (31)

Response: The Application Manager may decide, based on program-specific standard operating procedures whether an error or omission in an application would be minor and could be addressed with a phone call or is major and does not meet a statutory requirement and if appropriate would be denied.

25. **Comment:** Please clarify, DEP or the applicant -- is responsible for correcting the “minor deficiencies or omissions” on paper once those deficiencies or omissions have been discussed among the parties. We suggest that the burden of making these corrections -- like all permit application corrections -- should clearly rest on the applicant, not on the DEP. (68)

Response: The application package and any necessary corrections are the responsibility of the applicant; however, DEP will be responsible for notifying the applicant of those deficiencies.

26. **Comment:** Item (iii) notes that minor deficiencies or omissions should be addressed through a telephone call with the applicant and consultant. It should be stated that the telephone call will be initiated by the Department’s Application Manager, as the applicant and the consultant will be unaware of the need for the communication. (64)

Response: The Completeness Review is under “Department Responsibilities” in the policy and as such it is the responsibility of the Department to notify the applicant. We do not feel this inclusion is necessary.

27. **Comment:** The draft policy states that “Minor deficiencies or omissions that can be easily corrected should be addressed through a telephone call with the applicant and consultant.” It is imperative that appropriate record keeping procedures be followed when this occurs. Procedures for recording summaries of phone relevant phone conversations should be described in this policy. (45)

Response: Procedures for recording summaries of phone calls as part of the application record will continue, though this policy is not the appropriate place to outline these procedures. Standard operating procedures will provide details by program.

28. **Comment:** We are concerned that “minor deficiencies or omissions” are not defined in the draft policy and could be widely interpreted by permit reviewers. (10, 35, 44, 46, 48, 50, 68)

Response: Minor deficiencies will be defined by each Department program area and general guidance and will be provided in the program-specific standard operating procedures. The Department encourages applicants to visit the Permit Decision

Guarantee website to look for upcoming webinars which will include this as a discussion topic: <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

- 29. Comment:** Provide the Applicant with 30 days to respond to a notice of denial, either by providing the missing information and explaining why it was a minor omission, or by requesting a meeting with the Permit Manager to discuss the matter. (23)

Response: The Department disagrees, as this is contrary to the spirit and letter of the procedures outlined in the policy. The above process will be used, with varying timeframes, to allow for receipt and response to deficiency letters, not notices of denials.

- 30. Comment:** An application should not be denied for minor and easily corrected administrative omissions and errors and the Applicant should be given the opportunity to question any such denial. That is, the Application Manager should not be given carte blanche to deny an application with no recourse by the Applicant. (23)

Response: The Department agrees and the policy has been written so that minor deficiencies and omissions may be corrected and not automatically denied. While the Application Manager is responsible for conducting the Completeness Review and ultimately making a recommendation regarding completeness, in the case of a denial, the appropriate Program Manager or District Manager will review the recommendation to ensure consistency and adherence to Standard operating procedures.

- 31. Comment:** It is stated that minor deficiencies or omissions that can be easily corrected should be addressed through a telephone call with the applicant or consultant. This type of discretion will result in differing views of Minor or Major Deficiencies. If the reviewer cannot approve the application as submitted, a comment letter should be written. (22)

Response: The Department disagrees, and believes that in some instances a phone call or email asking for clarification or materials for a minor deficiency or omission is the proper course of action. Standard operating procedures are being drafted for each program area to assist staff in making consistent decisions on this issue.

- 32. Comment:** Does the clock stop for a “minor” deficiency that was addressed via telephone? If so, how will this be tracked? How long does the consultant/applicant have to address these “minor” issues? (22)

Response: In the Permit Review Process, there is no clock to stop, minor deficiency or not. The timeframe that an applicant has to address a minor deficiency will be indicated by the program area; though generally upon notification of a minor issue, it should be corrected within the same business day.

- 33. Comment:** We are encouraged that minor deficiencies or omissions will be addressed through informal means and support that approach. We also appreciate the department’s intent to provide consistent implementation of its statute, regulation, or guidance.

Providing applicants with specific citations where applications deemed incomplete would be beneficial. (34)

Response: The Department acknowledges the support for this provision of the policy.

34. **Comment:** The District recommends that minor deficiencies be addressed via a phone call and/or follow-up email to the plan preparer. Emails provide written documentation for the project file and allows other parties to be copied. (20)

Response: Department staff will continue to keep appropriate and complete written records in the application file. This is also the current procedure.

35. **Comment:** If the “minor” deficiency policy will remain, perhaps there should be a limit put on the applicant to respond, and failure to respond within that timeframe will result in the letter, and being out of the Guarantee. (22)

Response: A minor deficiency is one that an applicant will be able to respond to or remedy immediately. In the case of a deficiency, program-specific standard operating procedures will indicate how long an applicant has to respond to a deficiency. Upon issuance of a technical deficiency letter, with an exception for complex projects, the Permit Decision Guarantee will be voided at that time. Failure to respond to a deficiency within the allotted timeframe may result in a denial of an application.

36. **Comment:** Before this policy is effective, Program Managers must develop guidance regarding minor deficiencies and omissions mentioned in section (iii) in order to promote consistency among conservation districts and DEP regional offices. An example of a common deficiency is the failure to comply with the Act 67/68/127 municipal coordination process at the time of application. While this deficiency is easily corrected, the resolution can take as long as 30 days. Is this a minor deficiency or one that would result in permit denial? The guidance developed by Program Managers should include how much time an applicant is given to correct a minor deficiency addressed through a telephone call. (54)

Response: Program-specific standard operating procedures will include further clarification for staff on minor deficiencies and omissions to promote consistency among regions. The application should not be submitted until Act 67/68/127 municipal coordination, as well as any other completeness deficiencies, have been resolved.

37. **Comment:** The policy should also specify that an application that contains a combination of minor and major deficiencies is incomplete and will be denied by the Department. This will avoid the correction of minor deficiencies/omissions in a piecemeal fashion, which requires an excessive amount of time and tracking by the Application Manager. (54)

Response: The Department agrees, and any major deficiency identified by the Department during the course of the Completeness Review will result in a denial, unless otherwise stated in statute or regulation.

38. **Comment:** The first paragraph is unclear, suggest it be revised to read “*Complete applications will be subject to a detailed technical review. The acceptance letter will be used to notify applicants ~~Applicants will be notified~~ in writing of technical deficiencies discovered during the Department review. In most cases Applicants will have one opportunity...*” This section also references a footnote. The information in the footnote provides important clarification and should be moved into the body of the Policy, not included as a footnote. (19)

Response: The Department acknowledges the comment, though we do not believe the recommendation would provide additional clarity. Acceptance letters would not be used to notify applicants of deficiencies.

39. **Comment:** Under the new Permit Review Process, if a permit application is deficient and has to be returned twice it will void the Permit Decision Guarantee. However, a footnote to the policy reads: “More technically complex projects and applications (e.g. major plan approvals) may receive additional deficiency letters as appropriate prior to a decision point”. This exception will not void inclusion in the Permit Decision Guarantee...” Determining the extent of complexity may be a subjective decision by the DEP. The permits required for agriculture are inherently complex and should be afforded the opportunity to remain in the Permit Decision Guarantee even if minimal technical errors are discovered. A thorough review should ascertain if there are valid reasons accounting for technical deficiencies. (32)

Response: Under the new process, if there is any deficiency noted in the application, this immediately voids the Permit Decision Guarantee. The exception is for complex projects that are denoted with an asterisk in Appendix A.

40. **Comment:** The process of logging in applications (section (i)) must be established before this policy is published as final. This is especially critical for conservation districts that receive applications on behalf of DEP. (54)

Response: The Department has an established process for logging in applications. Additional details will be included if necessary in the program-specific standard operating procedures.

41. **Comment:** Submitting a complete and technically adequate application, I would like to see one NPDES plan that did not have anything wrong with it. All the plans that have been sent up to NERO have come back with comments even when a pre-application meeting has occurred with DEP and the district. (11)

Response: The Department agrees and this example highlights the need for the new Permit Review Process that emphasizes strong communication through Pre-Application meetings, outreach and training to the regions and improved checklists to address this very type of situation.

42. **Comment:** The completeness review discussed here, however, is not clearly distinguished from the subsequent review for “technical deficiencies” discussed on Pages 9 and 10. Clarification would be helpful. (14)

Response: Both of these terms now have complete definitions in the policy.

43. **Comment:** We request an explanation for the Department’s belief that the 10 day turnaround for completeness determinations is appropriate for all applications submitted to the Department, in particular for applications for plan approvals and operating permits, for which Pennsylvania’s air regulations currently prescribe periods of 30 days and 60 days, respectively. (57)

Response: The ten-day timeframe for the Completeness Review is a recommendation, not a strict directive for staff. The commenter is correct. This timeframe may not be appropriate for all applications. Additionally, where regulations currently prescribe timeframes for specific steps of the review process, they supersede the policy.

44. **Comment:** “Completeness Review” allows for only 10 business days to determine the completeness and the technical adequacy of applications/plans. This is unreasonable depending on the size and complexity of the project and shortage of DEP reviewers. (20)

Response: The ten-day timeframe for the Completeness Review is a recommendation, not a strict directive for staff. The commenter is correct. This timeframe may not be appropriate for all applications.

45. **Comment:** The policy states that Completeness Reviews should take no longer than 10 days. This should state will take no longer than 10 days. If the 10 day review period is missed, an immediate phone call shall be made to the applicant stating the reason for the delay and the anticipated date the review will be finished. DEP should develop internal guidelines to enable that all standard completeness reviews occur within, or as close as possible to the 10 day period. (56, 59)

Response: The Department disagrees. This is a public policy document that describes the process by which DEP will review permit applications. It is not, nor is it intended to be, a management directive for DEP staff.

46. **Comment:** The applicant should be afforded a reasonable opportunity to supplement the application to meet the completeness criteria. We recommend that the completeness review timeframe be changed from 10 business days to 5 business days. (64)

Response: The Department disagrees, as receipt of a complete and technically adequate application is a key aspect of the new Permit Review Process. The Department believes that ten business days to make this determination is reasonable, based on normal workload and workflow.

47. Comment: We strongly doubt whether ten days is long enough for PADEP to review all relevant applications. In the case of permits requiring complex and voluminous applications (e.g., applications for underground mining permits and landfill permits), we doubt that a completeness review could ever be accomplished in ten days, at least at PADEP's current staffing levels. We urge a more flexible approach for any completeness review period – i.e., an approach that allows for necessary deviations and sets different review periods for different permit applications, depending on their typical complexity and bulk. (62)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy. The ten-day timeframe for the Completeness Review is a recommendation, not a strict directive for staff. Further, the Department believes that ten business days to make this determination is reasonable, based on normal workload and workflow.

48. Comment: Section III B.5 iii states that the completeness review will be performed within ten business days. It is recommended that this timeframe be shortened to five business days, which has historically been used as the timeframe for most completeness reviews. (33)

Response: The Department believes that ten business days to make this determination is reasonable, based on normal workload and workflow.

49. Comment: It is unclear the timeframe for an Acceptance or Denial letter. Does the ten business-day timeframe apply to the completeness review and the receipt of an Acceptance or Denial letter by the Department? Because there appears to be multiple levels of review and approval, ten business days may not be sufficient for completeness and letter submission to the Applicant. However, if the letter development, review and approval, and receipt by the Applicant are expected to take longer than ten business days, this should be included in the policy. (68)

Response: The completeness review should be conducted by the Department within the ten day timeframe and notification to the applicant of the outcome of this review will be available on *eFACTS on the Web*:

<http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

50. Comment: The District suggests that twenty days would be a more reasonable timeframe to determine if applications are “complete and technically adequate” given the amount of information that is submitted with Individual NPDES permits for construction activities. (24)

Response: While the ten-day timeframe may not be appropriate for all applications, it is currently the target. Moving forward, it will be revised if deemed necessary.

51. Comment: The department should consider a deemed complete deadline for applications. Standard permit reviews should have an administrative review period

(five days) and should this time lapse, the permit application should be deemed to be complete. (33)

Response: The Department disagrees. There is no longer an “administrative review” and the Department feels that ten days is an appropriate timeframe. The Department would need specific legal authority to implement a “deemed complete” process.

52. **Comment:** It is not apparent that the Department has sufficient qualified staff available in all programs to accomplish completeness reviews within ten business days, particularly an evaluation of technical completeness for large and complex projects.....perhaps the completeness review time should be based on the expected review time calculated as a percentage (e.g. 10%) of the overall expected review time. (14)

Response: The Department believes there is sufficient staff to conduct completeness reviews within the timeframe established in the policy. If at some point in the future, this timeframe requires adjustment, the Department will give that due consideration.

53. **Comment:** The NPS recommends clarification as to how federal law and regulations will be satisfied even though the policy allows for only ten business days to determine a completeness review. There may be several permit programs that include federal requirements that far exceed a ten business-day timeframe. (68)

Response: The Applicability section of the policy states that the policy is not to be applied where it conflicts with statutory or regulatory requirements.

54. **Comment:** There is generally a continuous range of missing, limited, or erroneous information supplied in most air permit applications. We believe the policy will decrease the number of poor quality applications received and it will require staff review right away (within 10 days) further reducing the time from application receipt to issuance. (16)

Response: The Department agrees and appreciates the commenter’s support. The Department anticipates that the number of deficient applications will decrease as the Department implements the new Permit Review Process.

55. **Comment:** (iv) (Page 9) The final sentence is not clear. Suggest it be revised to read “*The date of the acceptance letter begins the DEP processing time calculation for the application does not begin until it is deemed by the Application Manager to be a complete application.*” (19)

Response: The Department acknowledges the recommendation, but does not feel this clarification is necessary.

56. **Comment:** B.5.v appears to conflict with Chapter 102.6(c)(2). This section states that if an application is deemed incomplete and the applicant chooses to resubmit the package it will be treated as a new application. Does this mean that it will require additional new

fees? Chapter 102.6(c)(2) allows the applicant 60 days to provide the missing information. (20)

Response: The Applicability section of the policy states that the policy is not to be applied where it conflicts with statutory or regulatory requirements.

57. **Comment:** The recognition in subparagraph (iii) that not all errors should be used as an excuse by DEP staff to avoid the policy is welcome, but needs to be made stronger and clearer. (23)

Response: When denying an application staff is now required to cite a specific regulatory or statutory citation. The Department believes this language in the policy is strong and clear.

58. **Comment:** Applications which have a significant defect or lack critical information should be returned, requiring a new application, or denied. The Department should not be required to adhere to a particular review timeline in order to benefit the applicant, if the applicant is not also required to submit all necessary documentation and information on an equally strict basis. (61)

Response: The Department agrees. As per the policy, applications that have a significant defect or lack critical information will be denied. Additionally, when an application is found to have a deficiency, the Permit Decision Guarantee will be voided.

59. **Comment:** Focusing limited staff resources on meeting unreasonable permit processing timeframes will compromise other key environmental protection and compliance activities important to our county residents. (24)

Response: The Department disagrees that unreasonable permit processing timeframes have been established by the policy for completeness, technical or otherwise. The Department believes that no provision of this policy will compromise environmental protection or compliance.

60. **Comment:** If the DEP creates an electronic permitting process the administrative review period should be eliminated as the process would be incorporated into the electronic submission process. Any administrative review time should be included in the overall review time for the appropriate permit. (33)

Response: The Department will consider this as we move forward with electronic permitting initiatives.

61. **Comment:** It is recommended that letters to deny permit applications as incomplete be reviewed and approved by Regional Directors or the Director of District Oil and Gas Operations. (33)

Response: The policy indicates that for denials at this stage, the denial letter will be reviewed by the Section Chief and Program Manager, or, for the District Oil and Gas or District Mining Offices, the Permits Chief or Manager. The Department feels this is the appropriate level of oversight for review of these letters.

62. **Comment:** The NPS suggests the Department include modeling protocols as a part of a complete package. (68)

Response: This is a program-specific issue, and is the type of thing item that will be addressed in the program-specific standard operating procedure.

63. **Comment:** The NPS suggests the Department clarify that the processing time for those applications that fall under the Permit Decision Guarantee policy begins when an Acceptance Letter is sent to the Applicant and not when the Application Manager (or Program Manager/District Manager) deems the application complete. A letter signed by the Application Manager (or Program Manager/District Manager) would serve as better documentation than an internal decision that may not be tracked, unless it is envisioned that the public tracking system identified in Section III.A.3 would track when the Application Manager (or Program Manager/District Manager) deems an application to be complete. (68)

Response: The public tracking system will track and notify the applicant when an application is deemed to be complete.

64. **Comment:** Presumably, since completeness review entails only a determination of whether an applicant has submitted all the information required of it, this directive refers to the various provisions in PADEP's regulations that allow PADEP to waive certain submissions in certain circumstances. We are skeptical of the prudence of "statewide interpretations" of these provisions. Staff should have the discretion to ensure that all information relevant to a permit application is submitted by the applicant. (62)

Response: While staff will still have the discretion to apply their best professional judgment, standard operating procedures will ensure that there is one Department interpretation of the regulations that is consistently applied across all regions.

65. **Comment:** Under Item 5(ii), checks accompanying applications will be processed by administrative staff in accordance with the fee processing policy. Because the completeness review is one small portion of the overall permit application review and to alleviate any inducement to collect fees alone, fees should be due within ten days after an application has been deemed complete and technically adequate. (35)

Response: The Department disagrees and believes this would create a burdensome administrative process as part of an initiative that is designed to eliminate such steps.

66. **Comment:** Additionally, because staff performance will be measured by processing time, we have concerns that many permit applications will not make it past the completeness

review in order to meet processing time goals, i.e., if a permit application does not come into the system, it cannot be added to staff workloads. (35, 46, 48, 50)

Response: The Department does not share this concern and believes that this will be addressed through the establishment of Standard Operating Procedures, the requirement to cite statutory and regulatory citations for every denial, and the review of denial letters by supervisory staff.

67. **Comment:** Some applications require publication of public notice upon submittal of the application. Should applicants delay such publications until notified by the Department that the application has been deemed complete? (52)

Response: The new procedures in the policy do not affect any existing legal requirements for applicants to meet public notice requirements in regulation.

68. **Comment:** Under “Completeness Review,” again change to active voice in the first two paragraphs. Your use of passive leaves the party conducting that review open to misinterpretation. (41)

Response: The Department acknowledges the comment and the final policy has been revised to state that Department staff conduct the Completeness Review.

69. **Comment:** We strongly urge DEP to offer a hearing to the applicant if DEP deems an application incomplete during the completeness review stage especially in light that an amended application would be classified as a new application. The reasoning is that the noncoal industry is burdened with a substantial financial investment for each permit (new, major modification, minor modification) submitted to DEP. Our recommendation is that a minimal fee (not greater than 10% of the non-coal permit fee schedule set by DEP) is accepted by DEP to facilitate the initial completeness review and the remainder of the application fee is returned if the application is deemed incomplete. (44, 50)

Response: The Department disagrees and believes this would create a burdensome administrative process as part of an initiative that is designed to eliminate such steps. Please refer to Appendix A of the policy to see if any of the applications in question are considered to be complex applications, with slightly different requirements.

70. **Comment:** One of the purposes of the policy is “to provide certain and predictable review timeframes for applicants who submit complete, technically adequate applications”. However the permit application will not qualify (section 1.A on page 1) for the Permit Decision Guarantee until the plan is “technically adequate” and that cannot be determined until a technical review has been completed by Department and/or Conservation District staff so it would appear in the case of a new NPDES (E&S) permit that the permit decision guarantee timeframe of 107 business days (Appendix A) would only start once the technical review process has been completed and the plan found to be “technically adequate.” This appears to allow the Department or Conservation District up to 107 business days after completing the technical plan review to simply generate a

permit or plan approval or denial letter. How is this “timely”? At York CCD we attempt to have permits issued and plan approval letters in the mail within 3 business days of completing the technical plan review. (20)

Response: The 107 business days referenced would begin after the completeness review which is not a technical review. The completeness review is to take no longer than ten business days, so the Conservation District’s review of the permit and the guarantee timeframe should commence no later than ten days after the receipt of that application.

71. **Comment:** The concern is that the proposed process will place undue burdens on smaller projects by limiting the flexibility of permit reviewers and placing increased expectations on permit applicants. For example, this office recently received an application for an NPDES stormwater permit renewal for a small commercial development on the day before the permit was to expire. While this is a violation of permit conditions, this office currently has the flexibility to accept the application for review. Under the proposed process, this application would be denied because it does not meet regulatory obligations for a number of reasons. (54)

Response: The commenter is correct in that the new policy places increased expectations on permit applicants; however, the policy does not impact the ability of the Department to use its discretion in instances where it may be appropriate.

72. **Comment:** Not being able to apply for a permit until a PNDI review is cleared is a major delay in obtaining a permit. There are no time frames for these requests to be reviewed and many times there is not action by the agency if the Applicant does not follow up on their requests. DEP must impose a responsible time-frame for these PNDI reviews to be completed. (13)

Response: The Department is currently developing proposed revisions to its PNDI policy. One component being considered is that, unless required by statute or regulation, the Department will conduct a review of the permit application that will run concurrently with the Pennsylvania Natural Diversity Index (PNDI) clearance process. The revised policy is expected to be published for public comment soon.

73. **Comment:** The use of electronic communication (e-mail, telephone, fax) by reviewers and applicants to quickly clarify or address real or perceived deficiencies in an application should be encouraged, particularly before issuance of a technical deficiency letter. (40)

Response: The Department agrees and the Permit Review Process stresses the importance of communication between DEP and the applicant. In some instances, such communication may not negate the need for a technical deficiency letter. However, staff is encouraged in these instances to, whenever possible, engage applicants in a meaningful discussion rather than through written correspondence back-and-forth can delay that may delay the review process.

74. **Comment:** The policy encourages telephone calls with consultants to discuss deficiencies. While the District is generally not opposed to this approach, and in fact utilizes it already, we encourage DEP to develop a protocol to ensure that all employees effectively document these communications for records completeness and decision transparency. The policy should not, in any way, interfere with the ability of the public to be informed about how decisions are made and to participate at every step in the permitting process. (24, 57)

Response: The Department agrees and will continue its practice of keeping complete and up-to-date information in the permit file regarding conversations and discussion that may ultimately lead to permit decisions.

75. **Comment:** We support maintaining open lines of communication between the Department and Industry and request that to the extent possible this be expedited by the use of email rather than a tag system of telephone calls. This will increase the measure of accountability. Language should be considered such that a telephone call may be utilized as the primary mode of contact; however, upon request by the applicant and consultant, email correspondence or other electronic format may be utilized. (29, 35, 46, 48, 59)

Response: The Department acknowledges the comment and agrees that in some situations, documented communications are necessary and the applicant may request that specifically. The purpose of that language was not to circumvent any documentation; rather, to provide the Department and applicant a quick and easy means to discuss minor deficiencies and make quick clarifications without the additional delay that written communication can often add to the process.

76. **Comment:** We do not support the Applicant's responsibility to remain in contact with the Department throughout the design of the project. The Department does not have time for this, and it is not their responsibility. The Applicant is responsible for the quality of their submission. At the very least, the Department must be given some discretion not to respond to every inquiry or some Applicants and their consultants will be contacting the Department every day. (54)

Response: We are public servants at DEP, as are the staff in delegated agencies that perform work for us. We have an obligation to respond to all inquiries, especially those concerning applications for activities that are important to the citizens we serve. In our experience, an open line of communication is the best way to resolve potential issues before applications are submitted to the Department.

77. **Comment:** We recommend adding all associated or interested parties including federal and state regulatory agencies to "open lines of communication with the Applicant." (68)

Response: The Department agrees with the recommendation to edit the text to stress communication with other entities, and has done so in the final policy.

TECHNICAL REVIEW

- 1. Comment:** On the timeframes in this policy does the time stop after comments are sent back to the engineering community and restart when their response comes back or does the time keep going? If the time clock keeps running and time runs out, I do not think the development community would like to pay all the fees again and start over. (11)

Response: The clock keeps running after a deficiency letter is sent back to the applicant or consultant. However, when a deficiency letter is issued, the Permit Decision Guarantee no longer applies; and as such, there would be no risk of time running out. The applicant would respond to the deficiency letter within the timeframe specified by the Department for that particular permit and the review would proceed forward, however with no guaranteed timeframe.

- 2. Comment:** Once reviewed and the applicant addresses those comments, the reviewer or manager or Regional chief, should not be allowed to make additional comments unless the project changes drastically. (10)

Response: The Department disagrees, as the Application Manager will review those materials submitted by the applicant to address any comments or deficiencies to determine if they are adequate and provide sufficient response. The Manager or Permitting Chief will have already reviewed the deficiency letter sent to the applicant, so the opportunity for additional comment is limited, however the Department reserves the right to comment or issue technical deficiencies on any permit application up until a final decision review.

- 3. Comment:** Apparently applicants are now to be given two chances to clarify information regarding their projects, but no chance to adjust it after the Department review except by filing a new application. That is not an unreasonable policy, although it may garner opposition from the regulated community. It appears aimed at giving applicants a strong incentive to design their projects properly before submitting complete and internally consistent applications to the Department. (14)

Response: The Department believes the commenter is referring to the Elevated Review provision outlined in the policy. The Elevated Review provision can be described as follows: If a response to a deficiency letter is not received timely, does not contain the requested information, or does not adequately address the noted deficiencies, the application review will be elevated to the manager or director level for resolution with the applicant. If that elevation fails to resolve the deficiencies or at least provide a path forward for doing so, the application maybe denied. Note that if considered a technically complex authorization type the application may continue through a second deficiency letter. The commenter is also referring to the section in the policy that states after the Department has begun its review of an application any substantive design changes will require submission of a new application.

4. **Comment:** If you choose to indicate that any technically-inadequate permit application voids the guarantee, you might as well state that DEP is putting that paragraph in there in case the workload increases to a point where the staff can't meet the timeframes, in which case they will find a tech deficiency to give to so that the PDG doesn't apply. (26)

Response: In accordance with the policy, when Department staff denies an application based on incompleteness or issue a deficiency letter, it must include the regulatory or statutory citations for the deficiency or denial. This ensures that only those applications not meeting statutory or regulatory requirements will be denied and/or void the Permit Decision Guarantee.

5. **Comment:** Subsection A.2 Proposed text revision: "Once an application has been accepted by the department as complete, and substantive project or **major** design change(s) as **determined by the PaDEP Program Manager** to that application made by the applicants ~~will~~ **may** require a new application to be submitted following appropriate program requirements and procedures and, as applicable, ~~will~~ **may** void the Permit Decision guarantee. **Any major changes that cannot be made by the applicant within the established response timeframe will require a new application or be subject to the Elevated Review Process (Section 111 B.7) as determined by the PaDEP program Manager.** (29)

Response: The Department agrees with the commenter and has adjusted the policy accordingly. There may be instances whereby the applicant is required to make changes to the project as a result of Department guidance, public comment, or in order to minimize environmental impacts. These types of changes will not require a new application; however, when the change is made as a choice of the applicant, these changes will require a new permit.

6. **Comment:** The policy states that during the technical review, the permit writer may "not rely on personal preference or opinion, or regional interpretation of statute, regulation or guidance that is inconsistent with the Department's statewide interpretation." The policy does not provide any recourse if the permittee is of the opinion that the regional office personnel are not following this provision or any other provision of the policy. The Department should include in the policy a process for evaluation of the DEP's performance by an impartial evaluator if requested by the permittee. (49)

Response: Such a route is provided by the Elevated Review Process.

7. **Comment:** Not "stopping the clock" while the designer/engineer is responding to our comments which will also likely have an impact on their municipal review process seems burdensome and unrealistic. It may take over a month just to get onto a meeting schedule at the townships. (11)

Response: The clock begins when the application is deemed complete and has begun the technical review. The clock will not stop until a final permit decision has been rendered.

The Department will not be stopping the clock during the applicant's response to comments as it's the Department belief that the improved communication, focus on pre-application meetings, streamlined checklists and permits will eliminate the need for the back-and-forth between the Department and the applicant.

8. **Comment:** The Policy states that applicants may be denied if they possess technical deficiencies after two technical reviews. If the applicant does not meet all applicable technical, regulatory and statutory requirements a thorough review should determine if it is due to negligence or a situation beyond control of the applicant. Only then should a decision be made whether to communicate further with the applicant or deny the application. (32)

Response: Those discussions can occur during the Elevated Review Process and be part of the path forward toward resolution resulting from meetings between the applicant and the regional director. The decision to deny will not be made lightly. Generally, denials will occur if there is no agreed-upon resolution at the end of that meeting.

9. **Comment:** Design drawings for projects are submitted under the review of a registered professional engineer. During review, comments are being presented that question the specifications of the design item in question. It is our understanding that unless the reviewer is a professional engineer, he or she has no right to comment on any specifications of any design items unless that item is not in conformance with regulations. (21)

Response: That understanding is incorrect. As long as the reviewer is under the responsible charge of a licensed engineer, they may provide comments on a design. Further, determination of whether or not an application complies with regulations and statutes is not always an engineering issue. In those cases, staff does not need to be under responsible charge of a licensed engineer to note deficiencies.

10. **Comment:** Dairy producers recommend that the permitting process utilize and engage those who are experienced and knowledgeable practitioners in the particular discipline under review... individuals who understand and have worked dairy operations for example. (25)

Response: While a good suggestion, it may not always be possible for Department staff to have experience in all fields. As part of DEP's new business process being implemented under this policy, the Department recognizes the need for our staff to have additional and specialized training, and would look to groups like the dairy producers for ideas and opportunities for such instruction.

11. **Comment:** The Department needs to be open to creative solutions developed by design professionals, which may make the difference in allowing projects that might not otherwise be considered viable—and which could produce substantial environmental improvements—the opportunity to go forward. This is often the case with redevelopment projects, many of which provide an opportunity to remediate past environmental damage

while creating economic growth. PBA also believes that the Department should consider how companies that develop creative solutions and new technologies receive proper credit for those initiatives as it implements the Permit Decision Guarantee Program. (60)

Response: The Department is always open to creative and innovative solutions to authorizing activities while achieving compliance with statutes and regulations. However, DEP points out to applicants and consultants that most of the time solutions that do not “fit the molds” that have been developed for our staff to follow take longer to evaluate for compliance purposes, sacrificing processing predictability. The greatest process reliability is achieved when a proposed project is designed in accordance with statutes and regulations, as well as existing Department guidance which contain the Department’s preferred means to meet regulatory requirements.

12. **Comment:** The DEP webinar training indicated that “if a technical deficiency letter is needed, then there is no decision guarantee and it falls out of the new policy.” Please clarify how DEP will consistently determine when a technical deficiency letter is required versus a phone call/email from the reviewer as discussed in the webinar training. (36)

Response: The webinar indicated that when a technical deficiency letter is necessary, the guarantee is voided; however, the application will still be reviewed in accordance with the policy. Technical deficiencies are as they are described in the policy and are shortcomings in applications related to specific regulatory and statutory requirements.

13. **Comment:** The technical knowledge of the reviewers varies tremendously across the state. Inexperienced reviewers will create situations which may nullify the PDG. Experienced reviewers are imperative for this process to be successful. (21)

Response: The Department agrees that experience is a key component to the success of this new process, and would add that this component is also key for consultants. On DEP’s end, all decisions reached by Application Managers with regard to technical deficiencies will be reviewed by experienced supervisors and managers.

14. **Comment:** The PDG policy of causing applications that requires mid-permitting changes to be pulled and resubmitted as well as the PDG policy of permit denial upon a second technical review letter will unnecessarily lengthen the overall permitting process and likely cause financial hardship on economic development projects in Pennsylvania. (63)

Response: The Department disagrees. The policy does not state that a denial will be forthcoming after a second technical review. It states that a path forward will be agreed-upon. Further, this process will result in only well-defined projects being submitted in applications. It will eliminate speculative applications being submitted to merely start the clock, followed by the endless deficiency letter-response cycle time that taxes resources and causes backlogs. To avoid financial difficulty, applicants should have a fully-defined project prior to submitting applications to the Department. If more than one pre-application meeting is needed to help fully define a project, these multiple meetings should be requested.

15. **Comment:** The Department should accept the local ACT 167 review for stormwater management consistency. We have found that the Department re-reviews these plans and documents. (37)

Response: The Department agrees, and standard operating procedures will address this matter.

16. **Comment:** The Department should place more emphasis on plans prepared by Professional Engineers and certified E&S plan preparers, and only perform a cursory review of the documents. We have found that the Department re-reviews these plans and documents. (37)

Response: The Department is responsible for making permitting decisions and, therefore, must conduct an independent review of all applications and materials to determine compliance with statutes and regulations.

17. **Comment:** Does this process examine the cumulative impacts of projects in the site-specific areas whose total consequences may be greater than each part when examined individually? (38)

Response: This question is beyond the scope of this policy.

18. **Comment:** We ask that the Department consider the option of “stopping the clock” until the changes can be made to the application to reflect the changes and then “restarting the clock” when the revisions are submitted. The availability of this option would depend on the extent and timing of the changes; for example, on a large pipeline project it would not be efficient for either the applicant or the Department to completely restart the permitting process for a change that impacts less than 20% of the permit that occurs close to the end of the review period. (42)

Response: The Department disagrees. Starting and stopping the clock are what significantly contributed to the Department’s permit back-log, and these actions have been specifically identified as needing to be eliminated for that reason. Continuing with the old process does not solve the existing problem.

19. **Comment:** In light of issues associated with the inconsistencies in draft Plan Approval language, EPM suggested that PADEP add provisions in Section IIIA2 of the draft Department of Environmental Protection Permit Review Process and Permit Decision Guarantee that allows the applicant to draft proposed Plan Approval conditions for PADEP review, approval and use in any resultant Plan Approval to expedite the technical review process and shorten the timeline for approval. (55)

Response: The Department disagrees with this suggestion, as allowing applicants and their consultants to draft such language will lead to added inconsistency across the state. The issue will be addressed through development of standard operating procedures and

conditions by the Program Bureau, to be used where they are appropriate. At the same time, the Department must recognize that a one-size-fits-all approach may not address site-specific situations, especially in the Air Quality program.

- 20. Comment:** This section appears to state that any deficiency identified by the Department will void the guarantee. If this is the case then, in all but the simplest applications, the policy and guarantee are worthless. If such a harsh reading is not correct then, since it is the Department's staff which decides unilaterally if an application is deficient, this section can easily be used to ensure that the Permit Guarantee is voided for any application at the whim of the reviewer or of management. PIOGA believes this is not what either Governor Corbett or the Department intends and therefore, recommends this section be re-worded as appropriate. (52)

Response: This understanding is correct. One deficiency will void the guarantee. The process is designed to improve the quality of applications such that process efficiency is greatly improved, which was the Governor's intent. The Department disagrees that this policy of improving efficiency and providing a guarantee for quality applications are worthless. Further, DEP staff will cite deficiencies only upon statutory and regulatory bases.

- 21. Comment:** In addition, PIOGA recommends the second paragraph of the section be revised to make it plain that changes made in response to a Department deficiency letter will not require a new application. (52)

Response: The Department agrees with the recommendation to clarify the text, and has done so in the final policy.

- 22. Comment:** If there are standard checklists for review, the application manager should review the project by using the checklist, the regional manager should only be commenting if something was severely over looked not re-reviewing the entire project. Regional chiefs should be properly trained, then train their folks properly and be trusting of their employees. (10)

Response: The Department appreciates this comment; however, the structure and management relationships and responsibilities are the Department's decision. Managers are responsible for the work performed by their staff. They must be involved in the oversight of application review to the extent that it is necessary to assure a decision is correct.

- 23. Comment:** This policy should be revised to provide for only one (1) technical review letter only. By doing this, it forces DEP staff to ensure they have done a complete and thorough review and will prevent overzealous staff from sending additional technical review letters intentionally designed to delay a project and avoid compliance with the Guaranteed Timeframe which has been the case under the Money-Back Guarantee Policy. If an applicant does not promptly reply to the technical view letter within 90 days, an Intent to Deny letter should be sent to the applicant advising them it will be denied

unless withdrawn. Allowing for additional technical review letters tend to give DEP review staff the impression that they don't have to perform a rigorous and comprehensive review the first time. This often creates a never-ending process of multiple review letters causing excessive delays in permit decisions. (2)

Response: The current policy is written in just this manner. Only one technical deficiency letter will be sent. If the response is inadequate, the Elevated Review Process begins. The Department disagrees with the other suggestions raised in this comment.

24. **Comment:** Recommendation that an outline of how much service is *reasonable* to provide to deficient applications, a further explanation or correction of the Appendix A, the need for consistency across the board, and details made to ensure guidance/staff training is made available on certain questionable matters. (9)

Response: The comment is not specific enough for a response.

25. **Comment:** This should be revised so that DEP can only send one technical review letter. This will increase DEP staffer's responsibility in reviewing the application and should also require DEP to be held to "timely responses". (13)

Response: The current policy is written in just this manner. Only one technical deficiency letter will be sent. If the response is inadequate, the Elevated Review Process begins.

26. **Comment:** Will the Department be providing standard technical deficiency letters, etc. citing this policy before this policy is finalized? Having standard form letters for the Conservation Districts' use assists in providing statewide consistency. (20)

Response: Each program area is developing a standard operating procedure for their permits, which will include forms, instructions, checklist, fact sheets and possible form letters for the Districts to use.

27. **Comment:** Section III.B.6(v) is welcome as well. Too frequently DEP personnel treat guidance documents as binding requirements, in contravention of a multitude of court decisions. Recognition by the Department that guidance is not binding is a valuable first step in reversing that attitude. (23)

Response: The Department acknowledges the support for this provision of the policy.

28. **Comment:** Past experience has shown that technical reviews are sometimes conducted in a piecemeal fashion, which each correction submitted by the applicant being met with notice of a new, previously unmentioned, deficiency. Accordingly, I recommend that the second sentence of this section say, "Applicants will be notified in writing of all technical deficiencies discovered during the Department review. Failure to timely notify an applicant of a technical deficiency at the will not extend the permit review deadline." (23)

Response: This situation should be prevented under the new policy. Technical review will not start unless a complete and technically adequate application is submitted. Further, there are no extensions of guarantee times, or target times, under any circumstances.

29. **Comment:** This sounds again like DEP is not trying to clean their own house, if you will, but instead are trying to place blame on the private consultants. If this is to be left as is, you should add a line that states clearly that DEP has only one (1) opportunity to review the plans for technical completion and that additional DEP reviews can only comment on the corrections submitted, not the entire project. Otherwise, DEP reviewers could “find” additional technical deficiencies (or claim the revisions are quite “perfect”—not a hypothetical—it happens in our programs) after the revisions are submitted, conveniently voiding the PDG. (26)

Response: This situation described will not occur under the new policy. Technical review will not start unless a complete and technically adequate application is submitted.

30. **Comment:** Suggest changing the current DRAFT text [First Paragraph; Third Sentence] “*Applicants will have one opportunity to correct technical deficiencies.*” Proposed text REVISION - “*Applicants will have one opportunity to correct technical deficiencies. Prior to submitting the revised documents to the PaDEP, the applicant and consultant may request (in writing) a sit-down meeting with the review staff to discuss any/all deficiency comments and the proposed responses. Said meeting will be scheduled within ten (10) business days of receipt of the written request.*” (29)

Response: The Department disagrees with this suggestion. DEP believes the policy adequately accomplishes the same goal.

31. **Comment:** The MSC commends the DEP for including specific and applicable regulatory and statutory requirements in the technical deficiency letter. (33)

Response: The Department acknowledges the support for this provision of the policy.

32. **Comment:** For permit applications authorized or revised by new or revised statutes or regulations, the DEP should use discretion regarding the issuance of only one technical deficiency letter. (33)

Response: The Department appreciates the comment and will consider it in future revisions to the policy after some experience with the conditions described.

33. **Comment:** The NPS recommends more specifics regarding what the Department defines as “...necessary scientific and engineering information...” Modeling protocols should be required for applications to be deemed complete. (68)

Response: This information will be provided through program-specific standard operating procedures and technical guidance documents.

- 34. Comment:** Has the technical guidance already been published by the Department? If so, technical guidance for each of the permit program areas should be identified. If not, will there be a public review process for technical guidance or request for federal or state review to ensure all applicable regulatory and statutory requirements are met? Also, the Program Bureau Director is to be consulted if a resolution to technical questions cannot be found. This requirement may create an unnecessary burden to top administrators in the Department. What steps can a Program Bureau Director then take to resolve, accept or deny the technical review of the application? Such a process should also be clearly outlined. (68)

Response: All Department technical guidance can be found on the DEP website in the eLibrary: <http://www.elibrary.dep.state.pa.us/dsweb/HomePage>

The Elevated Review requirement does not create a burden on Bureau Directors as it is part of their job descriptions.

- 35. Comment:** The NPS is concerned that "...deviations from technical guidance can generally be approved..." with or without federal input or review of those applications that must meet federal statutes or regulations. The NPS recommends language that this policy does not replace federal statutes for technical requirements of permits and that federal agencies do need to approve certain technical protocols or control technology proposals of a permit application to the Department. Additionally, we are concerned that "minor deficiencies or omissions" are not defined in the draft policy and could be widely interpreted by permit reviewers. We suggest that this paragraph be removed from the draft policy. (68)

Response: This refers to Department technical guidance, not federal regulations or federal guidance. Minor deficiencies are not defined because they are not the same in all cases for all sites. There must be some discretion on the part of Department technical staff. The Department does not believe that the guidance needs to be changed in this regard.

- 36. Comment:** The Policy does not explain what criteria section chiefs and managers should use in determining when a technical alternative is supported by "acceptable justification." The Policy should require PADEP section chiefs to prepare a memorandum explaining the approval of any deviation from technical guidance that may be approved. (62)

Response: This is a public policy that outlines the process by which the Department will review permits aimed at gaining efficiency and predictability. It is not a management directive for staff. The type of explanation that is suggested is part of the record of decision that is created for all Department permit decisions.

- 37. Comment:** The concept of denying an application upon a second deficiency letter is a source of major concern for LVBA. LVBA shares the goal of improving the overall quality of applications submitted to the Department. While the "no strikes" rule to remain

eligible for the permit decision timetable can be understood, LVBA contends that many land development projects may require the opportunity to make additional technical revisions. The opportunity to receive only one technical review letter may prove inadequate and unnecessarily expose the applicant to undue risk of having to resubmit the application for reasons beyond their control. For example, a commercial project may begin the permitting process with the assumption of a certain set of tenants. During the permitting process, tenants may change and the new tenant may request variations to the development plan to accommodate their particular needs. Modest changes within the Limit of Disturbance – such as perhaps a reduction of impervious surfaces – would result in simple changes but still requiring additional technical review. (63)

Response: The Department disagrees, and has established that the substantive changes, at the desire of an applicant while an application is under technical review, will require new applications. Such changes are costly and inefficient to the Department. With that said, modest changes within the Limit of Disturbance (LOD) as described could be considered as minor revisions and able to be reviewed without a new application. Individual program standard operating procedures should address these permit-specific issues.

- 38. Comment:** If the Department is holding the applicant to a completely technical submission, the Department must likewise hold its reviewers to a complete initial technical review. (63)

Response: The Department agrees.

- 39. Comment:** The policy allows for deviations from technical guidance to be approved by the Section Chief. The ability of Section Chiefs to deviate from technical guidance has largely contributed to regional inconsistency. Section Chiefs should seek approval from the Bureau Director for deviation from technical guidance. (64)

Response: The Department agrees that when the deviation proposed has not been seen before, the Bureau should be consulted.

- 40. Comment:** In conducting the Technical Reviews, we encourage the Department to utilize the technical expertise of certified professionals preparing these permit applications and refrain from conducting redundant engineering reviews of those portions of the permit applications that have been prepared by these certified professionals. Response timeframes are normally given to the applicant to address deficiencies. Timeframes should be given to the Department to review an applicant's response to the deficiency letter(s). (35, 46, 48, 50)

Response: Timeframes are given to Department staff. There are the guarantee times and the target times. The Department disagrees with a complete deferral to certified professionals because it has seen many errors and omissions in the past that were also regulatory deficiencies. DEP employs licensed professionals to perform this type of application review. Finally, the Department is obligated by law to perform an independent evaluation of all applications for permits.

- 41. Comment:** Minor technical deficiencies should not void the Permit Decision Guarantee. We have had instances where an initial Department review has determined a submission to be deficient only to find that the “missing” information had, indeed, been included with the initial submission but, unfortunately, had been overlooked by the Department reviewer. That it may have been overlooked is understandable; the restarting of the review process would be unjustifiable. The Applicant has one chance to correct all deficiencies before the Department will deny the Application, resulting in a new submission that must be made with all new fees to be paid again. This policy section can be very subjective and open to challenges resulting in confusion and delays. (37)

Response: It is unfortunate that the commenter experienced those incidents. DEP will strive under this new policy to assure this type of error on the Department’s part does not take place again. DEP will also employ performance reviews that will reflect poorly on that type of incident.

- 42. Comment:** It is foreseeable that the proposed procedure will dramatically limit those Applications that receive a “Guaranteed Review Period.” Because there is only one resubmission opportunity before the application is rejected, it effectively puts the Department in a position to assure that no guarantee period ever runs. (37)

Response: The guarantee applies to complete applications that meet all regulatory requirements when submitted. These are the only situations in which the Department can provide real, predictable processing times. As soon as an applicant has to correct a deficiency, the review time leaves DEP control, and thus the Department cannot guarantee a predictable decision.

- 43. Comment:** The “two-strike” policy during the technical review of an application coupled with a requirement that a deficiency letter include specific citation to Department regulations should substantially reduce the back-and-forth of multiple Requests for Additional Information from the Department and Responses from applicants that can prolong the review process. (40)

Response: The Department agrees and appreciates the comment.

- 44. Comment:** The voiding of the Permit decision Guarantee by the Department’s judgment that the application contains a single deficiency, no matter how minor, is arbitrary and seems to make the entire policy meaningless. PIOGA recommends that the policy include a dispute resolution process. (52)

Response: The Department’s decision will not be arbitrary, as it must be based on a specific regulatory or statutory requirement, which must be cited in a technical deficiency letter. A dispute resolution process would merely delay further processing. The most expeditious solution to a deficiency letter is an immediate, adequate response, which will allow the Department to continue processing the permit in its priority order.

45. **Comment:** Will the applicant be notified if technical questions are elevated from the Application Manager to the Section Chief or Program Manager? Does elevating questions constitute a 'Possible Processing Delay' and allow the Department to void the Permit Decision Guarantee? (52)

Response: Since there is no need for the applicant to be involved in routine communication between staff, supervisors and managers, this type of routine communication is not a possible processing delay.

46. **Comment:** How is the applicant to know prior that the Application Manager will determine that 'the technical information submitted with the application does not meet technical guidance or standards' in order to provide the 'scientific or engineering basis to support the application'? (52)

Response: The consultant and applicant will receive communication (telephone, email, etc.) indicating that there are comments, deficiencies or both with the applications. If a technical deficiency is noted, a letter will be sent.

47. **Comment:** The sentence 'The letter will state, as necessary, that the Permit Decision Guarantee is no longer applicable ... ' seems inconsistent with the section introductory paragraph which reads 'Technical Deficiencies will void the Permit decision Guarantee'. (52)

Response: The policy is stated this way because those permit types not contained in Appendix A will have never been included in the Permit Decision Guarantee.

48. **Comment:** Under "Technical Review," will there be any difference in rigor between applications for General Permits, as opposed to those for Joint Permits? (41)

Response: This is a program-specific question that will be addressed in a standard operating procedure.

49. **Comment:** There is no time frame given for the issuance of the technical deficiency letter or the applicant response described in 6. (vii). It is not clear how this sequence impacts the Permit Decision Guarantee Timeframe listed in Appendix A. (45)

Response: These are program specific questions that will be addressed in standard operating procedures. One deficiency will void the guarantee in any program.

50. **Comment:** Paragraph (vi) should include the citation of a technical guidance provision to be consistent with paragraph (vii). (54)

Response: Technical guidance is not regulation, and thus, deviations from technical guidance are not deficiencies. Technical guidance contain the Department's preferred means to meet regulatory requirements.

- 51. Comment:** The deadline for submission of deficient information/established response timeframe mentioned in paragraphs (vii) and (viii) must be established by Program Managers before the effective date of this policy. Paragraph (viii) should address failure to submit corrections within the established timeframe by stating that such a failure will result in permit denial. (54)

Response: These timeframes for response are program-specific questions that will be addressed in the standard operating procedures.

- 52. Comment:** This paragraph states that applications meeting all regulatory and statutory requirements “will be approved.” This statement ties DEP’s hands. Therefore, we suggest replacing that paragraph with one that preserves DEP’s discretion to deny a permit, or condition its issuance on terms and conditions that would protect environmental quality, human health and safety, or the long-term economic health of the area affected by permit-related activities. (68)

Response: If an application meets all regulatory and statutory requirements, it will, by definition, protect environmental quality, human health and safety. Therefore, it will be approved.

- 53. Comment:** We recommend that the Department conduct periodic site inspections to establish a track record for permit and mitigation compliance. These periodic inspections will give Application Managers confidence that applicants have a correct understanding of the Department’s expectations regarding best management practices and mitigation compliance. Further, it would establish a clear record that applicants are effectively communicating expectations between project design engineers and on-site crews. (47)

Response: The Department agrees.

ELEVATED REVIEW PROCESS

- 1. Comment:** The policy should include the ability to elevate to the appropriate supervisor cases where either the applicant or the application manager is not maintaining open lines of communication. (52)

Response: The Department believes that this type of circumstance is already within the Elevated Review Process. Further clarification on the process will be provided through individual program standard operating procedures and other program clarification efforts as needed.

- 2. Comment:** Explain the process for elevated reviews of a PAG02 application being conducted by the Conservation District. (22)

Response: The process for elevated reviews for any applications under review by Conservation Districts will be provided in Department standard operating procedures.

3. **Comment:** When decisions are elevated to the level of Bureau Director or Deputy Secretary, the decision rendered should be noted as a statewide policy to inform staff, regulated community and reduce repetition for similar issues. (42, 64)

Response: The Department agrees in part, and all decisions elevated to the Bureau Director or Deputy Secretary will be communicated to all staff members; however, decisions made as part of an Elevated Review Process will not by default result in new policy direction.

4. **Comment:** The proposed process for the Application Manager to elevate technical questions to the Section Chief and Program Manager for consultation and resolution is applauded. In cases where the question is not able to be resolved in the Regional Office it is further elevated to the Program Bureau Director. We ask that at an appropriate point in this decision tree, the Applicant be included in the discussion. (33, 35, 37, 42, 46, 48, 50, 64)

Response: The policy provides for discussions with the applicant, as appropriate, during the Elevated Review Process.

5. **Comment:** Paragraph (ii) requires that the resolution of technical questions must involve the DEP Section Chief and Program Manager. It will be challenging for delegated conservation districts to discuss technical issues with DEP regional offices. We therefore suggest that all applicants be required to submit one electronic copy of the complete application in addition to the required number of paper copies in order to facilitate discussions among remote offices. (54)

Response: While a good suggestion for consideration as we move forward with this new policy, we cannot require all applicants to do this without a change to regulations.

6. **Comment:** In Paragraph (iii), we disagree with contacting the Bureau Director for regional interpretations. Regional Offices are far more accessible, and they can communicate among themselves and with the Bureau Director through frequent focused training for statewide consistency. (54)

Response: The Department disagrees. Staff contacting the Bureau Director for interpretation, not regional interpretation, is a necessary step not only in the Elevated Review Process, but also for the Department as a whole, as this approach will maintain regional consistency.

7. **Comment:** I found the involvement of top management to resolve technical deficiencies skewed and felt that this is exactly what needs to occur *at the business of the applicant*. This need not be the role of the regulator to do work for the applicant. If that is the case,

then an additional fee needs to be charged for such work. Reconsideration of this provision is recommended. (9)

Response: To clarify, the Department will not be resolving the deficiency on behalf of the applicant, rather the Elevated Review Process will be used to (a) determine a path forward for those applications that have received two strikes and/or (b) make a final determination on a technical, statutory or regulatory point that is debated within DEP or among DEP and the applicant. The Elevated Review Process is in no way intended to have the Department make an incomplete application whole, which is clearly the responsibility of the applicant.

8. **Comment:** Based on staffing constraints currently facing PaDEP it would appear that requiring a consultation on every project that has not met the requirements of the first Technical Deficiency Letter with the DEP Program Manager/Regional Director would cause a severe backload of meetings with one DEP official. Similarly there is concern for the “second strike” policy because based on their opinion and experiences, the next level of DEP will be very busy dealing with the “second strike” reviews. (11, 21)

Response: By eliminating the back-and-forth review and response to technical deficiency letters staff will have sufficient time to participate in the Elevated Review Process. The Elevated Review Process will provide consistent review of applications and decisions rendered by staff and is an integral part of the new Permit Review Process.

9. **Comment:** We find this step in the permit review process to be unnecessary and actually reward and prioritize applications inappropriately or give special consideration to applications that are technically deficient. By elevating the review of these deficient applications to the “highest priority” and guarantees a review be completed “within 15 business days...” This provides an incentive for submitting poor quality plans contrary to the purposes of this policy. (9, 20, 24, 51, 62, 68)

Response: The Department recognizes these comments and to clarify the elevated review process is not intended to reward, prioritize applications or give special consideration for a projects review. The elevated review process is intended to provide consistent review of applications and decisions rendered by staff and will be an integral part in the review process.

10. **Comment:** The NPS recommends that once an application is deemed technically deficient after a certain number of attempts to correct the insufficient material, the application is automatically deemed incomplete and the Applicant must re-submit the project as a new application. (68)

Response: The intent of the Elevated review Process is to do just that. After two attempts to correct technical deficiencies are unsuccessful, the application may be denied. It should be noted, however, that since not every situation is identical the Department will retain the language in the current policy to allow for use of professional judgment when appropriate.

11. **Comment:** The MSC recommends that final review of the permit application(s) under this procedure include a meeting with the applicant in all cases. (33)

Response: The Department agrees that the applicant is an integral part of the Elevated Review Process. However, in cases where the Elevated Review Process is triggered due to internal discussion of Department interpretation of policy, though the applicant will be informed of the final decision, it may not be necessary to have them included in these conversations. Therefore to the greatest extent possible, applicants will be included in meetings; however this may not always be necessary, so the Department will not make this mandatory.

12. **Comment:** While we understand some projects may be subjected to an Elevated Review Process the adverse risk associated with the uncertain ability to receive such reviews will decrease permit predictability in the land development process. The risk of an application being recycled for responding to fluid design considerations is only compounded by the economic loss of repaying the permit application fees. (63)

Response: All design conditions should be firm when an application is submitted. Fluid design changes while an application is already under review are a significant taxing of Department resources and lead directly to the back-and-forth that has contributed to the agency's permit backlog. The back-and-forth is what we are trying to minimize. Changes to a design after an application has been determined to be complete will constitute a new project and require a new application to be submitted.

13. **Comment:** We support the use of the process to resolve disputes and to monitor decisions being made by staff. (9, 34)

Response: The Department appreciates the support for this facet of the policy.

14. **Comment:** Will the applicant be made aware that their application is being subjected to the elevated review process and if the 15 business day period for the director's review be noted in the Departments automated application tracking system? (52)

Response: Yes, through *eFACTS on the Web*, the applicant will be provided notification as to whether a specific permit application is subject to the Elevated Review Process: <http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx>

15. **Comment:** It should be clearly stated that this process does not apply to technically deficient applications where responses have not been received within the established timeframe. It should be clearly stated how remaining and/or new technical deficiencies are to be documented. (54)

Response: This suggestion is contrary to the intent of this process. The elevated review process will apply to those applications where a response to a technical deficiency letter is not received. If necessary, Department staff may have a face to face meeting or a

telephone call with the applicant and consultant to discuss the deficiencies. Under this new review process, it will be rare if “new” deficiencies are discovered after a technical deficiency letter has been issued.

- 16. Comment:** If a PDG deadline is missed, will the applicant be invited to the meetings between the appropriate manager and the Secretary to determine why the deadline was missed? (52)

Response: The Department anticipates few missed guarantees to reaching the point of review by the Secretary. Most will be resolved quickly. But, if the Elevated Review Process continues to the level of the Secretary, the applicant will be included in these meetings.

DECISION REVIEW AND PERMIT ISSUANCE

- 1. Comment:** Given that all permits will now go through the Regional Director or their assistant for final approval, it appears that there could be a bottleneck in the permit process. (51)

Response: All permits currently go through this process, so there is no change.

- 2. Comment:** The issuances of a permit (construction or operating) by email to the applicant should be allowed and encouraged. This is common practice in several states in which Aqua operates. It provides time-stamped verification of the date of transmission and facilitates distribution of the documents to the consultant, applicant and project managers. Physical receipt of a hard copy letter sent by standard mail should not be required as a prerequisite for commencement of construction or operation. (40)

Response: This is a good suggestion and is already a practice for certain permits in the Department.

- 3. Comment:** For most permits DEP has the option of attaching special conditions to any permit. The draft policy does not include this or discuss how any opportunity for an applicant to respond to draft permit conditions may impact the Permit Decision Guarantee Timeframe. (45)

Response: These are program-specific issues that will be addressed in the standard operating procedures.

- 4. Comment:** The webinar stated the length of time that DEP has the permit will be the deciding factor if it gets issued. This process does not make sense. This is not a smarter approach as claimed in the webinar. (10)

Response: That is not what was said on the webinar. The length of time the application is with the Department will be the measure of our performance, not whether it will be issued.

5. **Comment:** The draft policy document states that the Department's performance and that of its staff will be measured by permit processing time. We suggest that this is a narrow perspective, and that it would be more consistent with DEP's mission to measure its performance based on the issuance of well-thought-out permits that enable projects to proceed in a timely fashion while at the same time protecting the environment, human health and safety, and the taxpayers. (9, 45, 62, 68)

Response: The Department strives to always issue permits that are well-thought-out permits and enable projects to proceed in a timely fashion while at the same time protecting the environment, human health and safety, as well as the taxpayers. This policy is aimed at improving DEP's performance in that regard.

6. **Comment:** Why is the Department's success or failure in meeting the Permit Decision Guarantee timeframes not a measure of its performance? The Executive Order states '[t]he Department shall establish performance standards for staff engaged in permit reviews and consider compliance with the review deadlines a factor in any job performance evaluations. (52)

Response: Department performance will be measured with that exact metric.

7. **Comment:** Treat the health, welfare and values of all citizens of Pennsylvania of equal import – be they residing in remote or highly populated areas. (38)

Response: The Department strives to always protect the health and welfare of all citizens. Through implementation of the Department's regulations and statutes, and making certain that all permits comply with regulations and statutes, DEP accomplishes that goal.

8. **Comment:** Above all else, DEP must make well-informed and environmentally sound permit decisions. Any measures taken under the Permit Policy to increase efficiency should not be allowed to compromise the quality of water, air, land, and other environmental resources of the Commonwealth of Pennsylvania. No administrative shortcuts, such as failure to check accuracy of environmental features in applications submitted, should be allowed if they have the potential of undermining the other goals of the Department and its overarching mandate of environmental protection. The DEP's use of 'permit by rule' for erosion and sediment control permits for the Oil and Gas program is an example of a failure by DEP to ensure environmental requirements are being met. (61)

Response: The policy does not direct the Department to fast track or streamline the permitting process. It establishes a process for the Department to be more efficient in the

review and decision-making for permits that are protective of the environment, public health and safety.

9. **Comment:** DEP should not issue permits for any phase of a project that involves operators or companies with outstanding violations or subject to enforcement actions. DEP should make clear in this policy that this statement applies universally across all Department programs, and not just where statutorily required. It is also crucial that DEP not issue permits to any applicants that are clear “repeat offenders”. (61)

Response: The Department staff follows applicable laws when issuing permits, many of which contain provisions for compliance history reviews.

PERMIT COORDINATION

1. **Comment:** Will the PFBC still be receiving a copy of the application and the standard cover sheet for the paper applications and at what point in the process would this occur? (69)

Response: This policy will not change any of DEP’s current relationships or processes with resource agencies. However, all of these relationships are under review for process improvement, which would come at a later date.

2. **Comment:** Given this is a Department-wide implementation, reviews by other Department programs should be accomplished concurrently. (35, 46, 48, 50)

Response: The Department agrees. Further information regarding this can be found in the Department’s Permit Coordination Policy.

3. **Comment:** It is EPGA member companies’ experience that some regions of the Department have unnecessarily withheld issuance of such permits required to protect the environment and bring the applicant back into compliance presumably as a leveraging strategy to extract additional penalties from the applicant. EPGA respectfully requests that the Department expend additional efforts to eliminate such practices, which are inconsistent with the policy goal of “statewide interpretation” of statute, regulation or guidance in lieu of regional or other interpretations. (53)

Response: The Department will review program-specific suggestions like this one as it develops and implements program-specific standard operating procedures.

4. **Comment:** No projects should be allowed to commence or permits issued for initial phases of a project (e.g. gas well site clearing or stream diversion) until the plans for all potential long-term aspects (e.g. erosion and sedimentation control or waste handling) have been submitted and fully considered with regard to both their short- and long-term

environmental and community impacts. Further, environmentally sound decisions should always consider the opportunities for minimizing pollution. (61)

Response: The Department considers this comment is not related to this policy.

5. **Comment:** We are concerned about an issue that we've faced in the past that requires permits to be issued prior to the review of others. For instance, an administratively complete Water Quality Management application requires an approved E&S plan, which on larger projects means an issued Construction Stormwater NPDES permit. The NPDES permit itself can take 6-12 months from submittal to work its way through the system. In the meantime, DEP will not even begin a review of the WQM permit, even though that review has nothing to do with the construction stormwater. After issuance of the NPDES, we then have another 6-12 month period for the review and issuance of the WQM. (21)

Response: Under the PDG Policy, all necessary permits for projects are to be coordinated. A timeline for permit application submission and expected issuance should be discussed since permit issuance is predicated upon receipt of a complete, technically adequate application submission. The standard operating procedures being developed for Water Quality Management (WQM) permits will not indicate that an Erosion & Sedimentation (E&S) Control Approval or National Pollutant Discharge Elimination System (NPDES) permit for E&S is needed in order to make a WQM application complete. However the SOPs will note that if E&S approvals have not been received or are not being prepared for issuance in coordination with the WQM permit, the WQM permit will be held for coordination.

6. **Comment:** It is recommended that an adequate permit coordination policy be followed. (9)

Response: The Department agrees and has updated and posted also for public comment, the Permit Coordination Policy, in tandem with this policy.

7. **Comment:** Revise to read "...and consistent Department action on proposed projects ~~before the commencement of operations, construction or other activities that require Department permits.~~" Making sure that no construction starts before the permits are in place is the sole responsibility of the applicant, not the Department. (19)

Response: The Department agrees that abiding by laws, regulations and permit conditions is the responsibility of the applicant or permittee; however, a language revision is not necessary.

8. **Comment:** Coordination is to occur "before the commencement of operations, construction, or other activities that require Department permits." There is no other suggestion, however, that the coordination must occur prior to permit approval, just prior to on-ground activities. Is that what the department intends to say? If not, clarification would be appropriate. (14)

Response: It is the standard practice of the Department to confer with other program areas before issuance of a permit that is part of a larger project or initiative; therefore additional clarification in the policy is not warranted.

9. **Comment:** Dairy producers recommend that whenever a project requires multiple permit applications that the Department act upon them concurrently, as opposed to individually. (25)

Response: The Permit Coordination Policy has been modified to provide clarification on this issue. The Department may issue permits separately, when it determines it is necessary or sensible.

10. **Comment:** DEP should ensure interagency coordination on all relevant aspects of a proposed project. Permit coordination is to ensure that all necessary expertise and relevant information is brought to bear on a project review. (61)

Response: This policy will not change any of DEP's current relationships or processes with resource agencies. However, all of these relationships are under review for process improvements, which would come at a later date.

11. **Comment:** Permit coordination should include among DEP programs, as well as among state and federal agencies including the Army Corps of Engineers and the Fish and Wildlife Service. DEP must ensure that it does not violate commitments made to the federal government to consult and receive input. (61)

Response: This policy will not change any of DEP's current relationships or processes with resource agencies. However, all of these relationships are under review for process improvements, which would come at a later date.

APPEALS, DENIALS AND RESUBMISSIONS

1. **Comment:** It is recommended that the DEP amends its proposed policy to establish processes or mechanisms to allow applicants to challenge DEP permit determinations. (8)

Response: Such a process exists through the Environmental Hearing Board.

2. **Comment:** Can a denial based on the two Administrative incompletes be appealed to the Environmental Hearing Board (EHB)? (1)

Response: Yes. When DEP denies a permit application, it is typically an appealable action to the Environmental Hearing Board.

3. **Comment:** Is the denial of an application being deemed incomplete an appealable action? Will the Department retain or return the fee? (52)

Response: When DEP denies a permit application, it is typically an appealable action to the Environmental Hearing Board. It is the Department's policy to retain the application fee for permit applications that it denies.

4. **Comment:** Does the denial mean that PaDEP keeps the application fees and the application is determined denied without prejudice? (1)

Response: It is the Department's policy to retain the application fee for permit applications that it denies.

5. **Comment:** It is recommended that the DEP amends its proposed policy to create a mechanism and rules to allow applicants to file for refunds of permit application fees. (58, 8)

Response: Permit application fees pay for the time and resources used by DEP staff to review permit applications. Refunding such fees would cause a heavy reliance on the General Fund, to which all taxpayers contribute. Such reliance would put an undue burden on taxpayers to pay for industry-specific applications.

6. **Comment:** The additional filing fee probably no doubt is justified by the additional staff time required to review changes in a project under review. (14)

Response: The Department agrees and acknowledges the support for this provision.

7. **Comment:** PIOGA recommends the Department require only a portion of the applicable fee be submitted with the initial submittal. The remainder would be due at the completion of the review. The amount of the remainder would be reduced if the Department fails to meet the timeframes established by policy and, if the permit would be denied, by any portion of the calculated on the cost to the Department for inspections and compliance activities. (52)

Response: The Department disagrees, as this would create a burdensome accounting and administrative process.

8. **Comment:** The policy states that fees will not be returned for denied applications. An application can be denied during the first step—the 10-day completeness review. Considering the very large application fees required, it is unreasonable for the DEP to retain the fees simply for a review with a checklist of the items contained in the permit. Permit fees should be returned if an application is denied during the completeness review. (49)

Response: The Department disagrees and will not return fees for denied applications unless required by statute or regulation. The Department believes that this provision is an important aspect of the policy.

9. **Comment:** Denials based on incompleteness is reasonable and is a motivational tool for the applicants. This provision needs to be specifically adhered to without deviation by the regulator. There need be no special consideration, or case by case basis for this provision. It needs to operate as stated. (9)

Response: The Department acknowledges the support for this provision.

10. **Comment:** We are concerned that the Department has not sufficiently analyzed the issue of a “denied” permit application. A denied application is appealable to the Environmental Hearing Board and in order to avoid an onslaught of appeals, we encourage the Department to more completely examine all aspects of whether a denied application is what is truly needed in the context of applicants that fail to meet Department requirements for completeness. A more appropriate action would be a middle ground such as returning the application to the applicant as incomplete. (2, 35, 46, 48, 50)

Response: The Department has examined this issue in detail and is comfortable with the proposed approach.

11. **Comment:** According to the policy, incomplete applications and applications that involve changes to existing permits shall be considered new applications. Although it is laudable that DEP is holding applicants to higher standards, requiring resubmissions of applications will involve DEP reviewing the same proposals over again, taking up more of DEP’s time. The FAQ document states that “DEP staff will be working diligently to clear the existing queue of permits by June 30, 2013”. That deadline does not seem achievable considering that DEP will be attempting to clear the queue while simultaneously working out the kinks of this new policy. (51)

Response: To clarify, the Department does not consider changes to existing permits new applications. Rather, the Department will consider changes to permit applications to be new applications. These would be substantive changes not as a result of public comment, hearing, federal input or further environmental protection measures.

12. **Comment:** We recommend that “substantive projects and design changes” be defined and explained in the SOPs for each authorization. Requiring a new application process for projects with substantive project or design changes will be costly and inefficient and represents a potential opportunity for permit review staff to void projects from the Permit Decision Guarantee program. (33, 34)

Response: The Department disagrees that requiring new applications when a project is changed mid-stream at the desire of an applicant, while under technical review, is costly and inefficient to the Department. We also are dissuaded from defining in a policy, outside of regulation, specific types of projects that fall under substantive process changes. Further, the policy will result in only well-defined projects being submitted in applications. The policy will eliminate both the practice of submitting speculative applications solely to start the clock and the endless merry-go-round deficiency letter-response cycle that taxes resources and causes backlogs.

- 13. Comment:** This section states that “any substantive project or design changes...will require a new application to be submitted...” This needs further clarification. What constitutes “substantive project or design changes” requiring a new application? Will this require new permit fees? How does this fit into the minor/major permit modification process? Will “substantive project or design changes” resulting from technical deficiency comments require a new application and fees? (20, 68)

Response: A substantive change would be a design change mid-stream at the desire of an applicant while the application is under technical review by the Department. A new application will have to be submitted with new fees. Substantive project or design changes resulting from technical deficiency letters will not require new applications or fees.

- 14. Comment:** Please clarify why will an amendment to a project be treated as a new project? (10)

Response: Project changes during technical review made at the desire of an applicant, and not resulting from technical deficiency letters, tax Department resources. In order to foster greater efficiency in permitting processes, we have concluded that such review and re-review detracts from the timely review of and decision-making about other applications.

- 15. Comment:** This section states that after DEP has accepted an application as complete, any “substantive project or design change to the application will require a “new application”. It is common for most complex applications to have substantive modification due to technical comments or comments received by the public during the public comment period. This policy should be revised to delete any reference to a denial if substantive changes are made in applications after review commences when design or routing changes cannot be avoided due to unforeseeable circumstances such as public opposition to a particular route or re-routing to avoid threatened and endangered species of historical resources. (2, 42)

Response: As stated in the policy, complex applications are to be reviewed differently than less complicated applications.

- 16. Comment:** This office supports the requirement for a new application if substantive changes are made to a large project as discussed in general comments above, but small projects may not warrant a new application. We would appreciate the flexibility to not require a new application in all cases. (54)

Response: Standard operating procedures for specific programs are to include this type of flexibility.

- 17. Comment:** Denials need to be monitored in order to determine if staff is creating situations which are not based on regulations/requirements. Denials need to be overseen

especially if there is a pattern or situation involved with a particular applicant or contracted firm. (9)

Response: The Department agrees. All denial letters and technical deficiency letters will be reviewed by the Application Manger's chain of command, including appropriate legal staff prior to issuing such letters to an applicant.

- 18. Comment:** Finally, DEP should be aware that implementing the new policy may result in increased numbers of permit denials that could increase the number of appeals to the Environmental Hearing Board, overwhelming them and allowing third party intervention too early in the process. This would substantially complicate and extend the permit process and lead to more uncertainty. (2, 49)

Response: The Department has historically denied only a very small percentage of permit applications. Therefore, there is little reason for an increase in denials as a result of this Policy, because the regulated community and their consultants is certainly capable of submitting administratively complete and technically sound permit applications. The regulated community and their consultants now will have a clear understanding of the Department's expectations through this Policy, and this should minimize the need for denials.

- 19. Comment:** In developing this policy DEP has not considered that many applications require expensive newspaper notices at the time of submission sometimes costing over \$30,000. It is unreasonable to require costly re-publications in newspapers due to either minor technical deficiencies up-front or substantive changes during the review process. (2)

Response: The Department disagrees that it failed to consider the costs of preparing applications. These costs are significant to applicants in many cases. As a result, the Department believes applicants will have incentive to submit complete and technically-adequate applications routinely.

- 20. Comment:** It is recommended that the provision regarding the return of an application for additional or substantive design changes be adopted along with the policy of submitting a new application fee. (9)

Response: The Department acknowledges the support for this provision.

- 21. Comment:** The last sentence is unclear. If the point of the paragraph is that major revisions will kick the submission out of the policy guarantee, then I suggest it be revised to read "Once an application has been accepted by the Department as complete, any substantive project or design changes to that application made by the applicant will require a new application to be submitted following appropriate program requirements and procedures and, ~~as applicable,~~ will void the Permit Decision Guarantee in place for the initial submission." (19)

Response: The Department acknowledges the recommendation; however, we do not believe that the recommended edit provides additional clarity.

22. **Comment:** The Department should be required to discuss possible permit revisions with the applicant, rather than requiring permit denial in all cases. When a permit revision is practical, it should be allowed. (66)

Response: The policy encourages this type of discussion with applicants.

23. **Comment:** The final paragraph is not clear. Suggest it be revised to read “*Should an Applicant choose to amend the application and resubmit the package after denial, following appropriate program requirements and procedures, the Department will treat the resubmitted package as a new application in all respects.*” (19)

Response: The Department acknowledges the recommendation; however we do not believe that the recommended edit provides additional clarity.

APPENDIX A - PERMITS INCLUDED IN THE PERMIT DECISION GUARANTEE

1. **Comment:** A footnote in the policy indicated that technically complex projects will be indicated with an asterisk in the Appendix, however there are no asterisks. (9, 19, 31, 34, 39, 42, 45, 53, 54, 57, 65, 68)

Response: This has been corrected and asterisks now appear in Appendix A noting technically complex projects.

2. **Comment:** It is unclear how the Permit Decision Guarantee timeframes have been determined; in fact, information provided in the Department-hosted webinar specifically states that it was not possible to determine an average period of time necessary to review complete applications. (45, 51)

Response: Timeframes were determined by Department staff using their best judgment. In some cases, the Money-Back Guarantee timeframes were merely converted to business days. All times will be reviewed and adjusted, through a formal revision to this policy, as we collect more data on our performance when we receive complete applications that meet all statutory and regulatory requirements.

3. **Comment:** Given the uncertainty surrounding how the review timeframes were determined and the possibility that the proposed policy may not result in the anticipate project review efficiencies, it is essential that some amount of flexibility be provided in the policy. This flexibility could either be a mechanism for refining the timeframes proposed in this draft policy of a strategy for hiring additional staff, should the deadlines, as proposed, be found unworkable. (47)

Response: All times will be reviewed and adjusted, through a formal revision to this policy, as the Department collects more data on our performance when we receive complete applications that meet all statutory and regulatory requirements.

4. **Comment:** The permit list provided in Appendix A is not specific regarding the Types of Water Obstructions and Encroachment Permit being described. For example, only GP-11's and GP-5's are broken out separately. What about other General Permits? It also doesn't separate out an Individual Joint Permit. (36)

Response: If a permit type is not broken out separately in Appendix A, this means that it does not currently qualify for the Permit Decision Guarantee, although the new Permit Review Process applies to all permits and authorizations reviewed by the Department. Program-specific webinars will be held in November 2012 to answer program-specific questions such as these; please visit the website below for more information.

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21048

5. **Comment:** The Permit Decision Guarantee Timeframes should be less than or equal to the timeframes previously used by the DEP. Expanded use of checklists, development and use of program specific SOPs and improving training and guidance documents will save considerable time and allow timeframes to be shortened from previously used deadlines. (33)

Response: The Department agrees in part with this comment, and in many cases, that was done. However, not all authorizations were tracked in accordance with the old Money-Back Guarantee (MBG) process, so this methodology could not be employed for all permit types across the board. Further, the old MBG times were rigid and fixed for many years. They were not adjusted based on real performance data, so many of them are not truly reflective of actual time spent in review.

6. **Comment:** The MSC is concerned that the proposed timeframes for permit decisions related to oil and gas activities are unreasonably long and if implemented, would not achieve the overall goal of "timely" review. (33)

Response: The Department believes that the current permit review timeframes are appropriate and provide timely reviews of all oil-and-gas related permits. The permit review timeframes will be re-evaluated annually to determine if future adjustments are warranted.

7. **Comment:** AMS would suggest that Plan Approvals for air pollution sources that trigger Non-Attainment New Source Review (NNSR) or Prevention of Significant Deterioration (PSD) requirements be explicitly granted this consideration as technically complex, and that additional time be made available to review such NNSR and PSD Plan Approvals. (31)

Response: Air Program applications that are classified as “technically complex” will not be processed under the Permit Decision Guarantee although they will be subject to the new Permit Review Process. Applications that will not be subject to the PDG Program include New Source Review (NSR) and Prevention of Significant Deterioration plan approvals.

8. **Comment:** The Policy (Appendix A) does not include major New Source Review (NSR) permits (neither Non-Attainment NSR nor Prevention of Significant Deterioration) and does not include permits for National Emission Standards for Hazardous Air Pollutants 40 CFR Part 63 at major sources. The ACHD agrees because these types of Air Quality Permits can be large and complicated, and require a lot of “back-and-forth.” (16)

Response: The Department agrees and it is for just these reasons that they have not been included.

9. **Comment:** Since the permit review and approval may affect public health and safety and the environment, when the annual review is conducted, the public needs to have an opportunity to comment on applications that are to be added to Appendix A. It is therefore, recommended that the Appendix A additions be published in the *Pennsylvania Bulletin* with notice of public comment. (9)

Response: The Department agrees and will re-evaluate the process and all included permits on an annual basis and publish any changes to Appendix A to the *Pennsylvania Bulletin*.

10. **Comment:** Water Obstructions and Encroachments. Shouldn't this list include a timeframe for receiving an approved GP-7 for Well Road Stream Crossings? (13)

Response: No, the GP-7 permit for minor road stream crossings is not currently contained in the Permit Decision Guarantee although target review timeframes have been established for the GP-7 permit that all permit reviewers will be expected to achieve. The Department will re-evaluate timeframes including this general permit in the Permit Decision Guarantee when it conducts its annual review of the program.

11. **Comment:** The ACHD has reviewed the proposed schedule in Appendix A and believes it is reasonable and provides sufficient time to process most permit applications. (16)

Response: The Department agrees with the assessment and will be evaluating the timeframe and included permits on an annual basis.

12. **Comment:** The use of an Application Type Code Dictionary seems unnecessary because the Application Type Code Column appears to be large enough to accommodate the full words, not just the code word. (19)

Response: The Department acknowledges the comment, but will retain the dictionary for clarity.

13. **Comment:** Review times for the GP-11 are unacceptable. Most small township projects require a much quicker review process in order to capture some funding restrictions and other project circumstances. Will review times be shortened for projects with time restrictions? (21)

Response: Review times for the GP-11 will not be adjusted at this time. The Permit Guarantee timeframe allows for a review time of 86 business days as a maximum. However, the submission of a complete and technically sound application will greatly reduce the amount of time required to review and process the application.

14. **Comment:** Many of the proposed timeframes, especially those for general permit authorizations, are too long. General permit timeframes should not exceed 30 business days. Since many general permit applications are simple registrations or Notices of Intent, DEP SOPs should be written to reflect the differing nature of staff reviews provided for general versus individual permit processing. Based on current performance, the timeframe for well permit renewals should not exceed 15 business days. There is no basis for lengthening this to 32 days. (33)

Response: Most general permits across the agency were not tracked under the Money-Back Guarantee. Therefore, we do not have data that would support or dispute this general comment. As we collect these data over the next year, we will adjust times as necessary.

Specifically, the Oil and Gas Act of 2012 requires DEP to issue well drilling permits within 45 calendar days (32 business days) of submission; except that the Department may extend this timeframe up to 30 additional calendar days to address extenuating permitting issues and to review waiver requests. The standard review time for an oil and gas activity Erosion and Sediment Control General Permit (ESCGP) is 60 calendar days (43 business days); however, the Department offers a 14-business day expedited review process for this general permit under certain circumstances (such as for projects not located in flood plains or special protection watersheds). Most Erosion and Sediment Control General Permits received by the Department are submitted for the expedited review timeframe. The review timeframe for “transfers” of ESCGP permits has been reduced from 43 to 22 business days. The Department believes that the current review timeframes are reasonable and appropriate. The Department intends to review and reconsider all permit timeframes annually and make future adjustments as necessary.

15. **Comment:** The timeframes allotted for all oil and gas permits is quite short. Depending upon the operation, neighboring land owners, numerous state agencies (O&G, air, water, etc.), municipalities, and assorted federal agencies may need to be brought into the permitting process. We suggest expanding these timeframes. (68)

Response: The Department believes that the current permit review timeframes are appropriate and provide timely reviews of all oil-and-gas related permits. The permit

review timeframes will be re-evaluated annually to determine if future adjustments are necessary.

- 16. Comment:** The District notes that the timeframe for a New ESCGP-1 (43 days) is extremely unworkable given the potential earth disturbance and stream and wetlands encroachment associated with these projects. Requiring a 43 day processing time for a project of this scope would be irresponsible. (24)

Response: The standard review timeframe for the Erosion and Sediment Control General Permit (ESCGP) is 60 calendar days (43 business days). The Department offers an expedited review process for this general permit in limited circumstances such as when the project is not located in a floodplain or special protection watershed. The Department believes that the current review timeframes are reasonable and appropriate, but we do intend to review and reconsider all permit timeframes annually and make future adjustments as necessary.

- 17. Comment:** We suggest that GP-7 (Minor Road Crossing), GP-8 (Temporary Road Crossing) and GP-11 (Maintenance, Testing, Repair, Rehabilitation, or Replacement of Existing Encroachments) should be included on the list of permits with the Permit Decision Guarantee. These can all be integral parts of the development of a site. (27)

Response: The Department acknowledges the comment and will consider including them in the future.

- 18. Comment:** PWIA suggests that all other major solid waste permit modifications be included within Appendix A of the application. In addition, PWIA suggests that solid waste permit applications for renewal or reissuance are likewise appropriate for Permit Decision Guarantee and consistent fixed review timeframes. (28)

Response: The Department has added major modifications for landfill permits that do not require a harms/benefit analysis to Appendix A. The Department has chosen not to include renewal and reissuances in PDG. They are generally lower priority because the existing permit remains in place until the renewal is completed.

- 19. Comment:** PWIA suggests that air permits subject to mandatory processing timelines set forth in applicable regulations should be covered by the Permit Decision Guarantee or at least specifically referenced in the policy. (28)

PWIA includes the inclusion of the following specific permits:

- Minor Operating Permit Modifications under 25 Pa. Code §127.462
- Requests for Determination under 25 Pa. Code §127.14
- Application for Administrative Amendments
- Stack Test Protocol Approval

Response: The Department did not include certain plan approval and operating permit applications in the Permit Decision Guarantee. These authorizations will be processed

according to the prescribed deadlines in 25 Pa. Code Chapter 127. The Department may include additional authorizations in the Permit Decision Guarantee in the future. However, the review and processing of source test protocols is not a permitting action; therefore, source test protocols will not be subject to the Permit Decision Guarantee. The Department will continue to review and process complete protocols expeditiously.

- 20. Comment:** While the list set forth in Appendix A is quite comprehensive, it fails to include a particular category of permits that is important to our members, specifically Major Facility Plan Approvals, Hazardous Air Pollutant Standards (40 CFR Part 63). PCIC agrees that the application of Part 63 MACT requirements can be complicated, especially at major sources, but believes that this very complexity counsels toward including such plans in the Permit Decision Guarantee. (65)

Response: Plan approval applications for major facilities that would be subject to the National Emission Standards for Hazardous Air Pollutants (NESHAPs), codified in 40 CFR Part 63 and incorporated by reference in 25 Pa. Code § 127.35, are excluded from the Permit Decision Guarantee because of their complexity. In certain instances, multiple NESHAPs may be applicable to the sources included in an application, which will increase the complexity of the application review and may cause additional delays in the processing and issuance of the plan approvals. The Department may include additional authorizations in the Permit Decision Guarantee in the future.

- 21. Comment:** The Department provides the example of major plan approvals for technically complex projects. However, Air Quality major plan approvals in Appendix A (pg 18) are not noted with an asterisk. The NPS recommends better clarification for exactly what permit programs are listed in Appendix A, including Air Quality Major Plan(s) Approval. It is unclear whether or not federal Prevention of Significant Deterioration (PSD) permits, which are often technically complex projects and major plan actions, are included in Decision Permit Guarantee. (68)

Response: The Department concurs that the plan approval applications subject to New Source Review and Prevention of Significant Deterioration are technically complex. These plan approval applications are excluded from the Permit Decision Guarantee and are not included in Appendix A. The Air Quality permitting actions listed in Appendix A do not have an asterisk (*), as these permitting actions are not anticipated to require complex reviews.

- 22. Comment:** With respect to Appendix A, we request that the Department include Residual Waste disposal and storage impoundment permitting as it is proposing to include Landfill permits. (49)

Response: Due to the complexity of permits involving a Local Municipal Involvement Process or a Harms/Benefit analysis, they are not included in the guarantee. Modifications of residual waste disposal and storage impoundment permits, not involving a harms benefit analysis, will be considered in future updates to the policy as necessary.

23. **Comment:** PPL suggests that the Department consider including major modifications to these waste permits rather than just the minor modifications. (49)

Response: The Department has added to the policy major modifications for landfill permits not requiring a harms/benefit analysis.

24. **Comment:** Further, we suggest that applications for modifications to the following permits also be included: Major Facility Title V Operating Permit; NPDES Minor IW Facility with ELG; NPDES Major Facility <250 MGD; NPDES Major Facility >=250 MGD; and Dam Safety permits. PPL supports the comments filed by The Electric Power Generation Association (EPGA) addressing the inclusion of these and other permits. (49)

Response: The Department acknowledges the comment and will consider inclusion of these permits in future iterations of the policy.

25. **Comment:** We recommend that the following authorizations be considered technically complex projects and applications (e.g. major plan approvals) may receive additional deficiency letters as appropriate prior to a decision point. (39, 53)

Program Name	Authorization Type Description	Application Type Code	PDG Timeframe (Business Days)
Air Quality	Major Facility Plan Approval State Regulation *	NEW	150
Air Quality	Major Facility Plan Approval NSPS *	NEW	150
Air Quality	Major Facility Plan Approval Hazardous Air Pollutant Standards (40 CFR Part 61) *	NEW	150
State Water Pollution Control	Water Quality Management Part II, Industrial Wastewater Facility *	NEW	65
NPDES	Minor IW Facility with ELG *	NEW	143
NPDES	Major IW Facility < 250 MGD *	NEW	143
NPDES	Major IW Facility >= 250 MGD *	NEW	143

Response: The Department acknowledges the comment; however the programs have determined which permit applications meet these criteria and they are indicated with an asterisk in Appendix A of the policy.

26. **Comment:** Please amend Appendix A – Permits included in Permit Decision Guarantee – of the policy to also include the following permit applications:

Program Name	Authorization Type Description	Application Type Code	PDG Timeframe (Bus. Days)
Air Quality	Major Facility Plan Approval MACT Air Toxics (40 CFR Part 63) *	NEW	150
Air Quality	Major Facility Title V Operating Permit *	MOD (significant)	180

Per the 1990 amendments to the Clean Air Act, compliance with a MACT standard for an applicable source is due within 3 years of rule promulgation. Because of this statutory deadline, EPGA believes it is appropriate to include Plan Approval applications that address a MACT requirement among the list of applications eligible for the PDG policy.

25 Pa. Code §127.541(b) - concerning significant operating permit modifications to Title V permits – notes that the Department will complete a review “on a majority of significant permit modifications within 9 months after receipt of a complete application” (emphasis added). Because the referenced regulation does not provide for a firm deadline for reviewing all subject applications, EPGA requests that the PDG policy be amended accordingly. (39, 53)

Response: Plan approval applications for major facilities that would be subject to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) codified in 40 CFR Part 63 and incorporated by reference in 25 Pa. Code § 127.35 are excluded from the Permit Decision Guarantee because of their complexity. In certain instances, multiple NESHAPs may be applicable to the sources included in an application, which will increase the complexity of the application review and may cause additional delays in the processing and issuance of the plan approvals. The Department did not include certain plan approval and operating permit applications in the Permit Decision Guarantee. These will be processed according to the prescribed deadlines in 25 Pa. Code Chapter 127. The Department may include additional authorizations in the Permit Decision Guarantee in the future.

27. **Comment:** Please amend Appendix A – Permits included in Permit Decision Guarantee – of the policy to also include the following permit applications:

NPDES	Minor IW Facility with ELG	AMAJ	65
NPDES	Major IW Facility < 250 MGD	AMAJ	65
NPDES	Major IW Facility >= 250 MGD *	AMAJ	65

Often, issuance of a new Water Quality Management Part II permit (which is included among the list of permits eligible for the PDG policy) requires an amendment to the

applicant's NPDES permit. As such, EPGA requests that the PDG policy be amended accordingly. (39, 53)

Response: At this point, this Department is attempting to limit the number of authorizations included in the Permit Decision Guarantee to those that will have immediate environmental benefit and those that promote economic growth and stimulus. The commenter makes a good point that new water quality management permits or modifications may require an amended National Pollutant Discharge Elimination System (NPDES) permit, as well. However, not all NPDES permit amendments fall into that category. The Department will re-evaluate all of the permit authorizations for which we are responsible for after one year of operation under the policy and will make changes where appropriate.

- 28. Comment:** Notable missing among the list of applications is the Request-For-Determination (RFD) within the Bureau of Air Quality. Within the current anemic economic climate for many of Pennsylvania's traditional brick and mortar industries, growth is occurring in very small steps, rather than large, risky initiatives. Specifically including RFDs in the hierarchical list rather than relegating the small decisions to the category (vi), All Others, will make sure that the contribution of the manufacturing sector to the Commonwealth's economic engine is not lost. (64)

Response: The Department disagrees that Requests for Determination (RFD) should be included in the Permit Decision Guarantee Program. RFDs are not a permit authorization, but rather a determination under 25 Pa. Code Section 127.14(a)(8) and (9) as to whether a Plan Approval Application should be submitted for the construction, modification, reactivation or installation of air contamination sources of minor significance. Therefore, RFDs are not included in the Permit Decision Guarantee. The Department has developed an on-line RFD application system for use by applicants to allow for a timely determination by the Department on the need to apply for a plan approval. The Department encourages applicants to use this RFD *Online system to expedite the processing of RFDs. Additional information may be obtained from this web page: <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/rfd.htm>

- 29. Comment:** All of Chapter 105 general permits definitely need to have guidelines on timely issuance. Waiting a year for a permit for a municipality that feels their project is an emergency because the stream is flooding their roadway, but DEP does not see this as an emergency and wants a full blown engineering study (which many townships cannot afford) is not in the best interest of the environment let alone relationships. (10)

Response: All General Permits have associated review timeframes and they will be subject to the policy as it relates to the hierarchy of application reviews; however all General Permits are not included in the Permit Decision Guarantee at this time – it is the intent of the Department to eventually include them.

- 30. Comment:** General Permits contain standard conditions and have been subject to public notice and comment and, as such, applications for coverage under these permits should

not require extensive review which impacts resource availability for review of other, more complex permit applications. We recommend that General Permit applications be reviewed to determine if the activity qualifies for coverage under that permit and the coverage acknowledged by the Department within 30 days of receipt of the application. (42)

Response: The Department agrees that general permits should be processed as general permits. Under the Money-Back Guarantee, most general permits across the agency were not tracked. Therefore, we do not have data that would support or dispute this general comment. As the Department collects these data over the next year, we will adjust times as necessary.

31. **Comment:** Currently under Section 401 Water Quality Certification (WQC) is issued as part of the CH 105 permit. If his certification is not included as part of these authorizations, what mechanism will be provided to obtain such? Since Section 401 WQC is needed for validation of the US Army Corps of Engineers Section 404 Permit, this is an important issue. (34)

Response: This will be addressed through the standard operating procedures for Chapter 105 permits for which it applies.

32. **Comment:** The timelines for Oil and Gas permits to drill and operate a well (32 business days) and the Expedited Erosion and Sedimentation Stormwater Permits (14 business days) are clearly too short to provide meaningful environmental review and public participation. (61)

Response: The standard review time for an oil and gas activity Erosion and Sediment Control General Permit (ESCGP) is 60 calendar days (43 business days); however the Department offers a 14-business day expedited review process for this general permit under certain circumstances (such as for projects not located in flood plains or special protection watersheds). Most Erosion and Sediment Control General Permits received by the Department are submitted for the expedited review timeframe. The Department believes that the current review timeframes are reasonable and appropriate. The Department intends to review and reconsider all permit timeframes annually and make future adjustments as necessary.

CONSISTENCY

- 1. Comment:** LVBA understands that the Department's internal audit revealed a deficiency rate of 40% of submissions. Releasing the results of that audit would serve as an educational tool for the regulated community as to where the common problem areas. (63)

Response: The Department agrees and will be sharing more statistics, common applications errors, etc. moving forward.

- 2. Comment:** Under this policy, DEP responsibilities include the involvement of Central Office bureau staff. This is a good step to make policy and guidance uniform throughout the state. (56, 59)

Response: The Department acknowledges the support for this provision of the policy.

- 3. Comment:** We strongly recommend that all related oversight and administrative policies emanate from your office and the Department's headquarters' staff and that they be implemented and carried out by the regional staffs in a consistent and uniform basis... the permitting process should be predictable and not vary from region to region. (25)

Response: The Department agrees, as this is the approach that has been taken since the Department's 2011 reorganization. Standard operating procedures are being developed by central office staff, with input from regional staff, to ultimately be issued by central office for statewide application. Additionally, the Elevated Review Process raises questions of clarity, interpretation or policy to central office as well for dissemination to the regions.

- 4. Comment:** Central office should have total oversight of the regional offices. (10)

Response: As a result of the Department's 2011 reorganization, program bureaus in Harrisburg have oversight and responsibility to ensure that the regions have the tools necessary and are implementing programs efficiently and consistently. Additionally it is the bureaus' responsibility to identify areas where staff leveling may be necessary.

- 5. Comment:** Perhaps the most important phrase in this document is that staff shall not "rely on personal preference or opinion, or regional interpretation that is inconsistent with the Department's statewide interpretation." This is especially welcome in light of an increasing trend among regional offices in recent years to adopt policies and regulatory interpretations at odds with, and sometimes in direct contradiction of, Department policy and even contrary to regulations. (23, 35, 46, 48, 50, 56, 59)

Response: The Department acknowledges the support for this provision of the policy. Please see Response #9 for additional information on ensuring regional consistency.

6. **Comment:** From a consistency standpoint, evaluating the permitting risk with schedules in mind has proven to be quite problematic. We applaud the effort to address accountability from the central office, to the regional office, to the permit reviewers. We believe that this new approach will lead to efficient management and will require additional accountability from those preparing the permits as well. (43)

Response: The Department appreciates the support for its consistency efforts to date and would appreciate feedback as we move forward with implementation of the new process.

7. **Comment:** The TGD indicates that Program Bureaus are responsible for Technical Guidance, Permit Forms and Fact Sheets. However, some of our biggest challenges come from (1) what is not in the technical guidance and (2) expansive staff interpretation of what is in the technical guidance. DEP staff tends to treat the technical guidance as a minimum standard and require additional information above and beyond what is required by regulations. (35)

Response: Standard operating procedures are being developed for each program to aid in consistent application review across the state. Furthermore, in reviewing applications, staff may provide comments and ask questions aimed at gaining a better understanding of how the application complies with statutes and regulations; however, technical deficiency letters must include regulatory or statutory citations.

8. **Comment:** Minor deficiencies mentioned in paragraph (v) must also be addressed in guidance developed by Program Managers in order to promote consistency among conservation districts and DEP regional offices. We suggest a standard format for memorializing discussions of minor deficiencies to the project file so that the public has access to the information as they would in a technical deficiency letter and to prove that Department responsibilities are being met. (54)

Response: The Department agrees and this subject, and among others, is being addressed in the program specific standard operating procedures currently in development. Staff will continue to document discussions with applicants as required to maintain complete records.

9. **Comment:** While the Department may indicate in the TGD that no personal preferences should come into play, we have experienced time and time again, instances where an applicant is required to correct a technical deficiency based on a permit reviewers' personal preference of, for example, how lines on a map should be drawn and color choice. We encourage the Department management to provide written language to ensure that this does not occur. Footnote 2 on the bottom of pages 10 and 11 indicates that more technically complex projects may receive additional deficiency letters as appropriate...and will follow program specific guidance that is developed. (35, 46, 48, 50)

Response: The Department is aware of past applications of preference and inconsistency among regions and is striving to correct such cases moving forward. This policy and the

Department's 2011 reorganization are major steps toward accomplishing that objective. First, the policy directs each program area to develop standard operating procedures outlining the role of and expectations for Department staff in reviewing specific applications. Additionally, technical deficiency letters are now required to have a statutory or regulatory citation included and will be reviewed by supervisors and managers. These items, paired with increased and focused training sessions for staff, will also aid in ensuring regional consistency moving forward.

10. **Comment:** LVBA urges to the Department to place a premium on achieving greater consistency amongst the various Department regions and delegated agencies. In particular, the Department's effort to significantly reduce, if not eliminate outright, the use of personal preferences and unique local policies by permit reviewers is a welcome goal. Greater consistency from reviewer to reviewer will improve the regulated community's understanding of expectations and yield higher quality submissions to the Department. (63)

Response: The Department agrees and, with the aid of this policy, is working to achieve that goal. Please see response #9 above.

11. **Comment:** It is EPGA's experience that the procedures for issuance of draft and proposed permits vary among the Department's Regional Offices, which seems to be inconsistent with the subject draft policy which requires the "Department's statewide interpretation" of statute, regulation or guidance in lieu of regional or other interpretations. (53)

Response: Standard operating procedures are being developed for each program to aid in consistent application review across the state and will address inconsistencies in permit issuance.

12. **Comment:** It is appropriate that Department staff is to rely upon statewide Departmental interpretation of statutes, regulations, and guidance rather than personal or regional interpretations. It would be helpful to applicants and to the public, as well as to Department reviewers, if such administrative interpretations are made public from time to time as they arise. We recommend that the Department establish a procedure for collecting such interpretations and posting them at an appropriate location on its web page, so that they are readily available to Department staff, to applicants, and to the public. To the extent that recurrent regulatory questions arise, ready access to the Department's past experience would benefit all parties. (14)

Response: The Department agrees that consistent statewide interpretation of statutes, regulations and guidance is important and a keystone of the proposed policy. We publish technical guidance documents at the below link to accomplish that objective.
<http://www.elibrary.dep.state.pa.us/dsweb/HomePage>

Further, we will continue to explore opportunities for new technical and policy guidance for communicating interpretations to the public as we develop our training and outreach strategy around this policy.

13. **Comment:** The MSC encourages the DEP to establish a Director of Permit Coordination to properly implement these important new policies in a consistent manner. This will benefit both the DEP and the regulated community. (33)

Response: During the recent reorganization the Department created the Office of Program Integration, which among other initiatives, is responsible for establishing consistency among regional offices. The Director of this office, along with executive staff, will ensure this initiative is implemented fully and consistently among the regions.

TRAINING

1. **Comment:** PIOGA recommends that, for each permit application or authorization, the Department annually publish a list of the 10 most common deficiencies found in the previous year. Such a feedback loop would focus applicants and consultants on those issues. It would also aide the Department in identification of problems with wording on forms and in development of staff training. (52)

Response: The Department agrees that this would be extremely beneficial for Department staff, the applicants and consultants and will include such a provision in the communication and training strategy.

2. **Comment:** For this policy to be successful, education of department staff and the industry is imperative. We would suggest that when training sessions are held, comparable sessions are held for DEP and industry or that DEP staff and industry be invited to attend the session together. Then there will be no doubt that everyone heard the same explanation of the regulations and policies. If handled well by the instructor(s) the interaction and viewpoints from the two angles (applicant/reviewer) would give everyone involved a better perspective on the permitting process. (21, 36, 52, 64)

Response: The Department agrees that training and outreach are key to this policy's success; however, combined DEP and industry training sessions may not always be possible. Nonetheless, the Department will explore this suggestion.

3. **Comment:** "Department staff will not rely on personal preference or opinion, or regional interpretation of statute, regulation or guidance that is inconsistent with the Department's "statewide interpretation." The PA Chamber agrees with stating the Department's Responsibilities so plainly. A uniform and statutorily correct implementation of the regulations is a constant desire heard among the PA Chamber's diverse membership. (64)

Response: The Department acknowledges the support for this provision of the policy.

4. **Comment:** The policy notes a PADEP goal of “changing the current models and relationships related to preparation of applications and permit reviews.” To accomplish this goal, PADEP will implement a “significant training program” for both Department staff and the regulated community. Such a program will effectively decrease problems encountered by permit review staff dealing with deficient applications. (9, 62)

Response: The Department agrees and the first step in achieving this communication will be program-specific webinars the Department will hold in November 2012. These sessions will discuss how the Permit Review Process and Permit Decision Guarantee impacts Department programs, which permits are included in the guarantee, standard operating procedures, expectations for pre-application meetings and new checklists or permit applications, if applicable. Check the Department’s website for upcoming sessions:

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21048

5. **Comment:** The document references the “Department’s statewide interpretation” of statutes, regulation or guidance (pages 8 and 10), but does not provide details – please explain. Will such interpretations be documented and made available to the regulated community? (39)

Response: The Department’s statewide interpretation of statutes and regulations is reflected in policy and guidance documents and is available on the eLibrary:

<http://www.elibrary.dep.state.pa.us/dsweb/HomePage>

Further, in order to implement the draft policy and EO 2012-11, each program is required to develop and update guidance and checklists that will be made available to the public to assist with application submissions. The guidance and checklists will mirror the information contained in the established policy.

6. **Comment:** We commend the Department for recognizing the recurrent need for training of its staff, applicants, and their consultants as the Department continues to improve its technical guidance and permit processing. (14)

Response: The Department acknowledges the support for this provision of the policy.

7. **Comment:** Both Department and local Conservation District personnel should receive consistent training so that uniform reviews will be issued. We have found that different reviewers interpret the regulations differently. (37)

Response: The Department agrees and all training will be offered to Department staff and staff from agencies delegated work by the Department.

8. **Comment:** The expectation of the regulated community during the pre-application conference is to receive useful guidance from the DEP in order to produce a complete

application on the first round and for the Department to honor the Permit Decision Guarantee timeframe. The proposed training for DEP staff and the regulated community in the preparation of applications and permit reviews will help meet the expectations of both. (32)

Response: The Department acknowledges the support for this provision of the policy.

9. **Comment:** The MSC is willing to continue and expand its support to the DEP for providing frequent and focused training for DEP staff and the regulated community. Such training should include effective communication skills, both written and oral. (33)

Response: The Department will take this into consideration as we develop our training and outreach strategy around this policy.

10. **Comment:** The sentence beginning with “No regulation will be proposed as final.....” does not seem to belong in the paragraph. This paragraph is addressing application assistance, not regulations. (68)

Response: In keeping with open and timely communication with the public, this statement simply indicates that the Department will not propose any regulations as final without the accompanying support materials and guidance. It would not be in the spirit of this policy to publish a regulation without adequate outreach and guidance to both Department staff and the public.

11. **Comment:** The policy notes a PADEP goal of “changing the current models and relationships related to preparation of applications and permit reviews.” To accomplish this goal, PADEP will implement a “significant training program” for both Department staff and the regulated community. Further, the Policy provides no indication of what “relationships” it hopes to change, or what is currently wrong with them, or how it intends to change them. (62)

Response: The current model is one in which applications are submitted to the Department in various stages of completeness, accuracy and regulatory compliance with the expectation that the Department will assist in getting applications to an approvable condition via a back-and-forth exchange of on-the-clock-off-the-clock letter-writing. This model is inefficient, taxes Department resources and causes the perceived large backlog of permit applications for which the Department is then placed at fault. The current model is unsustainable and must be changed.

12. **Comment:** Given the lack of training at DEP the past few years this will be a welcome accomplishment as long as there is an ongoing commitment to provide this. This training will also make decision making more uniform. (56, 59)

Response: Under Secretary Krancer’s leadership, training has improved. The Department understands that frequent training will increase consistency, so we have made training a cornerstone of this policy implementation.

13. **Comment:** Training for staff and consultants is welcome, and should facilitate excellent permit applications. It will be the responsibility of the DEP Secretary to ensure that training sessions are sufficient to meet demand and the schedules of the consulting community – and to assess their effectiveness. (41)

Response: The Department acknowledges the support for this provision of the policy and is dedicated to frequent and focused training. We will continue to assess the content and frequency of training opportunities to ensure current and relevant content.

14. **Comment:** CBF fails to recognize how all the training will be done in a month before the policy is finalized. (51)

Response: It was not the Department's intent to conduct all the training in the month before the policy is finalized. Staff has developed, and is receiving training on, the new standard operating procedures between now and the finalization of the policy. Additionally, there is immediate outreach planned for applicants and the public as part of a longer-term communication and training strategy. Please see Response #14 for additional information about upcoming training sessions.

15. **Comment:** The *significant training program* necessary for *successful implementation* of the policy, referenced in the policy as a Department Responsibility, needs to happen *before* the policy takes effect. (24)

Response: The Department disagrees. It was not our intent to conduct all the training in the month before the policy is finalized. Staff has developed, and is receiving training on, the new standard operating procedures prior to the finalization of the policy. Additionally, there is immediate outreach planned for applicants and the public as part of a longer-term communication and training strategy. Please see Response #14 for additional information about upcoming training sessions.

16. **Comment:** PPL encourages the Department to conduct this training without delay after the policy is finalized and to ensure that it is detailed and comprehensive. (49)

Response: The Department is in midst of developing a communication and training strategy, the first step of which will be program specific-webinars the Department will hold in November 2012. These will discuss how the Permit Review Process and Permit Decision Guarantee impacts Department programs, which permits are included in the guarantee, standard operating procedures, expectations for pre-application meetings and new checklists or permit applications, if applicable. Check the Department's website for upcoming sessions:

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21048

PERMITS, FORMS AND CHECKLISTS

- 1. Comment:** In order to ensure uniformity and consistency throughout the processing of permits, DEP should prepare and make available to the permittee, detailed checklists for each type of technically-adequate application. Furthermore, this program should not be implemented nor the policy finalized until these checklists and guidance are finalized and available for use by the permittee. (9, 10, 24, 33, 34, 35, 39, 44, 46, 48, 50, 52, 59)

Response: Acknowledging the importance of consistency, DEP is developing detailed checklists to be used in the Permit Decision Guarantee process. These checklists will be available to the permittee prior to policy implementation. Checklists and application revisions for other permit applications will be forthcoming.

- 2. Comment:** In many instances, what are characterized as “technical deficiencies” by PADEP reviewing staff occur as a direct result of applicants addressing a state specific regulatory requirement that is not clearly defined, is implemented inconsistently across various regions, or is implemented by policy. A key example of such a requirements is found at 25 PA Code §127.12(a)(5) concerning the requirement for applicants to show that” the emissions from a new source will be the minimum attainable through the use of the best available technology” in an air quality Plan Approval Application. Best available technology (BAT) is defined in 25 PA Code §127.1 as “Equipment, devices, methods or techniques as determined by the Department which will prevent, reduce or control emissions of air contaminants to the maximum degree possible and which are available or may be made available”. While an applicant is required to identify BAT in Plan Approval Applications for “new sources”, there is no clear regulatory criteria regarding how a proposed level of BAT should be substantiated, leading to confusion for applicants, permit review staff, and the general public. As a result, many deficiency letters associated with Plan Approval Applications typically cite §127.12(a)(5), as if by default, for identified deficiencies and requests for supplemental information and analyses. PIOGA suggests that the PADEP develop clear regulatory guidance to articulate minimum expectations for such regulations or to actually revise the regulations to identify the minimum data requirements for inclusion in an application. PIOGA also suggests that technical deficiencies associated with such requirements be exempt from the “two strike” provisions of the draft Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee, DEP ID 021-2100-001. (52)

Response: As defined in 25 Pa. Code §121.1, best available technology (BAT) is defined as “Equipment, devices, methods or techniques as determined by the Department which will prevent, reduce or control emissions of air contaminants to the maximum degree possible and which are available or may be made available.” Pursuant to 25 Pa. Code 127.12 (a)(5), the plan approval applicant must show that the emissions from a “new source” will be the minimum attainable through the use of BAT. The final BAT determination is made, on a case-by-case basis, by the DEP at the time of issuance of the plan approval. The Department will finalize standard operating procedures (SOPs) for the

review and processing of applications included in PDG Program. Additionally, the Department intends to revise the plan approval application and provide detailed instructions to reduce technical deficiencies. The Department also encourages applicants and their consultants to participate in pre-application meetings so that the applicant can discuss with the Department applicable statutory and/or regulatory requirements.

3. **Comment:** Given the new procedures, revised/new standard letters, checklists, and internal documents like records of decision that must be in place when this policy become effective, we suggest that the final notice in the *Pa. Bulletin* not be published until the supporting information is available for Departmental staff to implement this policy. (54)

Response: The Department agrees and is developing all such documents outlined above, which will be available prior to final notice in the *Pennsylvania Bulletin*.

4. **Comment:** We would suggest the Department consider having the public and industry representatives involved with the revisions of permits and checklists. By allowing industry to assist DEP in developing fact sheets and other educational materials, hopefully industry's perspective can be considered by the Department. (21, 33, 35, 42, 44, 50)

Response: The Department acknowledges the benefit of all stakeholders, including industry, contributing to the development of permit application forms and checklists. The Department encourages this interaction and has granted individual program areas the discretion to foster such interaction.

5. **Comment:** PIOGA recommends the policy require the Department to provide drafts of any permit forms, fact sheets, application checklists and other materials to Advisory Boards and/or the Environmental Quality Board when a new or revised regulation or technical guidance is proposed. (52)

Response: The Department does not do this currently and does not plan to do so as a result of this new policy. However, we are always willing to listen to constructive suggestions that make these forms more clear.

6. **Comment:** Is consideration being given to updating best practices over time as part of this review? (38)

Response: Yes, it is of prime consideration as the Department moves forward with implementation.

7. **Comment:** This policy should be revised to require each program to immediately review all current technical guidance, permit forms and fact sheets applicable to the requirement's associated with content and scope of permit applications. This exercise should have the purpose of (1) eliminating any requirement in permit forms for the content of permit applications that is not expressly required by the statute or applicable

regulations, and (2) updating Technical Guidance and Fact Sheets to reflect current law and interpretation. (2)

Response: The policy currently does this.

8. **Comment:** The instruction forms for the permits should address every field on the form. (13)

Response: The Department agrees that permit forms should be clear and we are working to revise permit applications as necessary.

9. **Comment:** Have other Department documents (ex. NPDES Administrative Manual) been updated to be consistent with this new policy as per section III.B.1 of this policy? (20)

Response: Documents will be updated and revised over the next few months.

10. **Comment:** The policy refers to “No regulation will be proposed as final without all complimentary guidance, policy, forms and fact sheets being developed and available for public comment concurrent to the finalization of the regulation.” Because the policy explicitly states in the “Disclaimer” section above, that this policy is not a regulation or adjudication, it is unclear as to why now is the policy referring to regulatory actions. (68)

Response: This is a statement to the public that we have instructed our staff to follow this direction.

11. **Comment:** Every three years all public documents such as technical guidance, permit forms, fact sheets, and application checklists are to be reviewed and revised and republished, as necessary. This goal is admirable, but the current state of permit review of public documents speaks to the shortage of trained technical staff. (64)

Response: The Department disagrees with this comment. As the outcome of this change in process will be the more efficient use of Department staff and resources, we are confident we have adequate staff to complete such triennial reviews.

12. **Comment:** Will Department Standard Operating Procedures (SOPs) developed for reviewers will be made available to the public? (36)

Response: Yes, the Department intends that standard operating procedures (SOPs) developed for reviewers will be made available to the public.

13. **Comment:** We recommend the Department employ strategies to help reviewers address site specific issues given the diverse ecological niches within our Commonwealth; scrutinize risk management plans and emergency response procedures to ensure that they are reflective of reality; and discard “boiler plate” responses on forms that fail to address the existing conditions encountered with each specific project. (38)

Response: The Department agrees and these will be included the program specific standard operating procedures.

14. **Comment:** The last sentence in the first paragraph of this section is confusing. A regulation is final when it is published in the *Pennsylvania Bulletin*. Does this statement supersede the legal definition of the regulations in Pennsylvania? According to the second paragraph, complementary documents are republished every three years. Does this mean that regulations are never finalized? (45)

Response: No, the commentator has misunderstood the difference between regulations and complementary documents. Complementary documents are non-regulatory guidance documents and policies that are used to provide technical information, standards, design guidelines or explanations and interpretations of statutes and agency regulations. If necessary, complimentary documents will be updated every three years.

15. **Comment:** Developing guidance, forms and fact sheets concurrently with regulatory changes (and their frequent review and revision) is a good idea that will help the regulated community understand the scope and impact of proposed regulations. Hopefully it will reduce the number of forms and guidance documents that conflict with the regulations that they are supposed to implement. (23)

Response: The Department appreciates this comment.

16. **Comment:** Information required on permit forms need to be based solely on regulations and statutes. (35, 46, 48, 50)

Response: The Department agrees in part. There may be information that is not specifically required by regulation but is still needed by permit reviewers to make a determination that the application complies with regulations. The Department will strive to request only the amount of information necessary to make a permit determination.

17. **Comment:** To meet the requirements for DEP, DEP needs to re-address the permit application forms. The Applicants are unable to enter the information as needed. There needs to be coordination between the form designers and the staffers who will ultimately be responsible for reviewing the forms. (13)

Response: The Department agrees.

18. **Comment:** Only have what is necessary on the forms. One to two page applications should provide all the information that is needed for a project. (10)

Response: Under the new policy, the Department will strive to make forms as intuitive and comprehensive as possible while limiting information to what is needed. However, a “one-size-fits-all approach” cannot work, as some permits and activities are much more complicated than others. The Department will strive to request only the amount of information necessary to make a permit determination.

19. **Comment:** A thorough review of the application format may help assess if streamlining or redesigning the applications could help reduce the incidences of incomplete information. This could contribute to applications that are correct the first time which would greatly increase efficiency on both sides of the permitting process. (32)

Response: The Department agrees. However, a “one-size-fits-all” approach cannot work as some permits and activities are much more complicated than others. The Department will strive to request only the amount of information necessary to make a permit determination.

DEPARTMENT STAFFING

1. **Comment:** DEP should conduct a workload analysis in order to determine if the Department has sufficient staff and resources in its budget to process the expected number of permit applications in the required timelines established in these policies. It is asked that the results of this workload analysis be available to the public. (9, 10, 20, 21, 35, 41, 50, 51, 56, 59, 61)

Response: The Department has evaluated staff levels and determined they are adequate to implement this new policy. Once staff is all operating under the same standard operating procedures, the department plans to conduct a workload analysis. We will consider publishing the results if we are not constrained by law, labor agreement, or other potential restriction.

2. **Comment:** It is recommended that the Department give reasonable consideration to adequate staffing levels, and the increasing of ‘user’ permit fees as necessary. (9)

Response: The Department acknowledges the comment and will continue to assess staffing and, if necessary, reevaluate permit fees.

3. **Comment:** We are concerned that the Department lacks the resources needed to process permits accurately, much less to expedite that processing. A recent Earthworks report concluded that the Department lacked the capacity to adequately inspect its wells, which in 2010 and 2011 led to 91% and 86%, respectively, of Pennsylvania’s oil and gas wells not undergoing inspection. The Department’s inability to enforce its regulations does not necessarily mean that it is unable to process permit applications accurately, but it suggests a lack of resources that calls that ability into question. (57)

Response: DEP employs sufficient staff resources to perform timely permit reviews as well as conduct regular and ongoing inspections. The Department has added significant staff resources to its complement and has also opened two field operations offices (Williamsport and Scranton) for Oil and Gas staff. To ensure well sites are inspected on a routine basis, PA DEP amended the oil and gas regulations in 2011 to require operators to

inspect all of their wells each quarter and report to the agency immediately any well integrity issues. Further, operators are required to annually submit to DEP a report of the results of such inspections. The Earthworks report fails to acknowledge that the number of DEP inspections per well drilled has increased from 5.3 inspections per well drilled in 2009 to 7.8 inspections per well drilled in 2011 and more than 10 inspections per well drilled so far in 2012. This indicates the increased effort DEP is putting into field presence, inspections and oversight of the oil and gas industry.

4. **Comment:** We are concerned that current low revenues for state and local governments result in decreased levels of experienced technical staff with the necessary technical expertise to implement this policy. (51)

Response: The Department disagrees that revenues are tied to levels of experienced technical staff. Though the Department has experienced budget cuts in the recent years, efficiency measures, cost savings, and process improvements have allowed processes to continue with little impact.

5. **Comment:** Although DEP is staffed by many highly qualified professionals, it is not a given that it has the expertise to address every technical issue that arises with every permit application that is submitted. It is appropriate that the opinions of third parties with special expertise be solicited and considered in the review. Furthermore, the staff in Harrisburg and the regional offices cannot be expected to be familiar with all of the local issues relevant to every permit. (45)

Response: The policy does not presume that the Department is the repository for all environmental expertise, but, the Department is the agency responsible for making decisions on permit applications. The Department can only make competent decisions after a thorough analysis of all input, including expert opinions from outside scientists as well as the public, which is our current practice and will continue to be our practice moving forward.

6. **Comment:** It appears that some general permits are now part of the Permit Decision Guarantee. Clearly when everything is a priority, more staff is required to get the job done. As addressed in the #1 Webinar, it was noted that there is no need for additional staffing levels. At this point, has this clearly been evaluated in conjunction with the new timetable for the timely review of general permits? (9)

Response: General Permits are issued once by staff in the Central Office in Harrisburg. Once a general permit is issued, applicants are required to simply register under the General Permit. These are simple and straightforward and require less staff time, increase environmental protection and relieve agency workload for common permitting scenarios. DEP has evaluated staff levels and General Permits do not result in the need for more staff. As a result of time savings due to General Permits, DEP is looking for more opportunities to develop these permits.

THIRD PARTY REVIEWS

1. **Comment:** How will the Department determine third party reviewers and what will be the necessary procedure for becoming qualified as a third party permit reviewer as proposed under the Permit Decision Guarantee? (36, 66)

Response: There is not currently a program established for third party permit review and therefore, no procedures exist for becoming a qualified reviewer for the Department. The Department appreciates your interest and encourages you to look for future communications regarding this initiative.

2. **Comment:** If looking at a third party reviewers this should be a committee of private consultants from different companies, otherwise it will be like the municipal government engineers – you pat my back and I will pat yours and in the end the environment still loses. (10)

Response: There is not currently a program established for third party permit review and therefore, no procedures exist for becoming a qualified reviewer for the Department. If and when the Department decides to move forward with this initiative, avoiding conflict of interest will be one of the highest priorities.

3. **Comment:** The Permit Review Process and Permit Decision Guarantee as a welcome change for Pennsylvania construction businesses. We are pleased to see several of our recommendations are part of the new modernized process. Nonetheless, we feel the process could be enhanced by utilizing third party consultants to review specialty permits, i.e. NPDES, etc. (30)

Response: The Department acknowledges the support and is currently exploring options for process improvements, including the potential for third party review.

4. **Comment:** We suggest using a non-competing third party consultant as a reviewer for engineering and constructability issues. What’s more, third party consultants could be utilized should DEP encounter a backlog of permits that need to be processed for timely situations, i.e. the project is a job creator, or delays job completion. (30)

Response: If and when the Department decides to move forward with this initiative, avoiding conflict of interest will be one of the highest priorities.

5. **Comment:** The MSC recommends that the DEP consider and develop a “Third Party Review Initiative” that would advance the goals of the DEP’s draft policies. A voluntary program, initially implemented on a trial basis would create a separate, faster track for review and decision on high priority projects. We suggest that permits issued under 25 Pa. Code Chapter 102 and Chapter 105 for oil and gas activities, covering both individual and general permits, would be suitable for such a pilot project. (33)

Response: The Department acknowledges the comment, and is currently exploring options for process improvements, including the potential for third party review.

6. **Comment:** PA Chamber supports the adoption and incorporation into the draft Permit Review and Permit Decision Guarantee of a third party permit review. The third party review proposal is an important part of the success of the Department's efforts to ensure timely and efficient review of permit applications filed under certain water quality permit applications. The PA Chamber supports the establishment of a pilot program for third party review of certain permits submitted under the Clean Streams Law and under the Dam Safety and Encroachments Act. (64)

Response: The Department appreciates your feedback, and will evaluate the proposal as we move forward with consideration of this initiative.

7. **Comment:** PCIC believes that the timing for a third party review program is upon us and that the DEP should expedite and adoptions of the third party review program set forth in H.B. 1659, PN 2714. PCIC believes that this program will allow for more effective and timely review of applications, without sacrificing the DEP's control over the course of its permitting programs. Given the potential growth of the chemical industry in the Commonwealth due to the availability of local, cheap natural gas, establishing this program in the short term is essential to the long term economic success of the chemical industry in Pennsylvania. (65)

Response: The Department acknowledges the comment as we move forward with evaluation of this potential option.

8. **Comment:** Third party reviews were listed as a possibility in the webinar program. More evaluation should be done by DEP in this area, including the possibility of preliminary approval by a third party reviewer. (56, 59)

Response: The Department agrees, and this is one of the areas currently being explored.

9. **Comment:** We recommend against engaging third parties in permit review, which is the responsibility of DEP as a state agency. Should DEP proceed with third party engagement, it is of utmost concern that this entity be unbiased, independent, and has strong technical and policy expertise in the areas relevant to the proposed project (e.g., water and air quality, wetlands protection, or oil and gas development). The Department must set and maintain high standards for the credentials, past and current affiliations, and potential conflicts of interest on the part of any private companies or consultants engaged in any aspects of the permit review process, and make all such information available to the public. Any third parties must also be subject to state Right to Know and ethics laws. (61)

Response: The Department acknowledges the comment regarding third party reviewers and will consider these as we move forward with evaluation of this potential option.

FUTURE PERMITTING EFFICIENCIES

1. **Comment:** We look forward to the expansion and simplification of the use of General Permits to address routine maintenance and modifications of water and wastewater systems. In the development of these General Permits going forward, it will be important to allow for some flexibility so that minor modifications and improvements can be covered under the General Permit to avoid the unintended consequence of an owner deferring improvements to take advantage of a streamlined General Permit process. (40)

Response: The Department acknowledges and appreciates this support.

2. **Comment:** It was mentioned that DEP will try to have more general permits as an efficiency measure, but the concept is not mentioned in the Executive Order or the policy. CBF requests more detail about which permits DEP expects to convert into general permits in order to ascertain whether we believe this would be appropriate. Generally speaking, having more general permits is not an appropriate response to the abundance of permits that need to be reviewed and will likely have an adverse impact on the environment. (51)

Response: While the Department is always willing to consider innovative approaches to improve permitting, the Executive Order did not direct the Department to streamline permitting. Instead, it directed the Department to develop a review process that improves efficiency and removes steps that add no value. Those efficiencies and value added changes are the innovation suggested. In no way should this policy be construed to suggest that any less protection of public health and the environment will be required.

3. **Comment:** Policy should include provisions for optional or innovative approaches that would serve to further streamline the permitting process. (55)

Response: The Executive Order did not direct the Department to streamline permitting. Instead, it directed the Department to develop a review process that improves efficiency and removes steps that add no value. Those efficiencies and value added changes are the innovation suggested. In no way should this policy be construed to suggest that any less protection of public health and the environment will be required.

4. **Comment:** Per the recent webinar, it's the Department's intent to expand its DEP Greenport module to allow for electronic submittals. In the interim, will the Department be amenable to accepting application files saved to a CD (where feasible) in lieu of paper submittals? (39)

Response: The EO 2012-11 outlines that DEP will develop, implement and improve available information technology tools and those improvements will occur in phases. Currently, some programs may allow for application files to be submitted via a CD but at this time it is not a widely accepted submission format. For example, some statutes and

regulations may require paper submissions. The issue of submission formats will be evaluated on a program-by-program basis.

5. **Comment:** DEP should develop new electronic permitting tools that include a flagging system to identify those fields that are required for technical, statutory and regulatory completeness to avoid rejection during the review process and make them more easily available to the public. (32, 35, 36, 42, 46, 48, 50, 52)

Response: The Department agrees, and such electronic permitting tools are already in place for some programs and under development for others. It is DEP's goal to include strong programming and underlying business rules in these applications to ensure application completeness to the maximum extent possible.