

Frequently Asked Questions

Executive Order 2012-11, Permit Review Process and Permit Decision Guarantee, and Policy for Permit Coordination September 28, 2012

The purpose of this FAQ is to highlight and explain the Governor's Executive Order EO2012-11 and the associated draft policies for revising DEP's permitting process. This FAQ and the policies it refers to are intended to supplement existing requirements. Nothing in this FAQ or those policies shall affect regulatory requirements. This FAQ and the policies are not an adjudication or a regulation; there is no intent on the part of DEP to give them that weight or deference. This FAQ describes how the policies will establish the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this FAQ and the policies if circumstances warrant.

Executive Order

What is Executive Order 2012-11 and how does it relate to the Permit Review Process and Permit Decision Guarantee?

On July 24, 2012, Gov. Corbett signed Executive Order 2012-11 (EO2012-11) which rescinded the 1995 Executive Order establishing the Money Back Guarantee (MBG) Program. Gov. Corbett's Executive Order tasked DEP with:

- implementing the Permit Decision Guarantee; determining which permits the program covers;
- determining the responsibilities for permit applicants under Permit Decision Guarantee;
- addressing coordination of review for projects with multiple permits;
- establishing performance standards for permit review staff; and
- developing, implementing and improving electronic permitting tools.

How does DEP plan to implement the requirements of the Executive Order?

To begin implementing the direction of Executive Order EO2012-11, DEP drafted "Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee," which will be referred to in this FAQ as the draft policy.

This draft policy establishes a standardized review process for permit applications. The draft policy:

- provides certain and predictable review times for applicants who submit complete, technically-adequate applications that address all regulatory and statutory requirements;
- articulates clearly and concisely expectations for applicants that result in complete, technically-adequate applications that address all regulatory and statutory requirements;
- establishes expectations of Department staff aimed at achieving greater efficiency, clarity and consistency across regions and programs;
- improves the Department's internal tracking and coordination of permit applications; and,
- rescinds and replaces the Policy for Implementing the DEP Money-Back Guarantee Permit Review Process 013-2000-001, as amended.

The draft policy also outlines the processing times for certain Department permits and authorizations that will be included in the Permit Decision Guarantee.

The draft policy was published on September 1, 2012 in the *Pennsylvania Bulletin* for a 30 day comment period. Interested persons may submit written comments on this draft policy by October 1, 2012. Comments submitted by facsimile will not be accepted. Comments, including comments submitted by electronic mail must include the originator's name and address. Written comments should be submitted to the Hayley Book, Acting Director, Office of Program Integration, Rachel Carson State Office Building, 400 Market Street, P. O. Box 2063, Harrisburg, PA 17101-2063, (717) 772-1856, RA-EP-OPI@pa.gov.

What changes does DEP anticipate making to implement the Governor's Executive Order?

The overall schedule for implementing the Permit Review Process and Decision Guarantee, as directed by the Executive Order, spans from now to the end of October 2012. DEP will work on developing and reviewing (revising where needed) performance measures, benchmarks, training and standard operating procedures for employees for all of our functions (not just permitting) for years to come.

Over the coming months, additional Department policies and guidance documents will be revised to reflect the change from MBG to PDG and other changes necessary to effectively implement EO2012-11.

Will Permit Review Process and Permit Decision Guarantee and/or EO 2012-11 address DEP's backlog of permits?

Throughout the implementation of the Permit Review Process and Permit Decision Guarantee, DEP has made it a priority to clear the queue of permits currently in for review.

Are Permit Decision Guarantee and the EO 2012-11 a means to make Department staff work faster with focus less on protecting the environment?

The draft policy has been developed by DEP personnel at all levels who have done permitting work for years. The new process will free DEP personnel from the merry-go-round of pulling applications "off-the-clock" and then putting them back on, allowing them to spend more time reviewing quality, complete permit applications and concentrating on protecting the environment. The system will work better and more efficiently, and the environment will be better protected. At the same time, the process will deliver to the regulated community a more predictable and efficient manner of permit application review and decision.

The draft policy, which comes from the Executive Order, is built upon four core principles:

1. Complete and quality permit applications are crucial to the Department's ability to guarantee a timely decision;
2. Every full and complete permit application will receive a thorough review in an efficient manner;
3. The Department will not issue any permit that does not meet all legal and statutory requirements to protect the environment and public health and safety; and
4. The Department will make decisions based on the law, facts and sound science.

The Governor's Executive Order encourages applicants to schedule pre-application conferences as soon as practicable. Has DEP identified when these conferences should be scheduled?

A pre-application conference is the foundation for improved understanding and communication between the potential applicant and DEP. The pre-application conference allows the Department, consultant and applicant to discuss project details and seek clarification on applicable regulatory and statutory requirements. Upon request, DEP will schedule pre-application conferences when deemed to be necessary.

DEP recommends that applicants and their consultants contact DEP as soon as it is possible to provide a description (project summary, maps, etc.) of the proposed project. DEP also recommends that applicants and consultants remain in contact with the Department throughout the development of the project. This allows DEP staff to have a thorough understanding of the details and technical design of the project and allows applicants and consultants to be aware of any applicable regulatory and statutory requirements to gain insight into potential regulatory concerns that could delay permit issuance. As a result of such mutual awareness, all parties can work together to identify and implement solutions.

Will DEP be adding staff in order to meet the goals of the draft policy and the EO2012-11?

DEP maximizes its budget and resources and will not be adding additional permit review staff at this time. DEP does not believe additional permit review staff is necessary. The revised permit review process will make DEP more efficient. If necessary, workload will be shared across regions to accommodate overflow from one region.

Permit Decision Guarantee

What permits and authorizations are included under Permit Decision Guarantee?

The draft policy identifies 244 types of permits and authorizations across DEP's many programs. Please refer to Appendix A of the draft policy for a full list. This list may change as a result of the public comments DEP receives.

What permits and authorizations are not included under Permit Decision Guarantee?

At this time, any permit and authorization not listed in Appendix A of the draft policy is not eligible for the Permit Decision Guarantee. Again, this list may change as a result of the public comment DEP receives.

How will DEP determine when to review applications, given that some are not part of Permit Decision Guarantee?

The draft policy establishes a permit review process that prioritizes the review of applications as follows, with descending priority:

- Applications for projects necessary for the protection of public health, safety and the environment;
- Applications for projects necessary for economic development;
- Applications within Permit Decision Guarantee;
- Those applications that have been excluded from the Permit Decision Guarantee but are necessary for economic development projects that create jobs and enhance communities; and
- Lastly, any remaining applications will be reviewed on a "first-in-first-out" basis.

How will DEP measure the success of Permit Decision Guarantee and see if processing times are being met?

As outlined in the draft policy, DEP will maintain a department-wide application processing system for tracking applications. This application processing system will have an internal tracking mechanism but will also be revised to improve the transparency of permit information available to the applicant. In addition to the tracking system, regular meetings will be scheduled to review and monitor progress made on application processing. DEP has also updated position descriptions of staff to promote the expectations and accountability necessary for the success of Permit Decision Guarantee.

Why are Act 2 and brownfield cleanups not included in the Permit Decision Guarantee?

Because statutes associated with Act 2 and brownfield clean-ups provide guidelines and timeframes for approving final reports for remediation activities under the provisions of Act 2 already, they are currently excluded. The Permit Decision Guarantee does not trump the regulatory deadlines. While reports submitted under Act 2 are not permits as defined in the Permit Decision Guarantee policy, many other permits otherwise required for development or construction do fall under the Permit Decision Guarantee policy.

In reviewing Appendix A of the draft Permit Decision Guarantee policy, the proposed timeframe for some of the included permits appears to be less than the timeframe provided for that permit in regulation. Why?

The proposed timeframes for some of the permits may be listed differently than what would appear in the applicable regulation or statutes. Most regulations and statutes have been written in calendar days and the Executive Order outlines that permits will be reviewed in business days. In addition, program areas have reviewed their existing timeframes and in some instances they have been amended to more closely match actual processing times.

Will the new process discourage field visits?

Not in any way.

Policies and Procedures

What procedures will be followed in reviewing permits now that MBG has been rescinded?

Until the new Permit Review Process is final, DEP staff will continue to follow the review process and timeframes laid out in the MBG Policy (Policy for Implementing the DEP Money-Back Guarantee Permit Review Process 013-2000-001, as amended) as they review applications.

The Policy for Implementing the Department of Environmental Protection (Department) Permit Review and Permit Decision Guarantee document references the “Department’s publically-available data management system” (pages 6 and 7), but does not provide details – please explain.

The publically-available data management system is eFACTS, and specifically the eFACTS on the Web component, which is available to permit applicants to track permitting progress. This system has both internal and external tracking mechanisms and will be undergoing some upgrades to improve the clarity and transparency of permit information available to the applicant.

Are currently submitted applications going to be included in the PDG to get them out of the backlog?

Applications submitted to DEP prior to the final issuance of the Permit Review Process and Permit Decision Guarantee will be reviewed under the prior process. DEP staff will be working diligently to clear the queue of existing permits by June 30, 2013. Where there are efficiencies realized through implementation of the new policy, we will apply these to previously received permits where application of these efficiencies does not conflict with the prior policy.

DEP permits follow a fixed format. Has DEP considered having applicants submit applications with draft permits? For instance, DEP would review the permit application and sign off on the permit, thereby saving the time required for DEP staff to draft the permit.

DEP needs to look into this more. In some instances, it may be prohibited by statute or regulation, but it is a comment that programs will be asked to consider when developing standards and procedures needed to implement EO2012-11.

Will changes be made to Chapter 102 regulations because of this policy?

Statutes supersede regulations, and regulations supersede policy. If there is an item in the draft policy that is prohibited by statute, then it may not be implemented. However, if we find when developing and implementing standard review procedures that a regulation change would add value to the review process, DEP will move forward with proposing that change.

The Policy for Implementing the Department of Environmental Protection (Department) Permit Review and Permit Decision Guarantee 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?

The Department’s statewide interpretation of statutes and regulations are reflected in policy and guidance documents and are available on the eLibrary. 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.

The draft Policy for Permit Coordination notes that the Department will coordinate with other agencies as needed. Page 3 of the document provides a list of other potentially affected agencies. For Allegheny and Philadelphia counties, air permitting is administered by their respective county agency, but these agencies were curiously omitted from the list – please explain.

As an entity that performs delegated duties, the county agencies are referenced in the applicability section of the draft policy. For the purposes of the policy, these county agencies are considered to be the same as DEP and therefore are not listed specifically as other agencies.

Pre-Application Conferences

When an applicant requests a pre-application conference with DEP, will DEP invite the Conservation District?

Yes. If the Conservation District has been delegated review authority for that particular permit application, they, being vital partners in the review, will be included in pre-application conferences.

Since consulting firms will need to budget for pre-application meetings in their proposals for professional service contracts, will programs be developing standard pre-application formats that are specific to each program and will be used by the regional office staff? Also, who determines what types of projects require a pre-application meeting?

The programs will not be developing individual formats for pre-application meetings. A template for conducting a pre-application conference has been included as an Appendix to the draft Permit Coordination Policy. This template is included as a sample of what could be used to review permit requirements etc. The Assistant Regional Director will be responsible for determining if a pre-application conference is necessary.

How will DEP make sure the necessary staff is at pre-application conferences?

The Assistant Regional Director will coordinate these conferences. Based on the information the applicant or consultant provides in advance of the conference, the Assistant Regional Director will see to it that the necessary staff are in attendance for the pre-application conference. DEP understands that the pre-application meetings are a wise use of staff time, as discussions and time spent prior to submission will save staff time during the actual review process.

Will it be possible to have the pre-application meetings established on a given day of the month and have other agencies present, such as the Corps, USFWS, PAFBC, etc.?

That may be possible but will be up to the Assistant Regional Director/Regional Director or applicable District Manager to coordinate such a set day and time for the pre-application meetings. The Assistant Regional Director/Regional Director or applicable District Manager will invite all delegated agencies and other agencies that will need to review the application to the pre-application meeting that is being scheduled.

Permit Review Timeframes

Is it correct that the clock will not stop after DEP has reviewed the application, asked for additional information and the consultant is compiling a response?

Under the proposed Permit Review Process and Permit Decision Guarantee policy there is no starting and stopping a clock. The guarantee timeframe starts on the day DEP considers an application complete and it ends on the day DEP issues the permit. This is a shift in DEP's philosophy, from one of "how long does DEP have left to review a permit?" to one of "how long we have already had it in house?" DEP will increase training and management's involvement in permitting to make sure that staff is working as efficiently as possible on permit applications.

What will be the time limits on DEP's review? What will be the maximum time for review for a high priority and low priority submittal?

The processing time depends on each individual permit issued by DEP. The permit decision guarantee timeframe, for those permits contained in the Permit Decision Guarantee, are outlined in Appendix A of the draft Permit Review Process and Permit Decision Guarantee policy. For those permit types which are included in and qualify for (which means they are complete and technically adequate) the permit application will be reviewed within the permit decision guarantee timeframe. Everything else will be reviewed based on the priorities as outlined in the draft policy. Every permit and authorization, regardless of whether it is eligible for the decision guarantee, has a target review time that DEP will strive to meet. This is processing time for which we are aiming--not guaranteeing--and the timeframe against which we will evaluate our performance.

If a permit application is received and everything has been provided and it's acceptable, is it possible to receive a decision before the allotted time or will it be held until the allotted time?

It's certainly possible to receive a decision before the total processing time has elapsed. For applications that are complete and meet all regulatory requirements, DEP has the goal of minimizing the amount of time permits are under review. As such, DEP will issue permits as soon as reviews are complete and a decision is made, irrespective of the specific guarantee timeframe.

Is the 10 day completeness review included as part of the timeframe for the permit decision guarantee?

The 10 day review period is not part of the permit decision guarantee timeframe. The timeframe does not begin until an application has been accepted and technical review begins.

In the past, there have been significant delays in reviewing and issuing NPDES permits. Has this caused the need for this policy?

A delay in the review and issuance of any permit is part of the reason we are revising our permitting process. The need for this policy is that Gov. Corbett asked DEP to diagnose and correct the lag in our permitting system. Too often, permits with DEP may have been “on the clock” under Money-back Guarantee for 50 or 60 days, but over two years had passed since their initial submission. DEP would pull applications “off the clock” to wait for responses from applicants. Recognizing that this is problematic, we have proposed a better way to do business.

Will there be similar reviewers reviewing General Permits (GPs) and Erosion and Sedimentation Control (ESCGP) permits? Will there now be more consistency region to region and office to office?

Yes. We are hoping to achieve the goal of obtaining and maintaining consistency department-wide to the maximum extent possible. There will be similar reviews for these types of permits moving forward.

Some states provide for expedited permit review by charging applicants the cost of providing overtime for staff. Has DEP considered this tactic for review?

DEP is not considering such a fee for an expedited review at this time. DEP’s first priority is defining a clear, distinct and consistent workflow for standard permit reviews, which must be accomplished prior to considering alternate methods such as the one described.

If NPDES approvals for stormwater management are delaying land development approvals, can DEP issue a letter indicating the permit has no major problems so land development approvals can move forward while the permit is under review?

DEP is looking at post-construction stormwater management to identify where we are running into conflicts and where there may be duplicative reviews.

Application Processing Hierarchy

How will DEP reconcile the goal of certainty in the permit process with the notion that some permits are more important than others?

Every permit that DEP has the responsibility to review and issue has a target review timeframe associated with it, regardless of its inclusion in the Permit Decision Guarantee. DEP’s goal will be to meet or beat these target review times. DEP is developing performance measures for our staff that will hold them accountable to these review times. In terms of permitting priority, those permits that are currently included in the guarantee are those that DEP receives most often and from experience believe to meet the higher priority criteria.

Will there be a process for challenging the priority assigned to a permit application?

The priority of a permit application should be discussed during the pre-application conference and as such each applicant should have a clear idea of where their application stands in terms of the review hierarchy.

Would you give an example of an application that's necessary for the protection of public health and safety from an eminent threat?

There are many examples of these. One of which would be any kind of application for permit for drinking water facility where there is an on-going issue with the quality of finished water.

Application Processing

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?

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. This will be evaluated on a program by program basis.

The draft policy discusses that a completeness review will be conducted and that incomplete applications will be denied. What if a regulation or statute provides the applicant the ability to address completeness deficiencies?

If a regulation or statute outlines such an opportunity, the application will be processed in a manner different than what is outlined in the draft policy. Regulations and statutes supersede policy.

Currently, if threatened and endangered species checks are not completely cleared before applications are submitted, applicants will receive an administrative incompleteness letter. Under the proposed policies, would this no longer be the case?

Correct. No longer will applications with outstanding PNDI clearances will be issued incompleteness letters. Moving forward, DEP will have the ability to begin permit review while PNDI clearances are pending. Keep in mind that there will be no final decision until the PNDI review process has been completed as required by applicable regulations. DEP may conclude its interim review only to delay making a final permit decision until the PNDI review is completed.

If the permit decision guarantee becomes void on a permit application due to a technical deficiency, how will the permit be reviewed when the response is received?

The draft policy outlines a prioritization of reviews, also discussed in question 6 of this FAQ. The response will be added to the permits under review in the priority associated with that permit application.

What happens if an application is denied?

A denial letter will be prepared and will specify where the permit application failed to provide the information necessary to document that applicable regulatory and statutory requirements will be achieved. Applications that are denied will forfeit all fees. Denied applications will need to be re-submitted following appropriate program requirements and procedures and will be considered a new application.

Will all technical deficiencies be listed in one letter? There have been instances in the past where after addressing deficiencies listed in a first deficiency letter, there are additional letters sent which outline deficiencies not included in the first letter.

In the past this often happened because the application was not complete when received by DEP. When applicants provided a response to the deficiency letter, the response itself contained additional deficiencies

that DEP discovered upon review. Now DEP will be getting applications that are complete and staff will be able to conduct the technical review once. If a deficiency is noted, staff will issue one deficiency letter outlining all deficiencies encountered during the review. A complete application will prevent these multiple reviews and multiple deficiency letters.

Can a list of specific technical deficiencies be provided for each permit application?

DEP can begin to track this type of information, but in the meantime a deficiency is something that does not meet a regulatory requirement. Over time, training for applicants and consultants will be developed to address common technical deficiencies that are found with permit applications.

In terms of public comment and input during the permitting review process, does DEP have the discretion whether or not to hold a public hearing? Under what circumstances would DEP hold a public hearing?

Certain regulations absolutely require public meetings and often public meetings are required where an application meets certain criteria. In other cases it is up to DEP's discretion, though historically DEP has been a proponent of more public input. When requests for a public meeting are received, DEP nearly always holds a public meeting.

Is DEP required to respond to public comments prior to issuing a permit?

Yes, often DEP is required to respond to public comments prior to issuing a permit. However, this requirement is statute/regulation specific and therefore program specific. There are other instances whereby DEP can respond to comments at the same time a permit decision is issued.

Does the permit review process change the actual public notice of a joint permit application?

The process would not change.

How will DEP address situations where some types of permits, such as Water Quality Management permits, require another permit to be issued before review of the other permit application can begin?

DEP continues to evaluate its review procedures and modify them where needed. Situations such as the one referenced here may be opportunities for DEP to become more efficient in reviewing applications.

The decision guarantee timeframe for GP-11 listed in Appendix A is 86 days. Is that timeframe different than what is currently expected for the review?

There is no change in what is expected for the review. The change in days is the conversion from the 120 calendar days per money back guarantee to 86 business days per EO 2012-11.

Reviews by Conservation Districts and other Resource Agencies

Will the Permit Decision Guarantee and Permit Review Process change how other agencies handle their reviews?

DEP recognizes that other agencies may need to review and provide comments on components of applications and understands that this may delay making a decision on the applications. DEP will work cooperatively with other agencies to ensure decisions get made on time, to the greatest extent possible. Any potential delays are not considered in the processing times or permit decision guarantee timeframes outlined in the draft policy.

County Conservation Districts preform permitting work on behalf of DEP. Do the expectations of the revised permit review process and the draft policy apply for them as well?

The draft policy applies to County Conservation District and County Health Department permit review staff when completing delegated duties on behalf of the Department during the registration or evaluation of permit applications or modifications. DEP however continues to discuss the expectations of the draft policy with county conservation districts and county health departments. It is recognized that county conservation districts and county health departments may change or alter their delegated duties based on the expectations of the permit review process and the draft policy.

How will conservation district staff determine the hierarchy of permits?

Conservation District staff will follow the same hierarchy as outlined in the draft policy. When questions arise about hierarchy, DEP expects them to consult with the appropriate regional office. DEP is also partnering with the Department of Community and Economic Development and the Governor's Action Team to develop guidelines for staff related to economic development project identification and prioritization.

Are there efforts underway to streamline the permitting process when multiple agencies are involved?

Yes. DEP is working very closely with our partner resource agencies to identify ways to work smarter in regard to permits subject to multi-layer review processes. We aim to streamline the processes, and eliminate steps that add no value. The first multi-agency permit related process that we are working to streamline is the Pennsylvania National Diversity Index (PNDI) clearance. Moving forward, we will be meeting with state and federal resource agencies regarding coordination of authorizations. This new process focuses not only on how we can maximize efficiency internally, but with our state and federal partners as well.

How will the coordination of PNDI reviews and necessary clearances from other state agencies be handled?

DEP has been working closely with many of the resource agencies and a revised policy will be issued for comment during the fall of 2012 to address how PNDI reviews will be handled. Ideally, PNDI reviews should be completed prior to an application being submitted to DEP. The draft revised PNDI policy will provide the applicant the option of completing the PNDI review and obtaining clearances concurrently with the permit application review. DEP will complete an interim review of the submitted application but the review will not be complete and a permit decision provided until the PNDI review is completed as required by applicable regulations.

If DEP determines a project application is complete but another agency provides comments that would alter that decision for some reason, how will those changes be handled prior to permit authorization?

The inclusion of comments submitted by another agency, during the technical review, will be handled the same as comments are currently handled, except under the draft policy the clock will not stop while DEP waits for the comments. If review by another agency results in a redesign of the project, a new application will likely have to be filed.

The draft policies reference providing better coordination, how will that been handled between DEP and PENNDOT? How does the coordination impact PHMC?

The improvement of coordination is happening on a separate but parallel track to seek ways to improve the process between DEP and PENNDOT. As it relates to impacts to PHMC, the reviews will continue as they are currently occur.