

## **Chapter 102 Notice of Termination (NOT)**

### **Frequently Asked Questions (FAQ) Revised, February 24, 2025 Version 1.4**

When a person has coverage under a permit issued under Chapter 102, the permittee or co-permittee is required to submit a Notice of Termination (NOT) upon permanent stabilization and installation of best management practices (BMPs) in accordance with 25 Pa. Code § 102.7. The purpose of this document is to address some common questions the Department of Environmental Protection (DEP) receives on the NOT process.

Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP and delegated county conservation districts (CCDs) will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

#### **FAQ #1: What do I do when I complete my earth disturbance activities?**

After all earth disturbance activities are complete, the permittee and co-permittee(s) should permanently stabilize the site in accordance with the requirements at 25 Pa. Code § 102.22(a)(2). All temporary erosion and sediment control (E&S) BMPs should then be removed in accordance with the approved E&S Plan. All permanent post-construction stormwater management (PCSM) stormwater control measures (SCMs) should be installed in accordance with the approved PCSM Plan. When the permittee or co-permittee is ready to terminate the permit, the NOT form along with all required supplemental information should be completed and submitted to the DEP or CCD office that approved permit coverage. Refer to your permit for any additional or different requirements.

#### **FAQ #2: Which NOT form must I use?**

DEP's NOT for Chapter 102 Permits form ([3800-PM-BCW0229b](#)) must be used. The NOT Form should be completed as explained in the NOT Instructions ([3800-PM-BCW0229a](#)). To ensure a complete NOT submission permittees are expected to complete the NOT Checklist ([3800-PM-BCW0229c](#)).

### **FAQ #3: What happens after I submit my NOT form?**

DEP/CCD will review the NOT form and supporting documents to ensure the NOT is complete and all required information is provided. This information will be reviewed to verify compliance with the Chapter 102 regulations as well as permit conditions.

In addition to the review of the NOT documents, a site inspection will be conducted to determine if the site meets the stabilization requirements of 25 Pa. Code § 102.22, all temporary E&S BMPs have been removed, and the PCSM SCMs have been installed and maintained in accordance with the approved plans per 25 Pa. Code § 102.7.

If the NOT is incomplete, the information provided or the site does not meet the regulatory requirements, or the information is deemed inaccurate, the permittee will be notified through an NOT deficiency letter.

Permittees should not submit NOTs prior to achieving compliance with § 102.7(a) (i.e., the site should be permanently stabilized and all PCSM SCMs should be installed). In addition, permittees should submit NOTs at a time of year when DEP/CCD can visit the site to verify compliance with § 102.7(a) and the record drawings submitted with the NOT; otherwise, the final inspection of the site may need to be delayed by DEP/CCD.

### **FAQ #4: What if the earth disturbance is complete but I cannot achieve permanent stabilization at that time of year?**

The disturbed area should be permanently stabilized in accordance with 25 Pa. Code § 102.22(a)(2) before submission of the NOT. Permanent stabilization typically consists of a minimum uniform 70% perennial vegetative cover. You should not submit the NOT form before this standard is met. Seeding and mulching does not constitute permanent stabilization.

Compliance with all permit and regulatory requirement including reporting requirements is expected until the NOT is approved. For Individual NPDES Permits, annual permit fees will continue to be assessed until the NOT is approved. If your permit will expire before the NOT can be approved, to avoid the liability of discharging stormwater without a permit you should submit a renewal Notice of Intent (NOI) or application to retain permit coverage until the NOT is approved.

### **FAQ #5: My project is utilizing a riparian forest buffer that must be established. Must I wait until the canopy cover has reached 60% before I submit the NOT?**

No. The permittee does not have to wait until the proposed riparian forest buffer has reached 60% uniform canopy cover before the NOT is submitted. The permittee can submit the NOT after the riparian forest buffer plantings have been completed. DEP/CCD will review the NOT and site to verify implementation of the permittee's Riparian Forest Buffer Management Plan and that the

proper protections are in place to ensure the riparian forest buffer will reach 60% uniform canopy cover.

**FAQ #6: What if the licensed professional cannot or will not certify the installation of PCSM SCMs and/or the record drawings?**

The NOT cannot be approved without the certification of a licensed professional. For underground storage or treatment SCMs that were not observed by a licensed professional or designee during construction, it may be necessary to excavate and verify proper installation before the NOT can be approved. To avoid this added expense and delay, always ensure a licensed professional or their designee is on-site and responsible during the installation of critical stages of PCSM SCMs.

It is recommended that the permittee, operator co-permittee(s), and the licensed professional work out a process for notification regarding the installation of PCSM critical stages. The licensed professional must determine when construction or installation of SCMs are complete and they must complete and sign SCM Construction Certification Forms ([3800-PM-BCW0271j](#)) within 30 days of SCM completion.

**FAQ #7: If my permit already expired can I still submit an NOT form?**

Yes. 25 Pa Code §102.7 requires the submission of the NOT regardless of the permit expiration. In addition, the permittee and any co-permittee(s) remain jointly and severally responsible for proper stormwater management on the project site until the NOT has been approved.

**FAQ #8: Am I required to revise the recorded instrument to include the record drawings and long-term operation and maintenance (O&M) plan when the NOT is submitted?**

If the following are true, it is not necessary to amend the instrument that was recorded initially following receipt of permit coverage:

- The initial instrument recording:
  - Identifies who will be responsible for the long-term O&M of the PCSM SCMs;
  - Identifies the proposed SCMs;
  - Includes documentation that identifies the location of the SCMs on the relevant properties; the planned size (length, width, depth) of the SCMs; depictions of the inlet and outlet structures of the SCMs, as applicable; construction materials and media, as applicable; and the vegetation for the SCMs, as applicable;
  - Provides for access for long-term O&M of the PCSM SCMs;
  - Provides notice that the responsibility for long-term O&M for the SCMs is a covenant that runs with the land; and
  - Includes a long-term O&M Plan.

- During construction, there were no changes to the type of PCSM SCMs installed, design and construction of the SCMs, O&M requirements for the SCMs, drainage areas (e.g., impervious areas) to the SCMs, and the person(s) identified as being responsible for long-term O&M of the SCMs.

If there are any changes to the information above following the initial recording, then the instrument and/or its attachments or exhibits will need to be amended.

**FAQ #9: What if the permittee never submits the NOT?**

Submission of the NOT after the project is complete is a regulatory requirement and a permit condition. Failure to submit the NOT is a violation of the regulations and permit and could lead to an enforcement action and/or ineligibility for future permit coverage pursuant to Pennsylvania's Clean Streams Law. In addition, the permittee and co-permittee(s) will remain responsible for compliance with requirements contained in Chapter 102, including long-term O&M of all PCSM SCMs and any violations that may be identified on the project site. For Individual NPDES Permits, the \$500 annual permit fee will continue to be assessed until an NOT is approved.

**FAQ #10: After my permit is terminated do I need to do anything?**

Always consult your permit for specific requirements, but generally the permittee and co-permittee(s) must retain records of all monitoring information, including all copies of monitoring and inspection reports required by the permit, site logbooks, calibration and maintenance records, and records of data used to complete the NOI/application for the permit for a period of 3 years from the date of termination of permit coverage. This period of retention could be extended during any unresolved compliance, enforcement, or litigation, or when requested by DEP/CCD. The responsible party(ies) listed in Section 5 of the NOT form are responsible for the long-term O&M of the PCSM SCMs. If a permittee or co-permittee fails to transfer long-term O&M of the PCSM SCMs, the permittee or co-permittee remain jointly and severally responsible with the landowner for long-term O&M of the PCSM SCMs.

**FAQ #11: I am having trouble with landowner and third-party issues, which is preventing me from attaining permanent stabilization. What must I do in order for the NOT to be approved?**

Ultimately, it is the responsibility of the permittee and co-permittee to ensure all regulatory requirements and permit terms and conditions will be met. Permittees are strongly encouraged to plan ahead for potential issues with future landowners and third parties, and to take steps early and throughout the permit process to ensure that the permittee has a legally enforceable means to meet their regulatory and permit requirements. It is important that at the time of property transfer, the permittee ensures they will still retain authority to access those lots and perform maintenance as needed.

Issues with landowners and third parties that may later hinder the NOT approval process should be documented in the permittee's visual site inspection reports, as they occur. Any additional reasonable efforts to resolve the problem with the responsible party should also be documented by the permittee. DEP/CCD will review any documentation made available while making a determination about an NOT that has ongoing landowner or third-party issues. Examples of reasonable efforts that may be considered include, but are not limited to:

- Formal contact with the landowner explaining the permanent stabilization requirements.
- Educational materials provided to the landowner and/or third parties addressing land use issues while a project area is still considered in the active construction phase.
- Continued restoration efforts made by the permittee.
- Reasonable measures that were made to restrict access to the project area, such as signage, barriers, and removal of unnecessary access points.
- Current uses for the area in question that already existed prior to commencement of earth disturbance activities at the permitted project area.
- Proof that disturbed area of the project site is zoned for agricultural use and the landowner has updated their Conservation Plan or agricultural E&S Plan to show that the disturbed areas will be used for agricultural purposes.

**FAQ #12: What corrective actions can or should be taken by a permittee who had failed to record an instrument or provide landowner notice prior to selling lots containing PCSM SCMs, where the property owners now refuse to record an instrument?**

Without a recorded instrument as set forth in 25 Pa. Code § 102.8(m)(2), the permittee will not be able to satisfy the NOT requirements in 25 Pa. Code § 102.7. In order to be able to meet the regulatory requirements, the permittee may consider the following potential solutions:

- Amend the PCSM Plan to locate adequate SCMs on another parcel for which they can file an instrument; or
- Work with the property owner(s) to agree to the filing.

It is the responsibility of the permittee to ensure that all regulatory requirements and permit terms and conditions are met. Permittees are strongly encouraged to plan ahead for potential issues with future landowners and third parties, and to take steps early and throughout the permit process to ensure that the permittee has a legally enforceable means to meet their regulatory and permit requirements.

**FAQ #13: I am filing an NOT for a project that has been partially terminated previously. How should I fill out the NOT paperwork and which SCMs need to be documented with it?**

If the permitted work is now completely finished, the NOT should reflect a full permit termination. It is always useful to include all of the PCSM SCMs constructed over the life of the project in the final NOT to get an accurate picture of the entire project, although this is not required. In most cases, only those SCMs that were not previously identified in a partial termination NOT would need to be documented as part of the full termination NOT.

**FAQ #14: I am filing an NOT for full permit termination on a site where none of the planned activities were conducted. What parts of the NOT paperwork must be included with this application?**

For full terminations where no planned activities were conducted, complete Sections 1, 2 and 9 of the NOT form.

**FAQ #15: I have a deed restriction on my property because soils were amended during construction as an SCM. My municipality says that I cannot construct anything in the area of amended soils because of this restriction. What are my options, if any, to construct something on this land?**

Landowners should carefully review their deed and any documents filed with the Recorder of Deeds office for their parcel. Consulting an attorney is recommended. The options for dealing with any restrictions or covenants are dependent on the language of the recorded instrument and any local ordinances. DEP's regulations at 25 Pa. Code § 102.8(m)(2) state that the recorded instrument must provide notice that the responsibility for long-term operation and maintenance is a covenant that runs with the land is binding upon and enforceable by subsequent grantees.

DEP does provide a sample instrument that permittees may use, which states that, "Upon any reduction, loss, or failure of any PCSM BMP, the Grantor shall take immediate action to restore, repair, or replace the BMP or provide an alternative method of treatment. If a modification to the installed PCSM BMPs is proposed for any reason, this Instrument shall not be amended, terminated or in any way modified by the Grantor without the express prior written approval of the Commonwealth of Pennsylvania Department of Environmental Protection." Chapter 102 permits generally require consistency with DEP's sample instrument.

To obtain this written approval from DEP, the landowner would have to provide a suitable replacement for the functionality lost in the SCM(s) that they are proposing to remove. Local municipal approvals may still be required. If a CCD is delegated by DEP to complete technical reviews of PCSM Plans, the CCD may complete the review and provide approval on behalf of DEP, at their discretion. While DEP/CCD will include the municipality on any final approval or denial, ultimately it is the property owner's responsibility to ensure they receive approval for any proposed work from the municipality, if applicable, prior to performing any earth disturbance or removal of PCSM SCMs.

**FAQ #16: I am a consultant for a developer that subdivided land, completed roads, utilities, and grading, installed PCSM SCMs and then sold the lots. NPDES permit coverage was**

**obtained to authorize earth disturbance over the entire common plan of development or sale. Those PCSM SCMs were recorded with the county recorder of deeds in accordance with the permit requirements and constructed according to the approved plans. Each lot contains a rain garden, with separate rate control basins on dedicated lots. Lot owners have their own builders. A number of lot owners wish to relocate their rain gardens. What is the developer's responsibility for recording changes on lots the developer no longer owns?**

The developer may request that the lot owner pursuing a change to PCSM SCMs separately record an instrument to memorialize the change voluntarily, but ultimately it is the developer's responsibility as the permittee to do so. Any change to the type, size, location, construction details, and drainage areas (including impervious area) to PCSM SCMs must be memorialized in record drawings submitted to DEP/CCD for review and approval and must be part of a final, amended recording for full or partial site NOTs. DEP recommends that sales agreements between developers and new lot owners reflect this requirement. In addition, changes to PCSM SCMs may require DEP/CCD approval through a permit amendment (see [FAQ for Chapter 102 Permit Amendments](#)) or, if the permit has already been terminated, through separate action (see FAQ #15 above).

**FAQ#17: My NPDES permit has expired. I would like to submit my NOT, but I know that the record drawings are inconsistent with the approved PCSM Plan (an infiltration trench was never installed). I cannot amend an expired permit, so what should I do?**

You will need to demonstrate to DEP/CCD that despite the absence of the PCSM SCM the project site nevertheless meets PCSM regulatory requirements.

If this demonstration can be made, submit all supporting calculations with the NOT for DEP/CCD review.

If this demonstration cannot be made, then either the originally planned PCSM SCM will need to be installed or if that is not possible, then another SCM will need to be proposed to ensure the regulatory requirements are met. If a new PCSM SCM is proposed, then an updated PCSM Plan including Plan Drawings must be submitted.

If it is determined that the original PCSM SCM or a newly proposed PCSM SCM must be installed, then depending on the amount of work that needs to be done and how soon that work can be completed, DEP/CCD will recommend that you either:

1. Obtain a new permit; or
2. Enter into an enforceable agreement that may or may not include a penalty and stipulated penalties if milestones are missed, to ensure the SCMs are installed and all other regulatory requirements are completed in a timely fashion.

Failure to comply with any permit or regulatory requirement could lead to an enforcement action and/or ineligibility for future permit coverage pursuant to Pennsylvania's Clean Streams Law.

**FAQ#18: My project has been permanently stabilized in accordance with § 102.22(a)(2) and BMPs/SCMs have been installed and maintained in accordance with approved plans; however, my permit does not expire for another 2 years. Do I need to submit the complete NOT package now or can I wait until it is closer to permit expiration?**

Submittal of the NOT is not based on the permit expiration but rather the requirements of 25 Pa. Code § 102.7(a) which states, “upon permanent stabilization of the earth disturbance activity under § 102.22(a)(2) (relating to permanent stabilization), and installation of BMPs in accordance with an approved plan prepared and implemented in accordance with §§ 102.4 and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements), the permittee or co-permittee shall submit a notice of termination” (emphasis added). Therefore, once the project meets the requirement of § 102.7(a), the NOT must be submitted.

In addition, it is in the permittee’s best interest to terminate the permit as quickly as possible for the following reasons:

1. Once the permittee receives written approval of the NOT, the permittee and co-permittee(s) are no longer responsible for compliance with the terms and conditions of the permit, for the long-term O&M of the PCSM SCMs, and for any violations that may be identified on the project site.
2. The longer the permittee waits to terminate the permit, the greater risk that new lot owners may make modifications that may prevent termination and cost the permittee more resources to correct those changes and/or modify the permit.
3. If the permit is an Individual NPDES Permit, an annual permit fee is assessed until the NOT is approved, so waiting to terminate the permit could cost the permittee more in annual permit fees.

**FAQ#19: I have an individual permit and submitted my NOT before the annual permit fee was due. Do I still need to pay the fee?**

Generally, annual permit fees will remain due unless the permittee receives written approval of the NOT prior to the annual permit fee due date.

**FAQ #20: I purchased a lot and would like to install a pool but the municipality will not provide approval because a pool was not part of the original plan for the lot. What do I do?**

You will need to work with the developer to evaluate whether the increase in impervious area on the lot can be treated by existing or future SCMs. It is possible that the design of SCMs considered future impervious such that the proposed addition of impervious is already accounted for. If not, existing SCMs may need to be modified or additional SCMs may need to be proposed, either of which will require an amendment to the developer’s PCSM Plan and permit. However, the permittee is not required to amend their permit.

**FAQ #21: When applying for my NPDES permit, I included a factor of safety of at least 10% for impervious area or planned for the maximum impervious area allowed by the municipality. Do I need to amend my permit or the recorded instrument when adding new impervious area?**

As long as the total impervious area on a lot is less than the impervious area used to complete the PCSM analysis and design SCMs, permit amendments will not be necessary when adding new impervious. If, for example, a factor of safety (FOS) of 10% was used for the PCSM analysis (i.e., planned impervious x 110%) and the total impervious following the addition will exceed 110% of planned impervious, the permit will need to be amended to identify how the additional impervious area (above and beyond the FOS) will be controlled and treated to meet the rate, volume and water quality requirements of Chapter 102.

If the recorded instrument identified the FOS or maximum impervious area, then an amendment to the recording will not be necessary. However, if the FOS was not identified in the original recording or the additional impervious area exceeded the FOS, then an amendment to the recording will be required when additional impervious is constructed.

**FAQ #22: I am a co-permittee for an NPDES permit. The permittee has failed to terminate the permit. Am I permitted to terminate the permit?**

If a permit has expired, the former permittee or co-permittees can sign and submit an NOT. If a permit has not expired, only the permittee or a co-permittee identified on page 1 of the permit may sign an NOT to terminate the permit in most circumstances. In extenuating circumstances, DEP/CCD may be able to make an exception and allow an operator co-permittee (i.e., contractor) to sign the NOT and request termination. If an operator co-permittee believes that having the permittee sign and submit an NOT is not a viable option, it is recommended they contact the DEP or CCD office that approved permit coverage to discuss further.

**FAQ #23: I have purchased a property which was previously covered by an NPDES permit in which the developer was the permittee. The permit expired and an NOT was not approved. No construction occurred on the lot that I purchased, but I would now like to build a home. What do I do?**

You would need to apply for and obtain a new NPDES permit, even if earth disturbance will be less than one acre, assuming the lot was part of a larger common plan of development that required an NPDES permit.

**FAQ #24: Is property owned by the Pennsylvania Turnpike Commission (PTC), state-affiliated institutions, and state-related institutions considered Commonwealth property and therefore not subject to the recordation requirements until the time of property transfer in accordance with 25 Pa. Code § 102.8(m)(3)?**

Property owned by PTC and state-affiliated institutions such as those that are part of the PA State System of Higher Education do not need to complete the recordation of a legal instrument until the transfer of property.

However, state-related institutions such as Pennsylvania State University are not considered Commonwealth property and therefore must complete the recordation requirements either within 45 days of permit issuance or prior to scheduling the pre-construction meeting depending on permit requirements.

### Version History

<b>Date</b>	<b>Version</b>	<b>Revision Reason</b>
2/24/2025	1.4	Modified the response to FAQs #2, #3, #4, 5, #6, #7, #8, #9, #11, #13, #14, #15, #16, #18 and added FAQs #17-#24
1/22/2022	1.3	Added FAQ #16 and added last paragraph to FAQ #15.
3/31/2021	1.2	Modified the response to FAQ #13 and added FAQs #14 and #15.
11/12/2020	1.1	Added FAQ #13.
9/18/2020	1.0	Original