

Chapter 102 Notice of Termination (NOT)

Frequently Asked Questions (FAQ)

Revised, March 31, 2021

Version 1.2

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 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) BMPs 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 should be completed and submitted to the delegated county conservation district (CCD) or DEP office that approved permit coverage. Refer to your permit for any additional or different requirements.

FAQ #2: Which NOT form must I use?

NOT Form [3800-PM-BCW0229b](#) should be used. The NOT Form should be completed as explained in the NOT Instructions (see [3800-PM-BCW0229a](#)). If your Notice of Intent (NOI) or permit application was submitted prior to November 19, 2010 and your permit coverage was renewed prior to January 1, 2013, complete the NOT Form, but you may omit Sections 5, 6 and 7 and Appendices B and C.

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

CCD or DEP will review the NOT form to ensure it is complete and properly signed and all required information is provided. If the NOT is incomplete, the permittee/co-permittee will be notified and given the reasons why the NOT is incomplete. If the NOT is complete, CCD or DEP will conduct a site inspection of the project site. The permittee/co-permittee will be notified of the results of this site inspection.

FAQ #4: What if the earth disturbance ends but I can't get vegetative stabilization at that time of year?

The disturbed area should be permanently stabilized in accordance with 25 Pa. Code § 102.22(a)(2) before the submission of the NOT. If you are using vegetative cover it must be established at a minimum uniform 70% perennial vegetative cover. You should not submit the NOT form before this standard is met. Therefore, if you just seeded and mulched the site you should not submit the NOT until permanent vegetative cover is established. If your permit will expire before vegetative cover is established, contact CCD or DEP.

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. In this instance, the permittee must provide proof that they have met relevant regulatory and permit requirements to ensure that the proper mechanism is in place such that the responsible party is obligated to ensure that 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 BMPs and/or the record drawings?

The NOT cannot be approved without the certification of a licensed professional. With underground storage or treatment stormwater BMPs, 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 the PCSM BMPs.

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

Yes. The permittee and any co-permittee remain jointly and severally responsible for proper stormwater management from 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 plan?

No. However, DEP highly recommends recording the record drawings to provide this information to future landowners and to ensure proper long-term operation and maintenance of PCSM BMPs.

The record drawings identify the as-built conditions of the site, including the final location(s) of the installed PCSM BMP(s). The recorded instrument should at a minimum reference the record drawings, which will be on file with CCD or DEP after submission of the NOT.

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.

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, all monitoring information (including site logbook and 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 the coverage. This period of retention could be extended during any unresolved compliance, enforcement, or litigation, or when requested by CCD or DEP. The Responsible Party(ies) listed in Appendix C of the NOT form are responsible for the long-term operation and maintenance (O&M) of the PCSM BMPs. If a permittee or co-permittee fails to transfer long-term O&M of the PCSM BMPs, the permittee or co-permittee remain jointly and severally responsible with the landowner for long-term O&M of the PCSM BMPs.

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?

Any issues with earth disturbance caused by 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. CCD or DEP 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/restoration 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 Natural Resources Conservation Service Conservation Plan or agricultural E&S Plan to show that the disturbed areas will be used for agricultural purposes.

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.

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 BMPs, 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 BMPs 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 BMPs 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 BMPs for the life of the project in the final NOT to get an accurate picture of the entire project. In most cases, only those BMPs that were not previously identified in a partial termination NOT would need to be inspected as part of the full termination NOT. Per the NOT instructions, the partial termination and remaining permitted area should:

- Be at least five (5) acres (each);
- Not be hydrologically connected; and
- Not share any BMPs.

If these instructions were followed and remain true, and the applicant submitted a permit amendment application to change the permit to cover only the remaining work along with the submission of the partial termination NOT, then the permittee likely would not be required to submit the BMPs covered by the previous partial NOT with the final 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 through 4 of the NOT form and Section 4 of the Completeness Review and Fieldwork Checklist. In lieu of the Section 8 certification, submit a signed cover letter and indicate in the letter that no earth disturbance activities took place and no temporary E&S BMPs were installed. Since this cover letter replaces the Section 8 certification, it should still be completed by the permittee listed in Section 4 since they are the one ultimately responsible for the site until full permit termination is obtained.

FAQ #15: I have a deed restriction on my property because soils were amended during construction as a BMP. 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. However, DEP does not dictate the language of those instruments.

DEP does provide a sample covenant 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.”

To get this written approval from DEP, the landowner would have to provide a suitable replacement for the functionality lost in the BMPs that they are proposing to remove. Local municipal approvals may still be required.

Version History

Date	Version	Revision Reason
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