

## CHAPTER 102 PCSM RECORDING CHECKLIST INSTRUCTIONS

The Department of Environmental Protection's (DEP's) regulations at 25 Pa. Code § 102.8(m)(2) require that for any property containing a post-construction stormwater management (PCSM) stormwater control measure (SCM)<sup>1</sup>, the permittee or co-permittee must record an instrument with the recorder of deeds which must:

- Assure disclosure of PCSM SCMs and the related obligations in the ordinary course of a title search of the subject property (i.e., operation and maintenance (O&M) activities and the party responsible for long-term O&M).
- Identify the PCSM SCMs (i.e., information such as the type, location, and construction details of the SCMs).
- Provide for access to PCSM SCMs for long-term O&M.
- Provide notice that the responsibility for long-term O&M of PCSM SCMs is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.

For SCMs on Commonwealth or federally owned property, the recording does not need to be completed until the time of property transfer. However, with certain exceptions, other permittees must complete an initial instrument recording either within 45 days of permit issuance or prior to scheduling the pre-construction meeting, depending on the requirements of the applicable permit. An amendment to the initial recording will need to be completed prior to submittal of the NOT if any changes have occurred in comparison to the initial recording such as changes to PCSM SCMs, entities responsible for long-term O&M of the SCMs, etc.

The Chapter 102 PCSM Recording Checklist and these instructions have been created in an effort to assist permittees with assuring PCSM recordings are complete and assist DEP and County Conservation District (CCD) staff in verifying the completeness of the recordings. Use of the Checklist is optional but is encouraged.

### **Completing the Checklist**

**Type of Recording** – At the top of the Checklist check the appropriate box to indicate whether the recording is considered an Initial Recording (i.e., the first recording on the deed relating to SCMs) or a Final Recording (i.e., an amended recording that is submitted with a Notice of Termination (NOT)).

**HOA Declaration** – If a homeowner's association (HOA) or planned community declaration was recorded, check the appropriate box at the top of the Checklist. The declaration may satisfy regulatory requirements if it contains all of the information in 25 Pa. Code § 102.8(m)(2). To satisfy this regulation the declaration must identify the type of SCM(s), location (e.g., lot numbers) of each SCM, the party responsible for maintaining each SCM, and long-term O&M requirements for each SCM.

**General Information** – Identify the name of the permittee, the Chapter 102 permit number, the project site name, and the lot or parcel identification (ID) number(s) for which the recording was made. For projects with numerous existing or planned lots attach a separate sheet.

**NOTE** – For new subdivisions, if the initial recording is taking place prior to the issuance of deeds for separate lots, the recording of the subdivision plans with the legal instrument is sufficient if the recording can be found during the normal course of a title search for each individual lot, once created. However, if there are changes to SCMs as compared to the plans recorded initially (or if the original recording did not include SCMs), a new recording must be made against the lots containing SCMs.

### ***Instrument Recording Requirements***

Select the boxes for "Yes", "No", or "N/A" (if not applicable) next to each question to document the information contained in the recording.

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<sup>1</sup> The regulations refer to PCSM best management practices (BMPs). Stormwater control measures (SCMs) are BMPs that are utilized for PCSM.

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- 1. Does the recording identify the type of PCSM SCM(s)?** The recorded instrument must provide information specific to the SCM(s), including an identification of the type of SCM (e.g., wet pond for rate control, bioinfiltration SCM for volume and water quality management, etc.). An effective way to accomplish this is for the recording to include copies of the approved PCSM Plan Drawings or record drawings, when finalized. If drawings are recorded they must be large enough to be legible.
- 2. Does the recording identify the location of the PCSM SCM(s) on the lot?** The recording must include information such as a narrative description, measured distances from landmarks, latitude and longitude coordinates or other identifying information to allow the owner and person responsible for long-term O&M to locate the SCM. Photographs during and following construction are highly recommended.
- 3. Does the recording include drawings identifying SCM dimensions, inlet and outlet structures, construction materials and media, and vegetation (planting plan), as applicable?** This information should be identified in approved PCSM Plan Drawings or record drawings.
- 4. Does the recording identify how access to the SCM is accomplished?** An identification of easements or other lawful means to access the SCM(s) must be part of the recording if a third party such as an HOA is identified as being responsible for the long-term O&M of the SCM(s).
- 5. Does the recording include a long-term operation and maintenance (O&M) plan for the SCM?** The O&M Plan may be part of approved PCSM Plan Drawings (e.g., as notes) or may be a standalone plan that is recorded.
- 6. Does the recorded instrument identify the party responsible for long-term O&M?** The party responsible for long-term O&M of the SCM(s) must be identified in the instrument or HOA/planned community declaration; identification of a title, such as "landowner", is acceptable. The Commonwealth of Pennsylvania may not be identified as the party responsible for long-term O&M.

If a third party such as an HOA is identified as being responsible for the long-term O&M of the applicable SCM(s), a copy of the executed O&M agreement with the third party may be recorded, at the permittee's discretion.

- 7. Does the party responsible for long-term O&M identified in the recorded instrument match the information provided in Section 5 of the NOT? (*final recordings only*).** The party identified in the recorded instrument as being responsible for long-term O&M should match the party identified in Section 5 of the NOT. If the property owner will be responsible for long-term O&M, Section 5 of the NOT may identify a specific name, while the instrument may identify the property owner generally. This is acceptable as the property owner will change over time.
- 8. Does the instrument identify that the responsibility for long-term O&M of the PCSM SCM is a covenant that runs with the land and is binding and enforceable by subsequent grantees?** Language such as the following must be included in the instrument or declaration:

*Grantor hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to this Instrument which shall run with the land and be binding on all heirs, successors, assigns, occupiers, and lessees.*

- 9. Does the instrument state that the instrument shall be incorporated by reference into any deed or other legal instrument by which the Grantor divests itself by sale, exchange, devise or gift of all or any portion of the property?** Language such as the following must be included in the instrument or declaration:

*Subsequent Transfers. The terms of this Instrument shall be incorporated by reference into any deed or other legal instrument by which Grantor divests itself by sale, exchange, devise or gift of all or any portion of the Property. Failure of Grantor to perform any act required by this Instrument shall not impair the validity of this Instrument or limit its enforceability in any way. Upon valid sale or transfer of Grantor's ownership interest to a successor or assign and notice as required by this paragraph, Grantor shall be released from any responsibility for any violation of the terms of this Instrument caused by Grantor's successors or assigns or any third party which occurs subsequent to such sale or transfer.*

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- 10. Does the instrument include a provision that requires notification and approval by DEP or the conservation district prior to any modifications to the SCM(s)?** The legal instrument or recording must include language that directs the owner to notify DEP or the conservation district anytime the modification, removal or replacement of an SCM is proposed and receive approval from DEP or the conservation district prior to making modifications.
- 11. Is proof provided that the instrument was recorded with the County Recorder of Deeds Office?** Proof of recording must be submitted (e.g., receipt from county).
- 12. If modification to the approved plans were made after the initial recording, was the recording amended to reflect those changes? (*final recordings only*).** If modifications were made to SCMs during construction (including the drainage area to SCMs), an amendment to the initial recording is required for submission with the NOT. The instrument itself may not need to be recorded again but exhibits (plans) attached to the instrument may.
- NOTE** – If SCMs were designed to treat the maximum impervious area on a lot or the planned impervious plus a factor of safety of at least 10%, an initial recording would not need to be amended based solely on increases in impervious unless the increase exceeded the factor of safety.
- 13. Is the legal instrument consistent with DEP’s Sample Instrument for the Declaration of Restrictions and Covenants?** Chapter 102 permits may require that the legal instrument that is recorded is consistent with DEP’s Sample Instrument (available on DEP’s website at [www.dep.pa.gov/constructionstormwater](http://www.dep.pa.gov/constructionstormwater), select E&S Resources). The term “consistent with” means no substantive deviations. Select “Yes” if there is an HOA declaration that is consistent with DEP’s Sample Instrument.
- 14. Is the maximum allowable impervious area for each lot identified on recorded plans?** Recording the maximum allowable impervious area on plan drawings is optional but if done, and SCMs were designed to manage stormwater from this area, permit amendments may not be necessary for increases in impervious area after permit approval and record drawings that are submitted with an NOT would not need to identify these increases.

The “DEP/CCD USE ONLY” box at the bottom of the Checklist is for DEP/CCD review staff.