

DEP Chapter 105 Pilot Program for Individual Joint Permit Applications (JPAs)

August 6, 2024

Introduction

The Pennsylvania Department of Environmental Protection (DEP) is introducing the next stage of its Pilot Programs to evaluate new procedures for improving the quality of applications received and accelerating the review: [Chapter 105 Individual Joint Permit Applications \(JPAs\)](#). Chapter 105 General Permits are not part of the Pilot Program. The Pilot Program will start on September 1, 2024 and will end when specified by DEP on the Bureau of Waterways Engineering and Wetlands webpage. The Chapter 105 Individual JPA is a joint application for a DEP Water Obstruction and Encroachment permit and a federal U.S. Army Corps of Engineers Section 9, Section 10 or Section 404 permit.

Pilot Program Procedures

The following summarizes the policies and procedures for the Pilot Program. DEP has prepared a [Standard Operating Procedure \(SOP\)](#) document for the Pilot Program which contains more detailed information.

a. Factors and Criteria:

1. Acceptance into the Pilot Program is at the general discretion of DEP.
2. **Number of Applications** – A maximum of two (2) applications will be accepted into the Pilot Program per calendar quarter (3 months) per permitting office. This sums up to a total potential of **56 applications** on an annual basis.
3. **Fees** – There will be no change to the permit filing fees under this Pilot Program. The fees will be discussed at the required pre-application meetings (see below). To participate in this Pilot Program, Chapter 105 JPAs and fees will only be accepted through [electronic submissions](#) using Public Upload with Payment.
4. Applications accepted into the Pilot Program will be on a first-come, first-served basis.
5. Applicants may submit only one application each quarter for this Pilot Program.
6. Priority will be given to:
 - A. Publicly funded energy projects¹, and
 - B. Environmental restoration projects².

¹ For this Pilot Program, energy projects entirely or largely conducted in Pennsylvania, which are not being funded using privately available resources, relating to:

- (1) basic and applied research concerning energy use, renewable energy resources and energy extraction, transmission, storage or conversion;
- (2) limited scale or large-scale demonstration of innovative or commercially unproven technology to promote the production, use or conservation of energy;
- (3) activities to promote or remove obstacles to the utilization and transportation of Pennsylvania energy resources, including but not limited to limited scale synthetic fuel facilities and the conversion or technological improvement of industrial, commercial or agricultural systems to utilize Pennsylvania coal or renewable energy resources: provided, that no such facility unreasonably interferes with private waste recycling industries;
- (4) certain energy generation activities;
- (5) both small-scale and large-scale energy project that proposes to construct or modify an electricity generator

² Projects necessary for the protection of public health, safety or the environment from imminent threats or that are necessary to support the restoration of the environment or that support broader environmental improvement goals.

7. When the proposed impacts from the project exceed **0.5 acre** of permanent loss of regulated waters or **1000 linear feet** of permanent loss of stream channel³, the project will not be eligible for a PA State Programmatic General Permit (SPGP) and will require federal permitting directly from the U.S. Army Corps of Engineers (USACE). If the project exceeds **1.0 acre** of temporary loss, the project may still qualify for SPGP, but the USACE will need to review and approve it. Review timeframes by the USACE are beyond DEP's review process.
8. When a project requires a submerged lands license agreement (SLLA), it will typically add time to the overall process. The reduced timeframe of this Pilot Program is targeted to actual permit reviews and SLLA processing is beyond the permit review process.
9. Projects which have not had Pennsylvania Natural Diversity Index (PNDI) conflicts addressed by the time of submission can run into project delays. The reduced timeframe of this Pilot Program is targeted to actual permit reviews and PNDI Coordination is beyond the permit review process. To effectively process a JPA in this Pilot Program, clearance letters from jurisdiction agencies should be provided with the application for any potential conflicts identified on a PNDI receipt. There is no PNDI concurrent review option for the Pilot Program.
10. Applicants wishing to participate will be required to attend 2 pre-application meetings. See Section below on Pre-application Meetings for further details.
11. Once determined eligible after formal submission by the applicant, DEP reviewers will proceed directly into technical review. If any completeness items are identified, they will be combined with any technical deficiencies in one letter. If the project details vary from the second pre-application meeting, DEP will reserve the right to reject the project for the Pilot Program and enter the permit application through the normal JPA process.

b. Eligibility:

DEP will make every effort to identify the eligibility of a project during the pre-application meetings described below; however, a final eligibility determination will be made upon receipt of the application.

With the exception of the previously mentioned priority projects, the following types of applicants, applications, and projects will generally be **ineligible** for the Pilot Program:

1. The Pilot Program is only for **new** projects requiring a Joint Permit Application. Hence, projects requesting an amendment, or which qualify for a Ch. 105 General Permit or Environmental Assessment for Waived Activities are outside of the scope of this Pilot Program.
2. The applicant has **not** agreed to fully participate in both pre-application meetings. The second pre-application meeting should occur no later than 60 calendar days from the first pre-application meeting unless another mutually convenient timeframe is agreed upon by both parties.
3. Applicants that have been subject to a formal enforcement action or have been assessed a civil penalty by DEP within the last 5 years.
4. Applications that are expected to have significant public interest in which a public hearing is likely to be held. These projects add significant time and staff resources to the overall process and are therefore normally outside of the scope for this Pilot Program.

³ For streamlining purposes, it is advisable that the project meet eligibility thresholds for PAsPGP so the project can conveniently receive both state and federal authorization for proposed water obstructions and encroachments. The review timeframes undertaken by the USACOE are out of the control from PA DEP. For context, SPGP Non-Reporting Thresholds are: 1 ac. temporary impact, 0.25 permanent impact, 250 lf permanent impact. SPGP Eligibility Thresholds are 0.5 perm loss and 1000 lf of perm loss of stream channel. When a project reaches SPGP Reporting Status, it requires direct USACOE involvement and approval of the SPGP. When it exceeds SPGP eligibility thresholds, it requires separate federal approval.

5. Applicants who have already submitted an application into the Pilot Program during the calendar quarter or the DEP regional office has already received more than two Pilot applications during the quarter (unless DEP agrees to accept more).

c. Pre-Application Meetings – Prior to submission of the application, the applicant and their consultant (at a minimum) must participate in two pre-application meetings with the DEP Regional Office. Applicants must submit the [Chapter 105 Pre-Application Meeting Request Form](#) to coordinate the first meeting. Check the appropriate box requesting participation in the Pilot Program.

- a. The first meeting will be more of a “traditional” pre-application meeting to discuss an overview of the project, general permitting feedback, and eligibility for the Pilot Program.
- b. The second meeting will be a **pre-application meeting** which combines the aspects of a pre-submittal meeting and preliminary application evaluation with DEP staff.
 - i. A final draft of the complete Individual Chapter 105 Joint Permit Application must be presented and discussed at the meeting.
 - ii. DEP staff will spot-check the permit application materials as a preliminary evaluation of Pilot Program eligibility, completeness, and technical adequacy.
 - iii. The Application Manager(s) will be assigned at this meeting.
 - iv. The application must be submitted within **22 business days** of the date of the second pre-application meeting or participation in the Pilot Program may be forfeited. At DEP’s discretion, another pre-application meeting may also be required.

DEP will make a preliminary determination on eligibility for the Pilot Program by the conclusion of the second pre-application meeting, to be confirmed upon receipt of the application.

NOTE: If the project may require authorization from multiple DEP programs, the applicant is encouraged to first visit DEP’s website to request a DEP Permit Application Consultation Tool (PACT) meeting prior to scheduling the formal pre-application meeting. If significant permit coordination is required, participation in the Pilot Program will be discouraged.

d. Checklist – The applicant must complete and submit the [Pilot Program application checklist](#) with the application. The items needed for a complete Pilot Program application are the same as those for a complete Individual Chapter 105 Joint Permit application, with the following exception:

- a. Clearance letters from jurisdiction agencies are needed with the application for any potential impacts identified on a Pennsylvania Natural Diversity Index (PNDI) receipt. With the exception of the listed priority projects, there will be no PNDI concurrent review option for the Pilot Program.

e. Submission – DEP will only accept Pilot Program applications and fees electronically using [DEP’s Public Upload Tool](#). Note that applicants may not submit Pilot Program applications through DEP’s Chapter 105 ePermit System.

f. Acceptance – Applications submitted for the Pilot Program will undergo an initial check for acceptance into the Pilot Program within **seven (7) business days** of receipt based on the eligibility items described above. The applicant will then be notified via email of acceptance or denial into the Pilot Program. If denied, the email will identify the reason for denial. Alternatively, DEP may notify the applicant during the second pre-application meeting of the decision. If denied, the application will be processed using the standard review process for Individual Chapter 105 Joint Permits.

g. Review – If accepted into the Pilot Program, DEP will conduct a concurrent completeness and technical review within **46 business days**. If there are significant deficiencies, DEP will email a deficiency letter to the applicant and provide **22 business days** for resubmission. If there are no significant deficiencies

(or the significant deficiencies have been resolved upon resubmission), DEP will prepare and issue the permit following any necessary permit coordination.

NOTE: If a public hearing is deemed by DEP to be necessary due to public interest/comments, the application will be entered into the standard review process at that time and the applicant will be notified during the scheduling of the public hearing.

- h. Deficiencies** – If a Deficiency Letter is issued, a response letter detailing the revisions made must be provided by the Applicant with the resubmission.
 - a. Resubmission must be provided within **22 business days**, with an optional **10-business day** extension upon request.
 - b. Review of the resubmission will occur within **22 business days** of receipt.
 - c. If there are continued significant deficiencies following receipt of a resubmission, the application will be **returned** to the Applicant. If returned, the submitted fees can be applied to a resubmission within **six (6) months**. Proof of fee payment is required by the applicant at the time of submission. The resubmission would be reviewed under the standard review process and no longer part of the Pilot Program. If no resubmission is received within six (6) months, the application is considered withdrawn by the Applicant.

Timeline

The table below compares the time, in business days (bd), for each major task involved in the review of Chapter 105 Individual Joint Permit Applications in the Pilot Program and under the standard review process.

Task	Pilot Program Timeline <i>(possible extensions add 10 business days to applicant time)</i>	Standard SOP Timeline <i>(possible extensions add 40 business days to applicant time)</i>
Eligibility	7 bd	N/A
Completeness	N/A	10 bd
Response Due	N/A	45 bd
Technical/Concurrent	46 bd	46 bd
Response Due	22 bd	45 bd
Review Resubmission	23 bd	23 bd
Elevated Review	N/A	10 bd
Response Due	N/A	5 bd
Decision	Issue / Return	Issue / Denial
Subtotal	76 bd (DEP) 22 bd (Applic)	84 bd (DEP) 100 (Applic)
TOTAL	98 bd*	184 bd*

* The time to complete the decision task is variable and depends on the time it takes to address applicant and/or public comments. The total business days in this table does not consider the time for the decision task. The total allotted timeframe from PDG was 93 business days.