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Standard Operating Procedures (SOP) to implement the Policy for the Pennsylvania Natural Diversity Inventory (PNDI) Coordination during the Review and Evaluation of a National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities, for Erosion and Sediment Control (E&S) Permits, and Erosion and Sediment Control General (ESCGP) Permits

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DISCLAIMER: The process and procedures outlined in this Standard Operating Procedure (SOP) are intended to supplement existing requirements. Nothing in the SOP shall affect regulatory requirements.

The process, procedures and interpretations herein are not adjudication or a regulation. There is no intent on the part of DEP to give the rules in this SOP that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

This SOP describes the procedures and work flows associated with the review of NPDES, E&S and ESCGP permit applications/notices of intent for stormwater discharges associated with construction/earth disturbance activities in accordance with the Department's Policy for Pennsylvania's Natural Diversity Inventory (PNDI) coordination implementing the Department of Environmental Protection (Department) policy Document Number 021-0200-001.

Pre-Application Process

Before submitting a permit application, applicants should be directed to coordinate with the Pennsylvania Natural Heritage Program (PNHP) regarding the presence of State and Federal threatened and endangered (T&E) species on the project site is a regulatory requirement for the permit application/registration. Early coordination (prior to submission) with the appropriate jurisdictional agencies using the PA Conservation Explorer, previously known as the Pennsylvania Natural Diversity Inventory (PNDI) Environmental Review Tool (PNDI ER Tool), is the most effective means of timely permit decisions. The PA Conservation Explorer can be accessed at the www.naturalheritage.state.pa.us/ website. Upon completion of the review, a PNDI Receipt, valid for a period of two years from the date the search was conducted, is automatically available for printing. To provide proof of coordination with PNHP and PNDI, applicants must submit a PNDI Receipt as part of the permit application/registration.

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It is also noted that PNDI reviews can still be obtained free-of-charge for users without access to a computer using the standard process of requesting a project review directly from each jurisdictional agency—PA Department of Conservation and Natural Resources (DCNR), PA Game Commission (PGC), PA Fish and Boat Commission (PFBC) and the U.S. Fish and Wildlife Service (US FWS) instead of generating a PNDI Receipt instantly through the PA Conservation Explorer’s. The standard PNDI review process user is responsible for securing PNDI Receipts from **each** jurisdictional agency—DCNR, PGC, PFBC and the U.S. FWS.

- PNDI Receipts from each jurisdictional agency will be included with the application/registration package. The PNDI review is not complete or satisfied unless PNDI Receipts are included from all four jurisdictional agencies listed above. Applicants are encouraged to use the PA Conservation Explorer because using this tool is the most effective means of a timely permit decision.

If the review determines there are potential impacts to a T&E species, the PNDI Receipt will provide an explanation of the potential impact(s) and instructions on how to resolve the potential impact(s). **READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY.** Following the procedure outlined by the Department of Environmental Protection (DEP) in the *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation, No. 021-0200-001 (PNDI Policy)* will allow applicants to meet regulatory requirements.

There are two options available to applicants for handling PNDI coordination in conjunction with DEP’s Permit Review Process: sequential review and concurrent review.

Sequential Review:

- The applicant runs the PNDI search and completes all coordination with the appropriate jurisdictional agencies prior to submitting the permit application/registration. The applicant will include with the application/registration a PNDI Receipt, and clearance letter(s) from the jurisdictional agency(ies) if the PNDI Receipt shows a Potential Impact.
- If selecting sequential review, different items are required to be included as part of the permit application/registration package based on the search results:
 - If the PNDI Receipt shows “No Known Impact”, please provide a copy of the signed PNDI Receipt.
 - If the PNDI Receipt contains “Avoidance Measures”, the PNDI review is not complete or satisfied unless the applicant has signed where required on the PNDI Receipt, indicating he/she can and will fulfill the Avoidance Measure(s) for that

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- project. DEP recommends including Avoidance Measures in the Project Description. Please provide a copy of the PNDI Receipt signed as explained above and in the certification section.
- If the applicant cannot or chooses not to meet the Avoidance Measure(s), he/she must follow the same process for PNDI Receipts showing “Potential Impact”, outlined below.
 - If the PNDI Receipt shows "Potential Impact", DEP and the jurisdictional agencies require that the applicant provides additional information, outlined in the PNDI Receipt, to the agencies noted on the receipt for further review. Please provide a copy of the signed PNDI Receipt showing “Potential Impact” AND the additional information outlined in the PNDI Receipt along with proof of delivery to the appropriate jurisdictional agency(ies) where further coordination is required. If this coordination is not complete prior to submitting the permit application/registration package; the application/registration will be subject to the concurrent review process as outlined below.

Concurrent Review:

- Where feasible, DEP will allow technical review of the permit to occur concurrently with the T&E species consultation with the jurisdictional agency. The applicant must still include a copy of the signed PNDI Receipt with the permit application/registration package. While DEP is commencing its completeness and technical review of the application/registration, the applicant will engage in any consultation with the jurisdictional agencies.
- If selecting a concurrent review, the applicant will include a signed PNDI Receipt with the permit application/registration and include the signed PNDI Receipt to the appropriate jurisdictional agency(ies).
 - It is important to note, however, that the concurrent review option carries certain risks and consequences to the applicant, including:
 - The permit may not be issued/acknowledged until each potential impact is resolved . *See DEP’s Permit Review Process and Permit Decision Guarantee Policy, Document No. 021-2100-001 (PRP/PDG Policy)*

The proposed activity subject to the permit application/registration may need to be redesigned as a result of the PNDI consultation (*PNDI Policy pages 7-8*). *Note: Any substantive project or design changes to the application will require a new application and fee to be submitted.*

During the pre-application process (both informal and formal meetings) the Department and conservation districts should stress the need for early coordination by prospective applicants and their consultants using the PA Conservation Explorer. This is the most effective means of a timely permit decision and will guide prospective applicants. For example, jurisdictional agencies may recommend season specific surveys to determine potential impacts. If applicants are aware of such requests early in the project

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development process, it may be possible to complete such surveys without delaying the project. In addition, early awareness of threatened or endangered (T&E) species can minimize the likelihood of potential impacts requiring plan amendments or other modifications to projects during the permit review process.

Application Completeness

When the applicant has submitted an application package to either the delegated conservation district or the Department regional office, the delegated conservation district or the Department application manager will check to ensure that one of the following has been submitted:

1. Completed and signed PNDI search receipt, with no known impacts.
2. A signed PNDI search receipt that contains "Avoidance Measures." The PNDI review is not complete unless the applicant has signed where required on the PNDI receipt, indicating they will fulfill the avoidance measures.
3. A copy of the signed PNDI receipt showing "potential impact" and the additional information outlined in the PNDI search receipt as well as proof of delivery to the appropriate jurisdictional agencies, where further coordination is required. If the coordination is not complete prior to the submission of the permit application package the permit application will be subject to the concurrent review process as outlined below.
4. A Clearance letter from jurisdictional agency for T&E species hit **and** the completed and signed PNDI Search receipt.

If any of the above are submitted the permit application may be **deemed complete** provided that all other completeness items are submitted.

Technical Review – Sequential Review

1. If the applicant submits either item 1, 2 or 4 above, they may use the sequential technical review process. In this case the Department or conservation district will conduct the technical review in accordance with the appropriate permit type SOP.
2. The Department or conservation district will during the technical plan review ensure that if any avoidance measures are required that they are implemented in the permit application package.

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3. If the PNDI clearance letter contained any requirements to be followed by the applicant, the Department or conservation district would ensure that those requirements are addressed in the plans during the technical plan review.

Technical Review – Concurrent Review

1. If the applicant submits item 3 from the application completeness section, they must follow the concurrent technical review process. The Department or conservation district will conduct the technical review in accordance with the appropriate permit type SOP.
2. While the technical review of the permit application is taking place, the applicant will engage in consultation with the appropriate jurisdictional agencies.
3. An unresolved T&E species hit will be treated as a technical deficiency during the technical review portion of the permit application review process. This technical deficiency will be noted in the technical deficiency letter and the applicant will have 60 calendar days from the date of the letter (unless an extension is requested and granted) to resolve the T&E species hit and any other technical deficiencies that exist with the application.
4. If the unresolved T&E species hit is not resolved by the time the entire technical review process has been completed (as per the SOP's for the appropriate permit type) the permit will be denied.
5. If the applicant wants to continue to pursue the permit for the project they will have to submit a new complete application package and pay all appropriate permit application fees.

Permit Decision

Once the technical review of the permit application has been completed the Department regional office will move to the permit decision step, in the SOP for the appropriate permit type. The application manager will review the permit application and make a permit decision as to whether the permit will be issued or denied. The Department and conservation district will consider the recommendations made by the appropriate jurisdictional agencies for PNDI potential impacts. If the T&E species hit has not been resolved by this point the permit will be denied.