

5 Scenarios for Instrument Filing for General or Individual NPDES Permit or E&S Permit or ESCGP

January 8, 2018

DISCLAIMER: The process and procedures outlined in this clarification document are intended to supplement the Notice of Termination (NOT) Instructions and existing requirements. Nothing in this document shall affect regulatory requirements. The various scenarios presented within are a subset of all possible scenarios.

Scenario 1 - Permittee is Landowner

If the permittee is the landowner and will agree to be responsible for long-term operation and maintenance of the PCSM BMPs:

1. An instrument, will be signed by the permittee (as both grantor and grantee) and notarized. The instrument, along with attachments, shall (to satisfy 25 Pa. Code §102.8(m)(2)):
 - a. identify the PCSM BMP(s),
 - b. provide for the necessary access related to long-term operation and maintenance of the PCSM BMP(s), and
 - c. provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.
2. The above instrument and attachments listed below shall be recorded within 45 days of permit issuance or authorization. The proof of filing the instrument and attachments shall be provided to the Department or conservation district within 90 days of permit issuance or authorization.
 - a. approved PCSM plan
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the PCSM plan)
3. An operation and maintenance agreement will not need to be signed or recorded in this scenario because the permittee is the landowner.
4. Unless the location and dimensions of the PCSM BMPs on the record drawings are the same as those on the PCSM plan, there are no subsurface BMPs, all BMPs are non-engineered and require minimal maintenance, and the operation and maintenance plan has not changed, the instrument will need to be amended in preparation for permit termination. The amended instrument will be recorded with the following attachments:
 - a. record drawings which accurately reflect as-built conditions
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the record drawings)
5. The permittee shall provide “proof of filing” the instrument and attachments in the form of a receipt from the county Recorder of Deeds Office and complete Section 7.b of the NOT form.

Scenario 2 - Permittee is not Landowner

If the permittee is not the landowner, and the landowner will retain ownership and will agree to be responsible for long-term operation and maintenance of the PCSM BMPs:

1. The permittee will provide a copy of the approved PCSM plan, containing an operation and maintenance plan, to the landowner.
2. An operation and maintenance agreement will be signed by the landowner to notify the landowner of BMPs and to identify the landowner as the person responsible for long-term operation and maintenance of the stormwater BMPs.
3. An instrument, will be signed by the landowner (as both grantor and grantee) and notarized. The instrument, along with attachments, shall (to satisfy 25 Pa. Code §102.8(m)(2)):
 - a. identify the PCSM BMP(s),
 - b. provide for the necessary access related to long-term operation and maintenance of the PCSM BMP(s), and
 - c. provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.
4. The above instrument and attachments listed below shall be recorded within 45 days of permit issuance or authorization. The proof of filing the instrument and attachments shall be provided to the Department or conservation district within 90 days of permit issuance or authorization.
 - a. approved PCSM plan
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the PCSM plan)
 - c. operation and maintenance agreement
5. Unless the location and dimensions of the PCSM BMPs on the record drawings are the same as those on the PCSM plan, there are no subsurface BMPs, all BMPs are non-engineered and require minimal maintenance, and the operation and maintenance plan has not changed, the instrument will need to be amended in preparation for permit termination. The amended instrument will be recorded with the following attachments:
 - a. record drawings which accurately reflect as-built conditions
 - b. operation and maintenance plan (typically the operation and maintenance schedule included within the record drawings)
 - c. operation and maintenance agreement
6. The permittee shall provide “proof of filing” the instrument and attachments in the form of a receipt from the county Recorder of Deeds Office and complete Section 7.b of the NOT form.

Scenario 3 - New Planned Community/Property Owners' Association (POA) will be formed

If the permittee is the current landowner and is developing a residential subdivision, where all or some of the lots will be sold prior to permit termination and a new (established after permit issuance or authorization) property owners' association (POA) will agree to be responsible for long-term operation and maintenance of the PCSM BMPs:

1. An instrument, will be signed by the permittee (as both grantor and grantee) and notarized. The instrument, along with attachments, shall (to satisfy 25 Pa. Code §102.8(m)(2)):
 - a. identify the PCSM BMP(s),
 - b. provide for the necessary access related to long-term operation and maintenance of the PCSM BMP(s), and
 - c. provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.
2. The above instrument and attachments listed below shall be recorded within 45 days of permit issuance or authorization. The proof of filing the instrument and attachments shall be provided to the Department or conservation district within 90 days of permit issuance or authorization.
 - a. approved PCSM plan
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the PCSM plan)
3. Upon the creation of a POA, an operation and maintenance agreement will be signed to identify the POA as the person responsible for long-term operation and maintenance of the stormwater BMPs. A planned community declaration may satisfy this requirement.
4. As the properties within the permit boundary are sold, landowner notices shall be signed to notify each new landowner of the BMPs within the permit boundary and to identify the POA as the person responsible for long-term operation and maintenance of the stormwater BMPs. Notice of compliance with this bullet shall be provided to the conservation district or the Department within 45 days from the date of property transfer. A planned community declaration may satisfy this requirement if it includes all items required by the permit condition.
5. Unless the location and dimensions of the PCSM BMPs on the record drawings are the same as those on the PCSM plan, there are no subsurface BMPs, all BMPs are non-engineered and require minimal maintenance, and the operation and maintenance plan has not changed, the instrument will need to be amended in preparation for permit termination. The amended instrument will be recorded with the following attachments:
 - a. record drawings which accurately reflect as-built conditions (for entire site)
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the record drawings)
 - c. operation and maintenance agreement (for entire site)
6. On the amended instrument, the new landowners will be listed as grantors and the POA will be listed as the grantee for the sold lots, and the permittee will be listed as the grantor and the POA will be listed as the grantee for the unsold lots.
7. The permittee shall provide “proof of filing” the instrument and attachments in the form of a receipt from the county Recorder of Deeds Office and complete Section 7.b of the NOT form.

Scenario 4 - Existing Planned Community/Property Owners' Association (POA)

If the permittee is the current landowner and is developing a residential subdivision, where all or some of the lots will be sold prior to permit termination and an existing (prior to permit issuance or authorization) property owners' association (POA) will agree to be responsible for long-term operation and maintenance of the PCSM BMPs:

1. The permittee will provide a copy of the approved PCSM plan, containing an operation and maintenance plan, to the POA.
2. An operation and maintenance agreement will be signed by the POA to identify the POA as the person responsible for long-term operation and maintenance of the stormwater BMPs. A revised Planned Community Declaration may satisfy this requirement.
3. An instrument, will be signed by the permittee as the grantor and the POA as the grantee and notarized. The instrument, along with attachments, shall (to satisfy 25 Pa. Code §102.8(m)(2)):
 - a. identify the PCSM BMP(s),
 - b. provide for the necessary access related to long-term operation and maintenance of the PCSM BMP(s), and
 - c. provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.
4. The above instrument and attachments listed below shall be recorded within 45 days of permit issuance or authorization. The proof of filing the instrument and attachments shall be provided to the Department or conservation district within 90 days of permit issuance or authorization.
 - a. approved PCSM plan
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the PCSM plan)
 - c. operation and maintenance agreement
5. As the properties within the permit boundary are sold, landowner notices shall be signed to notify each new landowner of the BMPs within the permit boundary and to identify the POA as the person responsible for long-term operation and maintenance of the stormwater BMPs. Notice of compliance with this bullet shall be provided to the conservation district or the Department within 45 days from the date of property transfer. A planned community declaration may satisfy this requirement if it includes all items required by the permit condition.
6. Unless the location and dimensions of the PCSM BMPs on the record drawings are the same as those on the PCSM plan, there are no subsurface BMPs, all BMPs are non-engineered and require minimal maintenance, and the operation and maintenance plan has not changed, the instrument will need to be amended in preparation for permit termination. The amended instrument will be recorded with the following attachments:
 - a. record drawings which accurately reflect as-built conditions (for entire site)
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the record drawings)
 - c. operation and maintenance agreement (for entire site)
7. On the amended instrument, the new landowners will be listed as grantors and the POA will be listed as the grantee for the sold lots, and the permittee will be listed as the grantor and the POA will be listed as the grantee for the unsold lots.
8. The permittee shall provide "proof of filing" the instrument and attachments in the form of a receipt from the county Recorder of Deeds Office and complete Section 7.b of the NOT form.

Scenario 5 - New Lot Owners

If the permittee is the current landowner and is developing a residential subdivision, where all or some of the lots will be sold prior to permit termination and each new lot owner will agree to be responsible for long-term operation and maintenance of the PCSM BMPs located on their lot:

1. An instrument, will be signed by the permittee (as both grantor and grantee) and notarized. The instrument, along with attachments, shall (to satisfy 25 Pa. Code §102.8(m)(2)):
 - a. identify the PCSM BMP(s),
 - b. provide for the necessary access related to long-term operation and maintenance of the PCSM BMP(s), and
 - c. provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.
2. The above instrument and attachments listed below shall be recorded within 45 days of permit issuance or authorization. The proof of filing the instrument and attachments shall be provided to the Department or conservation district within 90 days of permit issuance or authorization.
 - a. approved PCSM plan
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the PCSM plan))
3. As the properties within the permit boundary are sold, landowner notices shall be signed to notify each new landowner of the BMPs on their property and to identify the new landowner as the person responsible for long-term operation and maintenance of the stormwater BMPs on their lot. Notice of compliance with this bullet shall be provided to the conservation district or the Department within 45 days from the date of property transfer. This landowner notice may also act as an operation and maintenance agreement, which shall be signed by the landowner to document the landowner's agreement to be responsible for long-term operation and maintenance of the stormwater BMPs on their lot.
4. Unless the location and dimensions of the PCSM BMPs on the record drawings are the same as those on the PCSM plan, there are no subsurface BMPs, all BMPs are non-engineered and require minimal maintenance, and the operation and maintenance plan has not changed, the instrument will need to be amended in preparation for permit termination. The amended instrument will be recorded with the following attachments:
 - a. record drawings which accurately reflect as-built conditions (for the entire site)
 - b. operation and maintenance plan (synonymous with the long-term operation and maintenance schedule included within the record drawings)
 - c. operation and maintenance agreements (for each sold lot containing PCSM BMPs)
5. On the amended instrument(s), the new landowners will be listed as grantors and grantees for the sold lots, and the permittee will be listed as the grantor and grantee for the unsold lots.
6. The permittee shall provide "proof of filing" the instrument and attachments in the form of a receipt from the county Recorder of Deeds Office and complete Section 7.b of the NOT form.