

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF OIL AND GAS MANAGEMENT**

**DOCUMENT NUMBER:** 800-2100-008

<b>TITLE:</b>	Policy for Erosion and Sediment Control and Stormwater Management for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities.
<b>EFFECTIVE DATE:</b>	Upon publication of notice as final in the Pennsylvania Bulletin.
<b>AUTHORITY:</b>	The Clean Streams Law (35 P.S. §§ 691.1--691.1001); the 2012 Oil and Gas Act (58 Pa.C.S. §§ 3201-3274); Sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20); regulations at 25 Pa. Code Chapter 102 (relating to erosion and sediment control), 25 Pa. Code Chapter 78 (relating to oil and gas wells) and 25 Pa. Code Chapter 78a (relating to unconventional wells).
<b>POLICY:</b>	The Department of Environmental Protection (DEP) and County Conservation Districts (CCD) will follow the guidance presented in this document to implement Chapter 102 requirements for earth disturbance activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities (Oil and Gas Activities) as well as requirements from the 2012 Oil and Gas Act and Chapters 78 and 78a.
<b>PURPOSE:</b>	The purpose of this guidance is to inform those engaged in earth disturbance activities associated with oil and gas exploration, production, processing, treatment operations or transmission facilities on how to comply with the requirements of the 2012 Oil and Gas Act and Chapters 102, 78, and 78a.
<b>APPLICABILITY:</b>	This document is DEP's guidance for evaluating the E&S permit requirements for earth disturbance activities associated with Oil and Gas Activities. This document also provides guidance regarding permitting, implementation of post construction stormwater management and site restoration requirements.
<b>DISCLAIMER:</b>	The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.
	The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give these rules 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.
<b>PAGE LENGTH:</b>	17 pages

# **Erosion and Sediment Control and Stormwater Management for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations, or Transmission Facilities**

## **I. Regulatory Requirements**

### **A. Erosion and Sediment Control**

All persons proposing or conducting earth disturbance activities must develop, implement and maintain Erosion and Sediment Control Best Management Practices (E&S BMPs) to minimize the potential for accelerated erosion and sedimentation. A person proposing earth disturbance activities must develop and implement a written Erosion and Sediment Control Plan (E&S Plan) when earth disturbance activities will result in total earth disturbance of 5,000 square feet or more, the earth disturbance activity has the potential to discharge to High Quality or Exceptional Value water under 25 Pa. Code Chapter 93 (relating to water quality standards), or if the person is required to develop an E&S Plan under 25 Pa. Code Chapter 102 or other DEP regulations (e.g. 25 Pa. Code Chapter 105, relating to dam safety and water management, 25 Pa. Code Chapter 78, relating to oil and gas wells, and 25 Pa. Code Chapter 78a, relating to unconventional wells). Persons that are required to develop, implement and maintain E&S BMPs may utilize the BMPs that are identified in the *Erosion and Sediment Pollution Control Program Manual*, Document No. 386-2134-001, as amended and updated or other alternatives approved by the DEP. A person proposing oil and gas activities that involve five (5) acres or more of earth disturbance over the life of the project must obtain an erosion and sediment control (E&S) permit prior to commencing the earth disturbance activity. E&S permits for oil and gas activities include the E&S general permit (i.e., ESCGP) and individual E&S permits. For more information regarding permits, see [Section II](#) of this document.

### **B. Post Construction Stormwater Management**

All persons proposing or conducting earth disturbance activities in Pennsylvania that require a permit under 25 Pa. Code Chapter 102 must manage post-construction stormwater in accordance with 25 Pa. Code § 102.8. Persons that are required to develop a Post Construction Stormwater Management Plan (PCSM Plan) may utilize the stormwater control measures (SCMs) and design standards identified in the *Pennsylvania Stormwater Best Management Practices Manual*, Document No. 363-0300-002, as amended and updated or other alternatives that are demonstrated to manage stormwater during and after the completion of earth disturbance activities in accordance with 25 Pa. Code §§ 102.11(a) and (b).

Under 25 Pa. Code § 102.8(n), the portion of a site restoration (SR) plan that identifies PCSM SCMs to manage stormwater from Oil and Gas Activities permitted in accordance with Chapters 78 and 78a may be used to satisfy PCSM Plan requirements under Section 102.8 if the PCSM/SR Plan meet the requirements of Section 102.8, subsections (b), (c), (e), (f), (h), (i), (l) and when applicable (m).

Section 102.8(b) provides the requirements regarding general PCSM planning and design, including that the management of post construction stormwater must be planned and constructed to the extent practicable to prevent a net change in stormwater volume,

rate, and quality when comparing preconstruction conditions to post construction conditions. *See 25 Pa. Code § 102.8(b)(1), (2), and (3).* According to Section 102.8(f)(8), a PCSM Plan must contain supporting calculations. To fulfill the requirements of Section 102.8 subsections (b) and (f), a PCSM/SR Plan should include restoration of disturbed areas to approximate original conditions or meadow in good condition or better. For disturbed areas not restored to meadow in good condition, the PCSM/SR Plan should include supporting calculations and analysis to demonstrate that there will be no increase in the peak rate of stormwater runoff for the 2-, 10-, 50- and 100-year/24-hour storm event when compared to preconstruction conditions. Additionally, for disturbed areas not restored to meadow in good condition, a PCSM/SR Plan should include supporting calculations and analysis to demonstrate that there will be no net increase in the volume of stormwater runoff for storms up to and including the 2-year/24-hour event when compared to preconstruction conditions.

## **C. Stabilization and Restoration**

### **1. Temporary Stabilization**

According to 25 Pa. Code § 102.22(b), upon temporary cessation of an earth disturbance activity or any stage or phase of an activity where cessation of earth disturbance activities will exceed four (4) days, the site must be immediately seeded, mulched or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities.

For the earth disturbance activity or any stage or phase of an activity to be considered temporarily stabilized, the disturbed area must be covered with either a minimum uniform coverage of mulch and seed with a density capable of resisting accelerated erosion and sedimentation or an acceptable BMP which temporarily minimizes accelerated erosion and sedimentation. *See 25 Pa. Code § 102.22(b).*

### **2. Permanent Stabilization**

According to 25 Pa. Code § 102.22(a), upon final completion of an earth disturbance activity or any stage or phase of an activity, the site must have topsoil immediately restored, replaced, or amended, seeded, mulched, or otherwise permanently stabilized and protected from accelerated erosion and sedimentation. E&S BMPs must be implemented and maintained until permanent stabilization is completed. Once permanent stabilization has been established, temporary E&S BMPs must be removed. Any areas disturbed in the act of removing temporary E&S BMPs must be permanently stabilized upon completion of E&S BMP removal activity. For the earth disturbance activity or any stage or phase of an activity to be considered permanently stabilized, the disturbed area must be covered with a minimum uniform 70% perennial vegetative cover with a density capable of resisting accelerated erosion and sedimentation (70% vegetative cover) or an acceptable BMP which permanently minimizes accelerated erosion and sedimentation. *See 25 Pa. Code § 102.22(a)(2).*

At a minimum, all of the following standards should be met:

- a. Work areas such as a well pad, access road, compressor station parking area or other areas that support vehicular traffic are stabilized with an erosion resistant material such as durable crushed rock, aggregate, gravel, or other suitable material, and is capable of supporting the weight of the equipment being used.
- b. Appropriate BMPs, such as culverts, rock protected outlets and appropriate erosion resistant linings, are placed in channels and roadside ditches.
- c. The remainder of the disturbed area is stabilized with a 70% vegetative cover with a density capable of resisting accelerated erosion and sedimentation or, seed and soil amendments are applied, and the area is secured with appropriate BMPs such as mulch, erosion control blankets, or erosion control mats containing an appropriate seed mixture so the required vegetation is established during the next growing season. Applying seed and mulch to snow covered areas is not an acceptable BMP. Seeding and mulching or use of a tackifier alone is not considered permanent stabilization. Where the vegetation is not compatible with the land use (e.g. cropland) an acceptable BMP that permanently minimizes accelerated erosion and sedimentation must be in place.
- d. Temporary BMPs, such as mulch, filter fence, straw bale barriers, filter socks or rock filters, are installed and maintained until the 70% vegetative cover is established.

### 3. Site Restoration

Pursuant to Section 3126(a) of the 2012 Oil and Gas Act, each oil or gas well owner or operator must restore the land surface within the area disturbed in siting, drilling, completing, and producing a well. This requirement is applicable within all areas of disturbance identified as part of the well site in the project's E&S Plan and PCSM Plan.

#### a. Restoration After Drilling

Pursuant to Section 3216(c) of the 2012 Oil and Gas Act, within nine (9) months after completion of drilling of any well, the owner or operator must restore the well site, remove or fill all pits used to contain produced fluids or industrial wastes and remove all drilling supplies and equipment not needed for production. Drilling supplies and equipment not needed for production may be stored on the well site if express written consent of the surface landowner is obtained. Unconventional operators must use the Landowner Consent for Storing Drilling Supplies and Equipment form (Document No. 8000-FM-OOGM0144U) to satisfy the requirements under Section 3216(c) of the 2012 Oil and Gas Act as well as Section 78a.65(g) regarding the written consent from the landowner.

When multiple wells are drilled on a single well site, DEP interprets Section 3216(c) of the 2012 Oil and Gas Act to mean that post drilling restoration is required within nine (9) months after completion of drilling all permitted wells on the well site and/or the expiration of all existing well permits on the well site, whichever occurs later. Operators must use the Well Site Restoration Report form (Document No. 8000-PM-OOGM0075) for conventional operations or the Post Drilling Well Site Restoration Report form (Document No. 8000-FM-OOGM0152U) for unconventional operations.

Additionally, DEP interprets Section 3216(c) of the 2012 Oil and Gas Act to mean that post drilling restoration includes the restoration of well development impoundments. Well development impoundments must be restored within nine (9) months of completion of drilling the last well serviced by the impoundment or expiration of the last well permit that the impoundment was intended to service.

DEP interprets Section 3216(c) of the 2012 Oil and Gas Act to mean that post drilling restoration includes the restoration of any borrow pit used to construct access roads or well sites. Borrow pits must be restored within nine (9) months of drilling the last well on a site that was developed using material obtained from the borrow pit. If additional well sites or access roads will be developed using material obtained from the borrow pit as evidenced by a new valid well permit for a site that was or will be developed from material obtained from the borrow pit within the nine (9) month restoration period, restoration of the borrow pit is not required until nine (9) months after the final well is drilled on a site developed with material obtained from the borrow pit. All borrow pits that were in existence and used for unconventional operation when the Chapter 78a regulations were promulgated on October 8, 2016, must be registered with DEP by completing and submitting the Borrow Pit Registration Form for unconventional operations ([Document No. 8000-FM-OOGM0141U](#)).

DEP considers a well site to be restored under Section 3216(c) of the 2012 Oil and Gas Act when the operator meets the following criteria:

- i. All permanent post construction stormwater control features as identified in the PCSM/SR Plan are in place and functioning as designed.
- ii. Remaining impervious areas are minimized. *See 25 Pa. Code § 102.8(b)(4).* Impervious areas include but are not limited to areas where the soil has been compacted, areas where the soil has been treated with amendments to firm or harden the soil and areas where soil is underlain with a synthetic or other type of impermeable liner.

- iii. All areas of the site not needed for production must be permanently stabilized in accordance with Section 102.22(a). Projects subject to restoration extensions must be restored to approximate original conditions including preconstruction contours and they must be capable of supporting the original land uses to the extent practicable. DEP considers the following areas as needed for production:
  - Areas used for service vehicle and rig access.
  - Areas used for storage tanks and secondary containment facilities.
  - Areas used for well head(s) and appurtenant processing facilities.
  - Areas used for any necessary safety buffer (a safety buffer is a limited area surrounding equipment that is physically cordoned off to protect the facilities from accidental entry or intrusion).
  - Areas used to store any supplies or equipment consented to by the surface landowner.
- iv. Areas used for implementation and management of long term PCSM SCMs
  - Pursuant to 25 Pa. Code § 102.8(m)(1), the permittee or co-permittee shall be responsible for long-term operation and maintenance of PCSM SCMs unless a different person is identified in the Notice of Termination (NOT) and has agreed to long-term operation and maintenance of the PCSM SCMs.
  - For projects that do not require a well permit under the 2012 Oil and Gas Act, pursuant to 25 Pa. Code § 102.8(m)(2) for any property containing a PCSM SCM, the permittee or co-permittee shall record an instrument with the County Recorder of Deeds Office, which will assure disclosure of the PCSM SCM and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the PCSM SCM, provide for necessary access related to long-term operation and maintenance for PCSM SCMs and provide notice that the responsibility for long term operation and maintenance of the PCSM SCM is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees and provide proof of filing with the NOT under 25 Pa. Code § 102.7(b)(5).
  - For projects that require a well permit under the 2012 Oil and Gas Act, the permittee must certify that they are responsible for long-term operation and maintenance of PCSM SCMs remaining on the well site after post drilling restoration in accordance with the PCSM/SR Plan included in the DEP-approved E&S permit. After post plugging restoration, if any PCSM SCMs remain on site, the landowner must record an instrument with the County Recorder of Deeds Office where the PCSM SCMs are located to assure disclosure of the PCSM SCMs and the obligations in the ordinary course of a title search of the subject property. The recorded instrument must:
    - identify PCSM SCMs,

- provide for necessary access related to long-term operation and maintenance, and
- provide notice that responsibility for long-term operation and maintenance of PCSM SCMs is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees and provide proof of filing with the notice of termination under 25 Pa. Code § 102.7(b)(5).
- For Commonwealth-owned property, a covenant that runs with the land is not required until the transfer of the land containing a PCSM/SR SCM occurs. Upon transfer of the Commonwealth-owned property containing the PCSM/SR SCM, the deed must comply with Section 102.8(m)(3).

Areas needed for production and the proposed final site layout including driveways, storage tanks, locations of wellheads and appurtenant gas processing facilities, safety buffer, equipment consented to by the surface landowner and permanent PCSM SCMs should be shown on the site restoration plan drawings. The site should be organized in the most spatially efficient manner practicable to minimize any unrestored area.

Conventional operations only: Pursuant to 25 Pa. Code § 78.65(3), within 60 days after the restoration of the well site, a conventional operator must submit a well site restoration report ([Document No. 8000-PM-OOGM0075](#)) to DEP.

Unconventional operations only: Pursuant to 25 Pa. Code § 78a.65(e), within 60 calendar days after post-drilling restoration at an unconventional well site, the operator must submit a restoration report ([Document No. 8000-FM-OOGM0152U](#)) to DEP.

#### Waiver of post-drilling restoration requirements

Unconventional operations only: Pursuant to 25 Pa. Code § 78a.65(g), the surface landowner may waive the post-drilling restoration requirements at an unconventional well site, if a properly completed and signed Post-Drilling Landowner Waiver of Well Site Restoration form ([Document No. 8000-FM-OOGM0149U](#)) is submitted to DEP.

#### *Interim Post Construction Stormwater Management*

The term “Interim Post Construction Stormwater Management” refers to PCSM SCMs designed and implemented for oil and gas sites with well permits. Since the well site must be restored within nine (9) months of plugging the well(s) the PCSM SCMs must be removed and the site restored unless the surface landowner waives the operator’s well site restoration requirements as detailed in Sections 3216(g) of the O&G Act, 78.65 and 78a.65. PCSM SCMs designed and implemented for oil and gas sites without well permits, such as compressor stations or parking areas adjacent to pipelines are oil and gas sites that typically do not have well permits, and

therefore the PCSM SCMs are not interim because the restoration requirements of Sections 3216(g) of the O&G Act, 78.65 and 78a.65 do not apply.

#### *Well Site Restoration Extension*

Pursuant to Section 3216(g) of the 2012 Oil and Gas Act, the restoration period may be extended by DEP for an additional period of time not to exceed two years upon demonstration by the well owner or operator that:

- i. The extension will result in less earth disturbance, increased water reuse or more efficient development of the resources; or
- ii. Site restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment, or labor.

The demonstration must include a SR Plan that provides for the timely removal or fill of all pits used to contain produced fluids or industrial wastes and the removal of all drilling supplies and equipment not needed for production. In addition, the SR Plan must include interim PCSM SCMs. The plan should include a demonstration of compliance with 25 Pa. Code § 102.8(a)-(m).

Operators who restore the well site within the statutory 9-month period are not required to comply with the approximate original conditions requirement in Section 78a.65(b). However, operators seeking an extension of the restoration period in accordance with Section 78a.65(c) must demonstrate “that the portions of the well site not occupied by production facilities or equipment will be returned to approximate original conditions.”

#### b. Restoration After Plugging

Pursuant to Section 3216(d) of the 2012 Oil and Gas Act, within nine (9) months after plugging a well, the owner or operator shall remove all production or storage facilities, supplies and equipment and restore the well site. DEP considers a well site to be restored under Section 3216(d) of the 2012 Oil and Gas Act when the entire well site is restored to approximate original conditions, including preconstruction contours and capable of supporting the original land uses to the extent practicable. When multiple wells are drilled on a single well site, DEP interprets Section 3216(d) of the 2012 Oil and Gas Act to mean that the 9-month timeframe for permanent restoration begins after plugging the final well on that site.

Conventional operations only: Pursuant to 25 Pa. Code § 78.65(3) within 60 days after post-plugging restoration at a conventional well site, the operator must submit Well Site Restoration Report ([Document No. 8000-PM-OOGM0075](#)) to DEP to properly document restoration of the site.

Unconventional operations only: Pursuant to 25 Pa. Code § 78a.65 (f), within 60 calendar days after post-plugging restoration at an unconventional well

site, the operator must submit Post Plugging Well Site Restoration Report ([Document No. 8000-PM-OOGM0075U](#)) to DEP to properly document restoration of the site.

#### Waiver of post-plugging restoration requirements

Conventional operations only: The surface landowner may waive the post plugging restoration requirements at a conventional well site. In order to ensure all the appropriate information is provided, DEP prefers that a properly completed and signed Post-Plugging Landowner Waiver of Well Site Restoration form ([Document No. 8000-FM-OOGM0020](#)) to be submitted to DEP.

Unconventional operations only: Pursuant to 25 Pa. Code § 78a.65(g), the surface landowner may waive the post-plugging restoration requirements at an unconventional well site, if a properly completed and signed Post-Plugging Landowner Waiver of Well Site Restoration form ([Document No. 8000-FM-OOGM0155U](#)) is submitted to DEP.

#### c. Restoration of Well Sites Where No Well is Drilled

Conventional operations only: Pursuant to 25 Pa. Code § 78.65(2), if a conventional well site is constructed and the well is not drilled, the well site shall be restored within 30 days after the expiration of the well permit unless DEP approves an extension application by the well owner or operator for reasons of adverse weather or lack of essential fuel, equipment, or labor.

Unconventional operations only: Pursuant to 25 Pa. Code § 78a.65(a)(3), if an unconventional well site is constructed and the well is not drilled, the well site shall be restored within nine (9) months after the expiration of the well permit unless DEP approves an extension for reasons of adverse weather or lack of essential fuel, equipment, or labor.

### **D. Co-Permittees**

Pursuant to 25 Pa. Code § 102.5(h), operators that are not permittees must be included as co-permittees. Section 102.1 defines “operator” as a person who has one or more of the following: (1) oversight responsibility of earth disturbance activity on a project site or a portion thereof who has the ability to make modifications to the E&S Plan, PCSM Plan or site specifications; or (2) day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the E&S Plan or PCSM Plan. Accordingly, for projects that involve earth disturbances associated with the preparation of a well site, the well operator should be included as a co-permittee if the operator is not the permittee.

### **E. Pre-construction Meetings**

Pursuant to 25 Pa. Code § 102.5(e), a pre-construction meeting for all E&S Permits must be scheduled by the permittee, unless the permittee has been notified otherwise in writing

by DEP/CCD. The permittee shall invite DEP and/or CCD to attend the pre-construction meeting and provide at least seven (7) days' notice of the pre-construction meeting to all invited attendees. Where notice of a pre-construction meeting has been provided to DEP/CCD and the pre-construction meeting is held pursuant to Section 102.5(e), but DEP/CCD representatives do not attend the scheduled pre-construction meeting, the earth disturbance activities approved under the erosion and sediment control permit may proceed.

## **II. Permitting Process**

Applicants are encouraged to use DEP's [Permit Application Consultation Tool](#) (PACT) to identify the necessary permits, authorizations or notifications needed for the project. PACT will provide additional information for the erosion and sediment control permitting process.

All permit applications or NOIs submitted for earth disturbance activities associated with oil and gas exploration, production, processing, or treatment facilities, and transmission facilities will be reviewed using a standard review process under DEP's Implementation of the Permit Review Process and Decision Guarantee Policy (PDG Policy) ([Document No. 021-2100-001](#)) and be covered by DEP's PAyback Policy, as applicable.

Once an earth disturbance activity is authorized under a permit, prior approval from DEP or CCD is required for all modifications to the approved E&S Plan or PCSM/SR Plan.

### **A. Pre-Application Meeting**

DEP encourages applicants to participate in a pre-application meeting prior to formally submitting applications. Having a pre-application meeting is beneficial because deficiencies in the application can be identified and corrected through discussions prior to submitting an application or NOI to DEP. This may contribute to a quicker turnaround for technical review. Applicants should coordinate with the DEP office and/or CCD, as applicable, where the project is located to arrange a pre-application meeting.

### **B. Scope of Permitted Area**

Existing roads that have been improved (i.e. widened, grade adjusted, etc.), new access roads, support facilities, and pipelines that are exclusively used for oil and gas operations may be permitted separately but are considered together solely to determine whether the total project acreage limit as detailed in Section 102.5(c) has been met and a permit is required. All portions of a project area of five (5) acres or more must obtain permit coverage prior to commencing earth disturbance activity.

#### **Well Sites**

Pursuant to 25 Pa. Code §§ 78.1 and 78a.1, a well site is defined as the area occupied by the equipment or facilities necessary for or incidental to the drilling, production or plugging of a well. At a minimum, a well site includes construction of the well site and access roads. Accordingly, the well site and access roads are substantially connected and constitute a project for 25 Pa. Code § 102.5(c) solely for permitting purposes. For multiple well sites that are concurrently under construction with a common access road,

the well sites and access road are substantially connected and constitute a project. Well sites constructed along a common access road are substantially connected to every other well site that is concurrently under construction along the common access road and constitute a project. For purposes of defining the project for permitting, DEP considers a well site to be under construction until DEP receives the well site's restoration report.

### Roads

Activities involving the construction or improvement of roadways used for the purpose of conducting Oil and Gas Activities as defined in Section 102.1 that do not meet the definition of Road Maintenance Activities as defined in Section 102.1 are Oil and Gas Activities and may be substantially connected to well sites, pipelines, other service lines or support facilities, and must obtain permit coverage.

Activities meeting the definition of Road Maintenance Activities as defined in Section 102.1 are not Oil and Gas Activities and are not substantially connected to well sites, new road construction, pipelines, other service lines or support facilities.

### Pipelines or Other Service Lines

Pipelines or other service lines constructed as part of the same common line or with contiguous earth disturbance are substantially connected and constitute a project. DEP considers pipelines and other service lines that are contiguous along the entire length of the line from the point of origin to the point of termination to be part of the same common line. Intersection points between pipelines or other service lines may be considered the point of termination for all but one of the intersecting lines. In the case of pipelines, this will generally be the larger line.

Well sites, access roads, and pipelines or other service lines are substantially connected and part of the same project when the well sites are constructed with interconnecting pipelines or other service lines and construction of the interconnecting service lines is commenced prior to completing all of the following items:

- i. Submission of a restoration report for all well sites to DEP,
- ii. Achievement of permanent stabilization of all disturbed areas, and
- iii. Receipt of the NOT acknowledgement from DEP for any E&S Permits for the connected well sites and access roads.

Pipelines, other service lines, support facilities and/or access roads that are connected to multiple well sites and are constructed after completing all of the following items may be considered independent projects from the well sites:

- i. Submission of a restoration report for all well sites to DEP,
- ii. Achievement of permanent stabilization of all disturbed areas, and
- iii. Receipt of the NOT acknowledgement from DEP for any E&S Permits by DEP for the well sites and access roads.

## Support Facilities

A support facility, including but not limited to, an impoundment, staging area, tank farm, auxiliary road, parking lot or borrow area that is within 1,320 linear feet (0.25-mile) of a well site is substantially connected to that well site and is thereby part of that well site project for Section 102.5(c) permitting purposes. DEP presumes that borrow pits not regulated by the Non-Coal Surface Mining Conservation and Reclamation Act, and well development impoundments are part of at least one well site for bonding and restoration requirements in Sections 78.302, 78a.302, 78.65 and 78a.65, respectively. These requirements are held separate and independent from determinations of the scope of a project for erosion and sediment control permitting purposes. For additional information regarding mining permit requirements, see Borrow Pits for Oil and Gas Well Activities ([Document No. 563-2111-115](#)).

Support facilities that are not substantially connected to a well site may be independent projects from the well site project. However, depending on the amount of earth disturbance required, these projects may still be subject to Section 102.4 E&S Plan requirements, and/or permit requirements per Section 102.5.

Once the earth disturbance activity, site restoration and permanent stabilization of a project are completed and the NOT is acknowledged by DEP, additional earth disturbance activity at the project site will be considered as a new project. Permanent stabilization cannot be implemented intermittently in order to keep below the five-acre threshold and avoid permit requirements.

## Transmission Facilities

Transmission pipelines transport crude oil and natural gas from their respective gathering systems to refining, processing, or storage facilities. Transmission pipelines also transport refined petroleum products and natural gas to customers, for use or for further distribution.

Transmission facilities include all of the equipment and pipelines necessary to transport the product. This includes the pipe, valves, pumps or compressors, breakout tanks, storage tanks, refining and processing facilities and other equipment.

For up to date information on permitting of a transmission facility including transmission pipelines, see [Division of Duties for Oil and Gas Activities FAQ](#) or contact the DEP [Regional Permit Coordination Office](#).

In certain instances, DEP may elect to issue separate permits for extensive linear projects, including, but not limited to, pipeline construction projects. Typically, separate permits will be issued for each county, or other identifiable segment. However, in no case will subdividing the project exempt any portion of the project from permit coverage.

C. **Notices of Intent (NOI) for Coverage under the Erosion and Sediment Control General Permit for Oil and Gas Activities**

An applicant seeking an Erosion and Sediment Control General Permit (ESCGP) for Oil and Gas Activities should submit an NOI to either the CCD, or appropriate DEP office as directed, depending on the proposed activity to be authorized. All applicants must submit a complete and acceptable application package that contains all of the items listed in the Instructions for a Notice of Intent (NOI) Authorization for Coverage Under the Erosion and Sediment Control General Permit (ESCGP) for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities.

**Expedited Review Process**

DEP offers an optional expedited review process to persons seeking an ESCGP administered by the Office of Oil and Gas Management. ESCGPs administered by other DEP Programs or CCD do not offer this option. Applicants that qualify for and request permit coverage through the expedited review process will be provided with an acknowledgement of coverage within 14 business days from the submission of a complete and acceptable NOI.

The applicant is responsible for submitting an administratively complete and technically adequate NOI, which meets all applicable regulatory and statutory requirements and contains all information required by DEP to make a final permit decision. Failure to do so will void Permit Decision Guarantee. Applications that require revisions, additions, corrections or supplements take much longer to review, and thus DEP cannot provide certainty regarding the permit processing timeframe.

The expedited review process is not available for an ESCGP for the following earth disturbance activities:

- i. Projects where any part is located in the watershed of a surface water with an existing or designated use of exceptional value or high quality pursuant to Chapter 93 (relating to water quality standards). Projects where any part is located in an exceptional value wetland in accordance with 25 Pa. Code § 105.17. Projects where any part is located in the watershed of an impaired surface water where the cause of impairment is identified as siltation.
- ii. Projects in which the well pad will be constructed in or on a floodplain.
- iii. Projects involving earth disturbance activities on lands that are known to be currently contaminated by the release of regulated substances as defined in Section 103 of The Pennsylvania Land Recycling and Remediation Standards Act (Act 2) (35 P.S. § 6026.103).
- iv. Projects located where naturally occurring geologic formations or soil conditions may provide hazards to the project or surrounding environment or have the potential to cause or contribute to pollution when disturbed, including, but not limited to, land sliding, steep slopes, karst/sinkhole formation, acid producing rock (including coal seams, where earth disturbance activities have the potential to expose acid producing rock or infiltrate stormwater runoff into acid producing rock), radioactive or arsenic

bearing formations, surface mines (existing, abandoned and/or reclaimed), deep mines (active, abandoned where the earth disturbance activities have the potential to encounter a mine void), mine spoil dump area, abandoned mine drainage, or abandoned mine drainage treatment systems.

- v. Projects submitted by an applicant who has any existing unresolved noncompliance issues with DEP.
- vi. Projects that are part of a transmission pipeline or associated facilities or are regulated by the Federal Energy Regulatory Commission (FERC).

NOIs for coverage under an ESCGP submitted through the expedited review process must be prepared and certified by a licensed professional (e.g. engineer, surveyor, geologist or landscape architect) who is registered in Pennsylvania.

The licensed professional is responsible for the development of a complete and acceptable NOI package, including an E&S Plan that specifies E&S BMP implementation and maintenance requirements and a site restoration plan with PCSM SCMs that meet regulatory requirements. All E&S Plan and PCSM/SR Plan drawings and plan narratives submitted for the expedited review process must be sealed by the licensed professional that prepared the application and plans. The seal must be placed on the cover page of the plan drawings, each plan drawing and on the cover of the narrative.

If a licensed professional routinely submits deficient NOIs, DEP may determine that the licensed professional may no longer submit NOIs under the expedited review process. DEP will notify in writing any licensed professional that it determines may no longer submit NOIs under the expedited review process. Licensed professionals that have been notified that they are no longer eligible to submit NOIs under the expedited review process may request to have their eligibility reinstated by DEP not less than one (1) year after receipt of notification that they are no longer eligible. The request for reinstatement should include a demonstration of competency by the licensed professional. The demonstration of competency may include:

- Erosion and sediment control permits or plans that are technically sound and approved by DEP or a CCD after the date of suspension. These can include plans submitted for:
  - Standard Review ESCGP for Oil and Gas Activities
  - Chapter 105 Waterway Encroachment Permits
  - General and Individual NPDES Permits for discharges associated with construction
- If the licensed professional does not prepare any E&S Plans described above, the licensed professional may obtain certification as a Professional in Erosion and Sediment Control and submit that certification to DEP as a demonstration of competency.
- Another form of demonstration approved by DEP.

If, after being reinstated, a licensed professional routinely submits deficient NOIs, DEP may determine that the licensed professional may no longer submit NOIs under the expedited review process. Licensed professionals that have been notified that they are no longer eligible to submit NOIs under the expedited review process a second time will be permanently excluded from submitting NOIs under the expedited review process.

DEP will review NOIs, including E&S Plans and PCSM/SR Plans to ensure that applicants have submitted complete and acceptable applications. The applicant is responsible for submitting a complete and technically adequate application which meets all applicable regulatory and statutory requirements and contains all information required by DEP to make a final permit decision. Failure to do so will void Permit Decision Guarantee. Applications that require revisions, additions, corrections or supplements take much longer to review, and thus DEP cannot provide certainty regarding the permit processing timeframe.

**D. Erosion and Sediment Control Individual Permits (Individual E&S Permit)**

Oil and Gas projects that disturb five (5) acres or greater over the life of the project, but due to the characteristics of the project do not qualify for ESCGPs, will require an Individual E&S Permit.

ESCGP is not available for the following activities:

- i. Discharges which contain hazardous pollutants, toxics, or any other substance which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or contribute to an increase in mortality or morbidity in either an individual or the total population or pose a substantial present or future hazard to human health or the environment when discharged into surface waters of this Commonwealth.
- ii. Discharges or earthmoving activities which are not, or will not be, in compliance with any of the terms or conditions of the general permit.
- iii. Discharges or earthmoving activities for which the responsible party (person) has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, and schedule of compliance or order issued by DEP or CCD.
- iv. Discharges which do not, or will not, result in compliance with applicable effluent limitations or water quality standards.
- v. Discharges or earthmoving activities which are likely to directly or indirectly adversely affect a State or Federal threatened or endangered species or a species proposed for such designation, or which is likely to destroy or adversely modify the critical habitat of such a species, as identified under the Federal Endangered Species Act of 1973; Title 30, Chapter 75 of the Pa. Fish and Boat Code; Title 17, Chapter 25, Conservation of Wild Plants; and Title 31 Chapter 133 Game Wildlife code.
- vi. Discharges which individually or cumulatively have the potential to cause significant adverse environmental impact.

- vii. Discharges to surface water identified as impaired waters where the proposed discharge will result in a net change (pre-condition to post-condition) in volume or rate or water quality of the stormwater, unless an analysis is completed which documents that the discharge will neither cause nor contribute to an impairment of the receiving waters.

#### **E. Permit Fees**

Applicants submitting a permit application or NOI must submit the fees as per 25 Pa. Code § 102.6(b). CCDs may charge additional fees in accordance with Section 9(13) of the Conservation District Law (3 P.S. § 857(13)). Applicants may be expected to submit these fees to CCDs for additional plan reviews. See 25 Pa. Code § 102.6(b)(3).

For major modifications, in addition to administrative filing fees, the permittee must pay the disturbed acreage fee for the disturbed area being added to the permit. For example, increasing from 100 to 105 disturbed acres with a major modification would require payment for only the additional five (5) acres.

Administrative filing fees are not required for authorization of minor modifications to previously authorized earth disturbance for Oil and Gas Activities but need to include the disturbed acreage fee for disturbed areas being added to the permit.

#### **F. Permit Termination**

Pursuant to 25 Pa. Code § 102.7, upon permanent stabilization of the earth disturbance activity under Section 102.22(a)(2), and installation of BMPs in accordance with an approved plan prepared and implemented in accordance with Sections 102.4 and 102.8, the permittee or co-permittee must submit a Notice of Termination (NOT) to DEP or CCD. The NOT must include the following:

1. The facility name, address and location.
2. The operator's name and address.
3. The permit number.
4. The reason for permit termination.
5. Identification of the persons who have agreed to and will be responsible for long-term operation and maintenance of the PCSM SCMs in accordance with 25 Pa. Code § 102.8(m) and proof of compliance with 25 Pa. Code § 102.8(m)(2) (when applicable).

The Permittee must submit a properly completed NOT for Chapter 102 Permits form (Document No. [3800-PM-BCW0229b](#)) to fulfill the obligations of 25 Pa. Code § 102.7 (related to Permit Termination). Until the permittee or co-permittee has received written approval of an NOT, the permittee or co-permittee will remain responsible for compliance with the permit terms and conditions including long-term operation and maintenance of all PCSM SCMs on the project site and is responsible for violations occurring on the project site.

For projects that require a well permit under the 2012 Oil and Gas Act, a covenant that runs with the land is not required until the wells are plugged. The well operator is responsible for long-term operation and maintenance of any PCSM SCM(s) that remain at the site that the NOT is being submitted for until the wells are plugged. For additional information see Section I.C.3 of this document.

For projects that do not have a well permit, the NOT must include the agreement document that transfers PCSM SCM(s) responsibility from the permittee/co-permittee/landowner to the entity accepting long-term operation and maintenance responsibility and provide evidence that an instrument has been recorded with the recorder of deeds. The recorded instrument must identify the PCSM SCM(s), provide for necessary access related to long-term operation and maintenance for PCSM SCM(s) and provide notice that the responsibility for long-term operation and maintenance of the PCSM SCM(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees. For additional information see Section I.C.3 of this document.

DEP or the CCD will conduct a final inspection and approve or deny the NOT within 30 days after it has been accepted the NOT as complete.

For more details on the NOT process, see DEP's [NOT FAQ](#) and [NOT form and instructions](#).