



February 28, 2022

National Fuel Gas Supply Corporation
c/o Mr. Daniel Young
1100 State Street
Erie, PA 16501

Re: Erosion and Sediment Control General Permit Coverage Approval
FM120 Insertion Project
DEP Permit No. ESG830021001
APS No. 1030859; AUTH ID No. 1340381
Shippen Township, Cameron County
City of St. Mary's and Jones Township, Elk County
Sergeant Township, McKean County

Dear Mr. Young:

Under the authority of Pennsylvania's Clean Streams Law, the Department of Environmental Protection (DEP) has approved your request for new coverage under the Erosion and Sediment Control General Permit for Stormwater Discharges Associated with Oil and Gas Activities (ESCGP). The latest versions of the Notice of Intent (NOI) and all supporting documents, including the Erosion and Sediment Control (E&S) Plan and Post-Construction Stormwater Management (PCSM) Plan, are incorporated into this approval, including the following plan drawings:

- The E&S Plan drawings, for the FM120 Insertion Project, dated November 8, 2021, and last revised February 11, 2022.
- The PCSM Plan drawings for the FM120 Insertion Project, dated and last revised November 8, 2021.

Your coverage under the ESCGP, which has been assigned ESCGP Permit No. ESG830021001 is effective on **February 28, 2022**, and will expire on **February 27, 2027**. If stormwater discharges associated with oil and gas activities are expected to continue beyond the expiration date of your ESCGP coverage, you must apply to renew your coverage at least 180 days prior to the expiration date.

Please review the ESCGP and the required enclosures carefully and contact this office if you have any questions. Please pay particular attention to the following requirements of the ESCGP:

1. In accordance with 25 Pa. Code § 102.5(h), operators who are not the permittee shall be co-permittees. An operator is a person who either has oversight responsibility of an earth disturbance activity on a project site who has the ability to make modifications to the E&S

Plan, PCSM Plan, or site specifications, or has day-to-day operational control over an earth disturbance activity on a project site. Please be advised that after an operator (contractor) has been selected for the project, the permit must either be transferred to the operator or the operator must be made a co-permittee and enter into an agreement with the permittee. Please use the Co-Permittee Acknowledgement Form for Chapter 102 Permits (3800-FM-BCW0271a) to add a co-permittee.

2. A pre-construction meeting is required as specified in 25 Pa. Code § 102.5(e) unless otherwise notified in writing by this office. The purpose of this meeting is to review all aspects of the permit with the permittee, co-permittees, operators, consultants, inspectors, and licensed professionals or their designees who will be responsible for the implementation of the critical stages of the approved PCSM Plan. You must provide at least seven days notice of the pre-construction meeting to all invited attendees.
3. You must conduct inspections of all best management practices (BMPs) on a weekly basis and after each stormwater event to ensure effective and efficient operation. The Visual Site Inspection Report Form (3800-FM-BCW0271d) is enclosed along with instructions. This form (or an equivalent electronic form providing the same information) can be used to document the required site inspections.
4. For any property containing a PCSM BMP, the permittee or co-permittee must record an instrument with the recorder of deeds which will assure disclosure of the PCSM BMP and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the PCSM BMP, provide for necessary access related to long-term operation and maintenance (O&M) for PCSM BMPs, and provide notice that the responsibility for long-term O&M of the PCSM BMP is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees. **You must record an instrument with the Recorder of Deeds and provide proof of the recording at the time an application to transfer permit coverage is submitted, if applicable, and at the time a Notice of Termination (NOT) is submitted to this office.**
5. If there are any changes to the PCSM BMPs or long-term operation and maintenance plan after the initial instrument recording and prior to permit termination, the permittee(s) will need to amend the initial recorded instrument at the Recorder of Deeds office prior to permit termination. Please note, most Recorder of Deeds offices require that the land owner (at the time of actual recording) signs the instrument to be recorded. If the land owner changes and an amended instrument needs to be recorded, the Recorder of Deeds office will likely require the new land owner's signature on the amended instrument. It is recommended that for any sale or transfer of property to a new owner before this permit is terminated that the permittee seek legal counsel on how to structure the sale or transfer to allow the recorded instrument to be amended.
6. The Notice of Termination (NOT) form must be completed and filed when construction activities have ceased and final stabilization has been achieved. The NOT must identify the responsible person(s) for the long-term O&M of the PCSM BMPs. Please be advised that the permittee and any co-permittees remain responsible for all operational maintenance

for this project site until the NOT has been filed and acknowledged. **It is important that you fulfill your obligations under the General Permit and submit a complete NOT to this office upon final stabilization of the site.**

Any person aggrieved by this action may challenge it in an appropriate legal forum. The state and federal courts are currently split on whether the proper forum to challenge a Department permit, authorization or approval for a facility or activity subject to the Federal Natural Gas Act, 15 U.S.C. § 717 *et seq.*, is the United States Court of Appeals for the Third Circuit or the Pennsylvania Environmental Hearing Board. See *Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl. Prot.*, 833 F.3d 360 (3d Cir. 2016); *Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl Prot.*, 903 F.3d 65 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 1648, 203 L. Ed. 899 (2019) and *Cole v. Dep't. of Env'tl Prot.*, 1577 C.D. 2019 WL 2420667 (Pa. Cmwlth Ct. June 15, 2021) (Pet. for Allowance of Appeal pending); *West Rockhill Twp. v. Dep't of Env'tl. Prot.*, No. 1595 C.D. 2019 WL 2426014 (Pa. Cmwlth. June 15, 2021) (Pet. for Allowance of Appeal pending).

You should promptly consult with a lawyer on the steps to take if you wish to challenge this action and to best protect your interests.

IMPORTANT LEGAL RIGHTS ARE AT STAKE. YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE.

If you have questions about your application, please contact Nick Rossi at 717-772-5667 or nicrossi@pa.gov and refer to the permit number referenced above.

Sincerely,



Domenic Rocco, P.E.
Director
Regional Permit Coordination Office

Enclosures: ESCGP-3 Permit
Visual Site Inspection Report Instructions/Form
Co-permittee Acknowledgement Instructions/Form
Co-permittee Liability Release
Notice of Termination Instructions/Form

cc: GAI Consultants (by email)
Northwest Regional Waterways and Wetlands PM (by email)
Northwest Regional ARD (by email)
Northcentral Regional Waterways and Wetlands PM (by email)
Northcentral Regional ARD (by email)
Cameron County Conservation District (by email)
Elk County Conservation District (by email)

McKean County Conservation District (by email)
Jones Township (by email)
Sergeant Township (by email)
Shippen Township (by email)
City of St. Marys (by email)