

**POLICY FOR IMPLEMENTING THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION PERMIT REVIEW PROCESS AND PERMIT DECISION GUARANTEE
(DEP ID: 021-2100-001)**

COMMENT RESPONSE DOCUMENT

August 15, 2014



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Permit Review Process and Permit Decision Guarantee

By signing Executive Order 2012-11, Gov. Tom Corbett charged the Department of Environmental Protection (DEP) with developing and implementing a policy that results in more timely permitting decisions, provides clear expectations for applicants to improve the quality of permit applications, establishes performance measures for DEP's permit review staff, and implements electronic permitting tools to enhance internal operations.

To accomplish this, in November 2012 DEP established the Permit Review Process (PRP) and Permit Decision Guarantee (PDG) policy. Close to one year after implementation, DEP held a 45-day public comment period on the "Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee" (policy). The notice of availability of the policy for comment appeared in the October 26, 2013, edition of the *Pennsylvania Bulletin*. This supplementary comment period offered on the final policy, a first of its kind, allowed stakeholders an opportunity to provide feedback on the effectiveness of the new policy. The comment period was extended on December 14, 2013, and subsequently ended on December 31, 2013, allowing for a total of 60 days to provide comment.

A concurrent internal review was conducted to augment the analyses conducted throughout the year via the quarterly reports. This internal review allowed for staff to review the permits that are included in PDG and those that were not, review the timeframes that were identified and recommend possible changes. Input on the effectiveness of the policy was also sought from program staff.

Following the review of the internal and external comments the Department elected not to make any revisions to the policy. The Department appreciates the feedback that was received and will continue to review the policy, process and timeframes yearly. Implementation of this and other policies are meant to increase efficiency of the permit review process within the Department and we continue to make progress.

The Department is dedicated to increased public participation and transparency and this additional comment period, a year after implementation of the policy is reflective of these goals.

TABLE OF CONTENTS

List of Commentators	1
General Comments	2
Definitions	5
Permit Delays and Permit Priority	6
Application Review	7
Authorizations.....	10

List of Commentators

No.	Commentator
1	<p>Susan Carty President League of Women Voters of Pennsylvania 226 Forster Street Harrisburg, PA 17102</p>
2	<p>David Spigelmyer President Marcellus Shale Coalition 24 Summit Park Drive 2nd Floor Pittsburgh, PA 15275</p>
3	<p>Paul Zielinski Sr. Director- Water Quality and Environmental Compliance Pennsylvania American Water 800 West Hersheypark Drive Hershey, PA 17033</p>
4	<p>Josie Gaskey Director, Regulatory & Technical Affairs Pennsylvania Coal Association 212 North Third Street Suite 102 Harrisburg, PA 17101</p>
5	<p>Stephen Kunz Senior Ecologist Schmid & Company Inc., <i>Consulting Ecologists</i> 1201 Cedar Grove Road Media, PA 19063</p>

General

1. **Comment:** The proposed permit review process jeopardizes protection of public health and the environment of Pennsylvania residents. (1)

Response: The policy that was published for comment has been finalized and in use by the department since October 2012. The intent of the comment period was to allow stakeholders an opportunity to provide feedback on the effectiveness of the policy since implementation. Additionally the process does not impact public health and the environment, all permits are issued under the same governing statutes and regulations and are protective of human health and the environment.

2. **Comment:** Too much effort and resources are being applied to permit issuance, and too little effort and resources are being applied to regulatory enforcement and actual environmental protection and the policy of the Department of Environmental Protection should first and foremost be to safeguard public health and the environment. The department should immediately suspend its permit review program and devote 100% of its time and resources to ensuring that all of the permits that have already been issued are being properly implemented and that once the department is certain that all of the existing permits are being adequately implemented, it can then begin to review and issue new permits once again. (5)

Response: The department disagrees. The policy clearly states that the protection of the environment and public health are the department's first and foremost priorities. The policy also refers to "permit decision" and not specifically "permit issuance". As has been stated in previous response documents, this is a public policy document that describes the process by which DEP will review permit applications. It is not, nor is it intended to be, a management directive for DEP staff. The policy does not direct the department to fast track or streamline the permitting process. It asks for efficiencies in the review and decision making for permits that are protective of the environment, which benefits both the environment and the taxpayers in the commonwealth. All permits issued by the department are environmentally protective by the nature of their statutory authority and conditions.

3. **Comment:** DEP should consider consistently applying the PDG across all regional offices, all permit reviewers and be committed to expeditiously processing permit applications and the industry must be committed to submitting high quality permit applications based on those requirements to heighten success of the PDG. (2)

Response: The department agrees and believes the results of the first year document the success of the permit review process and permit decision guarantee. To ensure consistent implementation of the policy across the commonwealth, each program holds statewide training and develops standard operating procedures etc., when needed.

4. **Comment:** The department should establish a Director of Permit Coordination to properly implement these important policies in a consistent manner. (2)

Response: During its reorganization in 2011, the department created the Office of Program Integration, which among other duties, is responsible for establishing general consistency across regional offices. The Director of this office, along with executive staff, will ensure these important policies are implemented fully and consistently among the regions.

5. **Comment:** The District Mining Offices (DMOs) are not adequately staffed to simultaneously review the backlog of permits and pending new/renewal permits. The DMOs, particularly those with the more complex permit applications, continue to struggle with balancing elimination of the backlog queue and reviewing incoming new permits. There is simply not enough qualified technical permit review staff to keep up with the ongoing new permits, as well as attempt to eliminate the backlog of complex permits left. (4)

Response: The Department appreciates the feedback and is continuously monitoring workload and staffing in all regional and district offices including the DMOs. Implementation of this and other policies are meant to increase efficiency of the permit review process within the Department and we continue to make progress.

6. **Comment:** Staffing increases must be sought, maintained and appropriately funded in ways that do not raise questions regarding potential conflicts of interest. (1)

Response: The department acknowledges the comment and will continue to assess staffing and appropriate funding.

7. **Comment:** The department needs to fast-track the development of a web-based electronic permitting system. A web-based electronic permitting system would alleviate many of the challenges associated with the entire permitting and permit review process and allow the Permit Decision Guarantee process to achieve its intended objective of guaranteeing timeframes for permit issuance. (4)

Response: The department agrees, and such electronic permitting tools are under development or already in use now. It is the department's goal to make any system developed user-friendly and for the underlying process to be efficient while ensuring application completeness to the maximum extent possible.

8. **Comment:** In order to provide clear expectations on public participation for the regulatory community and interested stakeholders, electronically submitted permit applications should be simultaneously posted and available for review with specific notation as to timeline guarantee. Data must be communicated in a readily accessible and meaningful manner. Summaries and reports should be compiled to evaluate the process and prompt changes, as needed. Such efforts do not detract but enhance from DEP's core function. (1)

Response: The department appreciates this suggestion and is committed to enhanced public participation. For example, the department announced in July 2013 an updated Public Participation website, an improved newsletter, and calendar of events, and in March 2014 the department published the revised “Policy on Public Participation in the Permit Review Process” (Document # 012-0900-003). Improvements have also been made to the *eNotice* and *eFACTS on the Web* tools to provide more transparency and accountability regarding Department’s decision-making.

9. **Comment:** DEP should consider an increased frequency of review of public documents for technical guidance, permit forms, checklists and fact sheets, especially for regulatory programs that are evolving from recent or proposed statutory or regulatory changes. (2)

Response: The department acknowledges this recommendation and will continue to review and revise public documents to reflect statutory and regulatory changes, particularly when the regulatory changes are in the final stages of development.

10. **Comment:** Additional review time of the process and application times is needed. Specifically, that because there has not been sufficient opportunity to see this process function full cycle for some of the more complex permits such as underground coal mining and coal refuse disposal permit applications the commentator recommended that an additional public opportunity to comment be provided after all types of permits have gone full cycle through this process. And, given the large number of permits, their range of implications, and the varying timeframes included in the Appendix, a “phase in” of the implementation over an extended period of time would seem appropriate. This would allow for further review and amendment of the process as needed –not just the public documents. (1) (4)

Response: The department will continue to review the policy, process and timeframes yearly.

11. **Comment:** The PDG policy should apply to all applications. At a minimum, the PDG should apply to all general permits. (2)

Response: The Permit Review Process outlined in the policy applies to all department authorizations; however, the Permit Decision Guarantee is currently limited to those authorizations listed in Appendix A of the policy. The department will be reevaluating the permits included in the Permit Decision Guarantee on an annual basis.

12. **Comment:** The performance of DEP employees should not be evaluated on the basis of how quickly permit applications are reviewed or permits are issued. DEP staff should take as much time as is necessary to thoroughly review and evaluate each permit application it receives in accordance with the regulations that have been promulgated to implement the environmental laws of this Commonwealth. Staff performance should not be artificially measured by meeting decision guarantees. (1) (5)

Response: This policy is aimed at gaining efficiency and predictability in the process used by the department to review permits. The timeframes established in this policy are

based on DEP's experience with each program and all permits will comply with applicable statutes and regulations.

13. **Comment:** The department should work to provide joint training with the regulated community to enhance and streamline the permit review process throughout all regional offices, improve the receipt of "complete" applications and engage directly with DEP to learn the specific expectations of the PDG policy. (2)

Response: The department recognizes the benefits of this comment for all stakeholders, including industry. As part of DEP's business process being implemented under this policy, the department recognizes the need for our staff to have additional and specialized training, and would look to groups for ideas and opportunities for such instruction. The department encourages this interaction and has granted individual program areas the discretion to foster such interaction.

Definitions

14. **Comment:** The definition of completeness review should be revised to be a "determination of administrative and technical completeness". The commentator explained that there is no definition of "technically adequate" provided in the policy and this term has created a misunderstanding of the process by both DEP staff and the regulated community. (2)

Response: The department did not add the recommended language to the policy. The Completeness Review determines whether an application is complete (has all necessary documentation) and technically adequate (contains information in sufficient detail to conduct a technical review), as defined in the policy.

15. **Comment:** Judging applications that are "technically accurate and scientifically sound" requires not only review by well-trained and competent personnel who oversee the paperwork, but also a comprehensive, "on the ground" assessment by highly qualified individuals. (1)

Response: The department agrees and believes our exemplary staff performs the proper reviews in evaluations of a permit application and the activities it proposes which may include an on the ground assessment prior to permit issuance.

16. **Comment:** "Substantive project and design changes" should be defined and explained in SOPs for each authorization. Requiring a new application process for projects with substantive project or design changes will be costly and inefficient and represents a potential opportunity for permit review staff to void process from the PDG program. (2)

Response: The term "substantive project and design changes" is defined on page 2 of the policy. The department recognizes this comment, but does not agree. DEP programs must have the flexibility to address this issue in ways that suit their unique programs,

using the guidelines in this policy. DEP is committed to the review and revision of SOPs, where needed, to provide additional clarity.

17. **Comment:** The department should provide some extra level of protection to those waters that it has designated as Special Protection waters (EV and HQ waters) and that general permits and waivers should not be applicable in any EV or HQ water. Additionally, time limits for the review and issuance of permits for projects proposed in EV and HQ waters should either be extended, or should be suspended altogether. (5)

Response: The department agrees that HQ, EV and other special protection waters be afforded extra protection. The department implements the antidegradation requirements of Chapter 93 according to the regulation. DEP provides an extra level of protection and a process for that type of review, where applicable. For example, projects requiring permits that are proposed in an EV or HQ watershed are not able to take advantage of general permits; individual permits with more detailed reviews and times are required. The department disagrees however that there should be no timeframes for review of these types of projects.

Permit Delays and Permit Priority

18. **Comment:** DEP should consider providing further explanation of the nine examples of activities that may delay final permit issuance. It was recommended that the activities be incorporated into the Standard Operating Procedures (SOPs) and that DEP provide applicants with an anticipated timeframe for resolution of such delays on a case-by-case basis. (2)

Response: The department recognizes this recommendation however it will be difficult to implement. For example, for some projects, anticipated timeframes may simply not be able to be provided with any degree of certainty due to their reliance on external agencies or authorities. To the maximum extent practicable the agency establishes Memorandums of Understanding and other agreements with external agencies to affix deadlines and timeframes to external permit reviews; however these are often only targets and may not always be met.

19. **Comment:** With respect to outside agency reviews, the required consultation process between the department and outside resource agencies has been a major impediment to the timely review of permits for years. (4)

Response: Any delays caused by outside agency reviews are beyond the department's control through implementation of this policy. The Department is working with other state and federal agencies to develop more efficient processing procedures and timeframes, but it must be noted that any changes to those processes must also be agreed upon by those agencies.

20. **Comment:** DEP should publish the criteria for determining the permit priority that implements the process detailed in B 1 i-v. (2)

Response: Page 4 of the policy outlines the prioritization criteria. Though staff may have additional tools to assist in prioritization; all information an applicant would need to understand the prioritization of their individual permit is included in the policy.

21. **Comment:** DEP should create a process that ensures that the determinations made by the Regional Directors, District Mining Managers or District Oil and Gas Managers are consistent and appropriately follow the permit review hierarchy guidelines. (2)

Response: The department appreciates this comment and notes that this process already exists.

22. **Comment:** DEP should issue guidance on how similar, competing projects proposed by more than one applicant will be prioritized. (2)

Response: Based on the criteria outlined in the policy, permit applications will be prioritized against other permit applications and may be re-prioritized based on additional permit application submissions as each application is received. For those permits with guarantee timeframes, those remain valid for a qualifying project regardless of individual prioritization or competing projects.

23. **Comment:** DEP should consider a mechanism for individual applicants to indicate their own priorities when submitting multiple applications. (2)

Response: While an application can certainly include information on what is believed to be its priority; the individual priority of an application will be determined by the department. Discussions regarding an application's priority should occur in a pre-application conference and the department will take this into account when prioritizing the review of the submitted application.

24. **Comment:** An additional consideration for evaluating permit prioritization status should be for projects that increase the reliability of utility service in an area for the customers of water and wastewater suppliers. (3)

Response: The department appreciates this comment and considers this under the first permit hierarchy category of supporting broader environmental improvement goals and protecting public health and safety.

Application Review

25. **Comment:** The pre-application process is not at optimal function for all types of permits as it is being used as a full-blown technical review of a permit application. There are complex situations that are not black and white, but rather subject to interpretation of the regulations, when the applicant and the permit reviewer even through the elevated review process cannot come to agreement. At this point, the applicant has no legal recourse, if

they want to move forward with the permit. The commentator requested the department work to develop a process that addresses this weakness in the PDG process. (4)

Response: The pre-application process is not intended to be a full-blown technical review. However, it is necessary to undertake some level of technical review in order to meet the expectations of the permit review process and permit decision guarantee. The department encourages applicants to take advantage of the opportunity to participate in a pre-application meeting. In many cases, it is appropriate to have a discussion between the applicant and the reviewer prior to submission of the application. While the elevated review process is available to applicants that reach an impasse, raising issues through the chain of command on a less formal basis is also an option for the resolving disagreements.

26. **Comment:** The application of the ten-day completeness review in Section III(B)(5)(iii) has been inconsistently applied across the DEP Regional Offices specifically to oil and gas permit applications. (2)

Response: While the ten-day timeframe is the policy recommendation, there may be times when this cannot be met.

27. **Comment:** The department should consider a “deemed complete” deadline for applications if the department cannot complete the review in ten days. (2)

Response: The department disagrees. The ten-day timeframe for the Completeness Review is a policy recommendation. A deemed complete determination would mean that deficient applications would be allowed to proceed through the review process, raising the possibility of a denial at a later time. The purpose of this Policy is to eliminate these circumstances, which benefits both applicants and the department.

28. **Comment:** Correspondence sent to deny incomplete permit applications should be reviewed and approved by the Director of District Oil and Gas Operations or appropriate Regional Director. (2)

Response: When an application is denied, the letter is reviewed and approved by the Section Chief and the Program Manager in accordance with the policy. Additionally the policy states that any denial letter must specifically outline, with the proper statutory and regulatory citations, how the application failed to provide the necessary information. This information is reviewed by those in the reviewer’s supervisory chain, though the Department does not feel it necessary to elevate permit denial letters to the Director level at this time.

29. **Comment:** The department should be commended for including specific and applicable regulatory and statutory requirements in the technical deficiency letter. The department should hold reviewers to a standard of providing the applicable regulatory statute on every technical deficiency letter. (2)

Response: The department appreciates this supportive comment and will continue to uphold the standard practice of providing applicable regulatory statute in every technical deficiency letter.

30. **Comment:** DEP should issue one set of technical review comments for a given application. If a technical review has been completed for the entire permit application and comments have been submitted to the applicant for revisions these revisions should be the only items which are reviewed when resubmitted. (2)

Response: The policy is written in just this manner; only one technical deficiency letter will be sent. However some revisions may impact other areas of the permit which may need to be re-examined.

31. **Comment:** For permit applications authorized or revised by new or statutes or regulations, the DEP should use discretion regarding the issuance of only one technical deficiency letter. Adequate time should be allowed for development of revised application forms, checklists, standard operating procedures and training to the regulated community prior to instituting the use of only one technical deficiency letter. (2)

Response: The department agrees and is committed to developing revised guidance, application forms, checklists, standard operating procedures and training plans prior to when regulations are published as final.

32. **Comment:** Final review of the permit application(s) should include an elevated review meeting with the applicant in all cases and the “elevated review process” that encompasses a broad range of concerns should be the rule rather than the exception. (1)(2)

Response: While the department agrees that the applicant is an integral part of the Elevated Review Process, it does not agree that an Elevated Review is necessary for all permits. However, the department has observed that Pre-Application Conferences are extremely important to increase mutual understanding of the project, and permit application and to establish strong communication. The department believes that enhanced communication can continue throughout the review of the permit, without requiring a formal Elevated Review which is meant to be more of a conflict resolution tool.

33. **Comment:** Consideration should be given to an expedited permit review process with an increased fee imposed for such consideration. (3)

Response: The department appreciates the recommendation and is always evaluating other potential permitting options to enhance our efficiency. Though none require an increased fee, the department currently has several permits that could be classified as expedited, if they meet certain requirements and we will continue to evaluate the appropriateness of expanding those included in this category in the future.

Authorizations

34. **Comment:** The timeframes for permit decisions related to oil and gas activities are unreasonably long and this policy has not achieved the overall goal of “timely” reviews. The PDG timeframes should be less than or equal to the timeframes previously used by the DEP. Expanded use of checklists, development and use of program specific SOPs and improving training and guidance documents will save considerable time and allow review periods to be shortened from previously used deadlines. (2)

Response: The department appreciates the comments, and the timeframes outlined in the policy will be adjusted over time based on performance data, regulatory requirements and both internal and external feedback.

35. **Comment:** SOPs should be revised to be compatible with the permit applications, specifically within the Oil and Gas Program. (2)

Response: The department appreciates this comment and will continue to review and revise SOPs to ensure they are compatible with specific permit applications.

36. **Comment:** Many of the proposed timeframes, especially for general permit authorizations, are too long. General permit timeframes should not exceed 30 business days and SOPs should be written to reflect the differing nature of staff reviews provided for general vs. individual permit processing by providing a simplified process for general permit processing. (2)

Response: The department appreciates the comment and will be adjusting timeframes over time based on performance data, regulatory requirements and both internal and external feedback. The department agrees that SOPs should be written to reflect the differing nature of staff reviews provided for general and individual permits and will continue to evaluate SOPs to ensure that distinction is made.

37. **Comment:** Based on current performance, the timeframe for well permit renewals should not exceed 15 business days. There is no basis for lengthening this to 32 days. (2)

Response: The review timeframe included in Appendix A for this specific permit is based on the statutory review time for the authorization. The review time has been converted from calendar days to business days for purposes of the policy.

38. **Comment:** The department should consider the development of an approved list of consultants that would allow the expedited review for a Construction and Operation permit application for a Public Water Supply system to function without a loss of technical integrity in proposed projects. (3)

Response: The department appreciates the comment, however at this time DEP does not to endorse or recommend consultants for any of its programs.

39. **Comment:** The process for obtaining a final operation permit for water distribution tank rehabilitation projects should be standardized. The department should consider the use of a minor permit amendment for tank maintenance activities. (3)

Response: The current regulations and policy already specify that the replacement/repainting of storage tank liners is a minor permit modification.

40. **Comment:** DEP should consider a shorter review period for Construction and Operation permit applications for a Public Water Supply system. A suggested maximum time frame would be 65-85 days, which is the review period for a Water Quality Management Part II permit. (3)

Response: The review timeframe included in Appendix A is based on the regulatory review time for this authorization. The regulatory review time has been converted from calendar days to business days for purposes of the policy.