



Instrument Filing and Permit Termination Procedures Related to NPDES Permits for Stormwater Discharges Associated With Construction Activities

September 9, 2014

Agenda

1. Instrument for the Declaration of Restrictions and Covenants (Instrument)
2. Post-Construction Stormwater Management (PCSM) Instrument Filing Notice
3. New Property Owner PCSM Best Management Practice(s) (BMP) Notification and Operation and Maintenance Agreement
4. Post-Nov. 19, 2010, Notice of Termination (NOT)
5. NOT Completeness Review and Fieldwork Checklist
6. Frequently Asked Questions
7. Questions

Instrument Filing

Instrument for the Declaration of Restrictions and Covenants

- **Permittee or co-permittee are required to file the Instrument with the Recorder of Deeds office within 45 days from date of permit issuance or authorization**
- **Per 25 PA Code §102.8(m)(2) the Instrument shall:**
 - Identify PCSM BMP(s)
 - Provide access for long-term operation and maintenance of PCSM BMP(s)
 - 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
- **Recorded prior to the issuance of first deeds**

Instrument Filing

Instrument for the Declaration of Restrictions and Covenants cont'd.

- **Documents attached as Appendices to the Instrument include:**
 - Record drawings/as-builts or the approved PCSM Plan
 - All applicable landowner notices
 - Long-term Operation & Maintenance Plan (O&M Plan)
 - Any Operation & Maintenance Agreements (O&M Agreements) between the permittee and the party responsible for implementation of the O&M Plan

Instrument Filing

Instrument for the Declaration of Restrictions and Covenants cont'd.

- Available through the DEP Bureau of Waterways Engineering and Wetlands homepage, under NPDES/Construction/Erosion Control http://www.portal.state.pa.us/portal/server.pt/community/npdes_construction_erosion_control/21657
- Sample document
- Should be developed in conjunction with permittee/co-permittee legal counsel

Instrument Filing

PCSM Instrument Filing Notice

- Assists the permittee with filing and the Recorder of Deeds Office with recording Instruments
- Developed in conjunction with Recorder of Deeds Office
- Fulfills the requirements related to PCSM obligations referenced in 25 Pa. Code §§ 102.7 (related to permit termination) and 102.8(m) (related to PCSM long-term operation and maintenance requirements)
- Notarized for each signing party

Instrument Filing

PCSM Instrument Filing Notice cont'd.

- Document # is 3150-PM-BWEW0556 with a revision date of 6/2014
- Available at www.elibrary.dep.state.pa.us

Instrument Filing

New Property Owner PCSM BMP Notification and O&M Agreement

- Document constitutes “Landowner Notice” as referenced in the Instrument, PCSM Instrument Filing Notice and NOT (Section 6)
- Satisfies permit condition 14(g)
 - Notifies purchaser/grantee/transferee of PCSM BMP long-term O&M at time of purchase or transfer
 - Identifies PCSM BMPs and associated long-term O&M
 - Outlines inspection and reporting schedule
 - Specifies party responsible for PCSM BMP long-term O&M and how access to PCSM BMPs will be achieved
 - Obtains approval from purchaser/grantee/transferee

Instrument Filing

New Property Owner PCSM BMP Notification and O&M Agreement cont'd.

- Available through the DEP Bureau of Waterways Engineering and Wetlands homepage, under NPDES/Construction/Erosion Control

http://www.portal.state.pa.us/portal/server.pt/community/npdes_construction_erosion_control/21657

- Sample document

Permit Termination

Notice of Termination

- Document # is 3150-PM-BWEW0229b, with a revision date of 6/2014
- Post Nov. 19, 2010, permit submissions
- Available at www.elibrary.dep.state.pa.us

Permit Termination

Notice of Termination cont'd.

- Sections 1 to 3 remain basic project information
- Section 4 – Long-term Operation and Maintenance or Restoration/Reclamation added
- Section 5 – Final Certification of Licensed Professional
- Section 6 – Proof of Instrument Filing with the Recorder of Deeds Office
- Section 7 – Permit Termination Certification
- Appendices A and B
- Completeness Review and Fieldwork Checklist added

Permit Termination

Notice of Termination cont'd.

- **Paperwork Requirements**

- Complete NOT Form, including Appendices A and B, when applicable, and the Completeness Review and Fieldwork Checklist
- Copy of record drawings/as-builts
- Copy of landowner notice*
- Copy of Recorder of Deeds Office receipt for instrument filing*

- **Field Requirements**

- Permanent Stabilization
- Installation of PCSM BMPs
- Removal of E&S BMPs

***Applies to non-Commonwealth/non-federally-owned property**

Permit Termination

Notice of Termination cont'd.

- **Commonwealth/Federally-Owned Property**
 - Per 25 PA Code §102.8(m)(3), a covenant that runs with the land is not required until transfer of the land containing the PCSM BMP occurs
 - A complete NOT submission includes:
 - ✓ Completed Sections 1-5, 7
 - ✓ Record drawings/as-builts
 - ✓ Appendix A
 - ✓ Completeness Review and Fieldwork Checklist

Permit Termination

Notice of Termination cont'd.

- **Non-Commonwealth/Non-Federally-Owned Property**
 - A complete NOT submission includes:
 - ✓ Completed Sections 1-7
 - ✓ Record drawings/as-builts
 - ✓ Copy of landowner notice(s)
 - ✓ Copy of Recorder of Deeds Office receipt for instrument filing
 - ✓ Appendices A and B
 - ✓ Completeness Review and Fieldwork Checklist

Permit Termination

Notice of Termination cont'd.

- **Restoration/Reclamation Activities**
 - 25 PA Code §102.8(n) references regulated activities that require site restoration or reclamation
 - A complete NOT submission includes:
 - ✓ Completed Sections 1-4, 7
 - ✓ Copy of record drawings/as-builts (PCSM Plan/Restoration Plan may be acceptable for restoration/reclamation sites)
 - ✓ Completeness Review and Fieldwork Checklist

**NOTICE OF TERMINATION ("NOT") COMPLETENESS REVIEW
AND FIELDWORK CHECKLIST FOR
POST-NOVEMBER 19, 2010, PERMIT SUBMISSIONS**

Facility/Development Name: _____ Permit No.: _____

Check-Off: C = Complete, NC = Not Complete

Paperwork Requirements:

NON-COMMONWEALTH/NON-FEDERAL PROPERTY			
Permittee	Reviewer		Item
<i>Included</i>	<i>C</i>	<i>NC</i>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Completed Sections 1-7 of the NOT
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Record Drawings/As-Builts
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Copy of Recorder of Deeds Office Receipt for Instrument Filing
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Copy of Landowner Notices
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Completed Appendices A and B
COMMONWEALTH/FEDERAL PROPERTY			
Permittee	Reviewer		Item
<i>Included</i>	<i>C</i>	<i>NC</i>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Completed Sections 1-6(a) and 7 of the NOT
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Record Drawings/As-Builts
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Completed Appendix A
RESTORATION/RECLAMATION ACTIVITY			
Permittee	Reviewer		Item
<i>Included</i>	<i>C</i>	<i>NC</i>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Completed Sections 1-4 and 7 of the NOT
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Record Drawings/As-Builts or PCSM Plan/Restoration Plan*

*PCSM Plan/Restoration Plan may be acceptable for restoration/reclamation sites.

Fieldwork Requirements:

FIELD INSPECTION (Required for permit termination)			
Permittee	Reviewer		Item
<i>Addressed</i>	<i>C</i>	<i>NC</i>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Permanent Stabilization per 25 PA Code §102.22 (a)(2)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Removal of E&S BMPs per 25 PA Code §102.4 and approved permit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Installation of PCSM BMPs per 25 PA Code §102.8 and approved permit

OFFICIAL USE ONLY

Determination: Approve Deny

Inspection Report No: _____

Reviewer Name: _____

Date: _____

Is the “Landowner Notice” form necessary if there will be no transfer of ownership of the parcel?

No. If the permittee retains ownership of the parcel, then no “Landowner Notice” form is necessary.

Does an Instrument need to be amended if it was initially recorded with the PCSM Plan?

The Instrument must accurately reflect the as-built conditions at the site. If the initial recording was not done with the Record Drawings/as-builts, then they are to be filed as an amendment to the Instrument once they become available.

Who constitutes a licensed professional?

25 PA Code §102.1 defines a licensed professional as: professional engineers, landscape architects, geologists and land surveyors licensed to practice in this Commonwealth.

FAQs contd.

Do NOTs need to be submitted for sites with expired permits?

Yes. Per 25 PA Code §102.7(c), the permittee and co-permittee will remain responsible for compliance with the permit terms and conditions until they receive written NOT approval.

What form should be used to remove a co-permittee from the permit?

The pre-Nov. 19, 2010, NOT form, document # 3150-PM-BWEW0229a, can still be used to remove a co-permittee from the permit.

Can NOTs be submitted for phases or stages of a project?

Yes.

FAQs contd.

If the permittee has no plans to sell the property, does an Instrument still need to be filed?

Yes. Long-term operation and maintenance of the PCSM BMPs is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.

Can the pre-November 19, 2010, NOT form be used to terminate ESCGP 1/2?

The Pre-November 19, 2010, NOT form applies to those ESCGPs submitted BEFORE November 19, 2010. All other ESCGP submissions are to use the post-November 19, 2010, form.



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waterways Engineering and Wetlands

Questions?

Summer Lee Kunkel
Water Program Specialist

sukunkel@pa.gov

717-783-3741