Erosion and Sediment Control General Permit – 2 Policy
Comments Received during Public Comment Period
January 21, 2012 – March 21, 2012

1. **Comment:** Conservation Districts should be involved in the development of oil and gas policy where their insight and perspective on the practical implementation of regulations will benefit the Department, the environment and the citizens of Pennsylvania. The Conservation Districts should be more involved in the permitting process through the review of oil and gas E&S Plans that do not qualify for the expedited review process, preconstruction meetings and regulation enforcement etc. In addition, the Department should define whether certain responsibilities are the responsibility of the Department or the conservation district, rather than "the Department or a Conservation District." (17, 19, 30, 38, 65)

   Response: It is the responsibility of the Department of Environmental Protection (Department) to develop policy for the oil and gas industry in Pennsylvania under the applicable environmental statutes and regulations. Permit review and processing functions are conducted in accordance with the March 2009 Transfer of Responsibility Agreement.

2. **Comment:** As currently framed, the Policy and draft documents all contain various operative terms or phrases; some are expressly defined and some are not; and some are defined in some places but not others. Although the expansiveness of Oil and Gas Activities is, in order to ensure consistency across the state, the policy statement should clearly define each item. Accordingly the five different documents must be reviewed to determine if a term is defined and, if so, how the term is defined. The Department should define all operative terms and include all definitions in the Policy. (17, 24, 26, 27, 28)

   Response: All relevant terms are defined in the Definitions Section of the Permit document.

3. **Comment:** Construction, development and restoration of unconventional gas well sites may not be accomplished for many years. The Department needs to define within this context interim construction stormwater management requirements to address E&S concerns after construction and prior to final site restoration. Accordingly, the permittee should continue to be responsible for inspection and maintenance of best management practices until the site is permanently restored. (17)

   Response: Until the well site is restored, the permittee is responsible for implementation; inspection and maintenance of Best Management Practices (BMPs).

4. **Comment:** The policy document should provide clear definitions of what installations or facilities are covered under the well permit? Of particular concern is the definition of "support facilities" that would be included as part of the original well permit. These

installations or facilities may or may not be developed or operated by the same responsible party as the well pad. Pipe yards, equipment storage areas, chemical storage areas, and spoil areas can all have impacts. Any earth disturbance activity not contiguous to the well pad be considered an additional earth disturbance site, and be permitted as such. (17)

Response: Any earth disturbance activity, whether contiguous or not, of 5 acres or more associated with oil and gas operation requires an E&S Control Permit.

5. **Comment:** The policy document should define transmission facilities. In many cases, there may be very little, if any, difference between 'midstream' gathering lines and the interstate transmission lines that are approved by the PA Public Utility Commission and the Federal Energy Regulatory Commission. (17)

   Response: The Department considers facilities regulated by the Public Utility Commission (PUC) or the Federal Energy Regulatory Commission (FERC) as transmission facilities.

6. **Comment:** The Department's guidance documents and general permit should be structured to provide clear standards, avoid ambiguity, and promote uniformity among the various regional offices and Conservation Districts reviewing applications for authorization under the ESCGP-2. As currently proposed, the Policy and related documents contain a number of ambiguities that create unnecessary uncertainty in the application process. (24, 26, 27, 28, 45, 62)

   Response: The Department strives to structure all E&S control permit documents in a structured, clear and unambiguous manner to promote uniformity across the state relative to application reviews and authorizations. The purpose and intent of the Policy/Guidance document is to provide a uniform interpretation and implementation of the regulations throughout the state.

7. **Comment:** The draft Policy states that the Department interprets "project" to be substantially connected well sites, access roads, pipelines, other service lines, support facilities, and/or other oil and gas activities. If a road connects to a well site that is under construction to one that was previously completed and stabilized per its E&S permit, the emphasis should be on the disturbed acreage, not the connectedness of various activities. The combination of every separate but related activity into one "project" presents a number of concerns and requires a level of coordination among separate and distinct projects and sponsors that would be difficult to manage. Additionally, if no logical "start" and "finish" are covered under the ESCGP, revisions to "substantially connected projects" could require permit revisions (for years). The suggestion that activities undertaken by separate entities may be regarded as a single project for this purpose is not consistent with the Department's regulations. In addition, Defining "project" in a way that combines separate adjoining activities will have significant legal and practical implications. The boundaries of a project should be drawn in part in relation to the project sponsor – activities conducted by different people or different legal entities should

be treated as separate projects. The draft Policy also should be amended to treat separately activities relating to projects that serve distinctly different functions on separate sites – e.g., well pads, pipelines and impoundments. It is recommended that the permit applicant define the project during their planning and design process. (24, 26, 27, 28, 34, 45, 48, 63)

Response: The intent of the Department's interpretation of a project is to ensure that projects are not developed in a manner that circumvents the 5 acre threshold.

8. **Comment:** The Policy makes a number of substantive changes to existing practice and procedure. The Policy should clarify that the Department will apply the new requirements of ESCGP-2 prospectively only. In this regard, Section 4(a) of draft ESCGP-2 should be revised to state that existing earth-disturbance activities authorized under ESCGP-1 are not subject to the requirements of the ESCGP-2 unless the project sponsor requests a new approval. Authorization requests submitted before the effective date of ESCGP-2 should be processed in accordance with the standards in place at the time of submittal. (24, 26, 27, 28, 45 ,62)

   Response: Permittees obtain coverage for 5 years from date of approval. Each authorization contains conditions that provide upon renewal if there are substantive changes; permittee must comply with all new requirements. New, revised, subsequent phases and renewals apply prospectively. However, please note that activities authorized under ESCGP-1 must comply with 25 Pa. Code Chapter 102.

9. **Comment:** The Policy should clearly state that earth disturbance activities may commence immediately upon approval of ESCGP-2 even if the operator awaits other approvals required under other programs or by other agencies. (24, 26, 27, 28)

   Response: Earth disturbance activities that necessitate permit coverage may commence when the permittee receives a receipt of authorization of coverage and/or the permittee obtains the other necessary permits and authorizations from the Department of conservation district related to the earth disturbance activity pursuant to 25 Pa. Code § 102.4(d), whichever occurs later. For example, if conducting earth disturbance activities associated with the well site and access road, the permittee must obtain a well permit prior to commencing such activities. *See* 58 Pa.C.S. §§ 3211(a), 3211(g).

10. **Comment:** The Department should make changes based on public comment to the Policy, draft ESCGP-2, NOI Instructions, NOI Form, and Checklist, and the final drafts of these documents should include clear and consistent cross-references to one another. (24, 26, 27, 28)

    Response: The public comment period is intended to obtain input from interested stakeholders to refine all documents associated with the ESCGP-2.

11. **Comment:** The Department is not properly permitting oil and gas facilities that discharge sediment to siltation-impaired waters of the Commonwealth. Sediment

impairment should be a prime consideration when evaluating an E&S permit application. All permit applications proposing earth disturbance activities in siltation impaired watersheds must be required to complete an antidegradation analysis in order to ensure that there are no discharges of sediment to siltation impaired waters, which would require an NPDES permit. (23, 25, 30, 60, 65, 66)

Response: The Department will be adding the following to the list of activities that ESCGP-2 does not apply to in Section 3.b of the permit: "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." Additionally, the Department will be amending the NOI to ask applicants to indicate whether the project is in or discharges to a siltation-impaired water and if so require that the operator demonstrate that its project will not result in a net change (pre to post condition) in volume, rate, or water quality or otherwise explain how the project will not contribute to a violation of a water quality standard.

12. **Comment:** The Department needs to be consistent when enforcing E&S and Stormwater regulations across the variety of earth disturbance activities. Whether it be land development for residential or commercial property, forestry, agricultural or oil and gas activities: enforcement should be the same. Road construction, parking lots, or drilling pads have the same potential for sediment pollution or increases in stormwater runoff. Oil and gas operators must be as responsible as the subdivision developer. (38)

    Response: The Department acknowledges the comment.

13. **Comment:** Conservations District's involvement in the oversight and enforcement of erosion and sediment control issues should be based on the technical expertise available in each of the individual Conservation District offices. This is especially important, if in the future, oversight responsibilities for erosion and sediment control for gathering lines are delegated to the Conservation Districts. DEP should provide training and oversight to Conservation Districts that do not have the experience or resources to enforce compliance with erosion and sediment control issues. (14, 39, 56)

    Response: Involvement by County Conservation Districts is dictated by delegation agreement and 2009 memo is beyond the scope of this policy.

14. **Comment:** Gathering lines must not be segmented in the permit process; the entire line from well pad to trunk line or transmission line must be permitted in aggregate. This act will benefit the erosion and sediment process by evaluating the environmental impact of the entire project and force companies constructing gathering lines to negotiate ROWs for the entire project before the project is constructed. (39, 56)

    Response: Subdividing a project to exempt any portion of that project from permit coverage is not permissible.

15. **Comment:** To aid in oversight of erosion and sedimentation control plans and permits, the Department is urged to allow County Conservation Districts to engage in the inspections of erosion and sediment controls at unconventional well sites under the guidance of the Department and consistent with applicable permit conditions. Given the nature of violations and the difficulty in identifying the violator and source of pollution, the county conservation districts are in a better position to inspect well pad sites for nonconformance with permit conditions because of their local presence and their expertise in stormwater management. (19, 25, 43)

    Response: Involvement by County Conservation Districts is dictated by delegation agreement and 2009 memo is beyond the scope of this policy.

16. **Comment:** To accurately assess the potential erosion and sedimentation impacts and propose the appropriate erosion and sediment control measures, the Department must consider the impacts of construction collectively—particularly, if the Department requires a general ESCGP-2 permit for transmission lines, as well as well sites. (43)

    Response: The ESCGP-2 Permit Application process is intended to assess the environmental impact of an entire project. Large projects that are planned to be phased over a period of time must provide "with sufficient detail to describe the scope, location and type of activity to allow the department to assess the total environmental impact of the project".

17. **Comment:** Restoration plans should include re-vegetation with native plants, in addition to the requirement that the disturbed area be covered with a minimum uniform 70% perennial vegetative cover with a density capable of resisting accelerated erosion and sedimentation. The Department should provide guidance to applicants during the preconstruction meeting on what plants are native to the disturbed areas. (43)

    Response: Current regulations do not specify re-vegetation with native plant species however the BMP Manual suggests using native species when possible.

18. **Comment:** According to the Policy Guidance, an applicant has to submit detailed plans for the initial phase of a phased project, and "sufficient" detail to describe the scope, location and type of activity for subsequent phases. The Department must clearly define what constitutes "sufficient" detail, to ensure that the Department can gain a full understanding of cumulative impacts created by the project and recommend appropriate mitigation measures. (43)

    Response: The level of detail required is defined in the policy as sufficient to describe the scope, location and type of activity.

19. **Comment:** How will DEP track "licensed professional" attendance to an "up-to-date" training. It appears that a licensed professional will be allowed to continue submitting permit applications while not having "up-to-date" training for up to 1 year. This seems to be a very liberal timeframe. Thought should be given to changing this to 6 months. (2)

Response: The Department uses sign in sheets at the training events to track attendance. Yearly training is adequate to ensure licensed professionals are "up-to-date" with the latest information concerning permit applications. Additionally, licensed professionals must certify in the NOI that they have met this requirement. Moreover, DEP permit reviewers verify this information during the permit review process.

20. **Comment:** Disturbed sites should also be temporarily stabilized when cessation of earth disturbances activities will exceed 4 days due to weather, work stoppages and/or holidays. (2)

    Response: The Department acknowledges the comment.

21. **Comment:** Temporary Stabilization should not only require "a minimum uniform coverage of mulch and seed at a minimum application rate of 2 Ton/Acer" but provide for the option to use erosion control blankets with a layer of netting. Only American products should be used, when available. The Department should adopt standards for the manufacture of acceptable erosion control blankets. (11, 18)

    Response: Operators are free to choose temporary stabilization materials as long as the materials used meet the minimum coverage requirements.

22. **Comment:** Permanent Stabilization should include appropriate BMPs, such as double net erosion blankets, turf reinforcement mats (TRMs) made from recycled materials (ASTM D792), fiber memory ≥95% (WLM-TM RC-17), culverts, rock protected outlets, appropriate erosion resistant linings and log (ASTM D5141), are placed in channels, and roadside ditch liners. Apply certified compost over curled and barbed erosion blanket in poor soil fertility and environmentally sensitive areas where expedited vegetation is paramount**.** Only American products shall be used, when available. The Department should adopt standards for the manufacture of acceptable erosion control blankets. (11, 18)

    Response: Operators are free to choose permanent stabilization materials as long as the materials used meet the minimum coverage requirements.

23. **Comment:** Retain the current practice that allows approval of minor modifications to the E&S Plan and PCSM Plan by Department or Conservation District staff initialing the plans located at the site. (12, 24, 26, 27, 28, 63)

    Response: The current practice that allows acknowledgement of minor modifications to E&S and PCSM Plans by Department and Conservation District staff initialing the plan in the field at the site has not changed. However, the Department or Conservation District should be notified of the minor modification.

24. **Comment:** Clarify the role of Conservation Districts. The Policy document indicates that, "NOIs for activities involving construction of transmission facilities should be submitted to Conservation Districts…Transmission facilities include: transmission lines,

compressor locations, gas purification and scrubber locations that are located "downstream" of the gathering line system" As proposed, compressor stations would now need to go through the Conservation District. Will Meter Stations be addressed similarly? Also, please clarify the respective roles of the Department and the Conservation Districts when a compressor station is located adjacent to a well pad. (12)

Response: The Conservation Districts are responsible for construction activities related to Federal Energy Regulatory Commission (FERC) or Public Utility Commission (PUC) regulated facilities. If a compressor station or metering station is located adjacent to a well pad and will be regulated by FERC it is the responsibility of the Conservation District; the well pad will be the responsibility of the Department.

25. **Comment:** Leave the policing of licensed professionals to the Department of State. A licensed professional has had its credentials approved by the Department of State, Bureau of Professional and Occupational Affairs. Theses credentials are supported by Professional Development Hours (PDHs) that must be accumulated for renewal of a license. It is questionable that the DEP has the authority to require a licensed professional to attend specified training prior to practicing its profession. A verity of course types and providers qualify for offering PDHs with no specific courses required. It would be helpful if the DEP had its up-to-date training approved by the Department of State as qualified PDHs. (12, 45, 48, 63)

    Response: The permit does not require licensed professional to attend specific training to maintain their license. The training courses that are prerequisite to the optional expedited review are to facilitate understanding of the ESCGP permit requirements and the processes associated with the specific authorization. The Department is not replacing the Department of State licensing, but complimenting it. Licensed professionals are responsible to ensure that the training attended qualifies for PDHs.

26. **Comment:** Keep it simple. The "Defining the Project" section in the Policy document identifies "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. In addition "Well sites, access roads, and pipelines or other service lines a 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…" This requirement greatly complicates the permitting process when many issues may not been completely defined during the planning process. Specifically, well head locations and/or pipeline corridors may shift to address landowner concerns or conflicts with surface resources. Coordinating several individual efforts into a much larger permit will be cumbersome. Taken to an extreme, an operator's entire Marcellus Development could be considered a Project. Please provide greater clarification of how these requirements would be implemented or the policy should clearly state that the DEP will not require a

single application or a single authorization under ESCGP-2 for adjoining and related projects that are sponsored by separate persons. (12, 16, 62, 63)

Response: "Substantially connected" is used to define the project only; separate portions of the project may be constructed by different entities operating under different authorizations.

27. **Comment:** Allow intermittent permanent stabilization to stay below the 5-acre threshold. The Policy document states that "Permanent stabilization cannot be implemented intermittently in order to keep below the five acre threshold and avoid permit requirements." The goal is to achieve permanent stabilization as soon as possible. If this can be accomplished in a way that lets the operator keep less than five acres disturbed at any given point in time, DEP should welcome the initiative. (12)

    Response: In accordance with 25 Pa. Code 102.5(c) earth disturbance over the life of the project must be considered for oil and gas activities. Therefore, all earth disturbances must cumulatively be considered and, if over 5 acres, must obtain coverage.

28. **Comment:** The Policy document discusses the Department's interpretation of § 206(c) of the Oil and Gas Act regarding restoration of the well site after drilling. In that discussion it is stated that the Department interprets well site restoration to include restoration of centralized wastewater or fresh water impoundments and borrow pits used to construct access roads and well sites. These sections should be modified to recognize impoundments permitted under the Clean Streams Law and borrow areas permitted under the non-coal mining program. (12)

    Response: Impoundments permitted under the Clean Streams Law and borrow areas permitted under the non-coal mining programs are subject to the terms and conditions of the applicable permits and are beyond the scope of this policy.

29. **Comment:** The Policy document suggested well site should be organized in the most spatially efficient manner practicable to minimize an unrestored area. While this may be desirable, in many instances site layout and equipment placement are dictated by well location, treatment unit sequencing, product storage, metering, gathering line availability, road access and other factors. (12)

    Response: The Department acknowledges the comment.

30. **Comment:** The fact that the person (including the permittee and co-permittee) is in "continuing violation", albeit in a corrective mode; should be an indicator that a preconstruction meeting on a new project site is vitally important to assure both the Department and the public that the chance of new violations occurring will be minimal. Preconstruction meetings will afford the appropriate industry and Department personnel the opportunity to communicate their concerns prior to construction and eliminate public health, safety, and environmental hazards that may exist. Accordingly, the Department must require Department representatives and Permittees/Co-Permittees attend ALL

preconstruction meetings to assure both the Department and the public that accelerated erosion will be minimized and sediment pollution of the waters of the Commonwealth avoided. (14, 18)

Response: The Department has established a priority process to determine when Department personnel should attend preconstruction conferences. Projects proposed by persons in continuing violation of Chapter 102 are priority projects for the Department.

31. **Comment:** A Fact Sheet that includes basic erosion and sediment control information including the 4 day rule would be very beneficial for the public. An easily understood Fact Sheet for the public at large could also be a reference for municipal officials, road masters, who would be able to know something is amiss and then make a phone call to the appropriate individuals designated on the Fact Sheet whether it be DEP or the well operator. There are many of us who live or drive by these sites daily and we do notice things – but we don't always know what we are seeing and who to contact. (14)

    Response: The Department's Oil and Gas website has many links to FAQs, Fact Sheets and contact information to report activities that appear to be questionable.

32. **Comment:** The best construction practice it would seem would be to eliminate winter pad building, or create a seasonal schedule of ground disturbance activity. The industry does not feel this is reasonable. Pads constructed during winter weather have more problems than those constructed during the dry weather season. (14)

    Response: 25 Pa. Code Chapter 102 does not restrict construction activities to dry weather seasons.

33. **Comment:** Well site remediation provisions should be amended to authorize the Department to extend the nine-month well-site restoration requirement when the Department determines that an extension would ultimately result in less surface disturbance, increased water reuse, or more efficient development of the resource. Such an extension would be for a defined period of time and could include interim restoration/stabilization measures, as specified by DEP. (14)

    Response: Section 3216(g) of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3216(g), provides for up to a 2 year extension of the well site restoration requirement upon a demonstration that (1) the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources; or (2) site restoration cannot be achieved due to adverse weather conditions or lack of essential fuel, equipment or labor.

34. **Comment:** Fresh Water Impoundments (FWIs) do not have a list for wells to receive the water stored in the impoundment. People are inclined to sign an impoundment agreement because they believe that the FWIs will ease the flow of traffic where they live. Because there has been no specifically defined area regarding the use of the stored water, some

people feel that the water will be trucked out to further areas perhaps and they will encounter more, not less traffic in their rural neighborhoods. If the area to be served by a FWI were defined or a list of wells to be served by the impoundments, people could make a more informed decision concerning impoundment agreements. (14)

Response: Impoundment agreements between landowners and operators involve personal property rights issues that are beyond the scope of the Department's authority as well as this policy.

35. **Comment:** Pursuant to § 206(c) of the Oil and Gas Act, within 9 months after completion of drilling of the last well the operator must restore the well site. Some provision or rulemaking should be made to address situations where pads are left in place for years because planned wells are not drilled in a timely manner (perhaps years). It does appear that in a case such as this allows the unrestored site to remain a source of erosion and sediment pollution. A rule to address this loophole should be developed and enforced. (14)

    Response: The Oil and Gas Act of 2012, 58 Pa.C.S. § 3216, requires restoration within 9 months of completion of drilling of the oil or gas well. For multi-well pads, the Department has interpreted this requirement to mean that the restoration period does not start until all wells have been drilled or active permits expire. During any time between when the first well is drilled and when the site is restored, interim PCSM practices must be maintained.

36. **Comment:** The Commonwealth needs to codify the elimination of pits. State regulations allow cuttings to be stored in lined pits on the well site. After the drilling is completed, the pits can then be covered in plastic and entombed beneath soil, a kind of mini-landfill. However, horizontal drilling produces so much material that it cannot be buried at most drilling sites. Those sites may contain several wells, each producing a thousand tons of cuttings. This practice can and will result in thousands of mini-landfills across the state with the potential to contaminate the ground water. (14)

    Response: Regulatory changes regarding waste disposal on a well site is beyond the scope of this policy document.

37. **Comment:** The technical guidance/policy document does not address the use of straw along the pipeline ROWs nor the need to use native species for site restoration activities. When local supplies of straw are consumed by the construction of pipelines that support the Marcellus gas play, additional supplies are brought in from other areas as dictated by market conditions. This activity has the potential to introduce invasive species of plant life. The Department should be aware of this and address the potential problem and encourage the use of native species in their site restoration regulations. To encourage the use of native species in the reseeding and restoration activities, guidance for using native species should be provided in the technical guidance/policy document (14, 33, 51)

Response: Current regulations do not address the source of straw for restoration activities or require re-vegetation with native plant species.

38. **Comment:** The Policy requires that the applicant submit Act 14 notices to municipalities for the initial and subsequent phases of projects under a phased-project procedure, and to submit "complete PNDI form and search receipt(s) for all phases of the project site." This requirement to do a PNDI search and Act 14 Notification prior to finalization of future phases of a phased project will be not only be inaccurate but provide confusing information to the Department upon submittal of subsequent phases of the project. Our recommendation is to only require these materials for the initial phase of the project, and require each subsequent phase to provide them upon application for permit coverage of that particular phase. PNDI receipts for all future phases of a master plan may prove difficult for projects that may not have future phases clearly defined, particularly since PNDI clearance is valid for only a one-year time frame. If initial hits for conceptual, future phases differ from PNDI results based on actual, final plans for those phases, the disparity will create confusion. Moreover, as a practical matter, the requirement generates greatly increased odds that the initial phase will be delayed due to PNDI issues or municipal comments on "Future Conceptual Activities." (16, 24, 26, 27, 28)

    Response: PNDI receipts must be submitted in accordance with the Department's PNDI Policy (Document ID # 400-0200-001). The E&S Policy has been updated to reference the PNDI Policy to ensure that the policies remain consistent.

39. **Comment:** The Policy and all related documents should state clearly and consistently the circumstances that qualify as a "major modification" (requiring formal approval) and as a "minor modification" (requiring Department or Conservation District personnel initials noting the modification on the plan on site). Under current practice, there are different interpretations among the regional offices as to what constitutes "major" versus "minor" modifications. Accordingly, the Policy should specify when a new NOI must be submitted for major modifications. The Policy as written merely suggests that a new NOI "may" be required but does not specify under what circumstances the Department will require a new NOI. (24, 26, 27, 28, 45, 48, 63)

    Response: Major Modifications are those that create an additional discharge or increase the area of disturbance of the project and a Minor Modification is anything other than a Major Modification. The policy will be revised to clarify that all major modifications require a new NOI.

40. **Comment:** The Department should increase the transparency of its HQ/EV designation process so that applicants for ESCGP-2 approval know with certainty that their projects are or are not within these watersheds at the time they submit their NOIs. The Department should state in the Policy that applicants can rely on the publically available listing at the date of application. Accordingly, the Department should update in a timely manner published lists of streams with existing or designated uses and promptly issue notice to the regulated community when a stream classification is updated. In addition,

the Department should maintain and make public a list of streams that are under consideration for HQ/EV classification and existing use determinations. (12, 24, 26, 27, 28)

Response: The Department maintains publically available lists of streams with existing and designated uses.

41. **Comment:** The lack of uniformity of review between the regional offices and Conservation Districts poses concerns. Reviewing agencies and reviewing engineers within these agencies often apply their own interpretations in the review process. As a result, a submission in one region is viewed as deficient when the same application submitted in another regional would not be viewed as deficient. Without uniformity, not only will applications be processed under different standards, but the professional that seals and certifies an application may improperly be eliminated from submitting NOIs under the expedited process due to inconsistent reviewing rather than his or her own professional capabilities. (24, 26, 27, 28)

    Response: The updated and revised Policy, Permit, Instructions, NOI, Checklist and the new Technical Guide are intended to promote uniformity and consistency throughout the state. The Department is aware of inconsistencies in program implementation statewide and is continuously working to improve program consistency.

42. **Comment:** The Department should clarify that contractors are not required in all circumstances to be co-permittees with a project sponsor (owner/operator). Only when the responsibility or control afforded a contractor satisfies the definition of "operator," as explained in the Policy, is a co-permittee arrangement required. (24, 26, 27, 28)

    Response: The Policy defines a Co-permittee as a person who has oversight responsibility for earth disturbance activities and has the ability to 1) make modifications to an E&S or PCSM Plans or site specifications; or 2) day-to-day operational control over earth disturbance activities.

43. **Comment:** The Policy requires operators to invite the Department to a preconstruction meeting. In turn, the Department may notify the operator in writing that it has elected not to attend a pre-construction meeting. The Policy should be revised to authorize operators to use email as a method of inviting the Department to the preconstruction meeting and to allow the Department to communicate with the operator by email if the Department has elected not to attend a pre-construction meeting. Page 6 of the Policy and Section 19 of the ESCGP-2 should be modified accordingly. (24, 26, 27, 28)

    Response: The Department Agrees. Section 19 of the ESCGP-2 has been modified to provide the operator with the option to invite the Department to the preconstruction meeting via email. However, the Department or Conservation

District will continue to notify the permittee in writing if a preconstruction meeting is not required.

44. **Comment:** ESCGP-2 authorization for well site projects should not be open indefinitely. The draft Policy states that the Department considers a well site to be under construction until it receives the well site's restoration report. If the Policy defines "project" as "substantially connected well sites, access roads, pipelines, other service lines, support facilities, and/or other oil and gas activities," then the permit for the well pad may remain open indefinitely if any "substantially connected" activity remains open. As long as one related activity is considered under construction, none of the other related activities will ever be complete, and all of the separate operations will maintain ongoing responsibility that otherwise would have terminated. The Policy should treat each well pad, pipeline or independent support facility on a separate site as separate project, regardless of any functional or physical connection between them. It is important that pipeline projects which are installed and quickly restored be separate from a well pad or support facility which may be "under construction" for years. In addition, the Department should replace the phrase "until it receives the well site's restoration report" with "until the site has achieved permanent stabilization as defined in 25 Pa. Code § 102.8(a)(2)." (24, 26, 27, 28, 42, 45, 48, 63)

    Response: There is no requirement for all substantially connected activities to be approved under the same authorization. The policy specifies that a well site is under construction until the Department receives the well site's restoration report for the limited purpose of defining the project for permitting. This statement for permitting purposes does not impact well site restoration requirements under 58 Pa.C.S. § 3216 or stabilization requirements under 25 Pa. Code § 102.22 and Notice of Termination requirements under 25 Pa. Code § 102. 7.

45. **Comment:** Impoundments Permitted Separately. The draft Policy states that support facilities include freshwater and wastewater impoundments within 900 feet of a well site. Impoundments are routinely permitted at different stages and different times and submitted under separate permits. Under the Policy, which treats well sites as under construction until the Department receives a site restoration report; neither the well site nor the impoundment would be considered complete until both are completely restored. The Department should clarify that this is not the intent of the Policy and revise it accordingly. (24, 26, 27, 28, 63)

    Response: The policy specifies that a well site is under construction until the Department receives the well site's restoration report for the limited purpose of defining the project for permitting. This statement for permitting purposes does not impact well site restoration requirements under 58 Pa.C.S. § 3216 or stabilization requirements under 25 Pa. Code § 102.22 and Notice of Termination requirements under 25 Pa. Code § 102. 7. There is no requirement for all substantially connected activities to be approved under the same authorization. Substantially connected well

sites and impoundments may be permitted separately. ESCGP-2 authorizations for centralized impoundments may be terminated prior to restoration of the impoundment.

46. **Comment:** The Policy suggests under Permanent Stabilization that well-pad projects remain under construction until the Department receives a site restoration report. The Policy should be revised to reflect the reality that once a site achieves permanent stabilization based on the standards set forth in the regulations and in the Policy, the BMPs required by the Department stabilize the site such that erosion and sedimentation and net changes in stormwater runoff are appropriately managed. Once a project or phase of a project is stabilized, it should not be considered under construction simply because permanent and final site restoration has yet to occur on a well pad (and which may not occur for some time after permanent stabilization is achieved). (24, 26, 27, 28, 45, 48, 63)

    Response: The policy specifies that a well site is under construction until the Department receives the well site's restoration report for the limited purpose of defining the project for permitting. This statement for permitting purposes does not impact well site restoration requirements under 58 Pa.C.S. § 3216 or stabilization requirements under 25 Pa. Code § 102.22 and Notice of Termination requirements under 25 Pa. Code § 102. 7. In accordance with 25 Pa. Code § 102.8(a), a person proposing new earth disturbance activities after November 19, 2010 requiring permit coverage under 25 Pa. Code Chapter 102 is responsible to ensure that a written post construction stormwater management plan is developed, implemented, operated and maintained in accordance with 25 Pa. Code § 102.8. In addition, according to 25 Pa. Code § 102.8(n) a person engaging in oil and gas activities permitted in accordance with Chapter 78 may use the portion of the site restoration plan that identifies PCSM BMPs to manage stormwater to satisfy the requirements of 25 Pa. Code § 102.8 if the site restoration plan meets the requirements of 25 Pa. Code §§ 102.8(b), 102.8(c), 102.8(e), 102.8(f), 102.8(h), 102.8(i), 102.8(l) and, when applicable, 102.8(m). Furthermore, according to 25 Pa. Code § 102.7, BMPs must be installed in accordance with an approved plan prepared and implemented in accordance with 25 Pa. Code § 102.8 prior to submission of a notice of termination.

47. **Comment:** Consistency with Act 13. The Department's Policy should be reviewed for consistency with Act 13 with respect to site restoration. The policy should explain precisely what stabilization measures and "interim post-construction stormwater management best management practices" are required. Under 58 Pa. C.S. § 3216, for example, the general nine-month well-site restoration requirement may be extended for up to two years. The Policy cites prior law providing for a nine-month extension. Identifying the specific restoration measures to be adopted is essential to protect water resources while also avoiding unnecessary additional earth disturbance in the event a site is intended for additional future drilling. (24, 26, 27, 28, 53, 63, 65)

Response: All ESCGP-2 documents will be reviewed and updated for consistency with Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes.

48. **Comment:** Clarification of the relationship between PCSM Plan Requirements and Site Restoration. The Department should clarify the timing and sequence of PCSM requirements and site restoration and what (if any) interim measures should be taken, particularly in light of Act 13 and the two-year extension authorized by the statute. (24, 26, 27, 28)

    Response: The relationship between the PCSM Plan requirements and Site Restoration requirements are identified in 25 Pa. Code § 102.8(n). Section 3216(g) of the 2012 Oil and Gas Act identifies the requirements for Interim PCSM. All ESCGP-2 documents will be reviewed and updated for consistency with Chapter 32 of Title 58 of the Pennsylvania Consolidated Statutes.

49. **Comment:** Section 102.8(m)(2) of the Department's regulations imposes obligations on permittees to record PCSM Plans "[f]or any property containing a PCSM BMP …." The wording of this provision suggests that the regulations contemplate situations in which there are no PCSM BMPs installed at the site (e.g., because the activity restores the surface to original conditions and thus no net increase in post-construction runoff compared to preconstruction conditions). The Department should clarify the Policy to acknowledge that, in some circumstances, there will be no post-construction measures at a site and, accordingly, no obligation to record the PCSM Plan due to a lack of PCSM BMPs constructed on the site that would require long-term maintenance. (24, 26, 27, 28)

    Response: The Department has made the appropriate changes in the permit. No revision to the policy is required.

50. **Comment:** Restoration to Support Original Land Uses. The draft Policy states that the Department considers a site restored when the "entire well site is restored to as closely to the original conditions as practicable, including restoration of original contours and land uses." The Policy should be revised to clarify that restoration of original land uses is not required; rather, restoration to support original land uses, to the extent practicable, is the objective. The actual use of the restored land is a matter for the landowner and not within an operator's control. (24, 26, 27, 28)

    Response: The Department agrees. The language will be changes to clarify that the land should be restored such that it can support the original land uses.

51. **Comment:** For the Initial Phase (and Each Subsequent Phase) of the Project Section V.B.5 refers to the construction of "impervious" surfaces at the site. The Department should provide a definition of "impervious" and clarify what constitutes an impervious surface on a well pad. (24, 26, 27, 28)

    Response: The definition is in the Pennsylvania Department of Environmental Protection Erosion and Sediment Pollution Control Program Manual, Technical

Guidance Number 363-2134-008, dated March 2012, on page 526. It states: Impervious Surface – Hard ground cover that prevents or retards the entry of water into the soil and increases runoff, such as asphalt, concrete, rooftops, etc.

52. **Comment:** Permit Termination. The Policy should be revised to provide that the operator will be released from responsibility under the permit upon receipt of the Department's or Conservation District's approval of the NOT. (24, 26, 27, 28)

    Response: The policy provides that until the permittee or co-permittee has received written approval of a Notice of Termination, the permittee and co-permittee will remain responsible for compliance with the permit terms and conditions including long term operation and maintenance.

53. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOIs) – Expedited Review Process – Paragraph 5. It is suggested that the first sentence state "If a licensed professional submits a deficient NOI, the Department may determine that the licensed professional may no longer submit NOIs under the expedited process." (29)

    Response: The Department disagrees. The proposed language provides flexibility which is appropriate when making such determinations under this policy.

54. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOIs) – Expedited Review Process – Paragraph 6. It is suggested that the first sentence state "If, after being reinstated, a licensed professional submits a deficient NOI, the Department may determine that the licensed professional may no longer submit NOIs under the expedited process." (29, 63)

    Response: The Department disagrees. The proposed language provides flexibility which is appropriate when making such determinations under this policy.

55. **Comment:** II Permit Process – C. Co-Permittee. Agencies of the Commonwealth, as well as other landowners, should not be required to be "co-permittees" and responsible for actions and decisions of operators in perpetuity. This will help drive the determination of PCSM BMPs toward using the BMPs that can be included in the Notice of Termination rather than ones that require long term operation and maintenance. The PCSM BMPs that require long term operation and maintenance have generally been associated with practices used for large scale urban and industrial development that is generally related to commercial activity. The relevance of incorporating PCSM BMPs that require long term operation and maintenance in relation to a forest is questionable. It is generally accepted that achieving a forested landscape is typically the ultimate goal for a restoration project on State Forest Lands. (29)

    Response: The co-permittee requirement is consistent with regulation at 25 Pa. Code § 102.5(h).

56. **Comment:** II Permit Process – D. Preconstruction Meetings. The surface land owner, the local municipality and any other stakeholder should be invited to the preconstruction meeting. The Surface owner may be responsible for or impacted by implementation of the development plans. The local municipality should be present with input of their concerns and knowledge of local conditions. Both the landowner and the municipality should have input in the planning stages in order to mitigate and minimize the disturbance. (29, 52)

    Response: The preconstruction meeting requirement is consistent with regulation at 25 Pa. Code § 102.5(e).

57. **Comment:** III. Permitting Guidelines – A. Defining the Project – Support Facilities. What criteria are being used to formulate the decision to choose 900 feet as the cut off criteria? (29)

Response: The 900 ft criterion is a carryover from the previous version of this policy.

58. **Comment:** IV. Stabilization and Restoration – B. Permanent Stabilization. The Bureau of Forestry's road system has been constructed to provide access for the administration and management of the state forests, including natural gas extraction. Improvement of these accesses, accompanied by road widening for and by natural gas companies, is in direct support of their leased state forest land tracts containing well pads. Could there be a requirement for the restoration of certain roads, such as state forest roads, back to predevelopment standards? The restoration of roads is of critical importance; otherwise it is just a way to circumvent the NPDES permit system for the expansion of roads and new construction. Maintenance of roads does not account for the widening of roads and this permit would be a great way to incorporate the restoration of roads back to the original width during the restoration portion of this permit. This would allow for the roads to be widened outside of the NPDES permit but still require the roads to be restored to a maintainable condition. (29)

    Response: Landowners can negotiate such requirements as part of a lease agreement. Un-restored roads will require compliance with all requirements of 25 Pa. Code §102.8. Restored roads can qualify for alternate post construction provisions of 25 Pa. Code § 102.8(n).

59. **Comment:** IV. Stabilization and Restoration – B. Permanent Stabilization – Paragraph 2 – Item 2. The ultimate goal for roadside ditches should be to establish and maintain a vegetative cover along with reducing the velocity of water within the ditch. It is suggested that considering vegetative cover as an example of an "erosion resistant lining". (29)

    Response: Where slopes, soil types and conditions permit "vegetative cover" as an "erosion resistant lining" may be acceptable. Roadside ditches should be designed,

constructed and maintained in accordance with the *Erosion and Sediment Pollution Control Program Manual* (Document No. 363-2134-008.)

60. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 3. Freshwater impoundments can be critical to limiting the amount of truck traffic in a given area. If a freshwater impoundment is not considered to be part of a well site on a permit, can it be added to another well site permit at a later time? How will it be handled when two or more operators are sharing the same freshwater impoundment? The sharing of an impoundment has been utilized on Bureau of Forestry lands by multiple lessees. If the impoundment is permitted by an operator that completes well development can the water impoundment be transferred to another company until they are finished with well development also? (29)

    Response: The freshwater impoundment must be removed and the area restored when the last well to be served by the impoundment has been drilled. The sharing arrangements involve personal property rights issues that are outside the scope of this policy.

61. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 5. It should be noted that section "m" is the requirement to record an instrument with the recorder of deeds, which will assure disclosure of PCSM BMP and related obligations in the ordinary course of a title search on the subject property. For Commonwealth owned property, a covenant that runs with the land is not required until the transfer of the land containing a PCSM BMP occurs. Upon transfer of the Commonwealth-owned property containing PCSM BMP, the deed must comply with this subsection. The Bureau of Forestry desires the use and implementation of those PCSM BMPs that will terminate with permanent site stabilization and the issuance of the Notice of Termination; not functional storm water management facilities requiring continued long term operation and maintenance. (29)

    Response: Preference to specific PCSM BMPs can and should be identified in the lease negotiations when long term operation and maintenance responsibilities are not wanted.

62. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 6. For consistency the word "change" should be edited to state "increase". (29)

    Response: The language is consistent with PA Code 25, Chapter § 102.8(g)(2).

63. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7. It should be noted that these PCSM features are not the same as E&S control measures and are not to be implemented until restoration begins. Construction of PCSM features prior to completion of well drilling may compromise the BMP. If the BMP's function is to promote infiltration to ground water, the BMP may

provide a preferential pathway for spills of contaminants to infiltrate to the subsurface / groundwater. (29)

Response: Proper project sequencing will prevent conflicts between PSCM BMP features and E&S BMP control measures as well as reduce construction cost by combined use of certain BMPs. There are some BMPs with both PCSM and E&S control functions.

64. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 2. Is this section referring to the restoration of roads as well? A road should be required to be restored back to its original road profile dimensions. (29)

Response: The referenced section refers to impervious areas. Roads constructed of impervious materials should be minimized.

65. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3. Following development and no longer needing a wider road surface it would be prudent to reduce the road profile back to the original as part of restoration. (29)

Response: Roads may only be restored to the minimum size required to permit operation of the well site. The lease agreement can be used as a vehicle to ensure that only the minimum width of a road remains upon restoration.

66. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3a. The Department should consider the area needed for production sites and provide specific guidance on acceptable reduction for sites. DEP should define maximum size acceptable to allow a truck to turn around in order to restore as much of the site as possible. (29, 48, 63)

Response: The policy provides language to describe the acceptable minimum requirements for restoration after drilling. Operational considerations do not allow development of a definite maximize allowable production pad size.

67. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3d. DEP should define acceptable safety buffer distances and the basis for defining. Without defining these distances more area may not be restored than necessary. (29)

Response: The Department agrees. Language clarifying what is an acceptable safety buffer will be added to the policy.

68. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3f. The area used for PCSM BMPs should not be new disturbed/cleared areas and in an effort to meet subsection (b) of 102.8 particularly

Numbers 4) Minimize impervious areas, 5) Maximize the protection of existing drainage features and existing vegetation, 6) Minimize land clearing and grading 7) Minimize soil compaction, and 8) Utilize other structural or nonstructural BMPs that prevent or minimize changes in stormwater runoff. (29)

Response: The Department agrees. PCSM BMPs do not necessarily require the installation of permanent structural BMPs to address PCSM. Nonstructural PCSM BMPs can be integrated or incorporated into natural areas. Such practices have been included in Department guidance manuals such as the Pennsylvania Stormwater Best Management practices Manual (363-0300-002). The Department encourages the use of PCSM BMPs that do not require maintenance where applicable.

69. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3f.i. and 3f.ii. Any PCSM facility that will not have the ability to be included on the Notice of Termination (NOT) will have to be maintained by the Bureau of Forestry Oil and Gas lease and will not be maintained in perpetuity by Bureau of Forestry so long as the Bureau does not become a co-permittee. This should provide additional incentive for companies to implement BMPs that do not require long term maintenance, but still meet the requirements for PA Code Chapter 102. (29)

Response: Specific terms of lease agreements between landowners and permittees are beyond the scope of this policy.

70. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3 – Paragraph 3. The site restoration plan drawings being provided to the surface owner prior or in conjunction with DEP and the land owner should (be able) – delete this be in agreement as well. (29)

Response: Landowners are jointly responsible with the Permittee for long term operation and maintenance unless arrangements have been made for another entity to agree to be responsible for long term maintenance under 102.8(m)(5). There is no requirement to provide site restoration plans to the landowner if the landowner is not responsible for long term operation and maintenance PCSMs.

71. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3 – Paragraph 6. In addition, the surface owner shall receive a copy of the Well Site Restoration Report. (29)

Response: The regulations do not require that the Well Site Restoration Report be provided to the surface owner.

72. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Plugging – Paragraph 1 & 3. The landowner should be able to allow the site to remain as built with written consent. Well pad construction and restoration requires large

amounts of truck traffic. It may be in the best interest for the land owner to keep the site as built to allow the operator the ability to return to the pad to commence drilling at a later date or when the land owner agrees to keep the site in a manner not consistent with the original condition. (29, 34, 45, 63)

Response: Restoration is required by Section 3216 of 2012 Oil and Gas Act 58 Pa.S.C. § 3216; however, the Department may exercise enforcement discretions when appropriate related to allowing site to remain unrestored with interim PCSM BMPs installed.

73. **Comment:** V. Phased Projects and Future Conceptual Activities – Paragraph 1. The Bureau of Forestry has experienced a unique issue in that gas companies are using existing forest roads to access various sites within the forest to reach many well sites. It is in the Commonwealth's best interest to make use of existing forest roads rather than to allow the installation of new roads for gas operator access only. This will greatly limit the need for further forest conversion. The use of Bureau of Forestry's roads is unique because all of our roads are administrative roads, some of which the Bureau opens to allow the public to travel on. The Bureau of Forestry can at any time limit access or close any forest road to travel by the public. Thus roads are "NOT" public roads or public highways as defined by law. "State forest roads have two purposes which are to provide access to Bureau of Forestry employees in order to permit management of the state forest and to provide access for visitors to the state forest" (taken from Castellii vs. Somerset Area School District No. 498 Civil 1998 Court of Common Pleas – Somerset County.) State forest roads are used by oil and gas operators and generally are to remain open to the public to travel them as well. (29, 34)

Response: The Department acknowledges the comment.

74. **Comment:** V. Phased Projects and Future Conceptual Activities – A. For the entire project area – Item 4. There is no mention of the PHMC (i.e., historic and archeological resources) here. Coordination with PHMC should be required with the NOI. Is it implied that the PNDI Response letters from the jurisdictional agencies will be submitted with the completed PNDI form and search receipt? The policy should clarify that the PNDI search should include the entire area of the project area polygon, not just the point location of a well. If the applicant's PNDI indicates that further review is necessary, the applicant needs to include documentation verifying that satisfactory consultation has been completed between the applicant and the appropriate jurisdictional agency or agencies for all topics cited in the PNDI Receipt. (29, 33, 51)

Response: PNDI receipts must be submitted in accordance with the Department's PNDI Policy (Document ID # 400-0200-001). The E&S Policy has been updated to reference the PNDI Policy to ensure that the policies remain consistent.

75. **Comment:** VI. Permit Termination – Paragraph 1 – Item 5. Written documentation should also be provided of an agreement between the operator and the person(s) who have agreed to the long term operation and maintenance of the PCSM BMP. (29**)**

Response: The policy is consistent with Pa Code 25, Chapter § 102.7(b)(5) and the Department does require notification under Pa Code 25 , Chapter 102.8(m)(4).

76. **Comment:** II. Permit Process – A. Notices of Intent for Coverage Under the E&S General Permit for Oil and Gas Activities (NOI) – Transmission Facilities – Paragraph 1. The definition of "transmission facilities" should be consistent with definitions outlined by US DOT & PHMSA. (34)

    Response: The "transmission facilities" definition is consistent with EPA's definition to qualify them for exemption from NPDES permits. Energy Policy Act 2005.

77. **Comment:** II. Permit Process – A. Notices of Intent for Coverage Under the E&S General Permit for Oil and Gas Activities (NOI) – Expedited Review Process – Paragraph 5. This is a broad statement that needs to clarify the meaning of routinely submits deficient NOIs and should be more specific related to the type and severity of deficiencies. Accordingly, there may be some deficiencies that are minor or administrative in nature that should not subject a professional (contractor) to disqualification. Administrative deficiencies or a difference in opinion on how a design was completed should not be counted toward the "routinely submits deficient NOIs" statement. (22, 24, 26, 27, 28, 34, 45, 52, 59)

    Response: A deficient NOI is a submittal that does not meet the minimum requirements of the regulations. The deficiency or decencies are of a nature that indicates that the proposed activity will not attain the intended result. The Department will review eligibility of licensed professionals to submit permits under the expedited review process on a case by case basis.

78. **Comment:** Contractors guilty of repeated (more than two) deficiencies similar in nature should not be allowed to submit Expedited Permit Applications after a third similar infraction. (42, 57)

    Response: The Department will review eligibility of licensed professionals to submit permits under the expedited review process on a case by case basis.

79. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 3. "The Department interprets 206(c) of the Oil and Gas Act to mean that post construction restoration includes the restoration of and … impoundments." This statement should be consistent with the Centralized Impoundment Permit and shall allow for Centralized Impoundments to be reclaimed within those established timeframes. (34)

    Response: Centralized impoundments must be restored within 9 months after the last well serviced by the impoundment has been drilled.

80. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 4. "The Department interprets 206(c) of the Oil & Gas Act to mean that post drilling restoration is required within 9 months after completion of drilling of all permitted wells or the expiration of all existing well permits" The statement "within 9 months after completion of drilling of all permitted wells" should read "within 9 months of completion of all permitted wells". It would be more appropriate for DEP to interpret "within 9 months after completion of drilling" to mean after completion of the well. (34, 45, 63)

    Response: The language is consistent with Section 3216(c) of the 2012 Oil and Gas Act. 58 Pa.C.S. § 3216(c).

81. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3 – Paragraph 5. Act 13 (HB 1950) allows for a 2 year restoration extension; this paragraph should be changed for consistency. (34, 48)

    Response: The paragraph will be modified to reflect Section 3216(c) of the 2012 Oil and Gas Act. 58 Pa.C.S. § 3216(c).

82. **Comment:** V. Phased Projects and Future Conceptual Activities – A. For the Entire Project – Item 3. Notification to counties and municipalities should be expanded to notification of all public water providers with facilities, surface water intakes, well fields, source water protection areas, reservoirs or watersheds along the project route. There is no specific language that includes the protection of a public water supplier's source of supply or Source Water Protection (SWP) Zones. Specifically, public water supply systems and Source Water Protection Zones should be added to the exception list along with HQ and EV streams where the Expedited Review Process is prohibited. The designated protection zones of public water supply Source Water Protection Plans should be used to alert the permitting engineer for oil and gas development and exploration activities as to the location of these water supply resources. (23, 30, 40, 41, 42, 44, 47, 50, 52, 54, 60, 66, 69)

    Response: The regulations require municipal notification but do not require the notification of public water suppliers.

83. **Comment:** Construction of pipelines generally result in restoration of the surface to its original preconstruction contours and/or the installation of earthen PCSM BMPs that do not require long-term maintenance that engineered PCSM BMPs might require. Under the Policy pipeline operators may be required to remove additional timber, construct structural BMPs in remote locations along the entire length of the right-of-way, and create additional and unnecessary impervious areas for access to BMPs as part of long-term maintenance responsibilities. In many cases such as these, installation and maintenance post-construction BMPs would create more earth disturbance than the project itself. To avoid these and other issues and concerns, the DEP should provide

separate requirements for pipeline construction or clearly state exceptions to requirements that do not apply to pipeline projects. (34, 45, 62)

Response: The Department disagrees. Operators are encouraged to minimize the use of PCSM BMPs that require maintenance to limit the need for significant access facilities. Earth disturbance from pipeline construction must be restored to 'meadow in good condition' to provide erosion and sediment protection.

84. **Comment:** The Policy's requirements for well site restoration are not consistent with Act 13 of 2012. The DEP should clarify the timing and sequence of post construction stormwater management requirements and site restoration. For instance, Act 13 requires that site stabilization and "interim post construction stormwater management best management practices" be included in a "site restoration plan" prepared in connection with a request for extension of the 9-month restoration period (new title 58 Pa. C.S. section 3216(g)(2)(i)). The Policy should explain precisely what stabilization measures and "interim post construction stormwater management best management practices" are required. Identifying the specific restoration measures to be adopted is essential to protect water resources while also avoiding unnecessary additional earth disturbance in the event a site is intended for additional future drilling. (45)

Response: The policy will be amended to address the interim post construction stormwater management requirements associated with the 2 year site restoration period extension created by Section 3216(g)(2) of the 2012 Oil and Gas Act. 58 Pa.C.S. § 3216.

85. **Comment:** It is recommended that the requirement to notify DEP when minor changes are made to the E&S Plan should be eliminated. This requirement is not practical and will be burdensome to both permittees and DEP staff. Minor modifications can be jointly reviewed and acknowledged at the construction activity during site inspections. (45)

Response: The Department disagrees. The notification is not for review purposes but only to alert the Department to the modification.

86. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOI) – Transmission Facilities – Paragraph 1. The policy describes the role of Conservation Districts to administer the E&S General Permit Program for Oil and Gas Activities. It is recommended that Conservation Districts be given the necessary resources (monetary resources) including training by the DEP to administer the program for transmission facilities, including conducting all reviews using a standard 60-day review process and to perform consistent inspections. It is recommended the Waterways Engineering and Wetlands Programs be given the same training to complete E&S permit reviews in a consistent manner with those reviewing applications through the Department of Oil and Gas. (45, 48, 63)

Response: The Department acknowledges the comment.

87. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOI) – Expedited Review Process – Paragraph 2. The expedited review process should be applicable to transmission projects covered by the ESCGP-2. Expedited review of these projects would accelerate the construction and operation of these facilities, allow for more accurate development planning with associated environmental protection, and produce economic benefits for the Commonwealth in a timely manner. (45, 48, 63)

Response: The Department disagrees. The expedited review process is not available for transmission projects.

88. **Comment:** It is recommended that deficient NOI's be addressed by DEP through denial of the permit application. DEP should ensure that, when reviews of the NOIs submitted by licensed professionals are judged to be unacceptable, that review/judgment is made by a qualified and licensed DEP professional. (45, 48)

Response: According to 25 Pa. Code 102.6(c)(2), when the Department or conservation district determines that an NOI is incomplete or contains insufficient information to determine compliance with 25 Pa. Code Chapter 102, it will notify the applicant in writing and the applicant will have 60 days to provide the necessary information.

89. **Comment:** II. Permit Process – B. Permit Fees – Expedited Review Process – Paragraph 3. For projects that are reviewed by Conservation Districts, the proposed fees are duplicative and burdensome. These projects in most counties will be charged 3 separate fees, including 2 fees based on project acreage. Further, these projects will require 3 separate checks: administrative filing fee of $500, per acre disturbance fee, and a plan review fee to the Conservation District; the latter two have yet to be defined. Fees for unconventional well projects should be consistent with the fees assessed to other industries. (34, 45, 63)

Response: Permit fees described in the policy are consistent with regulation at 25 Pa. Code § 102.6(b).

90. **Comment:** III. Permitting Guidelines – A. Defining the Project – Support Facilities – Paragraph 1.
"A support facility, including but not limited to, an impoundment, staging area, tank farm, auxiliary road, parking lot, and borrow area or rock pit ("borrow pit"), that is within 900 feet of a well site is substantially connected to that well site and is thereby part of that well site project for § 102.5(c) permitting purposes. The Department presumes that borrow pits not regulated by the Non-Coal Surface Mining Conservation and Reclamation Act, permitted centralized wastewater impoundments and centralized freshwater impoundments are part of at least one well site for bonding and restoration requirements..." What if a distant impoundment is being utilized to support operations on

a pad farther than 900-feet? Some operators are using temporary pipelines to transport water more effectively (and with less impact) than large volumes of truck traffic. (45, 63)

Response: Support facilities greater than 900-feet from a well pad are not substantially connected to the pad unless installed solely to service that project.

91. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 2. "…The Department interprets 206(c) of the Oil & Gas Act to mean that post drilling restoration includes the restoration of any … impoundments." Centralized impoundments are often permitted by separate ESCGPs and leaving them open longer would result in "more efficient use of the resource" as described in the restoration section of Act 13 (HB 1950). We recommend that DEP be consistent with the portion of the policy that states "Centralized wastewater or freshwater impoundments must be restored when no additional wells will be serviced by the impoundment after the 9 month restoration period. If additional wells will be serviced by the centralized wastewater or freshwater impoundment, as evidenced by a new valid well permit issued by the Department within the 9 month restoration period, restoration of the wastewater impoundment site is not required until 9 months after the final well serviced by the impoundment is drilled." (45, 63)

Response: The Department acknowledges the comment.

92. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 7 – Item 3 – Paragraph 5. 6 months restoration extension. Act 13 (HB 1950) allows for a 2 year restoration extension; this paragraph should be changed for consistency. (45)

Response: This paragraph will be updated to reflect Section 3216(g) of the 2012 Oil and Gas Act that allows for up to a 2 year restoration extension. 58 Pa.S.C. § 3216(g).

93. **Comment:** Public water suppliers are not part of the notification process. The Water Utility Council (WUC) believes that is essential for public water suppliers to be engaged in the permitting process. (47, 50, 54, 64)

Response: The regulations require municipal notification but do not require notification of public water suppliers.

94. **Comment:** Permittees should have to justify disturbing a buffer on a High Quality or Exceptional Value stream. The NOI should require applicants proposing activities within 150 feet of a special protection waterway for which site restoration is required under Chapter 78 to demonstrate the any existing riparian buffer is undisturbed to the extent practicable, both in their Erosion and Sediment Control Plan BMPs and in their Site Restoration Plan BMPs. The department needs to review the draft policy document to

insure that the buffer distances specified are at a minimum at least as stringent as those in the new Act 13 legislation. (23, 30, 36, 40, 57, 66, 70)

Response: The Department agrees. The NOI will be revised to require a demonstration that riparian buffers are preserved to the extent practicable, when required under 25 Pa. Code § 102.14. All documents will be revised to provide consistency with provisions of Chapter 32 of the 2012 Oil and Gas Act.

95. **Comment:** Phased permits on contaminated lands and sensitive areas will be beneficial in providing adequate environmental assessments and should be maintained. (30, 70)

    Response: The Department acknowledges the comment.

96. **Comment:** The Policy should contain language that ensures continuing and/or increased involvement by the County Conservation Districts in overseeing E & S permits. (19, 30)

    Response: Involvement by county conservation districts is dictated by delegation agreement and 2009 memo and is beyond the scope of this policy.

97. **Comment:** II. Permit Process – A. Notices of Intent for Coverage Under the E&S General Permit for Oil and Gas Activities (NOI) – Expedited Review Process – Paragraph 2. It is recommended that major modifications to existing projects in HQ or EV watersheds still be able to qualify for the expedited review process if the initial activity was authorized under ESCGP-1. For new projects, authorized under the ESCGP-2, it is recommended the 60 day review process be mandated for the "bulk earth disturbance" of the project; however, future modifications qualify for the expedited review process. (48)

    Response: The Department disagrees. Projects permitted under the ESCGP-1 will continue to meet ESCGP-1 permit terms and conditions. However, major modifications to a plan permitted under ESCGP-1 or subsequent phases of a phased project will be required to meet ESCGP-2 requirements. Projects permitted under the ESCGP-2 will be required to meet ESCGP-2 terms and conditions.

    Comment: It is recommended that access roads and water lines be excluded from the moratorium from the expedited review process and not mandate the 60 day review period if they are to be located in a floodplain. (48)

    Response: The Department disagrees. Expedited review restrictions are applicable to all types of projects.

98. **Comment:** Licensed professionals with a significant history of non-compliance should not be eligible for the expedited review process and placed on a list of banned entities. Will the Department maintain a list of the licensed professionals that are not eligible to

prepare expedited review permit applications and will the industry be privy to the list of the licensed professional's? (3, 22, 48)

Response: The Department maintains a list of individuals eligible for the expedited review process. Individuals not on the list should be considered ineligible.

99. **Comment:** It is requested the Department define/demonstrate an acceptable BMP alternative to temporarily seeding and mulching, which will temporarily minimizes accelerate erosion and sedimentation. (48)

Response: Acceptable BMPs for temporary stabilization are presented in the Erosion and Sediment Pollution Control Program Manual, Document No. 363-2134-008.

100. **Comment:** The Policy document, the Checklist and the Instructions all refer to Pennsylvania Natural Heritage program online review for threatened and endangered species in some instances is referred to PNHP and in others PNDI. To clarify and to provide consistency that these are the same in the review process it is recommended that the same reference be used thought out all the documents. (33, 51)

Response: The ESCGP-2 documents have been updated with respect to the PNHP and PNDI designations to provide consistency in the review process.

101. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities – Expedited Review Process. It is imperative that if the Department finds the Expedited Review Process does not provide sufficient time for review of permit materials, the Department will reconsider the Expedited Review Process rather than allowing staff to issue permits without adequate review. (33, 51)

Response: The Department acknowledges the comment.

102. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOI) – Paragraph 2. This paragraph indicates that the Department should be notified when a minor change to an E&S plan is made. We would suggest that this requirement be expanded to include the municipality in the notification. (52, 57)

Response: The Department disagrees. Municipal notification is not required for minor modifications.

103. **Comment:** The standard review process is 60 days and the expedited review process is 14 business days. During either of these review process will a municipality be notified, and if so when? (52)

Response: In accordance with Act 14 of the Commonwealth's Administrative Code (71 P.S. § 510-5), the local municipality/municipalities must be notified of the application and the Department may not act on the application until 30 days after notification has been submitted to the municipality.

104. **Comment:** III. Permitting Guidelines – A. Defining the Project – Roads – Paragraph 2. "Road maintenance activity involving 25 acres or more of earth disturbance" stipulates activity. Can we assume that less than 25 acres is exempt from the permit and corresponding regulations? (52)

Response: A permit is not required for road maintenance activities as defined in 25 Pa. Code § 102.1 totaling less than 25 acres of earth disturbance.

105. **Comment:** III. Permitting Guidelines – A. Defining the Project – Roads – Paragraph 2. Support facilities that are not substantially connected to a well site may be an independent project from the well site project." Does this mean that if the "support facility" is less than 5 acres it will not be subject to the E & S permit and the corresponding requirements? (52)

Response: Pursuant to 25 Pa. Code § 102.5(c), a person proposing Oil and Gas Activities that involve five acres or more of earth disturbance over the life of the project must obtain an E&S Permit under Chapter 102 prior to commencing the earth disturbance activity. As used in § 102.5(c), the Department interprets "project" to be substantially connected well sites, access roads, pipelines, other service lines, support facilities, and/or other oil and gas activities. A permit is not required for projects that involve less than 5 acres of earth disturbance over the life of the project.

106. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Drilling – Paragraph 1. Within 9 months after completion of drilling of any well, the owner or operator must restore the well site, remove and fill all pits used to contain produced fluids of industrial wastes and remove all drilling supplies and equipment not needed for production. Is this a typical time-frame? Could this be shortened? What are the penalties for noncompliance? Will the municipality be notified when this must be completed by? (52)

Response: Restoration requirements described in the policy, including the 9 month time frame, are consistent with Section 3216 of the 2012 Oil and Gas Act. 58 Pa.S.C. § 3216. A violation of the 2012 Oil and Gas Act is contrary to §§3255 and 3256 of that Act, for which the Department could institute administrative, civil and/or criminal proceedings. Municipalities will not be provided express notice of restoration requirements.

107. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration After Plugging – Paragraph 2. "Restoration period can be extended for an additional 6 months." Will a municipality be notified of this extension and can they challenge the validity of such an extension if they do not believe one is warranted? (52)

Response: Municipalities will not be provided express notice of restoration requirements.

108. **Comment:** II. Permit Process – A. Notices of Intent for Coverage under the E&S General Permit for Oil and Gas Activities (NOI) – Transmission Facilities - Paragraph 8. The Policy statement regarding the NOI indicates that all NOIs submitted for activities involving construction of transmission facilities will be reviewed using a standard 60-day review period. It is not clear if this refers to the completeness review or the technical review. The review period should be clarified so that construction schedules can be as closely defined as possible. (53)

Response: The 60-day review period includes an administrative completeness review and technical review.

109. **Comment:** The requirement to submit a copy of the E&S Plan to each municipality and county government with the notification letter is excessive. The need to send E&S plans to the local governments should be at their request and not a mandate for all projects. (53)

Response: Without the submission of the E&S Plans to the municipalities they will not be in a position to evaluate the project which is the intent of the requirement.

110. **Comment:** It is recommended that the NOI be provided to the local municipality. (57)

Response: The NOI instructions require submission of the NOI to the municipality with the Act 14 of the Commonwealth's Administrative Code (71 P.S. § 510-5) notifications.

111. **Comment:** The E&S Policy states that "[w]ell 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." In fact, access roads in general are considered "substantially connected" and "part of the same project" for permitting purposes. Yet, activities meeting the definition of Road Maintenance Activities as defined in Chapter 102 are not considered Oil and Gas Activities and are not "substantially connected" to well sites. It appears that there is language missing on page 8, second paragraph under the heading Roads. Based on CBFs reading it appears that new road construction would be considered substantially connected to the well site for permitting purposes; however, this is not clear. (65)

Response: The information provided in Section III(A) under the Roads heading is complete and accurate.

112. **Comment:** According to the E&S Policy, County Conservation Districts "will be responsible for inspection and complaint Response: for all transmission facility earth disturbances." DEPs Oil and Gas Program field staff "will be responsible for inspection and complaint response: for all earth disturbance activities that are associated with the exploration, production, processing and treatment facilities." It is recommend that DEP reconsider the role of the County Conservation District to include inspection and complaint response: for all earth disturbance activities associated with exploration, production, processing and treatment facilities. With the passage of Act 13 and increased monies going toward County Conservation Districts, along with corresponding cuts to DEP funding, it would seem both reasonable and more efficient to allow County Conservation Districts, who are both willing and able, to become engaged in the oversight of earth disturbance activities associated with exploration, production, processing and treatment facilities. (19, 65)

Response: Involvement by county conservation districts is dictated by delegation agreement and is beyond the scope of this policy.

113. **Comment:** Although current proposal for well site restoration is accepted, the recent revelation that many of these sites may stand open for an ever growing number of years due to production constraints leads us to believe that greater protections should be required. Stronger BMP's seem to be appropriate if once forested land is now anticipated to remain open for a number of years to allow production activities to continue. Unlike other construction activities, Oil and Gas Activities have the possibility of keeping sites open for extended periods of time while more wells are drilled. This must be taken into account when reviewing the potential impacts from earth disturbance activities and the associated post-construction runoff. (65)

Response: Restoration requirements including interim PCSM BMPs described in the policy are consistent with Section 3216(g) of the 2012 Oil and Gas Act. 58 Pa.C.S. § 3216(g). Permittees must maintain compliance with the terms and conditions of their permit and 25 Pa. Code Chapter 102 at all times.

114. **Comment:** Although it is acknowledged that DEP is not required to add the requirements of the Chesapeake Bay TMDL to the ESCGP-2 permit and its associated documents, the fact that the overall potential for increased sediment loads to waters in the Bay watershed must be addressed pursuant to the TMDL. The increase in sediment loads from Oil and Gas Activities must be accounted for by DEP. Source sectors beyond those currently addressed in DEPs Phase I and II Watershed Implementation Plans, including anticipated/projected changes in loads from Oil and Gas Activities is necessary. (65**)**

Response: The Department acknowledges the comment.

115. **Comment:** Companies building pipelines should have to apply for individual permits. Pipelines have much more significant impacts than any one well pad. Pipelines cut through riparian buffers whenever they cross a stream. They also leave behind

permanently compacted surfaces when they are fully built. There have been serious erosion and sedimentation impacts from pipelines crossing exceptional value and high quality headwater streams and wetlands. Cumulatively construction activities, maintenance, and permanent loss of vegetation can seriously degrade the watersheds. (68)

Response: Regulations allow pipelines to be permitted under the general permit. Additional permitting and restrictions are required for stream and wetland crossings as well as treatment of riparian buffers.

116. **Comment:** It is impossible to define "approximate original conditions". (57)

Response: The Department disagrees. Plans drawings including original contours are required as part of the NOI submission.

117. **Comment:** The use of "minimized" is too broad. The Department should define minimized in order to make this term relevant and attainable without dispute. (57)

Response: Use of "minimized" is consistent with requirements at 25 Pa. Code 102.8(b)(4).

118. **Comment:** The post construction plan should be bonded to ensure adequate funding is available for PCSM Plan/Site Restoration Plan implementation. (57)

Response: 25 Pa. Code 102.7 ensures that PCSM/Site Restoration Plans are implemented by withholding Permit Termination until all Plan requirements are met. In addition, 25 Pa Code 102.8(m) ensures requirements of PCSM/Site Restoration Plan are met by tying the obligation for the operation and maintenance Plan to the property. There is no bonding requirement.

119. **Comment:** III. Permitting Guidelines – A. Defining the Project. Any impoundment or area of disturbance from which the proposed well site will draw or store material, should be included in the site description and measurement whether within 900 feet or greater. In order for the public to be fully apprised of the impact of a given proposal, all disturbed areas should be included in one permit application and therefore subject to the combined acreage thresholds and reporting requirement. (57)

Response: The Department disagrees. The policy requires consideration of all substantially connected components of a project so that the 5-acre threshold is not circumvented and the environmental impact of the entire project can be evaluated. Requiring all substantially connected activities to be covered under the same permit is unnecessary to implement the regulations.

120. **Comment:** The Department should revise the Policy Document No. 550-2100-008 to provide whenever oil or gas facilities are proposed in watersheds of waters listed as being

impaired for siltation, the operators should submit NPDES permit applications rather than Notices of Intent for Coverage under ESCGP-1. This Policy document should also establish a process to insure that all existing and proposed oil and gas construction activities in water sheds with siltation-impaired waterways are identified and properly reviewed. (25, 70)

Response: Oil and gas plans are exempt from NPDES permit coverage. However, the Department will be adding the following condition to the permit: "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." Additionally, the Department will be amending the NOI to ask applicants to indicate whether the project is in or discharges to a siltation-impaired water and if so require that the operator demonstrate that its project will not result in a net change (pre to post condition) in volume, rate, or water quality or otherwise explain how the project will not contribute to a violation of a water quality standard.

121. **Comment:** Is it true that if a Marcellus Shale (MS) support site (compressor station, surface water intake, etc.) involves less than 5 acres in disturbed acreage and is not in an Act 167 watershed (assuming no municipal requirements), then neither a Site Restoration Plan nor a Post Construction Stormwater Management Plan are required? Also an ESCGP-1 (or 2) would not be required and that all that would be required is an E&S Plan? Please confirm. (1)

Response: Pursuant to 25 Pa. Code § 102.5(c), a person proposing Oil and Gas Activities that involve five acres or more of earth disturbance over the life of the project must obtain an E&S Permit under Chapter 102 prior to commencing the earth disturbance activity. As used in § 102.5(c), the Department interprets "project" to be substantially connected well sites, access roads, pipelines, other service lines, support facilities, and/or other oil and gas activities. A permit is not required for projects that involve less than 5 acres of earth disturbance over the life of the project. According to 25 Pa. Code 102.8(a), a written post construction stormwater management plan is required for activities requiring a permit under 25 Pa. Code § 102.5.

122. **Comment:** The new General Permit published on January 21, 2012 alters the current practice related to Post Construction Stormwater Management Best Management Practices. While both the GP-1 and GP-2 require consistency with any Act 167 plan that the covers the area to the project, the new GP-2, through its policy document, application forms and instructions, removes the exemption that currently exists under Chapter 102, and requires PCSM BMPs that meet the design criteria of 102.8(g) for well sites. This section of the regulations expressly requires the design standards of 102.8(g) by incorporating those standards into 102.8(b) and 102.8(f). The end result is that the

exemption under Chapter 102 is removed by guidance and policy rather than rulemaking, and the PA Bulletin notice provides no indication of this result. (1, 12)

Response: The Department disagrees. The policy provides guidance for compliance with 25 Pa. Code §§ 102.8(b) and 102.8(f).

123. **Comment:** Permit Termination. The Policy should be revised to provide that the operator will be released from responsibility under the permit upon receipt of the Department's or Conservation District's approval of the NOT. (24, 26, 27, 28)

Response: The policy provides that until the permittee or co-permittee has received written approval of a notice of termination, the permittee or co-permittee will remain responsible with the landowner for compliance with the permit terms and conditions including long-term operation and maintenance of all PCSM BMPs on the project site and is responsible for violations occurring on the project site.

124. **Comment:** The Department conducts a compliance review of applicants submitting NOIs for coverage under ESCGP-2. Compliance issues may affect the processing of ESCGP-2 applications. Many notices of violation issued by the Department are not timely closed even if the operator has resolved issues and demonstrated full compliance. Use and posting of timely, up-to-date compliance information will be necessary to efficient processing of ESCGP-2 applications. (24, 26, 27, 28, 45)

Response: The Department acknowledges the comment.

125. **Comment:** The Department should provide for training after the Policy and documents are finalized. The Department should sponsor a training program and invite the members of the regulated community and Department and Conservation District staff charged with reviewing applications. In this way, the industry and the reviewing engineers of the Department and Conservation Districts will develop a common understanding of the requirements for obtaining ESCGP-2 coverage based on the Department's training. (24, 26, 27, 28, 62, 63)

Response: The Department will continue to provide training to internal staff, the public and the regulated community on a regular basis.

126. **Comment:** In accordance with Section 102.5(m) of Pa. Code Title 25, Chapter 102, the Department must determine that the projects proposed to be covered under this general permit are more appropriately controlled under a general permit than an individual permit and that, individually and cumulatively, they do not have the potential to cause significant adverse environmental impact. This would allow what we see as a necessary and important dialogue between the oil & gas industry and public water suppliers to best serve the needs of both industries. The Department should not issue another general permit for this category of activities until it is prepared to share its rationale under Section 102.5(m) as part of this public participation process. The Department should

consider making this policy an individual permit and not a general permit for oil and gas activity; especially pipeline and source water protection zones. (37, 67, 70)

Response: Regulatory changes are beyond the scope of this permit.

127. **Comment:** The scope of activities in ESCGP-2 limits its use to discharges which individually or cumulatively do not have the potential to cause significant adverse environmental impact. An applicant should not be expected to, nor will they, quantify cumulative impacts from projects other than their own. This statement acknowledges the requirements of Section 102.5(m) but does not implement those requirements. It is the Department's responsibility to meet these requirements, not the applicant's. (37)

Response: The Department acknowledges the comment.

128. **Comment:** The Department and members of the General Assembly should consider requiring an E&S permit for surface disturbance of one acre or more for drilling-related activities. The 5 acre threshold for the requirement for E&S is totally unrealistic especially when high erodible soils are present. The potential damage to local streams and eventually the Chesapeake Bay is tremendous. By doing so, Pennsylvania could begin to alleviate many of the surface water quality impacts associated with shale gas drilling. (43,56)

Response: Pursuant to 25 Pa. Code § 102.5(c), a person proposing Oil and Gas Activities that involve five acres or more of earth disturbance over the life of the project must obtain an E&S Permit under Chapter 102 prior to commencing the earth disturbance activity.

129. **Comment:** The expedited review process should not be available in "Watersheds" with an HQ or EV designation. If this is already the case, it is not very well defined. In reality drilling of any kind should not be allowed at all in HQ or EV watersheds. In addition, the expedited review process should not be available in watersheds with known wild trout and/or naturally reproducing populations as listed by the Pennsylvania Fish and Boat Commission, regardless of Class designation. According to Chapter 105.17, Wetlands adjacent to these waters are considered Exceptional Value and should be protected as such. Again, drilling of any kind should not be allowed in these areas. (2, 23, 30, 70)

Response: The Expedited Review Process is not available in High Quality (HQ) or Exceptional Value (EV) watersheds.

130. **Comment:** The proposed ESCGP-2 continues to treat the need to control erosion and sediment resulting from storm water events as separate and distinct from the need to control point source discharges within a watershed. However, these two conditions cannot be separated and are essentially the same in the context of natural gas development. Accordingly, since the quality of a point source discharge to an EV stream must be equal to or greater than the quality of the receiving stream, neither ESCGP nor NPDES permits for point source discharges for oil and gas activities should be granted within EV watersheds as such discharges will degrade receiving streams. (5)

Response: The Department disagrees. The regulations treat stormwater runoff separately from point source discharges.

131. **Comment:** It is suggested that no ESCGP or NPDES permits be issued for oil and gas development related activities within an EV watershed. Failing adoption of such a restriction, it is suggested that no ESCGP or NPDES permits be issued without the permittee first demonstrating to the satisfaction of the Department that, 1) all drilling waste will be removed from the watershed, 2) all produced water and returned fracking fluids will be contained and disposed of outside the EV watershed, 3) completion can be accomplished without open flaring and 4) natural gas activity is necessary, to accommodate important economic or social development within the EV watershed. (5)

Response: The Department disagrees. Current regulations provide protection of the environment during oil and gas activities.

132. **Comment:** SEJs submitted in support of oil and gas well operations within an EV watershed should be reviewed by regional staff in the Bureau of Oil and Gas Management program area as part of the ESCGP-2 and NPDES permit applications. (5)

Response: Social and Economic Justifications (SEJs) are reviewed at the district offices of the Office Oil and Gas Management.

133. **Comment:** The proposed text of the ESCGP-2 should require that a generalized permit review process similar to that required for proposed discharges to EV waters should precede a sixty day period of public comment. (5)

Response: The Department disagrees. The regulations do not require a sixty day public comment period.

134. **Comment:** Phased permits and heightened scrutiny should be required where applications are on contaminated land. The expedited review of ESCGP-2 permits is a privilege requiring special administrative care by PA-DEP. The expedited permit review process for the ESCGP-2 NOI should not be available in sensitive areas and where earth disturbance activities a proposed on lands that are known to be currently contaminated by the release of regulated substances, as defined in Section 103 of Act 2. A phased approach for projects will allow the Department to assess the total environmental impact of drilling activities. A thorough, phased permit approach is necessary for PA-DEP staff to assess the complete impacts of drilling activities on and off site. (23, 30, 66, 70)

Response: The Department acknowledges the comment.

135. **Comment:** Revise the Policy to Allow Expedited Review for Projects in HQ/EV Watersheds. Expedited review should be available for projects in HQ/EV areas. There is no reason that projects in these watersheds should not be eligible for expedited review given the technical standards imposed by ESCGP-2 and the Department's regulations and the requirement that a professional engineer seal and certify the NOI. Moreover, because

many projects may be located within these watersheds, the Department may lack sufficient staff to perform technical reviews within 60 days. (23, 30, 24, 26, 27, 28)

Response: The Expedited Review Process is not available where earth disturbance is proposed in HQ/EV watersheds.

136. **Comment:** The Expedited Review Process should not be used in any watershed regardless of classification; the full 60 day review must be required if the Commonwealth's water are to be protected. Any incomplete or unacceptable applications should be rejected and returned to the applicant with the option to resubmit the application if the nature of the original rejection was minor. The clock should start over with each re-submission. (57)

Response: The Department acknowledges the comment.

137. **Comment:** It is recommended that the complete PPC Plan be posted at the entrance to the site and a copy be provided to the municipality for distribution to emergency services organizations serving the municipality and to the general public. (57)

Response: PPC Plan requirements described in the policy are consistent with 25 Pa Code §§ 78.55 and 102.5(l).

138. **Comment:** The use of the term "additional" soil testing is too broad to provide sufficient, consistent regulation. The regulation should enumerate the type, quality and quantity of soil testing required so there is no doubt of what has to be done if infiltration BMPs are compromised. (57)

Response: Use of the term "additional soil testing" is appropriate within the scope of the policy. Soil testing requirements are described in detail in Pennsylvania Stormwater Best Management Practices Manual; Document No. 363-03000-002.

139. **Comment:** I am writing to comment on DEP's recent changes to stop the granting of expedited permits for well pads on floodplains or the watersheds of high quality or exceptional value steams. While this is a positive development, it is far too limited to adequately protect our waterways. Sedimentation concerns are not the only problem associated with drilling pads. Because by definition floods occur in flood plains, the dangers of pollution of all types from a flooded well pad are almost certain to occur. (4)

Response: The Department acknowledges the comment.

140. **Comment:** If a well pad of less than five acres requires connecting roads, pipelines and other earth disturbance activities, those substantially connected earth disturbance activities must be incorporated into a comprehensive individual permit and be subject to a thorough review process by the Department. (40)

Response: The Department acknowledges the comment.

141. **Comment:** Fourteen days is not sufficient time for an E&S Plan review and to evaluate comments from affected municipalities. (53)

Response: The fourteen day expedited review process relies on the performance of licensed professionals to provide complete and accurate applications that they are required to certify as complete. Their ability to continue to prepare permit applications for expedited review depends on their performance in this regard.

142. **Comment:** IV. Stabilization and Restoration – C. Well Site Restoration – Restoration after Drilling – Paragraph 3. The text should be modified to allow more flexibility in restoration period for permitted wells that plan to use built (existing) impoundments but may have been permitted prior to the 9 month restoration period. (32)

Response: The Department disagrees. The 9 month restoration period provides adequate flexibility.

143. **Comment:** In defining the project, do Well Sites include water impoundments? (32)

Response: A project includes well sites and water impoundments that serve the oil and gas activities at that well site. The water impoundments would be substantially connected to the well site and therefore part of a project.

144. **Comment:** Please further define "the project site". Does this mean all phases? (32)

Response: 25 Pa. Code § 102.5(c) requires consideration of earth disturbance over the life of the project, including all phases.

145. **Comment:** Please further define or explain the containment requirements for well Pads. Would something like an earthen berm to contain spills be permitted or would you need some type of liner system? Would leak detection be required as well? (32)

Response: Well site containment requirements are beyond the scope of this policy.

146. **Comment:** Consideration should be given to reducing the five acre rule to what is required of earth disturbance activities for construction projects other than oil and gas – 1 acre or greater. (46, 61)

Response: Pursuant to 25 Pa. Code § 102.5(c), a person proposing Oil and Gas Activities that involve five acres or more of earth disturbance over the life of the project must obtain an E&S Permit under Chapter 102 prior to commencing the earth disturbance activity.

147. Waivers for earth disturbance within 100 feet of a spring, stream, surface water or wetland larger than one acre should not be commonly granted without investigation into alternate measures. (46)

Response: The Department acknowledges the comment.

148. **Comment:** Prompt issuance of the Erosion and Sediment Control BMP Manual so that the regulated community, the DEP and Conservation District staff can all utilize updated guidelines and BMP information. (62, 63)

Response: The Erosion and Sediment Pollution Control Program Manual was published as final on March 31, 2012.

149. **Comment:** Development of model E&S plans or examples of designs that better explain and standardize the DEP requirements and expectations for:
    - Post Construction Stormwater Management
    - Site Restoration
    - Thermal Impacts
    - Documentation of BMP effectiveness
    - Identification of seasonal high ground water table procedures (62, 63)

Response: Development of a model E&S plan is beyond the scope of this policy.