Policy for Permit Coordination Comment/Response Document
November 2, 2012

The Policy for Permit Coordination (policy) was revised to complement the Department of Environmental Protection's (Department) Policy for Implementing the Permit Review Process and Permit Decision Guarantee that was developed based on the authority provided in Executive Order 2012-11. That new policy sets forth a significant change in the business process the Department will employ in reviewing applications for authorizations, referred to as "permits", from the past practice detailed in the Money Back Guarantee Policy. The purpose of the Permit Review Process and Permit Decision Guarantee policy is not to "streamline" or "expedite" the permitting process, nor is it the purpose of this policy. The purpose of both policies is to make the Department's permitting process more predictable and efficient without compromising thorough review for environmental and public health protection.

This Permit Coordination policy outlines how the Department will coordinate the review of multiple permits for proposed projects to ensure efficient use of its resources, thorough environmental review, and consistent Department action on proposed projects before the commencement of operations, construction or other activities that require Department permits or approvals.

The draft technical guidance was published for comment in the *Pennsylvania Bulletin* on Sept. 1, 2012, and the 30-day comment period ended on Oct. 1, 2012. The comments received from 24 commentators during the public comment period, as well as responses from the Department are included in this Comment/Response document.

Additional information pertaining to the Department's Policy for Permit Coordination and Permit Review Process and Permit Decision Guarantee can be found on the Department's website at www.dep.state.pa.us, keyword: Permit Decision Guarantee).

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LIST OF COMMENTERS

No.	Name	Organization	City	State
2	Mark M. McClellan	Evergeen Environmental, Inc. (EEI)	Harrisburg	PA
3	Rose A. Koufos	n/a	York Springs	PA
9	Emily E. Krafjack	n/a	Mehoopany	PA
13	Michele A. Wice	Kriebel Minerals, Inc.	Clarion	PA
14	James A. Schmid, Ph.D.	Schmid & Company Inc.	Media	PA
19	Marjorie Hughes	Citizens Advisory Council	Harrisburg	PA
27	Stephanie Catarino Wissman	Associated Petroleum Industries of PA	Harrisburg	PA
31	Edward Braun	City of Philadelphia- Department of Public Health, Air Management Services (AMS)	Philadelphia	PA
32	William A. Neilson	Pennsylvania Farm Bureau (PFB)	Camp Hill	PA
33	Kathryn Z. Klaber	Marcellus Shale Coalition	Pittsburgh	PA
34	Bradley J. Heigel, P.E.	PA Turnpike Commission	Harrisburg	PA
36	Eric G. Madden	American Council of Engineering Companies (ACEC) of PA	Harrisburg	PA
40	Preston Luitweiler, P.E.	Aqua Pennsylvania, Inc.	Bryn Mawr	PA
41	Kenneth M. Klemow, Ph.D.	Wilkes University	Wilkes-Barre	PA
42	Pamela Faggert	Dominion Resources	Parkersburg	WV
47	Clinton Riley	U.S. Fish & Wildlife Service- Pa Office	State College	PA
48	Darrel K. Lewis, P.E.	Allegheny Mineral Corporation	Kittanning	PA
51	Lee Ann H. Murray, Esq.	Chesapeake Bay Foundation	Harrisburg	PA
53	Douglas L. Biden	Electric Power Generation Association	Harrisburg	PA
54	Craig Todd and Orianna Roth Richards	Monroe County Conservation District	Stroudsburg	PA
56	John Brosious	Pennsylvania Municipal Authorities Association (PMAA)	Wormleysburg	PA
		Responsible Drilling Alliance, Ralph Kisberg	Williamsport	PA
		Lehigh Valley Gas Truth, Julie Edgar	Bethlehem	PA
		Delaware Riverkeeper Network, Maya van Rossum	Bristol	PA
		Group Against Smog and Pollution, Lauren Burge	Pittsburgh	PA
		Luzerne County Citizens for Clean Air, Nancy Dolan	West Wyoming	PA
64	Samuel Denisco	PA Chamber of Business and Industry	Harrisburg	PA

GENERAL

1. **Comment:** Two recommendations to maximize effective public participation were offered. First, the Department should arrange to post all permit applications (text and graphics) on its web page, so that they are readily available to the public at the time notice is given in the Pennsylvania Bulletin. Second, the Department should resume its former practice of providing public notice of all general permit registrations and post such documents and associated drawings online. (14)

Response: The Department appreciates the recommendations offered; however, they will not be addressed through the Policy for Permit Coordination. The Department has a separate policy concerning public participation.

2. **Comment:** Our organization is supportive of the Policy for Permit Coordination in that it streamlines the permitting process when multiple permits are involved for complex projects. The coordination effort may reduce the time needed for permit approvals and considers the importance of timeliness to the permit applicant. The DEP statement which describes their adherence to a policy of timely permit issuance in accordance with the Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee is a positive step forward to encourage greater cooperation and communication between the permit applicant and the DEP. Additionally, our organization commends the DEP for the proposed improvements to existing procedures contained in the draft policy for permit coordination. (32, 33)

Response: The Department acknowledges the support provided for the Policy for Permit Coordination. It should be noted that the purpose of this policy (and the Permit Review Process and Permit Decision Guarantee policy) is not to "streamline" the permitting process. The purpose of both policies is to make the permitting process more efficient without compromising thorough review for environmental and public health protection.

3. **Comment:** Our organization supports the use of the pre-application checklist and feels that its use should be mandatory for all Pre-application Conferences. We suggest the form be expanded to accommodate additional comments pertaining to the various application issues noted on the form and summary points from the conference and that the checklist include a section for discussion and determination of applicable public notice and participation requirements for the proposed project. Additionally, we recommend that use of the Pre-application Conference Summary Letter (Appendix B) be mandatory and that DEP provide permit processing timeframes and summarize public participation requirements for the proposed project in the Summary Letter. (33)

Response: The pre-application checklist form will be expanded to accommodate additional comments pertaining to the various application issues noted on the form and summary points from the conference. In addition, the checklist will include a section for discussion and determination of applicable public notice and participation requirements for the proposed project. Finally, the Department will be developing a standard operating

procedure that will assist in scheduling, holding and following up on pre-application meetings.

4. **Comment:** We recommend that DEP develop clear and concise Standard Operating Procedures (SOPs) based on regulatory requirements. This will be a key to the success of the proposed policy. In addition, the MSC requests that prior to implementing the new policy, the DEP review all technical guidance documents, checklists, FAQ sheets, and permit application forms for clarity and content. The MSC is ready and willing to provide assistance in all such reviews pertaining to oil and gas applications. (33)

   Response: Standard operating procedures are already being developed and staff will be reviewing all documents for clarity, content and adherence to the new policy.

5. **Comment:** The Pennsylvania Natural Diversity Inventory (PNDI) process causes extensive delays for our industry. We recommend that DEP continue to improve the coordination with other agencies, negotiating firm, reasonable and timely coordination timeframes, especially with the Pennsylvania Fish and Boat Commission and the Pennsylvania Game Commission to allow the DEP to make its final permit decision. Improved timelines and coordination can be gained by allowing PNDI applicants and their consultants to have access to data and by allowing concurrent reviews by federal agencies and other state resource agencies. (33)

   Response: DEP is currently working with other resources agencies toward timely and coordinated timeframes for Pennsylvania Natural Diversity Inventory (PNDI) review and will be publishing a revised draft policy this fall.

6. **Comment:** DEP should work on improving coordination and timeframes with the U.S. Army Corps of Engineers when reviewing permits which require a joint review by both agencies. (33)

   Response: DEP takes this under advisement as we continue to work to improve processes with all state and federal partners.

7. **Comment:** There are several outdated documents on the elibrary online document repository and all outdated documents should be removed and replaced with current documents. (36)

   Response: The Department acknowledges the need to keep document inventories up-to-date and is working to remove outdated documents currently found in eLibrary. http://www.elibrary.dep.state.pa.us/dsweb/HomePage

8. **Comment:** The goals of this policy are to maximize efficient use of resources, provide clarity to the applicant, and ensure consistent Department actions. The PA Chamber agrees with these goals and supports implementation of the Policy. (64)

Response: The Department acknowledges the support provided for the Policy for Permit Coordination.

PERMIT COORDINATION POLICY

1. **Comment:** The policy statement is noteworthy by its omission of maximizing environmental protection as an objective. Efficient resource use, clarity, and consistency are laudable aims, but only insofar as they are applied to the central responsibility of the Department to protect the environmental of this Commonwealth and the health and welfare of current and future generations of citizens from environmental harm. We recommend that the policy statement be expanded to emphasize the Department's primary responsibility for environmental protection. (14)

   Response: The purpose of this policy (and the Permit Review Process and Permit Decision Guarantee policy) is not to "streamline" the permitting process. The purpose of both policies is to make the permitting process more efficient without compromising thorough review for environmental and public health protection. Through systematic and appropriate implementation of law and regulation, as is consistently stated throughout the policy, these environmental and public health protections are achieved.

2. **Comment:** The document notes that the Department will coordinate with other agencies as needed. Page 3 of the document provides a list of other potentially-affected agencies. For Allegheny and Philadelphia Counties, air permitting is administered by their respective county agency, but these agencies were curiously omitted from the list – please explain. (3)

   Response: Section 12(b) of the Air Pollution Control Act provides that "[t]he administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department." Consequently, Allegheny and Philadelphia Counties would not be subject to the provisions of the PDG program. However, the Department strongly encourages the ACHD to implement the PDG program to ensure consistency throughout the Commonwealth.

3. **Comment:** This policy is to apply to projects that require multiple permits from the Department and its delegated agencies. Neither this section nor the definitions define "project". This is a striking omission in as much as the Department typically allows construction projects to be sliced and diced into small pieces designed to fit is various regulatory programs. This practice has long hampered the ability of the Department to evaluate actual construction projects affecting multiple programs under multiple statues, despite the general requirement in the regulations of specific programs that all statutes are

to be complied with. Yet the Department has been reminded of its responsibility to look beyond the limited purview of individual program concerns when reviewing permits. e.g. Oley Township et al. v. PADEP & Wissahickon Spring Water, Inc. (1996 EHB 1098). (14)

Response: Project refers to any activity that may require authorization from the Department.

4. **Comment:** We note that the applicability of the Policy is broadened to include County Conservation Districts and County Health Departments. The PA Chamber supports this requirement, but realizes the challenges to implementation caused by budgetary constraints. Appendix A, the Pre-Application Conference Checklist, exemplifies this point very well, with no less than fifty-six programs for which coordination applicability must be determined. Achieving the desired permit coordination is a noble goal. Additional tools may be needed to achieve the goals. (64)

Response: For pre-application conferences, this policy merely memorializes the existing processes within the Department. Additional tools and resources will be assigned as necessary to these activities.

5. **Comment:** We are concerned about the policy going forward without DEP first revising the delegation agreements it has with the County Conservation Districts. (51)

Response: DEP is working with the Conservation Districts to review delegation agreements and will revise as necessary moving forward.

6. **Comment:** This document includes the usual disclaimer found in all of the Department's technical guidance that the document does not affect regulatory requirements, is not an adjudication, and is not a regulation. The amount of "weight or deference" that the Department intends to give this coordination policy, like all the Department's technical guidance, remains shrouded in the fog of agency discretion. Thus the public is forewarned regarding this guidance that it should not be taken too seriously. (14)

Response: The Department uses this disclaimer in all of its policies and guidance to make it clear that they do not contain substantive legal requirements. By their nature, policies and guidance have built-in flexibility when implemented by the Department. The Department is committed to using the procedures in both policies, to make the Department's permitting process more predictable and efficient without compromising thorough review for environmental and public health protection.

7. **Comment:** DEP has reserved the discretion to deviate from the policy statement if circumstances warrant. This is a broad statement which could materially undermine the intent of the DEP's Policy for Permit Coordination. The statement indicates that the Policy can be altered for almost any reason if the circumstances warrant. Greater clarification should include which circumstances that would deviate from the Permit Coordination Policy which, most likely, would lengthen the time reviewing multiple

permits and result in costly delays for the project. The language must not be used to dismiss any inefficiency within the Department. (32)

Response: The Department disagrees with this comment. Please see the response to Comment No. 14 above.

DEFINITIONS

1. **Comment:** *"Applicant"* – This definition should be revised. The current wording means that only those people that actually receive a permit are considered an applicant, when I think it should mean everyone who submits a permit application. (19, 41)

   Response: DEP agrees, and the definition in both policies has been updated to reflect this comment.

2. **Comment:** *"Application Manager"* – Who names the Application Manager & when? (19)

   Response: The Application Manager is named by the applicable Section Chief, District Mining Manager or District Oil and Gas Manager upon receipt of an application

3. **Comment:** I propose to add a *new definition "Application Coordinator"* – On page 2 it says *"It will be the responsibility of the Assistant Regional Director to coordinate the review of all permits necessary for the project. For District Oil and Gas Offices and District Mining Offices the Permits Chief or District Manager will, as necessary, coordinate the review of other permits needed for the project*." Is the ARD the Application Manager, or something else, such as an application coordinator? (19)

   Response: The Application Manager is the staff person who is assigned the review of the application as outlined in the policy. The Assistant Regional Director is responsible for application coordination that is the coordination of permits for a multi-permitted project.

4. **Comment:** It may be helpful to clarify the difference between individual and general permits in the definition section. The delineation between the two is often a mystery to many individuals seeking permits. (41)

   Response: These terms are defined in regulation.

5. **Comment:** There are a number of terminology issues in this section similar to those in the preceding policy, such as "large scale multi-permit projects", "very large, high priority economic development projects, etc. Since the preceding policy references pre-application meetings as well, we wonder by Appendices A and B in this policy aren't also included in that policy as well. (34)

Response: The Department does not understand this comment. If by preceding policy, the commenter means the Permit Review Process and Permit Decision Guarantee Policy, the response is that the two policies reference each other and are to be used in unison when permit coordination is necessary.

6. **Comment:** The lack of specific criteria in the development of permit prioritization opens DEP to legal challenges on the arbitrariness of its decisions. A more comprehensive and detailed plan for creating permit review priorities must be established. At the same time, DEP must update its Standard Operating Procedures to ensure consistency. (51)

Response: The Department disagrees in part with this comment, specifically the reference to permit application review prioritization. DEP is in the process of developing standard operating procedures for every authorization.

PRE-APPLICATION CONFERENCES

1. **Comment:** The Pre-Application Conference Procedure is detailed clearly. It is obvious that serious applicants would desire to participate in such a Conference. It is recommended that the Pre-Application Conference Procedure be adopted as policy. Stressing in the document that the Permit Decision Guarantee is contingent upon an adequate submission also must be included. (9)

Response: The Department agrees in part. While Pre-Application Conferences are recommended, they are not required by regulation and cannot be required by policy. Please also see the response to Comment No. 14.

2. **Comment:** Providing for public participation regarding larger, multi-permitted projects is an excellent idea. The Department in requiring public input is providing a much needed service to the public even when the items of concern are not an environmental protection matter. Having an avenue to ask the Operator questions is a needed and important aspect for local residents. Therefore, it is also recommended that this policy contains, promotes and enables a public input component to be regularly utilized where the Operator is available to participate. It would be helpful for the Department to indicate under what circumstances it is planning not to recommend early public coordination for major or minor projects. (9, 14)

Response: DEP maintains a separate Public Participation policy which is currently undergoing revisions and will be posted for public comment when those revisions are final.

3. **Comment:** This policy states that DEP "may provide a Summary Letter" following a pre-application conference. It should be <u>mandatory</u> that DEP provides a written detailed letter outlining the requirements and their decisions. This written summary is the only

way to ensure that both DEP and the Applicant are under the same understanding and that requirements do not change. (2, 13)

Response: The Department agrees that summary letters are a useful tool, both for DEP staff and the applicant. However, not every situation may require such a letter. Therefore for the purposes of this policy; it will not be made mandatory to allow DEP staff necessary flexibility.

4. **Comment:** The Department clearly encourages applicants to participate in pre-application conferences. We are supportive of the greater use of pre-application conferences and feel they will help clarify and address crucial issues up front. This is an appropriate and helpful step whose benefits are not confined to large scale, multi-permit projects. (14, 32, 56)

Response: DEP agrees, though these types of projects are where pre-application conferences have proven most beneficial in the past. No authorization or project will be precluded from having a pre-application conference based on project size.

5. **Comment:** The indication that conferences for large, high-priority economic development projects will be led by the District Oil and Gas Office (for petroleum) or by the District Mining Office (for coal), Permits Chief or Manager while conferences for non-petroleum and non-coal projects will be led by the Regional Director is quite significant. This suggests a clear intent to continue the present separation of Department technical staff expertise in other areas from involvement in review of fossil-fuel extraction projects. This will continue to provide only minimal availability of the Department's general technical environmental expertise to fossil-fuel extraction project reviewers and limit the Department's ability to analyze potential impacts effectively for petroleum and coal development permits. (14)

Response: The Department disagrees entirely with the comment that only minimal technical review is conducted in these offices. DEP has experienced and qualified technical staff of multiple scientific and engineering disciplines located in its District Oil and Gas and District Mining Offices.

6. **Comment:** There is no indication that applicants are expected by the Department to have considered alternatives for discussion at pre-application conferences. Yet most major projects need permits that mandate consideration of alternatives. The Department should take this opportunity to recommend that applicants be prepared to discuss alternatives at pre-application conferences, and its representatives should be prepared to offer applicants guidance on how to document alternatives properly for permit review. (14)

Response: As stated above, the Department will be developing standard operating procedures that will assist in scheduling, holding and following up on pre-application meetings.

7. **Comment:** Many unconventional gas well permits are for locations where multiple wells are drilled on a single pad. Permit coordination may be applicable for the first well drilled on a pad, but not necessarily for additional wells at that location. For example, approved ESCGP and Water Management Plans will already be in place when applications for additional wells are submitted. The pre-application conference and checklist for the initial well should have addressed necessary information for the additional wells that may be drilled. Additional well permits should be reviewed and issued without the need to be subjected to this policy. (27)

   Response: The Department agrees that additional well permits may be reviewed and issued without the need for permit coordination.

8. **Comment:** We suggest that the pre-application conference and conference checklist include local representatives of the township and county, other state agencies such as DCNR, PA Fish and Boat Commission, PA Game Commission, PA DOT, as well as interstate commissions and federal agencies that have jurisdiction over an activity, to the extent practicable. Any concerns that any jurisdictional agency may have can be addressed and any conflicts between agencies can be identified and addressed. (27)

   Response: As stated above, the Department will be developing a standard operating procedure that will assist in scheduling, holding and following up on pre-application meetings.

9. **Comment:** This is a very effective policy which can reduce processing time and will allow interaction with the applicant as to which items need clarification to meet the technical, regulatory and statutory requirements. However, in the statement "Upon request, the Department will schedule pre-application conferences when deemed to be necessary" should be clarified that it is not the DEP that deems the pre-application conference to be necessary but the applicant. The current statement infers the meaning that DEP will conduct a pre-application conference only if the Department deems it necessary. The statement should indicate that upon request, the pre-application conference will always be scheduled with the applicant. (32)

   Response: The Department disagrees that the policy implies "that DEP will conduct a pre-application conference only if the Department deems it necessary." It is clearly our intent to hold pre-application meetings when they are requested. However, it must be noted that in some cases, e.g. small projects applying for straight-forward general permit coverage, it may simply not be necessary to hold a formal meeting in all cases.

10. **Comment:** Completing a Pre-application Checklist and a Summary Letter of the pre-application conference will be helpful in providing a technically, statutory and regulatory complete application and solidify a clear understanding of the requirements of the permitting process for all the parties involved. (32)

    Response: The Department agrees and will be developing a standard operating procedure that will assist in scheduling, holding and following up on pre-application meetings.

11. **Comment:** Should DEP be unable to provide the applicant with a Permit Decision Guarantee timeframe, a detailed explanation needs to accompany the decision and allow the applicant electronic access to progress on the permit approvals. (32)

    Response: DEP will be using its publically-available data management system, eFACTS, and specifically the online *eFACTS on the Web* component, which is available to all permit applicants to track permitting progress.
    http://www.ahs2.dep.state.pa.us/eFactsWeb/default.aspx

    This system has both internal and external tracking mechanisms and will be undergoing some upgrades to improve the clarity and transparency of permit information and progress available to the applicant.

12. **Comment:** Unless required by regulation, a DEP recommendation for public input prior to submitting the application should be left entirely to the discretion of the applicant. (32)

    Response: While the policy encourages applicants to seek public input prior to submitting the application, it is correct that unless required by regulation, public input is left to the discretion of the applicant.

13. **Comment:** DEP staff should give strong consideration to conducting pre-application meetings and site visits prior to permit applications being submitted. DEP must be willing to make firm decisions at the pre-apps (and/or with a timely pre-app follow up letter) and then stand by them when reviewing the permit package for the new process to provide any improvement over the current practices. (36)

    Response: The Department agrees and will be developing a standard operating procedure that will assist in scheduling, holding and following up on pre-application meetings.

14. **Comment:** Aqua and our consultants have voluntarily requested and participated in pre-application conferences with Department staff prior to submitting applications on many projects. We have almost always found the process to be helpful for Aqua and the Department, particularly in identifying potential permit coordination issues. We anticipate continuing, and expanding, use of pre-application conferences. Encouraging these conferences is a positive step. (40)

    Response: DEP agrees and appreciates the feedback.

15. **Comment:** The wording should emphasize that pre-application conferences are not mandatory but highly recommended. (41)

    Response: The Department believes the policy does this.

16. **Comment:** The U.S. Fish and Wildlife Service (Service) supports the concept of pre-application conferences and feels that applicants would benefit by having all of these

resources agencies present for these conferences. This opportunity for interagency coordination currently exists in the form of the Environmental Review Committee (ERC), but is underutilized. In the mid-1990s, the Department and other agencies formed the ERC to discuss the permitting process, application expectations, site-specific resources, and permitting protocols with project applicants. Meetings were held monthly with all State and federal resource agencies attending. The resource agencies encourage applicants, particularly for large or complex projects, to initiate coordination early in the project planning process to discuss potential impacts that may be incurred by project implementation; to identify strategies to avoid or minimize impacts to aquatic resources; and to work out the necessary compensation requirements, once all impacts have been minimized. Furthermore, it is often beneficial to have pre-application meetings on-site, to evaluate habitat types, wildlife presence, and site-specific concerns. We suggest that it would be more efficient to encourage applicants of large or otherwise complex projects to participate in the ERC process, rather than having Department-specific coordination, which only addresses one component of the permitting process. (47)

Response: DEP is currently working with resource agencies toward timely and coordinated timeframes for project reviews. Pre-application conferences are a part of those discussions. The comment will be considered as that process moves forward.

17. **Comment:** Based on the proposed guidance, it appears that an applicant must submit a full mitigation plan with the pre-application conference materials. We feel that planning for mitigation upfront may be premature, as the first step of mitigation- avoidance of impacts through project planning and design- would not have been completed at this stage. Considering compensation or offsets prior to a discussion of steps to avoid and minimize impacts to aquatic resources may be inefficient as well as inappropriate. To satisfy resource agencies, the applicant will be required to conduct due diligence in justifying their impacts to aquatic resources, especially if the project is not water dependent. It is unrealistic to expect an applicant to develop a compensatory mitigation plan if the project is still in early design stages, and the total amount of impacts (both temporary and permanent) is unknown. Furthermore, if a compensatory mitigation plan is developed early on, the applicant has little incentive to reduce impacts to aquatic resources. (47)

Response: This comment appears to be program-specific, and will be addressed through the development of standard operating procedures, application forms and instructions for that program.

18. **Comment:** As a producing member of PACA, I hereby offer my concurrence on the comment letter of Peter Vlahos, President. Allegheny Mineral Corporation is a licensed mining operator and customer of the permitting system. While we agree with the need to improve the system, it must be recognized that the complexity of mining should exempt it from standards established for other forms of permitting. (48)

Response: The Department disagrees.

19. **Comment:** Please amend the policy to clearly denote that it is the Department's responsibility to forward the permit application checklist to the applicant within ten business days (suggested) following the pre-application conference. The draft policy requires Department Program Bureaus to develop and maintain "application checklists and other materials necessary to provide clear and concise expectations for applicants. All permit applications will include a checklist outlining required application materials and information." Please see §III.B.1, page 6; and Department staff to "provide an explanation of the number and type of permits required for the project" during the pre-application conference. Please see §III.B.4(iv), page 7. (56)

Response: The Department will be developing standard operating procedures that will assist in scheduling, holding and following up on pre-application meetings.

20. **Comment:** An accompanying draft policy document (No. 021-2000-301) notes that "Department staff <u>may</u> provide a Summary Letter (Appendix B) following a pre-application conference to confirm discussions and when possible provide permit processing timeframes for the proposed project" (reference page 2, emphasis added). We concur with the Department that issuance of such a summary letter would be an ideal procedure for forwarding the permit application checklist to the applicant. However, because the issuance of the summary letter is at the Department's discretion, we suggest that the policy be amended as outlined above. The Department would have the discretion to forward the permit checklist either as part of a post-conference summary letter or via other procedures (e.g., email transmittal to the application manager). (39, 53)

Response: The Department will be developing standard operating procedures that will assist in scheduling, holding and following up on pre-application meetings.

21. **Comment:** If an applicant is requested to submit a proposed project schedule, the expected submission dates and permit issuance date should include non-DEP permits such as PennDOT and municipal approvals. (54)

Response: This is a good suggestion. The Department agrees and will be developing standard operating procedures that will assist in scheduling, holding and following up on pre-application meetings.

COORDINATION WITHIN THE DEPARTMENT

1. **Comment:** Bullet #1 should be given its own title, such as <u>Monitoring & Tracking</u> and be revised as follows: *"The Department will maintain a Department-wide application processing system for tracking ~~permits~~ <u>applications</u>."* (19)

Response: The Department agrees with the recommendation to edit the text, and has done so in the final policy.

2. **Comment:** Improvement of its current ability to track permits Department-wide could be a major advance. To this end, all permits relevant to a construction project should be tracked together (or at least their file numbers should be fully cross-referenced). At present it is common for staff reviewers in one Department program to have no knowledge of ongoing review by other programs for the same project. In our experience, this situation typically precludes comprehensive review. Environmental impacts often do not fit neatly into the Department's regulatory program pigeonholes. Even more than to Department reviewers, the slicing of project approvals into small "independent" pieces constitute a disservices to the affected residents of this Commonwealth. (14)

   Response: The Department disagrees that this is a common occurrence. Nonetheless, DEP'S improved tracking under this new process will prevent those situations from developing.

3. **Comment:** Given the near universal preparation of application text and drawings using electronic computers, the Department would be prudent to mandate or at least strongly encourage electronic filing of all permit application forms and graphics. This would maximize the productivity and effectiveness of Department staff as well as benefit applicants and conserve paper. (14)

   Response: As a longer-term project, the Department is currently investigating electronic permitting to achieve this type of increased efficiency.

4. **Comment:** We are also supportive of achieving greater consistency between, and sometimes within, regional offices. More detail is necessary to elucidate how this will occur. This would also apply to the direction and oversight by Central Office Bureau Directors and their staff. (56)

   Response: The Department acknowledges past practices may have created inconsistencies. DEP's recent reorganization and this new policy for reviewing and coordinating permits are intended to address those concerns.

5. **Comment:** Revise to read "…and consistent Department action on proposed projects ~~before the commencement of operations, construction or other activities that require Department permits~~." Making sure that no constru**ction starts before the permits are in place is the sole responsibility of the applicant, n**ot the Department. (19)

   Response: The Department acknowledges the comment, though does not believe this comment provides additional clarity.

COORDINATION WITH OTHER AGENCIES

1. **Comment:** The policy states that Department Staff "will follow existing coordination/concurrence procedures with other agencies". This is a critical mistake that if followed, will substantially diminish the potential benefits of this new policy and will prevent in many case, the Guaranteed Timeframe deadlines from being achieved. As a pre-requisite of the implementations of this policy, DEP must undertake a comprehensive review of all existing coordination /concurrence policies with other resource agencies particularly as it applies to the PNDI review process. (2)

   Response: DEP agrees, and is in the process of evaluating these procedures and implementing efficiencies.

2. **Comment:** The policy should be revised to require DEP staff to evaluate all current coordination/concurrence procedures with other resource agencies. DEP should establish reasonable expected timeframes for other agency reviews under the PNDI review process (i.e. 30 days for review of initial notice letter and 30 days for decisions on submittal of any resource assessments). DEP should inform all resource agencies that DEP may act on a permit application if the agency does not provide response within the agreed upon timeframes. If deadlines for the PNDI review process by these resource agencies are not established, the Guaranteed Timeframes for most applications will not be achieved. (2)

   Response: DEP cannot establish expected timeframes for review by other agencies. However, the Department can work with these other agencies to achieve efficiencies as stated above.

3. **Comment:** Effective coordination with other agencies is encouraged and recommended. (9)

   Response: DEP agrees and acknowledges the support.

4. **Comment:** This section starts with "Department staff, when necessary, will follow existing coordination/concurrence procedures with other agencies." This statement defends and tries to justify the delays that the Applicants are already enduring with PNDI. DEP must review the existing coordination/concurrence procedures with the other agencies to establish reasonable time frames that will not delay the permitting process. Without establishing a reasonable timeframe for the other agencies to respond, the time and effort put into this entire policy is futile. (13)

   Response: The Department disagrees. This statement acknowledges that other agencies must provide review and input to the Department, and that review takes time. Further, applicants have the choice to wait to submit applications to the Department after review by these resources agencies has been completed.

5. **Comment:** The first paragraph should be revised as follows: "*~~Department staff, when necessary~~, The Application Manager will follow existing coordination/concurrence procedures with other agencies. These ancillary activities may be in addition to the Department's review of the permit application and ~~may delay~~ the final permit ~~issuance~~ decision will be made when all required coordination review is complete; ~~however~~ the Department will work cooperatively with other agencies to advance necessary ~~approvals~~ reviews." This responsibility could also be placed on the Application Coordinator.* (19)

   Response: The Department disagrees with this proposed change.

6. **Comment:** The policy document lists fourteen agencies with which coordination (when necessary) is expected to follow existing procedures. Surprisingly, it fails to suggest any additional coordination that may be appropriate to expedite permit review. The Department should make use of this opportunity to improve interagency coordination. (14)

   Response: The purpose of this policy (and the Permit Review Process and Permit Decision Guarantee policy) is not to "expedite" the permitting process. The purpose of both policies is to make the permitting process more efficient without compromising thorough review for environmental and public health protection, which includes that by other agencies. The Department is working with other agencies to improve interagency communication and coordination.

7. **Comment:** Applicants for all permits affecting streams, wetlands, or other bodies of water should be urged to delineate, survey, and then provide formal preliminary or approved Jurisdictional Determinations (JDs) for those bodies of water from the Army Corps of Engineers. JDs confirm the limits of such features and potentially can greatly reduce the workload of the Department staff, who typically are unfamiliar with procedures for field delineation. Often the proffered limits of regulated areas are challenged during permit review or after permit approval. It would save time for applicants and greatly reassure the public if preliminary or approved Corps JDs routinely were submitted to the Department as part of every application involving water obstructions or other regulated encroachments. Lacking such information, it is not possible for the Department even to advise applicants accurately what permit approvals they will need for their proposed projects. This easily remedied situation too often leads to unnecessary controversy and avoidable litigation. (14)

   Response: This comment appears to be program-specific, and will be addressed through the development of standard operating procedures, application forms and instructions for that program.

8. **Comment:** Need to Account for Local Permitting Agencies, Generally -As echoed in the comments for the Draft Permit Review Process and Permit Decision Guarantee Policy, local permitting agencies do not share the same internal organization, reporting structure, or procedures for tracking pending permit applications. Any coordination policy must

account for these differences, and provide for regular communication between local permitting agencies, PADEP, and other regulatory agencies. (31)

Response: Local permitting agencies delegated by the Department to conduct work on behalf of the Department will be expected to follow this policy and the standard operating procedures developed as a result. The Assistant Regional Director will be the point of contact for local agency questions and coordination concerns.

9. **Comment:** In addition, the need for other agency review and correspondence (i.e. consistency letters and E&S approval letters) which are obtained concurrently with permit review need to be taken into consideration. While it is ideal to obtain all inter-agency approval prior to submitting a permit package to DEP, project schedules typically do not allow for this. Environmental studies are often required for permit approval; however the guidelines and requirements for these studies are vague. The guideline documents should be improved and more detail provided. (36)

Response: The Department will be revising technical guidance documents to implement this new processing approach.

10. **Comment:** How will the Department coordinate reviews with other agencies (i.e. conservation districts, PHMC, etc.)? (36)

Response: The current coordination arrangements will continue until such time as the Department and the resource agencies are able to agree on changes aimed at improving efficiencies.

11. **Comment:** Under coordination with other agencies: FAA coordination on siting wind turbines would be helpful. (41)

Response: This list is not meant to be a comprehensive listing of coordination with all agencies which is why this and other coordination may not be included.

12. **Comment:** Recognizing that the section header indicates that the 'Coordination with other agencies' list is not complete, we suggest that the list be revised to include coordination with the Service for potential impacts for migratory birds, per the Migratory Bird Treaty Act. Applicants should also be encouraged to coordinate with the Service per the Fish and Wildlife Coordination Act prior to receiving Section 404 permits. You may also consider adding coordination with the Environmental Protection Agency (EPA), per the National Environmental Policy Act (NEPA), on Environmental Justice issues to the list. Since coordination on the aforementioned issues does not result in issuance of a specific permit, applicants may not be aware of their legal requirements to coordinate on these topics. (47)

Response: This list is not meant to be a comprehensive listing of coordination with all agencies which is why this and other coordination may not be included.

13. **Comment:** In regards to decisions that result in application denial, it is recommended that the Department consistently adhere to the Coordination policy. When appropriate and if at all possible, interdependent permits need to be issued simultaneously. For example, given consideration for gathering lines, especially the lengthier routes, it absolutely makes no sense the piecemeal fashion that applications have been submitted and approved. The entire route needs to be submitted, with the entire package and coordination with the necessary permits. Construction commencing lacking the necessary stream and wetland crossing permits leads to confusion for everyone, industry, general public, and Department Enforcement Staff. (9)

Response: The Department acknowledges the recommendation and will consider it in coordination decisions.

14. **Comment:** For clarity, the text should be revised to read *"Denied applications ~~will need to~~ can be re-submitted at any time ~~following appropriate program requirements and procedures~~ and will be considered a new application."* (19)

Response: The Department acknowledges the recommendation.

15. **Comment:** It appears reasonable for the Department henceforth to deny applications that remain information-deficient after two rounds of technical review (or that require design changes) and/or require their refilling as new applications. Implementation of such a policy would appear to place great importance on the Department's determination that an application is complete and ready for technical review. In the past this has not been the case, and this change appears to be a major one for Department staff. (14)

Response: Correct. This is a change in DEP's processing procedure.

16. **Comment:** The import of the statement "Where appropriate, interdependent permits required for a project may be issued simultaneously…" is not clear. Apparently, permits also may not be issued simultaneously, at the discretion of the Department. There is little point in the Department issuing one permit prior to issuance of the remaining permits needed for a project. In part, this is a matter of how "project' is defined. Applicants should not be encouraged to argue that the Department has issued three needed permits but is holding up one, in an effort to pressure the Department to issue the outstanding permit. If one is denied, the others are useless. (14)

Response: The Department will exercise its best professional judgment in determining when it may be appropriate to hold permit applications until all permits are ready to be issued.

17. **Comment:** In some permit programs (such as that for underground coal mines) applicants currently are not required to provide essential environmental inventory information in time for consideration during the Department's permit review. Instead, vital information regarding some or all of an affected property may not be compiled until years after the Department has approved the permit. If the present policy is intended to

change that practice, that would be a great improvement that could allow the Department actually to consider potential impacts before granting permit approval. If not, then a glaring gap in the Department's regulatory practice will remain unaddressed. The revised policy document should make clear what the Department intends when it elects to apply its new policy regarding the completeness of applications. (14)

Response: This comment appears to be program-specific, and will be addressed through the development of standard operating procedures, application forms and instructions for that program

18. **Comment:** The other issue that stands out as problematic is the lack of consistency by DEP when reviewing permit packages. Firms have received administratively deficient letters from some DEP reviewers that appear to solely contain comments related to technical discrepancies, not the absence of the information required for the package to be administratively complete. This makes it appear that the permit package was prepared incorrectly, when it was not, and prevents the review clock from moving forward. There are also inconsistencies within and between DEP regions regarding what practices are acceptable to them. (36)

Response: The Department acknowledges past practices may have created inconsistencies. DEP's recent reorganization and this new policy for reviewing and coordinating permits are intended to address those concerns.

19. **Comment:** The Department's encouragement that applicants consult early with local governments and communities regarding public interests and local concerns is laudable. It is noteworthy, however that the Department considers Environmental Justice outreach to be optional, "depending on the scope of the project." We would have thought that Environmental Justice outreach would not be optional for any permits affecting designated Environmental Justice Areas. The present wording suggests that Environmental Justice is a minor concern for the Department and may not even ben mentioned to applicants as warranting their attention for proposed projects in Environmental Justice Areas. (14)

Response: The Department appreciates the commenter's support for early consultation with local government organizations and communities. When applicable, the Department considers Environmental Justice outreach a critical component to a successful project. DEP's current Environmental Justice Policy is being updated to address these concerns as well as the new permitting approach.

APPENDIX A - PRE-APPLICATION CONFERENCE CHECKLIST

1. **Comment:** The draft forms appear to provide the foundation for addressing permit coordination questions in the pre-application conference instead of through the GIF which could lead to the modification or elimination of the GIF form. The foundation provided by the draft forms should eliminate circumstances where misinterpretation of a question on the GIF form or an attempt to choose a box in a grey area inappropriately tips or temporarily avoids permit coordination. We see the proposed process as greatly improving communication between applicants, consultants, Department personnel and agencies with which the Department coordination during the permit review. (40)

   Response: Appendix A is to assist with the collection of information during a pre-application meeting and to assist with coordination needed for the permitting of a project. Appendix A will not at this time remove the need for the GIF form but as the Department moves forward with the implementation of the policy, the GIF form will be evaluated and may be revised or eliminated as necessary.

2. **Comment:** It is not clear how comprehensive this checklist is meant to be. All types of mining, for example, are omitted. Yet mining permits along occupy four pages of the Appendix draft to guidance 021-2100-001. The Department should correct this apparent oversight or explain why mining is not included here. (14)

   Response: Appendix A is an example. The Department is developing a pre-applications meeting standard operating procedure and each program will be developing application checklists that will be used in pre-application meetings to clearly express the expectations for a complete application.

3. **Comment:** It appears strange that under Permit Coordination only one line is provided for all interactions with Other Agencies, yet the Department has listed fourteen other agencies on page three. At minimum all those agencies should be listed here. (14)

   Response: Such coordination is not necessary for all permit types and, therefore may not be needed for all pre-application meetings. Appendix A is an example.

4. **Comment:** Appendix A includes a section regarding Act 2 projects. It is unclear why Act 2 projects are included in this checklist because Act 2 is not a permitting process, but the Voluntary Remediation Program which may require various permits to execute. We ask that the Department either clarify the intent or remove this section. (42)

   Response: The comment answers its own question. Voluntary Remediation Program may require other permits to execute.

5. **Comment:** Air Quality permits and considerations included in the checklist should also include “General Conformity” and the “Potential Need to Purchase Offset Credits”. (42)

Response: Appendix A is an example. The Department is developing a pre-applications meeting standard operating procedure and each program will be developing application checklists that will be used in pre-application meetings to clearly express the expectations for a complete application.

6. **Comment:** The permit guidance is unclear about what is considered a technically complete application with regard to project reviews and concurrent from other State and Federal agencies. Section II.A. of the draft policy recognizes that coordination and approval by other State, federal, or municipal agencies may cause processing delays beyond the control of the Department. However, the Pre-application Conference Checklist (Appendix A) identified PNDI (Pennsylvania Natural Diversity Index) review as an essential component for a complete application package. We recommend that the Department clarify whether the applicant needs to provide (1) a PNDI receipt or (2) a PNDI receipt including documentation of consultation and clearance by resource agencies for all issues that require additional project review. In order to comply will all State and federal regulations, the Service requests that no permits be issued prior to receiving clearance on natural resources triggered by the PNDI project review. (47)

Response: Appendix A is an example; however, DEP has removed that language to avoid confusion. The Department is developing a pre-applications meeting standard operating procedure and each program will be developing application checklists that will be used in pre-application meetings to clearly express the expectations for a complete application. Moving forward, DEP will have the ability to begin permit review while Pennsylvania Natural Diversity Index (PNDI) clearances are pending. No longer will applications with outstanding PNDI clearances be issued incompleteness letters. DEP will have the ability to begin permit review while PNDI clearances are pending. However, there will be no final decision until the PNDI review process has been completed as required by applicable regulations. DEP may conclude its interim review only to delay making a final permit decision until the PNDI review is completed.

7. **Comment:** In Appendix A, the Pre-Application Conference Checklist, “Impaired Waters” should be added between Special Protection Watershed and Existing/Designated Use, as a riparian forest buffer may need to be established. (54)

Response: Appendix A is an example. The Department is developing a pre-application meeting standard operating procedure and each program will be developing application checklists that will be used in pre-application meetings to clearly express the expectations for a complete application.

APPENDIX B - PRE-APPLICATION CONFERENCE SUMMARY LETTER

1. **Comment:** Including a letter template is a good idea and should promote consistency. Suggest that a copy list be added and it includes the Pre-Application Conference Participants, the Coordinating Agencies and the individual DEP program areas. (19)

   Response: Appendix B is an example. The Department is developing a pre-application meeting standard operating procedure and each program will be developing application checklists and other documents that will be used in pre-application meetings to clearly express the expectations for a complete application.

2. **Comment:** It is also surprising that no mention is made of the Department's efforts to put some of its permit milestones online via eFACTS. That source should be of great interest to applicants seeking to track their approvals, as well as to the affected public. The Department should take credit for initiating and maintaining it as a source of timely information on permit status. (14)

   Response: DEP will be using its publicly-available data management system, eFACTS, and specifically the *eFACTS on the Web* component, which is available to all permit applicants to track permitting progress. This system has both internal and external tracking mechanisms and will be undergoing some upgrades to improve the clarity and transparency of permit information and progress available to the applicant.

3. **Comment:** To ensure that permits are accurately addressing potential environmental impacts, DEP must also be cognizant of the need for public oversight and comment in the permitting process. (51)

   Response: The Department agrees.