

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF CLEAN WATER**

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TITLE: Permitting Policy and Procedure Manual

EFFECTIVE DATE: October 1, 1997
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AUTHORITY: The PA Clean Streams Law, The Federal Clean Water Act, PA Code Title 25, and other State/Federal permitting regulations.

POLICY: To implement the permitting aspects of the Water Quality Protection Program in a fair, equitable, consistent, and environmentally sound manner.

PURPOSE: This Manual describes the policies and procedures for (1) applying for NPDES and WQM permits, and (2) reviewing and processing the permit applications. The policy was revised to incorporate policies and procedures that were issued by memo since the last revision of the policy and procedure. The Process Improvement Team Recommendations on the review procedure for NPDES applications was also incorporated.

APPLICABILITY: All NPDES (Part I) and Water Quality Management (Part II) permits for point sources.

DISCLAIMER: The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies and procedures shall affect regulatory requirements. The policy and procedures herein are not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. This document establishes the framework within which DEP will exercise administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

LENGTH 143 pages

PERMITTING POLICY AND PROCEDURE MANUAL

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Section 110 - DESCRIPTION OF PENNSYLVANIA'S WATER QUALITY PROTECTION PERMIT PROGRAM

A. Water Quality Management Part I (NPDES) and WQM Part II Permitting

Issuance of Water Quality Protection permits occurs in two distinct phases as follows:

Part I (NPDES) Permits - represent authorization to “discharge pollutants” from “point sources” to “navigable waters” (i.e., waters of the Commonwealth) under the National Pollutant Discharge Elimination System.

WQM Part II Permits - represent authorization to construct and operate sewage collection and conveyance systems, and sewage and industrial wastewater treatment facilities. Part II permits are also required for disposal of sewage and industrial waste via land application or underground injection. Part II permits may also be required for construction and operation of surface impoundments or any other activity which has potential to cause pollution of surface or groundwater.

B. Basis and Intent of NPDES Permitting

1. Statutory Basis for NPDES Permitting

Federal Law – Section 402 of the Federal Clean Water Act states that no “person” shall “discharge pollutants” from a “point source” into “navigable waters” without obtaining an NPDES permit. These terms and their definitions are described in Section 502 of the Act, EPA’s NPDES program regulations (40 CFR 122), and Chapter 92 of the Department's rules and regulations.

State Law – Sections 202 and 307 of the Pennsylvania’s Clean Streams Law discuss permit requirements for discharge of “sewage” and “industrial waste” into “waters of the Commonwealth” by a “person” or municipality” as described below. These terms are further defined in Section 1 of the Law.

“Section 202. Sewage Discharges

No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the Department or such person or municipality has first obtained a permit from the Department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the Department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include

a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or hereby declared to be a nuisance.”

“Section 307. Industrial Waste Discharges

(a) No person or municipality shall discharge or permit the discharge of industrial wastes in any manner, directly or indirectly, into any of the waters of the Commonwealth unless such discharge is authorized by the rules and regulations of the Department or such person or municipality has first obtained a permit from the Department. For the purposes of this section, a discharge of industrial wastes into the waters of the Commonwealth shall include a discharge of industrial wastes by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth.”

2. Intent of NPDES Permitting

As a key element in Pennsylvania’s Water Quality Management program, each NPDES permit which is issued to a point source discharger to surface waters serves several important purposes:

- It allows the permittee to discharge to waters of the Commonwealth.
- It directs the permittee to achieve an acceptable quality of effluent prior to discharge.
- It specifies the type and frequency of self-monitoring and reporting which the permittee must carry out in order to demonstrate to the Department that compliance with discharge limitations is being achieved.
- Where applicable, it sets forth a schedule for achieving compliance with discharge limitations and other requirements.
- It serves as the basic legal reference document when it becomes necessary to take enforcement actions against the permittee.

In addition to the above, each NPDES permit represents the culmination of applicable Water Quality Management planning (areawide, basinwide, and local) which forms the basis for allowing the discharge(s) in question to occur.

3. Basic Principles Involved in Preparing NPDES Permits

Because of the importance of NPDES permits to the success of Pennsylvania's Water Quality management program, several key principles must be kept in mind concerning the manner in which NPDES permits are prepared:

- Principle #1 - NPDES permits must conform to, and reflect, the statutory requirements of Pennsylvania's Clean Streams Law and the Federal Clean Water Act, as well as the requirements of state, interstate and federal regulations which are promulgated under these laws or relevant interstate compacts.
- Principle #2 - NPDES permit terms and conditions must be technically correct in order to ensure protection of water quality in the receiving stream and must be legally defensible.
- Principle #3 - NPDES permit effluent limitations and self-monitoring requirements must be technically-compatible in order for both the permittee and the Department to be able to demonstrate compliance with the permit.
- Principle #4 - The supporting calculations, data sources, assumptions, and other factors which form the basis for the permit requirements must be clearly stated and must be made a part of the official permit file for future reference by any interested party (including future permit writers, the permittee, the permittee's legal counsel and technical consultant, the general public, interested government agencies, and environmental groups). With limited exceptions, which are spelled out in Chapter 92a of the Department's regulations, this information is not confidential.

C. Basis and Intent of WQM Part II Permitting

1. Statutory Basis for Part II Permitting

The basis for requiring Part II permits for construction and operation of sewage collection/conveyance systems and sewage or industrial waste treatment facilities is contained in Pennsylvania's Clean Streams Law as follows:

“Section 207. Approval of Plans, Designs, and Relevant Data by the Department

(a) All plans, designs, and relevant data for the construction of any new sewer system, or for the extension of any existing sewer system, by a municipality, or for the extension of any existing construction, except as provided in Section (b) and a location of any treatment works or intercepting sewers by a person or municipality, shall be submitted to the Department for its approval before the same are constructed or erected or acquired. Any such construction or erection which has not been approved by the Department by written permit, or any treatment works not operated or maintained in accordance with the rules and regulations of the Department, is hereby also declared to be a nuisance and abatable as herein provided.”

(b) Except as specifically provided by the rules and regulations of the department, plans, designs and relevant data for the construction of a sewer extension to collect no more than the volume of sewage from two hundred fifty single-family dwelling units or their equivalent by a person or municipality shall not require a permit from the department if such sewer extension is located, constructed, connected and maintained in accordance with the rules and regulations of the department and is consistent with the approved official plan, required by Section 5 of the Act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the “Pennsylvania Sewage Facilities Act,” for the municipality in which the sewer extension is to be located, constructed, connected or maintained. However, all such sewer extensions remain subject to any conditions imposed by the Department, the municipality or any municipal authority whose interest may be affected by the sewer extension. Any such sewer extension which is located, constructed, connected or maintained contrary to the rules and regulations of the department, contrary to the terms and conditions of a permit, inconsistent with the approved official plan for the municipality or contrary to any conditions imposed by the department, municipality or municipal authority is also hereby declared to be a nuisance and abatable as provided herein.

(207) amended July 7, 1989, No. 40)

“Section 308. Approval of Plans, Designs, and Relevant Data by the Department

All plans, designs, and relevant data for the erection and construction of treatment works by any person or municipality for the treatment of industrial wastes shall be submitted to the Department for its approval before the works are constructed or erected. Any such construction or erection which has not been approved by the Department by written permit, or any treatment works not maintained or operated in accordance with the rules and regulations of the Department, is hereby declared to be a nuisance.”

The basis for requiring Part II permits for discharge and disposal of sewage and industrial waste via land application is contained in Sections 202 and 307 of the Clean Streams Law (as discussed above for NPDES permitting).

The basis for requiring Part II permits for disposal of sewage or industrial waste via deep well injection, or for any other activity with potential to cause surface or groundwater pollution is contained in the Clean Streams law as follows:

“Section 402. Potential Pollution

Whenever the Department finds that any activity, not otherwise requiring a permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the Department may, by rule or regulation, require that such activity be conducted only pursuant to a permit

issued by the Department or may otherwise establish the conditions under which such activity shall be conducted, or the Department may issue an order to a person or municipality regulating a particular activity. Rules and regulations adopted by the Department pursuant to this section shall give the persons or municipalities affected a reasonable period of time to apply for and obtain any permits required by such rules and regulations.”

2. Intent of Part II Permitting

The intent of Part II permitting is to insure that facilities for collection, conveyance, treatment and disposal of sewage industrial waste are designed, constructed, and operated in such a way as to insure that they will individually and collectively perform their intended functions and thereby prevent pollution of waters of the Commonwealth.

Part II permits also specify appropriate surface or groundwater monitoring which may be necessary to assure proper operation and maintenance of the permitted facilities.

Part II permits serve as the basic legal reference documents when it becomes necessary to take enforcement actions against permittees.

Part II permits may also approve various management practices to be carried out by permittees (such as PPC plans and erosion and sedimentation control plans).

120 - RELATIONSHIP OF PROFESSIONAL PRACTICE OF ENGINEERING TO PERMIT APPLICATION PROCESSING

A. Responsibility of Program Engineering Staff for Permit Application Review

It is the responsibility of the Bureau engineering staff to provide advice to applicants and consulting engineers relative to the preparation of applications for permits issued by the Department.

This responsibility includes participation in preliminary review conferences to discuss technical issues and the review of permit applications and supporting plans, specifications and reports to the extent that is necessary to determine that a project meets Department requirements.

In accordance with the Department's rules and regulations, Program staff shall not:

- a. Select or recommend specific measures or methods to be adopted by the applicant in meeting the Department's requirements (although staff can advise the applicant of options which should be investigated).
- b. Act as a consulting engineer for an applicant, or recommend the employment of a particular consultant, gather the data for the design of treatment plants, prepare any plans, or act as an inspector on the construction of the project. (This restriction does not pertain to final facility inspections to determine if facilities are constructed in accordance with permit requirements).
- c. Guarantee directly or by implication the efficacy of a proposed method of pollution abatement.

Staff shall exercise best judgment based on their experience in assisting applicants and consultants, but the responsibility for abating pollution shall rest entirely upon the discharger or activity causing the pollution.

B. Code of Ethics of the Engineering Profession

As engineering professionals, it is the responsibility of engineers employed by the Program to abide by the code of ethics of the engineering profession and to bring to the attention of the governing professional engineering societies those instances of violation of the engineering professional code of ethics, as defined in Section 4i of the Commonwealth of Pennsylvania's Professional Engineers Registration Law [see Addendum #1 of this Section].

If it becomes apparent that an improper or unethical practice is occurring, then specific information and recommendations concerning this must be forwarded through the Regional Clean Water Program Manager to the Bureau Director, for review and discussion of follow up action which should be pursued.

C. Engineer Land Surveyor and Geologist Registration Law
Act of 1945, P.L. 913, No. 367

AN ACT

Relating to and regulating the practice of the profession of engineering, including civil engineering, mechanical engineering, electrical engineering, mining engineering and chemical engineering, the profession of land surveying and the profession of geology and constituent parts and combinations thereof as herein defined; providing for the licensing and registration of persons practicing said profession, and the certification of engineers-in-training and surveyors-in-training, and the suspension and revocation of said licenses, registrations and certifications for violation of this act; prescribing the powers and duties of the State Registration Board for Professional Engineers, Land Surveyors and Geologists, the Department of State and the courts; prescribing penalties; and repealing existing laws. (Title amended Dec. 16, 1992, P.L.1151, No.151)

Section 1. Short Title.--This act shall be known and may be cited as the "Engineer, Land Surveyor and Geologist Registration Law."

(1 amended Dec. 16, 1992, P.L.1151, No.151)

Section 2. Definitions.--As used in this act--

(a) (1) "Practice of Engineering" shall mean the application of the mathematical and physical sciences for the design of public or private buildings, structures, machines, equipment, processes, works or engineering systems, and the consultation, investigation, evaluation, engineering surveys, construction management, planning and inspection in connection therewith, the performance of the foregoing acts and services being prohibited to persons who are not licensed under this act as professional engineers unless exempt under other provisions of this act.

(2) The term "Practice of Engineering" shall also mean and include related acts and services that may be performed by other qualified persons, including but not limited to, municipal planning, incidental landscape architecture, teaching, construction, maintenance and research but licensure under this act to engage in or perform any such related acts and services shall not be required.

(3) The foregoing shall not be deemed to include the practice of architecture as such, for which separate registration is required under the provisions of the act of July 12, 1919 (P.L.933, No.369), entitled "An act to regulate the practice of architecture in the Commonwealth of Pennsylvania by providing for the examination and registration of architects by a State Board of Examiners; defining the power and duties of said board of examiners; and providing penalties for the violation of this act," excepting only architectural work incidental to the "practice of engineering."

(4) The "Practice of Engineering" shall not preclude the practice of the sciences which shall include but not be limited to: soil science, geology, physics and chemistry.

((a) amended Dec. 19, 1990, P.L.782, No.192)

(b) "Inspection" shall mean the acts and services performed in the practice of engineering during the construction, development, production or functioning of the things designed: Provided, That

performance of such acts and services shall not be construed as a guarantee of satisfactory performance by others, or an assumption of financial liability for defects or deficiencies in the work of others.

(c) "Engineer-in-Training" means a candidate for licensure as a professional engineer, who has been granted a certificate as an engineer-in-training after successfully passing the prescribed written examination in fundamental engineering subjects, and who shall be eligible upon the completion of the requisite years of experience in engineering, under the supervision of a professional engineer, or similarly qualified engineer, for the final examination prescribed for licensure as a professional engineer.

(d) "Practice of Land Surveying" means the practice of that branch of the profession of engineering which involves the location, relocation, establishment, reestablishment or retracement of any property line or boundary of any parcel of land or any road right-of-way, easement or alignment; the use of principles of land surveying, determination of the position of any monument or reference point which marks a property line boundary, or corner setting, resetting or replacing any such monument or individual point including the writing of deed descriptions; procuring or offering to procure land surveying work for himself or others; managing or conducting as managers, proprietors or agent any place of business from which land surveying work is solicited, performed, or practiced; the performance of the foregoing acts and services being prohibited to persons who are not granted certificates of registration under this act as a professional land surveyor unless exempt under other provisions of this act. ((d) amended Dec. 13, 1979, P.L.534, No.120)

(e) "Professional Engineer" means an individual licensed and registered under the laws of this Commonwealth to engage in the practice of engineering. A professional engineer may not practice land surveying unless licensed and registered as a professional land surveyor as defined and set forth in this act; however, a professional engineer may perform engineering land surveys. ((e) amended Dec. 13, 1979, P.L.534, No.120)

(f) "Professional Land Surveyor" means an individual licensed and registered under the laws of this Commonwealth to engage in the practice of land surveying. A professional land surveyor may perform engineering land surveys but may not practice any other branch of engineering. ((f) amended Dec. 13, 1979, P.L.534, No.120)

(g) "Board" means The State Registration Board for Professional Engineers, Land Surveyors and Geologists. ((g) amended Dec. 16, 1992, P.L.1151, No.151)

(h) "Department" means the Department of State.

(i) "Responsible Charge" means a position that requires initiative, skill and independent judgment, and implies such degree of competence and accountability gained by technical education and experience of a grade and character as is sufficient to qualify an individual to personally and independently engage in and be entrusted with the work involved in the practice of engineering or land surveying. This term does not include positions which require routine performance of subprofessional work such as auxiliary survey personnel (unless acting as chief of party) and drafting personnel. ((i) amended Dec. 13, 1979, P.L.534, No.120)

(j) "Engineering Land Surveys" means surveys for: (i) the development of any tract of land including the incidental design of related improvements, such as line and grade extension of roads, sewers and grading but not requiring independent engineering judgment: Provided, however, That tract

perimeter surveys shall be the function of the Professional Land Surveyor; (ii) the determination of the configuration or contour of the earth's surface, or the position of fixed objects thereon or related thereto by means of measuring lines and angles and applying the principles of mathematics, photogrammetry or other measurement methods; (iii) geodetic survey, underground survey and hydrographic survey; (iv) storm water management surveys and sedimentation and erosion control surveys; (v) the determination of the quantities of materials; (vi) tests for water percolation in soils; and (vii) the preparation of plans and specifications and estimates of proposed work and attendant costs as described in this subsection.

((j) amended Dec. 19, 1990, P.L.782, No.192)

(k) "Employee" means an individual who is on payroll and for whom taxes are withheld and Social Security is withheld and matched. ((k) added Dec. 19, 1990, P.L.782, No.192)

(l) "Surveyor-in-Training" means a candidate for licensure as a professional land surveyor who has been granted a certificate as a surveyor-in-training after successfully passing the prescribed written examination in fundamental land surveying subjects and who shall be eligible, upon the completion of the requisite years of experience in land surveying, under the supervision of a professional land surveyor or similarly qualified surveyor, for the final examination prescribed for licensure as a professional land surveyor. ((l) added Dec. 19, 1990, P.L.782, No.192)

(m) "Geology" means the science which treats the Earth in general, the study of the physical Earth, the investigation of the Earth's crust and the rocks and other minerals which compose it and the applied science of utilizing knowledge of the Earth and its constituent rocks, minerals, liquids, gases and other materials for the benefit of mankind. ((m) added Dec. 16, 1992, P.L.1151, No.151)

(n) "Practice of geology" means the practice or the offer to practice geology for others for a fee, including, but not limited to, describing the natural processes acting on earth materials, gases or fluids, predicting the probable occurrence of natural resources, predicting and locating natural or man-induced phenomena which may be useful or hazardous to mankind and recognizing, determining and evaluating geologic factors. The term shall also include the performance of geological service or work, consultation, investigation, evaluation, planning, mapping and inspection of geological work required in implementing the provisions of any Federal or State law or regulation or the provisions of any ordinance, code, rule or permit required by any local political subdivision. The term shall not include the practice of engineering, land surveying or landscape architecture for which separate licensure is required. ((n) added Dec. 16, 1992, P.L.1151, No.151)

(o) "Activity" shall mean any qualifying activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to a licensee's professional practice. ((o) added May 12, 2010, P.L.192, No.25)

(p) "College or Unit Semester Hour" or "College or Unit Quarter Hour" shall mean credit for courses in programs approved by the Accreditation Board of Engineering and Technology or the National Association of State Boards of Geology or other related college courses. ((p) added May 12, 2010, P.L.192, No.25)

(q) "Continuing Education Unit" shall mean a unit of credit customarily used for continuing education courses. ((q) added May 12, 2010, P.L.192, No.25)

(r) "Course" shall mean any qualifying course with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to a licensee's professional practice. ((r) added May 12, 2010, P.L.192, No.25)

(s) "Geologist-in-training" means a candidate for licensure as a professional geologist who has been granted a certificate as a geologist-in-training after successfully passing the required written examination in fundamental geology subjects and who shall be eligible, upon completion of the requisite years of experience in geology under the supervision of a professional or similarly qualified geologist, for the final examination prescribed for licensure as a professional geologist. ((s) added May 12, 2010, P.L.192, No.25)

(t) "Professional Development Hour" or "PDH" shall mean fifty minutes of instruction or presentation relevant to professional practice or any equivalent. ((t) added May 12, 2010, P.L.192, No.25)

(2 amended Nov. 24, 1967, P.L.548, No.270)

Compiler's Note: Section 6 of Act 25 of 2010, which amended subsecs. (o), (p), (q), (r), (s) and (t), provided that the State Registration Board for Professional Engineers, Land Surveyors and Geologists shall promulgate regulations necessary to implement Act 25 within 18 months of the effective date of section 6.

Section 3. Practice of Engineering, Land Surveying or Geology Without Licensure and Registration Prohibited.--(a) In order to safeguard life, health or property and to promote the general welfare, it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer, for any person to practice or to offer to practice land surveying, unless he is licensed and registered under the laws of this Commonwealth as a professional land surveyor or for any person to practice or to offer to practice geology unless he is licensed and registered under the laws of this Commonwealth as a professional geologist. Individuals licensed as professional engineers, professional land surveyors or registered landscape architects may perform geological work which is incidental to their engineering, surveying or landscape architecture without being licensed as a professional geologist.

(b) A person shall be construed to practice or offer to practice engineering, land surveying or geology who practices any branch of the profession of engineering, land surveying or geology; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist, or through the use of some other title implies that he is an engineer, land surveyor or geologist or that he is registered under this act; or who holds himself out as able to perform, or who does perform any engineering, land surveying or geological service or work or any other service designated by the practitioner or recognized as engineering, land surveying or geology.

(3 amended Dec. 16, 1992, P.L.1151, No.151)

Section 4. General Powers of Board.--The board shall have power--

(a) Approval of Engineering, Surveying and Geology Curricula.--To investigate and to approve or disapprove engineering, surveying and geology curricula of this State, and other states, territories and

countries for the education of students desiring to be licensed to engage in the practice of engineering, land surveying or geology, and to revoke or suspend approvals where they are no longer deemed proper.

(b) Licensing Professional Engineers, Professional Land Surveyors and Professional Geologists.--To provide for and to regulate the licensing, and to license to engage in the practice of engineering, land surveying or geology any person of good moral character and repute who speaks and writes the English language, if such person either--

(1) Holds an unexpired license or certificate of registration issued to him by proper authority of some other state, foreign country or territory of the United States in which the requirements and qualifications to engage in the practice of engineering, land surveying or geology were at the time of the initial issuance of such license or certificate of registration at least equal to the existing standards of this Commonwealth: Provided, however, That such other state, territory or foreign country shall similarly license or register professional engineers, professional land surveyors or professional geologists licensed and registered in this Commonwealth. A person may be licensed under this subsection without examination.

(2) In relation to engineers and surveyors, holds a certificate of qualifications issued by the National Bureau of Engineering Registration of the National Council of Examiners for Engineering and Surveying: Provided, The requirements and qualifications of said bodies to engage in the practice of engineering or land surveying are at least equal to the standards of this Commonwealth. A person may be licensed under this subsection without examination.

In carrying into effect clauses (1) and (2) of subsection (b) of this section in relation to engineers and surveyors the board may in its discretion enter into agreements for reciprocity with the National Council of Examiners for Engineering and Surveying and with states under such rules and regulations as the board may prescribe.

(3) Complies with the education and experience criteria and successfully completes the two-examination process for licensing as a professional engineer, as set forth in section 4.2, or as a professional land surveyor, as set forth in section 4.3 or the examination process for licensing as a professional geologist as set forth in section 4.4.

(c) Investigations of Applications; Determination of Competency of Applicants.--To investigate the allegations contained in any application for licensure or certification under this act in order to determine the truth of such allegations and to determine the competency of any person applying for licensure to assume responsible charge of the work involved in the practice of engineering, land surveying or geology, such competency to be determined by the grade and character of the engineering work, the grade and character of the land surveying work or the grade and character of geologic work actually performed. In relation to engineers and surveyors, the mere execution as a contractor of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent, or the operation or maintenance of machinery or equipment, or work performed as a salesman of engineering equipment or apparatus, shall not be deemed to be active practice in engineering, unless such work has involved the actual practice of engineering. Engineering and land surveying work, performed under the supervision of a professional engineer or land surveyor, respectively, shall be given full credit. Whenever the board determines otherwise than by examination, that an applicant has not produced sufficient evidence to show that he is competent to be placed in responsible charge and shall refuse to examine or to license such applicant, it shall set forth in writing its findings and the reasons for its conclusions and furnish a copy thereof to the applicant.

(d) Examinations; Fees.--To prescribe the subjects, manner, time and place of examinations for licenses as professional engineers, professional land surveyors and professional geologists and for certificates for engineers-in-training, geologists-in-training and surveyors-in-training, and the filing of applications for such examinations, and to prepare or provide for the preparation of such examinations, conduct or provide for the conduct of such examinations, to make written reports of such examinations, which reports shall be preserved for a period of not less than three years, to collect such fees for such examinations, and for licenses and certificates issued without examination, as may be fixed according to law, and to issue licenses and certificates to such persons as successfully pass such examinations.
((d) amended May 12, 2010, P.L.192, No.25)

(e) Biennial Registrations; Fees.--To provide for, regulate and require all persons licensed in accordance with the provisions of this act and all persons licensed and registered under prior laws of this Commonwealth, relating to the licensing of professional engineers and professional land surveyors, to register biennially with the board, to prescribe the form of such registration, after consultation with the Commissioner of Professional and Occupational Affairs and the payment of such biennial registration fee, as shall be fixed according to law, to issue biennial registration to such persons and to suspend or revoke the license or registration of such persons as fail, refuse or neglect to so register, or pay such fee within such time as the board shall prescribe by its rules and regulations, and to reinstate licenses and registrations of persons who shall thereafter pay such registration fees in accordance with the rules and regulations of the board.

(f) Roster of Registrants.--To keep a roster showing the names and addresses of professional engineers, professional land surveyors and professional geologists licensed under this act, and under prior laws, and registered by the board, which roster shall be published in booklet form by the board following each biennial renewal. Copies of the roster shall be furnished upon request to each registered or certified person and may be furnished to other persons upon such terms as the board shall prescribe: Provided, however, That copies of the roster shall be furnished to the Planning Commission and the prothonotary of each county in the Commonwealth.

(g) Suspension and Revocation of Licenses; Registrations and Certificates; Reinstatements.--To suspend or revoke the license and registration of any professional engineer, professional land surveyor or professional geologist or the certificate of any engineer-in-training, geologist-in-training or surveyor-in-training, who is found guilty by the board, by a majority vote of all its members, of the practice of any fraud, deceit or misrepresentation in obtaining his license, certification or registration, or of gross negligence, incompetency or misconduct in the practice of engineering, in the practice of land surveying or in the practice of geology, or of violation of the code of ethics of the engineering profession, and to reinstate suspended licenses, registrations and certificates in any cases where a majority of all the members of the board shall determine the same to be just and proper. Unless ordered to do so by a court, the board shall not reinstate the license, certificate or registration of a person to practice as a professional engineer, professional land surveyor, professional geologist or an engineer-in-training, geologist-in-training or a surveyor-in-training which has been revoked, and such person shall be required to apply for a license, certificate or registration after a period of five years in accordance with section 2 if he desires to practice at any time after such revocation. The board shall require a person whose license or registration has been suspended or revoked to return the license or registration in such manner as the board directs. Failure to do so shall be a misdemeanor of the third degree. Misconduct in the practice of engineering, land surveying or geology shall include, but not be limited to conviction for a criminal offense such as extortion, bribery or fraud or entry of a plea of nolo contendere to a charge thereof for conduct relating to the practice of engineering, land surveying or geology, or has violated any provision

of this act or any regulation promulgated by the board. For the purposes of this subsection, the code of ethics is as follows: ((g) intro. par. amended May 12, 2010, P.L.192, No.25)

It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer, professional land surveyor or professional geologist:

(1) To act for his client or employer in professional matters otherwise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered.

(2) To attempt to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone.

(3) To attempt to supplant another engineer, land surveyor or geologist after definite steps have been taken toward his employment.

(4) To compete with another engineer, land surveyor or geologist for employment by the use of unethical practices.

(5) To review the work of another engineer, land surveyor or geologist for the same client, except with the knowledge of such engineer, land surveyor or geologist, or unless the connection of such engineer, land surveyor or geologist with the work has terminated.

(6) To attempt to obtain or render technical services or assistance without fair and just compensation commensurate with the services rendered: Provided, however, the donation of such services to a civic, charitable, religious or eleemosynary organization shall not be deemed a violation.

(7) To advertise in self-laudatory language, or in any other manner, derogatory to the dignity of the profession.

(8) To attempt to practice in any field of engineering, land surveying or geology in which the registrant is not proficient.

(9) To use or permit the use of his professional seal on work over which he was not in responsible charge.

(10) To aid or abet any person in the practice of engineering, land surveying or geology not in accordance with the provision of this act or prior laws.

The board shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as may be required under this subsection.

The board shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by the hearing examiners.

The hearing examiners shall have the power to conduct hearings in accordance with the regulations of the board, and to issue subpoenas requiring the attendance and testimony of individuals or the production of, pertinent books, records, documents and papers by persons whom they believe to have information relevant to any matter pending before the examiner. Such examiner shall also have the power to administer oaths.

The hearing examiner shall hear evidence submitted and arguments of counsel, if any, with reasonable dispatch, and shall promptly record his decision, supported by findings of fact, and a copy thereof shall immediately be sent to the board and to counsel of record, or the parties, if not represented.

If application for review is made to the board within twenty days from the date of any decision made as a result of a hearing held by a hearing examiner, the board shall review the evidence, and if deemed advisable by the board, hear argument and additional evidence. As soon as practicable, the board shall make a decision and shall file the same with its finding of the facts on which it is based and send a copy thereof to each of the parties in dispute.

(h) Financial Requirements of Board.--(1) To submit annually to the Department of State an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.

(2) To submit annually to the House and Senate Appropriations Committees, fifteen days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

(i) Administration and Enforcement of Laws.--To administer and enforce the laws of the Commonwealth relating to the practice of engineering, land surveying and geology, and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practices.

(j) Minutes and Records.--To keep minutes and records of all its transactions and proceedings. Copies thereof duly certified by the secretary of the board shall be received in evidence in all courts and elsewhere.

(k) Member of National Council of Examiners for Engineering and Surveying; Dues.--To become a member of the National Council of Examiners for Engineering and Surveying, and to pay such dues as said council shall establish, and to send delegates to the annual meeting of said council, and to defray their expenses.

(l) Administrative Rules and Regulations.--To adopt, promulgate and enforce such administrative rules and regulations, not inconsistent with this act, as are deemed necessary and proper by the board to carry into effect the powers conferred by this act, which shall include establishing requirements for continuing education to be fulfilled by individuals licensed and registered under this act. The rules and regulations shall include any fees necessary for the board to carry out its responsibilities regarding establishing continuing education requirements. ((l) amended Nov. 29, 2006, P.L.1534, No.170)

(m) Status of Complaints.--The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

(n) Member of National Association of State Boards of Geology; Dues.--To become a member of the National Association of State Boards of Geology, to pay dues as the association shall establish, to

send delegates to the annual meeting of the association and to defray their expenses. ((n) added May 12, 2010, P.L.192, No.25)

(4 amended Dec. 16, 1992, P.L.1151, No.151)

Compiler's Note: Section 6 of Act 25 of 2010, which amended subsecs. (d) and (g) intro. par. and added subsec. (n), provided that the State Registration Board for Professional Engineers, Land Surveyors and Geologists shall promulgate regulations necessary to implement Act 25 within 18 months of the effective date of section 6.

Section 4.1. State Registration Board for Professional Engineers, Land Surveyors and Geologists.--(a) There is hereby established within the Department of State the State Registration Board for Professional Engineers, Land Surveyors and Geologists. The board shall consist of the Commissioner of Professional and Occupational Affairs, three members appointed by the Governor who shall be persons representing the public at large and nine members appointed by the Governor, five of whom shall be registered professional engineers, two of whom shall be registered professional land surveyors and two of whom shall be registered professional geologists. Any land surveyor appointed to serve on the board shall have received the land surveyor license upon the passage of the appropriate examination. Any geologist licensed under section 4.4 of this act shall be eligible for appointment to the board. The professional members of the board shall be so selected that not more than two of them shall specialize in any one of the five major disciplines of engineering: civil, mining and metallurgical, mechanical, electrical and chemical. Each member of the board shall be a citizen of the United States and a resident of this Commonwealth. Each professional member shall have been engaged in the practice of the respective profession for at least ten years and shall have been in responsible charge of work for at least five years. ((a) amended Nov. 25, 2002, P.L.1113, No.136)

(b) The terms of members of the board shall be six years, or until his successor has been appointed and qualified but not longer than six months beyond the six-year period. In the event that any of said members shall die or resign during his term, his successor shall be appointed in the same way and with the same qualifications and shall hold office for the unexpired term. No member shall be eligible for appointment to serve more than two consecutive full terms.

(c) Seven members of the board shall constitute a quorum. A member may not be counted as part of a quorum or vote on any issue, other than temporary and automatic suspension, under this act unless he is physically in attendance at the meeting.

(d) The board shall select annually a president from among its members.

(e) Each member of the board, except the Commissioner of Professional and Occupational Affairs and the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, shall receive sixty dollars per diem when actually attending to the work of the board. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties.

(f) The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(g) A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the

member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(h) A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," shall forfeit board membership unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(4.1 amended Dec. 16, 1992, P.L.1151, No.151)

Section 4.2. Procedure for Licensing as Professional Engineer.--(a) An applicant for licensure as a professional engineer shall satisfactorily complete the engineering fundamentals examination and become certified as an engineer-in-training and subsequently show evidence of experience satisfactory to the board to prepare him for the engineering principles and practice examination.

(b) (1) An applicant for the engineer-in-training certificate shall show satisfactory evidence of:

(i) graduation from an approved engineering curriculum of four or more years; or

(ii) eight or more years of progressive experience in engineering work and knowledge, skill and education approximating that attained through graduation from an approved engineering curriculum.

(2) An engineering student who has completed two or more years of an approved program in engineering may, subject to board approval, sit for the examination; but such student shall not be eligible for certification until he shows proof of graduation.

(3) An applicant who satisfactorily completes the examination in engineering fundamentals shall be certified as an engineer-in-training without time limitation and may remain certified until such time as he becomes licensed under this act as a professional engineer.

(c) An applicant who is a certified engineer-in-training may apply for licensure and shall pass the examination in engineering principles and practice. To qualify for the principles and practice examination, an applicant shall, in addition to holding the engineer-in-training certificate, show satisfactory proof of:

(1) four or more years of progressive experience in engineering work performed after the issuance of the engineer-in-training certificate and under the supervision of a professional engineer or a similarly qualified engineer of a grade and character to fit him to assume responsible charge of the work involved in the practice of engineering; or

(2) four or more years of progressive teaching experience in an approved curriculum under the supervision of a professional engineer or a similarly qualified engineer of a grade or character to fit him to assume responsible charge of the work involved in the practice of engineering.

(d) The board may grant one year of experience credit for each postbaccalaureate engineering degree earned by applicants for licensure, not to exceed two years, provided that:

(1) the degree is from an engineering program approved by the board;

(2) the degree is in the same discipline as an earned undergraduate degree; and

(3) the academic time is not concurrent with earned experience.

((d) added Nov. 27, 2003, P.L.320, No.35)

(4.2 added Dec. 19, 1990, P.L.782, No.192) delete

Compiler's Note: Section 14 of Act 192 of 1990, which added section 4.2, provided that sections 4.2 and 4.3 shall not apply to any person who completes the educational requirements by June 30, 1994, for licensure as a professional engineer or professional land surveyor as those requirements existed on the day prior to the effective date of Act 192. Sections 4.2 and 4.3 shall not apply to any person who begins the experience requirements prior to the effective date of this act for licensure as a professional engineer or land surveyor as those requirements existed on the day prior to the effective date of Act 192. Such persons to whom sections 4.2 and 4.3 do not apply shall comply with the education and experience requirements as they existed on the day prior to the effective date of Act 192.

Section 4.3. Procedure for Licensing as Professional Land Surveyor.--(a) An applicant for licensure as a professional land surveyor shall satisfactorily complete the surveying fundamentals examination and become certified as a surveyor-in-training and subsequently show evidence of experience satisfactory to the board to prepare for the land surveying principles and practice examination.

(b) (1) An applicant for the surveyor-in-training certificate shall show satisfactory evidence of:

(i) graduation from an approved civil engineering curriculum of at least four years, including no less than ten credit hours instruction in surveying;

(ii) six or more years of progressive experience in surveying and knowledge, skill and education deemed equivalent, in accordance with board regulation, to graduation from an approved curriculum in land surveying or civil engineering; or

(iii) an associate's degree in an approved surveying technology curriculum.

((1) carried without amendment Nov. 25, 2002, P.L.1113, No.136)

(2) An applicant who satisfactorily completes the fundamentals examination shall be certified as a surveyor-in-training without time limitation and may remain certified until such time as he becomes licensed under this act as a professional land surveyor.

(3) An applicant shall show diversification of field and office experience, with at least twenty-five per cent of his experience in each.

(4) An applicant who is a surveying student who has completed two or more years of an approved curriculum may, subject to board approval, sit for the examination, but such student shall not be eligible for certification until that student shows proof of graduation. ((4) added Nov. 25, 2002, P.L.1113, No.136)

(c) Each applicant for licensure shall be certified as a surveyor-in-training and shall pass an examination in land surveying principles and practice. To qualify for the principles and practice examination, the applicant shall demonstrate:

(1) Four or more years of progressive experience in land surveying work performed after the issuance of the surveyor-in-training certificate and under the supervision of a professional land surveyor or a similarly qualified surveyor of a grade or character to fit him to assume responsible charge of the work involved in the practice of land surveying.

(2) Four or more years of progressive teaching experience in an approved curriculum under the supervision of a professional land surveyor or a similarly qualified surveyor of a grade and character to fit him to assume responsible charge of the work involved in the practice of land surveying.

(4.3 added Dec. 19, 1990, P.L.782, No.192)

Compiler's Note: Section 14 of Act 192 of 1990, which added section 4.3, provided that sections 4.2 and 4.3 shall not apply to any person who completes the educational requirements by June 30, 1994, for licensure as a professional engineer or professional land surveyor as those requirements existed on the day prior to the effective date of Act 192. Sections 4.2 and 4.3 shall not apply to any person who begins the experience requirements prior to the effective date of this act for licensure as a professional engineer or land surveyor as those requirements existed on the day prior to the effective date of Act 192. Such persons to whom sections 4.2 and 4.3 do not apply shall comply with the education and experience requirements as they existed on the day prior to the effective date of Act 192.

Section 4.4. Procedure for Licensing as Professional Geologist.--(a) An applicant for licensure as a professional geologist shall satisfactorily complete the fundamentals of geology examination and provide the board with satisfactory evidence of experience that would have prepared the applicant for the practice of geology. ((a) amended May 12, 2010, P.L.192, No.25)

(b) An applicant shall be qualified to be licensed after submission of proof satisfactory to the board that the applicant:

(1) Is of good moral character.

(2) Has graduated from an accredited institution of higher learning with a major in geology, geophysics, geochemistry or engineering geology with a minimum of thirty semester or forty-five quarter hours in geology, geophysics, geochemistry, engineering geology or their subdivisions; or completion of thirty semester or forty-five quarter hours or an equivalent amount of geological education from institutions which do not grant semester or quarter hours in geological science courses leading to a major in geology, of which at least twenty-four semester hours or an equivalent amount are in third or fourth year or graduate courses.

(3) Has completed at least five years of professional geological work, which shall include either a minimum of three years of professional geological work under the supervision of a licensed professional geologist or a minimum of five years experience in a responsible position in professional geological work. Professional geological work performed prior to the effective date of this section shall satisfy the requirement of this clause if it is performed under the supervision of either a licensed

professional geologist or a qualified geologist who was not licensed. For purposes of this clause, professional geological work does not include routine sampling, laboratory work or geological drafting. Credit for graduate study may not exceed a total of two years toward meeting the required number of years of professional geological work.

(4) Has passed any examination adopted by the board.

(5) Has paid all appropriate fees in the amount determined by the board by regulation.

(c) (1) An applicant for the geologist-in-training certificate shall provide satisfactory evidence of graduation from an approved geology curriculum of four or more years.

(2) A geology student that has completed two or more years of an approved program in geology may sit for the fundamentals of geology examination if approved by the board but may not be certified until proof of graduation is submitted to the board.

((c) added May 12, 2010, P.L.192, No.25)

(d) Upon graduation an applicant that has satisfactorily completed the fundamentals of geology examination shall be certified as a geologist-in-training and may retain that certification until the applicant becomes licensed as a professional geologist. ((d) added May 12, 2010, P.L.192, No.25)

(4.4 added Dec. 16, 1992, P.L.1151, No.151)

Compiler's Note: Section 6 of Act 25 of 2010, which amended subsec. (a) and added subsecs. (c) and (d), provided that the State Registration Board for Professional Engineers, Land Surveyors and Geologists shall promulgate regulations necessary to implement Act 25 within 18 months of the effective date of section 6.

Section 4.5. Continuing Professional Competency Requirements.--(a) In order to help safeguard life, health and property and to promote the public welfare, the practice of professional engineering, professional land surveying and professional geology in this Commonwealth requires continuing professional competency.

(b) Except as otherwise provided under subsection (g), each licensee shall be required to meet the continuing professional competency requirements of this section as a condition for licensure renewal. Continuing professional competency obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, including law and ethics applicable to the profession, or develop new and relevant skills and knowledge. No credit shall be given for a course in practice building or office management. ((b) amended Apr. 12, 2012, P.L.225, No.24)

(c) Each licensee shall be required to obtain twenty-four PDH units during the biennial renewal period. If a licensee exceeds the requirement in any renewal period, a maximum of twelve PDH units may be carried forward into the subsequent renewal period. PDH units may be earned as follows:

(1) Successful completion of college courses relevant to professional practice.

(2) Completion of continuing education courses relevant to professional practice.

(3) Completion of correspondence, televised, videotaped and other short courses or tutorials relevant to professional practice.

(4) Completion of seminars, employer-sponsored courses, workshops or professional or technical presentations made at meetings, conventions or conferences relevant to professional practice.

(5) Teaching, presenting or instructing in any of the activities listed in clauses (1), (2), (3) and (4).

(6) Authoring published papers, articles or books relevant to professional practice.

(7) Obtaining patents relevant to professional practice.

(d) (1) Except as provided in clause (2), units of other types of credit shall be converted to PDH units as follows:

(i) One college or unit semester hour shall equal forty-five PDH units.

(ii) One college or unit quarter hour shall equal thirty PDH units.

(iii) One continuing education unit shall equal ten PDH units.

(iv) One hour of professional development in course work, seminars or professional, technical presentations made at meetings, employer-sponsored courses, conventions or conferences shall equal one PDH unit.

(v) Each published paper, article or book shall equal ten PDH units.

(vi) Each patent obtained shall equal ten PDH units.

(2) Teaching any of the activities listed in clause (1)(i), (ii), (iii) and (iv) shall equal double the amount of PDH units provided for in those subclauses. Teaching credit shall be awarded for teaching a course or seminar but shall not be awarded to full-time faculty members in the performance of their duties at their employing institutions.

(e) The board shall not require courses to be preapproved. The board may preapprove course providers. The board shall have final authority regarding approval of courses, credit, PDH value for courses and other methods of earning credit. Credit determination for activities listed in subsection (d)(1)(v) and (vi) shall be the responsibility of the licensee. The board shall accept credits earned in other jurisdictions if the activity otherwise complies with this section.

(f) The licensee shall be responsible for maintaining records to be used to support credits claimed. Required records shall include all of the following:

(1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned.

(2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(g) (1) A licensee may request exemption from the requirements of this section for any of the following reasons and to the extent specified in this subsection:

(i) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(ii) A licensee experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(iii) A licensee who lists his occupation as retired on the board-approved renewal form and certifies to the board that he no longer engages in the practice of his licensed profession shall be exempt from the requirement set forth in subsection (a), and the board shall issue him a retired-status license. If the licensee intends to return to active practice, then the licensee must complete the number of professional development hours required for each year exempted, not to exceed the annual requirement for two years. An individual who holds a retired-status license shall hold himself out to others as a retired licensee, which includes using this designation in advertising and signatures.

(2) An individual applying for initial licensure and registration shall be exempt from the requirement set forth in subsection (a) for the licensure period immediately following initial licensure and registration.

((g) amended Apr. 12, 2012, P.L.225, No.24)

(h) As part of the process to reactivate a license, a licensee must obtain all delinquent PDH units, except that under no circumstance shall a licensee be required to obtain more than the biennial renewal requirement.

(4.5 amended May 12, 2010, P.L.192, No.25)

Compiler's Note: Section 5 of Act 25 of 2010, which amended section 4.5, provided that a licensee shall begin to comply with the continuing competency requirements during the 2009-2111 biennial renewal cycle. The State Registration Board for Professional Engineers, Land Surveyors and Geologists may first deny renewal for the 2011-2013 biennial renewal period to a licensee who has failed to comply with the continuing competency requirements for the 2009-2111 biennial renewal period.

Section 6 of Act 25 of 2010 that the State Registration Board for Professional Engineers, Land Surveyors and Geologists shall promulgate regulations necessary to implement Act 25 within 18 months of the effective date of section 6.

Section 5. Exemption from Licensure and Registration.--Except as specifically provided in this section, this act shall not be construed to require licensure and registration in the following cases:

(a) The practice of engineering, land surveying or geology by any person who acts under the supervision of a professional engineer, professional land surveyor or geologist, respectively, or by an

employee of a person lawfully engaged in the practice of engineering, land surveying or geology and who, in either event, does not assume responsible charge of design or supervisions;

(b) The practice of engineering, land surveying or geology, not exceeding thirty days in the aggregate in one calendar year, by a nonresident not having a place of business in this Commonwealth, if such person is legally qualified to engage in the practice of engineering, land surveying or geology in the state or territory of his residence: Provided, That standards of such state or territory are at least equal to the standards of this Commonwealth;

(c) The practice of engineering, land surveying or geology by officers and employees of the United States Government for the said government;

(d) Except as otherwise provided in subsection (g) of this section, the practice of engineering or land surveying by a regular employee of a public utility company, as defined by the Public Utility Code (66 Pa.C.S. § 101 et seq.) in connection with the facilities of such public utility, which are subject to regulation by the Pennsylvania Public Utility Commission: Provided, That such public utility shall employ at least one professional engineer, as defined in this act, who shall be in responsible charge of such utility's engineering work and shall employ at least one professional land surveyor, as defined in this act, who shall be in responsible charge of such utility's land surveying;

(e) The practice of architecture by a duly registered architect, and the doing of such engineering work as is incidental to his architectural work;

(f) The practice of engineering, land surveying or geology by any person or by any employee of any copartnership, association or corporation upon property owned by such person or such copartnership, association or corporation, unless such practice affects the public safety or health or the property of some other person or entity.

(g) The practice of engineering, land surveying or geology work by a manufacturing, mining, communications common carrier, research and development or other industrial corporation or by employees of such corporation, provided such work is in connection with or incidental to products of, or non-engineering services rendered by, such corporation or its affiliates.

(h) The running of lines or grades and layout work on or within established property limits, or from established points outside the property limits to or within such property limits when performed by a contractor or home builder in conjunction with the construction, reconstruction, alteration, maintenance or demolition of a structure or other facility.

(i) The writing of deed descriptions.

(j) The preparation of shop drawings or the performance of construction management services by persons customarily engaged in construction work.

(k) The practice of individuals providing geologic services to businesses engaged in the exploration or development of gas or oil.

(5 amended Dec. 16, 1992, P.L.1151, No.151)

Section 6. Practice by Firms and Corporations.--The practice of engineering, of land surveying and of geology being the function of an individual or of individuals working in concerted effort, it shall be unlawful for any firm or corporation to engage in such practice, or to offer to practice, or to assume use or advertise any title or description, including the use of the term "engineer" or "engineering" in its firm or corporate name, conveying the impression that such firm or corporation is engaged in or is offering to practice such profession, unless the directing heads and employes of such firm or corporation in responsible charge of its activities in the practice of such profession are licensed and registered in conformity with the requirements of this act, and whose name, seal and signature, along with the date of signature, shall be stamped on all plans, specifications, plats and reports issued by such firm or corporation.

(6 amended May 12, 2010, P.L.192, No.25)

Compiler's Note: Section 6 of Act 25 of 2010, which amended section 6, provided that the State Registration Board for Professional Engineers, Land Surveyors and Geologists shall promulgate regulations necessary to implement Act 25 within 18 months of the effective date of section 6.

Section 7. Seal of Registrants.--(a) Each person, registered under this act, shall obtain a seal of a design authorized by the board which shall bear the registrant's name and number and the legend "Registered Professional Engineer," "Registered Professional Land Surveyor" or "Registered Professional Geologist." Such seal, or a facsimile imprint of same, shall be stamped on all plans, specifications, plats and reports issued by a professional engineer, professional land surveyor or professional geologist.

(b) It shall be unlawful for any person to use such seal during the period the license or registration of the holder thereof has been suspended or revoked, or to use a seal of any design not approved by the board.

(7 amended Dec. 16, 1992, P.L.1151, No.151)

Section 8. Procedure for the Suspension and Revocation of Licenses and Registrations; Appeals.--Before the license of any licensee, or any registration, or any certification is suspended or revoked by the board, a written copy of the complaint made shall be furnished to the licensee, registrant, or person against whom the same is directed, and an opportunity be afforded him to be heard before the board personally and by counsel. At least ten days' written notice of the time and place of such hearing shall be given the licensee, registrant or person by registered mail addressed to the post office address as shown on the biennial registration, or other record, or information in possession of the board. (Par. amended Dec. 17, 1959, P.L.1885, No.688)

(8 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 9. Fees.--(a) The fee for an applicant for licensure as a professional engineer, professional land surveyor or professional geologist, including examination, and for examination or certification, or both, as an engineer-in-training or a surveyor-in-training, shall be as fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance

with the "Regulatory Review Act," such that the projected revenues will meet or exceed projected expenditures.

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the board, shall increase the fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that adequate revenues are raised to meet the required enforcement effort.

(c) All persons now qualified and engaged in the practice of engineering, land surveying and geology, or who shall hereafter be licensed by the board, shall register, biennially, with the board and pay the fee for each biennial registration. All fees collected under the provisions of this act shall be received by the board and shall be paid into the Professional Licensure Augmentation Account.

(9 amended Dec. 16, 1992, P.L.1151, No.151)

Section 10. Status of Existing Licensees and Registrants Preserved.--Any person, licensed or legally authorized to practice as a professional engineer or professional land surveyor in this Commonwealth at the time this act takes effect, shall thereafter continue to possess the same rights and privileges with respect to the practice of engineering or land surveying without being required to be licensed anew under the provisions of this act. However, all actions shall be subject to the power of the board as provided in this act to suspend or revoke the license of any such person for any of the causes set forth in this act, and subject to the power of the board to require any such person to register biennially with the board as provided in this act.

(10 amended Dec. 19, 1990, P.L.782, No.192)

Section 10.1. Temporary and Automatic Suspensions.--(a) A license issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than one hundred eighty days.

(b) A license issued under this act shall automatically be suspended upon the legal commitment to an institution of a licensee because of mental incompetency from any cause upon filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this subsection, the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic

suspension under this subsection shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as hereinafter provided in the case of revocation or suspension of such license.

(c) An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reports of alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

(10.1 added Dec. 19, 1990, P.L.782, No.192)

Section 10.2. Reporting of Multiple Licensure.--Any licensee of this Commonwealth who is also licensed to practice engineering, land surveying or geology in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states, territories or countries shall be reported to the board on the biennial renewal application or within ninety days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the engineer's, land surveyor's or geologist's record, and each state, territory or country shall be notified by the board of any disciplinary action taken against the licensee in this Commonwealth.

(10.2 amended Dec. 16, 1992, P.L.1151, No.151)

Section 11. Penalties.--(a) Whoever shall engage in the practice of engineering, the practice of land surveying or the practice of geology without being licensed and registered as required by this act, or exempted therefrom, as provided in this act, or shall present or attempt to use, as his own, the license or certificate of registration of another, or shall give any false or forged evidence of any kind to the board, or to any member thereof, in order to obtain a license or registration as a professional engineer, professional land surveyor or professional geologist or a certificate as an engineer-in-training or surveyor-in-training, or shall use any expired, suspended or revoked certificate of registration, or shall otherwise violate the provisions of this act, shall be guilty of a summary offense and upon conviction thereof for a first offense, shall be sentenced to pay a fine not exceeding one thousand dollars, or suffer imprisonment, not exceeding three months, or both and for a second or subsequent offense shall be guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not less than two thousand dollars but not more than five thousand dollars or to imprisonment for not less than one year but not more than two years, or both.

(b) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of six members, whichever is greater, may levy a civil penalty of up to one thousand dollars on any current licensee who violates any provision of this act or on any person who practices the profession of an engineer, land surveyor or geologist without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

(11 amended Dec. 16, 1992, P.L.1151, No.151)

Compiler's Note: Section 3 of Act 25 of 2009, which amended section 5 of the act of July 2, 1993 (P.L.345, No.49), provided that section 11(b) is repealed insofar as it is inconsistent with the amendment of section 5.

Section 11.1. Injunction Against Unlawful Practice.--It shall be unlawful for any person to practice, or attempt to offer to practice, engineering, land surveying or geology, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of engineering, land surveying or geology, as defined in this act, may be enjoined by the courts on petition of the board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of engineering, land surveying or geology, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.

(11.1 amended Dec. 16, 1992, P.L.1151, No.151)

Section 11.2. Investigative Subpoena.--The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. Client records may not be subpoenaed without consent of the client or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoenas as are necessary to prevent unnecessary intrusion in client confidential information. The board is authorized to apply to the Commonwealth Court to enforce its subpoenas.

(11.2 added Dec. 19, 1990, P.L.782, No.192)

Section 12. Repeal.--The act approved the sixth day of May, one thousand nine hundred and twenty-seven (Pamphlet Laws, eight hundred twenty), is hereby repealed, except that said act shall not be repealed in so far as applications for licensure shall be made thereunder by honorably discharged members of the armed forces of the United States, and for such purposes the said act shall remain in full force and effect until two years after proclamation by the President of the United States that hostilities in all wars in which the United States is now engaged have ceased.

Section 13. Effective Date.--This act shall become effective June thirtieth, one thousand nine hundred and forty-six.

APPENDIX

Supplementary Provisions of Amendatory Statutes

1983, DECEMBER 22, P.L.348, NO.87

Section 5. This act reestablishes the State Registration Board for Professional Engineers in accordance with the procedures set forth in section 7(a) of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Compiler's Note: Act 87 added or amended sections 4, 4.1. 9, 10 and 11 of Act 367.

Section 6. The presently confirmed members of the State Registration Board for Professional Engineers constituted under section 425 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of December 31, 1983, shall continue to serve as board members until their present terms of office expire.

Section 7. Each rule and regulation of the board in effect on December 31, 1983, shall remain in effect after such date until repealed or amended by the board.

PERMITTING - POLICY AND PROCEDURE MANUAL

SECTION 200 - PERMIT APPLICATION PROCESSING, GENERAL CONSIDERATIONS

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200.1 PRIMARY RESPONSIBILITY FOR APPLICATION REVIEW

A. Regional Office/Central Office Involvement

Since the Water Quality Protection permit program is decentralized, it is necessary that all negotiations concerning applications be handled through the Regional Office concerned.

All applicants for permits contacting the Central Office shall be referred to the appropriate Regional Field Office. All discussions and consultations concerning an application must be initiated and carried out through the Regional Office. Applications and accompanying documents are not to be accepted in the Central Office, but in all cases referred to the Regional Field Office directly.

Regional Offices may at any time request the assistance of Central Office personnel during connection with the review of specific applications.

If, during Central Office review of project documents, it becomes necessary to further contact the applicant for additional information or corrections, such information should be obtained through the Regional Office and not by contacting the applicant directly.

B. Facilities Occurring in More Than One Region

1. When the principal municipality served by a sewerage system making application is in one Region and the point(s) of discharge in another, the Region in which the principal municipality served is located shall handle the case unless other arrangements between field offices has been made.
2. In the Industrial Waste Program, the “municipality served” concept does not apply. The Region in which the discharge is located shall be responsible for the case.

C. Differences Between Applicants and Regional Offices

During review of an NPDES or WQM Part II application by the Regional Office staff, if the applicant is requested to furnish information, or to propose facilities, to which the applicant objects, the applicant may request a discussion with the Central Office before final action is taken. In the event there is a meeting between the applicant and the Central Office to discuss such differences, the Regional Clean Water Program Manager or the program manager’s representative will be asked to attend the meeting.

D. Differences of Opinion Among Staff

When there is a difference of opinion between two staff members concerning a specific requirement or recommendation in the preparation of permits, the following steps should be taken:

- The two people should discuss the problem to see if the difference can be resolved.
- If the difference cannot be resolved, the people should submit their recommendations to their supervisor(s) who should endorse these and submit their own views.

- The conflict will then be resolved by a decision at a higher level (i.e. Regional Water Management Program Manager, Division Chief, or Bureau Director if necessary).

200.2 GENERAL PRINCIPLES AND PROCEDURES FOR PERMIT APPLICATION PROCESSING

A. General Principles

Regional staff are responsible for processing and reviewing permit applications in a timely, consistent manner. The following principles apply when carrying out this responsibility:

1. Every applicant for a permit is entitled to prompt, efficient and courteous service, and a prompt answer regarding the action to be taken. In order for the regional office to properly process an application, certain deadlines must be set up in order to assure prompt service to applicants and to allow the staff sufficient time to complete its work on the application.
2. Before any application is accepted, it must be reviewed to determine whether it is accompanied by the required documentation (reports, plans, specifications, etc.) which is required by the regional office so that it can be properly processed.
3. Every application accompanied by proper documentation must be processed promptly even if the project does not meet Bureau requirements. However, appropriate and prescribed efforts shall be made to have sub-standard applications revised.
4. Whenever a review engineer recommends the issuance of a permit, this means that he or she is satisfied that the issuance of a permit, this means that he or she is satisfied that the project, as proposed in the application and accompanying documentation, complies with the requirements of the Clean Streams Law, other applicable laws, policies regulations, technical standards and requirements of the Department. If an application does not meet these requirements, and the applicant is unwilling within a specified time to correct the application accordingly, the permit must be denied, or the application returned.
5. Applications which are faulty and do not meet all the requirements of applicable laws, regulations, policies and procedures, or technical standards may not be approved by including restrictive conditions in the permit. The only exceptions to this are applications which were submitted prior to a change in technical standards or regulations. Provisions covering revised standards or regulations, or for experimental permits, may be included in the permit as special conditions where appropriate.

B. General Procedures for Permit Application Processing

1. Pre-Application Stage

A pre-application conference is often the foundation for improved understanding and communication between the potential applicant and the Department's staff.

Pre-application conferences can be a time-consuming venture for the applicant, the applicant's consultant and the staff, but generally the time investment pays dividends in terms of improved submissions by applicants and a better understanding of the project by DEP staff. These meetings are particularly important when large scale, multi-permitted facilities are involved or when the applicant has no history with DEP.

Under this policy, field offices will:

- Encourage a potential applicant (and consultant if appropriate) to participate in a pre-application conference. Assistant Regional Directors (ARDs) will coordinate for large scale, multi-permitted projects. Present at the conference should be the applicant, the applicant's consultant, the ARD, and representatives of the various programs.
- Identify areas where application packages and accompanying guidance documentation need to be upgraded to better communicate the Department's application requirements. These requirements should be specifically addressed during the pre-application conference so as to articulate clearly DEP's requirements.
- Provide the applicant with an estimate of the time frame for processing the permit, an explanation of the number and type of permits required for the project, an explanation of the process and interrelationship of the various permits.

2. Administrative Completeness Review

Administrative completeness reviews are to determine whether an application package contains the necessary information, maps, fees and other documents, regardless of whether these items would be sufficient for issuance of the permit. The purpose of the administrative completeness review is to determine whether the information and forms are provided, not to evaluate the quality or content of the information.

Administrative completeness reviews should be conducted as quickly as possible. Reviews should take no longer than 20 days, unless provided otherwise by state or federal law. Even when the state or federal law or regulation provides for a longer time period, it shall be the Department's policy to limit the scope of an administrative review so as to not overlap with the technical review. Programs with shorter time frames shall not extend those as a result of this policy.

Following are the steps involved in an administrative review:

- a. Applications will be received in individual program areas where they will be entered in the Department's proposed Application Tracking System. For an example of the steps performed by the automated system see attachment entitled "Prototype - Application Processing." Pending the development of the new system, programs may continue using their current tracking systems.
- b. An acknowledgment letter will be sent (See Letter A) to the applicant, a notice of receipt of the application to municipalities, counties and other state agencies, and the form I process will be initiated (for those permits currently coordinated). All of these notifications will be system generated and utilize E-mail for the distribution of notices internally. Pending implementation of the new system, regions are to produce the acknowledgment on existing systems and to continue use of the paper Form I process, which should be expanded to include legal reviews.

- c. Checks accompanying applications shall be processed immediately for deposit and not held pending completion of administrative or technical reviews.
- d. Programs review applications for administrative completeness.

If complete:

The Application Tracking System is updated and the system automatically generates an Acceptance Letter (Letter B) which explains the technical review process, provides approximate time frames for completion, provides the name, address and phone number of the lead program person, specifies other permits required, and provides an application number for reference purposes. (When the new system is completed, this will be a global ID number). If administrative completeness reviews can be accomplished within ten working days, the Acceptance Letter may be consolidated with the Acknowledgement Letter (Letter C). If multiple permits are required, the Assistant Regional Director will be notified and will be responsible for coordinating the review and issuance of all permit decisions.

If incomplete:

The program will send a letter outlining the administrative deficiencies. The letter will include a deadline for submission of the corrections and explain that there will be only one opportunity to correct administrative deficiencies. (Program Managers should meet and determine a standard maximum time period to be applied statewide for submissions in response to administrative deficiency letters. Individual letters may use a shorter time frame if appropriate). If, after the submission of the corrections, the application is still administratively incomplete or the applicant fails to respond to the request, the application will be returned, and a refund may be requested. Resubmissions must include an additional fee. (See Letter D)

Telephone calls may be made for notification of minor deficiencies.

Programs should process for technical review, applications with minor administrative deficiencies. Minor administrative deficiencies are those that have no impact on the technical review. Included in this category are applications which fail to include the Act 14 notification. The programs should continue to notify the applicant of this deficiency, but there is no need to delay the beginning of the technical review because of this administrative deficiency.

The second administrative completeness review must be completed within the same time period established for the first administrative completeness review, but under no circumstances shall the review take longer than 20 days.

Upon acceptance of an application, the program is responsible for completing the necessary PA Bulletin notices. The PA Bulletin notices must be completed consistent with the format found in Attachment H. Since Central Office will no longer receive, renew and consolidate notices from the regions, it is the responsibility of the facilities chief to ensure that the notices are being completed properly.

3. Technical Review

The technical review is, obviously, the most difficult part of the application review process. It is often the cause of the greatest frustration for the regulated community because of the many requests from DEP for additional information. Some of the steps discussed above should result in better submissions by the applicants thus reducing the number of deficiency letters required by DEP. Not more than two deficiency letters will be sent by DEP to the applicant. The first is a deficiency letter and the second is a pre-denial letter. The Department will make a concerted effort to state as clearly and precisely as possible the type, content, and format of the information being requested so as to eliminate the need for multiple requests from DEP. Furthermore, for coordinated permits, the ARD will make every attempt to coordinate technical review letters as to reduce the number of requests being sent from the staff.

The steps in the technical review are:

- a. The program reviews the application for technical deficiencies.
- b. If on-site inspections are required for facilities needing multiple permits, the initial visit shall be scheduled as a joint inspection involving appropriate permitting and operations staff.
- c. If the application is technically deficient:
 - i. One (and only one) technical deficiency letter will be sent. The policy is to send only one deficiency letter which has implications for both the applicant and DEP staff. DEP staff will have to make a concerted effort to better define their requirements and to articulate them in a more concise and unambiguous fashion. Each deficiency must cite the statute, regulation or policy that requires the information requested. If the information being requested cannot be attributed to a statute, regulation or policy that requires the information requested. If the information being requested cannot be attributed to a statute, regulation or policy and is a request of the individual reviewer, that must be noted as well. The letter shall offer the applicant an opportunity to meet and discuss the deficiencies. The letter shall include a deadline for submission of the material (Program Managers shall meet and develop a statewide policy for each program).
 - ii. The applicant has the option of declining and asking the Department to make a decision based on the information already made available. If the applicant fails to respond to the deficiency letter within the stated timeframe, the application will be denied.
 - iii. If the material submitted in response to the deficiency letter fails to address the department's requirements, telephone calls may be made to clarify or resolve minor issues. However, if the issues are too complex to be resolved over the telephone, a pre-denial letter (and not a second

deficiency letter see Letter E) shall be issued. The pre-denial letter (Letter F) will identify the remaining deficiencies, give a time frame in which to make an additional submission and offer the applicant an opportunity to meet and confer. Should a meeting be scheduled, it must be held prior to the due date established in the letter.

- iv. If the applicant fails to submit all of the material requested in the pre-denial letter, the application shall be denied. The permit writer prepares a draft letter denying the permit. The draft letter shall be sent to DEP's litigation staff for review and approval before the letter can be issued. The Department will maintain a record and file of the application until the appeal period is exhausted. Resubmissions after a denial has been rendered or an application with the appropriate fee.

- d. When the application is deemed satisfactory:

The permit writer begins to prepare a draft permit. Permit writers shall consult with appropriate operations and legal staff when new or unusual permit conditions are being considered. Permit writers are also encouraged to discuss the draft permit or any unusual permit conditions with the applicants prior to permit issuance.

Public Notice of draft permits, where required, shall be completed by the programs and submitted to the address noted above, for submission to the PA Bulletin.

- e. The ARD will coordinate all approvals/denials for projects involving multiple applications. Denials must be coordinated to ensure that additional applications, contingent upon the original application, are not reviewed nor permits issued.

Meetings with applicants should provide the opportunity to review problems or deficiencies with the application and discuss possible solutions. While it is not the Department's role to perform as the applicant's consultant, it is entirely appropriate to discuss options for resolving issues and to provide technical guidance based on past practice or experience.

All meetings with applicants or interested third parties shall be noted in the official file. Minutes of commitments or decisions made at these meetings shall be the obligation of the lead reviewer. The minutes shall be placed in the official file.

4. Permit Issuance

The ARD coordinates the issuance of multiple permits. In cases where more complex permits are being issued, the program or ARD shall require a post-issuance meeting (Letter G). This meeting will include the applicant (permittee), the consultant, the operator, the permit reviewer, an operations staff representative, legal counsel and possible, representatives of the general public (if requested). The purpose of the meeting is to explain the permit conditions to ensure a common understanding of the terms and

conditions of the permit by the applicant, the applicant's consultant, DEP operations and permitting staff and interested third parties. Should corrections or clarifications be required, permit amendments can be prepared and issued.

DRAFT ACKNOWLEDGEMENT LETTER

**P.O. BOX 8465
Harrisburg, PA 17105-8465**

RE: Acknowledgement Letter

_____ (Applicant)

_____ Township
_____ County

Dear _____:

On _____ (date) _____, the Department received the above referenced application. Permit applications undergo a series of reviews before a final decision is rendered by DEP. A brief explanation of the permit application review process and approximate processing times are outlined below:

Permit Coordination:

Your permit application will be sent to other regulatory programs within DEP for a preliminary review to determine if other permits are required for the activity you are proposing. If it appears other permits are necessary, you will be sent applications for those regulated activities. The coordination of the permit application reviews will be the responsibility of the Assistant Regional Director, _____, who can be reached at _____.

Administrative Review:

Administrative reviews vary slightly by program, but generally include; among other things, checking for the appropriate signatures, filing fees, notarizations, maps and applications forms. The purpose of the administrative completeness review is to determine whether information and forms are provided. It is not to evaluate the quality or content of the information. Administrative reviews for _____ permits are generally conducted within _____ days of the receipt of the application.

If your application is administratively deficient, you will be notified by phone or letter. You will be given a reasonable time frame in which to submit the required information. If the information is not submitted within that time frame, the application will be denied.

When an application is determined to be administratively complete, it will be accepted for technical review by the Department. This means that the Department will initiate the technical review of the application. you will be notified by letter that your application has been accepted. At that time, you will be given the name and phone number of the person to whom your application has been referred for review.

Technical Reviews:

Technical reviews begin once an application is deemed administratively complete and are performed by one or more of DEP's professional staff. The technical review includes; among other things, an analysis of the proposal for potential adverse environmental impacts, the completeness, clarity and soundness of engineering proposals, conformance with applicable statutes and regulations, and analysis of comments submitted by the public.

A critical part of the technical review process is the review of comments from the general public and other governmental agencies. Comments may be solicited as a result of publishing a notice of the permit request or draft permit by; the circulation of the Pennsylvania Bulletin and general newspapers, circulating the application to other governmental agencies, or through public meetings or hearings. Unsolicited comments in the form of letters and petitions are also given consideration.

DEP staff will review the application and all other relevant information, and you will be notified by phone or letter if there are deficiencies in your application. You will be given a reasonable period of time in which to address the deficiencies. If you fail to do so within the allotted time, your application will be denied. If the material you submit in response to the deficiency letter still fails to meet the Department's requirements, you will be issued a pre-denial letter. This letter will state that the Department is prepared to deny your application if the ongoing deficiencies are not corrected within a stated time frame. You will have one final opportunity to address those deficiencies; otherwise, the permit will be denied.

When DEP has completed the technical review of your application, a decision will be rendered. If all applicable requirements are met, your permit will be issued. If multiple permits are involved, they will be issued simultaneously from the Assistant Regional Director's office. Permits may be denied for a number of reasons including; failure to supply the required information needed for a complete and comprehensive technical review (as described in the paragraph above), failure to show that the activity will not have an adverse impact on the environment, failure to satisfy all applicable legal requirements, or in some cases, a negative compliance history of the applicant.

Public Input and Participation:

Permit applications may be subject to any or all of the following: notice in the Pennsylvania Bulletin or to their publication of general circulation; a public meeting; a public hearing. These opportunities for public input are often required by regulation or statute but may also occur at the discretion of the Department.

Once final decision has been reached and communicated, there is generally a right to appeal to the Department's determination to the Pennsylvania Environmental Hearing Board. Not only the applicant but affected third parties: such as citizens' groups and municipal governments, may seek to appeal DEP permit decisions. Any appeal to the Environmental Hearing Board must be filed within the time period provided by law, normally 30 days. If you believe you may want to file an appeal, you should immediately contact the Environmental Hearing Board (717-787-3483) to obtain a copy of the Notice of Appeal form and the Board's rules and regulations. Any appeal must be filed in a timely manner with the Environmental Hearing Board: sending a Notice of Appeal to DEP is not sufficient. If you wish to appeal a permit decision, you may find it advisable to employ an attorney, although the Environmental Hearing Board does not require it. Final decisions of the Environmental Hearing Board may be appealed to the Pennsylvania Commonwealth Court by the timely filing of Petition for Review.

ADMINISTRATIVE COMPLETENESS LETTER

P.O. BOX 8465
Harrisburg, PA 17105-8465

CERTIFIED MAIL NO. _____

RE: Administrative Completeness Review or Acceptance Letter

_____ (Applicant)

_____ Township
_____ County

Dear _____:

This is to inform you that the Department has reviewed the above referenced application in order to determine whether it contains the information, maps, fees, and other documents necessary for administrative completeness. Please be advised that your application has been determined to be administratively complete and will be processed for technical review or administratively incomplete.

(Following if complete):

During the technical review, your application will be assigned to _____ who will serve as the lead reviewer. The lead reviewer will evaluate the adequacy of the application and its components to determine if sufficient information exists to render a decision on the technical merits of your application. This individual will also coordinate comments from other technical staff as may be necessary for a comprehensive evaluation of the application.

You will be notified in writing if additional information is required before a technical decision can be rendered. The Department will make every attempt to make its requirements clear and concise. The Department will send only one technical deficiency letter. Upon notification of any technical deficiencies, you will be given a stated period of time in which to submit the material requested. When you submit a satisfactory response to the Department's request, the Department will proceed with its technical evaluation.

If after completing the technical review the Department is inclined to deny the application, you will be sent a pre-denial letter. The letter will outline the reasons for the denial. You will have one final opportunity to correct the deficiencies in your proposal before the application is denied. In the event you receive a pre-denial letter, you will be provided an opportunity to meet with DEP staff to discuss the unresolved issues.

Under normal circumstances, completed applications can generally be processed within _____ days from the date of acceptance. Obviously, those applications which are complete and require little or no additional information can usually be processed more quickly.

For questions about your application, please contact _____ and refer to application number.

(Following if incomplete):

Therefore, the application must be revised. The application may be returned to you if you so desire for revision and resubmittal. The enclosed checklist specifies the items which must be included in the resubmittal of your application or the submission of additional information. Please note that this information must be received within _ days or the Department will deny the application as incomplete.

Sincerely,

DRAFT ACKNOWLEDGEMENT/ACCEPTANCE LETTER

**P.O. BOX 8465
Harrisburg, PA 17105-8465**

CERTIFIED MAIL NO. _____

RE: Acceptance Letter

_____ (Applicant)

_____ Township

_____ County

Dear _____:

On ____ (date) _____, the Department received the above referenced application. We have reviewed the application in order to determine whether it contains the necessary documents to be considered administratively complete. Please be advised that your application has been determined to be administratively complete.

or

On _____, the Department received the above referenced application. We have reviewed the application in order to determine whether it contains the necessary documents to be considered administratively complete. Please be advised that your application has been determined to be administratively incomplete. Therefore, the application must be revised before we can begin our technical review. The enclosed checklist (or information listed below), specifies the items which must be included in the resubmittal of your application or the submission of additional information. Please note that the updated application must be received within _____ days or the Department will deny the application as incomplete.

The administrative completeness review is the first in a series of reviews conducted by DEP. To help you better understand the application review process, a brief explanation of the permit application review process and approximate processing times are outlined below:

Permit Coordination:

Permit applications are sent to other regulatory programs within DEP for a preliminary review to determine if other permits are required for the activity being proposed. The activity you are proposing will require the following permits:

Applications for these activities are enclosed. Coordination of the permit application reviews will be the responsibility of the Assistant Regional Director, _____, who can be reached at _____.

or

Permit applications are sent to other regulatory programs within DEP for a preliminary review. This is to determine if other permits are required for the activity being proposed. We have determined that no other permits are necessary.

Administrative Review:

Administrative reviews vary slightly by program, but generally include; among other things, checking for the appropriate signatures, filing fees, notarizations, maps and application forms. The purpose of the administrative completeness review is to determine whether information and forms are provided, not to evaluate the quality or content of the information. When an application is determined to be administratively complete, it will be accepted for technical review by the Department.

Technical Reviews:

Technical reviews are begun once an application is deemed administratively complete and are performed by one or more of DEP's professional staff. The technical review includes; among other things, an analysis of the proposal for potential adverse environmental impacts, the completeness, clarity and soundness of engineering proposals, conformance with applicable statutes and regulations, and analysis of comment submitted by the public.

A critical part of the technical process is the review of comments from the general public and other governmental agencies. Comments may be solicited as a result of publishing a notice of the permit request or draft permit by; the circulation of the Pennsylvania Bulletin and newspapers of general circulation, circulating the application to other governmental agencies, or through public meetings or hearings. Unsolicited comments in the form of letters and petitions are also given consideration.

DEP staff will review the application and all other relevant information, and you will be notified by phone or letter if there are deficiencies in your application. You will be given a reasonable period of time in which to address the deficiencies. If you fail to do so within the allotted time, your application will be denied. If the material you submit in response to the deficiency letter still fails to meet the Department's requirements, you will be issued a pre-denial letter. This letter will state that the Department is prepared to deny your application if the ongoing deficiencies are not corrected within a stated time frame. You will have one final opportunity to address those deficiencies, otherwise the permit will be denied.

When DEP has completed the technical review of your application, a decision will be rendered. If all applicable requirements are met, your permit will be issued. If multiple permits are involved, they will

be issued simultaneously from the Assistant Regional Director's office. Permits may be denied for a number of reasons including; failure to supply the required information needed for a complete and comprehensive technical review (as described in the paragraph above), failure to show that the activity will not have adverse impact on the environment, failure to satisfy all applicable legal requirements or in some cases, because of the compliance history of the applicant.

I hope you find this information helpful in understanding the application review process. For additional questions about your application, please contact _____ and refer to permit #_____.

Sincerely,

Enclosure

ADMINISTRATIVE DENIAL LETTER

P.O. BOX 8465
Harrisburg, PA 17105-8465

CERTIFIED MAIL NO. _____

RE: Completeness Review

Application # _____

Township

County

Dear _____

On _____ (date) _____, the Department received the above referenced application. On date, the Department notified you that this application was incomplete because detailed information, maps, fees, and documents required to make the application complete were not found or specific. You were also notified that all of the required information was to have been received by the Department within days of the receipt of that letter.

(Choose A if incomplete response; choose B if no response)

- A. The daytime period has expired, and the information required for the administrative completeness has not been received in this office. The required information, maps, fees, and documents which were not submitted, are detailed below:

Therefore, please be advised that Application No. _____ is being returned.

- B. The _____ daytime period has expired, and no response has been received to the _____ date _____ letter. Therefore, please be advised that Application _____ is being returned.

FOR THE DEPARTMENT

DRAFT TECHNICAL DEFICIENCY LETTER

**P.O. BOX 8465
Harrisburg, PA 17105-8465**

CERTIFIED MAIL NO. _____

RE: Technical Deficiencies
_____ (Applicant)
Application # _____
_____ Township
_____ County

Dear _____:

The department has reviewed your application and has determined that the following significant deficiencies exist:

1. _____
2. _____
3. _____
4. _____

Should you have any questions regarding the identified deficiencies, please contact _____ to schedule a meeting. The meeting must be scheduled within the _____ day period allotted for your reply, unless otherwise extended by the Department.

If you believe the stated deficiencies are not significant, you have the option of declining and asking the Department to make a decision based on the information you have already made available. If you fail to respond to this request by your application will be denied.

Sincerely,

bcc: _____

reference initials: typist's initials

DRAFT PRE-DENIAL LETTER

**P.O. BOX 8465
Harrisburg, PA 17105-8465**

CERTIFIED MAIL NO. _____

RE: Pre-Denial
_____ (Applicant)
Application # _____
_____ Township
_____ County

Dear _____:

The Department has reviewed your application and subsequent submissions and has determined that significant deficiencies still remain. If the following deficiencies are not addressed within _____ days, the Department will deny your application.

1. _____
2. _____
3. _____
4. _____

Should you have any questions regarding the identified deficiencies, please contact _____ to schedule a meeting. The meeting must be scheduled within the _____ day period allotted for your reply, unless otherwise extended by the Department.

Sincerely,

DRAFT POST ISSUANCE LETTER

P.O. BOX 8465
Harrisburg, PA 17105-8465

CERTIFIED MAIL NO. _____

RE: Permit Issuance
_____ (Applicant)
Application # _____
_____ Township
_____ County

Dear _____:

The Department has reviewed your application for

_____ and has determined that you have satisfied all applicable requirements necessary to perform this activity. Therefore, we are prepared to issue you this permit. However, because of the complexity of the activity you are proposing, as well the conditions of the permit, the Department will require that you and your consultant participate in a post-issuance conference.

The purpose of the post-issuance conference is to review all aspects of the permit with you, your consultant and the Department's inspectors who will be assigned to your site. You will have an opportunity to seek clarification or additional information regarding any of the conditions placed on your permit. This will also enable the Department the opportunity to reach a common understanding with all parties regarding the meaning and intent of each permit condition.

Please contact _____ at _____ to schedule your post-issuance conference.

Sincerely,

5. General Priority of Permit Application Processing

a. NPDES Permit Applications

Except as otherwise noted in the Bureau's annual program plan, applications for new dischargers and enforcement cases shall generally take precedence over other types of NPDES Applications.

b. Part II WQM Permit Applications

Processing of Part II permit applications shall generally be in the order in which the applications are received, unless otherwise directed by the Regional Water Management Program Manager.

6. Notarization of Permit Applications

Except for applications submitted by other agencies of the Commonwealth, all NPDES and WQM Part II permit applications must be properly notarized.

200.3 PUBLIC PARTICIPATION REQUIREMENTS ASSOCIATED WITH NPDES AND WQM PART II PERMITTING

Several mechanisms are used to ensure adequate public participation at various stages during the NPDES and WQM Part II permitting process. These are described below, and are discussed further, as appropriate, in Sections 201 and 202 of this document.

A. Local Municipal and County Notification (Act 14)

Act 14 amended the Commonwealth's Administrative Code, effective April 17, 1984, as follows:

“Section 1905 A Cooperation with Municipalities

“(b)(1) The Department of Environmental Protection shall require every applicant for the following permits and permit revisions to give written notice to each municipality and county in which the activities are located:

- (i) Air quality permits applied for pursuant to the act of January 8, 1960 (1959 P.L. 2119, No. 787), known as the “Air Pollution Control Act.”
 - (ii) Water allocation permits applied for pursuant to the act of June 24, 1939 (P.L. 842, No. 365).
 - (iii) Water obstructions permits applied for pursuant to the act of November 26, 1978 P.L. 1375, No. 325), known as the “Dam Safety and Encroachments Act.”
 - (iv) Water quality permits, except permits relating to coal mining activities, applied for pursuant to the Act of June 22, 1937 (P.L. 1987, No. 394), known as the “The Clean Streams Law.”
- (2) In the case of written notices sent pursuant to subclause (i), (ii), (iii) and (iv), the written notices shall be received by the municipalities and counties at least thirty (30) days before the Department of Environmental Protection may issue or deny the permit.

- (3) The provision of this subsection shall not apply to permits relating to coal mining activities issued under the act of June 22, 1937 (P.L. 1987, No. 394), known as ‘The Clean Streams Law,’ the Act of May 31, 1945 (P.L. 1198, No. 418), known as the ‘Surface Mining Conservation and Reclamation Act,’ the Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1), known as ‘The Clean Bituminous Mine Subsidence and Land Conservation Act,’ and the Act of September 24, 1968 (P.L. 1040, No. 318), known as the ‘Coal Refuse Disposal Control Act.’

In order to demonstrate compliance with the requirements of Act 14, an applicant for an NPDES or WQM Part II permit (including permit renewal or amendment) must submit both of the following items as part of the permit application:

1. a copy of the applicant's correspondence notifying the municipality and the county in which the permitted activity will occur of the applicant's intentions.

and
2. evidence that the municipality and county have received the above notification. Acceptable forms of this evidence include - Certified mail return receipt; or written acknowledgement of the notification from the municipality and county.

Failure to provide a copy of the notification correspondence and evidence of municipal and county receipt of the notification with the application, or failure to comply with Act 14, will result in permit denial.

In accordance with Act 14, the Department cannot act on a permit application until the full 30-day period has lapsed regardless of whether comments have been received from the municipality and county involved prior to the end of this 30-day period.

B. Local Newspaper Notice for New or Substantially Changed

Section 307 of Pennsylvania's Clean Streams Law requires permit applicants for new or substantially changed discharges of industrial wastewater to waters of the Commonwealth (under an NPDES permit for stream discharge or under a WQM Part II permit for land disposal or underground injection) to publish notice of intent to apply for such permit in a newspaper of general circulation in the county where the discharging activity will occur. Such notice must be published at least once per week for four (4) consecutive weeks.

The notice should be located at or near the top of a right-hand page, as far forward as possible in the first section of the newspaper.

The notice should appear as a "display" type advertisement. Whenever possible, it should be set off from the surrounding material by a black border. The notice should be at least 2-3/4 inches, or two columns, wide (whichever is greater), and at least four inches high.

SAMPLE NEWSPAPER NOTICE

“NOTICE”

Notice is hereby given that the (Company Name, Address, and telephone number) intends to make application to the Department of Environmental Protection for a Water Quality Management Permit for the discharge of industrial wastes, in a manner which meets Department requirements, from its facility located in (municipality), (county). This is a (new, existing) discharge of a (temporary, intermittent, continuous) nature, to (describe location and type of discharge, including the name of the receiving stream where applicable, and the method of discharge - such as spray irrigation - where appropriate).

This application is made under the provisions of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended. Persons desiring additional information, or who wish to provide comment, concerning this permit application should contact the Company as indicated above, or the Department at the following address: Clean Water Program Manager (appropriate address and telephone number), after (date on which application will be submitted).

This newspaper notice requirement applies where the permit would approve a new discharge, a discharge which is increased in volume or degraded in quality, or where there is a significantly changed point of discharge.

Newspaper notice published by the applicant is not required when:

- An industrial waste WQM Part II permit is applied for under Section 308 of the Clean Streams Law, for approval of plans, designs and relevant data, but where there will not be a discharge, a discharge increased in volume or degraded in quality, or a significantly changed point of discharge.
- An industrial waste WQM Part II permit is applied for under Section 101.4 of the Department's rules and regulations, approving the operation, maintenance or use of an impoundment for the processing, storage, treatment or disposal of polluting substances (without discharge to waters of the Commonwealth).
- An industrial waste NPDES permit renewal is applied for under Section 307 of the Clean Streams Law, where there will not be a new discharge, a discharge increased in volume or degraded in quality, or a significantly changed point of discharge.

Proof of such publication must be received by the Department (in the form of newspaper clippings with the publications date intact, or a notarized "proof of publication" statement from the newspaper) before the permit can be issued. It is preferable, but not absolutely necessary, that this proof of publication be submitted with the permit application.

When newspaper notice is required, the advertisements must have appeared within one year prior to date of submission of the application.

C. Pennsylvania Bulletin Notices of Applications and Permits

The Bureau routinely publishes notice in the Pennsylvania Bulletin of the following:

- NPDES Draft Permits
- NPDES Permit Final Actions (issuance, denial)
- WQM Part II Permit Applications (except sewer extensions)
- WQM Part II Permit Final Actions (issuance, denial, except for sewer extensions)

(See Section 201.2 and 202.2 for further discussion of notice procedures and format.)

The notices are also routinely published in the Pennsylvania Bulletin of requests for certification under Section 401 of the Clean Water Act, and final action on such requests (see Section 400 of this manual).

D. Statewide NPDES public Notice Mailing List

On a weekly basis, the Bureau mails copies of the Pennsylvania Bulletin notices of draft and final NPDES permits to a statewide mailing list of interested citizens, public interest groups, consultants, and governmental agencies, having an interest in the NPDES program. (See Section 201.2 for further discussion.)

200.4 APPLICATION FEES AND RELATED PROCEDURES

A. Application Fee Structure

The application fee structure for the Part II WQM Permit and NPDES Permit programs are established by regulation in Chapters 91 and 92a of the Department's rules and regulations. Application fees are payable to the Commonwealth of Pennsylvania.

Note: In situations where there is a stream "encroachment" or "water obstruction" associated with the sewage facilities, a separate application is required to be submitted to the Waterways and Wetlands Program or delegated county conservation district.

B. Procedures for Refund of Application Fees

As discussed in Subsection 200.2 above, application fees (checks or money orders) are to be forwarded to the Regional Business Manager within two (2) working days of receipt.

The Regional Business Manager normally transmits incoming revenues (application fees, penalties) to the Comptroller's Office on a weekly basis.

Refunds should only be considered if the application is withdrawn before Administrative Review begins.

If a refund is appropriate, and if the fee has not yet been forwarded to the Comptroller, than the check or money order may be returned with the assistance of the Regional Business manager (who will follow the procedures outlined in the Department's Administrative Manual).

If the fee has already been forwarded to the Comptroller, then the applicant has two options:

1. Request a return of the fee. If the Region concurs, a Request for Refund form shall be prepared and forwarded to the Comptroller (original and two copies).
2. If the applicant intends to re-submit the permit application within six months of the date on which the applicant was returned, then no additional application fee will be required.

C. Situations Where Refund of Application Fee is not Appropriate

Once an application has been accepted complete, and the major portion of the technical review has occurred then, regardless of whether the application is subsequently returned or the permit is subsequently denied, the fee shall not be refunded.

If the applicant subsequently resubmits a permit application, a new application fee will be required.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

REQUEST FOR REFUND

Date _____

TO: Department of Environmental Protection Office of Comptroller
901 North 7th Street
P.O. Box 8005
Harrisburg, PA 17105-8005

REFUND TO: Name _____

ADDRESS _____

The above individual/company is due a refund of revenue paid to the Commonwealth of Pennsylvania in accordance with the following:

Amount Received from Payor - \$

Treasury Receipt No. - Date -

Revenue Code -

Revenue Transmittal No. - Date -

Less: Revised Amount Due Commonwealth - (_____)

REFUND DUE PAYOR \$ _____

Reason for refund:

I certify that the above information is true and correct to the best of my knowledge.

By _____

Title _____

Office _____

OFFICE OF COMPTROLLER USE ONLY

Date _____

Expenditure Code _____

Comptroller Approval _____

200.5 INDIVIDUAL APPLICATION/PERMIT NUMBERING SYSTEM

A. WQM Part II Permits

A numerical numbering system consisting of seven digits shall be assigned to applications and permits.

Each Regional Office shall assign the application number upon receipt of the application as follows:

Digits 1 & 2	---- County*	
Digits 3 & 4	---- Calendar Year Received	Program
Digit 5	---- <u>Program</u>	<u>Code</u>
	Industrial Wastes	2
	Sewerage	4

Digits 6 & 7 ---- These represent the sequence of applications received during the calendar year within the county and program concerned.

For example:

In 1994 a sewer extension permit application is received for a project in Cambria County. This is the 5th sewer extension application received within this county since 1/1/94. The application number would be as follows: 11 94 4 05

B. NPDES Permits

The Bureau uses the Environmental Protection Agency's NPDES application/permit numbering system.

EPA uses a 9-digit, alpha-numeric numbering system, which is computer generated, as follows:

PA _____ *

The last digit (*) is a "random" number generated by an EPA computer program.

Each Region has been allocated a block of NPDES application/permit numbers for use. The Division of Permits and Compliance maintains the basic inventory of available numbers.

For stormwater individual NPDES permits, the third position should be "S" to denote stormwater discharge.

*County is a location code. For sewerage projects it relates to the county in which the principal municipality served is located. For industrial wastes, it relates to the county in which the discharge is located. If the discharge in an industrial waste case, is in a different Region than the Region handling the case, the number for the application will show the county of discharge and will be obtained from the Region responsible for that county.

C. Numbering System for Amendments Transfers, and Renewals

1. WQM Part II Permits

Amendments to Part II permits are either accomplished by letter, or through issuance of a new Part II permit (see Subsection 202.4 below).

When amended by letter there is no change in the permit number; however, each amendment will be designated in the order occurring, as follows:

1184201
Amendment No. 1
Amendment No. 2 etc.

Transfers of Part II permits (see 202.4) require an alpha-numeric indicator to be attached to the permit number as shown below:

1184201 - T1 (1st transfer)
> - T2 (2nd transfer)
> etc.

2. Individual NPDES Permits

NPDES permit numbers remain associated with the facility as long as it is a direct discharger, including during modification, transfer, renewal, or revocation/reissuance (see 201.4).

When an NPDES permit is modified (including modification due to transfer,), a notation to that effect is made on the cover page, and any revised page(s) of the permit, as follows:

PA0010396
Amendment No. 1
Amendment No. 2
etc.

Once the permit is renewed or revoked/reissued, the above amendment notations are removed from the pages involved.

200.6 PERFORMANCE GOALS AND OBJECTIVES FOR WQM PERMITTING

A. General Objectives

As stated in Section 200.2 above, every applicant for a WQM permit is entitled to prompt, efficient review of the application materials, and to receive the permit in as timely a fashion as possible.

In addition to the above, the WQM permit program must be carried out in a manner which make efficient use of limited staff resources and available review time.

B. Performance Goals

Performance goals will be established by the Bureau with the intent of achieving the above objectives for the following types of reviews:

NPDES Reviews

1. Major Industrial
2. Major Municipal
3. Minor Industrial
4. Minor Municipal
5. Non-Municipal Sewage

WQM Part II Reviews

1. Industrial Waste Treatment
2. Sewage Treatment (Municipal)
3. Sewage Treatment (Non-Municipal)
4. New Sewer Systems and Major Sewer Extensions (incl. pump sta., interceptors)
5. Minor Sewer Extensions

Performance goals will be based on factors such as:

1. Overall Review Time - From date accepted complete to date final permit documents are ready for issuance.
2. Overall Staff Time - Technical review staff time spent by the Permits, Grants, Planning Engineer(s) assigned to the project (does not include aquatic biologist, hydrogeologist, or soil scientist staff time).

200.7 APPEALS OF PERMIT ACTIONS

POLICY: It is the policy of the Bureau to expedite resolution of permit appeals.

It is also the policy of the Bureau to actively pursue continuing violations of permit requirements pursuant to the Bureau's enforcement policy. Permittees which appeal NPDES permits are not exempt from the responsibility to comply with permit terms and conditions.

PROCEDURE:

A. Procedure for Filing Appeals

Any final action of the Department may be appealed to the Environmental Hearing Board (EHB) by any aggrieved party, using the attached form developed by the EHB and by the following the general procedures outlined in Chapter 21 of the Department's rules and regulations.

All appeals are to be filed with the EHB within 30 days of receipt of notification of the permit action. Pursuant to Section 21.52 of the EHB regulations, "Receipt of Notification" refers to either:

The date on which notification of final action is published in the Pennsylvania Bulletin;

or

The date the letter is received by an interested party which notifies the party of the final action on the permit (see also Subsection 201.21 and 202.2D of this policy and procedure).

Pursuant to Section 21.51 of the EHB regulations, within ten days of filing notice of appeal with the EHB each appellant is required to serve a copy of the appeal to:

The office of the Department issuing the final permit action.

The central office, DEP Bureau of Regulatory Counsel.

The permittee (in the case of a third-party appeal).

B. Procedures for Responding to Appeals

Once a copy of the appeal is received by the Regional Office, the appeal shall be reviewed as soon as possible to determine the nature and extent of the issues under appeal.

The appropriate litigation attorney in the Regional Office of Chief Counsel shall be then contacted to determine the factual and legal issues involved and to review these issues in regard to the following:

Whether the appeal has been filed in a timely manner.

The significance of the issues under appeal in terms of their possible impact of future policy-making or program implementation decisions (where significant policy issues are involved central office program staff and Bureau of Regulatory legal staff should be contacted for their input).

What follow-up contact should be made with the appellant and/or appellant's legal counsel concerning these issues.

What appropriate enforcement action should be taken with respect to ongoing violations of permit conditions (see Section D below)

A general stepwise approach for resolving appeals is presented in Figure 200.7-1. The BWQP Regional Office is to work closely with the litigation attorney to expedite resolution of the appeal. It is highly preferable to resolve issues under appeal, and to obtain a withdrawal or dismissal of the appeal, without proceeding through the lengthy delays sometimes associated with the litigation process.

C. Effect of Permit Conditions During the Appeal Process

During the appeal process all relevant permit terms and conditions are to be considered in effect and enforceable except where:

The EHB has issued a supersedeas pertaining to one or more permit terms and conditions;

or

The permittee is subject to a separate order or consent adjudication which provides that the Department will exercise enforcement discretion concerning temporary relief from one or more permit terms and conditions.

D. Addressing On-going Violations of Permit Terms and Conditions During the Appeal Process

A permittee which appeals a permit, but which continues to violate the effective terms and conditions of the permit should be informed that the Department has the right to fully enforce the permit requirements, including retroactive assessment of civil penalties for violations of the permit during the course of the appeal process.

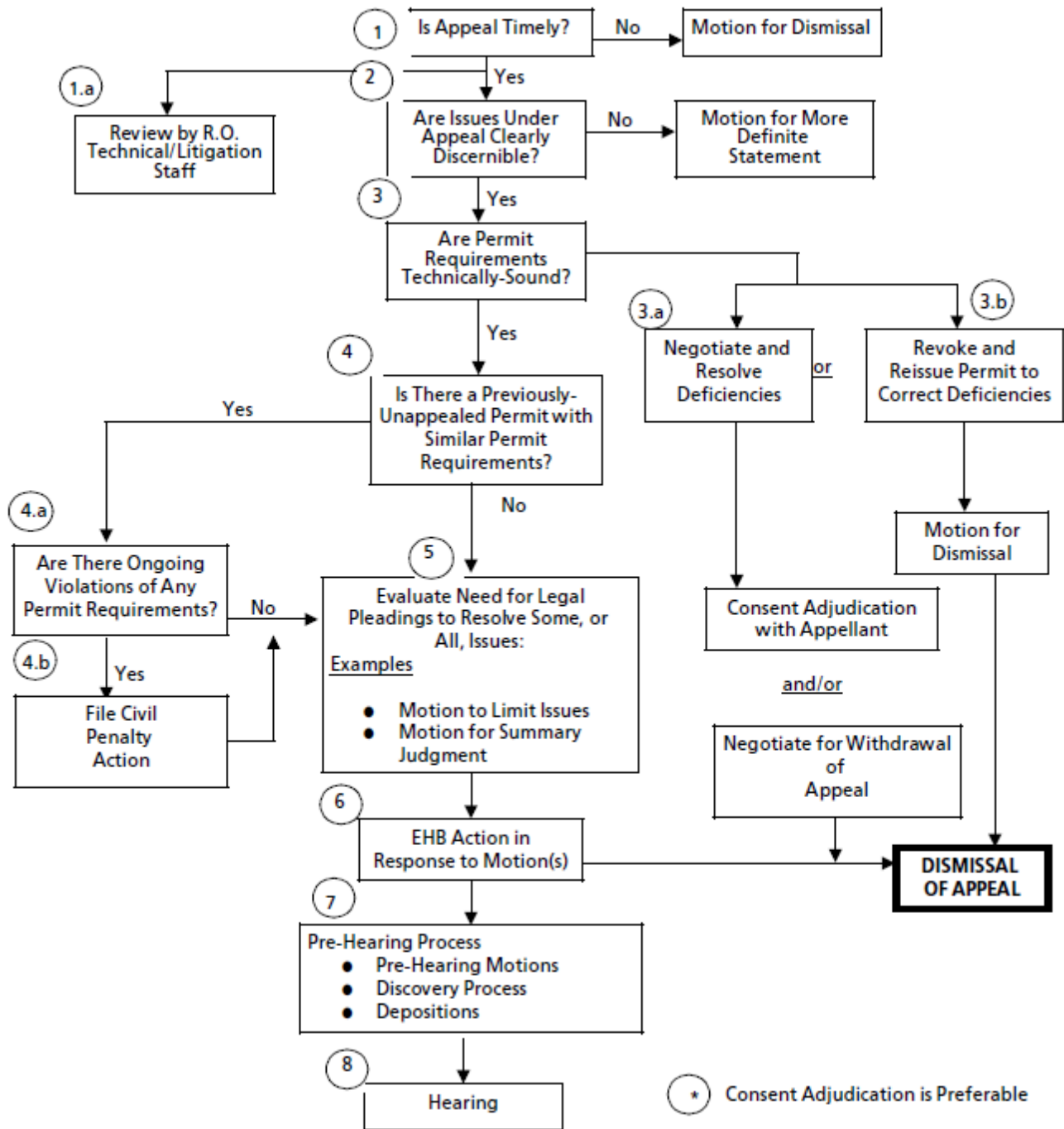
In cases where there was a previously-unappealed permit with similar permit requirements, and where the permittee continues to violate those same permit requirements under the current permit, a civil penalty action should be filed before the EHB in conjunction with addressing to the permit appeal.

REFERENCE DOCUMENTS

A. Policies and Procedures

B. Guidance Documents

**FIGURE 200.7-1 PROCESS FOR RESOLVING NPDES PERMIT
APPEALS**



PERMITTING POLICY AND PROCEDURES MANUAL

201 NPDES Permit Application Processing

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201.1 GENERAL CONSIDERATIONS

A. NPDES Application and Permit Requirements

1. Who Must Obtain an NPDES Permit

Except as further discussed in Subsection A.4 or F.4 below, any “person” discharging or proposing to discharge pollutants from a point source into navigable waters (surface waters of the Commonwealth) must obtain an NPDES permit. Included are those “persons” discharging storm water associated with industrial activity as defined by 40 CFR 122.26(b)(14). The term “person” means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

For a new discharge, the NPDES permit must be obtained, along with any corresponding WQM Part II permit, prior to construction of wastewater treatment facilities and commencement of discharge.

2. Who Must Apply for NPDES Permits

Applications for NPDES permits for discharge of wastewater to waters of the Commonwealth must be submitted by the “person” which is legally responsible for operating the facility. Operator in this context is the person who has financial control over the operation of the facility (usually through a lease agreement); not the person who was contracted to run the treatment facility. The NPDES permit must be issued to that same “person.”

Lease-back of facilities - In some instances a municipal sewerage authority will “lease-back” the facilities (after construction) to the municipality involved. When notified of this lease-back arrangement, the NPDES permit shall be transferred to the municipality. Before doing so the Regional Office should obtain documentation of the lease-back arrangement. The corresponding Part II permit may remain with the authority or may be transferred to the municipality, depending on the lease-back arrangement.

3. Effective Date and Duration of NPDES Permits

The cover page of the permit must show both the permit issuance date and the date the permit becomes effective.

NPDES permits are effective the first day of the month following the permit issuance date. They may be issued, reissued, or revoked and reissued for a term not to exceed five (5) years. A shorter permit term may be specified if considered appropriate.

4. Regulatory Exclusions from NPDES Permit Requirements

In accordance with EPA regulations, 40 CFR 122.3, the following discharges do not require NPDES permits:

- (a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge

incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

- (b) Discharges of dredged or fill material into waters of the United States which are regulated under Section 404 of CWA. [Note: This exclusion does not apply to discharges of waste materials.]
- (c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.
- (d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR Part 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
- (e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.
- (f) Return flows from irrigated agriculture.
- (g) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.44(m).

5. NPDES Permit Requirements for Stormwater Dischargers.

In 1987, the Clean Water Act was revised by adding Section 402(p) to address storm water. In summary, Section 402(p) states that prior to October 1, 1992, the NPDES program cannot require permits for discharges composed entirely of storm water unless one of the following conditions apply:

- 1) The discharge has been permitted prior to February 4, 1987 (in this case, the operator is required to maintain the existing permit).
- 2) The discharge is associated with industrial activity.

- 3) The discharge is from a large (population greater than 250,000) or medium (population greater than 100,000 but less than 250,000) municipal separate storm sewer system.
- 4) The permitting authority determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p) of the CWA requires EPA to establish NPDES permit application requirements for storm water discharges associated with industrial activity; discharges from large municipal separate storm water systems (systems serving a population of 250,000 or more); and discharges from medium municipal separate storm water systems (systems serving a population of 100,000 or more, but less than 250,000). In response to this requirement, EPA published permit application requirements on November 16, 1990 (55 FR 47990). These requirements are primarily contained in Section 122.26 of Section 40 of the Code of Federal Regulations (40 CFR Part 122.26).

6. Discharges to “Special Protection” Streams (Anti-Degradation and Socio-Economic Justification)

NPDES permits may not be issued for discharges in “special protection” areas unless a finding has been made that the anti-degradation requirements (in Chapter 95 of the Department’s rules and regulations) have been satisfied. See the Department’s Special Protection Waters Implementation Handbook.

B. NPDES Application Forms to be Used and Number of Copies Required

NPDES applications for sewage discharges shall be made using the following forms as appropriate:

Major Sewage	3800-PM-BCW0009
Minor Sewage	3800-PM-BCW0342

The NPDES applications for industrial waste discharges shall be made using the following forms as appropriate:

Type of Outfall Addressed		Application Form No.	Number of Copies**
a.	Process Wastewaters (includes contact rolling water), non-contact cooling water, miscellaneous wastewaters (Boiler, cooling tower blow down, etc.) or stormwater mixed with any of the above.	3800-PM-BCW0008	3
b.	Stormwater only (for industrial activity)		
1.	Individual Permit Application	3800-PM-BCW0403	3
2.	Notice of Intent to be covered under General Permit (GP)	3800-PM-BCW0083	3

** An additional copy of the application form and supplemental materials must be submitted for projects located in Erie County, Allegheny County or for certain projects located in the Delaware River Basin. (See Subsection 201.3 below for further discussion on coordination of application reviews.)

The instructions with these forms further explain which types of situations they should be used for.

The original, signed copy of each application must be notarized.

C. Signatures Required on NPDES Applications

There is no requirement in EPA or Department regulations for an NPDES permit application to be signed or sealed by a registered professional engineer.

In accordance with EPA's regulations 40 CFR 122.22(a), NPDES applications must be signed as follows:

(a) Applications. All permit applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy, or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

- (2) For a partnership or sole proprietorship: by a general partner or the proprietor respectively; or
- (3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

- (c) Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and believe, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

D. Limitations on Number of Facilities Which May Be Covered Under A Single NPDES Permit

Coverage under an NPDES permit shall normally be limited to those facilities, and associated discharge points, which are included under a single Administrative File (AF). NPDES permit applications submitted for facilities under more than one Administrative File shall be returned and the applicant shall be required to resubmit individual applications for each AF.

Note: In some situations, an applicant may request that the discharges presently under the control of one AF be segregated and covered by two (or more) NPDES permits. For example, a manufacturing facility may have a related operation located on-site which is not an integral part of the manufacturing operations, and which has its own separate discharges.

In such situations the Region should try to discourage the applicant from obtaining separate permits if possible; however, it is permissible to issue such separate permits if the applicant insists (separate applications and fees would be required).

E. NPDES Permit Requirements for Temporary Discharge Situations

1. Bypassing of Wastewater at NPDES-Permitted Facilities.

These situations are covered under the “bypass” provisions of EPA’s NPDES permit program regulations as shown below and are spelled out in the “boilerplate” language of the Bureau’s NPDES permit forms.

Excerpt from EPA’s NPDES Program Regulations

40 CFR 122.41 (m) - Bypass

(1) Definitions.

- (i) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.

- (ii) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.”
- (2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.”
- (3) Notice.
 - (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.
 - (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (1)(6) of this section (24-hour notice).
- (4) Prohibition of bypass.
 - (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph (m)(3) of this section.
 - (ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4) of this section.

As the above regulatory language indicates, certain anticipated bypasses may be approved by the Region without the need for a supplemental permit action provided the permittee meets certain conditions, including notification of the Bureau concerning the bypass. If these conditions are met, an anticipated temporary bypass may be approved by

letter after considering the impact on water quality and any other factors considered relevant.

In conjunction with approving bypasses, the Region should take whatever steps are considered appropriate to notify other interested parties and agencies of such decisions. This could include having the permittee provide such notices before, during and upon completion of such bypassing.

2. In the case of a sewage treatment plant which is undergoing modification or expansion, it may be necessary to bypass untreated or partially treated sewage for short periods of time to accommodate the construction process. In such cases, the provisions of Section 203-1 of this P&P are to be followed.

3. Spills and Emergency Cleanup Situations

Corrective action for these situations obviously cannot be delayed while going through the complete NPDES application/permit issuance process. In these situations, the Regional Office must decide what conditions and restrictions should be placed on such discharges while the cleanup operations occur. These should be communicated by standard orders to those responsible, where time allows, before cleanup operations begin or during the cleanup operation. As stated in Subsection A.4 above, when such discharges are in accordance with On Scene Coordinator's instructions, no NPDES permit is required.

Where the cleanup will involve a substantial period of time, i.e. several months or years, the Region should obtain and process an NPDES permit application for the discharge to allow the necessary technical and administrative reviews and public notification to occur (See Subsection F.4 below).

4. Other Temporary Discharges

There are a variety of temporary discharge situations which Bureau staff encounter for which an NPDES and/or Part II permit may or may not be appropriate. Table 201-1 outlines the decision-making framework which should be employed for such situations.

F. Cases Desiring Expedited NPDES Permits

There is currently no provision in federal or state regulations to grant "expedited" NPDES permits for dischargers without going through the required administrative process and public notification procedures. However, fairly quick approval can be given while still going through these procedures if the Regional Office decides to give such requests high enough priority. Assuming that the effluent limits are known when the request is made, and that an adequate NPDES application is on hand, the discharge could be approved in 50-60 days after the time the request was received (if no further complications arise).

G. Confidentiality of NPDES Permit Application and Related Information

This is addressed by EPA in its NPDES Permit Program Regulations, 40 CFR 122.7, Section 92a.8 of the Department's regulations, and in the instructions on its application forms, as follows:

Applicants may not claim as confidential any information required to be submitted on EPA's application forms (or required to be attached to those forms).

Applicants may claim as confidential, information which goes beyond that required by EPA, except for data on effluent quality.

If a claim of confidentiality is not made at the time of submittal of the information in question, then the information may be made available to the public without further notice to the applicant/permittee.

Information qualifying as confidential shall be handled in accordance with applicable Department policy and procedures.

Table 201-1

**Decision Framework for
Permitting/Approval of Various Temporary Discharge Situations**

Nature and Type of Discharge	Common Examples	Type of BWQP Permit/Approval
1. Unforeseen, emergency (naturally-occurring or man-induced)	<ul style="list-style-type: none"> - Leaks, spills, and related cleanup activities 	<p><u>No discharge permits involved</u> (See P & P 201.1, A.4). Handle in accordance with DEP/EPA emergency response procedures.</p> <p>Require development of PPC plans, if appropriate, to avoid repeat occurrences.</p>
2. One-time, temporary discharges involving relatively clean water	<ul style="list-style-type: none"> - Dewatering of quarries, or removal groundwater/stormwater which has accumulated in pits or basements - Hydrostatic testing of tanks, pipelines 	<p>No discharge permits involved. Handle by <u>letter</u> of permission, outlining controls to use to minimize environmental impact (such as E & S practices).</p> <p>Prior to such approval, require the discharges to clearly explain nature and duration of discharge, location(s) of discharge, and potential degree of contamination from conventional and toxic pollutants.</p>
3. One-time, short-term (<6 months) discharges involving some degree of contamination		
a. Where activity causing the discharge(s) is subject to state/federal environmental regulations/guidelines and suitable environmental controls are being utilized	<ul style="list-style-type: none"> - Dewatering of abandoned strip pits as part of state/federal abandoned mine reclamation projects - Bridge painting/sand blasting as part of PennDOT funded rehabilitation projects - Groundwater pump tests at state or EPA waste cleanup sites 	<p>a. No discharge permits involved. Projects should be reviewed to ensure adequacy of environmental control. Letter of permission should be issued which may include specific conditions where appropriate. See Groundwater Cleanup Temporary Discharge Approvals (4/21/93).</p>

* A generic order, with case-specific language included, is to be used. The order will be signed by the Regional Clean Water Manager. No legal review should be necessary unless part of an overall litigation case.

Table 201-1

**Decision Framework for
Permitting/Approval of Various Temporary Discharge Situations**

Nature and Type of Discharge	Common Examples	Type of BWQP Permit/Approval
b. Where activity is not being carried out under established state/federal environmental controls and Bureau of Clean Water is main regulatory point of contact		b. <u>No discharge permits involved.</u> Handle by standard order* outlining appropriate environmental controls, monitoring, and reporting requirements. Use COA if necessary, to coordinate with related enforcement activity.
4. <u>Periodic</u> , short-term discharges involving some degree of contamination	<ul style="list-style-type: none"> - Truck washing operations at industrial/commercial activities - Discharges associated with state or county fire-fighter training - Vehicle washing at military reserve training centers - Swimming pool filter backwash discharges 	<p>Require development of PPC plans along with installation of “best management practices” to minimize environmental impact.</p> <p>Use Order* if necessary, to stimulate corrective action or PPC plan development.</p> <p>Where volume, frequency, level of contaminants are cause of environmental concern, require NPDES and/or WQM Part II permit.</p>

* A generic order, with case-specific language included, is to be used. The order will be signed by the Regional Clean Water Manager. No legal review should be necessary unless part of an overall litigation case.

Table 201-1

**Decision Framework for
Permitting/Approval of Various Temporary Discharge Situations**

Nature and Type of Discharge	Common Examples	Type of BWQP Permit/Approval
5. Temporary but long-term (>6 months) discharges of pollutants	- Contaminated groundwater cleanup activities	<p>a. No permits required if “superfund” site. Rely upon cleanup standards and emission requirements established by EPA/DEP.</p> <p>b. NPDES permit will be required in all other cases.</p> <p>Issue standard Order* or Letter Approval to allow start-up of cleanup project while NPDES permit application is being developed and reviewed. Handle public notification via Regional Office press release or other method determined by CRC. (See Groundwater Cleanup Temporary Discharge Approvals (4/21/93).</p> <p>Evaluate NPDES permit requirements using the principles outlined in existing policies and technical guidances for various types of pollutants (for example Appendix H of DEP’s Toxics Management Strategy and Simplified/Consistent Gasoline Station Groundwater Cleanup Permitting (8/4/92)).</p> <p>Part II WQM permit not required for simple-air-stripping and/or carbon adsorption facilities but should be required for more complex physical/chemical/biological treatment facilities. Part II permits should also be required for projects involving spray irrigation or re-injection of treated wastewater.</p>

* A generic order, with case-specific language included, is to be used. The order will be signed by the Regional Clean Water Manager. No legal review should be necessary unless part of an overall litigation case.

201.2 NPDES ADMINISTRATIVE ACTIONS AND TECHNICAL REVIEW SPECIFIC TO THE NPDES PERMITTING PROGRAM

A flow chart indicating the general application review sequence for NPDES permits is shown in Figure 1.

The NPDES application shall be processed and reviewed for completeness as discussed in Subsection 200.2.B of this Manual. The following additional steps must be taken:

A. Application Transmittal to Other Agencies

For projects located in Erie or Allegheny County, a copy of the application will be forwarded to the Erie County Health Department and Allegheny County Health Department for review.

For projects located in the Delaware River Basin, one copy of the application will be forwarded to DRBC.

See Table 1 for EPA forwarding requirements.

See table 2 for forwarding requirements to other agencies.

B. Technical Review

Upon acceptance as complete, the application will be assigned to an Application Review Engineer who will be responsible for coordinating the technical review and preparation of the NPDES permit. Information concerning effluent limits, discharge monitoring requirements, compliance schedules, outstanding orders or consent orders and agreements and any other special conditions, will be obtained from the necessary staff within the Regional Office, and Central Office as necessary. The technical review shall be carried out and coordinated as described in Section 200.2.B. of this document.

C. Draft NPDES Permit and Water Quality Protection Report

Once appropriate effluent limits, monitoring requirements, special conditions, and compliance schedules are established, a draft permit shall be prepared by the Review Engineer. The supporting documentation which forms the basis for permit terms and conditions shall constitute the Water Quality Protection Report, to be made available for review by anyone having an interest in the permit (i.e. applicant, consultant, EPA, Central Office, the public) in accordance with Chapter 92a of the Department's rules and regulations.

D. General NPDES Public Notice Procedure

The general procedure is for publishing all NPDES permit draft and final permits except for minor municipal and non-municipal permits that have no significant changes to the permit being renewed. (See E below for fast tracking minor municipal and non-municipal permits with no significant changes.)

1. In conjunction with preparing the draft permit, the Review Engineer will prepare a public notice of the draft permit and intent to issue the permit. Public notice shall contain the following information (see sample notice format below):
 - Name, address, phone number of the Regional Office concerned;
 - Name and address of the applicant;
 - Brief description of the applicant's activities which will result in the discharger(s) in question;

TABLE 1
LIST OF DOCUMENTS TO BE SENT TO EPA

Type of Permit	Document to be Sent	When to Send
All Majors (includes watershed <u>major</u> permits)	Application Draft Permit WQMRs Public Notice	With Draft Permit
	Final Permit Changes to WQMR Expanded Public Notice if any	With Final Permit
All Biomonitoring Permits	All Biomonitoring/WETT permits should be treated as majors for sending documents to EPA.	Same as Majors
All Pretreatment Permits	All Pretreatment permits should be treated as majors for sending documents to EPA.	Same as Majors
All Minor Permits	Applications only, unless requested by EPA	When applications are received
All Stormwater Permits	By definition, these are minor permits, but, as requested by EPA, nothing needs to be sent to EPA.	When Requested
All Minor Permits involving CSO or municipal sludge requirements	As requested by EPA, nothing needs to be sent to EPA, unless requested by EPA	When requested

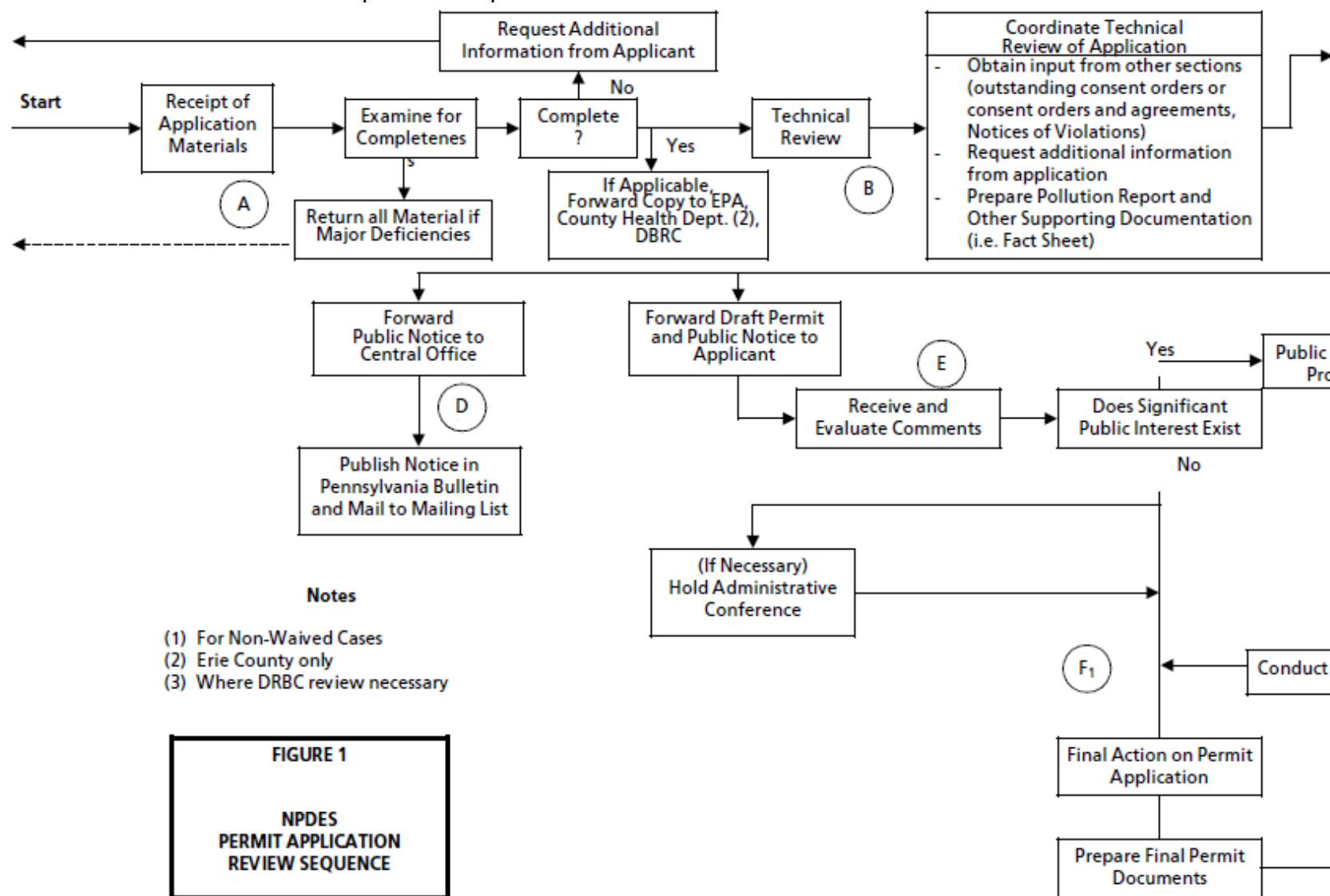
Table 2 - Distribution of NPDES Permits and Related Documentation

The NPDES application, draft and final NPDES permit, and related documents shall be distributed as indicated below:

	Regional Office	Central Office	Erie Co. (1)	Allegheny Co. (2)	DRBC (3)	Applicant
Permit						
Application	X	X	X	--	X	--
Related Review						
Correspondence	X	X	X	--	X ⁽³⁾	--
Supporting						
Documentation	X	X	X	X	X ⁽³⁾	X ⁽⁴⁾
Draft Permit	X	X ⁽⁵⁾	X	--	X ⁽³⁾	X
Final Permit	X	X	X	X	X	X
Notary Form	--	--	--	--	--	X

- (1) For cases in Erie County
- (2) For cases in Allegheny County
- (3) For cases in Delaware River Basin subject to DRBC review
- (4) Upon request of applicant
- (5) Various Central Office Divisions may request to review draft permits prior to final issuance for certain cases or for certain types of discharge situations.

Technical Guidance for the Development and Specification of Effluent Limitations and Other Conditions in NPDES Permits



Strategy and Procedures for Addressing Priority Pollutants in NPDES Permits.

Supporting documentation which forms the basis for developing permit terms and conditions shall be prepared in a clear, concise manner, making use of standard the above reference documents.,

- Name and designated uses of the receiving stream and a short description concerning the location of the discharge in question;
 - Name and location of nearest downstream potable water supply (PWS) (existing or proposed), considered in the determination of the draft permit limits for TDS, NO₂-NO₃, Fluoride, or Non-Priority Pollutant Phenolics. Even if no effluent limits are required for one of the four PWS parameters, identify the name and location of nearest downstream PWS considered in the notice.
 - The quantity of each discharge and proposed effluent limitations (including both interim and final limits and their effective dates), and any unique special conditions which relate to the discharge(s) in question.
2. A weekly submittal consists of items gathered under the appropriate Heading (what the Act is) and further broken down into category (application; permit issued; application returned; permit denied; etc.). Somewhere in between the Heading and the Category, the particular location should be typed. Category can be eliminated if the Heading makes what follows obvious. In some cases, it is not obvious, especially when dealing with Actions. The simplest example of this is:

Heading: Applications received under the Clean Streams Law Act of 1937
(P.L. 1987, No.394) (35 P.S. § 721.1 - 721.17).

Location: Regional Office, Clean Water Program Manager, Address

Category: Applications Applied for (or Permits Applied For)

Item: PA000000, Applicant, Address, County

See Sample format for Public Notices

Heading Action taken under the Clean Streams Law Act of 1937 (P.L. 1987,
No. 394)

Location: Regional Office, Clean Water Program Manager, Address

Category: Permits Issued

Item: PA000000, Permittee, Address, County

See Sample format for Public Notices

Sometimes the Heading is preceded by a lengthy information sheet (boilerplate) that reads the same in every issue of the Bulletin, explaining how to proceed if one has a dispute with a particular application/permit (i.e., NPDES, Mining). Only one of these sheets needs to be attached to the packet coming from a particular region/field location.

The DEP packet to the Bulletin consists of submittals from the various regional/field locations put together in a particular order, with what are called Applications being first

in order and Actions being second; at the end are put non-weekly submittals known as Notices. An example of a Notice would be a notification of a public meeting scheduled, or something that must be published in the PA Bulletin but is not a “normal” application or approval/denial.

Once a week the RO or FO designate should print out the weekly submittals under the appropriate Heading, printed on separate sheets by Category. NOTE: Each Item does not need to be on a separate sheet of paper as long as it is under the same Category, but every Category needs to start a new sheet. This allows for collating submissions from the various locations under like categories.

Because information to be published will be coming from multiple locations, it is necessary that the Headings are set up in each region/field office to read the same so there is no confusion about what they are.

Three copies (one original, two xerox) should be forwarded to Central Office. It is not necessary to forward this with a cover memo, as long as Central Office knows whom to contact via phone if the Bulletin calls with a question.

Submissions from various offices must be received in Harrisburg on Monday. Every Tuesday this information is collated, and the packet is sent to the Bulletin to be published. Publication date is the second Saturday following that Tuesday.

Sample Format for NPDES Public Notices

_____ Regional Office:

Regional Clean Water Manager, (Street, City, ZIP)

Telephone: () _____

PA __Appl. #), (Sewage) (Industrial), SIC, (Applicant name and address)

This application is for (Renewal) (Issuance) (Amendment) of an NPDES permit to discharge (Untreated (Treated) (Process Wastewater, Sewage, Cooling Water, Etc.)) to the Stream Name in _____ township, borough, etc. as applicable, _____ county. This is a (new (existing)) discharge.

The receiving stream is classified for the following uses: (list the general statewide uses applicable - i.e. aquatic life, water supply, etc. - and include special use designations such as CWF, WWF, HQ, EV, shown in Section 93.9 of Chapter 93). For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, Fluoride, and Phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is (name of PWS), located at (location on stream and distance below point of discharge).

The proposed effluent limits, based on a design flow of _____ MGD, are:

Outfall _____

Parameter (see attached examples of format to use for expressing limitations). Other Conditions

(Indicate any out-of-the-ordinary, special conditions which will be of special significance to this discharge. For example - special temperature conditions, toxic reduction evaluation conditions, special monitoring conditions, special restrictions on duration, magnitude, frequency of discharge, etc.

Do not indicate the more “routine” special conditions that are in fairly common use - such as “dry stream discharge”, “abandonment when sewers are available”, “85% BOD removal”, etc.)

Format to Be Used for Effluent Limits in NPDES Notices

Example #1 - POTW Sewage Dischargers

<u>Parameter</u>	<u>Average Monthly (mg/l)</u>	<u>Average Weekly (mg/l)</u>	<u>Instantaneous Maximum (mg/l)</u>
C-BOD			
Total Suspended Solids			
Ammonia Nitrogen			
5-1 to 10-31			
11-1 to 4-30			
Total Phosphorous			
5-1 to 10-31			
11-1 to 4-30			
Fecal Coliform			
5-1 to 9-30	_____	/100 ml as a geometric average	
10-1 to 4-30	_____	/100 ml as a geometric average	
Dissolved Oxygen	Minimum of _____mg/l at all times.		
pH	6.0 - 9.0 at all times.		

Example #2 - Non-POTW Sewage Dischargers

Parameter	Average Monthly (mg/l)	Instantaneous Maximum (mg/l)
(Use same format as shown above, spell out names of parameters)		

Example #3 - Industrial Waste Dischargers

Parameter	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
(Spell out names of parameters)			

NOTE: Specify all applicable limits as mg/l. Do not use lbs/day for NPDES Public Notices unless the permit contains only mass limits.

3. Notification of Other Governmental Agencies (See also 201.3)

In conjunction with the statewide NPDES mailing list, the Division of NPDES Permitting or the Field Offices will mail copies of NPDES public notices (concerning both draft permits and final actions) if requested to:

- Interstate Agencies having water quality control authority over waters affected by the issuance of an NPDES permit;
- District Offices of the Army Corps of Engineers operating in Pennsylvania;
- The applicable offices of the Water Pollution Control Agencies for the states of New York, New Jersey, Delaware, Maryland, and West Virginia;
- Any other federal, state, or local governmental agency, upon request of that agency.

4. Public Notice Comment Period

Prior to taking final action on an NPDES application, a comment period of 30 calendar days shall be allowed commencing on the date of publication of the public notice in the Pennsylvania Bulletin during which time the applicant, or any person, group, or agency concerned, may submit written comments and/or request to hold a public hearing on the application.

The Regional Clean Water Manager may allow up to 15 additional calendar days for comments if circumstances warrant.

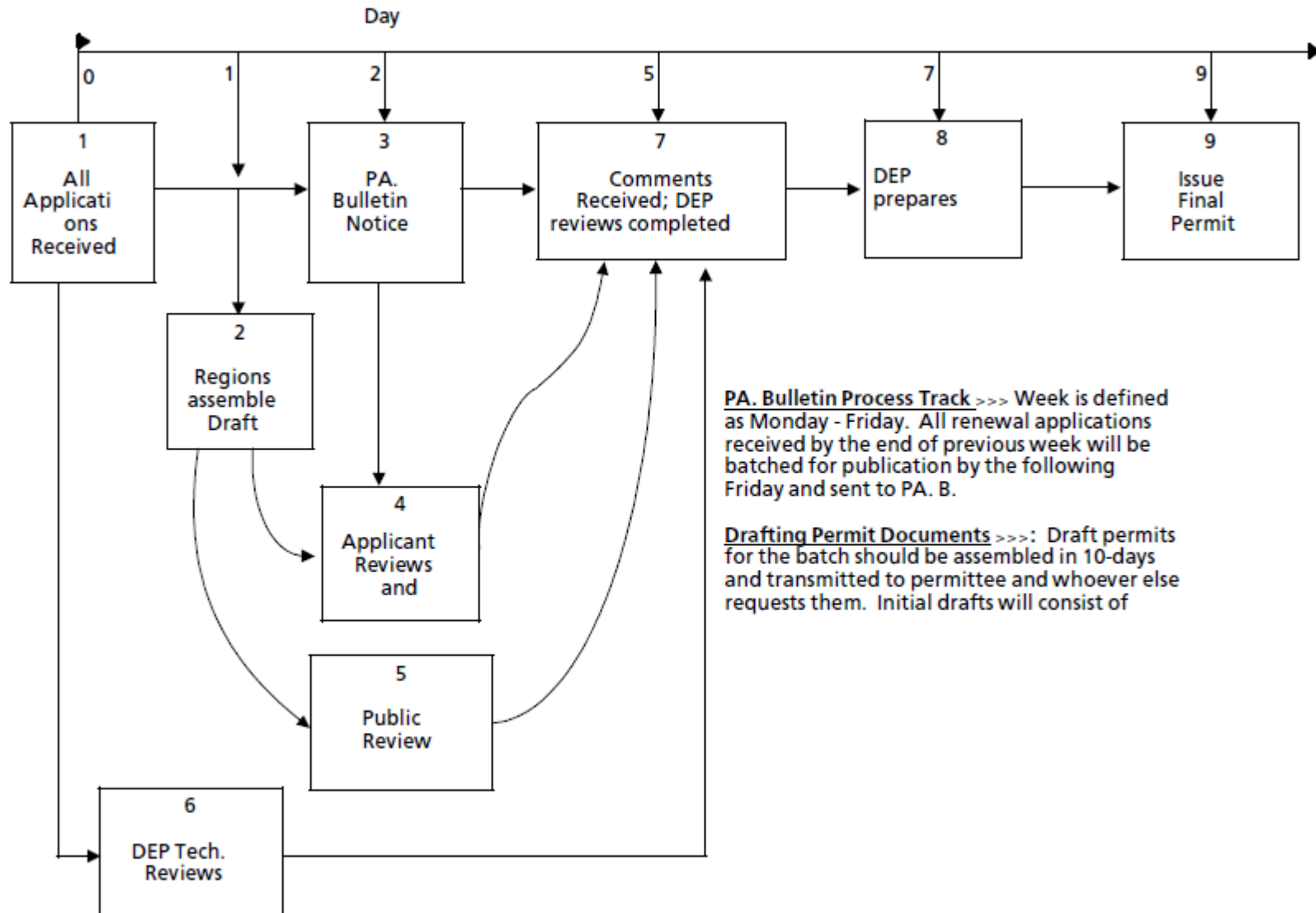
E. **Procedure for Fast Tracking Public Notice of Minor Municipal and Non-municipal Sewage NPDES Permit Renewal Applications**

The fast-tracking process will be used for all existing minor municipal and non-municipal sewage NPDES discharges to surface waters. This process is not applicable to new minor permit applications or major expansions of existing facilities, or industrial waste discharges.

1. Publishing Application Receipts and Intent to Issue Permits:

The Pennsylvania Bulletin notice template provides for publishing the “applications received” and “proposed Department actions” as a batch after completion of DEP’s administrative completeness review.

FAST TRACK PERMIT RENEWAL PROCESS



The Pennsylvania Bulletin public notice simplifies and shortens the existing permit processing time by allowing concurrent department, permittee and public reviews. The suggested tabular format that follows the public notice allows the permit actions to be “batch published” in manner similar to general permit related actions. A Pennsylvania Bulletin notice template is provided for use as a guide.

A 30-day comment period is still required to afford the public an opportunity to request and review necessary permit documents including the “proposed” draft permit. The permittee should be notified of the publication of the draft permit action and be given an opportunity to review and comment on any proposed changes to their current permit. If any other request for a copy of the draft permit is received, a copy of the current permit with appropriate and necessary updated requirements and conditions to reflect new or changed regulations, policies and guidance should be provided. The updates may include, where necessary, additional permit conditions, and/or new or changed requirements addressing such issues as CSOs, municipal sludge disposal, and TRC control.

2. Publishing Final Permit Actions:

The final permit action will depend upon DEP’s technical review of the application and any comments received from permittees or the general public. For all permit actions with no major changes from their existing permits, the final permit actions will be published in a batch tabular format, similar to the one used for the draft permits. A Pennsylvania Bulletin notice template is provided for use as a guide.

All permit actions with major changes from, or deviations to, the existing permit limitations or requirements shall be documented and published with an “expanded” description on the final notice for that permit action. All permits with expanded descriptions will continue to be published as individual permit actions listing final effluent limits and permit requirements.

3. Fast Track Pennsylvania Bulletin Notice for NPDES Permit Renewal Actions for Minor Sewage Discharges

The following parties have applied to renew their current NPDES permit(s) to allow the continued discharge of controlled wastewaters into the surface waters of this Commonwealth. The Department of Environmental Protection (DEP) has made a tentative determination to renew these permit(s) and proposes to issue them, subject to their current permit effluent limitations, and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management, and total residual chlorine control (TRC). Any major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

4. Template for Submitting Pennsylvania Bulletin Notices of Draft and Substantially Unchanged Final Minor Municipal and Non-Municipal Renewal NPDES Permits Issued.

NPDES No.	Facility Name and Address	County and Municipal	Tributary Stream	New Permit Reqmts.
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		
	Name: _____ Address: _____ _____	County: _____ Municipality: _____		

Persons wishing to comment on the proposed permit(s) are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Managers will make a final determination regarding the proposed permit action. Notice of this determination will be published in the Pennsylvania Bulletin at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents proposed effluent limitations and special conditions, comments received, and other information are on DEP's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

F. EPA Review of Draft NPDES Permit

The Regional Office shall forward a copy of the draft permit and documentation supporting development of the draft permit to EPA Region III according to Table 1 of this section.

EPA will have 45 days in which to formally comment or object in writing to the terms and conditions of the draft permit. If no response, orally or in writing, is received from EPA by the close of the public comment period, then the permit may be issued, provided all other comments and concerns are properly addressed.

When EPA formally "objects" to issuance of an NPDES permit, the Regional Office must fully address EPA's objection and make the necessary changes to the permit prior to issuance.

When EPA "comments" on the draft permit, the Regional Office must document a response to EPA's comments as part of the official record of decision-making for the permit.

When significant changes are made as a result of EPA comments or objections, the applicant should be notified and given an opportunity to respond prior to permit issuance.

G. Delaware River Basin Commission Review of Draft NPDES Permit

A copy of the draft NPDES permit, and appropriate supporting documentation, will be forwarded to DRBC in the following situations:

1. For discharges to the tidal portions of the Delaware River and its tributaries (i.e. the Delaware River Estuary).
2. Where the draft permit contains terms and conditions which would require a waiver from DRBC basin regulations (this should be explained in the transmittal letter to DRBC).

DRBC will normally have five (5) working days to provide any initial comments after which time the public notice may be forwarded to the Division of NPDES Permitting for Pennsylvania Bulletin publication and mailing to the statewide mailing list.

H. Applicant Review of Draft NPDES Permit

Once the draft permit, public notice, and supporting documentation have been prepared, the Regional Office shall forward the draft permit and a copy of the public notice to the Applicant. The Applicant should be given 30 days to comment on the draft permit. This time period may be extended as circumstances warrant.

Additional explanatory information relating to how specific permit terms and conditions were developed should be included in the transmittal letter as appropriate. It is important to provide such additional explanation in order to avoid misunderstandings on the part of the Applicant which would otherwise tend to prolong negotiations over permit terms and conditions. In some situations, it may be advisable to forward the Protection Report with the draft permit, for the Applicant's review.

Applicants will generally be given one opportunity to review the draft permit. Any concerns or disagreements which the Applicant expresses must be resolved as quickly as possible. Questions which arise concerning application of the EPA effluent limitations guidelines (ELG) regulations, "best professional judgement" (BPJ), or water quality-based requirements, shall be resolved via discussions with appropriate EPA or Central Office staff. Such discussions shall be documented as part of the permit case file.

Prolonged discussions and negotiations, repetitive meetings, etc., with the Applicant are to be avoided. If technology-based and water quality-based requirements have been properly developed and documented, there is no value in delaying permit issuance. If the Applicant insists on continuing to disagree with the Regional Office, then the Applicant should be advised of the Applicant's right to appeal the final permit decision.

I. Evaluation of Public Comments, Resolution of Concerns, Public Hearings

1. Based on considerations and concerns raised by the public during the public comment period on the draft permit, the Review Engineer shall determine what, if any, responses are appropriate.

As discussed above, any interested person, group, or agency desiring to express comments on an NPDES permit must do so in writing within the allowable public comment period. The Review Engineer shall ensure that all comments received will be evaluated by the appropriate staff within the Regional or Central Office and shall coordinate the responses to each set of comments received.

2. All relevant comments shall be addressed through a written reply. If significant public interest exists, a public hearing should be held as discussed below. Otherwise, where it appears appropriate, an administrative conference may be held to allow those expressing concern, and the applicant, to resolve differences of opinion.

NOTE: If public hearings on the proposed project have already been held as a result of the Act 537, or construction grants processes, then an additional public hearing at the NPDES stage should not be necessary unless significantly new issues have been raised.

3. Public Hearing

Subject to the time constraints discussed below, all public hearings on NPDES permits shall be conducted as soon as possible after the close of the initial public comment period. The Regional Clean Water Program Manager shall make arrangements for conducting the hearing in conjunction with the Regional Business Manager. The hearing shall be held in the general geographical area of the activity causing the discharge. More than one NPDES permit can be included for discussion at the same hearing if circumstances warrant.

A public notice concerning the hearing shall be prepared and forwarded to the Division of Permits and Compliance for subsequent mailing to the statewide NPDES mailing list and to the Pennsylvania Bulletin for publication. In addition, the Regional Office shall mail a copy of the notice to the applicant and to any commenters who are not on the regular NPDES mailing list.

The Region shall publish the notice in at least one newspaper of general circulation within the geographical area of the activity causing the discharge. The newspaper notice should appear in a section of the paper where it will be reasonably visible to the general public. The Region should review the general layout of the newspaper ahead of time and should then specify which section of the paper the notice will appear in. The Community Relations Coordinator should assist in this process.

The public notice shall be published in the Pennsylvania Bulletin at least 30 days prior to the hearing date. The notice shall include the following information:

Name, address, and phone number of the Regional Office holding the hearing;

Name and address of the applicant;

Name and designated uses of the stream to which discharge is or will be made and a short description of the location of the discharge on the waterway;

A brief reference to the original public notice issued for the draft NPDES permit, including the date of the notice;

Information regarding the time and location for the hearing; The purpose of the hearing;

A concise statement of the issues raised by those requesting the hearing;

Address and phone number of the Regional Office at which interested persons may obtain further information, and also where they may inspect and copy any non-confidential related documents;

A brief description of the nature of the hearing including the rules and procedures to be followed;

The Regional Clean Water Program Manager shall normally preside over the hearing. Written testimony submitted prior to or at the hearing shall be preferred, accompanied by opportunity to present oral testimony during the hearing. Oral testimony offered during the hearing shall be transcribed using either a tape recorder or a clerk stenographer. A court stenographer to take verbatim testimony is not necessary;

The rules of procedure for the hearing shall generally follow Roberts Rules of Order.

J. Final Determination and Public Notice of Permit Action

1. Final Determination

The determination of final action to be taken on the permit application shall be made as soon as possible after either the initial public comment expires, on or after the public hearing or administrative conference has been held.

Once the final determination is made, the Review Engineer shall prepare the recommended final permit (or denial) transmittal letter, along with the supporting documentation for permit requirements, and shall forward these through the Permits Section Chief to the Regional Clean Water Program Manager for signature and issuance.

A copy of the final permit (or denial decision) the NPDES permit application, and the supporting documentation shall be forwarded to the division of Permits and Compliance which will prepare the Central Office permit file folder and the notice of final action to be placed in the Pennsylvania Bulletin. For non-waived cases, a copy of the final permit (all pages) shall be sent to EPA Region III.

When insignificant changes have been made to effluent limits, compliance schedules, or other important permit conditions (which were mentioned in the initial public notice) the Review Engineer shall prepare an amplified final notice briefing outlining the changes. This notice shall be forwarded to the Division of NPDES Permitting for publication with the other notices of final permit action received during the week. If the changes to the draft are significant, a new draft permit should be issued to guarantee an opportunity for the permittee and interested parties to comment on the changes without having to resort to an appeal. Issuance of a new draft permit may also eliminate the need to revoke and reissue or amend the final permit in order to address comments.

2. Public Notice of Final Determination

In all cases the notice of final determination (issuance or denial) on the NPDES permit application shall be published in the Pennsylvania Bulletin.

3. Comments Received After Notice of Final Action

Occasionally, comments will be received after final action, and associated public notice have been made. Although the Bureau is not legally required to address such comments, the Regional Office may determine that the comments are valid and important enough to warrant an amendment to the permit.

In these situations, the procedures for making “minor” or “major” amendments to NPDES permits shall be followed.

4. Notifying Commenters of Right to Appeal

All parties who have formally expressed comments and concerns over the draft permit shall be notified of the final action and of their rights of appeal to the Environmental Hearing Board, pursuant to Chapter 21 of the Department’s Rules and Regulations.

The letter of notification shall contain the following statement:

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Market Street State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board’s rules of practice and procedure may be obtained from the Board. The appeal forms and the Board’s rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

5. Recording of Deeds Certificate for Sewage NPDES Permits

Section 202 of the Clean Streams Law requires the recording of all new sewage discharge permits. This section states in part that, “such permit for a sewage discharge before being operative shall be recorded in the Office of the Recorder of Deeds for the county wherein the outlet of said sewer systems is located and in case the municipality or person fails or neglects to record such permit, the Department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person.” This has been interpreted by legal counsel to apply to:

- a. All new and renewed NPDES permits for point source sewage discharges, and
- b. Other sewage discharge permits (not covered by an NPDES permit) issued under the Clean Streams Law such as Part II permits for discharge of sewage to groundwater.

These permits do not become operative until recorded in the Office of the Recorder of Deeds in the county in which the discharge is located. It is the permittee’s responsibility to have the permit recorded. When requested by the permittee, the Department should facilitate such recording of the permit.

Discharge permits not required to be recorded are:

- a. NPDES permits for industrial discharges containing sewage, and
- b. WQM (Part II) permits for industrial discharges containing sewage.

201.3 NPDES PERMIT REVIEW COORDINATION REQUIREMENTS

A. Inter-Program Permit Coordination

As discussed in Section 300 of this Manual, inter-bureau permit coordination must be followed in order to assure that a permit issued by one program will not violate the integrity of another regulatory program under the jurisdiction of the Department.

Under normal circumstances, the issuance of an NPDES permit would not be delayed pending the issuance of other Bureau permits or approvals. The issuance of the related Part II permits would, however, be coordinated with other program permits and approvals. It is the Regional Director's prerogative to withhold issuance of an NPDES permit pending resolution of other environmental program issues associated with controversial cases.

When a Form No. 1 is received from other Department programs it shall be reviewed to determine whether or not the project of concern would require an NPDES and/or a Part II permit. This will be indicated and brought to the attention of the Regional Director.

B. Coordination with EPA Region III

1. As discussed in Section 201.2 above, one copy of each NPDES permit application for non-waived cases shall be forwarded to EPA Region III. The name of the application review engineer shall be indicated in the transmittal to EPA.

EPA will indicate its desire to review and comment on (see Table 1, Section 201.2) certain draft permits, as set forth in the DEP-EPA Memorandum of Agreement. EPA comments shall be considered and, if appropriate, will be reflected in the final permit. EPA will "waive" review for other cases and will notify the Regional Office to that effect.

2. In addition to the documents specified in Table 1, Section 201.2, the following material must also be forwarded to EPA:

Copies of revisions or supplements to an NPDES application (all cases).

Copies of written requests for minor permit amendments (non-waived cases).

Copies of all incoming and outgoing correspondence concerning review of the permit application (for cases where EPA has not waived review).

3. EPA Region III staff may be consulted at any time during the application review process for technical assistance in determining effluent limitations or other requirements.

C. Coordination with Other Agencies

As stated in Section 201.2 above, various local, state, interstate, and federal agencies will be involved in receiving public notices for pending NPDES permits. The following specific guidance will apply to coordination of permit reviews with these agencies:

1. River Basin Commissions

- a. Coordination with the Susquehanna River Basin Commission (SRBC) and the Ohio River Valley Water Sanitation Commission (ORSANCO) - The Division of NPDES Permitting will assure that SRBC and ORSANCO are placed on the NPDES public notice mailing list. These river basin commissions will contact the appropriate Regional Offices with questions or comments concerning specific public notices.
- b. Coordination with the Delaware River Basin Commission - This will occur as described above for SRBC and ORSANCO, with the following exceptions:

Permit Application - A copy of each NPDES permit application received for projects located in the Delaware River Basin shall be forwarded to DRBC.

Draft Permit - For discharges to the Delaware River Estuary or where the permit conditions will require a waiver from DRBC basin regulations, a copy of the draft NPDES permit will be forwarded to DRBC prior to submittal of the public notice to the Division of NPDES Permitting. DRBC will have five (5) working days to provide any initial comment, after which the public notice may be forwarded to the Division of NPDES Permitting for publication.

Final Permit - DRBC will be sent a copy of each final NPDES permit for all projects located in the Delaware River Basin.

2. Pennsylvania Fish and Boat Commission and Pennsylvania Game Commission - These agencies are on the statewide NPDES public notice mailing list. They will be given the same 30-day comment period provided to the public and other agencies.
3. U.S. Fish and Wildlife Service - This agency is on the statewide NPDES public notice mailing list. They will be given the same 30-day comment period provided to the public and other agencies.
4. U.S. Army Corps of Engineers - The Corps Districts which have responsibility in Pennsylvania are on the statewide NPDES public notice mailing list. They will be given the same 30-day comment period provided to the public and other agencies.
5. Water Pollution Control Agencies of Adjoining States - These agencies are on the statewide NPDES public notice mailing list. They are given the same 30-day comment period provided to the public and other agencies.

201.4 RELATED NPDES PERMIT ACTIONS

In addition to permit issuance, several other related permit actions are discussed in EPA's NPDES permit program regulations and in Chapter 92a of the Department's regulations as discussed below:

A. Denial

1. If after reviewing the project is found to conform to Departmental requirements, it will be recommended for approval and the permit will be issued. Conditional approval is not to be given in the case of an application supported by only partly acceptable data or information.
2. The following are grounds for denial of an NPDES permit:
 - a. Under the provisions of Section 609 the Clean Streams Law, where the applicant is in violation of the Clean Streams Law or other environmental statutes or regulations, and where issuance of the NPDES permit would not resolve these violations.
 - b. For new discharges, where the discharger would clearly be unable to comply with effluent limitations or other permit requirements.
 - c. Where the applicant refuses to provide necessary information critical to the development of effluent limitations and other requirements.
3. The following procedures will be followed when denying NPDES permits:
 - a. The Water Management Program Manager shall prepare and send a letter of denial to the applicant without delay. See Section 200.2 for the details of the procedure.
 - b. The denial letter must include the following statement:

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Market Street State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form, and the Board's rules of practice and procedure may be obtained from the Board. The appeal forms and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

B. Return of Application

This is not a formal “permit action” per se, however it is a step which may be taken when it becomes clear that there is no point in further processing the NPDES application. For example:

1. Where necessary Act 537 planning approval has not been obtained.
2. Where the project sponsor decides the project will not be carried out and will not need a permit.
3. Where the application is incomplete and non-reviewable.

Refer to Section 200.4 regarding refund of application fees.

C. Renewal

Except as discussed in Sub-section D. below, any permittee who wishes to continue to discharge wastewater after the date of NPDES permit expiration, must submit a formal permit renewal application at least 180 days prior to the permit expiration date, unless the Regional Water Management Program Manager allows for permit application submittal at a later date.

Each Regional Field Office shall maintain an account of upcoming NPDES permit expiration dates and periodically send written notice to those permittees whose permits are due to expire in the future.

Upon renewal, the same NPDES number will be used as in the existing permit.

D. Continuation of Expired NPDES Permits

Chapter 92a of the Department’s regulations allows the administrative extension of NPDES permits which have expired, if:

1. The permittee has submitted a timely application for renewal and the permit has not been renewed through no fault of the permittee; or
2. The Clean Water Program Manager otherwise determines that an administrative extension is appropriate.

Permits which are administratively extended shall continue in full force and effect until they are renewed.

E. Modification

NPDES permits may be modified (or alternatively they may be revoked and reissued as discussed in Sub-section F. below) under the circumstances discussed below. When a permit is modified only the permit conditions subject to modification are reopened for the purpose of technical review and public notification.

When modifying an NPDES permit, the expiration date of the original permit will be maintained. The cover page and each revised page of the permit will be annotated with the sequential amendment number.

e.g. PA0086735
Amendment No. 1

Upon review and approval, the modified permit, including all pages, will be transmitted to the permittee, with copies of the entire permit and supporting documentation to the Regional file, Division of NPDES Permitting, and for all non-waived cases, EPA Region III. A cover letter should accompany all copies of the modified permit, detailing the changes made.

1. Minor Modifications

A minor modification may be requested by letter from the permittee, or it may be initiated by the Regional Office with the consent of the permittee.

Copies of pertinent correspondence relating to the minor amendment shall be sent to EPA Region III. Publication in the Pennsylvania Bulletin or via the statewide mailing list will not be required for minor modifications.

Pursuant to Section 122.63 of EPA's NPDES program regulations, minor modifications may be made in order to:

- (a) Correct typographical errors;
- (b) Require more frequent monitoring or reporting by the permittee;
- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date in a schedule of compliance;
- (d) Allow for a change in ownership or operational control of a facility (i.e. in conjunction with a permit transfer) where the Bureau determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Bureau (see Subsection G. below);
- (e) Change the construction schedule for a discharger which is a "new source." No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;
- (f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

- (g) When the permit becomes final and effective on or after March 9, 1982, to conform to changes respecting §§ 122.41(e), 122.41(1), 122.41(m)(4)(i)(B), 122.41(n)(3)(i) and 122.42.(a) of EPA's NPDES program regulations issued September 26, 1984.

2. Major Modifications

Major modifications to NPDES permits may be initiated by the Bureau, or requested by the permittee, under the circumstances discussed below. When requested by the permittee, a formal permit application and fee is required, along with local municipal notification (Act 14).

Pennsylvania Bulletin notice of draft and final permit is required for all major modifications. Pursuant to Section 122.62 of EPA's NPDES program regulations, the following are causes for a major modification:

- (1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(**Note**--Certain reconstruction activities may cause the "new source" provisions of § 122.29 to be applicable).
- (2) Information. The Bureau has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance. For general NPDES permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable.
- (3) New regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations, or by judicial decision, after the permit was issued. Permits may be modified during their terms for this cause only as follows:
 - (i) For promulgation of amended standards or regulations, when:
 - (A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under Part 133; and
 - (B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

- (C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after **Federal Register** notice of the action on which the request is based.
- (ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.
- (iii) For changes based upon modified State 401 certifications of NPDES permits (see § 124.55(b)). [This only applies where EPA is the permitting agency].
- (4) Compliance schedules. The Department determines good cause exists for modification of a compliance schedule (such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy). However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline.
- (5) Variances. When the permittee has filed a request for a variance under section 301(c), 301(g), 301(h), 301(j), 301(k), or 316(a) of the Clean Water Act, or for “fundamentally different factors”, within the time specified in § 122.21 and the Bureau processes the request under the applicable provisions of §§ 124.61, 124.62, and 124.64.
- (6) 307(a) toxics. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).
- (7) Reopener. When required by the “reopener” conditions in a permit, which are established in the permit under § 122.44(b) (for Clean Water Act toxic effluent limitations) or 40 CFR 403.10(e) (pretreatment program).
- (8) Net limits.
- (i) Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(h); or
- (ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(h)(1)(ii)(B).
- (9) Pretreatment. As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).
- (10) Failure to notify. Upon failure of an approved NPDES State to notify, as required by section 402(b)(3) of the Clean Water Act, another State whose waters may be affected by a discharge from the approved State.

- (11) Non-Limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).
- (12) Notification levels. To establish a “notification level” as provided in § 122.44(f).
- (13) Compliance schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of the Clean Water Act for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.
- (14) When the permit becomes final and effective on or after August 19, 1981, if the permittee shows good cause for the modification, to conform to changes respecting the following regulations issued under the Settlement Agreement dated November 16, 1981, in connection with Natural Resources Defense Council v. EPA, No. 80-1607 and consolidated cases: § 122.41(c) (need to halt or reduce activity not a defense); and § 122.41(d) (duty to mitigate).
- (15) When the permittee’s effluent limitations were imposed using “best professional judgement” under section 402(a)(1) of the Clean Water Act and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitations be made less stringent than the subsequent guideline.
- (16) To correct technical mistakes such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.
- (17) When the discharger has installed the treatment technology considered by the permit writer in setting “BPJ” effluent limitations imposed under section 402(a)(1) of the Clean Water Act and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

F. Revocation and Reissuance

Pursuant to Section 122.62 of EPA’s NPDES program regulations, as an alternative to a major modification, an NPDES permit may be revoked and reissued either at the request of the permittee or initiated by the Department with the permittee’s consent.

When a permit is revoked and reissued, the entire permit is reopened and subject to revision. The permit is then reissued for a new term, with the same permit number as originally assigned.

Revocation and reissuance are generally not appropriate unless the bulk of the current permit term has elapsed and/or the permit modifications are truly significant. When done at the request of the Permittee, new NPDES application, fee, and local municipal notification (Act 14) will be required.

A draft permit and associated public notice and interagency coordination shall also be required.

G. Transfer

NPDES permits may be transferred to the new owner or operator of a facility provided the facility is the same as originally approved, the quality and quantity of the discharge have not changed significantly. The following procedures are to be followed:

1. In the event of any pending change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the Regional Office by letter of such pending change at least 30 days prior to the change in ownership or control. Both the current permittee and the new owner or controller shall complete the Application for Transfer of Permit.

Applications for all transfers shall be submitted to the Regional Office in duplicate. All applications received by the Central Office will be referred to the proper Region for processing.

If the transfer involves a change in name only, proof of compliance with the Fictitious Name or Fictitious Corporate Name Act must accompany the transfer in a separate document.

2. The request shall be accompanied by a written agreement between the existing permittee and the new owner or controller stating that the existing permittee shall be liable for violations of the permit up to and until the date of permit transfer and that the new owner or controller shall be liable for permit violations from the date on.
3. The original permit shall be surrendered if available. If the permittee cannot produce a copy of the permit, the application must so indicate.
4. The Regional Office will review the application with particular regard to compliance with requirements of rules and regulations and conformity of facilities with those approved in the permit. If the judgement is for approval, a new permit document will be prepared.

Conditions contained in the former permit which are no longer applicable may be deleted from the new permit by the program, but no conditions or restrictions not in the former permit may be included in the transferred permit. Transferred NPDES permits will be designated by their original number along with a notation that the permit has been amended (to reflect new responsible permittee).

Example PA 0012345
Amendment No. 1.

5. The amended permit will be mailed to the new permittee with a letter of transmittal. Copies of the letter of transmittal will be sent to the old permittee and to the Division of NPDES Permitting (with copies of amended permit pages).

When transmitting transferred sewage NPDES permits, the Regional Office will notify the new permittee that the permit must be recorded by the County Recorder of Deeds under the provisions of the Clean Streams Law.

6. Upon issuance of the transferred permit, the file copies of the former permit in the Regional Office and in the Central Office shall be marked "CANCELLED." The former permittee's folder will remain in file with the cancelled permit, but all correspondence still pertinent to the new permittee will be transferred to the new permittee's file. The file folders will be appropriately cross-referenced.
7. If judgement is for denial, the Regional Office will return the transfer request and supporting documents to the former permittee and notify the former permittee that the transfer is refused, stating the reason for refusal and the former permittee's rights of appeal (see 201.4A above). A copy of the notification letter will be sent to the proposed new permittee.

H. Termination

The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit.
- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time.
- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- (4) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

201.5 GENERAL NPDES PERMITS

A. Procedure for Development

The general considerations and procedures for developing and administering general NPDES permits are discussed in Chapter 92a of the Department's Rules and Regulations. (See Figure 1)

B. Procedure for Notice of Intent Review and Approval for Coverage

A flow chart of the general NPDES permit development process is shown in Figure 1. The procedures involving review and approval of requests for coverage under NPDES permits are summarized in Figure 2.

C. Numbering System for Developed General Permits

General permits will be numbered in the order they are developed with the prefix of PAG. (Pennsylvania General Permit) - For example, the first general permit developed will be called PAG-01. The second developed is PAG-02.

D. Number System for General Permits Issued for Coverage:

1. Numbering System for Industrial Storm Water Permits.

All Industrial Storm Water General and Individual Permit Applications will be assigned a unique number according to the following numbering convention.

Regional Offices have been assigned a block of numbers. Central Office must be contacted for additional numbers if and when needed.

Each number is comprised of nine (9) positions:

First Two Positions	PA	
Third Position	R Water	(Designator for Storm <u>General</u> Permit)
Fourth and Fifth Positions	Type Code (See below)	
Sixth – Ninth positions	Sequential number 0001 through 9999 (assigned by Central Office to each region - see below)	

Storm Water Permit Numbering System
Conversion of SIC Codes to Permit Type Codes for 4th and 5th positions of permit number.

SIC	DESCRIPTIONS	PERMIT TYPE
10	Metal Mining	30
12	Coal Mining	30
13	Oil & Gas Extraction	31
14	Non-Metallic Minerals	32
20	Food and Kindred Products	12
21	Tobacco Products	12
22	Textile Mill Products	13
23	Apparel Related Products	13
24 (except 2434)	Lumber and Wood Products (except Wood Kitchen Cabinets)	22
2434	Wood Kitchen Cabinets Manufacturing	22
25	Furniture and Fixtures	22
26 (except 265 & 267)	Paper and Allied Products (except Paperboard Containers and Products)	14
265	Paperboard Containers and Boxes	14
267	Converted Paper and Paperboard Products	14
27	Printing, Publishing, and Allied Industries	15
28 (except 283 & 285)	Chemicals and Allied Products (except Drugs and Paints)	23
283	Drugs	23
285	Paints, Varnishes, Lacquer, Enamels and Allied Products	15
29	Petroleum Refining Industries	70
30	Rubber and Plastics	23
31 (except 311)	Leather and Leather Products (except Leather Tanning and Finishing)	13
311	Leather Tanning and Finishing	13
32 (except 323)	Stone/Clay/Glass and Concrete Products (Except Glass Products Made of Purchased Glass)	21
323	Glass Products	21
33	Primary Metal Industries	20
34 (except 3441)	Fabricated Metal Products (except Fabricated Structural Metal)	20
3441	Fabricated Structural Metals	20
35	Industrial and Commercial Machinery and Computer Equipment	11
36	Electronic and Other Electrical Equipment and Components	11
37 (except 373)	Transportation equipment (except Ship and Boat Building and Repairing)	80
373	Ship and Boat Building and Repairing	80
38	Measuring, Analyzing, and Controlling Instruments	11
39	Miscellaneous Manufacturing Industries	32
40	Railroad Transportation	80
41	Local Passenger Transportation	80
42 (except 4221 - 4225)	Trucking and Warehousing (except Public Warehousing and Storage)	80
4221 - 4225	Public Warehousing and Storage	80

43	U.S. Postal Service	80
44	Water Transportation	80
45	Transportation by Air	80
4991	Steam Electric Power Plants	70
4952	POTWs, Sewage Sludge Disposal and Pre-Treatment facilities	90
4953	Hazardous Waste Treatment, Storage, or Disposal facilities	40
4953	Landfills, and Land Application sites	50
5015	Motor Vehicle Parts, Used	60
5093	Scrap and Waste Materials	60
5171	Petroleum Bulk Stations and Terminals	80

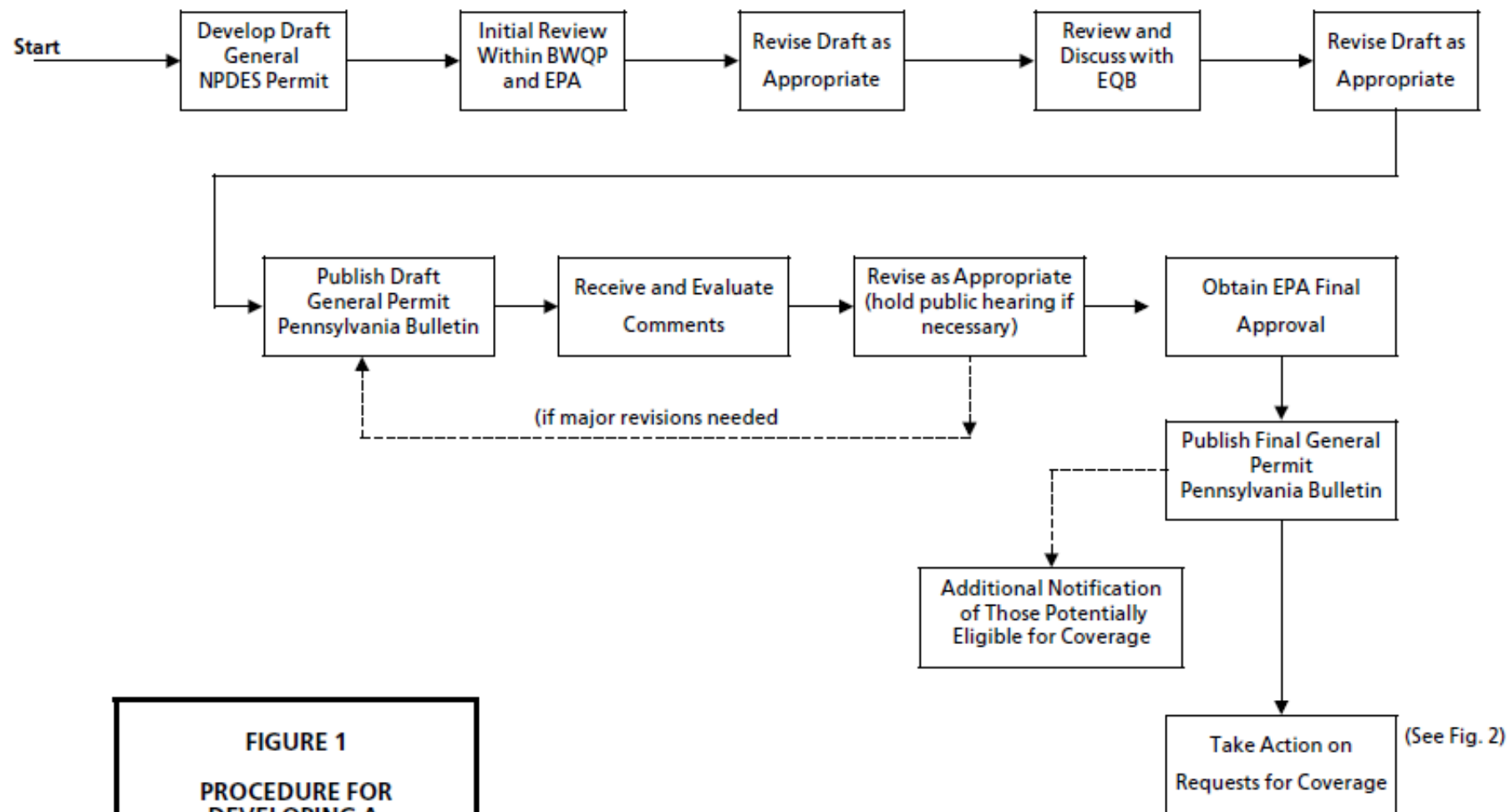


FIGURE 1
PROCEDURE FOR
DEVELOPING A
GENERAL NPDES PERMIT

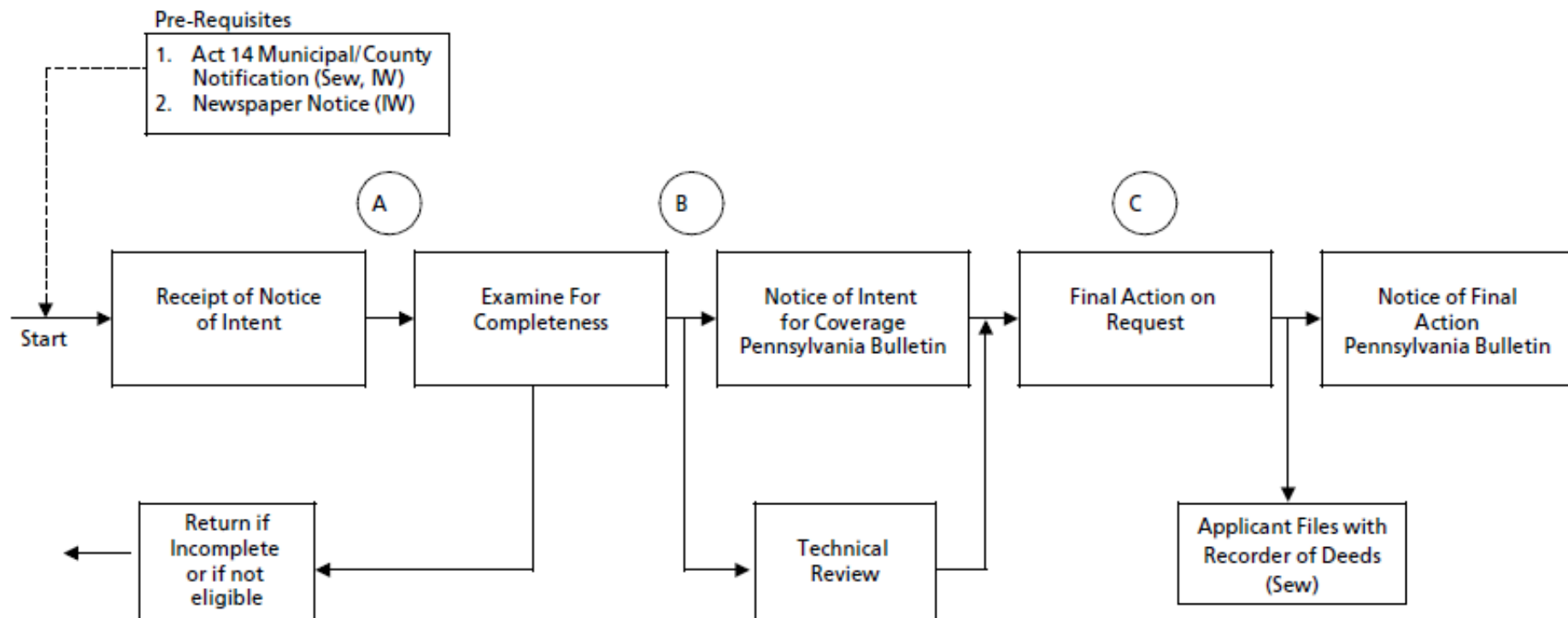


FIGURE 2

**GENERAL NPDES PERMIT
REQUEST-FOR-COVERAGE
PROCESS**

Sequential Numbers for the Sixth through Ninth Positions

Regional Offices may use **only** those sequential numbers assigned below.

These blocks of numbers should be repeated for each “Designator” (R or S) and “Type Code” (see example at below).

0001 - 2200	Southeast (CONSHOHOCKEN)
2201 - 3500	Northeast (WILKES BARRE)
3501 - 4800	Southcentral (HARRISBURG)
4801 - 6100	Northcentral (WILLIAMSPORT)
6101 - 8300	Southwest (PITTSBURGH)
8301 - 9600	Northwest (MEADVILLE)

For Example: The Northcentral Regional Office received six (6) new applications for Storm Water General Permits. They would be numbered as follows.

<u>Application Type Code</u>	<u>Storm Water Number</u>
<u>General Permit Applications</u>	
Application for Lumber & Wood Products General Permit	PAR224801
Application for Transportation Industry General Permit	PAR804801
Second Application for Lumber & Wood Products General Permit	PAR224802
Application for Paper & Allied Products General Permit	PAR144801
Second Application for Paper & Allied Products General Permit	PAR144802
Third Application for Lumber & Wood Products General Permit	PAR22480

2. Numbering System for Other General Permits Issued for Coverage.

All general permits will be assigned a unique number according to the following numbering convention.

Each number is comprised of nine (9) positions:

First two positions.....PA

Third position.....G (Designator for a general permit)

Fourth and Fifth positions01 to 99 (general permit number for the general permit issued. Use the number assigned to the general permit when it was issued

Sixth – Ninth positions.....sequential number 0001 through 9999

Sequential Number for the sixth through ninth position.

Regional Office may use only those sequential numbers assigned below.

0001 - 2200	Southeast (Conshohocken)
2201 - 3500	Northeast (Wilkes-Barre)
3501 - 4800	Southcentral (Harrisburg)
4801 - 6100	Northcentral (Williamsport)
6101 - 8300	Southwest (Pittsburgh)
8301 - 9600	Northwest (Meadville)

For Example: The Northcentral Regional Office received three new applications for single residence sewage treatment plant for general permits (PAG-04). They should be numbered as follows.

<u>Application Type</u>	<u>Permit Number</u>
Single Residence Sewage Treatment Plant	PAG044801
Single Residence Sewage Treatment Plant	PAG044802
Single Residence Sewage Treatment Plant	PAG044803

E. General Permit Public Notice

Following is the form and language to be used to prepare the public notice for general permit coverage publication in the **Pennsylvania Bulletin**.

**Notices of Intent for Coverages Under
NPDES General Permits and Department Final Actions**

The Department of Environmental Protection has received Notices of Intent (NOI) for approval of coverage under General NPDES Permits and has taken the following final actions by approving the requested general permit coverages.

These actions of the Department may be appealed to the Environmental Hearing Board, Second Floor, Rachel Carson State Office building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483, by an aggrieved person under the environmental Hearing Board (35 P.S. 7514); 2 Pa. C. §§ 501-508 and 701-704 (relating to the administrative Agency Law). Appeals must be filed with the Environmental Hearing Board within 30 days from the date of this issue of the **Pennsylvania Bulletin** unless the appropriate statute provides a different time period. Copies of procedure before the Board may be obtained from the Board.

NOI Received and Final Actions Under NPDES General Permits

Coverage under the General Permits issued under the National Pollutant Discharge Elimination System (NPDES) Permit Program to discharge waste waters to waters of the Commonwealth.

NPDES #	Application GP No.	Facility Name and Address	County and Municipal	Stream Name	SIC
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		
PA		Name: _____ Address: _____ _____ _____	County: _____ Municipality: _____ _____		

PERMITTING POLICY AND PROCEDURE MANUAL

Section 202 - WQM Part II Permit Application Processing

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202.1 GENERAL CONSIDERATIONS

A. WQM Part II Permitting Requirements

1. Who Must Obtain a Part II Permit

The following situations require issuance of Part II permits:

- a. Construction and operation of wastewater treatment facilities which will discharge to waters of the Commonwealth (via stream discharge or to groundwater). (Section 207, 308 Clean Streams Law)
- b. Operation of land application systems for wastewater treatment and/or disposal. (Section 207, 308 Clean Streams Law)
- c. Construction and operation of underground injection wells and associated pretreatment facilities. (Section 402 Clean Streams Law)
- d. Construction and operation of impoundments used for storing or treating wastewater. See 25 PA Code Chapter 287 for permitting requirements for construction and operation of impoundments used to store or treat wastewater (see Section 207 Clean Streams Law)
- e. Construction and operation of facilities for storage of animal manure or land application of animal manure where the Bureau determines that a permit is necessary pursuant to Section 101.8 of the Department's Rules and Regulations. (Section 402 Clean Streams Law)
- f. Public owned sanitary sewer systems
 1. New sewer systems (i.e. not extensions).
 2. Any pump station and force main except individual grinder pump connections serving five or less EDUs.
 3. Any sewer extension serving over 250 EDUs or having the potential to serve over 250 EDUs.
 4. Any alternative, unusual, or experimental designs (i.e. not built in accordance with DWFM).
 5. Sewers -8" in diameter, generally.
- g. Private owned sanitary sewer systems
 1. New sewer systems serving or having the potential to serve more than 250 EDUs (i.e. not extensions).
 2. Pumping station and force main serving more than 250 EDUs.

3. Extensions serving greater than 250 EDUs, i.e. not associated with a pumping station.
4. Alternative, unusual or experimental designs (i.e. not built in accordance with DWFM).

2. Who Must Apply for the WQM Part II Permit

It is the responsibility of the treatment facility owner to obtain the WQM Part II Permit.

3. Exclusions from Part II Permit Requirements

Part II permits are not required under the following circumstances:

- a. Construction and operation of closed systems for treatment of wastewater, which have no discharge to waters of the Commonwealth.
- b. Surface impoundments used for collection of storm water and control of storm water discharges or used for erosion and sedimentation runoff control purposes.
- c. Construction and operation of facilities for storage and land application of animal manure which are constructed and operated in accordance with the Department's Manure Management Manual.
- d. Construction and operation of privately owned collection sewers.
- e. Public owned Sanitary Sewer System
 1. Sewer extensions serving 250 EDUs or less. The definition of "sewer extension" does not include pump stations and force mains.
 2. Sewer extensions that do not have the potential to serve more than 250 EDUs.
- f. Privately owned Sanitary Sewer Systems
 1. Pumping stations serving 250 EDUs or less.
 2. Collection systems serving 250 EDUs or less.
 3. Individual pumping stations and force mains, both privately owned, collectively not serving over 250 EDUs.

Definitions:

- a. Publicly owned sanitary sewer system - a treatment works and connecting sewers owned by a state or municipality.

- b. Sewer system - pipelines or conduits, pumping stations and force mains, and other appurtenant construction devices and facilities used for conveying sewage to a plant.
- c. Extension - an addition to sanitary sewer system to accommodate more than one connection.
- d. Connection - the connecting of a structure which generates or could generate hydraulic or organic loads to a sewer system.
- e. An EDU is defined as contributing 262.5 GPD of flow per day.
- f. Privately owned sanitary sewer system - treatment works and connecting sewers owned by other than a state or municipality.

Notes:

- a. Downstream existing sewers need not be permitted unless they will receive flow >65,600 GPD. (existing + proposed)
- b. These rules apply for capped sewers.
- c. $250 \text{ EDUs} = 65,600 \text{ PD} (75 \text{ GPD} \times 3.5 \text{ persons per EDU})$

4. Part II Permit Required Prior to Construction

The Clean Streams Law requires that, where a Part II permit is necessary, physical construction of the facilities involved for treatment or disposal of wastewater shall not be initiated until the permit is issued. Bureau personnel may not indicate or infer to applicants that the mere submission of the Part II application is sufficient basis to initiate construction.

5. Number of Facilities Which May Be Covered Under a Part II Permit

Sewage and Industrial Waste Treatment Plants - Each wastewater treatment plant associated with a discharge point shall generally be subject to an individual Part II permit.

6. Duration of Part II Permits

Part II permits normally have no expiration date and remain in effect for the life of the facilities involved.

Industrial Waste - Each Part II permit issued for industrial waste facilities contains a standard condition stating that the permit will become null and void if the facilities involved are not constructed within two years of permit issuance.

Experimental Permits - In accordance with Section 91.25 of the Department's Rules and Regulations, where the suitability of a proposed device or method of treatment has not

been demonstrated by actual field use, conditional approval shall be given to it until such time as the effectiveness of the device or treatment has been demonstrated to the satisfaction of the Department by ample field experience. The Bureau reserves the right to issue experimental permits under such circumstances which may contain special conditions regarding expiration dates. (See Section 203 of this Manual concerning experimental permits).

B. Part II Permit Application Requirements

1. Part II Application Forms and Number of Copies Required

Applications for individual Part II permits shall be made using form 3850-PM-BCW0400. Notices of Intent for general Part II permits shall be made using forms 3850-PM-BCW0020 (WQM General Permit for Small Flow Treatment Facilities) and 3850-PM-BCW0045 (WQM General Permit for Sewer Extensions and Pump Stations).

Three sewage copies of each application must be submitted. The original, signed copy must be notarized. An additional copy must be submitted for projects in Erie or Allegheny Counties or certain classes of projects located in the Delaware River Basin.

2. Signatures Required on Part II Permit Applications

Applications for Part II permits must be signed by a legally authorized representative of the person, municipality, corporation, or other entity which is legally responsible for controlling the discharge.

3. Confidentiality of Part II Permit Application and Related Information

Section 607 of Pennsylvania's Clean Streams Law (relative to public records and evidence) states the following:

“All papers, records, and documents of the Department, and applications for permits pending before the Department, shall be public records open to inspection during business hours: provided, however, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record. Copies of all such public records and the rules and regulations of the Department shall be received in evidence in all courts and elsewhere, subject to the rules of law concerning evidence.”

Information provided as part of, or in support of, Part II permit applications is generally not to be considered “confidential.” Information which is proprietary to the manufacturing or commercial aspects of the activity generating the discharge, and which is not otherwise required to be made public as part of the NPDES permitting process (see Section 201.1H), may be considered as confidential and shall be handled accordingly.

4. Requirements Regarding the Use of Registered Engineer's Seal

Section 91.23 of the Department's Rules and Regulations requires that:

- (a) An Engineer's Report as well as plans and specifications shall accompany the applications, showing clearly what is proposed and permitting the basis of design to be thoroughly understood and checked.
- (b) Plans, reports and specifications shall be prepared by a licensed professional engineer authorized to practice in this Commonwealth.
- (c) The front cover or flyleaf of each set of drawings and each copy of the report and specifications shall bear the imprint of the engineer's seal.
- (d) All drawings submitted shall bear the imprint or legible facsimile of the engineer's seal.
- (e) Reports, drawings and specifications for strip mines or for minor work not involving safety to life or health may be submitted, as provided by law, by a registered surveyor and shall bear the imprint or facsimile of the registered surveyor's seal.

The Landscape Architect's Registration Law of 1965 (Act 535) prohibits Landscape Architects from designing "structures or facilities as are ordinarily included in the practice of engineering or architecture." (Section 2). The design of wastewater treatment or conveyance facilities and subsequent Part II Application Submission by Landscape Architects is therefore not acceptable.

Based on the above considerations, a P.E. seal will be required for all Part II permit applications.

202.2 PART II PERMIT APPLICATION ADMINISTRATIVE ACTIONS AND TECHNICAL REVIEW

A flow chart indicating the general review sequence for Part II permit applications is shown in Figure 1. Table 1 indicates the general time frames associated with this review process. Each Part II application shall be reviewed for completeness and processed as discussed in Section 200.2B of this manual. The following additional steps must be taken:

A. Application Transmittal to Other Agencies

Upon acceptance as complete various interagency review coordination shall commence as follows:

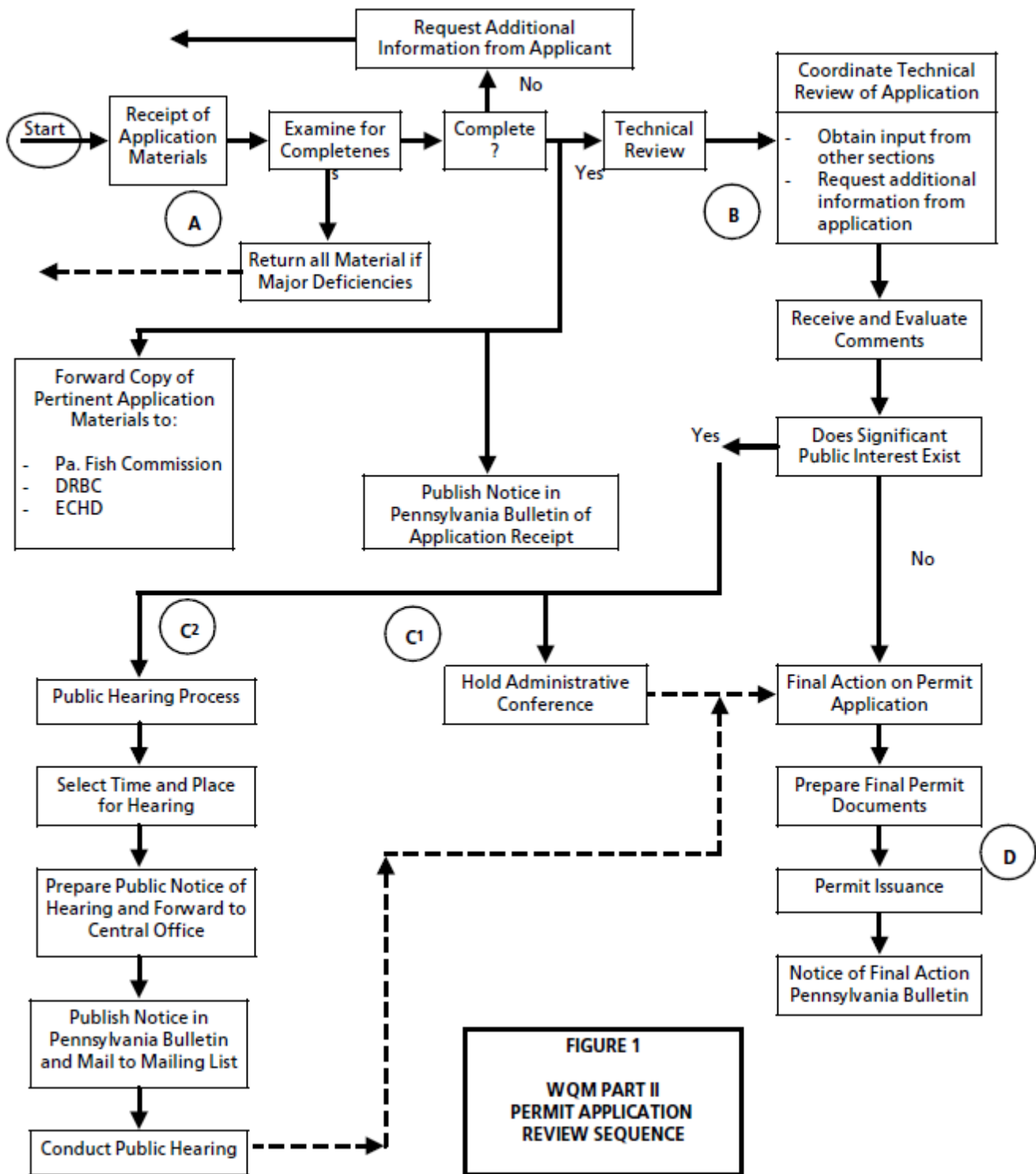
1. For projects located in Erie County, a copy of the application will be forwarded to the Erie County Health Department for review.

For projects located in the Delaware River Basin, and subject to DRBC review, (See Section 202.3B), one copy of the application will be forwarded to DRBC.

2. For projects involving sewer stream crossings or treatment plant outfall/headwalls which will encroach upon streams, one copy of the application materials and drawings which pertain specifically to the stream crossings or outfall/headwall shall be forwarded to the Pennsylvania Fish Commission for review in accordance with the procedures outlined in Section 202.3B. The Waterways and Wetlands Program shall also be contacted for an application for a permit for the crossing.

B. Technical Review

Upon acceptance as complete, the application will be assigned to an application Review Engineer who will be responsible for coordinating the technical review and preparation of the Part II permit. Information concerning effluent limits, monitoring requirements, compliance schedules, and any other special conditions, will be obtained from the necessary staff within the Regional Office and Central Office. The technical review will be carried out based upon the principles and standards outlined in the various technical design manuals developed by the Bureau for Part II permitting.



Where a discharge is to be to the land surface or to groundwater, review by the Regional Soil Scientist and/or Hydrogeologist and shall be obtained prior to making a final determination on the permit.

The review engineer shall summarize the basis for the project and the results of the Regional Office technical review on an Internal Review and Recommendations form. This form shall be signed by the Review Engineer, the Permits Section Chief, and the Clean Water Program Manager. Their signatures recommending approval will certify that the project complies with the appropriate laws, rules and regulations, technical standards and policies and procedures of the Department.

C. Evaluation of Comments, Resolution of Concerns, Public Hearings

Prior to making a final determination on a Part II permit the Review Engineer shall carefully consider any comments, opinions or objections raised by those outside the Bureau concerning the proposed project. The Review Engineer shall insure that all comments received will be evaluated by the appropriate staff within the Regional or Central Office and shall coordinate the responses to each set of comments received.

All relevant comments shall be addressed through a written reply. If significant public interest exists a public hearing may be held as discussed under Section 201.2 (NPDES Permitting).

Where it appears warranted and beneficial, an administrative conference shall be called by the Clean Water Program Manager to deal with the issues surrounding comments and objections which may have been received (including those from the applicant). The Regional Manager should chair the conference and emphasize that the purpose of the conference is to resolve the conflict. The Regional Manager will allow each party an opportunity to present their case and ask relevant questions. At the opening of the conference, the first item on the agenda should be factual information on the case to be presented by the Department. Following the conference, the Regional Manager will prepare a memorandum listing conference attendees, facts of the case, main points raised at the conference, unresolved issues, conclusions, and recommendation for final action. This information shall be appended to the Internal Review and Recommendations form discussed above.

D. Final Determination and Public Notice of Permit Action

Once a final determination has been made to issue or deny the Part II permit, the Regional Office shall complete the necessary permit documents in accordance with the following procedures:

1. Sewerage - The Clean Water Program Manager shall sign the WQM Part II Permit Form and transmittal letter. The permit shall identify the appropriate "Standard Conditions Relating to Sewerage," and any special conditions considered necessary.

When the Part II permit involves a sewage discharge to groundwater, it must be recorded by the Recorder of Deeds Office in the County where the discharge will be located, pursuant to Section 202 of the Clean Streams Law.

2. Industrial Wastes - The Clean Water Program Manager shall sign the WQM Permit Form and transmittal letter. The permit shall identify the appropriate “Standard Conditions Relating to Industrial Wastes,” and any special conditions considered necessary.
3. A copy of the permit and related documentation shall be forwarded to the Division of NPDES Permitting for incorporation into the Central Office files and for public notification purposes.
4. All parties who have expressed comments and concerns during the permit application review process shall be notified by the Regional Office of the final action, and of their rights to appeal to the Environmental Hearing Board pursuant to Chapter 21 of the Department’s Rules and Regulations.

A period of 30 days is normally provided as part of the Pennsylvania Bulletin notice for any aggrieved parties to submit their appeals to the Environmental Hearing Board.

E. Distribution of Part II Permits and Related Documents

The final Part II permit and related documents shall be distributed as indicated below:

	Regional Office	Central Office	<u>County Health Departments</u>			DRB C ⁽³⁾	Applicant
			Fish Comm. (4)	Erie Co. ⁽¹⁾	Allegheny Co. ⁽²⁾		
Permit Application	X	X	X	X	-	X	-
Related Review Correspondence	X	-	-	X	-	X	-
Internal Review and Recommendations	X	X	-	X	X	X	-
Final Permit Standard Conditions	X	X	-	X	X	X	X
Notary Form ⁽⁵⁾	-	-	-	-	-	-	X
Recorder of Deeds Certificate ⁽⁵⁾	X	-	-	-	-	-	X

- (1) -For Cases in Erie County
- (2) -For cases in Allegheny County.
- (3) -For cases subject to DRBC review.
- (4) -For cases involving stream crossings and outfalls/headwalls.
- (5) -For cases involving discharge of sewage to groundwater (see Vol. III, 201.2).

202.3 PART II PERMIT REVIEW COORDINATION REQUIREMENTS

A. Inter-bureau Permit Coordination

Inter-bureau permit coordination must be followed in order to assure that a permit issued by one program will not violate the integrity of another regulatory program under the jurisdiction of the Department.

When a Part II permit application is received, the General Information Form (GIF) shall be forwarded to the Assistant Regional Director for distribution to other Department programs (or an equivalent procedure). Upon receipt of the comments from all programs, the Assistant Regional Director shall inform the applicant of what other permits or approvals may be required. Under normal circumstances the issuance of a Part II permit will be coordinated with any other required Department permits and approvals.

When a GIF is received from other Department programs it shall be reviewed to determine whether or not the project of concern will require a Part II permit and/or an NPDES permit. This will be indicated and brought to the attention of the Assistant Regional Director.

B. Coordination with Other Agencies

1. River Basin Commissions

- a. Susquehanna River Basin Commission (SRBC) - SRBC is primarily interested in having an opportunity to review and comment on NPDES permits issued for projects within the Basin. For Part II permits, SRBC will be provided with opportunity to contact the appropriate Region where it has an interest in a project (based on SRBC's review of notices of Part II application receipt which appear in the Pennsylvania Bulletin).
- b. Ohio River Valley Water Sanitation Commission (ORSANCO) - Coordination with ORSANCO on Part II permits will occur in a manner similar to that for SRBC above.
- c. Delaware River Basin Commission (DRBC) - DRBC must review and approve (via a formal docket decision) proposals for construction of certain types of wastewater treatment facilities within the Delaware River Basin.

Therefore, the Region will forward one complete set of Part II permit application materials (upon acceptance as complete) to DRBC for projects involving construction, alterations, or additions of sewage or industrial waste treatment facilities whose design capacity is 50,000 gallons per day or larger.

Part II permits for such projects shall be withheld until DRBC approval has been received.

2. Pennsylvania Fish and Boat Commission

For sewerage cases involving proposed stream-crossings, outfalls, and headwalls, a copy of the information listed below shall be sent to the Fish and Boat Commission at:

Chief, Environmental Services
Pennsylvania Fish & Boat Commission
450 Robinson Lane
Bellefonte, PA 16823-9685
814-359-5140

Who will then forward the material to the local waterways' patrolman involved? The waterways patrolman will forward their comments back to the Chief, Division of Environmental Services in Bellefonte, who will then finalize PFBC comments and send them to the DEP Regional Office.

A total of 30 days will be provided for the above process. If comments are not received from PFBC within 30 days, final action on the permit should not be delayed unless PFBC requests an extension of time.

Materials to be Sent to PFBC (one copy each as applicable)

- WQM Part II Application Form (all cases).
- Pertinent excerpts from application package describing nature of project.
- Pertinent portions of blueprints, plans, drawings on specifications which best describe the stream crossing, outfalls, and headwalls.
- Portion of topographic map showing exact locations(s) of project all cases).

NOTE: PFBC has requested that the volume of the above material should be kept to a minimum. Only send what is necessary for the PFBC to get a clear indication of what will be constructed and where it will be located.

3. Public Utility Commission

Issuance of permits to private corporations or persons intending to furnish sewerage service to other property owners shall not be recommended unless the applicant has applied to the Public Utilities Commission for a Certificate of Public Convenience for the area concerned. If the Certificate of Public Convenience has been applied for but not issued, approval of the sewerage application shall be withheld until the Public Utilities Commission authorizes the Certificate of Public Convenience.

202.4 RELATED PART II PERMIT ACTIONS

In addition to issuance, several other related permit actions are permissible under the Department's rules and regulations as follows:

A. Denial

1. If after reviewing the project is found to conform the Departmental requirements, it will be recommended for approval and the permit will be issued. Conditional approval is not to be given in the case of an application supported by only partly acceptable plans and specifications.
2. If the project does not conform, it will be recommended for denial.
 - a. If the recommendation is for denial, the Regional Water Quality Manger shall prepare and send a letter of denial to the applicant without delay. The Internal Review and Recommendations and the denial letter should cite relevant sections of standards, regulations and law which support the denial.
 - b. The denial letter should include the following statement:

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Market Street State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105 8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form, and the Board's rules of practice and procedure may be obtained from the Board. The appeal forms and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

B. Modification

This is a Department action in which changes are made in a permit. This action can originate either by application from the permittee or by the issuing agency.

C. Suspension

This is a Department action temporarily preventing the permittee from carrying out the action authorized by the permit. It is intended as a temporary action usually applicable in cases where the permit may be reinstated after the violations are corrected.

D. Reinstatement

This is a Department action reinstating a previously suspended permit.

E. Revocation

This is an action by the Department which permanently terminates the privileges granted by the permit. A revoked permit is not subject to reinstatement. Revoked permits must be returned to the Department.

It is the responsibility of the Region to revoke any permit for which facilities have not been constructed, provided such action will not cause or contribute to continuation of water quality degradation.

In order to accomplish this purpose, the Clean Water Program Manager shall provide for the routine review of permits which have been issued but for which facilities have not been constructed.

F. Termination

This is a Department action usually as a result of a request from the permittee. This requires a report by the region supporting this action. This report should indicate that there is no violation in existence at the facilities covered by the permit. That the operation has been terminated in such a manner that no violations can reasonably be expected to occur, and therefore the permittee is to be relieved of their obligation under the permit. This action cancels the permit, and the permit should be returned to the Department.

Permits may be terminated upon request of the permittee or the instigation of the Department except when such action might relieve the permittee of responsibility in correcting existing or possible future violations at facilities covered by the permits.

In cases where the Region feels a permit should be terminated because the Permittee does not request termination, the Region may terminate the permit without such request. The Region should write a certified letter to the last known address notifying the permittee of the intent to terminate the permit unless notified of objections within fifteen days. After fifteen days and if no valid objections from the permittee have been received, the Region shall terminate the permit by writing a certified letter so notifying the permittee. If the permittee cannot be located, the region will prepare a memorandum for the records, setting forth the circumstances, with a copy to the Division of NPDES Permitting.

G. Withdrawal

This is not a Department action. This is an action resulting from the request of an applicant to withdraw an application prior to action on the application.

H. Returned

This is a Department action. This is an action which is taken by returning the application, together with the check and/or all other documentation, to the applicant because the application

is not complete prior to acceptance, grossly inadequate following acceptance, or requested supplemental information or other required permit applications were not submitted in a timely manner. (See Section 200.4 regarding refund of application fees.)

I. Withheld

The Department has favorably acted on an application but cannot issue the permit until certain specific conditions have been met, such as DRBC approval.

J. Transfer

Sewerage or industrial waste Part II permits may be transferred to the new owner or operator of a facility provided the facility is the same as originally approved, the quality and quantity of the discharge have not changed significantly. The following procedures are to be followed:

1. In the event of any pending change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the Regional Office by letter of such pending change at least 30 days prior to the change in ownership or control. Both the current permittee and the new owner or controller shall complete the Application for Transfer of Permit.

Applications for all transfers shall be submitted to the Regional Office in duplicate. All applications received by the central office will be referred to the proper region for processing.

If the transfer involves a change in name only, proof of compliance with the Fictitious Name or Fictitious Corporate Name Act must accompany the transfer in a separate document.

2. The request shall be accompanied by a written agreement between the existing permittee and the new owner or controller stating that the existing permittee shall be liable for violations of the permit up to and until the date of permit transfer and that the new owner or controller shall be liable for permit violations from the date on.
3. The original permit shall be surrendered if available. If the permittee cannot produce a copy of the permit the application must so indicate. (Instructions on this are furnished with the form).
4. The Regional Office will review the application with particular regard to compliance with requirements of rules and regulations and conformity of facilities with those approved in the permit.

If judgement is for issuance, a new permit will be prepared. Conditions contained in the former permit which are no longer applicable may be deleted from the new permit by the section, but no conditions or restrictions not in the former permit may be included in the transferred permit. Where the former permit referred to Standard Conditions of an issue no longer current, reference may be made in the transferred permit to a current issue, but numerical designations must be revised appropriately to provide equivalent conditions.

5. Transferred permits will be designated by their original number followed by the suffix “T” and a number to indicate the number of times the permit has been transferred and to give each transferred permit a distinct identity. (Examples: 161S43-T2, 6768214-T1.)

The transferred permit will be mailed to the new permittee with a letter of transmittal. Copies of the letter of transmittal will be sent to the old permittee.

When transmitting transferred sewerage permits involving a discharge, the Regional Office will notify the new permittee that the permit must be recorded by the county Recorder of Deeds, under the provisions of the Clean Streams Law.

6. Upon issuance of the transferred permit the file copies of the former permit in the Regional Office and in the Central Office shall be marked “CANCELLED.” The former permittee’s folder will remain in file with the cancelled permit, but all correspondence still pertinent to the new permittee will be transferred to the new permittee’s file. The file folders will be appropriately cross-referenced.
7. If the judgement is for denial, the Regional Office will return the transfer request and supporting documents permit to the former permittee and notify the former permittee that the transfer is refused, stating the reason for refusal and the former permittee’s right for appeal. A copy of the notification letter will be sent to the proposed new permittee.

PERMITTING POLICY AND PROCEDURES MANUAL

Section 203 - Program Specific Permitting Considerations

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203.1 SEWAGE TREATMENT PLANT OPERATION DURING ALTERATION, MODIFICATION AND/OR ADDITION

POLICY

During the course of sewage treatment plant alterations, modifications and/or additions, treatment plant operations must be maintained. The degree of treatment afforded the sewage prior to the beginning of construction must be maintained during the construction period. Periods of lesser treatment, but not less than primary, will be allowed only when there is no technical way to avoid the need for reduced treatment levels.

PROCEDURE

1. Plans and/or programs for providing or maintaining treatment during such construction must be submitted as part of the application for the WQM Part II permit.
2. In the case of any proposal that involves construction that may interfere with existing treatment plant operation, the Regional Office will ascertain that the existing level of operation is maintained during construction. An appropriate section should be added to the project specifications in conformance with Section 15 of the Domestic Wastewater Facilities Manual.
3. In order to enforce this Policy, site inspections of treatment plants undergoing construction shall be made as often as deemed necessary by the Regional Office.

PERMITTING POLICY AND PROCEDURES MANUAL

Section 400 - Certification Procedures

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400.1 CERTIFICATION OF INDUSTRIAL ANTI-POLLUTION FACILITIES FOR TAX BENEFITS

POLICY

- A. Regulations of the Environmental Protection Agency Provide for fast tax write-off of certain pollution control facilities of businesses which qualify for rapid amortization under Section 169 of the Internal Revenue Code. To obtain favorable amortization treatment, a taxpayer must obtain certification of their pollution control facility from the “State certifying authority.”
- B. Pennsylvania Law, Section 602.1 of Act 93, approved August 31, 1971, provides for tax benefits for corporations, providing “equipment, machinery, facilities and other assets employed or utilized within the Commonwealth of Pennsylvania for water and air pollution control or abatement devices which are being employed or utilized for the benefit of the general public.”
- C. It is the duty of the Department to certify eligible projects to the appropriate agency.

PROCEDURE

- D. To qualify for certification under the Federal Regulations:
 - 1. The facilities must have been built under a Water Quality Management Permit if any was required at the time of construction, and
 - 2. The facilities must be operated in compliance with DEP requirements.
- E. In order to qualify for certification under Pennsylvania Act 93, approved August 31, 1971:
 - 1. The facilities must have been built under a Water Quality Management permit, if required.
 - 2. The facilities must be operated in compliance with DEP requirements.
 - 3. The facilities must be used for pollution control only.
- F. Where the establishment provides water pollution control facilities not requiring a Water Quality Management Permit, such as a connection to a sanitary sewer, the discharge from which is adequately treated by others, the cost of the connection may qualify. Pre-treatment facilities under like circumstances may qualify. In such cases it can be certified that the facilities, while not under a Water Quality Management permit, were in conformity with Pennsylvania’s program for pollution abatement at the time they were constructed.
- G. Facilities for the treatment of sanitary sewage from an industrial establishment are eligible as well as facilities for the treatment of industrial waste. The facilities must, however, prevent pollution and comply with Department requirements.
- H. Buildings are not eligible unless the building is part of a treatment facility and serves no other purpose.

- I. The regional offices are in no way obligated to determine other factors which may affect eligibility.
- J. The regional offices shall issue notice of certification when appropriate:
 - 1. Certification under the Federal Internal Revenue Code shall be by completing EPA Form 3300.
 - 2. Certification under Pennsylvania Act 93, approved August 31, 1971, shall be by completing Form 3600-FM-WQ0021 (below).
- K. Responsibility for certification in the Regional Office shall rest with the Permits Section.

**3600-FM-WQ0021 Rev. 7/95 COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**APPLICATION AND NOTICE OF STATE CERTIFICATION FOR CORPORATION TAX
BENEFITS
FOR AIR AND WATER POLLUTION CONTROL DEVICES**

For Tax Year Ending _____

1. Corporation Name _____
2. Person Representing Corporation _____
Title _____ Telephone () _____
Mailing Address _____

3. Location of Pollution Control Device(s)
Plant Name _____ County _____
Mailing Address _____ Municipality _____

(Twp, Boro, City)
4. Briefly list and describe the nature and function of each pollution control device(s) for which the tax certification is requested. (If more space is needed, please attach additional sheets.)
 1. _____ :
 2. _____ :
 3. _____ :
 4. _____ :
 5. _____ :
5. Attach a detailed description of the device(s), along with diagrams or sketches showing the device(s) in question and their relationship to the overall air or water pollution control system at the plant.
6. DEP Permits Pertaining to the Pollution Control Device(s): (1)

Permit No.	Air	Water	Date Issued	Date Expiring
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7. Complete the following information for the device(s) in question:

Device	Date Installed	Date Began Operation	Original Installation Cost
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- (1) Some pollution control devices (i.e. pretreatment units) may not be permitted by the Department but may still be eligible for the corporate tax benefit.

**3600-FM-WQ0021 Rev. 7/95 COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**APPLICATION AND NOTICE OF STATE CERTIFICATION FOR CORPORATION TAX
BENEFITS
FOR AIR AND WATER POLLUTION CONTROL DEVICES (contd.)**

Subject to the penalties of Title 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities, I certify that I am an authorized representative of the corporation, and that the devices for which tax benefits are herein requested are in place and operating, and that all the information submitted on this application is accurate and valid to the best of my knowledge.

Signature of Authorized Representative

Date Signed

FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION USE ONLY

CERTIFICATION BY THE DEPARTMENT

Except as otherwise noted below, the Department of Environmental Protection hereby certifies:

1. That the above component(s) is/are component(s) to a water or air pollution control device;
2. That the above device(s) is/are installed and completed in place;
3. That the above component(s) or device(s) is/are employed or utilized to remove pollutants commencing in, or during, the tax year in question;
4. That, where a plan approval or permits is required by the Department of Environmental Protection, plan approval or permit has been obtained.

By _____

Title _____

(signature of authorized DEP Clean Water representative)

Date _____

By _____

Title _____

(signature of authorized DEP Air Quality Control representative)

Date _____

Comments:

400.2 PROCEDURE FOR 401 WATER QUALITY CERTIFICATION

A. REQUIREMENT

1. Water Quality Certifications are required by Section 401 of the Federal Clean Water Act (CWA) as a prerequisite to receiving a federal license or permit for any activity which may result in a discharge into navigable waters. Applicants must provide a certification from the state that the discharge complies with the provisions of sections 301, 302, 303, 306 and 307 of the CWA.
2. In the Commonwealth of Pennsylvania, Water Quality Certifications have been integrated with other required approvals or permits. Individual separate Water Quality Certifications are issued for activities that do not need approvals or permits under these programs.

B. PROCEDURE

1. When the Department of Environmental Protection (DEP) receives a request for Water Quality Certification, a notice is published in the **Pennsylvania Bulletin** for a 30-day comment period. The **Pennsylvania Bulletin** is the official gazette of the Commonwealth of Pennsylvania.
2. Applications for water obstructions and encroachments, including dredge and fill activities, are reviewed by the Regional Waterways and Wetlands permitting staff. Water obstructions and encroachments must comply with Pennsylvania's Clean Streams Law which requires that all earth moving activities must have an erosion and sedimentation control plan. By administrative decisions, DEP has concluded that the only pollution threat from water obstructions and encroachments is from sediment pollution during construction. Therefore, in most cases, the 401 Water Quality Certification is issued based on the applicant's documentation that an adequate or approved erosion and sedimentation control plan has been developed and will be implemented during construction.
3. Although dredging is regulated as a physical encroachment, dredged material is defined as solid waste. Dredged material is frequently used or disposed of a clean fill. Dredging of contaminated sediments, however, requires a coordinated review by DEP's Clean Water and Waste Management programs to address concerns related to resuspension of pollutants, impacts on water quality parameters, and proper disposal of waste material. Clean Water evaluates potential for discharge of pollutants and considers the impacts of the activity based on the classification of the body of water, water quality standards and the Commonwealth's antidegradation program. Waste Management reviews the types and concentrations of pollutants to assure disposal in a properly designed and approved site. These coordinated reviews rely on the expertise and professional judgment of technical program staff. The decision to issue or deny the Commonwealth's applicable Water Obstruction and Encroachment, Water Quality or Waste Management permits provides the basis and vehicle for granting or denying 401 Water Quality Certification.
4. The issuance or denial of Water Quality Certifications is an integral part of the respective approval or permit and is published in the **Pennsylvania Bulletin** as a final action of the

Department. Actions of the Department may be appealed to the Environmental Hearing Board within thirty days by an aggrieved person.

C. WAIVERS

1. Following the publishing of a notice that an application for Water Quality Certification has been received, DEP may simply waive the Commonwealth's decision. Waivers are confirmed by letter to the applicant and the federal permitting agency. Waiving the Water Quality Certification is done to save time and resources of both DEP and the applicant in special cases where there is little potential impact, or the project is otherwise adequately regulated.

D. MISCELLANEOUS ADDITIONAL GUIDANCE

1. The CWA Section 401 provides that WQ Certification is waived if a state fails to respond within a reasonable time. In a settlement of federal litigation, DEP has a maximum of 180 days to respond. To waive, write a letter to the applicant and the federal permitting agency that we do not intend to make a decision and are therefore waiving our right to make a 401 determination. We must, however, publish notice an application was receive, but no notice of waiver is received, but we do not have to publish notice that we waived.
2. All State 105 GPs and 105 waivers under Chapter 105(a)(1)-(10) and (12)-(15) have the integrated 401 reviews/approvals (refer to **Pennsylvania Bulletin** publications dated 8/6/94 and 2/12/94). In addition, use of any of the state approved nationwide general permits (NWP) of the U.S. Corps of Engineers also have the state 401 review/approval and are listed in the 105 Program Guidelines available in each Soils and Waterways Section. The NWP 29 was issued in **Pennsylvania Bulletin** 10/14/95.
3. As to technical review procedure or review criteria, there is no detailed available guidance from EPA or other sources. This is where you need to use the best professional judgment. However, the Section 401 of CWA and regulations thereunder provide some specific information and procedural requirements. It is sketchy on technical evaluations guidance. If you assume the premise that instream encroachments/disturbances are temporally in nature and only cause temporarily/transient water quality impact (suspended solids and turbidity are the expected major problems with temporary impacts), there shouldn't be much other technical review involved. The only thing needed is to assure that the applicant has or will use BMPs, pollution prevention and erosion and sedimentation plans during and a short period after the completion of the activity.