



September 3, 2024

Joe Kelly
Office of Oil and Gas Management
Department of Environmental Protection
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: MSC Comments on ESCGP-4-related Forms

Dear Mr. Kelly:

The Marcellus Shale Coalition (MSC) recently submitted formal comments to the Department on the draft ESCGP-4 permit. While the forms necessary to implement and utilize the permit, such as the Notice of Intent form and accompanying instructions, were not included as part of the formal public comment period, they are nonetheless intertwined with the permit. As such, the MSC has engaged with its members to review these forms and provide feedback on them. We submit the following comments for your consideration. We understand these comments will not be part of the Department's official Comment and Response document, but we nonetheless hope that this input is helpful and constructive as the Department works to finalize and implement the ESCGP-4 permit.

General Comments

Electronic Permitting

Our members strongly encourage the Department to ensure that any changes which may be made to these forms during the duration of the use of ESCGP-4 be made simultaneously to both the Greenport website and the copies of forms maintained in the Department's eLibrary.

Throughout the utilization of the current ESCGP-3, the Department has made several significant changes to the ESCGP-3 forms on Greenport while maintaining older and outdated versions of the forms within eLibrary. Doing so renders the forms contained within eLibrary useless, as operators and applicants who are part of preparing a permit – but may not themselves have access to Greenport – cannot depend on the forms found in eLibrary to be accurate.

The MSC also strongly encourages the Department to refrain from making substantive changes to these forms outside of an accompanying change on the permit application itself which is subject to public review and input.

Specific Comments

1. Page 1 of Transition Plan – The document 8000-PM-OOGM003e Rev 7/2024 states, *“After October 25, 2024, any NOI for new projects, renewals, subsequent phases and major modifications must be submitted in accordance with the ESCGP-4 terms and conditions on the new forms.”* The October 25th, 2024, date does not match what is prescribed in the ESCGP-4 NOI Instructions, DEP document 8000-PM-OOGM0003b, Page, Authorization of Coverage, which states “After November 06, 2024, any NOIs for renewals must be submitted in accordance with the ESCGP-4 terms and conditions.” The MSC recommends updating the dates for consistency.
2. Page 1, Applicability, Note 1, NOI Instructions – *“The Department of Environmental Protection (DEP) interprets “project” to be substantially connected well sites, access roads, pipelines, other service lines, support facilities, and/or other oil and gas activities. Well pads, impoundments and pipelines, etc. may be permitted separately but are considered together solely to determine whether the total project acreage limit of 25 Pa. Code § 102.5(c) has been met and a permit is required.”*

The MSC believes that it would be helpful if the Department provided a definition for “substantially connected”. We have made this comment on previous versions of the ESCGP permit. Well sites, pipelines, support facilities are typically developed by separate companies and in the past, there have been comments from DEP reviewers that other facilities, outside of the control of the permit applicant, be included in new ESCGP permit applications.

3. Page 14, Part I: General Information, Section F, General Information (37), Discharge to Non-Surface Water / Erosion Potential Analysis, NOI Instructions

According to MSC subject matter experts, erosion potential from concentrated or sheet flow is affected by numerous factors that should be considered when use of the proposed form (Document No. 3800FMBCW0271h) is and is not required. These factors include drainage area size, slope gradients, slope length, significant peak flows, rainfall, vegetation type, and soil type. Based on a review of the Department’s instructions for erosion potential analysis, a majority of these factors are not considered in greater depth or at all. For example, using the 10-year/24-hour storm event as the design storm event is typically not a storm with the most potential for erosive events. The drainage area size, which in turn influences the peak flows, is also a major factor in erosion potential. The Department should consider an exemption to drainage areas of point discharges less than 5 acres.

The MSC strongly urges the Department delay issuing the Erosion Potential Analysis until further research, review and considerations are made. This type of analysis is extremely sensitive and requires landowner consent which heightens the scrutiny of these calculations.

4. Page 28, Part V: PCSM Plan Stormwater Analysis, (a), NOI Instructions - Under Site Characterization and Assessment the Department states that applicants may use Pre-development Site Characterization spreadsheet developed by DEP's Bureau of Clean Water to meet this requirement.

After thorough review of this spreadsheet, the MSC believes that the recommended minimum number of infiltration tests is excessive. With testing often occurring in undeveloped, forested habitat or even in agricultural fields, equipment access is likely difficult or restricted by landowners. In addition, well pad and compressor station operations adhere to precautionary safety restrictions that require distance buffers which dictate the size and location of these facilities. We recommend the Department add more flexibility for the testing requirements such as considering landowner restrictions and operational safety buffers.

5. Page 28, Part V: PCSM Plan Stormwater Analysis, (b), Volume Reduction and Water Quality Requirements, NOI Instructions, states *"The applicant must include an analysis in the project narrative that demonstrates the PCSM SCMs to be used will meet the volume and water quality requirements specified in an applicable DEP approved and current Act 167 stormwater management watershed plan or manage the net change for storms up to and including the 2-year/24-hour storm event when compared to pre-construction runoff volume and water quality."*

The MSC recommends that the Department replace the term "Volume Reduction" with "Volume Management" or expand the text to clarify further volume reduction (aka removed from surface runoff).

6. Page 14, (37), NOI Instructions - DEP's Erosion Potential Analysis for Chapter 102 Permits form, Document No. 3800FMBCW0271H is not available on DEPs eLibrary. It is not clear as to when this form is to be submitted.

"Document No. 800FMBCW0271h must be submitted for certain stormwater discharges, both during and following construction, that will not directly enter a surface water. Attach these forms to the NOI."

How could a form that should be submitted for stormwater discharges, both during and following construction, also be submitted with the ESCGP-4 Permit NOI?

7. Page 1, NOI Checklist - The DEP has listed the minor modification as a formal submission. Historically minor modifications have been accepted as field changes by DEP inspectors via redlines. Minor field changes should have an informal approval process and are different than a formal submission and a major modification. The MSC recommends that the Department provide clarification for how field changes via redlines can still be made to prevent construction and operational delays.
8. Page 6, (24), NOI – The MSC requests that the Department provide clarity on what naturally occurring geology or soil conditions thresholds would potentially cause



pollution. In the prior version of the permit, DEP reviewers have not provided specifics and stated that “any” naturally occurring geology or soil conditions with the potential to cause pollution are not able to be authorized under a General Permit.

Within the proposed NOI, the applicant is provided with an opportunity to prepare a “*Geologic Hazard Avoidance or Minimization Plan*” (a new plan) to provide information and an explanation on how these conditions are present but do not have the potential to cause pollution. The MSC requests that the Department provide guidance on what this new plan should include in order to obtain authorization under this general permit, specifically on thresholds, testing and other information for the review and approval of the permit application.

Further, on December 5, 2023, the Department issued a Frequently Asked Question (FAQ) document on Individual Permits and Oil and Gas Permits that stated, “*An ESCGP may not be applicable when potentially hazardous geologic or soil conditions are present. In these situations, an Individual E&S Permit may be required.*” This provided no clarity for how an applicant may provide the Department with information to receive coverage under a general permit or when an individual permit will be required. The MSC requests that transparency be provided to the regulated community so that applicants (and Department permitting staff) have a clear understanding of the situations that authorize use of the ESCGP-4 or that may require an individual permit. The intent of a General Permit is to provide the opportunity to use the general permit under predictable scenarios; clarity is necessary to achieve this objective.

9. Page 6, (29) NOI – This is new to the permit application. If the project requires a Chapter 105 permit authorization, will it impact the ESCGP-4 permit review or approval? Will the two permit authorizations remain separate and subject to independent reviews?
10. Page 7, (37), NOI – The MSC requests additional clarification for this requirement of when a flowage easement or waiver is required. For example, if a Post Construction Stormwater Management Control is provided for rate and volume within a drainage area that discharges onto an adjoining landowner’s property over the ground surface before entering a stream, is a flowage easement or landowner waiver required?
11. Page 9, (5), NOI – Erosion Potential (EP) Analysis. This is new to the permit application. An EP Analysis is a new term and requirement within the proposed ESCGP-4 permit. The MSC requests that the Department provide additional clarification as to the required level of detail needed to demonstrate “erosion potential.”

The MSC presumes that the measures in the Department’s Erosion and Sedimentation Control BMP Manual are sufficient for the design of ground surface erosion protection measures. We also assume that if the manual is followed that additional modeling is not required. Further, we assume that the downstream erosion potential analysis can be terminated at either the Limits of Disturbance or Property Line. The MSC is concerned that DEP will issue operators violations when adjacent private landowners (outside of the

control of operators) decide to change their existing property use. Additional clarity would be helpful.

12. Page 11, (2.c), NOI – Alternative Design Standard. The MSC requests that the Department provide information on the process an applicant should pursue to obtain approval for an alternative design and where approved alternative designs are located. In the past there has been confusion on this process when pursuing an alternative design that is not in the current BMP manuals.
13. Page 16, Section (k), NOI – Compliance Review. The MSC requests that the Department provide an explanation as to how (and if) compliance history is a factor in a permit approval. Historically, the Department has been slow to close out open violations in eFacts, even when there is documentation from DEP inspectors that they have been addressed. This issue can largely be addressed if Department inspectors update and close out inspections on the Department’s compliance database, which is consistent with the Department’s own internal protocols.

Conclusion

The MSC appreciates the opportunity to provide comments on the proposed ESCGP-4 permit forms. The MSC welcomes the opportunity to meet with Department staff to explain further or illustrate and discuss any of these issues. Thank you very much for your consideration of these comments.

Sincerely,



Jim Welty
Vice President, Government Affairs