



September 27, 2021

Technical Guidance Coordinator
PA Department of Environmental Protection, Policy Office
Rachel Carson State Office Building
PO Bo 2063
Harrisburg, PA 17105-2063

Re: Prioritized Review Process Under the Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (ESCGP), submitted via www.ahs.dep.pa.gov/eComment

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 125 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission, in the country, as well as the suppliers and contractors who work with the industry.

Since August 2019 representatives from the MSC have participated in a Pennsylvania Department of Environmental Protection (PA DEP or Department) multi-stakeholder workgroup Prioritized Review Process Under the Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (Policy). We participated in all 6 workgroup meetings and provided the Department 3 comment letters on drafts of the Policy before it was published for public comment. We also surveyed our membership during the development of the Policy to determine if any of our members would utilize the Policy as drafted. As described in our comments to the Department, none of our members expressed interest in making use of the Policy as currently drafted. We appreciate the opportunity to participate in discussions concerning the development Policy and we offer both general and specific comments below for the Department's consideration.

General Comments:

The success of a prioritized permit review process can only be realized if it is viable for the applicant, while still providing the superior environmental controls as part of the process of an earth moving or site restoration project that the Department, the industry, and other stakeholder's desire. The draft Policy that has been published has a very complex scope of items to the point that it is doubtful it will be utilized in its present form. The additional requirements for operators

to develop, implement and maintain a subset of the proposed BMPs or practices contained in the fourteen Scoring Categories are substantial. In some cases, the cost of these additional measures could exceed the basic design and implementation costs for permitting and implementing the erosion and stormwater control measures normally required for the proposed earthmoving activities covered by the ESCGP-3.

As discussed during the October 13, 2020, workgroup meeting, the process as currently drafted would most likely not be utilized by industry due to the associated cost and effort outweighing the limited benefit of a quicker initial review. In addition, we would reinforce the following points.

- The number of required points is currently too high for operators to consider engaging in this process.
- Most projects, due to their scope or geographic location would not lend themselves to achieving 9 points out of the scoring sections available. There needs to be flexibility given the type of project and the scoring sections selected.
- The MSC recommends that PA DEP lower the required point total to a more realistic requirement that encourages the policy's utilization. What exactly that point total should be will be informed by what other modifications the Department makes to the scoring sections.

The MSC would like to see additional clarification of the benefits to applicants when engaging in this process. For example, it should be clearly stated that once an operator qualifies for the Prioritized Review process it qualifies for the entire review process and not simply the initial review portion.

The current proposed obligations of the applicant to qualify for the Prioritized Review are substantial and come at a time when the natural gas sector faces historic economic challenges – many challenges which preceded, but have been exacerbated by, the current COVID-19 pandemic. The obligations often include factors affecting design, construction, future operations, and recurring monitoring, along with the associated costs that accompany each of these factors. It is imperative to note that any criteria included in a prioritized review process are measures above and beyond what the Department has already determined are necessary to fulfill the obligations of 25 PaCode Chapter 102. In summary, these measures are less about environmental protection and more about directing industry behavior. The industry representatives strongly encourage the Department to continue to explore alternative solutions for qualification in the Prioritized Review process.

Lastly, the MSC representatives on the workgroup have participated in each of the 6 meetings that PA DEP hosted to offer constructive feedback to this effort. Unfortunately, most of the non-governmental organizations who sought to have input in this process – but do not have to live with the outcome of this process because they are not permit applicants themselves – failed to accept the invitation afforded to them to participate in these discussions aimed at crafting a viable product. While the Department certainly must consider any comments received during its public comment process, it is fair to conclude that some of these NGOs are interested more in creating distractions than providing constructive input.



Specific Comments:

With this background in mind, please see below specific comments on the draft Policy:

1. As discussed previously, the scoring requirement to qualify for Prioritized Review is significant and presents a disincentive for participation. In addition to lowering the point total to qualify we offer an additional alternative for scoring that would encourage operators to participate and qualify for the process.
 - a. The industry acknowledges the Department's inclusion of the Impaired Resources Scoring Category. Additional concepts should be considered, such as offsite projects that have been completed previously and that demonstrate environmental and/or community enhancement and improvement. This concept was discussed at several of the workgroup meetings and there should be a mechanism provided to allow the applicant to document and to illustrate the benefits of these completed projects. Depending on the significance of the environmental enhancement project, the Department should consider providing an opportunity to utilize them to obtain credits for multiple permit applications or even a temporal basis (good for one or two years). This would encourage companies to engage in completing environmental and community enhancement projects eligible for this program.

2. The MSC has significant concerns regarding how permit packages that qualify for the Prioritized Review would be reviewed and approved, as well as how permit packages that are not requesting Prioritized Review will continued to be processed in a timely manner. The development of a Standard Operating Procedure (SOP) for the review and approval of Prioritized Review permits should be developed before the draft Policy is finalized and shared with the multi-stakeholder workgroup for review and discussion. There should be a consistent review process that does not add additional technical review beyond that performed for a standard ESCGP-3 permit package. If the review and approval process is not streamlined, it will discourage use of the process. The MSC is not suggesting that PA DEP reviewers complete any lesser review of the required components of a standard ESCGP-3 permit package. Rather, the MSC recommends that PA DEP employ a self-certification type of review for scoring items selected on the Prioritized Review where reviewers utilize a simple checklist.

3. 2.0 Prioritized Review NOI Standards and Submission Requirements
 - a. 2.1 Scope of Resource Assessment is proposing to expand the earthmoving and construction phase to also include addressing impacts during and after site restoration and during production. The MSC points out that this is beyond the scope of a permit authorization to conduct earthmoving activities and recommends deleting this item.

 - b. 2.1.2 Ecological Survey is expanded from an aquatic resource survey to all ecological communities within the permit boundary. Any habitat enhancement proposed by the applicant would have to be developed submitted and approved by the jurisdictional agency and submitted as part of the NOI. This will be very costly and time consuming. MSC recommends deleting this item.

- c. 2.3 Administratively Complete and Accurate NOI. The section states “NOIs that do not meet this requirement will not be accepted as Prioritized Review and the applicant will be notified.” If no application can proceed for processing without an administratively complete NOI, can you clarify the Department’s intent with this section? Does an administrative error on an initial submission automatically disqualify an applicant from Prioritized Review, or can the applicant proceed in the program once the administrative error is remedied?
 - d. 2.4 Compliance History. Continuing noncompliance and/or lack of intent to comply as determined by PA DEP eliminates applicant eligibility for a Prioritized Review. Compliance history use by PA DEP is very inconsistent and each PA DEP office seems to have different approaches to its use. The MSC requests additional clarification here to promote consistency.
4. 3.1 Forest Conservation – Minimizing Canopy Fragmentation
- a. This subsection lists 14 specific mitigation methods, of which the applicant would have to commit to at least nine of those and provide evidence to the Department that the items have been completed or will be achieved. In addition, the PA DEP references the 2016 Department of Conservation and Natural Resources (DCNR) guidelines for oil and gas activities on state forest lands as an appropriate document to follow to achieve credit for this scoring section. Industry requests flexibility in achieving nine of these items to qualify as several of the mitigation methods are specifically for well sites or pipeline projects. Depending on the type of project under consideration, there could be a smaller universe of available selections, rather than 14. The simplest solution without adding additional mitigation methods would be to reduce the number required to qualify for this category.
5. 3.1.2 Wetland Protection
- a. The MSC recommends that PA DEP utilize the United States Environmental Protection’s definition of a wetland¹. Similarly, this subsection lists 7 items that an applicant would have to adhere to in order to obtain credit as one of the ten criteria. All the items listed would not be achievable at most locations. For example, creating a new wetland habitat may not be feasible within the project limits. Controlling and eradicating invasive species in the area of the project and wetlands may be very costly, especially over the full lifetime duration of a project.
 - b. The MSC recommends that PA DEP provide a more viable list of items for the protection of wetlands or allowing for applicants to voluntarily construct new wetlands or enhancing existing wetlands as part of a mitigation banking project and in-lieu fee mitigation credits.

¹ <https://www.epa.gov/cwa-404/how-wetlands-are-defined-and-identified-under-cwa-section-404>

- c. In the bulleted list of mitigation options, the 1st item is a broad invasive species mitigation statement taken from DCNR’s Guidelines applicable to essentially any area, not just areas near wetlands. The MSC suggests that this broadly stated bullet item be moved to Section 3.7 addressing Invasive Species Management, though a modified version, as shown below, could still be retained in this Section 3.1.2 on Wetland Protection:

“Control and-eradicate minimize novel and high threat invasive plant species populations and limit the spread of additional invasive plant species that threaten forest and wetland ecosystems ~~or forest management activities.~~”

- d. In addition, in the bulleted list of mitigation options, in the 3rd bullet item, the reference in the 4th sub-bullet to performing certain wetland management options to contribute to “climate change” adaptation is subject to a wide range of interpretations and is unnecessary. The MSC recommends that the specific reference to “climate change” in that sub-bullet be deleted, as shown below:

“to contribute to ~~climate change~~ or drought adaptation”

6. 3.3 Species Protection/Enhancement

- a. The MSC would like for the Department to consider concurrent PNDI reviews for those applications seeking to use the Prioritized Review. For those applications that qualify for the Prioritized Review and do not choose to use the species protection/enhancement credit, the concurrent review would still be of value for the applicant, especially as it relates the overall review times and being able to hit the seasonal construction timeframes as outline in many of the items in the prioritized review process. In some cases, review times with the resource agencies like, USFWS, PGC and PFBC may be lengthy and any opportunity to minimize review delays would be of value to the applicant. Eliminating concurrent reviews from the Prioritized Review process would be a disincentive.
- b. PA DEP states that the applicant must improve habitat for T&E Species near the confirmed location. Typically, agencies do not communicate the specific location of T&E Species. The PNDI tool provides a general area for these species. Without the cooperation of the responsible agencies with respect to location of the T&E Species this would not be achievable. Recommend deleting this bullet in this section.

7. 3.7 Invasive Species Management

- a. Though the title and first paragraph of this section imply that the scope includes both Invasive Plant species and Invasive Animal species, the only specified mitigation practices in this section are for Invasive Plant Species. Mitigation options should also be included for Invasive Animal species if they remain within the scope of this section.

- b. There should be multiple ways for an applicant to receive credit for this section. Industry recommends splitting this into a couple of sections. An applicant could receive credit if they commit to following the DCNR's Guidelines for Administering Oil and Gas Activity on State Forest Lands, Appendix C, *Invasive Plant Management*.
- c. The proposed policy requires monitoring and treatment of invasive species for a three-year period. Based on industry experience, this is excessive. We recommend it be revised to two years. Industry also points out that entering into an agreement with the surface landowner for post-project maintenance could potentially be very difficult.

8. 3.8 Extended Setbacks

- a. Industry again recommends that setbacks should be applied from the well pad and at least eliminate the access drives from the setback consideration. Seven out of 12 criteria will be difficult to achieve.
- b. There is confusion on if this section would be applicable to linear projects, such as pipelines. MSC recommends consideration be given to linear projects and how they would be able to qualify for this scoring section. Based on experience the list of 12 may best apply to well sites.

9. 3.10 Noise Management

- a. The site-specific noise mitigation plan required in (1) is to address noise during "drilling, stimulation, and servicing activities," so the timing requirement in any agreement to "prepare and implement" such a plan should be prior to drilling, not prior to site preparation and construction. There may be an extended period of time between site construction and the initiation of drilling, so the mitigation plan addressing drilling, stimulation, and servicing activities would serve no purpose in that interim period. It is unclear exactly how PA DEP would plan to track this type of commitment made at the ESCGP NOI stage, which would then apply at some currently undetermined point in the future during the well drilling, stimulation, and servicing phases. In addition, we question whether the Department has in-house noise management expertise and appropriate technical guidance to properly review any mitigation plans.
- b. Also, requiring the plan to "minimize" – rather than mitigate - noise is a much stricter standard than is necessary. "Minimize" suggests a requirement that noise be reduced to the lowest level possible, when in fact that is often unnecessary and unwarranted, as long as the site is complying with the applicable sections of the OSHA noise standards in 29 CFR 1910.95 for worker protection, any applicable local ordinances, and is adequately taking into consideration nearby residents for purposes of this Prioritized Review condition. If those parameters are being adequately addressed, then requiring additional controls (which can be at very

significant cost) to further “minimize” the noise is not justified. It is important to note that, if noise considerations are a local issue, local governments currently have the ability to set reasonable noise thresholds.

The suggested revisions to sub-paragraph (a) to address the comments above are shown below:

- c. “(a) ~~Prior to drilling preparation and construction of the well site or access road,~~ the operator shall prepare and implement a site-specific noise mitigation plan to **reduce** ~~minimize~~ noise during drilling, stimulation and servicing activities.”
- d. In item 2(b) PA DEP states that, “An assessment of known and potential noise from drilling, stimulation and servicing activities, taking into consideration the interests of nearby residents, including the effects on indoor noise levels for residents near the well site.” We strongly recommend that subjective resident perspectives should not be included as a condition. Targets need to be strictly objective and related to on-site activities. Inclusion of neighboring interests introduces subjective requirements which may likely never be satisfied, provide no additional safety measures to neighboring property owners and substantially increases cost for noise mitigation.
- e. Sub-paragraph (2)(c) – The proposed 60 dB(a) maximum at the property boundary seems inappropriately and unnecessarily stringent, particularly since background levels in some areas may already exceed 60 dB(a). For purposes of this Prioritized Review process, a target more in line with something like 5 dB(a) above background would seem more appropriate.
- f. The MSC recommends that the Department include the use of turbines that were developed to meet regulations for sound sensitive installations. Use of these turbines, which have a target performance of 50 dBA at 100 feet, should result in compliance with this scoring section. These turbines have been installed with success in Pennsylvania.

10. 3.11 Impaired Resource Enhancement – Water Resources

- g. The MSC supports the addition of this scoring category. We would recommend that PA DEP provide additional clarification on how this scoring section can be utilized and under what circumstances.

11. 3.13 Voluntary Contribution to Air Quality Improvements – Use of Low or Zero Emission Technology

- a. There is continued industry concern with including items in the Prioritized Review that do not fall under the jurisdiction of the Office of Oil and Gas Management. Industry recommends that these items only require a self-certification for completion and not an entirely separate review. A lengthy separate review would be a disincentive.



- b. The description of this voluntary measure seems to be only inclusive of drilling operations. It is unclear if it may also be used by applicants proposing to construct a compressor station. If so, this should be added to the description text.
- c. In the introductory paragraph, a few suggested edits are shown below, and the last sentence of the paragraph is unnecessary and is recommended to be removed, as shown below:

“Oil and gas activities, from earth disturbance to production and transportation of hydrocarbons involve various processes and operations of numerous equipment including fossil fuel fired engines. During and after earth disturbance, some of the oil and gas activities and associated equipment have the potential to release into the atmosphere various air pollutants including methane (CH₄), volatile organic compounds (VOCs), nitrogen oxides (NO_x), hazardous air pollutants (HAPs), and sulfur oxides (SO_x). Methane, VOCs, and HAPs have the potential to be released during oil and gas operations. These pollutants can also be emitted when a well is in production through leaks from equipment and the piping systems as well as during transportation. ~~Fossil fuel fired engines used to support drilling and fracturing operations, offices, or other accommodations on site or transportations of materials emit NO_x, VOCs, and SO_x. NO_x and VOCs react in the presence of sunlight and produce ground level Ozone which is a serious health concern and impairs visibility.~~”

- d. The emissions tables for natural gas fired engines and turbines are not reasonable – they are taken directly from the PA DEP’s Best Available Technology (BAT) requirements for new Air Quality General Permits for brand new permanently-installed sources. Separately, the tables in the Prioritized Review draft are not consistent with the tables in the BAT requirements. This section would not be utilized for temporary units for drilling and completion operations. Industry recommends a “cut-off” for engine size – the limits for under 100 hp will not work even for a brand-new engine, and emissions reductions efforts would be best focused on larger diesel engines. Absent an engine cut-off size, this option simply will not be utilized by industry as it imposes conditions that are cost-prohibitive and simply not proportional to the limited benefits of a timely review of an earth-moving permit.
- e. It will be challenging, if not impossible, for operators to utilize a full fleet of all Tier 4 engines. Not enough of these engines exist and/or are viable for oil and gas operations currently. Industry recommends inserting some flexibility on this requirement. We would suggest qualifying language, such as “Limit of Disturbance, with the exception of access roads.”

As an alternative, the MSC recommends PA DEP consider the use of alternative technologies to satisfy this requirement, where Tier 4 engines are not viable.



- a. The industry would encourage adding the following as options to qualify for this section for air quality improvements:
 - i. Enhanced dust control measures
 - ii. Tar and chipping of township roads

12. 3.14 Carbon Neutrality

- a. As the MSC recommended during several of the workgroup meetings credit for carbon neutrality should apply to not only the planting of new trees, but the retention of existing trees that otherwise would be removed in the normal course of construction. This would result in additional benefits to the environment and an incentive for the industry to participate in this process while recommending best management practices. Additionally, the carbon-capture ability of mature trees is demonstrably greater than new plantings.
- b. During the workgroup meetings the MSC also recommended trying to limit new asphalt and gravel impervious areas, utilizing existing roads where possible and other designs (geogrids with grass) as opposed to installing new gravel or asphalt. Additionally, construction vehicles have improved over time and industry should get credit for emissions factors on these vehicles being lower.
- c. The use of waste heat for electricity should also be available as an option to qualify for this scoring section. Turbines with integrated heat exchangers can convert waste heat into electric and thermal energy while reducing the carbon footprint and additional use of fossil fuels for these needs. The MSC recommends that this option be included to qualify for this scoring section.

13. 3.15 Renewable Energy

- a. The MSC requests that the Department explain where the 50% renewable number was developed for this program. MSC recommends that this be 50% of the proposed facility/site design energy need. Additionally, clarification on what the Department considers 'renewable' energy, including whether such a designation includes a life-cycle analysis of emissions to procure and construct the components of that energy source (not simply an evaluation of emissions at point of use), should be provided.
- b. The MSC also has concerns of how this will be measured and calculated with respect to electrical draw day-in and day-out. There are some nuances to calculate and demonstrate compliance with this item.
- c. Some operators are already installing solar fields that are feeding into the grid and then being utilized by operators from the grid. Credit should be offered for this activity.

14. 4.0 Environmental Enhancement Plans (EE Plan)

- a. The MSC envisions that this plan will be extensive, time consuming and costly to prepare, versus a simple checklist within the NOI to illustrate the scoring



categories achieved within the Policy. This will be a disincentive to utilizing the Prioritized Review process. In addition, the statement is made that the EE Plan should be made available to the Department upon request. The MSC assumes that this document would then be reviewed by Department staff, with subsequent comments and response requirements, further lengthening the process to obtain final approval. The MSC points back to our original comment on the need for a SOP for review to be developed and a simple certification process for this Policy, or it will not be utilized.

15. 5.0 Review Process

- a. This section states, “Prioritized Review does not offer specific review timeframes.” As stated in the beginning of our comments, it is critical that a clear and concise standard operating procedure, anticipated timeframe and checklist is developed for reviewers for Prioritized Review permit packages or else the same permit time headaches will be realized with this program as well and will dissuade operators from using the program. The MSC recommends a self-certification process to be implemented. We recommend that this certification process and the SOP be developed prior to the draft Policy being finalized and shared with the workgroup for review and discussion.

Conclusion:

The MSC thanks the Department for its consideration of these comments. Such feedback is offered in the spirit of constructive commentary, as all parties work toward a process that provides value to the applicant, Department and to the environment.

We remain concerned that the complexity of the Policy will cause even greater delays in the processing of ESCGP-3 Permits. The amount of information and level of detail required to be submitted in hopes of qualifying under this process may disincentive applicants to participate. In many respects, these criteria – though regarded as optional – far exceed that which was ever envisioned for a department General Permit.

Finally, it should be noted that the need for the Prioritized Review is not evident statewide. Two of the three District permitting offices routinely review and issue timely permit decisions within 45 days. Only the Southwest District Office has not been able to routinely meet Permit Decision Guarantee timeframes. When ESCGP-3 permits normally submitted to the Southwest District Office are reassigned to the Northcentral District Office, permit review times decrease dramatically and are in line with review times in both the Northwest and Northcentral District Offices.

Development of a prioritized review process to navigate around a process, rather than through it, is akin to building a permanent detour rather than fixing the roadway. While industry remains committed to working constructively with the Department, we strongly encourage even greater focus on fixing the underlying challenges that made development of a prioritized review process necessary in the first place.



Thank you for your consideration of these comments.

Sincerely,



Loren Anderson
Director, Technical Affairs