

# REPORT HIGHLIGHTS

## *A Performance Evaluation of the Department of Environmental Protection Chapter 102 and Chapter 105 Permitting Programs*

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Senate Resolution 2017-226 directs the Legislative Budget and Finance Committee to conduct a performance evaluation of two environmental permitting programs within the Department of Environmental Protection: the Chapter 102 Erosion and Sediment Pollution Control Program and the Chapter 105 Water Obstruction and Encroachment Program. Highlights of our report include the following:

- ❖ **Stakeholders, both regulated and regulator, expressed a wide variety of concerns about the management of the permit application process.** The two issues raised most frequently were inconsistencies in the interpretation of regulations and requirements of the permitting programs, between and among the regional offices and the CCDs, and the length of time for permit applications to be reviewed and disposed. Stakeholders also report a lack of communication from the DEP Central Office to the DEP regional offices, CCDs, and the regulated community.
- ❖ **DEP does not systematically collect, compile, analyze, and report data to measure the performance of the CCDs or DEP regional offices for all Chapter 102 and Chapter 105 permitting programs.** LBFC staff conducted a file review of disposed DEP permits to gauge whether the CCDs and DEP are consistently adhering to the review process and internal controls established by DEP. We reviewed roughly 440 files and found that DEP internal controls, designed to ensure compliance with review requirements, are ineffective. For example, DEP requires its employees to complete certain checklists. The majority of those checklists were either incomplete or missing.
- ❖ **DEP does not document whether its Chapter 102 and Chapter 105 permitting programs are protecting the environment.** One of the stated purposes of both permitting programs is protection of the environment, however, we found that DEP does not have policies and procedures in place for the Chapter 102 program to ensure continued environmental protection after a project is terminated, unless a complaint is filed.

Additionally, DEP has no mechanisms in place to collect, compile, analyze, and report data that may be used to measure environmental effects for all types of permits in both programs. Further, DEP does not systematically monitor whether a Chapter 102 Notice of Termination (NOT) has been submitted and approved. The NOT represents a final inspection of the project site to ensure compliance with Commonwealth laws, regulations, and the approved permit application.

DEP does not systematically inspect a Chapter 105 permitted site post construction to ensure the environment is protected. According to DEP, inspection is a compliance and enforcement responsibility, not a permitting requirement.

- ❖ **DEP has not sought an increase in fees to supplement funding for either permitting program.** DEP has traditionally funded the Chapter 102 and Chapter 105 programs with a combination of state general funds, federal funds, and program fees. We found that DEP has not sought an increase in fees to supplement funding for either permitting program. DEP is mandated, by regulation, to issue fee reports for the Chapter 102 and Chapter 105 permitting programs. The reports may be used to request an increase in fees. DEP failed to issue a Chapter 102 fee report when it was last mandated to do so. DEP issued the Chapter 105 report, but did not propose an increase in fees.
- ❖ **DEP has undertaken three major initiatives to improve the program.** The Permit Decision Guarantee Program (essentially an update of the former Money-Back Guarantee Program) is designed to establish a standardized review process and processing times for permits. We found that DEP and the CCDs have not met PDG timeframe requirements when complete and technically adequate applications have been submitted. The percentage of complete and technically adequate permit applications reviewed and disposed within the maximum review days exceeded 90 percent in only one of five permit types.

The Regional Project Coordination Office (RPCO) is designed to provide “synchronized and consistent reviews and approvals for general to complex projects.” The RCPO has been in place for almost two years and has only recently begun reviewing projects.

DEP has developed an ePermitting system to streamline the process of permit application and approval. The roll-out of this program has been problematic.

- ❖ **Our report contains 16 recommendations.** The recommendations are designed to address conflicting interpretations of application requirements; provide effective administrative control and guidance; ensure protection of the environment; and ensure eligible applications are approved within the guaranteed time frames.

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