

LEGISLATIVE BUDGET AND FINANCE COMMITTEE

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

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

June 2019



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REPORT SUMMARY



Objectives and Scope

- ❖ *To review concerns about the Chapter 102 and Chapter 105 permitting programs.*
- ❖ *To analyze and compare total and individual resources and workloads.*
- ❖ *To compare permit review times, performance levels, and goals.*
- ❖ *To review the effectiveness of applicable policies, procedures, or guidance.*
- ❖ *To evaluate recent and ongoing efforts and initiatives to remove obstacles to effective and efficient permit reviews.*
- ❖ *To review similar permitting programs administered in Pennsylvania and other states.*
- ❖ *To make recommendations.*

Our performance audit covered the period of January 1, 2015 through December 31, 2017 for CCDs and July 1, 2015 through June 30, 2018 for DEP.

Report Overview

Senate Resolution 2017-226 (SR 226) directs the LBFC to conduct a performance evaluation of two environmental permitting programs within the Department of Environmental Protection (DEP): the Chapter 102 Erosion and Sediment Pollution Control Program (Chapter 102) and the Chapter 105 Water Obstruction and Encroachment Program (Chapter 105).

As we planned our work, we reviewed DEP regulations, policies, standard operating procedures, guidance documents, and permit files. We met with senior management, division chiefs, bureau directors, DEP legal counsel, as well as county conservation district (CCD) staff, and stakeholders from the regulated community.

The sections of our report are as follows:

- **Section I – Objectives, Scope, and Methodology**
- **Section II – Background Information**
- **Section III – Concerns of Stakeholders**
- **Section IV – DEP Resources and Workloads**
- **Section V – DEP Policies, Performance Levels, and Fee Structures**
- **Section VI – Initiatives to Improve Permitting Programs**

Our performance evaluation covered Calendar Years (CY) 2015 through 2017 for the CCDs and Fiscal Years (FY) 2015-16 through 2017-18 for DEP.

Background Information

The primary purpose of the Chapter 102 permitting program is to minimize accelerated erosion and sedimentation pollution. All earth disturbance activities in excess of one acre, must develop, implement, and maintain a plan to minimize accelerated erosion and sedimentation and must obtain the federally required National Pollutant Discharge Elimination System (NPDES) permit for discharge of stormwater from construction activities.

The purpose of the Chapter 105 permitting program is to ensure public health and safety, the health of the environment, and to regulate activities around bodies of water, including ponds, rivers, lakes, streams, and wetlands. A permit is necessary for any structure or activity that changes, expands, or diminishes the course, current, or cross section of a stream, floodway, or body of water.

Six DEP regional offices and 66 CCDs have primary responsibility for administering these permitting programs. CCDs are created by a county governing body to educate farmers and landowners on Best Management Practices (BMPs) to provide for the conservation of the soil, water, and related resources of the Commonwealth, and are governed by a Board of Directors.

Concerns of Stakeholders

Through our communications with various stakeholders in the regulated community and those agencies that review Chapter 102 and Chapter 105 permit applications, we found a wide variety of concerns about the administration of the application process.

The two issues raised most frequently were (1) inconsistencies in interpreting the regulations and requirements of the permitting programs between both the regional offices and the CCDs; and (2) the length of time for permit applications to be reviewed and disposed. Included in this are comments that speak to the lack of communication between DEP Central Office, DEP regional offices, CCDs and the regulated community, which can be a factor in elongating permit review times, as well as quality of the submitted applications.

We found that stakeholders report:

- DEP and the CCDs are inconsistent in their interpretation of DEP regulations and requirements of the permitting programs.
- DEP does not review permits in a timely manner.
- DEP does not adequately communicate with its regional offices, CCDs, or applicants in a consistent or timely manner.

DEP Resources and Workloads

LBFC was asked to analyze and compare the total and individual resources and workloads for the permitting programs. This analysis includes all offices charged with administration of the programs, including DEP Central and regional offices and the 66 CCDs.

We analyzed the data by computing three ratios – expenditures per Full-Time Equivalent (FTEs), expenditures per permits disposed, and permits disposed per FTE. The data is reported by permit program (Chapter 102 and Chapter 105) and by DEP regional offices and individual CCDs. We also computed the correlation coefficient to measure the strength of the relationship between inputs (expenditures and FTEs) and outputs (permits disposed).¹

Total staff resources for DEP and CCDs for both Chapter 102 and Chapter 105 averaged 303 FTEs and the number of FTEs increased by 3 percent during the review period. Staffing levels for DEP averaged 109 FTEs and increased by 3.6 percent while staffing for CCDs averaged 194 FTEs and increased by 2.6 percent.

Total expenditures for DEP and the CCDs averaged \$14.8 million per year, increasing by 12.4 percent over the review period. Expenditure levels for DEP averaged \$5 million and increased by 12.6 percent while expenditures for CCDs averaged \$10 million and increased by 12.4 percent.

We found that:

- Data provided by DEP failed to establish a strong relationship between total expenditures and total number of permits disposed by DEP regional offices.
- Data provided by the CCDs established a strong relationship between total expenditures and total number of permits disposed by the CCDs.
- Data provided by DEP failed to establish a strong relationship between the total number of FTEs and total number of permits disposed by DEP regional offices.
- Data provided by the CCDs established a strong relationship between the total number of FTEs and total number of permits disposed by the CCDs.
- Data provided by DEP showed a negative correlation between expenditures and the number of permits disposed by DEP.

¹ FTEs for the Chapter 102 and 105 permitting programs engage in activities in addition to directly issuing permits. These indirect activities are also a part of the total cost and time of issuing a permit. For example, training, outreach, and education are part of the total cost and time of issuing a permit and must be included when making comparisons between FTEs and the number of permits issued.

- Data provided by DEP showed a negative correlation between FTEs and the number of permits disposed by DEP.

DEP Policies, Performance Levels and Fees

DEP has regulations, policies, procedures, guidelines, and standard operating procedures (SOPs) for the Chapter 102 and Chapter 105 permitting programs. In addition to state regulations for both programs, federal requirements are also applicable.

LBFC staff conducted a file review of DEP permits to gauge whether the CCDs and DEP are consistently adhering to the review process outlined in both the Chapter 102 and Chapter 105 Administrative Manuals.

To conduct our review of Chapter 102 and Chapter 105 application files, we asked DEP to provide the following information necessary to determine the size of our sample:

- The number of permit applications received annually by CCDs, DEP regional offices, and DEP central office by county (for the CCDs) and by region (for DEP).
- The number of applications disposed annually by CCDs, DEP regional offices, and DEP central office by county (for the CCDs) and by region (for DEP).
- Length of time to review a permit from receipt to disposition.

In response to this request, DEP informed us that they do not systematically collect, compile, analyze, and report this data from CCDs or DEP regional offices.

To determine which files to randomly select, we requested a list of all permits disposed from FY 2012-13 through FY 2017-18, however, data was only available for FY 2015-16 through FY 2017-18. For our review, we chose a random, statistically significant sample from each permit type and requested these files from DEP. Our sample size was 470 files.

According to DEP, the overall goal for these two permit programs is to issue permits that protect the environment and natural resources and the health and safety of Pennsylvania residents while ensuring projects are using and maintaining construction methods that are both environmentally sound and of the latest approved BMPs. DEP does not, however, document whether its programs meet this standard.

In addition to the goals outlined in this report, DEP referenced its mission statement and the goal of applying the programs as required in as efficient and effective a manner as possible, as its goal for the programs.

DEP has not sought an increase in fees to supplement funding for permitting programs. DEP did not issue a mandated Chapter 102 fee report that could have been used to request a fee increase if it were necessary. DEP issued its mandated Chapter 105 fee report and declined to request an increase in fees.

We found that:

- DEP does not systematically collect, compile, analyze, and report data to measure the performance of the CCDs or DEP regional offices for Chapter 102 and Chapter 105 permits.
- DEP internal controls for the permitting programs are ineffective. 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.
- DEP has not sought an increase in fees to supplement funding for permitting programs.
- DEP does not document whether Chapter 102 and Chapter 105 permitting programs protect the environment, natural resources, and the health and safety of Pennsylvanians.

Initiatives to Improve Permitting Programs

DEP has implemented measures to improve both the Chapter 102 Erosion and Sediment Control Program and the Chapter 105 Water Obstruction and Encroachment Program. DEP has replaced the Money-Back Guarantee Program with the Permit Decision Guarantee Program (PDG), implemented the Regional Project Coordination Office (RPCO), continued to partner with the PA Department of Transportation (PennDOT), and established an ePermitting program to allow applicants to submit applications online for Chapter 105 general permits.

DEP implemented the PDG Program to establish a standardized review process and processing times for permits. Permits covered by the PDG include:

- Chapter 102 Individual Permits.
- Chapter 105 Individual Permits.
- Chapter 105 General Permits 5 and 11.

The RPCO was established by DEP in March 2017, and is located in the Program Integration Office, which is overseen by the Executive Deputy Secretary for Programs. According to DEP, the mission of the office is to provide synchronized and consistent reviews and approvals for general to complex projects related to Chapter 102 and Chapter 105 projects

from the Central Office. Even though it was established in early 2017, the RPCO only began to accept permit applications in January 2019.

DEP has developed an electronic system for Chapter 105 general permit applications. DEP “anticipates that the regulated community, along with DEP and delegated CCD staff will find that the ePermitting process will improve application quality, reduce permit review timeframes, and will help us to eliminate permit backlogs.” According to a DEP official, ePermitting was intended to make an electronic process available to all applicants in an effort to streamline the process, as the KEES system has done for PennDOT applications. This system began accepting applications on October 18, 2018.

We found that:

- DEP and the CCDs have not met PDG timeframe requirements when complete and technically adequate applications have been submitted.
- The RPCO has been in place for almost two years and has only recently begun the work of reviewing and issuing permits.
- The roll-out of ePermitting has been problematic.

Report Recommendations

Our report makes the following recommendations:

1. To address conflicting interpretations of application requirements we recommend DEP:
 - a. Convene a working group of consultants, CCDs, and DEP regional offices to standardize interpretation of program requirements.
 - b. Establish a state-wide, effective mechanism to resolve conflicting interpretation decisions between and within DEP regional offices and between and within the CCDs when they arise.
 - c. Conduct permit requirement interpretation sessions around the state to train regional and CCD staff and ensure the consistent interpretation of program requirements.
 - d. Develop a test project, with the same permit application, for review by both CCDs and its regions to test for consistency in interpretation of all applicable statutes and regulations in the application review process.

2. To provide administrative control and guidance, DEP should:

- a. Systematically collect, compile, analyze, and report data related to:
 - FTEs and the number of permits disposed.
 - Expenditures and the number of permits disposed.
 - The reasons for a positive correlation between FTEs, expenditures, and permits disposed by the CCDs.
 - The reasons for a negative correlation between FTEs, expenditures, and permits disposed by DEP regional offices.
 - b. Periodically conduct random audits of permit application files to ensure that:
 - DEP regional offices and CCDs are adhering to internal controls.
 - DEP regional offices and CCDs are meeting maximum review time requirements.
 - c. Standardize required internal controls across DEP regional offices and CCDs.
 - d. Clearly define appropriate and measurable goals, actions, and performance measures to improve the administration of the Chapter 102 and Chapter 105 permitting programs.
 - e. Submit the mandated Chapter 102 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.
 - f. Submit the mandated Chapter 105 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.
3. To ensure protection of the environment, DEP and the CCDs should systematically collect, compile, analyze, and report data that measure and explain the environmental effects of the Chapter 102 and Chapter 105 permitting programs.
 4. DEP should systematically collect, compile, analyze, and report whether or not an NOT has been submitted and the final inspection has taken place.
 5. DEP should systematically inspect completed construction sites to determine if the elements of approved permits have been properly installed and are functioning.
 6. DEP should establish consequences for DEP regional offices and CCDs that do not meet PDG time frames.

7. DEP should systematically collect, compile, analyze, and report data on PDG-eligible applications and implement a plan of action to ensure eligible applications are approved within the guaranteed time frame.
8. DEP should revisit its PDG policy, and establish appropriate review time standards for projects that are more complex, for example, those that are five acres or greater.

SECTION I OBJECTIVES, SCOPE, AND METHODOLOGY



Why we conducted this study...

Senate Resolution 2017-226 directs the Legislative Budget and Finance Committee (LBFC) to conduct an independent performance evaluation of permitting under the Erosion and Sedimentation Program and Water Obstruction and Encroachment Program administered by the Department of Environmental Protection.

On February 22, 2018, the LBFC Officers adopted this performance evaluation.

Objectives

Our objectives for this evaluation were:

1. To review concerns about the Chapter 102 and Chapter 105 permitting programs expressed by stakeholders.
2. To analyze and compare the total and individual resources and workloads for the permitting programs.
3. To compare permit review times, performance levels, and goals for DEP and the CCDs.
4. To review the effectiveness of applicable policies, procedures, or guidance for permit review and issuance.
5. To evaluate recent and ongoing efforts and initiatives by DEP and the CCDs to remove obstacles to effective and efficient permit reviews.
6. To review similar permitting programs administered in Pennsylvania and other states.
7. To make recommendations.

Scope

Our performance evaluation covered the period of January 1, 2015 through December 31, 2017 for the CCDs and July 1, 2015 through June 30, 2018 for DEP.

Methodology

To review concerns about the Chapter 102 and Chapter 105 permitting programs, we contacted a variety of stakeholders, including the regulated community and associated consultants, biology and engineering professionals, municipal associations, academics, builders, environmental groups, and other governmental agencies. Additionally, we met with three of the six regional DEP offices, as well as seven CCDs, at least one from each DEP region. We also met with PennDOT and the PA Turnpike Commission (PTC), two of DEP's biggest customers.

To analyze and compare the total and individual resources and workloads for the permitting programs, we obtained information from DEP and the CCDs regarding full-time equivalents (FTEs)² per permitting program; the number of permits disposed per program; and expenditures per program. We analyzed the data by computing three ratios: 1) expenditures per FTEs; 2) expenditures per permit disposed; and 3) permits disposed per FTE. We also computed the correlation coefficient to measure the strength of the relationship between inputs (expenditures and FTEs) and outputs (permits disposed).

To compare permit review times, performance levels, and goals we conducted a file review of 440 DEP permit applications; reviewed DEP and CCD regulations, policies, procedures, guidelines, standard operating procedures (SOPs), Administrative Manuals, and goals for each permitting program; and compared the fee structures from DEP and the CCDs.

To evaluate recent and ongoing efforts and initiatives by DEP, we evaluated the PDG, the RPCO, and the ePermitting program.

To review similar permitting programs administered in Pennsylvania and other states, we surveyed other Pennsylvania, federal, and state permitting programs.

We did not independently verify the appropriateness of technical aspects of permit applications and whether permits were properly approved.

Frequently Used Abbreviations

Throughout this report, we use a number of abbreviations for government-related agencies, terms, and functions. These abbreviations are defined as follows:

Abbreviation	Name	Abbreviation	Name
BMP	Best Management Practice	NOI	Notice of Intent
CCD	County Conservation District	NOT	Notice of Termination
CWA	Clean Water Act	NPDES	National Pollutant Discharge Elimination System
DEP	Department of Environmental Protection	PASPAG-5	PA State Programmatic General Permit 5
E&S	Erosion & Sedimentation	PCSM	Post Construction Stormwater Management

² FTEs for the Chapter 102 and 105 permitting programs engage in activities in addition to directly issuing permits. These indirect activities are also part of the total cost and time of issuing a permit. For example, training, outreach, and education are part of the total cost and time of issuing a permit and must be included when making comparisons between FTEs and the number of permits issued.

Abbreviation	Name	Abbreviation	Name
EPA	Environmental Protection Agency	PDG	Permit Decision Guarantee
EQB	Environmental Quality Board	PNDI	Pennsylvania Natural Inventory
EV	Exceptional Value Watershed	RPCO	Regional Project Coordination Office
FTE	Full-time Equivalent	SLLA s	Submerged Lands License Agreements
HQ	High Quality Watershed	SOP	Standard Operating Procedure

Impairment

As part of our standard process, LBFC reviews five years of historical data. DEP was only able to provide three years of historical data for this performance audit.

Acknowledgements

We acknowledge the cooperation we received from Secretary Patrick McDonnell, Sean Gimbel, and the staff of DEP, CCDs, and stakeholders who provided us with information necessary to conduct our review.

Important Note

This report was developed by the staff of the Legislative Budget and Finance Committee, including Deputy Executive Director, Christopher Latta, staff analysts, Anne Witkonis and Amy Hockenberry, and Counsel Rick Jones. The release of this report should not be construed as an indication that the Committee as a whole, or its individual members, necessarily concur with the report's findings, conclusions, or recommendations.

Any questions or comments regarding the contents of this report should be directed to the following:

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SECTION II BACKGROUND



Fast Facts...

- ❖ *The Chapter 102 and Chapter 105 permitting programs are in place to protect the environment and water resources of the Commonwealth.*
- ❖ *There are 47 states and one U.S. territory authorized to implement the NPDES program. Pennsylvania has held this authorization since 1978.*

Overview

Senate Resolution 2017-226 (SR 226) directs the LBFC to conduct a performance evaluation of two environmental permitting programs within the DEP: the Chapter 102 Erosion and Sediment Pollution Control Program (Chapter 102); and the Chapter 105 Water Obstruction and Encroachment Program (Chapter 105).³

The primary purpose of the Chapter 102 program is to minimize accelerated erosion and sedimentation⁴ pollution from earth disturbance activities through regulation. A permit is required for any earth disturbance activity in excess of one acre.

The Chapter 105 program provides for the regulation and supervision of water obstructions and encroachments. A permit is required for any structure or activity that changes, expands, or diminishes the course, current, or cross section of a stream, floodway, or body of water.

Six DEP regional offices⁵ and 66 CCDs,⁶ have primary responsibilities for administering these permitting programs. CCDs are created by a county governing body⁷ to educate farmers and landowners on BMPs⁸ to provide for the conservation of soil, water, and related resources of the Commonwealth, and are governed by a Board of Directors.⁹

³ Both Chapter 102 and Chapter 105 are found in 25 Pa. Code.

⁴ Erosion and Sedimentation: Erosion is the transport of soil, sediment, and rock fragments produced by the weathering of geological features. Sedimentation occurs when eroded material is being transported by water and settles out of the water onto the surface as the water flow slows.

⁵ DEP Regional offices are: Northeast Regional Office, Northcentral Regional Office, Northwest Regional Office, Southeast Regional Office, Southcentral Regional Office, and Southwest Regional Office.

⁶ Philadelphia County is the only county without a conservation district. Their work is handled by the Southeast Regional Office.

⁷ A county governing body is the board of county commissioners or the body that has responsibility or authority relating to the conservation district (Conservation District Law, Act 1945-217).

⁸ Best Management Practices (BMPs) manage and treat stormwater discharges to protect water quality after construction, and should be prepared and implemented in accordance with DEP's Stormwater BMP manual.

⁹ A CCD's Board of Directors is made up of seven members, appointed by the county governing body, and consists of one member of the county governing body, two to four farmers, and two to four public members who are not farmers.

CCDs vary in size, some with as few as one employee, while others can be larger, with over 20 employees. CCDs receive funding from the Conservation District Allocation Fund (CDAF), the Public Utility Commission (PUC), and their own fees. CDAF money comes from state or federal appropriations, earnings on interest, and other funds made available by the State Conservation Commission. Funds from the PUC come from the unconventional gas well impact fees as directed by Act 2012-13. The Conservation District Law permits CCDs to charge additional fees, which are kept by the districts for their services. These fees are outlined further in Appendix B.

The CCDs and their Board of Directors decide whether their counties will administer either the Chapter 102 permitting program, the Chapter 105 permitting program, or both permitting programs. The CCDs and DEP sign delegation agreements that outline the responsibilities of both parties. Exhibit 1 shows which counties have delegated responsibility for each program.

Exhibit 1

Counties Delegated Responsibility for Chapter 102 and Chapter 105 Permitting Programs

County	Ch. 102	Ch. 105	County	Ch. 102	Ch. 105
Adams	x		Juniata	x	
Allegheny	x	x	Lackawanna	x	
Armstrong	x		Lancaster	x	x
Beaver	x	x	Lawrence	x	
Bedford	x		Lebanon	x	
Berks	x	x	Lehigh	x	
Blair	x		Luzerne	x	
Bradford	x	x	Lycoming	x	
Bucks	x		McKean	x	x
Butler	x	x	Mercer	x	x
Cambria	x	x	Mifflin	x	
Cameron	x	x	Monroe	x	x
Carbon	x		Montgomery	x	
Centre	x	x	Montour	x	x
Chester	x		Northampton	x	
Clarion	x		Northumberland	x	x
Clearfield	x	x	Perry	x	
Clinton	x	x	Pike	x	x
Columbia	x	x	Potter	x	x
Crawford	x	x	Schuylkill	x	
Cumberland	X		Snyder	X	

Exhibit 1 Continued

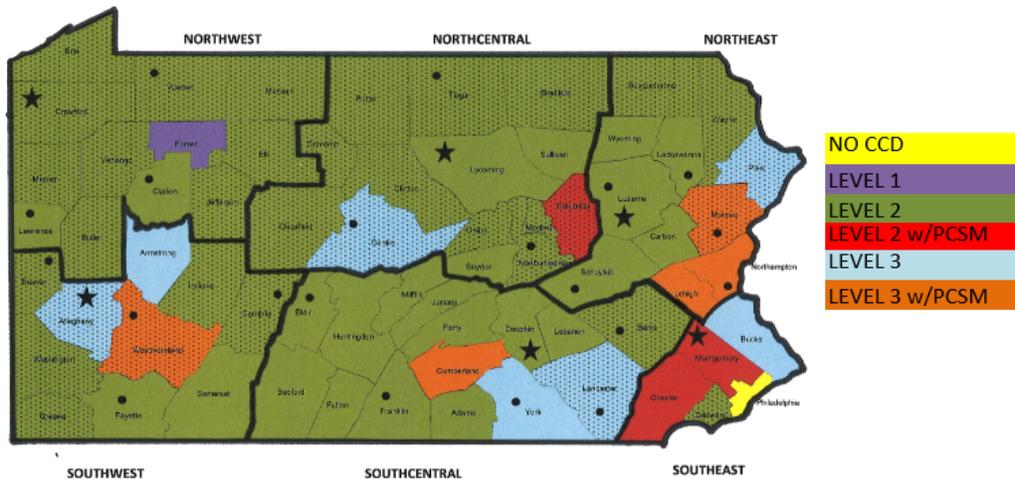
County	Ch. 102	Ch. 105	County	Ch. 102	Ch. 105
Dauphin	x		Somerset	x	
Delaware	x	x	Sullivan	x	
Elk	x	x	Susquehanna	x	x
Erie	x	x	Tioga	x	x
Fayette	x		Union	x	x
Forest			Venango	x	x
Franklin	x		Warren	x	x
Fulton	x		Washington	x	x
Greene	x	x	Wayne	x	x
Huntingdon	x		Westmoreland	x	x
Indiana	x	x	Wyoming	x	
Jefferson	x	x	York	x	

Source: Developed by LBFC staff from information provided by DEP.

Program responsibilities vary, depending on both the program and the level of delegation. Counties delegated for the Chapter 102 Program may have one of three levels of delegation, as illustrated by Exhibit 2. Forest County is the only county with a Level I delegation. The details of delegation responsibilities are outlined in Appendix C.

Exhibit 2

Chapter 102 County Delegation Levels*



*The map reflects the counties in each DEP region at the time our fieldwork was conducted, however, effective January 10, 2019, Armstrong and Indiana Counties became part of the Northwest Region.

*PCSM stands for Post Construction Stormwater Management.

Source: Developed by LBFC staff from information provided by DEP.

Programs

A. Chapter 102 Erosion and Sediment Control Program (E&S)

The primary purpose of the Chapter 102 permitting program is to minimize accelerated erosion and sedimentation pollution. All earth disturbance activities in excess of one acre, must develop, implement, and maintain a plan to minimize accelerated erosion and sedimentation and must obtain the federally required National Pollutant Discharge Elimination System (NPDES) permit for discharge of stormwater from construction activities.

The NPDES permit program was created by the Clean Water Act (CWA) of 1972 to address water pollution by regulating point sources that discharge pollutants to waters of the United States.¹⁰ The permit contains limits on what may be discharged, monitoring and reporting requirements, and other provisions to ensure that discharges¹¹ do not impact water quality or public health. The permit translates general requirements of the CWA into specific provisions tailored to the operations of each entity discharging pollutants.

There are various methods used to monitor NPDES permit conditions. The permit requires the permittee to sample site discharge(s) and notify the Environmental Protection Agency (EPA) and DEP of the results. The permit also requires the permittee to notify EPA and DEP of noncompliance with permit requirements. The EPA, CCDs, and DEP send inspectors to NPDES permitted sites to determine compliance with permit conditions and to take enforcement actions, including civil and criminal, against permit violators.

Under the CWA, the EPA authorizes states to administer the NPDES permit program, although oversight responsibilities are retained by the EPA. There are currently 47 states and one territory¹² authorized to administer the NPDES program. Pennsylvania administers this program in conjunction with the Chapter 102 program by issuing either an NPDES General Permit or an NPDES Individual Permit.

¹⁰ Waters of the United States is defined broadly in the CWA as navigable waters, tributaries to navigable waters, interstate waters, the oceans out to 200 miles, and intrastate waters which are used by interstate travelers for recreation or other purposes, as a source of fish or shellfish sold in interstate commerce, or for industrial purposes by industries engaged in interstate commerce.

¹¹ Discharges are liquid effluent or waste water released to surface waters or on the ground.

¹² The following are authorized to administer the NPDES program: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY and the U.S. Virgin Islands.

The CWA specifies that NPDES permits may not be issued for longer than five years. Permittees who need a permit for longer than five years must submit a complete application for renewal at least 180 days prior to the expiration of the current permit. According to a DEP regional official, as long as the renewal application is received in their office prior to the permit expiration date, the 180 days is waived, allowing work on the project to continue.

The NPDES administrative procedures require the general public to receive notice and the opportunity to comment on NPDES permit applications. In Pennsylvania, the notification is placed in the *Pennsylvania Bulletin*.

There are four types of permits issued under the Chapter 102 program: NPDES General Permit (PAG-02), NPDES Individual Permit, Erosion and Sediment (E&S) Permit, and Erosion and Sediment Control General Permit (ESCGP) for Oil & Gas activities.¹³ Permit applications must be submitted to either a DEP regional office or delegated CCD for review.

Chapter 102 General Permits

Chapter 102 general permits, also known as PAG-02 permits, are required for construction activities with earth disturbances greater than one acre during any stage of development. A PAG-02 permit covers multiple discharges with similar operations and types of discharge. Projects seeking PAG-02 coverage cannot be located in high quality (HQ) or exceptional value (EV) watersheds. If the project is located in an HQ or EV watershed, the applicant must apply for an individual permit.

Application Process for General Permits. An applicant requesting coverage under a Chapter 102 general permit must submit a Notice of Intent (NOI),¹⁴ which contains basic information about the applicant and the planned discharge. The timeframe for the authorization of a PAG-02 permit is 71 business days.

An administratively complete NOI must be submitted to a delegated CCD or DEP regional office. To be considered administratively complete, the NOI must be signed and contain the following elements:

- Completed and notarized NOI.
- Permit filing fee of \$500 payable to the County Clean Water Fund.
- \$100 per disturbed acre fee payable to the PA Clean Water Fund.

¹³ The E&S permit is only issued to an individual proposing a timber harvesting or road maintenance activity involving 25 acres or more of earth disturbance over the life of the project. The ESCGP-2 permit is required for earth disturbance associated with oil & gas exploration, production, processing, or treatment operations, or transmission facilities and is issued by the three DEP Oil & Gas Regional Offices.

¹⁴ The NOI is the application for a Chapter 102 General Permit.

- Documentation of municipal and county notifications.
- Signed Pennsylvania Natural Diversity Inventory (PNDI) receipt.¹⁵
- E&S plan copies.¹⁶
- PCSM plan copies.¹⁷

Once an NOI is deemed complete, the delegated CCD or DEP has 22 business days to perform a technical review. If the NOI is technically adequate, the permit is authorized and the permittee is notified by letter. Public notice of the permit authorization is placed in the *Pennsylvania Bulletin*.

If an NOI is found to be incomplete, the CCD will send the applicant an incompleteness letter that outlines the statutory and/or regulatory deficiencies and give them 60 calendar days to provide the necessary information to make the NOI complete. If the applicant fails to provide the necessary information, the NOI will be considered withdrawn and a letter will be sent to the applicant informing them of the withdrawn NOI.

If the application has technical deficiencies, they are documented in a letter to the applicant that cites all statutory and/or regulatory requirement deficiencies. The applicant has 60 calendar days to correct the deficiencies. The applicant has the right to request an extension beyond the initial 60 calendar days.

If the applicant submits corrected information, the delegated CCD performs another technical review to determine technical adequacy. If the NOI is deemed technically adequate, the delegated CCD authorizes the permit. If the NOI remains technically inadequate, an elevated review takes place.

During an elevated review, the applicant, CCD staff, and DEP staff meet to discuss deficiencies. If all parties come to an agreement to correct the technical deficiencies, the applicant has ten business days to make corrections. If there is no agreement, the DEP Bureau Director may approve or deny the permit at their discretion.

Once a permit is authorized by the DEP regional office, the delegated CCD prepares and signs the permit documents, prepares the permit issuance cover letter that is sent to the applicant, and distributes the permit and copies of plans to the permit applicant, the DEP regional office, the

¹⁵ PNDI is the primary source of information used by DEP for the protection of Federal and Pennsylvania threatened, endangered, and special concern species. The PNDI may contain comments from the PA Game Commission (PGC), PA Fish and Boat Commission (PFBC), PA Department of Conservation and Natural Resources (DCNR), and the U.S. Fish and Wildlife Services (USFWS).

¹⁶ E&S Plans are site-specific plans that contain drawings and an explanation identifying BMPs to minimize accelerated erosion and sedimentation before, during, and after earth disturbance activities.

¹⁷ Post Construction Stormwater Management (PCSM) plans are site-specific plans that contain drawings and an explanation identifying BMPs to manage changes in stormwater runoff volume, rate, and water quality after earth disturbance activities have ended and the project site is permanently stabilized.

applicant, consultant, the municipality, DEP Central Office, and to the *Pennsylvania Bulletin* for public notice of the permit authorization. Upon permanent site stabilization and installation of PCSM BMPs, a permittee must submit a Notice of Termination (NOT)¹⁸ to either the delegated CCD or DEP regional office, where it is reviewed to ensure completeness.

If the NOT is incomplete, it is denied and a written notice is sent to the permittee. If the NOT is complete, the delegated CCD or DEP regional office schedules a site visit within 30 calendar days to conduct an onsite inspection to verify that the project is complete and has achieved permanent stabilization. Any violations need to be corrected before the permit can be terminated. If there are no violations, the inspection is final and the permit is terminated.

A permittee remains responsible for permit compliance and any violations that may occur at the site until the permit is terminated.

Chapter 102 Individual Permits

Chapter 102 individual permits are required for site-specific conditions of a single discharge at construction sites that take place in an HQ or EV watershed. The delegated CCD or DEP regional office develops a permit based on the information contained in the application.

Application Process for Individual Permits. An applicant requesting coverage under an individual Chapter 102 permit must submit an application to a delegated CCD or DEP regional office. Chapter 102 individual permits are issued by the appropriate DEP regional office. The Permit Decision Guarantee (PDG)¹⁹ timeframe for the authorization of a Chapter 102 individual permit is 107 business days.

An administratively complete application must be submitted to a delegated CCD or DEP regional office. To be considered administratively complete, the application should be signed and contain the following elements:

- Completed and notarized application.
- Permit filing fee of \$1,500 payable to the County Clean Water Fund.
- \$100 per disturbed acre fee payable to the PA Clean Water Fund.
- Receipt of municipal and county notifications.
- Signed PNDI receipt.
- E&S plan copies.
- PCSM plan copies.
- Completed General Information Form (GIF).²⁰

¹⁸ Notice of Termination (NOT) is a request to terminate permit coverage of an NPDES permit.

¹⁹ Permit Decision Guarantee (PDG) is discussed in further detail in Section VI.

²⁰ The General Information Form (GIF) contains the client information, site information, facility information, project information, land use information, coordination information, and certification.

When an application is deemed complete, the delegated CCD or DEP regional office has 47 business days to perform a technical review of the E&S and the PCSM plans. PCSM plans can only undergo a technical review by DEP regional offices or delegated CCDs that have a professional engineer on staff.²¹ If the delegated CCD does not have a professional engineer on staff, the delegated CCD reviews the E&S plan and then forwards the application to the appropriate DEP regional office for review of the PCSM plan and permit authorization. If the delegated CCD is PCSM delegated, it reviews both the E&S plan and the PCSM plan and forwards the application to the appropriate DEP regional office for permit authorization.

If an application is found to be incomplete, the CCD will send the applicant an incompleteness letter that outlines the statutory and/or regulatory deficiencies and give them 60 calendar days to provide the necessary information to make the application complete. If the applicant fails to provide the necessary information, the application will be considered withdrawn and a letter will be sent to the applicant informing them of the withdrawn application.

If the application has technical deficiencies, they are documented in a letter to the applicant that cites all statutory and/or regulatory requirement deficiencies. The applicant has 60 calendar days to correct the deficiencies, and the right to request an extension beyond the 60 calendar days.

If the applicant submits the corrected information, the delegated CCD/DEP performs another technical review to determine technical adequacy. If the application is deemed technically adequate, is authorized the permit. If the application remains technically inadequate, an elevated review takes place, which entails the same process as an elevated review for a general permit.

Once a permit is authorized by the DEP regional office, the delegated CCD prepares and signs the permit documents, prepares the permit issuance cover letter that is sent to the applicant, and distributes the permit and copies of plans to the permit applicant, the DEP regional office, the applicant, consultant, the municipality, DEP Central Office, and to the *Pennsylvania Bulletin* for public notice of the permit authorization.

Upon permanent site stabilization and installation of PCSM BMPs, a permittee must submit an NOT to either the delegated CCD or DEP regional office. This process is the same as outlined for a general permits.

²¹ There are five counties that have a professional engineer on staff to review PCSM plans. Those counties are Cumberland, Lehigh, Monroe, Northampton, and Westmoreland.

B. Chapter 105 Water Obstruction and Encroachment Program

The purpose of the Chapter 105 permitting program is to ensure public health and safety; the health of the environment; and to regulate activities around bodies of water, including ponds, rivers, lakes, streams, and wetlands. A permit is necessary for any structure or activity that changes, expands, or diminishes the course, current, or cross section of a stream, floodway, or body of water.

DEP's regulatory authority under Chapter 105 comes from the Clean Streams Law, 32 P.S. §§ 691.1- 691.1001, and Dam Safety and Encroachments Act, 32 P.S. §§ 693.1-693.27. Section 17 of the Dam Safety and Encroachments Act and 25 Pa. Code § 105.24 require DEP to coordinate federal and state requirements with the Army Corps of Engineers when possible, which DEP does through PASPGP-5.

There are four types of "authorizations" within the Chapter 105 program: general permits, individual permits, permit waivers, and emergency permits. All permits have associated fees, and, depending on the project, and which type of permit, additional fees may apply, such as those for earth disturbances.

The Chapter 105 program is Pennsylvania's version of the federal Section 404 permit, established in the Clean Water Act, administered by the Army Corps of Engineers. Section 404 established a permit program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation.

In Pennsylvania, DEP is authorized to issue the Section 404 permit authorizations for the Army Corps of Engineers through the Pennsylvania State Programmatic General Permit 5 (PASPGP-5)²², which gives DEP the authority to attach the Army Corps of Engineers Section 404 authorization to Chapter 105 permits for both general and individual permits.²³ Both permit designations are required in Pennsylvania unless the permit is issued for an activity the Army Corps of Engineers does not regulate, such as isolated wetlands, for which only a Chapter 105 permit is necessary. The application for the permit applies for both DEP and the Army Corps of Engineers. The PASPGP-5 authorizes work in, over, and under

²² PASPGP-5 also authorizes work under Section 9 and 10 of the Rivers and Harbors Act.

²³ Individual permit and joint permit are used interchangeably. For this report, we use the term individual permit.

navigable waters of the United States under Section 10 of the Rivers and Harbors Act, and the discharge of dredged and/or fill material into waters of the United States, including jurisdictional wetlands. The PASPGP-5 became effective July 1, 2016, for a five year period and delegated the ability to verify Federal authorization under the PASPGP-5 to DEP.

Although the PASPGP-5 allows DEP to authorize most permits without Army Corps of Engineers involvement, two thresholds of note within the PASPGP-5 can trigger Army Corps of Engineers involvement with a project - eligibility and reporting²⁴:

1. The **eligibility threshold** is the maximum amount of impact a single and complete project may have to be eligible for authorization under the PASPGP-5. These thresholds are one acre or less of impact to waters of the United States and 1,000 linear feet of stream loss. Any projects greater than these limits are not eligible for authorization under the permit, and must be reviewed by the Army Corps of Engineers.

2. **Reporting thresholds** are any permanent stream impact greater than 250 linear feet, any project that involves more than 0.1 acre of wetland conversion, or any project with greater than 0.5 acres of impact (temporary and/or permanent). A proposed activity is reporting to the Army Corps of Engineers if it exceeds the defined thresholds.

According to a DEP official, few applications are reporting to the Army Corps of Engineers, and those are mainly individual permit applications. When an application is reported, as defined above, DEP sends a copy of the application to the Army Corps of Engineers, which will authorize the federal permit. If a reported permit decision is delayed at the Army Corps of Engineers, DEP can proceed with the Chapter 105 permit review and issue the permit. The applicant cannot, however, start the project without federal 404 authorization.

Chapter 105 General Permits

DEP developed general permits for categories of water obstruction and encroachment projects that are similar in nature, can be adequately regulated using standardized specifications and conditions, and do not present a substantial risk to the environment. Successful applicants receive authorization to use the permits for their projects, rather than receiving new permits.

²⁴ The Standard Operating Procedures for the PASGP-5 contains a complete list of reporting activities.

General permits must specify project design, operating, and monitoring conditions to adequately protect life, health, property, and the environment. DEP has developed 12 general permits under the Chapter 105 program. The 12 general permits are:

- GP-1: Fish Habitat Enhancement Structures.
- GP-2: Small Docks and Boat Launching Ramps.
- GP-3: Bank Rehabilitation, Bank Protection & Gravel Bar Removal.
- GP-4: Intake and Outfall Structures.
- GP-5: Utility Line Stream Crossings.
- GP-6: Agricultural Crossings and Ramps.
- GP-7: Minor Road Crossings.
- GP-8: Temporary Road Crossings.
- GP-9: Agricultural Activities.
- GP-10: Abandoned Mine Reclamation.
- GP-11: Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions.
- GP-15: Private Residential Construction in Wetlands.

As shown in Exhibits 1 and 2, 34 counties have delegation agreements with DEP to authorize Chapter 105 general permits one through nine. If a county is not delegated for authorizing Chapter 105 permits or if the general permit is a 10, 11, or 15, DEP regional offices perform the authorization review.

Each permit contains conditions the project must meet in order to qualify for authorization under the specific general permit. For example, one of the conditions for a GP-5, a utility stream crossing, requires the maximum size utility line to be 36 inches in diameter. If a project does not meet the conditions outlined in a general permit, an individual permit becomes necessary.

Application Process for General Permits. The applicant must submit the Chapter 105 Water Obstruction and Encroachment General Permit Registration form, the first several sections of which include information about the applicant, consultant, and basic project information. Section D of the registration requires the applicant to designate the desired permit and calculate the required fees, as well as project-specific information, such as:

- Location map.
- Photographs.
- Project description.
- Site specific and/or Standard Drawings.
- Proposed Project Purpose.
- Erosion & Sediment Control Plan (required only for GP 11 or a GP for oil and gas).
- Aquatic Resource Impact Table.

- PNDI receipt.
- Other activities that impact wetlands – if impacts are greater than 0.5 acre, a mitigation plan must be included.

Applications are sent to either a delegated CCD, or the appropriate DEP regional office for review. An important part of this review is the determination by the reviewer that the project meets all the corresponding conditions of the specific permit. In some cases, as defined earlier in this section, the project is reportable to the Army Corps of Engineers. Applications go through both a completeness review and a technical review before a permit is issued.

Chapter 105 Individual Permits

Chapter 105 individual permits are issued for those projects which require a permit, but are not authorized by waiver or general permit. There is a joint permit application for individual permits, which satisfies requirements for both DEP and the US Army Corps of Engineers.²⁵ All individual permits are reviewed at the regional level.

The Chapter 105 permitting program includes an option for small projects, which are those that have insignificant impacts on life, health, property, and the environment, yet still require an individual permit. They warrant an abbreviated application and Environmental Assessment (EA), and follow the same fee structure as a regular individual permit. Any project located in a wetland does not qualify for small project status. According to a DEP official, small projects permits are about ten percent of total individual permits.

Application Process for Individual Permits. DEP recommends a pre-application conference when an applicant has questions regarding the need for a Chapter 105 individual permit and highly recommends the conference for complex projects. The application process follows:

- Receipt of application.
- Completeness Review.
- Publication in the *Pennsylvania Bulletin*.²⁶
- Technical Review, both engineering and environmental.

²⁵ Not all permits need federal approval. Permits for wetlands that are isolated and not connected to a stream, although not federally regulated, are regulated by Pennsylvania.

²⁶ DEP staff may determine that further public participation, e.g. hearings or comment period extension may be warranted for certain projects. At times, DEP staff needs time to review, consider and respond to public comment as part of the application process.

- Coordination, if necessary with other review agencies, such as PA Game Commission (PGC), the PA Fish & Boat Commission (PFBC), the PA Historic and Museum Commission (PHMC), and the US Fish & Wildlife Service (US FWS).
- Issuance, denial, or withdrawal.

After the completeness review phase of the process, if additional information is needed from the applicant, an incomplete notice is sent and the applicant has 60 days to respond to make the application complete, and may also request a 60 day extension. The same 60 day allowance is given to the applicant if a reviewer finds technical deficiencies in the application, and the same 60 day extension is allowed.

Three complete application packages must be submitted to the appropriate DEP regional office and must include the following:

- Permit application.
- General Information Form.
- Project Location and site map.
- Aquatic Resource Impact Table.
- Compliance Review.
- Application Fee.
- Cultural Resource Notice.
- PASPGP-5 Reporting Criteria.
- Bog Turtle Habitat Screening.
- PNDI Search Receipt.
- Project plans.
- Project description.
- Photographs.
- Environmental Assessment Form (EA).

Environmental Assessment (EA). The EA is a significant piece of a permit application and consists of four modules: Site Identification and Project Summary; Resource Identification and Characterization; Identification and Description of Potential Project Impacts; and Mitigation Plan. DEP may waive a specific requirement if it determines it is not necessary to complete the review. Exhibit 3 summarizes the elements of the EA modules one and two.

Exhibit 3

**Chapter 105 Environmental Assessment Elements
Modules 1 and 2**

Module 1: Project Summary

- Overall project description.
- Information related to project purpose, need, water dependency, and summary of resources.

Module 2: Resource Identification and Characterization

- Standard resource identification information - location map; wetland determination or delineation reports; watercourse reports; identification and qualifications of preparers; and answers to related questions.
- Identification of all aquatic resources, fishery designations, and Exceptional Value wetland (EV) analysis.^{a, b}
- PNDI.
- Level 2 Rapid Assessment.^c

^a Exceptional Value wetlands are defined as wetlands that exhibit one or more of the following characteristics: (1) Wetlands that serve as habitat for fauna or flora listed as “threatened” or “endangered”; (2) Wetlands that are hydrologically connected to or located within 1/2-mile of wetlands that maintain the habitat of the threatened or endangered species within the wetland; (3) Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value, or wetlands within the corridor of a watercourse or body of water that has been designated as a national wild or scenic river; (4) Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply; or (5) Wetlands located in areas designated by DEP as “natural” or “wild” areas within state forest or park lands, wetlands located in areas designated as federal wilderness areas, or wetlands located in areas designated as national natural landmarks by the Secretary of the Interior.

^b Chapter 105 regulations do not authorize DEP to issue a permit located in, along, across, or projecting into EV wetland, unless the applicant meets the following three requirements: (1) the project will not have an adverse impact on the wetland, as determined by application review and EAs; (2) the project requires access or proximity to the wetland or sits within the wetland, to fulfill the basic purpose of the project; and (3) there is no practicable alternative that would not involve a wetland, would have lesser effects on the wetland, and not have any other significant impacts on the environment.

^c The Level 2 Rapid Assessment (RA), was developed by DEP and implemented in July 2017. There are three types of RAs: (1) Riverine to assess rivers, (2) Lacustrine to assess lakes, and (3) Wetlands. RA was developed because of a requirement in a 2008 federal Final Rule, at both 40 CFR Part 230 and 33 CFR Parts 325 & 332, which govern compensatory mitigation for water obstruction and encroachment permits. The regulations establish performance standards and criteria for the use of various mitigation programs to improve the quality and success of compensatory mitigation projects. It is intended to evaluate the condition of each resource impacted by a Chapter 105 project. An RA results in a score that is then used to determine the level of mitigation that must be undertaken by the applicant. As of September 2018, DEP was in the process of developing new mitigation protocols and expects these protocols to be in place in 2019.

Source: Developed by LBFC Staff from the Chapter 105 Environmental Assessment Form.

Exhibit 4 summarizes EA modules three and four: Identification and Description of Potential Project Impacts and Mitigation Plan. In the Chapter 105 regulations, mitigation is defined in 25 PA Code § 105.1, as an action undertaken to accomplish one or more of the following:

- Avoid and minimize impacts by limiting the degree or magnitude of the action and its implementation.
- Rectify the impact by repairing, rehabilitating or restoring the impacted environment.
- Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.

Section 105.20a delineates the criteria for the ratio of replacement, function and value replacement, and siting of mitigation efforts. Regulations require a minimum of a 1:1 ratio of replacement acres. DEP has the authority to require higher replacement ratios, based on a determination of the area affected and the functions and values that will be destroyed.

According to DEP officials, replacement ratios for wetlands are as follows:²⁷

- Emerging Wetland – 1:1
- Scrub Shrub Wetland – 1.5:1
- Forested Wetland – 2:1.

Exhibit 4

Chapter 105 Environmental Assessment Elements Modules 3 and 4

Module 3: Identification and Description of Potential Project Impacts

- Summary table of the proposed and permanent impacts on resources.
- Tables of all proposed water obstructions, encroachments activities, and dams.
- Antidegradation Analysis,^a Alternatives Analysis,^b and Potential Secondary Impact Evaluation.^c
- Identify and evaluate the potential cumulative environmental impacts of this project and other potential or existing projects like it, and the impacts that may result through numerous piecemeal changes to the wetland resource.

Module 4: Mitigation Plan

- Identify and discuss any measures taken that resulted in avoiding or minimizing unavoidable resource impacts.
- Identify and discuss any repair, rehabilitation, or restorative actions taken to rectify an impacted resource.
- Identify and discuss any actions undertaken to provide compensatory mitigation including the purchase of credits from an approved provider, and a detailed discussion of proposed compensation actions, and how they will offset the lost resource functions.
- When applicable, provide a plan to monitor the identified actions proposed for compensatory mitigation area.

^a The applicant must demonstrate consistency with Pennsylvania antidegradation requirements.

^b This analysis examines changing the configuration of a project to avoid impacts, while keeping the original purpose of the project.

^c The applicant must identify and describe environmental impacts on adjacent land and water resources associated with, but not the direct result, of the project.

Source: Developed by LBFC Staff from the Chapter 105 Environmental Assessment Form.

If the environmental impact of a project cannot be eliminated, compensation, or mitigation, must be made by replacing or providing substitutes for the resources effected by the project. This mitigation may take place

²⁷ When determining ratios, DEP considers not only the exact *area* of mitigation, but also, the *function* of the area. For example, in a forested wetland during prior years, if a tree was removed, the tree would need to be replaced. Now, it may not be necessary to replace all trees, but to replace the function of their canopy.

in one of three ways, as ranked by preference of the Army Corps of Engineers in the 2008 Final Rule: use of mitigation banking; in-lieu fee mitigation; and permittee-responsible compensatory mitigation.

Mitigation Banking: According to the National Mitigation Banking Association, "mitigation banking is: the restoration, creation, enhancement, or preservation of a wetland, stream, or other habitat area undertaken expressly for the purpose of compensating for unavoidable resource losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial."

Mitigation bankers establish banks from which they can sell credits to anyone who has a project that requires mitigation. They look for environmentally unsound sites and rejuvenate them into healthy, functioning environments that are worth a certain amount of credits, and can be sold to a permittee with a mitigation requirement. Any continued oversight of the land is the responsibility of the mitigation banker.

Currently, there is only one approved mitigation banker active in Pennsylvania – Resource Environmental Solutions (RES). RES must develop individual sites within Pennsylvania's 22 watersheds as defined by the State Water Plan. If an applicant wishes to buy mitigation credits from a bank, the credits must be located in the same watershed as the proposed project.

In-Lieu Fee Program: Federal regulations, 40 CFR § 230.92 define an in lieu fee program as:

A program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor.

According to DEP officials, DEP is developing a new in-lieu fee program and a prospectus has been sent to the Army Corps for comment.

For its in-lieu fee program, DEP intends to issue RFPs for mitigation projects, which will likely be managed by mitigation bankers. The funds collected for the in-lieu fee program are intended for mitigation projects, and, through DEP's agreement with the National Fish and Wildlife Foundation, in-lieu mitigation fees are to be deposited with the Foundation, to which project invoices will be sent to be paid. The program is intended to offset impacts in areas where mitigation bankers may not find

it financially attractive to invest. DEP tentatively plans to have this mitigation option in place by the end of 2019.

Permittee-Responsible Mitigation: Federal regulations define this term as:

An aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

According to a DEP official, permittee-responsible mitigation is the most often used mitigation method in Pennsylvania.

Emergency Permits

Emergency permits are issued to alleviate situations that present an imminent threat to life, property, or the environment, as determined by the application's reviewer. An emergency permit should contain any special conditions that the reviewer deems necessary to perform the work. A PNDI is also necessary for an emergency permit. These permits are generally issued for 60 days, but may be extended up to an additional 60 days. An application for an individual permit or general permit authorization may or may not be necessary, depending on the circumstances of the emergency work.

Waiver of Permit Requirements

Chapter 105 regulations waive requirements for permits for certain structures and activities, regardless of when the projects began. As shown in Exhibit 6, there are 16 such waivers in §105.12. Environmental Assessments are, however, required for waivers 11 and 16, for which DEP charges \$500. DEP maintains discretion to require a permit for the structure or activity if DEP determines it to be necessary, under regulations at 105.12(a).

Submerged Lands License Agreements (SLLAs)

SLLAs are required when an applicant applies for a Chapter 105 permit to occupy submerged lands of Pennsylvania. Submerged land in the beds of navigable lakes, rivers, and streams, is owned by the state.²⁸ A permit applicant proposing a project on, over, under, around, or through submerged lands requires an SLLA to occupy the land. The SLLA must be executed before any permit is authorized or issued. The need for an SLLA is determined by the project reviewer and there is no action necessary from

²⁸ DEP's List of Streams to the Submerged Lands License Program, i.e., those that are navigable, is composed of three separate lists: the Public Highway List; the US Army Corps of Engineers List; and a list based on previous legal analysis, historical research, and/or Pennsylvania court decisions.

the permittee. All SLLAs are executed through the DEP Central Office, and are vetted through the attorney general's and comptroller's offices. In essence, through the SLLA, Pennsylvania gives permission to work around the bed of a stream for the desired activity.

An SLLA is a perpetual agreement with an annual fee, as long as the activity is ongoing, for example, a pipeline. Other fees included under SLLAs include those for barges, docks, and public utilities. In rare cases, projects over 25 acres of submerged land require permission from the legislature. Revenues from SLLAs are deposited in the General Fund. Annual fees for SLLAs, delineated in 25 PA Code § 105.35, are as follows:

- For commercial utility and other dams, water obstructions, and encroachments:
 - Areas occupied by facilities, \$150 per tenth of an acre.
 - Barge fleeting and mooring areas, \$30 per tenth of an acre.
 - Minimum annual charge, \$750.
- For private recreation docks, owned and used solely by the owners of adjacent riparian property, unless the project is otherwise authorized by a general permit issued under section 7 of the act (32 P. S. § 693.7), an annual charge of \$250;
- Licenses for public service lines crossing or occupying submerged lands of this Commonwealth, are subject to the following schedule of annual charges, as shown in Exhibit 5²⁹

Exhibit 5

Annual SLLA Fees for Public Service Lines

Length of Crossing (in feet)	Charges (in dollars)
Less than 500	\$ 750
500 to 999	1,500
1,000 to 1,499	3,000
1,500 to 1,999	4,500
2,000 to 2,499	6,000
2,500 to 2,999	7,500
3,000 to 3,499	9,000
3,500 to 3,999	10,500
4,000 to 4,499	12,000
4,500 to 4,999	13,500
5,000 and over	15,000

Source: Developed by LBFC Staff from 25 PA Code § 105.35(B).

²⁹ Includes those that are issued under section 15 of the act or section 514 of The Administrative Code of 1929 (71 P.S. § 194).

Exhibit 6

Waiver of Permit Requirements

1. A dam not exceeding 3 feet in height in a stream not exceeding 50 feet in width, except wild trout streams designated by the Pennsylvania Fish & Boat Commission.
2. A water obstruction in a stream or floodway with a drainage area of 100 acres or less. This waiver does not apply to wetlands located in the floodway.
3. An aerial crossing of a non-navigable stream or wetland by electric, telephone or communication lines which are not located in a Federal wilderness area or watercourse or body of water designated as a wild or scenic river under the Wild and Scenic Rivers Act of 1968 or the Pennsylvania Scenic Rivers Act. This waiver applies to one or more wires attached above-ground to single poles. This does not apply to the maintenance and construction of towers, roads, or other water obstructions or encroachments.
4. A dam subject to the requirements of the Mine Safety and Health Administration if DEP determines on the basis of preliminary data submitted by the applicant that the dam is of Size Classification C and Hazard Potential Classification 3 as defined in § 105.91 (relating to classification of dams and reservoirs) and is not located in a watercourse or body of water designated as a wild and scenic river under the Wild and Scenic Rivers Act of 1968 or the Pennsylvania Scenic Rivers Act.
5. A water obstruction or encroachment located in, along, across, or projecting into a wetland or impoundment, constructed and maintained for the purpose of treating acid mine drainage, sewage or other waste, if the wetland or impoundment is a treatment facility constructed under a valid permit issued by the Department under the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, the Non-coal Surface Mining Conservation and Reclamation Act, the Solid Waste Management Act, the Oil and Gas Act, and the Pennsylvania Sewage Facilities Act.
6. A water obstruction or encroachment located in, along, across, or projecting into a stormwater management facility, or an erosion and sedimentation pollution control facility that meet the requirements in Chapter 102, if the facility was constructed and continues to be maintained for the designated purpose.
7. Maintenance of field drainage systems that were constructed and continue to be used for crop production.
8. Plowing, cultivating, seeding, or harvesting for crop production.
9. Construction and maintenance of ford crossings of streams for individual private personal use which require only grading of banks for approach roads and the placement of not more than 12 inches of gravel for roadway stability. Fords may not be used for commercial purposes and shall cross the regulated waters of this Commonwealth in the most direct manner. This waiver does not apply in exceptional value streams or in wild trout streams.
10. A navigational aid or marker, buoy, float, ramp, or other device or structure for which a permit has been issued by the PFBC.
11. The removal of abandoned dams, water obstructions, and encroachments if the Department determines in writing on the basis of data, information, or plans submitted by the applicant that the removal of the abandoned dam water obstruction or encroachment cannot imperil life or property, have significant effect on coastal resources, or have an adverse impact on the environment, and the plans provide for restoration and stabilization of the project area.
12. The construction, operation or removal of staff gages, water recording devices, water quality testing devices, including, but not limited to, sensors, intake tubes, weirs^a, and small buildings which contain required instruments and similar scientific structures.
13. A bridge or culvert purchased from an operating railroad company subsequent to the abandonment of the railroad line, track, spur, or branch pursuant to the approval of the Interstate Commerce Commission.
14. The maintenance of an artificial pond or reservoir to its original storage capacity where: the contributory drainage area is less than or equal to 100 acres, the greatest depth of water at maximum storage elevation is less than or equal to 15 feet, and the impounding capacity at maximum storage elevation is less than or equal to 50 acre feet.
15. The construction and maintenance of an encroachment or water obstruction on an abandoned mining site, where the Department has issued a notice of intent to forfeit the bond for a mining activity permitted after July 1982.
16. Restoration activities undertaken and conducted pursuant to a restoration plan which has been approved, in writing, by the Department.

^aWeirs are small dams in a river or stream of varying construction types and used for catching fish.

Source: Developed by LB&FC Staff from 25 PA Code §105.12.

C. Other States

Federal law authorizes states to jointly implement the NPDES program. Authorization is completed through a process defined by the Clean Water Act. In order for a state to become authorized, it must submit the following:

- A letter from the Governor requesting review and approval.
- A memorandum of agreement.
- A program description.
- A statement of legal authority.
- The underlying state laws and regulations.

The EPA determines whether a package is complete within 30 days of receipt. Within 90 days, EPA approves or disapproves the program application. If EPA approves the program, the state assumes permitting authority. Submission of all new permit applications go directly to DEP.

EPA has authorized 47 states and one U.S. territory to implement the NPDES program. Under EPA's regulations, citizens may petition the agency to withdraw a state's authority to administer the NPDES program. Forty-nine petitions for withdrawal have been submitted to EPA. No state program has had their authority withdrawn. Pennsylvania received authorization to administer the NPDES permit program in 1978. In 1991, the Commonwealth received authorization to issue general permits under the program.

D. Current Legislation in Pennsylvania

Several bills related to DEP permitting were introduced during the 2019-20 legislative session as follows:³⁰

House Bill 99, requires DEP to create and maintain a secure online permit tracking system where applicants are able to track the progress of their permits. This legislation would also require DEP to provide electronic notifications to permit holders 60 days prior to the expiration date of a permit, along with notifications regarding changes in statutes, regulations, and fees that may affect a permit. This legislation was introduced during the 2017-18 legislative session as House Bill 587.

House Bill 177, clarifies the intentions of Act 2014-162 by providing the flexibility and alternative methods to comply with the NPDES program

³⁰ As of May 3, 2019.

that DEP interpreted as not needed and eliminated the regulatory waivers and exemptions. This legislation was House Bill 784 during the 2017-18 legislative session.

House Bill 414, creates the Erosion and Sediment Control Permit Act. Under this Act, individuals seeking an Erosion and Sediment (E&S) permit would be required to obtain a permit in compliance with the regulations of the PA Clean Streams Law. This legislation was introduced during the 2017-18 legislative session as House Bill 588.

Under this bill, DEP or the CCD would review and issue a permit within 45 days of receiving an application, unless the application is administratively incomplete or the application is not in compliance with regulations. Permits submitted by a licensed engineer must be approved within 20 days of receipt.

House Bill 420, holds DEP accountable to specified timeframes and procedures for the initial review, approval, and rejection of permit applications.

House Bill 421, creates a process where applicants that fail to receive a final permit decision by the review deadline under law, regulation, or Executive Order can appeal the failure of DEP to the Environmental Hearing Board who would then be empowered to determine if the applicant has met the permit requirements.

House Bill 509, reforms the permitting process in Pennsylvania by requiring all agencies that issue permits, to increase transparency by posting information on their website about permits they grant, to create an accessible tracking system where applicants can check the status of their applications, and to clearly state the legal authority the agency relies upon when a permit application is denied. This legislation was introduced as House Bill 1959 during the 2017-18 legislative session.

House Bill 534, allows construction sites resulting in land disturbance of more than one acre but less than five acres, to apply for a waiver of the required National Pollutant Discharge Elimination System (NPDES) permit, bringing Pennsylvania's NPDES program up to the same standards as the federal and surrounding state programs. This bill was introduced as House Bill 2647 during the 2017-18 legislative session.

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SECTION III CONCERNS OF STAKEHOLDERS



Fast Facts...

- ❖ *We received comments and observations from a variety of stakeholders.*
- ❖ *The two most frequently cited issues expressed by stakeholders were inconsistency with file reviews and the timeliness of permit approvals.*
- ❖ *Stakeholders also offered some positive comments about the two permitting programs.*

Overview

For this report, we were asked to review the concerns of government, business, and industry stakeholders. We contacted a variety of stakeholders, including the regulated community and associated consultants - biology and engineering professionals, municipal associations, academics, builders, environmental groups, and governmental agencies. Specifically, we asked about their concerns regarding the Chapter 102 Erosion and Sediment Control Program and the Chapter 105 Water Obstruction and Encroachment Program.

Additionally, we met with three of the six DEP regional offices, as well as seven CCDs, at least one from each DEP region.³¹ We also met with the Pennsylvania Department of Transportation (PennDOT) and the PA Turnpike Commission (PTC), two of DEP's biggest customers.

In addition to our individual meetings, we surveyed CCDs regarding their recommendations for improvements to the permitting programs. Many had suggestions for both permitting programs, related to staffing and training; complexity of applications; communications and assistance from DEP; cumbersome application process; and simplification for smaller projects.

We found that stakeholders, both the regulated community and its regulating bodies, had a range of concerns regarding both permitting programs. Comments and observations from both are included in the exhibits in this section. We also note the positive comments stakeholders made about the permitting programs.

We found stakeholders report:

- DEP and the CCDs are inconsistent in their interpretation of DEP regulations and requirements of the permitting programs.
- DEP and the CCDs does not review permits in a timely manner.
- DEP does not adequately communicate with its regional offices, CCDs, or applicants in a consistent or timely manner.

³¹ We met with DEP's Southcentral, Northeast, and Southwest Regional Offices, and the following County Conservation Districts: Butler, Cumberland, Delaware, Lancaster, Monroe, Northumberland, and Westmoreland.

Issue Areas

A. Concerns of Stakeholders and PA Government Agencies

Through our communications with various stakeholders in the regulated community and those agencies that process Chapter 102 and Chapter 105 permit applications, we found a wide variety of concerns and complaints about the administration of the application process. This section includes comments and observations from our contacts with parties involved with the two permitting programs. We have categorized these comments below.

The two issues raised most frequently were (1) inconsistencies in interpreting the regulations and requirements of the permitting programs between both the regional offices and the CCDs; and (2) the length of time that permit applications took in order to be reviewed and disposed (see Section V for an analysis of permit approval times). Observations on these two issues are shown in Exhibits 7 and 8.

Exhibit 7

Stakeholder Observations Regarding Inconsistencies in Permit Reviews

Regulated Community Observations

There is variation with the interpretation of the E&S Program requirements from CCD to CCD, as well as from DEP region to region. While it is understood some practices are applicable to some regions and not others, based on topography and climate variations, other parameters and requirements that should be consistent are not.

Regional interpretations are always an issue.

One region runs its pre-application conferences with a reviewer of the month, which means this person is not necessarily going to be the person who reviews the application. This causes inconsistencies; for example, the reviewer of the month might agree that the project qualifies for small project status, but the reviewer of the application does not agree and requires the applicant to submit a full individual permit.

There are concerns related to some reviewers spending a lot of time on field inspections and engineering technical review of permits and others who are not. This is not only occurring within the DEP regional offices, but also in the CCDs. Some spend hours/days reviewing permits while others do a cursory review. Some complete field inspections often, while others are not visiting sites at all. Depending on region or county, a developer is held to very different standards.

There needs to be clearer guidance for reviewers as to what they are supposed to review and how in-depth. Some ensure all required items are included in the submission, while others dig into the weeds of the calculations and seem to nitpick items that may not be a big deal.

Decisions should be based on law and not subjective criteria determined by the bureaucrat.

A consistent frustration is inconsistencies with the interpretation of Chapter 102 permits across the counties. For example, some counties view things as technical when they are administrative and vice versa. Both regions and counties are very different when it comes to timeframes and reviews.

Exhibit 7 Continued

One organization remained concerned with the regional variability in the application of Chapter 102 and Chapter 105 requirements. For example, Chapter 102.8 requires companies to develop and implement a PCSM plan. Some regions accept plans that simply restore a site where there was temporary activity, and other regions will not accept a plan for the same type of temporary activity without a detailed review of the analyses and assumptions that inform the plan and associated BMPs.

A consultant stated that he gets inconsistent answers from different people in the same regions, districts, and offices.

The biggest inconsistencies are from one regional office. A consultant stated that he submits an application packet based on who the reviewer is going to be because they all have their own individual way things need to be submitted. He also stated that when submitting an application to this office, he plans for at least a year to have permits in place.

With all the discrepancies between regions, there is no recourse if a permit applicant disagrees with DEP's interpretation of regulations, guidance, etc. DEP does not have to defend its decision on which permit it requires, nor on whether or not a project qualifies for a waiver.

All general permits contain conditions, which are descriptions of what could prevent an applicant from getting a general permit and having to apply for an individual permit. These conditions are interpreted by CCDs and DEP, and there are inconsistencies between regions.

There are discrepancies in waivers. Some projects can qualify for a waiver of permit, but, one region uses stricter interpretations, forcing an individual permit.

One region is slow and the Regional Director works differently than others. DEP regions overlap different PennDOT regions, and they notice the inconsistencies in application of regulations.

The reviews/ number of comments/ timeliness varies significantly between several CCDs within the same region.

There is one region that gives the PTC trouble over ephemeral streams, i.e., forces them to mitigate for them. This type of stream is basically a depression in the ground where run-off water might go after a storm, but is generally dry. This region is the only one that requires mitigation for these streams.

Regulator Community Observations

DEP has a large turnover rate which leads to inexperience and causes inconsistency.

The aquatic resource table is interpreted differently across the state.

Changes in policy and procedure come in via email and may not be sent to all offices and/or given to the CCDs.

The information given to regions is not consistent or disseminated in a timely manner to the CCDs.

DEP makes decisions on the Chapter 102/ Chapter 105 permitting programs without soliciting any comments or feedback from districts. Districts are not given time to review changes before implementing them.

Consistency is an issue: consultants who do this type of design work are generally newer in the areas, and think that a design that worked in one region will work the same in another.

Source: Developed by LBFC Staff from contacts with stakeholders.

Exhibit 8 shows stakeholder comments and observations related to timeliness in completing permit application reviews. Included in this are comments that speak to the lack of communication between DEP Central Office, DEP regional offices, CCDs and the regulated community, which can be a factor in elongating permit review times, as well as quality of the submitted applications (See Section V of this report for information on application review timeframes).

Exhibit 8

Stakeholder Observations Regarding Timeliness and Communication in Application Reviews

Regulated Community Observations

Timeliness

CCDs are timelier than regions; a consultant always adds several months to the project timeframe if a DEP region is involved.

There are continuing concerns about permit issuance. It is taking one to one and a half years. Most animal agricultural operators who need to move projects depend on estimates and financing obtained before the project begins. Time is money.

DEP always waits until the last minute to return an application, i.e., waiting 179 of the allowed 180 days to send back an application that requires further information.

Excessive delays in processing or issuance of permits can cause a significant problem or expense for a project, or can cause a project to go to another state.

Countless small-business owners have waited years to get permits from DEP.

The duration of the review process at CCDs and DEP: takes too long in many jurisdictions.

Excessive review timelines.

Sewer joint permit submitted in December 2017 and still have not received an initial review letter even with the application being deemed administratively complete in January 2018.

Time becomes a challenge when a permit goes to the regional level.

An organization thinks the biggest issue with the permitting process is timeliness, and has tried to address this issue with DEP.

They have had to redo PNDIs because the review is taking so long.

Communication

Communication is bad – it is very difficult to get anyone to answer the phone or return an email.

They often ask reviewers what they want to see, and often do not get answers.

Previously, reviewers would adhere to what they said in pre-application meetings, but now it often becomes muddy.

Many times, the questions DEP asks about applications are nebulous and unclear.

There is no consistent communication from DEP – they will call or email.

CCD staff told a consultant that the office gets new feedback from DEP on a continuous basis, which makes it difficult to get it straight with design issues, etc.

DEP was not helpful or was unresponsive when assistance was requested in understanding requirements.

Inability of a business to find out the status of its permit application or find out who to contact about a permit application. They had to go so far as to contact a legislator to get information.

Lack of response to emails and phone calls - general acknowledgment of questions, submissions, etc.

Regulator Community Observations

Timeliness

A CCD told us that the primary reason for delay is because of incomplete applications. Other reasons for delay could be that: the CCD is overwhelmed with the number of applications it receives; receiving poor quality applications; consultants not responding to deficiencies because they have not been paid by a client; or the PNDI/PHMC requirements are missing.

Applicants and consultants improperly read, or fail to read instructions.

One CCD previously handled Chapter 105 permits, but in 2001, when its funding was cut, they dropped their delegation. The CCD started handling Chapter 105 permits again, years later, because of the number of complaints it was receiving from the regulated community about the length of time it was taking to get a permit from DEP.

Communication

The CCDs would like more support from DEP in a timely fashion both with permitting and enforcement questions, for example, returning phone calls and emails.

Engineers fail to respond to comments or deficiencies because they have not been paid by their clients.

Exhibit 8 Continued

A CCD stated that there was a massive increase in email when SOPs were implemented and put in place of annual training. When staff receive emails from DEP, there are never links to the new information, and it is not highlighted in the SOPs for the district to easily notice.

Central Office has tried to simplify the programs, but if the Central Office would make fewer changes to the programs, Chapter 102 more than Chapter 105, it would help consultants better understand and would cause less confusion, which would lead to better quality applications.

A regional office informed us that the majority of their direction and information comes from Central Office and it is overwhelming.

Source: Developed by LBFC staff from contacts with stakeholders.

Stakeholders also identified issues they experience with the environmental aspects required for DEP permits, specifically in the areas of mitigation; PNDI and wild trout and high quality waters. These concerns may be found in Exhibits 9, 10, and 11.

Exhibit 9

Stakeholder Comments and Observations Regarding Mitigation

Regulated Community Observations

On impacts and mitigation: it is still not clear from DEP whether all functions and values must be replaced. For example, a mitigated piece of land may be as environmentally sound, but not store as much flood water. In order to cover all functions and values, you would probably restore more acres than were disturbed. There is no magic calculation to determine this. The point of analysis should be focused on those resources with real ecological value and not be formulaic.

In-lieu of mitigation needs to come back.

Permittee-responsible mitigation is the only one (out of the original three methods) that is available. DEP is not really looking to get the Army Corps of Engineers approval for reauthorization of the in-lieu fee program.

An organization is concerned about the 'functional basis' of mitigation that DEP is advocating, which may be unique to Pennsylvania. Functional basis means looking at a quarter acre and evaluating what its function was in the environment (water filtration, good vegetation, etc.) and replacing those elements in another quarter acre.

Unfortunately, at present time, permittee-responsible mitigation, is the only practical option available for many projects. DEP has been unable to secure the Army Corps of Engineer's approval for reauthorization of the in-lieu fee program and there has not been much success with private wetlands banking efforts due in large part to regulatory uncertainty. DEP's move towards a unique functional mitigation (instead of an acreage-based mitigation) approach has resulted in unnecessary confusion around regulatory approvals.

Mitigation banks are the preferred method of the Army Corps of Engineers.

There are very limited mitigation banks available in PA. Mitigation banks are the easiest way for permittees to perform the required mitigation plans.

Mitigation banks could eliminate about one-third of the Chapter 105 applications, making the review less time consuming. Mitigation banking could really streamline the process.

DEP will not approve a lot of mitigation credits.

A banker sees a hot area with a lot of development, and looks for a large parcel of land on which to build streams and wetlands. It is easy to build new wetlands and revive streams

Bankers must have wetlands ready before credits can be released.

Exhibit 9 Continued.

Another issue with banking in PA is the different credits. OH and WV have two types of credits: stream credits and wetlands credits. Pennsylvania wants to have subcategories under each of those types, which will just continue to complicate things.

In-lieu fee mitigation is still an option, but only for isolated wetlands, which are only under state jurisdiction, and not federally regulated.

A consultant thinks DEP wants applicants to prove their mitigation plans are not good enough. He thinks that this is going to be used to deny permits. Between fees and the new assessment, it seems that DEP wants to stop development.

A consultant said that developers from out of state do not enter PA because of the lack of consistent protocols, the uncertainty of permits, and the lack of mitigation banking options. He gave an example of a developer in California, who works in over 40 states. This developer gets his own permits in all of those states, with the exception of CA and PA, where processes are so complicated that he hires consultants instead.

Source: Developed by LBFC staff from contacts with stakeholders.

Exhibit 10

Stakeholder Comments and Observations Regarding PNDI

Regulated Community Observations

For a Chapter 105 permit, the search process adds an 800 foot radius search area. This is true if a project is only disturbing, for example, 40 square feet – the search radius adds a 46 acre search area. If there is a hit, either the PA Game Commission or the PA Fish & Boat Commission (PFBC) (or both) must be notified, and their approvals given before the permit is approved. A hit means the client must upload photos and detailed project information to the Commission(s) for review. The Commission(s) are under no time constraints or performance criteria. An example of this was an Allegheny wood rat on a mountain across a river from a site that cost four weeks of delay and extra consultant fees to the client.

If there is a PNDI hit in an EV wetland, if a species is truly endangered or threatened, that is ok. However, the PNDI program treats all species the same, for example, it still tags the timber rattlesnake, which is no longer an endangered species.

A PNDI has an impact on the permit process, because anything done near an EV waterway (any stream with wild trout is considered exceptional value) must have an individual permit. The thresholds get much higher and the cost skyrockets.

They have had to redo the PNDI because the review is taking so long.

Source: Developed by LBFC staff from contacts with stakeholders.

Exhibit 11

**Stakeholder Comments and Observations Regarding
Exceptional Value (EV) Waters and Wetlands, and Wild Trout**

Regulated Community Observations

Chapter 105 has some convoluted regulations. For example, EV wetlands have significant protections, and being in a flood plain of a wild trout designated stream makes any of that stream's floodplain an EV wetland, whether or not the stream is high quality. Trout designations are out of hand.

Wild trout streams: PFBC is constantly changing the list. If it applies, your wetlands automatically become EV, which bumps you to an individual permit. This happens when you are in a wetland with trout NOT where your project is located. The wetland becomes EV even though there are no trout anywhere near your property.

DEP defers to the PFBC on designation of streams. We wonder whether PFBC considers all trout streams "wild trout streams," which requires a more stringent set of requirements for permits because they are considered EV wetlands (making permits more difficult to obtain). We would suggest that the statutory intent of "wild trout stream" was likely a wild brook trout stream, rather than a trout stream that has only brown or rainbow trout, which are more pollution-tolerant than brook trout. Clarifying this would likely lessen the regulatory burden of permitting around wetlands without impacting the environment.

Streams previously listed as warm water fish (WWF) water designation are now reclassified as EV. DEP claims that these reclassifications are based on science. There is no way to refute a classification.

Additional watersheds are being classified as supporting wild trout by the PFBC. This causes the wetland within these watersheds to be classified as EV which in turn requires an individual NPDES permit. This is particularly frustrating in upland areas where the unnamed tributaries obviously don't support wild trout.

Source: Developed by LBFC staff from contacts with stakeholders.

As shown in Exhibit 12, stakeholders are concerned that DEP is not offering enough training. When asked about training opportunities, one DEP official stated that there is a contract with the Pennsylvania Association of Conservation Districts (PACD) to sponsor training events for both CCD and DEP staff on both permitting programs. Two trainings are held in the spring: basic Chapter 102 and Chapter 105 is for new staff, usually with less than one year of experience. Several weeks later, advanced training is held to discuss new program initiatives, for example, e-permitting or record keeping. Additionally, in the fall, visits are made to each DEP regional office where the districts in that region convene for a one-day training/program update.

Additionally, the Chapter 102 permitting program has two staff engineers who visit CCDs upon request, typically for new hire individualized training. Most often it is small group training and generally focused on the review of NOIs/applications and E&S Plans.

Exhibit 12

**Stakeholder Comments and Observations
Regarding Staffing and Training**

Regulated Community Observations

Staff changes occurring between pre-application meetings and permit package submissions result in revised project permitting requirements/approaches. When new staff require different solutions to achieve the requirements than previously discussed, it frequently results in significant design changes and re-work at the expense of the taxpayer. The project designs should follow the previously discussed approach (of course designers should provide documentation of such in meeting minutes, emails or records of phone conversations).

Chapter 102 affects more people and requires more throughout. DEP is way down in staff and is stretched too thin, which makes their communications with both CCDs and the public more difficult.

Per the delegation agreements, DEP is to train new CCD staff, however, DEP has taken the stance that when a new staff person is hired by a CCD, the CCD should contact neighboring districts to assist in the training of that new staff person. This is contrary to the signed delegation agreements.

Retirements and turnover at one CCD caused delays in permit approvals.

Training has gone from annual training to regional training.

DEP held a half day training on rapid assessment and it cost \$90 to attend. A consultant told us it was the worst roll-out ever.

Not much training is offered by DEP.

More training to get everyone moving in the same direction.

The industry needs more training.

Inconsistencies show that there is inadequate training.

Only the higher-ups are getting training and people below are not getting the same information.

Regulator Community Observations

DEP's Central Office has lost a lot of institutional knowledge.

One regional office has only been at full staff for three months in the past four years.

Source: Developed by LBFC staff from contacts with stakeholders.

The final category of observations from stakeholders is in regard to business and development, shown in Exhibit 13. Reportedly, some would-be applicants are no longer submitting applications, but proceeding with their projects because the permitting processes are so onerous. Some spoke about the additional costs caused by delays in permit processing.

Exhibit 13

**Stakeholder Comments and Observations Regarding
Business and Development**

Regulated Community Observations

Many frustrated business owners simply give up or divert business capital to projects in other states.

One member, who sells construction equipment, cited a 40 percent decline in sales over 32 months due to his customers being unable to get timely permits.

Two things are happening: law abiding citizens are getting crushed and people are starting to ignore the process altogether.

Permitting costs (for stormwater) can be pretty expensive, making some projects costs prohibitive. This happens in places where the land is not worth much.

The Chapter 105 permitting process in PA is so absurd that people just avoid it and do their projects without one, and people outside PA don't want to do business here.

Delays in permits that relate to an applicant's cost: material increases, costs of management working, and financing costs.

DEP does not look at itself as a partner with applicants, but seems to be against development. This consultant said there are many businesses that do not enter PA because of the unreasonableness of DEP.

Up to 30 percent of the cost of a \$100 million project is a combination of the land and stormwater permits.

Operators who need to move projects depend on estimates and financing obtained before the project begins. Time is money.

Source: Developed by LBFC staff from contacts with stakeholders.

Recommendations

We recommend DEP:

1. Convene a working group of consultants, CCDs, and DEP regional offices to standardize interpretation of program requirements.
2. Establish a state-wide, effective mechanism to resolve conflicting interpretation decisions between and within DEP regional offices and between and within the CCDs when they arise.
3. Conduct permit requirement interpretation sessions around the state to train regional and CCD staff and ensure the consistent interpretation of program requirements.
4. Develop a test project, with the same permit application, for review by both CCDs and regional offices to test for consistency in interpretation of all applicable statutes and regulations in the application review process.

B. Positive Comments From Stakeholders and PA Government Agencies

We also heard positive comments about the two permitting programs from stakeholders. Exhibit 14 highlights the positive responses.

Exhibit 14

Positive Comments from Stakeholders

Regulated Community Observations

People with experience in the CCDs make things a lot easier.

DEP was great with the flooding that hit PA last year and the issuing of emergency permits. DEP staff showed up as soon as permit needs were known.

Pennsylvania is one of the better states for keeping track of its resources and ensuring that there are not too many unpermitted losses.

Stakeholders told us that they appreciate pre-application meetings and that they are helpful.

Several in the regulated community commented on their good relationships and experiences with CCDs.

A CCD communicates changes well through email blasts.

It seems like there has been a more consistent definition of wetlands and better application of the regulations.

Central Office has tried to drive consistency among regions.

A consultant told us that he thinks that everyone involved in these programs are trying to do the right thing.

No problems with the Chapter 105 Program.

Regulator Community Observations

Coordination with CCDs – two to three times per year, the region holds roundtable meetings with CCDs to provide updates and talk about new issues. The region has daily interaction with its CCDs and is not deaf to their complaints.

Training is sometimes provided from Central Office.

One region conducts supervisory reviews - the application is reviewed by the initial reviewer, and then reviewed by a supervisor and program manager (for individual permits only – general permits only rise to supervisor level). This is done to avoid inconsistencies and to ensure that reviewers are not asking for too much from the applicant. If deficiencies are not eliminated after the first letter to the applicant, they perform an elevated review.

For the past 10 years, the CCD has offered a completeness review that is done before the actual submission of an application. The purpose of this is to go over the application and let the applicant know what is missing before the application is formally submitted.

A CCD offers continuing education credits for engineers by holding engineer workshops that are almost always sold out; they end up turning people away.

A CCD implemented the Assisted Plan Consistency Check, created by a staff member. During this check, the applicant comes to the CCD with a complete application package and applicable fees. The check takes about an hour to complete and the applicant can submit the application and leave with the completeness review already done, and ready for technical review.

A regional office conducts pre-application meetings every second and fourth Thursday of every month.

A CCD holds yearly workshops for the regulated community, municipalities, and applicants to educate them on the permitting process.

One region said that they have good strong communication with other CCDs in the region. They communicate with fellow engineers in other counties and also have partnered with other counties for continuing education.

One CCD tries to communicate with the regional office on inconsistency issues; the relationship between them is good and it gets quick responses to its inquiries. Although there is less and less manpower in Harrisburg with regard to both the Chapter 102 and Chapter 105 permitting programs, the level of response from both regional offices and Central Office has improved significantly.

Source: Developed by LBFC staff from contacts with stakeholders.

SECTION IV ANALYSIS OF RESOURCES AND WORKLOADS



Fast Facts...

- ❖ *Total staffing to administer the Chapter 102 and Chapter 105 permitting programs averaged 303 FTEs during the study period.*
- ❖ *Expenditures for both DEP and CCDs exceeded \$15 million in the final year of the study period.*
- ❖ *The number of permits reviewed by CCDs increased by over 12 percent during the study period.*

Overview

For this performance evaluation we were asked to analyze and compare the total and individual resources, and workloads for the permitting programs. This analysis includes all offices charged with administration of the programs, including Central and regional offices of DEP and the 66 CCDs. To accomplish this task, we obtained the following information from DEP and CCDs:

- A. Full-Time Equivalent staff (FTEs) per permitting program.
- B. The number of permits disposed per permitting program.
- C. The expenditures per permitting program.

We reviewed all available data from FY 2015-16 through FY 2017-18 in the case of DEP, and CYs 2015 through 2017 in the case of CCDs. We analyzed the data by computing three ratios – expenditures per FTE, expenditures per permit disposed, and permits disposed per FTE. The data is reported by permit program (Chapter 102 and Chapter 105) and by regional DEP offices and individual CCDs. We also computed the correlation coefficient to measure the strength of the relationship between inputs (expenditures and FTEs) and outputs (permits disposed).

Finally, because our computations are based on the complete dataset, (all permit determinations from the years stated above) anomalies in the data fall along the normal distribution and would be offset, which takes into account large projects that may divert staff from their regular review responsibilities, and small projects that are determined quickly.

We found:

1. Total FTEs increased by 3.0 percent during the review period.
2. Total expenditures increased by 12.4 percent during the review period.
3. Total permits disposed increased by 8.2 percent.
4. Total expenditures per FTE increased by 9.1 percent during the review period.
5. Total expenditures per permit disposed increased by 6.2 percent during the review period.
6. Total permits disposed per FTE increased by one permit during the review period.

7. Data provided by DEP failed to establish a strong relationship between total expenditures and the total number of permits disposed by DEP regional offices.
8. Data provided by CCDs established a strong relationship between total expenditures and the total number of permits disposed by CCDs.
9. Data provided by DEP failed to establish a strong relationship between the total number of FTEs and the total number of permits disposed by DEP regional offices.
10. Data provided by CCDs established a strong relationship between the total number of FTEs and the total number of permits disposed by CCDs.
11. Data provided by DEP showed a negative correlation between expenditures and the number of permits disposed by DEP.
12. Data provided by DEP showed a negative correlation between FTEs and the number of permits disposed by DEP.

Issue Areas

A. Total and Individual Staff Resources

As mentioned above, we obtained complete data from DEP and the CCDs for the most recent years requested.

Total staff resources for DEP and CCDs, for both the Chapter 102 and Chapter 105 permitting programs, averaged 303.4 FTEs during the review period. The number of FTEs increased by three percent. Staffing levels for DEP averaged 109.2 FTEs and increased by 3.6 percent while staffing for CCDs averaged 194.3 FTEs and increased by 2.6 percent. See Exhibit 15.

Exhibit 15

Total Staff Resources for Chapter 102 & Chapter 105 Permitting Programs (FTEs)

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	106.3	111.2	110.1
	CY 2015	CY 2016	CY 2017
CCDs	192.4	193.3	197.4
	FY/CY	FY/CY	FY/CY
TOTAL	298.4	304.4	307.5

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Staff Resources

Staff resources for the Chapter 102 permitting programs increased every year during the review period. The total increase was 3.2 percent while staffing levels averaged 178.4 FTEs. See Exhibit 16. Staffing at DEP’s Central and regional offices increased by 9.3 percent from FY 2015-16 to FY 2017-18 and averaged 27.4 FTEs over the review period. Exhibit 17 provides additional details.

Staffing at the 66 CCDs ranged from 150.5 FTEs in CY 2015 to 153.5 FTEs in CY 2017, an increase of 2.0 percent over the period after dropping by one percent in CY 2016. The average over the period was 151 FTEs. Appendix D provides county by county details.

Exhibit 16

Total Staff Resources for Chapter 102 Permitting Program (FTEs)

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	25.9	27.9	28.3
	CY 2015	CY 2016	CY 2017
CCDs	150.5	149.0	153.5
	FY/CY	FY/CY	FY/CY
TOTAL	176.4	176.9	181.8

Source: Developed by LBFC staff from information provided by DEP.

Exhibit 17

DEP Staff Resources for the Chapter 102 Permitting Program (FTEs)

	FY 2015-16	FY 2016-17	FY 2017-18
Central	6.7	6.0	5.3
SERO	5.8	8.0	8.2
NERO	4.2	4.3	5.2
SCRO	4.1	3.7	3.8
NCRO	1.6	1.6	1.5
SWRO	2.9	2.8	3.1
NWRO	0.7	1.5	1.1
TOTAL	25.9	27.9	28.3

Source: Developed by LBFC staff from information provided by DEP.

Chapter 105 Staff Resources

Staff resources for the Chapter 105 permitting program fluctuated during the review period. From FY 2015-16 to FY 2016-17, FTEs increased by 4.2 percent before falling back in FY 2017-18. The total increase over the period, however, was 2.8 percent. The average over the review period was 125.1 FTEs. See Exhibit 18.

Exhibit 18

Total Staff Resources for Chapter 105 Permitting Program (FTEs)

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	80.4	83.2	81.8
	CY 2015	CY 2016	CY 2017
CCDs	41.9	44.2	43.9
	FY/CY	FY/CY	FY/CY
TOTAL	122.3	127.4	125.7

Staffing at DEP's Central and regional offices increased by 1.7 percent from FY 2015-16 to FY 2017-18. The average number of FTEs was 81.8. Exhibit 19 provides additional details on staffing levels.

Exhibit 19

DEP Staff Resources for the Chapter 105 Permitting Program (FTEs)

	FY 2015-16	FY 2016-17	FY 2017-18
Central	11.4	11.2	10.7
SERO	10.1	9.6	10.4
NERO	11.6	12.4	10.9
SCRO	13.6	15.3	16.0
NCRO	11.4	10.9	10.0
SWRO	13.8	15.3	14.7
NWRO	8.5	8.6	9.1
TOTAL	80.4	83.2	81.8

Source: Developed by LBFC staff from information provided by DEP.

The FTE numbers for the 66 CCDs increased by 4.5 percent from CY 2015 to CY 2017. The average over the same period was 43.3 FTEs. It is important to note that not all CCDs provide Chapter 105 permitting services. For a complete list of those that do, please see Section II of this report. Appendix E provides further information.

B. Total and Individual Expenditures

Total expenditures for DEP and the CCDs for the Chapter 102 and Chapter 105 permitting programs averaged \$14.9 million over the study period, increasing by 12.4 percent. Expenditure levels for DEP averaged \$5 million and increased by 12.6 percent while expenditures for the CCDs averaged \$9.9 million and increased by 12.4 percent. See Exhibit 20.

Exhibit 20

Total Expenditures for the Chapter 102 & Chapter 105 Permitting Programs

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	\$ 4,609,018	\$ 5,150,251	\$ 5,191,333
	CY 2015	CY 2016	CY 2017
CCDs	9,363,559	9,811,371	10,518,670
	FY/CY	FY/CY	FY/CY
TOTAL	\$ 13,972,577	\$ 14,961,622	\$ 15,710,003

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Expenditures

Expenditures for the Chapter 102 permitting program increased every year during the review period, ranging from \$10.5 million in the first year to \$11.8 million in the third. The total increase over the period was 12.6 percent, and the average expenditure was \$11.2 million. Spending by the CCDs averaged nearly \$8.8 million and increased by 12.3 percent. See Exhibit 21.

Exhibit 21

Total Expenditures for Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	\$ 2,198,018	\$ 2,354,848	\$ 2,491,532
	CY 2015	CY 2016	CY 2017
CCDs	8,322,808	8,754,150	9,350,099
	FY/CY	FY/CY	FY/CY
TOTAL	\$ 10,520,826	\$ 11,108,998	\$ 11,841,631

Source: Developed by LBFC staff from information provided by DEP.

Expenditures at DEP’s Central and regional offices increased by 13.4 percent from FY 2015-16 to FY 2017-18. Spending averaged \$2.3 million over the same review period. Spending increased every year. The Southwest Regional (SWRO) and Northeast Regional Offices’ (NERO) expenditures increased significantly more than the other regional offices, 38.5 percent and 36.4 percent respectively. Exhibit 22 provides additional details.

Exhibit 22

DEP Expenditures for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central	\$ 659,419	\$ 674,050	\$ 657,950
SERO	539,775	654,917	630,996
NERO	294,430	315,175	401,701
SCRO	209,441	210,306	223,549
NCRO	156,475	142,547	139,250
SWRO	183,689	174,331	254,338
NWRO	154,789	183,522	183,747
TOTAL	\$ 2,198,018	\$ 2,354,848	\$ 2,491,532

Source: Developed by LBFC staff from information provided by DEP.

Expenditures at the 66 CCDs increased by 12.3 percent from CY 2015 to CY 2017. Average spending over the review period was \$8.8 million. Eleven counties³² had expenditure increases in excess of 25.0 percent. Appendix F provides county by county details.

³² Beaver, Berks, Butler, Centre, Cumberland, Jefferson, Juniata, Lawrence, Lehigh, Montgomery, and Northampton

Chapter 105 Expenditures

Expenditures for the Chapter 105 permitting program increased each year during the study period. Total expenditures for DEP and the CCDs averaged \$3.7 million per year. The total increase in spending from CY 2015 to CY 2017 was 12.1 percent. Spending by CCDs averaged nearly \$1.1 million and increased by 12.3 percent over the same period. See Exhibit 23.

Exhibit 23

Total Expenditures for Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	\$ 2,410,999	\$ 2,795,403	\$ 2,699,801
	CY 2015	CY 2016	CY 2017
CCDs	1,040,752	1,057,221	1,168,571
	FY/CY	FY/CY	FY/CY
TOTAL	\$ 3,451,751	\$ 3,852,624	\$ 3,868,371

Source: Developed by LBFC staff from information provided by DEP.

Expenditures at DEP's Central and regional offices for Chapter 105 permitting increased by 12.0 percent over the three year review period. Spending averaged \$2.6 million per year and increased every year. Spending at the Northwest Regional Office (NWRO) grew 42.3 percent from FY 2015-16 to FY 2017-18. Exhibit 24 provides additional details. Spending increases exceeded 25 percent over the study period in Beaver, Berks, Indiana, Jefferson, Pike, Venango, and Washington Counties. Appendix G provides additional spending details.

Exhibit 24

DEP Expenditures for the Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central	\$ 574,900	\$ 782,314	\$ 646,053
SERO	236,307	251,726	282,328
NERO	359,736	416,172	410,288
SCRO	162,923	155,344	186,224
NCRO	389,791	367,834	414,095
SWRO	374,018	420,155	314,740
NWRO	313,325	401,858	446,072
TOTAL	\$ 2,410,999	\$ 2,795,403	\$ 2,699,801

Source: Developed by LBFC staff from information provided by DEP.

C. Total and Individual Permits Disposed

Permits disposed by DEP and the CCDs for the Chapter 102 and Chapter 105 permitting programs averaged 6,305 during the study period, an 8.2 percent increase during the review period. Total permits disposed by DEP regional offices did not increase over the study period, while permits disposed for CCDs increased by 12.5 percent over the three calendar years reviewed. See Exhibit 25 for more information.

Exhibit 25

Total Permits Disposed for Chapter 102 and Chapter 105 Permitting Programs

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	2,139	1,131	2,135
	CY 2015	CY 2016	CY 2017
CCDs	4,158	4,672	4,679
	FY/CY	FY/CY	FY/CY
TOTAL	6,297	5,803	6,814

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Permits Disposed

Permits disposed for the Chapter 102 program increased by 8.4 percent with an average of 3,231 permits disposed over the three year study period. The number of permits disposed by DEP regional offices decreased by 5.0 percent (18 permits), while permits disposed by CCDs increased by 10.2 percent (280 permits). The average number of permits disposed by DEP was 327, while the CCDs averaged 2,904 over the study period. Exhibit 26 provides additional details.

Exhibit 26

Total Permits Disposed for Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	355	290	337
	CY 2015	CY 2016	CY 2017
CCDs	2,758	2,915	3,038
	FY/CY	FY/CY	FY/CY
TOTAL	3,113	3,205	3,375

Source: Developed by LBFC staff from information provided by DEP.

Permit disposals at DEP’s regional offices decreased by five and averaged 327 permits over the three year review period. The number of permit disposals conducted by the Southeast Regional Office (SERO) and North-central Regional Office (NCRO) decreased by 46.0 percent and 22.0 percent respectively. Conversely, permit reviews conducted by the NERO increased by 70.0 percent. Exhibit 27 provides additional details.

Exhibit 27

DEP Permits Disposed for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ^a	-	-	-
SERO	165	73	89
NERO	56	51	95
SCRO	41	72	56
NCRO	41	46	32
SWRO	34	30	44
NWRO	18	18	21
TOTAL	355	290	337

^a The DEP Central Office does not process permit applications.

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 permits disposed by CCDs increased by 10.2 percent from CY 2015 to CY 2017, with an average of 2,904 permits disposed. Thirteen counties³³ increased the number of permits they disposed by at least 58.0 percent over the course of the review period. Appendix H provides county by county details.

Chapter 105 Permits Disposed

The number of Chapter 105 permits disposed over the course of review period decreased in the second year and rebounded during the third. The total increase over the period was eight percent. The number of permits disposed by DEP increased by only 0.8 percent while those disposed by CCDs increased by 17.2 percent. Total permit disposals increased by 8.0 percent. See Exhibit 28 for additional details.

³³ Armstrong, Beaver, Bedford, Carbon, Fulton, Huntingdon, Juniata, Lawrence, Luzerne, Pike, Susquehanna, Warren, and Wyoming

Exhibit 28

Total Permits Disposed for Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP	1,784	841	1,798
	CY 2015	CY 2016	CY 2017
CCDs	1,400	1,757	1,641
	FY/CY	FY/CY	FY/CY
TOTAL	3,184	2,598	3,439

Source: Developed by LBFC staff from information provided by DEP.

The number of Chapter 105 permit disposals conducted by DEP's regional offices grew by only 0.8 percent. DEP permit disposals conducted by the NERO declined by 23.6 percent, while permits disposed by the SWRO increased by 61.8 percent. Exhibit 29 provides additional details.

Exhibit 29

DEP Permits Disposed for the Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ^a	-	-	-
SERO	345	174	340
NERO	280	151	214
SCRO	449	206	412
NCRO	263	138	247
SWRO	233	122	377
NWRO	214	50	208
TOTAL	1,784	841	1,798

^a The DEP Central Office does not process permit applications.

Source: Developed by LBFC staff from information provided by DEP.

The number of Chapter 105 permit disposals conducted by CCDs increased by 17.2 percent over the three year review period. Twelve counties³⁴ increased the number of permits they disposed by more than 25.0 percent. Appendix I provides additional CCD permit disposal details.

³⁴ Allegheny, Beaver, Cambria, Centre, Delaware, Erie, Jefferson, Susquehanna, Venango, Warren, Washington, and Wyoming

D. Expenditures per Full Time Equivalent Staff (FTE)

To analyze DEP and CCD data, we compared expenditures to the number of staff for each permitting program at DEP regional offices and the CCDs. For comparison purposes, we computed a simple ratio by dividing expenditures by the number of FTEs.

Total expenditures per FTE for DEP and the CCDs for both the Chapter 102 and Chapter 105 permitting programs increased by 9.1 percent over the three year review period. Expenditures per FTE for CCDs increased at a faster rate (9.4 percent) than DEP (8.7 percent). See Exhibit 30.

Exhibit 30

Expenditures per FTE for Chapter 102 and Chapter 105 Permitting Programs

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 43,363	\$ 46,332	\$ 47,151
	CY 2015	CY 2016	CY 2017
CCD TOTAL	48,680	50,768	53,283
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 46,021	\$ 48,550	\$ 50,217

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Expenditures per FTE

Expenditures per FTE for the Chapter 102 permitting program increased, on average, every year during the review period. DEP expenditures per FTE increased over the three years by 3.6 percent, while CCD expenditures per FTE increased by ten percent. Exhibit 31 provides a breakdown of the data.

Exhibit 31

Expenditures per FTE for Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 84,866	\$ 84,282	\$ 87,978
	CY 2015	CY 2016	CY 2017
CCD TOTAL	55,316	58,737	60,897
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 70,091	\$ 71,509	\$ 74,438

Source: Developed by LBFC staff from information provided by DEP.

Expenditures per FTE at DEP’s Central and SWRO increased by 26.0 percent during the review period. Average expenditures per FTE decreased over the same period. The SCRO had the lowest expenditure per FTE, while the NWRO had the highest. Exhibit 32 provides a complete breakdown of expenditures per FTE.

Exhibit 32

DEP Expenditures per FTE for Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central	\$ 98,421	\$ 112,155	\$ 123,443
SERO	93,225	81,762	76,670
NERO	70,102	73,639	77,698
SCRO	51,460	57,148	58,216
NCRO	98,412	86,919	90,422
SWRO	64,452	62,261	81,258
NWRO	221,128	120,738	170,136
AVERAGE	\$ 99,600	\$ 84,946	\$ 96,835

Source: Developed by LBFC staff from information provided by DEP.

Expenditures per FTE at the 66 CCDs, on average, held steady throughout the review period – increasing by only 1.4 percent from CY 2015 to CY 2017. The increase in expenditures per FTE for Beaver and Lawrence Counties were significantly higher than the rest of the CCDs. Appendix J provides a complete breakdown by CCD.

Chapter 105 Expenditures per FTE

Expenditures per FTE for the Chapter 105 permitting program barely increased during the review period (0.6 percent). While CCD expenditures per FTE decreased between year 1 and year 2 of the study, they ultimately increased by year 3, and were up 8.8 percent. Please see Exhibit 33 for a complete breakdown.

Exhibit 33

Expenditures per FTE for Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 29,991	\$ 33,591	\$ 33,013
	CY 2015	CY 2016	CY 2017
CCD TOTAL	24,485	23,905	26,637
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 27,238	\$ 28,748	\$ 29,825

Source: Developed by LBFC staff from information provided by DEP.

Expenditures per FTE at the DEP Central and regional offices increased by 15.6 percent from FY 2015-16 to FY 2017-18. The average expenditures per FTE were \$33,900. Exhibit 34 provides additional details.

Exhibit 34

DEP Expenditures per FTE for Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central	\$ 50,430	\$ 69,912	\$ 60,379
SERO	23,397	26,167	27,147
NERO	31,039	33,698	37,641
SCRO	11,945	10,133	11,646
NCRO	34,282	33,902	41,286
SWRO	27,083	27,479	21,425
NWRO	36,949	46,782	49,181
AVERAGE	\$ 30,732	\$ 35,439	\$ 35,529

Source: Developed by LBFC staff from information provided by DEP.

The expenditures per FTE, for the 66 CCDs, for the Chapter 105 permitting program decreased by 4.3 percent from CY 2015 to CY 2017. Three counties, Beaver, Jefferson, and Venango, more than doubled their expenditures per FTE. Appendix K provides additional details on CCDs.

E. Expenditures per Permit Disposed

Total expenditures per permit disposed by DEP and CCDs for both the Chapter 102 and Chapter 105 permitting programs increased by 6.2 percent during the review period. DEP's expenditures per permit disposed increased by 111.3 percent from FY 2015-16 to FY 2016-17. Overall, DEP expenditures per permit disposed increased 12.8 percent. CCDs decreased their expenditures per permit disposed by 0.2 percent from CY 2015 to CY 2017. Exhibit 35 provides additional details.

Exhibit 35

Expenditures per Permit Disposed for Chapter 102 and Chapter 105 Permitting Programs

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 2,155	\$ 4,554	\$ 2,432
	CY 2015	CY 2016	CY 2017
CCD TOTAL	2,252	2,100	2,248
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 2,204	\$ 3,327	\$ 2,340

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Expenditures per Permit Disposed

Expenditures per permit disposed for the Chapter 102 permitting program increased by 13.7 percent over the review period. CCDs' cost per permit disposed increased by less than two percent from CY 2015 to CY 2017. DEP's cost per permit increased by 19.3 percent from FY 2015-16 to FY 2017-18. Exhibit 36 provides additional information.

Exhibit 36

Expenditures per Permit Disposed for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 6,192	\$ 8,120	\$ 7,393
	CY 2015	CY 2016	CY 2017
CCD TOTAL	3,018	3,003	3,078
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 4,605	\$ 5,562	\$ 5,236

Source: Developed by LBFC staff from information provided by DEP.

DEP's regional office average cost per permit disposed increased from \$5,243 in FY 2015-16 to \$5,699 in FY 2017-18 – an increase of nine percent. The SERO saw their costs increase dramatically from \$3,271 per permit disposed to \$7,090. The change represents an increase of 117 percent. Two regional offices, Northeast and Southcentral decreased their per permit costs by 20.0 percent and 22.0 percent respectively. Exhibit 37 provides a complete breakdown.

Exhibit 37

DEP Expenditures per Permit Disposed for Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ³⁵			
SERO	\$ 3,271	\$ 8,971	\$ 7,090
NERO	5,258	6,180	4,228
SCRO	5,108	2,921	3,992
NCRO	3,816	3,099	4,352
SWRO	5,403	5,811	5,780
NWRO	8,599	10,196	8,750
AVERAGE	\$ 5,243	\$ 6,196	\$ 5,699

Source: Developed by LBFC staff from information provided by DEP.

CCDs average cost to dispose a permit decreased by 14.0 percent from \$6,348 in CY 2015 to \$5,449 in CY 2017. Twenty four counties, shown in Appendix L, decreased their per permit disposal costs over the review period.

Chapter 105 Expenditures per Permit Disposed

The cost for each permit disposed for the Chapter 105 permitting program increased by 5.7 percent during the review period. Expenses per permit disposed incurred by CCDs fell by 4.2 percent from CY 2015 to CY 2017. The cost per permit disposed by DEP increased by 11.2 percent from FY 2015-16 to FY 2017-18. Exhibit 38 provides additional information.

Exhibit 38

Expenditures per Permit Disposed for the Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	\$ 1,351	\$ 3,324	\$ 1,502
	CY 2015	CY 2016	CY 2017
CCDs TOTAL	743	602	712
	FY/CY	FY/CY	FY/CY
AVERAGE	\$ 1,047	\$ 1,963	\$ 1,107

Source: Developed by LBFC staff from information provided by DEP.

³⁵ The DEP Central Office does not process permit applications.

The average cost to dispose a permit at a DEP regional office for the Chapter 105 permitting program increased from \$1,147 in FY 2015-16 to \$1,309 in FY 2017-18. Expenditures per permit for the NERO increased by nearly 50 percent over the same period. Expenditures per permit disposed for the SWRO decreased by 48.0 percent. The average increase was 14.1 percent. Exhibit 39 provides a complete breakdown.

Exhibit 39

DEP Expenditures per Permit Disposed for Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ^a	-	-	-
SERO	\$ 685	\$ 1,447	\$ 830
NERO	1,285	2,756	1,917
SCRO	363	754	452
NCRO	1,482	2,665	1,676
SWRO	1,605	3,444	835
NWRO	1,464	8,037	2,145
AVERAGE	\$ 1,147	\$ 3,184	\$ 1,309

^a The DEP Central office does not process permit applications.

Source: Developed by LBFC staff from information provided by DEP.

For those CCDs that process Chapter 105 permits, the cost per permit disposed increased by 6.6 percent from CY 2015 to CY 2017. Expenditures per permit disposed increased by more than 50 percent in four counties – Clinton, Jefferson, Pike, and Union. See Appendix M for all county data.

F. Permits Disposed per FTE

The number of permits disposed per FTE for the Chapter 102 and Chapter 105 permitting programs for both DEP and CCDs increased by one permit over the review period, resulting in a 2.3 percent increase. DEP permits disposed per FTE decreased by five percent, while CCD permits disposed per FTE increased by nine percent. Exhibit 40 provides details.

Exhibit 40

Permits Disposed per FTE for the Chapter 102 and Chapter 105 Permitting Programs

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	20	10	19
	CY 2015	CY 2016	CY 2017
CCD TOTAL	22	24	24
	FY/CY	FY/CY	FY/CY
AVERAGE	21	17	22

Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Permits Disposed per FTE

The total number of permits disposed per FTE for the Chapter 102 permitting program held steady over the review period. DEP's per FTE output decreased by 14.0 percent for the Chapter 102 permitting program. CCDs increased their output by 11 percent per FTE. Exhibit 41 provides additional details.

Exhibit 41

Total Permits Disposed per FTE for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	14	10	12
	CY 2015	CY 2016	CY 2017
CCD TOTAL	18	20	20
	FY/CY	FY/CY	FY/CY
AVERAGE	16	15	16

Source: Developed by LBFC staff from information provided by DEP.

The average number of permits disposed per FTE by DEP decreased by 15.0 percent over the review period. The SCRO increased the number of permits disposed per FTE by 45.0 percent, while the SERO decreased their per FTE disposal totals by 62.0 percent. Exhibit 42 provides additional details.

Exhibit 42

DEP Permits Disposed per FTE for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ^a	-	-	-
SERO	29	9	11
NERO	13	12	18
SCRO	10	20	15
NCRO	26	28	21
SWRO	12	11	14
NWRO	26	12	19
AVERAGE	19	15	16

^a The DEP Central Office does not process permit applications.

Source: Developed by LBFC staff from information provided by DEP.

The average number of Chapter 102 permits disposed per FTE by CCDs increased by six percent from CY 2015 to CY 2017. Nine counties increased the number of permits disposed per FTE by 75.0 percent or more over the time period under review. Of those, six more than doubled the number of permits disposed per FTE. See Appendix N for additional details.

Chapter 105 Permits Disposed per FTE

The total number of permits disposed per FTE for the Chapter 105 permitting program increased by seven percent, as shown in Exhibit 43 CCDs increased their number of permits disposed by nearly 12.0 percent, while DEP did not increase the number of permits disposed per FTE over the course of the review period.

Exhibit 43

Total Permits Disposed per FTE for the Chapter 105 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
DEP TOTAL	22	10	22
	CY 2015	CY 2016	CY 2017
CCD TOTAL	33	40	37
	FY/CY	FY/CY	FY/CY
AVERAGE	28	25	30

Source: Developed by LBFC staff from information provided by DEP.

The average number of Chapter 105 permits disposed per FTE by DEP decreased by 55.0 percent from FY 2015-16 to FY 2016-17. The NWRO saw the sharpest year-to-year decline, 76.0 percent, from 2015-16 to 2016-17. Over the review period reviewed, the average number of Chapter 105 permits decreased by nearly three percent. The SWRO saw an increase of 52.0 percent from FY 2015-16 to FY 2017-18. The SWRO, along with the NCRO were the only DEP regional offices to increase their per FTE output. Exhibit 44 provides additional details.

Exhibit 44

DEP Permits Disposed per FTE for the Chapter 102 Permitting Program

	FY 2015-16	FY 2016-17	FY 2017-18
Central ^a	-	-	-
SERO	34	18	33
NERO	24	12	20
SCRO	33	13	26
NCRO	23	13	25
SWRO	17	8	26
NWRO	25	6	23
AVERAGE	26	12	25

^a The DEP Central Office does not process permit applications.

Source: Developed by LBFC staff from information provided by DEP.

The average number of Chapter 105 permits disposed per FTE by CCDs decreased by two percent from CY 2015 to CY 2017. Eight CCDs increased their FTE output over the review period by more than 25.0 percent. Appendix O provides additional details.

G. Relationship Between Expenditures, FTEs, and Permits Disposed

In order to determine if there is a relationship between expenditures and the number of permits disposed or FTEs and the number of permits disposed, we compared the change in inputs (expenditures and number of FTEs) with the change in outputs (the total number of permits disposed and the number of permits disposed within DEP guidelines). To do this, we calculated the percentage change in each year during the review period and applied that percentage to a base number (1.00).

We also calculated the correlation coefficient to determine the strength of the relationship between expenditures and the number of permits disposed, and FTEs and the number of permits disposed. We used the following formula:

$$\text{Correlation } (X, Y) = \frac{\sum(x - \bar{x})(y - \bar{y})}{\sqrt{\sum(x - \bar{x})^2(y - \bar{y})^2}}$$

A correlation coefficient of 1.0 means that for every positive increase in one variable, there is positive increase of a fixed proportion in the other. For example, expenditures increase in almost perfect correlation with the number of permits disposed.

A correlation coefficient of -1.0 means that for every positive increase in one variable, there is a negative decrease of a fixed proportion in the other. For example, expenditures increase while the number of permits disposed decreases.

Zero means that for every increase, there is neither a positive nor negative increase – the two are not related.

Finally, the absolute value of the correlation coefficient yields the strength of the relationship. The larger the number, the stronger the relationship. For example, 0.80 has a stronger relationship than 0.50.

Relationship Between Expenditures and Permits Disposed

We did not find a strong relationship between total expenditures and the total number of Chapter 102 and Chapter 105 permits disposed by DEP and CCDs.

From Year 1 to Year 2 of the review, expenditures by both DEP and CCDs for the Chapter 102 and Chapter 105 permitting programs increased by seven percent. From Year 1 to Year 3, they increased by 12.0 percent. Yet the total number of permits disposed by DEP and CCDs decreased by eight percent prior to rebounding. See Exhibit 45.

Exhibit 45

Total Expenditures and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 Expenditures and Number of Permits Disposed.

We found a strong relationship between expenditures and the number of permits disposed in the Chapter 102 permitting program. Although expenditures over the course of the study increased at a faster rate than the number of permits disposed, as expenditures increased, so did the number of permits disposed. See Exhibit 46.

Exhibit 46

Chapter 102 Expenditures and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Chapter 105 Expenditures and Permits Disposed.

We found a negative relationship between expenditures and permits disposed in the Chapter 105 permitting program. From Year 1 to Year 2, DEP and CCD data show a 12.0 percent increase in expenditures in the program. At the same time, the number of permits disposed decreased by eight percent before rebounding the following year. See Exhibit 47.

Exhibit 47

Chapter 105 Expenditures and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Correlation Coefficient for Expenditures and Permits Disposed. Additionally, we did not find a strong correlation between total expenditures and the total number of Chapter 102 and Chapter 105 permits disposed. The correlation coefficient we calculated using data provided by DEP and CCDs yielded a result of 0.44.

When we separated DEP from the CCD data, we found that DEP expenditure and permit disposal data yielded a correlation coefficient of -0.45. This indicates a negative correlation between the amount of money DEP spends on the program and the actual number of permits disposed. The CCD data yielded a strong positive correlation coefficient of 0.80. This indicates that for every dollar increase in the CCD expenditures, there is a positive fixed increase in the number of permits disposed.

The difference was even more striking when we separated Chapter 102 permit disposals. In that program, we found a correlation coefficient of -0.31 for DEP. The CCD data shows a correlation coefficient of 0.99, a nearly perfect correlation between increases in CCD spending on Chapter 102 permit disposals and the actual number of permits disposed.

DEP data for the Chapter 105 permitting program show a -0.68 correlation coefficient. This indicates a stronger negative relationship between spending and permits disposed in the Chapter 105 permitting program than in the Chapter 102 permitting program. The CCD data yielded a 0.31 correlation coefficient. This tells us that, for CCDs, the positive relationship between spending and permits disposed in the Chapter 105 permitting program is weaker than the positive relationship in the Chapter 102 permitting programs. The overall correlation coefficient for the Chapter 105 permitting program is -0.19.

Relationship Between FTEs and Permits Disposed

We found no strong relationship between the total number of FTEs and the total number of permits disposed by DEP and CCDs. We found that while the number of permits disposed by FTEs during the study time period increased by three and eight percent respectively, there was a significant drop between Year 1 and Year 2 in permits disposed. The number of FTEs from Year 1 to Year 2 increased by two percent. See Exhibit 48.

Exhibit 48

Total FTEs and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Chapter 102 FTEs and Number of Permits Disposed.

We found a strong relationship between the total number of FTEs (DEP and CCDs) and the total number of permits disposed in the Chapter 102 permitting program. Unlike expenditures, the number of

permits disposed increased at a faster rate than the increase in the number of FTEs. See Exhibit 49.

Exhibit 49

Chapter 102 FTEs and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Chapter 105 FTEs and Number of Permits Disposed.

We found a negative relationship between FTE staff and permits disposed in the Chapter 105 permitting program. From Year 1 to Year 2, DEP and CCD data show a three percent increase in the number of FTEs with a corresponding 18.0 percent reduction in the number of permits disposed. The following year (Year 3) shows a slight reduction in FTEs and a rebound in the number of Chapter 105 permits disposed. See Exhibit 50.

Exhibit 50

Chapter 105 FTEs and Permits Disposed



Source: Developed by LBFC staff from information provided by DEP.

Correlation Coefficient for FTEs and Number of Permits Disposed. We found no strong correlation between the number of FTEs and the total number of Chapter 102 and Chapter 105 permits disposed by DEP and CCDs. The correlation coefficient we calculated using data provided by DEP and CCDs yielded a result of 0.44. This is a weaker correlation coefficient than that calculated for expenditures and permits disposed.

When we separated DEP from CCD data, we found that the correlation numbers diverged. For both the Chapter 102 and Chapter 105 permitting programs, DEP has a correlation coefficient of -0.67. This suggests that as DEP increased the number of FTEs, the number of permit disposals decreased. CCDs, on the other hand, had a correlation coefficient of 0.65. This tells us that at CCDs, additional staff yielded additional permits disposed.

The contrast between DEP and CCDs was somewhat less significant when we looked at Chapter 102 permits on their own. For DEP, we calculated, based on DEP data, a -0.60 correlation coefficient, which suggests a negative relationship between the number of FTEs and the number of permits disposed. For CCDs, we calculated, based on data provided by CCDs, a 0.62 correlation coefficient. This suggests a positive relationship between the number of FTEs and the number of permits disposed.

For Chapter 105 permits, the CCDs calculated correlation coefficient yielded a result of 0.98. This tells us that the number of FTEs nearly perfectly correlates with the number of permits disposed. The case is the opposite for DEP. There we found a strong negative correlation between the number of FTEs and the number of permits disposed (-0.86).

Recommendations

We recommend the following:

1. DEP should systematically collect, compile, analyze, and report data related to:
 - a. FTEs and the number of permits disposed.
 - b. Expenditures and the number of permits disposed.
 - c. The reasons for a positive correlation between FTEs, expenditures, and permits disposed by CCDs.
 - d. The reasons for a negative correlation between FTEs, expenditures, and permits disposed by DEP regional offices.

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SECTION V DEP POLICIES, PERFORMANCE LEVELS AND FEES



Fast Facts...

- ❖ *Completeness and technical adequacy have impacts on review times.*
- ❖ *In most cases, DEP and CCD staff failed to meet maximum review times, even when an application is complete and technically adequate upon submission.*

Overview

DEP has regulations, policies, guidelines, standard operating procedures (SOPs), and goals for the Chapter 102 and Chapter 105 permitting programs. In addition to state regulations for both programs, federal requirements are also applicable. Additionally, DEP administrative manuals for each program delineate the requisite standards to be followed from the time a permit application is submitted until its final disposition.

LBFC staff conducted a file review of 440 DEP permits to gauge whether the CCDs and DEP consistently adhere to the review process outlined in both the Chapter 102 and Chapter 105 Administrative Manuals.

Additionally, we compared the fee structures from the 66 CCDs. County fees are in addition to fees required by DEP regulations.

We found that:

- DEP does not systematically collect, compile, analyze and report data to measure the performance of the CCDs or DEP regional offices for Chapter 102 and Chapter 105 permits.
- DEP internal controls for the permitting programs are ineffective.
- 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.
- DEP has not sought an increase in fees to supplement funding for permitting programs.
- DEP does not document whether its Chapter 102 and Chapter 105 permitting programs protect the environment, natural resources, and, the health and safety of Pennsylvanians.
- DEP does not document whether its Chapter 102 and 105 permitting programs protect the environment, natural resources, and the health and safety of Pennsylvanians.

A. Policies and Procedures

DEP, on its website, posts all documents for permit programs, including permit applications, technical guidance, publications, fact sheets, and

waivers to environmental laws. Procedures for application submission and review for both programs are detailed in Section II of this report.

Chapter 102

The Administrative Policy and Permitting Manual for the Chapter 102 permitting program outlines Chapter 102 statutory and regulatory authority, and is separated by permit type (Chapter 102 General, Chapter 102 Individual, E&S Permits, and E&S permits for Oil & Gas) with SOPs on how to process each permit. Each section covers different variations (new, renewal, major modification, minor modification, and phased projects) of each permit.

The manual also contains a section for Frequently Asked Questions, an explanation on how the NPDES permit numbering system works, permit coordination, eFACTS,³⁶ reporting, records retention, and training. The manual also includes sections for Pennsylvania Natural Diversity Inventory (PNDI) and the SOP for the Notice of Termination (NOT).

DEP provided the following policy and guidance documents for Chapter 102 permits:

Standard Operating Procedures (SOPs)

- New NPDES General Permit for Stormwater Discharges Associated with Construction Activities.
- Renewal NPDES General Permits for Stormwater Discharges Associated with Construction Activities.
- Major Modification NPDES General Permits for Stormwater Discharges Associated with Construction Activities.
- Minor Modifications NPDES, E&S, and Erosion and Sediment Control General Permit (ESCGP).
- Phased Projects NPDES, E&S, and ESCGP Permits.
- New NPDES Individual Permits for Stormwater Discharges Associated with Construction Activities.
- Renewal NPDES Individual Permits for Stormwater Discharges Associated with Construction Activities.
- Major Modification NPDES Individual Permits for Stormwater Discharges Associated with Construction Activities.
- New E&S Control Permit for Stormwater Discharges Associated with Timber Harvesting or Road Maintenance Activities over 25 acres.

³⁶ eFACTS - Environment Facility Application Compliance Tracking System – allows individuals to search for authorizations, clients, sites, and facilities. Users can also search the database to find inspection and pollution prevention visits as well as inspection results data, including enforcement information when violations are noted.

- Renewals for E&S Control Permit for Stormwater Discharges associated with Timber Harvesting or Road Maintenance Activities over 25 acres.
- Major Modification to E&S Control Permits for Stormwater Discharges associated with Timber Harvesting or Road Maintenance Activities over 25 acres.
- To Terminate Permits and Process NOT Forms for NPDES, E&S, and ESCGP Permits Processed by DEP Staff and Delegated CCDs Only.

Other Guidance

- Guidelines and Recommended Procedures.
- NPDES/E&S Stormwater Permit Numbering System.
- Review of E&S Plans.
- Permit Coordination – NPDES, Chapter 105, and PennDOT.
- Searching eFACTS for Compliance History.
- Reporting.
- Training.
- PNDI.
- Program Clarification Memos.³⁷
- Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Authorizations for Facilities and Infrastructure.
- Phased Project Guidance.
- Policy for PNDI Coordination during Permit Review and Evaluation.
- Guidelines for the Development and Implementation of Environmental Emergency Response Plans.
- Supplemental Riparian Buffer Guidelines.

Chapter 105

DEP developed an Administrative Program Manual for Chapter 105 general permits that covers all aspects of the general permit process. Additionally, there are SOPs for general permits and individual permits.

DEP provided the following policy and guidance documents for Chapter 105 permits:

Standard Operating Procedures (SOPs)

- Review of Joint Permit Applications and Environmental Assessments by Department Staff.
- Review of Select General Permits Covered by Permit Decision Guarantee (PDG) by DEP and CCD Staff.

³⁷ There are multiple program clarification memos relating to various subjects within the 102 and 105 permit programs.

- Review of General Permits by Delegated CCD Staff.
- PA State Programmatic General Permit-5.

Other Guidance

- Instructions for Transfer of a Chapter 105 Permit and/or Submerged Lands License Agreement (SLLA).
- Policy for PNDI Coordination during Permit Review and Evaluation.
- Program Clarification Memos.³⁸
- Standards for Channel Cleaning at Bridges and Culverts.
- Policy for Implementing the DEP Permit Review Process and PDG.
- Policy on Public Participation in the Permit Review Process.
- Environmental Justice Public Participation Policy.

B. File Reviews

To conduct our review of Chapter 102 and Chapter 105 application files, we asked DEP to provide the following information necessary to determine the size of our sample:

- The number of permit applications received annually by CCDs, DEP regional offices, and DEP Central Office by county (for the CCDs) and by region (for DEP).
- The number of applications disposed annually by CCDs, DEP regional offices, and DEP Central Office by county (for the CCDs) and by region (for DEP).
- Length of time to review a permit from receipt to disposition.

DEP informed us that they do not collect this data from CCDs or DEP regional offices.

To determine which files to randomly select, we requested a list of all permits disposed from FY 2012-13 through FY 2017-18, however, data was only available for FY 2015-16 through FY 2017-18. For our review, we chose a random, statistically significant sample from each permit type and requested these files from DEP. Our sample size was 470 files.

LBFC staff determined the review criteria for each permit type based on DEP policies and procedures, communications with CCDs, and both the regulated and regulator communities. We reviewed files for internal control documents and other documents that are required for an application to be deemed complete upon submittal, for example, an application, site map, and PNDI.

³⁸ There are multiple program clarification memos relating to various subjects within the 102 and 105 permit programs.

LBFC staff reviewed 440 files³⁹ received from the 66 CCDs and six DEP regional offices. The sample consisted of:

- 114 Chapter 102 general permits.
- 114 Chapter 102 individual permits.
- 109 Chapter 105 general permits.
- 103 Chapter 105 individual permits.

Internal Controls

To test for administrative consistency in the application review process, we reviewed files for the various internal controls that assist applicants and reviewers to ensure all necessary information accompanies applications.

Completeness Review Checklist. These checklists are to assist the reviewers with ensuring all required documents have been submitted. For both the Chapter 102 general and individual permits, this checklist is called the Completeness Review Checklist. For the Chapter 105 general permit, it is called a General Permit Completeness Checklist, and for the Chapter 105 individual permits, this is called an Individual Permit and Environmental Assessment Completeness Checklist.

Files were reviewed to determine if they contained completeness checklists, as well as whether the checklist was complete. Exhibit 51 shows the percentage of permits that contained a completeness checklist, and the percentage of those that contained completed completeness checklists.

Exhibit 51

Permits that Contained a Completeness Checklist and a Completed Completeness Checklist by Permit Type

Permit Type	Contain a Completeness Checklist (%)	Contain a Completed Completeness Checklist (%)
Chapter 102 General	90	54
Chapter 102 Individual	76	34
Chapter 105 General	36	15
Chapter 105 Individual	31	22

Source: Developed by LBFC staff from data collected from DEP.

³⁹ DEP was unable to locate 30 of the files in our sample.

E&S Checklist. Both the Chapter 102 general and individual permits contain an E&S checklist that is used during the technical review of the application process. This checklist is in place to assist the reviewers with ensuring all required elements have been submitted and are technically adequate.

Files were reviewed to determine if they contained an E&S checklist and whether the checklist was complete. Exhibit 52 shows the percentage of permits that contained an E&S checklist, and the percentage of those that contained a completed E&S checklist.

Exhibit 52

Permits that Contained an E&S Checklist and a Completed E&S Checklist

Permit Type	Contain an E&S Checklist (%)	Contain a Completed E&S Checklist (%)
Chapter 102 General	19	12
Chapter 102 Individual	44	24

Source: Developed by LBFC staff from data collected from DEP.

Engineering Technical Checklist. This checklist assists the reviewers with ensuring all required elements are adequate and sufficient during the technical review of the Chapter 105 individual permit application.

Files were reviewed to determine if they contained an engineering technical checklist, as well as, whether the checklist was complete. Exhibit 53 shows the percentage of permits that contained an engineering technical checklist, and the percentage of those that contained a completed engineering technical checklist.

Exhibit 53

Permits that Contained an Engineering Technical Checklist and a Completed Engineering Technical Checklist

Permit Type	Contain an Engineering Technical Checklist (%)	Contain a Completed Engineering Technical Checklist (%)
Chapter 105 Individual	65	51

Source: Developed by LBFC staff from data collected from DEP.

Environmental Technical Checklist. This checklist is to assist the reviewers with ensuring all required elements are adequate and sufficient during the technical review of the Chapter 105 individual permit application.

Files were reviewed to determine if they contained an environmental technical checklist, as well as, whether the checklist was complete.

Exhibit 54 shows the percentage of permits that contained an environmental technical checklist, and the percentage of those that contained a completed environmental technical checklist.

Exhibit 54

Permits that Contained an Environmental Technical Checklist and a Completed Environmental Technical Checklist

Permit Type	Contain an Environmental Technical Checklist (%)	Contain a Completed Environmental Technical Checklist (%)
Chapter 105 Individual	77	61

Source: Developed by LBFC staff from data collected from DEP.

These checklists can be used to determine whether the policies and procedures are being followed. They do not determine if an application is actually ready to be approved and a permit issued.

Maximum Review Times

One of the most frequent complaints voiced by the regulated community was the length of time it takes for a permit application to go through the review process. Both the Chapter 102 and Chapter 105 administrative manuals outline the maximum business days to complete a permit review, as shown in Exhibit 55.

Exhibit 55

DEP Maximum Number of Business days for a Permit Review

Permit Type	Maximum Review Days (business days)
Chapter 102 General	71
Chapter 102 Individual ^a	107
Chapter 105 General (GPS 1-9)	43
Chapter 105 GP11 ^a	86
Chapter 105 Individual ^a	93

^a The review times for these permits, including GP-5, are established by the Permit Decision Guarantee Program.

Source: Developed by LBFC staff from information obtained from DEP administrative manuals.

During the review, we found the longest review time was 809 business days for a Chapter 105 individual permit that eventually was withdrawn. The shortest review time was one business day for a Chapter 105 general permit.

To determine if DEP and CCDs are in compliance with DEP’s review standards, we calculated the average review time in business days for each permit type⁴⁰, and the percent of permits completed within the maximum review time. We found the average number of business days to review a permit exceeds the maximum review times established by DEP in two of five permit types. See Exhibit 56.

Exhibit 56

Comparison of Maximum Review Days versus Average Review Days

Permit Type	Maximum Business Days to Review	Average Business Days to Review	Business Days Exceeding Maximum Review Time
Chapter 102 General	71	52	-
Chapter 102 Individual	107	130	23
Chapter 105 General	43	32	-
Chapter 105 GP-11	86	35	-
Chapter 105 Individual	93	150	57

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

During the course of the study, LBFC staff were told that very few permits are submitted, reviewed, and have a disposition within the maximum re-

⁴⁰ DEP’s guidelines for review times can be found in the *Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee*, and in the SOPs for each permitting program.

view days outlined in DEP’s policies. Exhibit 57 shows the actual percentage of permits, by permit type and scenario that were reviewed and disposed of within the maximum review days as outlined by DEP policies. We found that the percentage of complete and technically adequate permit applications received and disposed within the maximum review days exceeded 90 percent for Chapter 105 GP-11 permits, but was less than 50 percent for Chapter 105 individual permits.

Exhibit 57

Percentage of Permits Reviewed and Disposed within the Maximum Review Days Based on Review Criteria

Review Criteria	Chapter 102 General Permits (%)	Chapter 102 Individual Permits (%)	Chapter 105 General Permits (%)	Chapter 105 GP-11 (%)	Chapter 105 Individual Permits (%)
All	79	59	74	95	30
Complete Application	76	60	75	94	32
Incomplete Application	85	54	60	100	22
Technically Adequate	81	67	83	95	39
Technically Deficient	75	53	0	N/A	16
Complete & Technically Adequate	81	70	81	94	41
Not Complete nor Technically Adequate	87	57	0	N/A	0

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

DEP indicated that there are often additional complexities involved with both Chapter 102 and Chapter 105 projects. As stated in its *Policy for Implementing the DEP Review Process and Permit Decision Guarantee*, some reasons for delays in permit processing include, resolution of outstanding violations or compliance actions, need for approval by or coordination with another agency, reviews by other department programs, natural disasters, or time necessary to address additional public comment. DEP further noted that other factors within a project make a review more complex and can increase time necessary for review. These factors include: impacts on bodies of water designated as high quality or extra value, the number of linear feet of impacted streams, the number of bodies of water within the project, and the number of acres that the project will disturb.⁴¹

⁴¹ According to a DEP official, projects of five acres or more are more complex in nature.

This policy created the Permit Decision Guarantee Program, and established maximum review time standards for certain types of permit applications, including Chapter 102 and Chapter 105 individual permits, and Chapter 105 general permits GP-5 and GP-11. However, DEP did not provide additional review time in its standards to account for the factors cited above.

Permit Review Times by Type

During the file review, we identified six different scenarios that can have an effect on review times. Those scenarios are:

- Complete Application.
- Incomplete Application.
- Technically Adequate.
- Technically Deficient.
- Complete & Technically Adequate.
- Not Complete nor Technically Adequate.

Exhibit 58 shows these average review times.

Exhibit 58

Average Review Times (Business Days) by Permit Type Based on Review Criteria

Review Criteria	Chapter 102 General Permits	Chapter 102 Individual Permits	Chapter 105 General Permits	Chapter 105 GP-11	Chapter 105 Individual Permits
Maximum Review Times (business days)	71	107	43	86	93
All	52	130	32	35	150
Complete Application	54	132	30	40	149
Incomplete Application	48	125	66	10	154
Technically Adequate	48	111	21	35	130
Technically Deficient	59	144	128	N/A	183
Complete & Technically Adequate	49	102	22	40	127
Not Complete nor Technically Adequate	49	110	139	N/A	184

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

Chapter 102 General Permit Review Times. As shown in Exhibit 58, on average, it takes 52 business days to review a Chapter 102 general permit. This is within the maximum timeframe. An application that is submitted complete and technically adequate is reviewed, on average in 49 business days, however, only 81 percent were disposed of within the maximum timeframe. Of all Chapter 102 general permits reviewed, only 79 percent reached a disposition within the 71 day maximum timeframe.

Chapter 102 Individual Permit Review Times. We reviewed Chapter 102 individual permits and found that only 59 percent of them were completed within the 107 day maximum timeframe. Of the applications that were submitted complete and technically adequate, 70 percent were disposed of within the maximum timeframe.

Chapter 105 General Permit Review Times. While three of the scenarios identified in Exhibit 58 were over the 43 day maximum timeframe, it is important to note that applications that were submitted complete, technically adequate, or complete and technically adequate were, on average, completed under the maximum timeframe. Of the permits reviewed, 74 percent were completed within the maximum timeframe. Of the applications submitted complete and technically adequate, 81 percent were disposed of within the 43 business day maximum timeframe.

Chapter 105 GP-11 Review Times. Chapter 105 GP-11 permits fall under the PDG program and have a maximum review time of 86 business days. Ninety-four percent were complete and technically adequate and disposed within the maximum timeframe.

DEP, on average, takes 35 business days to review a GP-11, and the average review days for any of the scenarios we looked at were all disposed below the maximum time outlined by DEP. Exhibit 58 shows that overall, 95 percent of the Chapter 105 GP-11 permit applications submitted were disposed of within the maximum timeframe.

Chapter 105 Individual Permit Review Times. Exhibit 58 shows that it takes an average of 127 business days to complete a review of a Chapter 105 individual permit application that is submitted complete and technically adequate. That is 34 business days over the maximum timeframe of 93 business days. Of the permits reviewed, 30 percent were reviewed and disposed of within the maximum timeframe. Of the permits submitted complete and technically adequate, 41 percent were disposed of within the maximum time frame.

Completeness of Applications

Another issue frequently expressed by CCDs and DEP is the lack of completeness of submitted applications. According to the CCDs and DEP officials, applications are submitted to get the review process started, with the applicant knowing the applications are incomplete, technically deficient, or both.

Our file review, however, showed that the majority of applications are complete when submitted. See Exhibit 59.

Exhibit 59

Applications Submitted Complete vs. Incomplete

Complete v. Incomplete	Chapter 102 General Permits (%)	Chapter 102 Individual Permits (%)	Chapter 105 General Permits (%)	Chapter 105 Individual Permits (%)
Complete	70	76	93	83
Incomplete	30	24	7	17

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

If an incomplete application is submitted, meaning it does not contain all required documents necessary to satisfy all applicable statutory and regulatory requirements, the reviewing agency sends an incomplete notice to the applicant who then has 60 calendar days to submit the missing information. Once a response is submitted, another review takes place; if information remains missing, a second incomplete notice is sent. Each time the applicant is sent an incomplete notice they are given 60 calendar days to submit missing information, with the ability to request an additional 60 calendar days. The impact the additional time allowed to correct incomplete applications has on review times is shown in Exhibit 60 as average calendar days for an applicant to respond to an incomplete notice. It is important to note that the average does not exceed the 60 day allotted timeframe.

Exhibit 60

Average Applicant Response Times (Calendar Days) for Incomplete Notifications

Permit Type	1 st Notification
Chapter 102 General	31
Chapter 102 Individual	25
Chapter 105 General	10
Chapter 105 Individual	33

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

Technical Adequacy of Applications

Technical deficiencies can also impact permit review times. Technical deficiencies, or deficiencies, are statutory and/or regulatory requirements an applicant failed to meet. Applicants are sent a deficiency notice outlining the statutory and/or regulatory requirements they failed to meet and are given 60 calendar days to resubmit plans correcting the deficiencies. If the initial 60 calendar days is insufficient, the applicant may request an additional 60 calendar days. Our file review showed that, except for Chapter 102 Individual Permit applications, a majority of applications are technically adequate when submitted. See Exhibit 61.

Exhibit 61

Applications Submitted Technically Adequate vs. Deficient

Technically Adequate vs. Deficient	Chapter 102 General Permits (%)	Chapter 102 Individual Permits (%)	Chapter 105 General Permits (%)	Chapter 105 Individual Permits (%)
Technically Adequate	61	40	92	62
Deficient	39	60	8	38

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

While the average applicant response times to deficiency notices do not exceed the 60 calendar days applicants are given to correct deficiencies, they still have an impact on the length of time for a review compared to those applications that are not deficient. The average applicant response times for deficiency notifications is shown in Exhibit 62.

Exhibit 62

Average Applicant Response Times (Calendar Days) for Deficiency Notifications

Permit Type	1 st Notification
Chapter 102 General	26
Chapter 102 Individual	55
Chapter 105 General	24
Chapter 105 Individual	33

Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

Recommendations

We recommend the following:

1. DEP should revisit its PDG policy, and establish appropriate review time standards for projects that are more complex, for example, those that are five acres or greater.
2. DEP should periodically conduct random audits of permit application files to ensure that:
 - a. DEP regional offices and CCDs are adhering to internal controls.
 - b. DEP regional offices and CCDs are meeting maximum review time requirements.

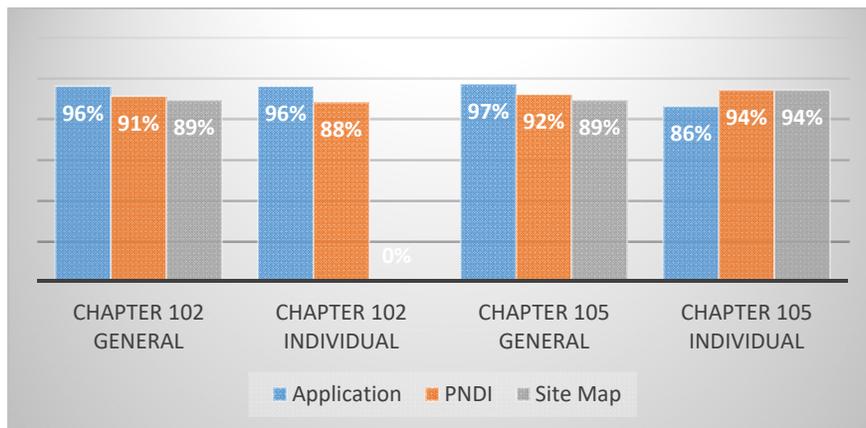
C. Other Required Documents

As a result of our file reviews, we found there were inconsistencies throughout the state regarding administrative procedures. CCDs and DEP use different tracking sheets and tracking methods for their reviews as identified in our file review.

While conducting the file review, staff took note of other documents that are required for an application to be deemed complete upon submittal. These include an application, site map, and a PNDI. As Exhibit 63 illustrates, the majority of the files contained these documents.

Exhibit 63

Percentage of Files that Contain Additional Required Documents



Source: Developed by LBFC staff from information obtained from DEP permit file reviews.

Recommendation

We recommend the following:

1. DEP should standardize required internal controls across DEP regional offices and CCDs.

D. Overall Impacts and Policy Effectiveness

According to DEP, the overall goal for these two permitting programs is to issue permits that protect the environment and natural resources and the health and safety of Pennsylvania residents while ensuring projects are using and maintaining construction methods that are both environmentally sound and of the latest BMPs. DEP did not provide any documentation showing it has met these standards.

DEP and the CCDs have disposed of approximately 19,000 permits during the three year period we reviewed. Exhibit 64 shows the number of permits disposed each year by permit type.⁴²

Exhibit 64

Number of Permits Disposed FY 2015-16 through FY 2017-18

Year	Chapter 102 General Permits	Chapter 102 Individual Permits	Chapter 105 General Permits	Chapter 105 Individual Permits
2015-16	2,402	362	3,432	326
2016-17	2,373	416	2,598	305
2017-18	2,554	476	3,445	471
TOTAL	7,329	1,254	9,475	1,102

Source: Developed by LBFC staff from data provided by DEP.

Although permits are being processed and issued, we found the interpretation of DEP policies is inconsistent throughout the state. We heard these concerns from both the regulated community and the reviewing agencies. These inconsistencies cause delays in permit processing and frustration on part of both applicants and reviewers, making the process more burdensome and less effective than it should be.

As noted earlier, one of the stated purposes of both permitting programs is protection of the environment, however, we found that DEP does not

⁴² These numbers include permits that were issued, denied, waived, replaced, withdrawn, appealed, cancelled, or returned.

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, and DEP does not systematically monitor whether an NOT has been submitted and approved. The NOT represents a final inspection of the project site to ensure compliance with Commonwealth laws and the approved permit application.

Upon requests for any goals DEP has for the Chapter 102 and/or Chapter 105 permitting programs, outside those outlined in this report, DEP directed LBFC staff to DEP's mission statement and the goal of applying the programs as required in law in as efficient and effective a manner as possible.

Recommendations

We recommend the following:

1. To ensure protection of the environment, DEP and the CCDs should systematically collect, compile, analyze, and report data that measure and explain the environmental effects of the Chapter 102 and Chapter 105 permitting programs.
2. DEP should systematically inspect completed construction sites to determine that the elements of approved permits have been properly installed and are functioning.
3. DEP should systematically collect, compile, record, and audit whether or not an NOT has been submitted and the final inspection has taken place.
4. DEP should clearly define appropriate and measurable goals, actions, and performance measures to improve the administration of the Chapter 102 and Chapter 105 permitting programs.

E. Fees and Fee Structures

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. The Chapter 102 program fees were last increased in 2010 and Chapter 105 program fees were last increased in 2013. DEP did not issue a mandated Chapter 102 fee report that could have been used to ask for a fee increase if it were necessary. Second, DEP did issue its mandated Chapter 105 fee report and declined

to seek an increase in fees. Additionally, data provided by DEP failed to establish a strong correlation between expenditures and permits reviewed.

DEP regulations, 25 Pa. Code 102.6(b)(2) and 25 Pa. Code 105.13(l) require DEP to review the adequacy of its fees once every three years for both programs and report this data to the EQB. Reports are to identify any disparity between program income generated by the fees and the costs to administer these programs. The reports are also to contain recommendations to adjust fees to eliminate any disparity, including recommendations for regulatory amendments.

Chapter 102 Fee Structure

DEP established regulations setting a \$500 administrative filing fee for general permits and a \$1,500 administrative filing fee for individual permits. In addition to the administrative filing fees, an applicant must pay \$100 for each disturbed acre.

Individuals applying for Chapter 102 permits submit three separate checks for all fees incurred. The first check is for the NPDES filing fee which is deposited into the county's Clean Water Fund. The second check is for any E&S plan review fees (See Appendix B) and written to the county. The third check is for DEP's disturbed acre fee and is deposited into the Commonwealth's Clean Water Fund.

There are additional fees that may be charged when applying for a Chapter 102 permit, however, they depend on the project and the county in which the project is located. For example, the county may charge their own disturbed acre fee in addition to what is required by regulation, additional charges for subsequent reviews of projects that have deficiencies, minor and major modifications, and administrative fees.

Chapter 105 Fee Structure

The Chapter 105 registration fees for general permits vary depending on the type of permit⁴³. In addition to the general permit registration fee for GP-11 and GP-15, a disturbance review fee is charged where applicable. This disturbance review fee is different from the one under Chapter 102, in that it is calculated individually by adding all of the permanent and temporary impacts to waterways, floodways, floodplains, and bodies of water including wetlands. Exhibit 65 shows the regulated registration fees for Chapter 105 general permits.

⁴³ Governmental Chapter 105 project applicants, including those that are federal, state, local, or water authorities, are exempt from paying fees.

Exhibit 65

Chapter 105 General Permit Registration Fees

General Permit	Permit Description	Registration Fee
GP-1	Fish habitat enhancement structures	\$ 50.00
GP-2	Small docks and boat launching ramps	175.00
GP-3	Bank rehabilitation, bank protection and gravel bar removal	250.00
GP-4	Intake and outfall structures	200.00
GP-5	Utility line stream crossings	250.00
GP-6	Agricultural crossings and ramps	50.00
GP-7	Minor road crossings	350.00
GP-8	Temporary road crossings	175.00
GP-9	Agricultural activities	50.00
GP-10	Abandoned mine reclamation	500.00
GP-11	Maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments	750.00
GP-15	Private residential construction in wetlands	750.00

Source: Developed by LBFC staff from 25 Pa. Code 105.13(l).

For Chapter 105 individual permits, applications must be accompanied by a check for the appropriate fee, to be deposited into the PA Clean Water Fund, and used to offset operating costs for the program. Individual permit fees are \$1,750, plus any other applicable disturbance review fees, as listed in Exhibit 65 above. Small projects, which require individual permits, also require a \$1,750 fee.

Exhibit 66 below shows additional fees that apply to other Chapter 105 Program activities.

Exhibit 66

Other Chapter 105 Program Fees

Other Fees not Added to Initial Application or Registration Fees	Fee
Environmental assessment for Waivers 11 and 16	\$500
Temporary Disturbance Fee, per tenth acre, minimum tenth acre ^a	400
Permanent Disturbance Fee, per tenth acre, minimum tenth acre ^a	800
Major amendment to a Chapter 105 Permit	500
Major amendment to a Chapter 105 Permit	250
Transfer of a permit with Submerged Lands License Agreement (SLLA)	200
Transfer of a permit without SLLA	100

^aDisturbance fees are charged for applicable activity in GP-5, GP-11, and individual permits. They apply to disturbances in waterways, floodways/floodplains and wetlands.

Source: Developed by LBFC staff from 25 Pa. Code 105.13(l).

Recommendations

We recommend the following:

1. DEP should submit the mandated Chapter 102 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.
2. DEP should submit the mandated Chapter 105 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

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SECTION VI INITIATIVES TO IMPROVE PERMIT PROGRAMS



Fast Facts...

DEP has undertaken initiatives to improve its permitting programs, including:

- ❖ *Permit Decision Guarantee Program*
- ❖ *ePermitting*
- ❖ *Regional Project Coordination Office*

Overview

DEP has implemented measures to improve the Chapter 102 Erosion and Sediment Control Program and Chapter 105 Water Obstruction and Encroachment Program. DEP has replaced the Money-Back Guarantee Program with the Permit Decision Guarantee Program (PDG), implemented the Regional Project Coordination Office (RPCO), continued to partner with the PA Department of Transportation (PennDOT), and established an ePermitting program to allow applicants to submit applications online for Chapter 105 general permits.

In addition to the initiatives specifically discussed in this section, as of March 2019, DEP implemented a new dashboard tool, the Permit Efficiency Database, which is a comprehensive system that will allow better tracking of permits.

We found that:

- DEP and CCDs have not met PDG timeframe requirements when complete and technically adequate applications have been submitted.
- The RPCO has been in place for almost two years and has only recently begun the work of reviewing and issuing permits.
- The roll-out of ePermitting has been problematic.

Issue Areas

A. Permit Decision Guarantee Program (PDG)

DEP implemented the PDG Program to establish a standardized review process and processing times for permits. Permits covered by the PDG include:

- Chapter 102 Individual Permits.
- Chapter 105 Individual Permits.
- Chapter 105 General Permits 5 and 11.

For those permits contained within the decision guarantee, permit decisions are to be made within published timeframes if the applicant has submitted a complete and technically adequate application in the first submission. Timeframes for the applicable permits are shown in Exhibit 67. DEP states in one of its Chapter 105 general permit SOPs that the goal is to process all general permits by the listed timeframes whether or not the PDG applies.

Exhibit 67

Published Timeframes for Permit Decisions Under the Permit Decision Guarantee

Type of Permit	Application Type	PDG Timeframe – Business Days
Chapter 102 Individual Permits	New	107
Chapter 102 Individual Permits	Amendment	107
Chapter 102 Individual Permits	Renewal	107
Chapter 102 Individual Permits	Transfer	22
Chapter 105 General Permit 5 – Utility Line Stream Crossings	New	43
Chapter 105 General Permit 11 – Maintenance, Testing, Repair, Rehabilitation or Replacement	New	86
Chapter 105 Environmental Assessment	New	86
Chapter 105 Individual Permit	New	93
Chapter 105 Individual Permit	Major Amendment	93

Source: DEP Office of Program Integration Policy for Implementing the DEP Permit Review Process and Permit Decision Guarantee.

DEP’s policy is to minimize processing times while ensuring adherence to all applicable regulatory and statutory requirements and prioritizing permit applications. Its written policy, however, identifies reasons why decisions could be delayed, including resolution of outstanding violations or compliance actions against the applicant; reviews by other DEP programs, the purpose of which is to provide technical information to the reviewing program and therefore cannot be accomplished concurrently; or factors outside of DEP’s control, such as a natural disaster.

As part of our file review for Chapter 102 and Chapter 105 individual permits and the two PDG-qualifying Chapter 105 general permits (See Section V for additional information regarding our file review), we recorded the dates permit applications were deemed complete and the dates they were disposed in order to calculate processing times. Recognizing that not all PDG-covered permits are eligible for PDG, we found that only one type of permit, Chapter 105 GP-11, of the four PDG-eligible permit types met the prescribed timeframes. Exhibit 68 below shows the ranges and

average time for each type of permit as well as the percent of applications that qualify for the PDG, by virtue of being complete and technically adequate.

Exhibit 68

Permit Decision Time Frames for Permits Eligible for PDG

	PDG Timeframe	Average Business Days	Percent Eligible for PDG (%)	Range of Business Days
Chapter 102 Individual Permit	107	130	38	3-704
Chapter 105 General Permit 5	43	45	76	1-254
Chapter 105 General Permit 11	86	35	85	1-108
Chapter 105 Individual Permits	93	150	50	4-809

Source: Developed by LBFC Staff from review of DEP application files.

Through our conversations with the regulator community, we were told that very few PDG-eligible application submissions qualify for PDG due to application completeness or technical issues. One region informed us it has had two applications - of over 5,000 - that qualified for PDG and that the poor quality of applications is the most pressing issue. However, our file review found numerous PDG-eligible applications that were complete and technically adequate (see Exhibit 68 above), yet the timeframes remain higher than those required in the PDG policy. Exhibit 69 shows the percentage of applications qualifying for PDG that were disposed within maximum timeframes and associated average disposal timeframes.

Exhibit 69

**Permit Decision Time Frames for
Permit Applications that Qualify for the PDG Program**

	PDG Timeframe	Percent Disposed within PDG Timeframe (%)	Average Days	Range of Days
Chapter 102 Individual NPDES Permit	107	70	102	3-458
Chapter 105 General Permit 5	43	77	23	1-254
Chapter 105 General Permit 11	86	94	40	7-108
Chapter 105 Individual Permits	93	41	127	4-310

Source: Developed by LBFC Staff from review of DEP application files.

Because SR 226 specifically mentions the PDG, we discussed the program during our communications with stakeholders. Exhibit 70 shows some of their comments.

Exhibit 70

Stakeholder Observations Regarding the PDG

Regulated Community Observations

PDG is meaningless because an application can be bumped out for two little comments.

The PDG is not working and there are no repercussions to reviewers for not meeting timeframes.

The PDG is not an improvement over the Money Back Guarantee Program

Reviewers look for ways to get out of the PDG, for example, sending a deficiency for a small thing rather than making a phone call.

One region is always at the maximum number of days; there are no issues with other regions.

If the app is not complete or technically adequate, the PDG clock can be stopped.

The PDG program has proven to be ineffective.

Regulator Community Observations

One CCD stated that it has not had any problems meeting the PDG timeframes, and to its knowledge there are no consequences if the timeframes are not met.

One region told us that it strives to get applications completed within the maximum timeframes, whether the application is complete or not.

A CCD informed us that, of the permits they review, maybe five percent of them get through PDG successfully and that is a high estimate.

Almost all applications need some sort of revision, which kicks them out of the PDG. There are no consequences for failing to adhere to the PDG timeframes, and no incentive to keep applications within the timeframes.

Staff feels that the quality of the applications has gotten better since the start of PDG and that PDG has improved regional office reviews.

A CCD informed us that it applies the PDG timeframes to every permit it processes.

A CCD informed us that PDG is a better program than Money Back Guarantee. In the first year of the PDG, staff got really good stuff worth reviewing. The county does not have a lot of development going on so it is not an issue to get permits done in a timely manner.

A regional office stated that if an application comes in under PDG, it is not an issue to get it done within the prescribed time frame.

Source: Developed by LBFC Staff from contacts with stakeholders.

Recommendations

We recommend the following:

1. DEP should establish consequences for DEP regional offices and CCDs that do not meet PDG time frames.
 2. DEP should systematically collect, compile, analyze, and report data on PDG-eligible applications and implement a plan of action to ensure eligible applications are approved within the guaranteed time frame.
-

B. Regional Project Coordination Office (RPCO)

The RPCO was established by DEP in March 2017, and falls organizationally under the Program Integration Office, which is overseen by the Executive Deputy Secretary for Programs. According to DEP, the mission of the office is to provide synchronized and consistent reviews and approvals for general to complex projects related to Chapter 102 and Chapter 105 projects from a Central Office. The Pennsylvania Manual describes this office as being:

...responsible for the comprehensive review and issuance of decisions related to construction stormwater discharges and stream and wetland encroachment permits for complex linear infrastructure projects, including pipeline and transportation projects, that cross a county, multiple counties, or multiple watersheds. The office coordinates with appropriate regional offices that may be processing other permit applications associated with complex linear projects, such as hydrostatic discharges and air quality, and may also assist the regional offices to ensure timely review and decision making for permits.

In effect, this office will absorb some of the workloads from DEP regional offices and the CCDs for large, linear projects, mainly pipelines and roadways.

According to a DEP official, to accomplish its mission, the RPCO:

- Provides technical support on Chapter 102 and Chapter 105 permitting in conjunction with established bureau personnel.
- Reviews and approves permit applications and their companion plans (Chapter 102 and Chapter 105) for general to complex projects. This may include multi-county/multi-regional projects, Federal Energy Regulatory Commission-regulated projects, and projects with complex engineering/geologic considerations.
- Assists with cross-program coordination with the various DEP Programs that have authority to process permits/authorizations under Chapter 102 and Chapter 105 (e.g., regional offices, Oil and Gas, Dam Safety, Flood Protection, Mining, and CCDs).

The office began hiring staff in May of 2017. There is a total of 15 staff in the RPCO, and there are currently two vacancies. DEP has recruited from its regional offices and is allowing staff to work remotely in some cases.

Although it was established in early 2017, the RPCO only began to accept permit applications in January 2019. As of January 24, 2019, it has four pipeline projects in-house which involve a total of 20 permit applications. One authorization has been issued and two more are expected shortly. RPCO is also closely involved with two additional pipeline projects that are in the planning stages, and closely assisting with another pipeline project under review by a regional office. RPCO is also engaged with both regional and Central Office staff on several permitting and compliance related matters.

C. Coordination with the Pennsylvania Department of Transportation (PennDOT)

Because of the volume of both Chapter 102 and 105 permits needed by PennDOT, the two departments have taken steps to make the process operate smoothly.

Through a memorandum of understanding (MOU), PennDOT has been funding positions in DEP's regional offices. This has been an ongoing relationship for over 25 years. Twelve positions are funded with a biologist and engineer in each of the six DEP regional offices, and an additional person located in Central Office to handle extra work.

The Keystone Environmental Electronic System (KEES) is a permit submission system developed by PennDOT, in conjunction with DEP, to handle the volume of permits required by PennDOT. This system shows PennDOT's permit history and enables officials to quickly become aware of inconsistencies or quality issues in the permitting process.

The Pennsylvania Turnpike Commission (PTC) informed us that, it, too, wanted to fund positions in DEP to be dedicated to its permit applications, as it faces similar issues with its projects as PennDOT, but that in prior years DEP was not interested in doing so. However, a DEP official told us that DEP is in the process of finalizing an MOU with PTC to fund two technical positions and a portion of a coordinator position. DEP anticipates finalization of the MOU by May 2019. According to a PTC official, the new RPCO was the catalyst that allowed this agreement to occur. The PTC anticipates that all of their projects, going forward, will be reviewed at the RPCO when those positions are staffed.

D. ePermitting for Chapter 105 General Permits

DEP has developed an electronic system for Chapter 105 general permit applications. DEP “anticipates that the regulated community, along with DEP and delegated CCD staff will find that the ePermitting process will improve application quality, reduce permit review timeframes, and will help to eliminate permit backlogs.”⁴⁴ According to a DEP official, ePermitting was intended to make an electronic process available to all applicants in an effort to streamline the process, as the KEES system has done for PennDOT applications. This system started accepting applications on October 18, 2018.

In order to access the application system, an applicant must be registered on DEP’s Greenport as an Electronic File Administrator (EFA). An EFA can be a consultant, an applicant, or a CCD, etc. As of March 2019, DEP had 59 registered EFAs. Since there were 3,445 Chapter 105 general permits processed in FY 2017-18, it appears that many more users need to register as EFAs in order to submit electronic applications.

DEP received its first two application submissions in November 2018, and has received a total of 34 submissions as of March 2019. Of those 34, eight have been approved; 24 are in submitted status, which includes new submissions and resubmissions in response to deficiency notices; and two are outstanding for deficiencies.

DEP intended ePermitting to be paperless upon its implementation, however, according to a DEP official, there have been several issues with the system, including:

- Applicants cannot print out their applications, but must instead screenshot every page and print each screenshot.
- Although DEP is able to collect permit fees through the system, no method has been established to transfer the appropriate fees to CCDs.
- Uploads to eFacts from the system do not always work.
- CCDs do not have access to eFacts.

In our conversations and meetings with various stakeholders, we discussed ePermitting, and found most are hoping it will improve and streamline the process (e.g. the online submission will not allow an incomplete application), however, there are concerns about the new tool, as shown in Exhibit 71.

⁴⁴ Letter from Patrick McDonnell, DEP Secretary to Brenda Shambaugh, Executive Director of the PA Association of Conservation Districts, September 2, 2018.

Exhibit 71

Stakeholder Observations Regarding ePermitting

Regulated Community Observations

ePermitting will be more of a hindrance at first due to needing more certifications for the computer systems and learning the specific ways things need to be submitted.

It will make the process worse because it is going to be hard to review drawings on the computer and could be more time consuming leading to longer permit processing times. A consultant informed us that he has been involved in PennDOT's electronic permitting program and has not had any issues and will be surprised if DEP's works half as well as PennDOT's.

Regulator Community Comments

ePermitting may help to make the applications more consistent and make things easier and more streamlined. It will cut out the letter writing because they will be automatically generated and sent via email to the applicant. The ePermitting system will also automatically collect data and send it directly to Central Office in Harrisburg, thus eliminating the need for CCD quarterly reports. A concern is how the staff will review the permits because they will need new computer equipment and software to be able to read the drawings.

CCDs will end up doing the work for applicants that don't have a computer or internet access.

There should be some sort of alternative access for those who don't use computers for various reasons, for example, the Amish.

CCD fees are not taken into account so the CCD has to call an applicant to collect its fees.

Someone (at both the CCDs & regional offices) will have to be available to assist those that need to apply for a permit but cannot afford a consultant to do the work for them.

CCD staff informed us that they have registered for an account with Greenport but have not been able to get into the system. They also informed us that they have not received definitive training - when they went for training, DEP staff leading the training could not get in the system.

There has not been much training on the system. The system is going to be frustrating because there is no integration with the other systems, and information entry will be duplicative, which is time consuming. Staff said they need to figure out how to upgrade technology so that they can accommodate ePermitting.

They had regional training on ePermitting, however, there was not a DEP IT person in attendance.

Another issue is the statutory requirement that an approved, stamped set of plans be kept on site at all times, and ePermitting is paperless. CCDs have not received an answer as to how this statutory requirement will be met.

DEP is not providing funding to the CCDs to accommodate implementation. They may have to increase their fees to purchase what is needed to implement ePermitting, for example, new computers, a plotter, paper, and upgrades to computer systems and software.

Source: Developed by LBFC Staff from contacts with stakeholders.

According to a DEP official, work on ePermitting for the Chapter 102 is to begin upon completion of the Chapter 105 ePermitting project.

E. General Permit Registration

In conjunction with the Army Corps of Engineers, DEP streamlined the general permit registration application. The intent was to simplify the process and federal coordination under the PASGP-5 and to eliminate or simplify pieces of the application that were burdensome, confusing, or unnecessary. The new form was implemented in 2018. DEP stated that the process has led to more efficient processing of general permit registration applications.

Appendix A – Senate Resolution No. 226

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. **226** Session of
2017

INTRODUCED BY YUDICHAK, RESCHENTHALER, BREWSTER, WHITE, MENSCH,
REGAN, WAGNER AND BARTOLOTTA, OCTOBER 19, 2017

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 19, 2017

A RESOLUTION

Directing the Legislative Budget and Finance Committee to
conduct an independent performance evaluation of certain
Statewide environmental permitting programs administered by
the Department of Environmental Protection.

WHEREAS, The Department of Environmental Protection is
charged with the protection of this Commonwealth's air, land and
water from pollution, as well as the environmental health and
safety of residents; and

WHEREAS, Federal and State laws and regulations require the
Department of Environmental Protection to review environmental
permit applications and make determinations for approval,
including the Clean Streams Law, the Dam Safety and
Encroachments Act, the Federal Clean Water Act and related
statutes; and

WHEREAS, Municipalities and industry and business communities
that perform activities subject to environmental regulation and
permitting have raised concerns about the cost, economic

impairment and missed opportunities for job creation resulting from instances of inconsistent review of environmental permit applications and unreasonable delays in environmental permit review and issuance by the Department of Environmental Protection; and

WHEREAS, The Department of Environmental Protection has undertaken considerable efforts to address concerns raised regarding its environmental permit review process and continues to work to identify problems and implement technical solutions within available resources; and

WHEREAS, Continued concerns expressed by stakeholders on all sides of the environmental permitting process deserve the attention of the General Assembly, which may be addressed through an independent, thorough and impartial performance evaluation; and

WHEREAS, Such a review of Statewide environmental permitting programs by the Legislative Budget and Finance Committee, with assistance from impartial experts, is necessary to establish a fair baseline from which additional administrative and legislative policies may be established; therefore be it

RESOLVED, That the Senate direct the Legislative Budget and Finance Committee to conduct an independent performance evaluation of environmental permitting under the Erosion and Sediment Pollution Control Program and the Water Obstruction and Encroachment Program administered by the Department of Environmental Protection and county conservation districts; and be it further

RESOLVED, That the Legislative Budget and Finance Committee, in conducting the evaluation, shall seek assistance, through cooperation or contract, from impartial individuals who have recognized experience and expertise in the oversight and implementation of environmental laws and regulations and environmental or energy engineering or sciences, including, but not limited to, individuals from accredited academic institutions; and be it further

RESOLVED, That the Legislative Budget and Finance Committee include the following elements in its evaluation of permitting under the Erosion and Sedimentation Program and Water Obstruction and Encroachment Program:

(1) consideration of concerns for permitting programs expressed by stakeholders, including the Department of Environmental Protection and regulated municipality, business and industry representatives;

(2) an analysis and comparison of total and individual resources and workloads for the permitting programs and all offices charged with administration of the programs, including central and regional offices of the Department of Environmental Protection and county conservation districts;

(3) a comparison of permit review times, performance levels and goals for each office of the Department of Environmental Protection and a representative sample of county conservation districts charged with administration of the permitting program;

(4) a review of the appropriateness and effectiveness of

applicable policies, procedures or guidance for permit review and issuance, including the permit decision guarantee program and related fee structures;

(5) an analysis of permit application procedures and outcomes, including the examination of random samples of applications and interviews with permit applicants and appropriate program staff of the Department of Environmental Protection and conservation districts;

(6) an evaluation of recent and ongoing efforts and initiatives by the Department of Environmental Protection or conservation districts to remove obstacles to effective and efficient permit reviews and improve outcomes for applicants;

(7) a review of similar permitting programs administered in this Commonwealth or other states in an effort to identify best practices or offer suggestions for improving review performance without sacrificing environmental protection; and

(8) recommendations for practical administrative or legislative actions that improve administration, timing and outcomes of the permitting programs;

and be it further

RESOLVED, That the Legislative Budget and Finance Committee provide a comprehensive report of its findings and recommendations to the Senate not later than one year after the adoption of this resolution.

Appendix B – County Fee Schedules for Chapter 102 and Chapter 105 Permits

Standard fees for both permit programs, as determined by regulation, are presented in Section V of this report. Below is a summary of the fees⁴⁵ that CCDs charge for their work in permit application processes. Disturbed acres are rounded to the nearest whole acre. Where dates follow the county name below, they represent the last time fees were revised.

ADAMS – 12/15/16

Chapter 102 - The fees, intended to cover the initial review and one revision, for services related to the E&S program (D = disturbed acres, do not round):

Disturbed Acres	Fee (in dollars)
Less than 0.5 acre	\$400 base fee
0.5 – less than 1	800 base fee
1 – less than 5	1,000 base fee + (D x \$400)
5 – less than 25	1,500 base fee + (D x \$400)
25 plus	3,000 base fee + (D x \$400)

Chapter 105 - E&S plans associated with Chapter 105 general permits are charged a flat fee of \$400 for plan review and inspection services.

ALLEGHENY

Chapter 102 - Both General & Individual NPDES submissions use the following fee schedule:

Total Project Acreage	Regular Fee (in dollars)	Expedited Fee (plus regular fee) (in dollars)
0-1.99 acres	\$700	\$1,400
2-4.99	1,600	3,200
5-9.99	2,900	5,800
10-24.99	5,200	10,400
25-39.99	6,500	13,000
40-54.99	8,200	16,400
55-69.99	8,900	17,800
70 plus	8,900 + \$150/additional acre	17,800 + 250/additional acre

Chapter 105 - All Chapter 105 general permits require a reviewed and approved E&S plan. If the Chapter 105 general permit is associated with a Chapter 102 permit there is no separate E&S plan review fee

⁴⁵ The fees found in this document are taken directly from the fee schedules found on each of the CCD's websites. There may be additional fees charged, not included in this appendix, for things such as timber harvesting activities, subsequent reviews, unique projects, phased projects, modifications, spoil and borrow sites, enforcement activities, special conditions, processing fees, returned check fees, permit renewals, non-NPDES plan reviews, and administrative requests.

charged. If the Chapter 105 general permit is not associated with a Chapter 102 permit, the following E&S review fees are charged:

Total Project Area	Regular Fee (in dollars)	Expedited Fees (plus regular fee) (in dollars)
0-0.49 acres	\$200	\$400
0.5-0.99	400	800

ARMSTRONG – 7/1/14

Chapter 102 - The following E&S project review fees include plan reviews, site inspections, technical assistance, complaint response, educational programs, and administrative support:

Project	Fee (in dollars)
Land Disturbance < 5,000 sq. ft. and not part of any DEP permit	No Charge
Land Disturbance > 5,000 sq. ft. to 1 acre	\$175
Land Disturbance > 1 acre	175 per acre + NPDES permit fee
General Permit or Waiver of Permit	175 per acre
Joint Permit Application or Small Project Permit	175 per acre
Single Family Residence < 1 acre and not part of a larger plan of development or needing any DEP permit	No Charge

Chapter 105 – The review of an E&S plan associated with a Chapter 105 general permit is charged \$175.

BEAVER – 2/1/18

Chapter 102 - Fees are based on the amount of disturbed acres associated with the project and are intended to cover the entire E&S review and the first revision. They are:

Disturbed Acreage	Regular Fee (in dollars)	Expedited Fee (in dollars)
0.00-1.00 (base fee)	\$500	Double Regular Fees
1.00 or more	500 (base fee) + \$150/acre	Double Regular Fees

Chapter 105 - The review of an E&S plan associated with a Chapter 105 general permit is charged \$150.

BEDFORD – 1/23/17

Chapter 102 - The following E&S plan review fees include planning meetings, E&S plan reviews, construction meetings, and inspections as follows by project type:

Project Description	Disturbed Project Acres/Number of Units	Fee (in dollars)
Industrial/Commercial/Utility Projects	<1 acre	\$500
	1-5	1,000 plus 200/acre
	6-25	2,000 plus 150/acre
	25 plus	3,000 plus 100/acre
Residential	1-10 units	200/unit
	11-20	2,000 plus 100/unit
	21-100	3,000 plus 75/unit
	101 plus	4,000 plus 50/unit

Chapter 105 - The review of an E&S plan associated with a Chapter 105 general permit is charged \$150.

BERKS – 8/17

Chapter 102 – The initial fee includes the initial review, one subsequent review, site inspections, technical assistance, complaint response, and administrative support:

Disturbed Acres	Fee (in dollars)
1-4.99 acres	\$2,350
5-9.99	3,200
10-14.99	4,000
15-19.99	4,725
20-24.99	5,500
25 plus	6,300 plus 100/additional acre

Chapter 105 - Chapter 105 water obstruction and encroachment general permit E&S plans are subject to a \$210 review fee per general permit.

BLAIR – 1/12

Chapter 102 – The fee includes the E&S plan review and the first and second technical reviews as follows:

Project Description	Fee (in dollars)
Commercial/Industrial Development	\$400 base fee plus \$125/disturbed acre
Residential Subdivision (more than 3 lots)	400 base fee plus 150/disturbed acre
Linear Utility Project	500 base fee plus 200/disturbed acre
Other Types of Development	125 base fee plus 50/disturbed acre

Chapter 105 - The review of an E&S plan associated with a Chapter 105 general permit is charged \$125.

BRADFORD – 1/7/13

Chapter 102 – The following fee schedule covers the initial and a second review of the E&S plan:

Project Category	Fee (in dollars)
Less than 1 acre of earth disturbance	No Charge
1-2 acres	Disturbed acres x \$25 per acre plus estimated project life x 50 monthly inspection fee plus 100 base fee
2 plus acres	Disturbed acres x 10 per acre plus estimated project life x 75 monthly inspection fee plus 500 base fee
Residential Subdivision disturbing greater than 2 acres	Number of lots x 100 per lot plus estimated project life x 75 monthly inspection fee plus 500 base fee

Chapter 105 - Only mentioned in the review fees refund policy, which states that for Chapter 105 general permits, the CCD will refer back to page 7 in the most recent General Permit Standard Operating Procedure, which states, "If an applicant chooses to withdraw their registration package the application fee will not be returned."

BUCKS – 1/1/18

Chapter 102 - The following fee schedule for E&S reviews covers the initial review, resubmissions, and is based on disturbed acres only:

Disturbed Acres	Fee (in dollars)
Single Family Home under 1 acre	\$200
0.02296-0.99	650
1-1.99	1,350
2-4.99	2,000
5-9.99	3,000
10-19.99	5,000
20 plus	6,000 plus 100/acre

Chapter 105 - This CCD does not process Chapter 105 general permits.

BUTLER – 7/1/17

Chapter 102 - E&S review fees cover the initial review and first resubmission if submitted within 60 days and are calculated by rounding up to the nearest whole disturbed acre as follows:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Commercial/Industrial/Other Land Development	Up to 0.99 acres	\$500
	1-3	1,000
	3 plus to 6	1,500
	6 plus to 10	2,250
	Over 10	2,250 plus 190/acre over 10
Residential	1-5 units	200/unit
	6 plus	1,000 plus 60/unit over 5

Chapter 105 – All E&S plan reviews are charged a \$25.00 review fee. If the general permit is in an area that has an existing approved E&S plan, the fee is not required.

CAMBRIA – 2/7/13

Chapter 102 – Review fees for E&S plans cover initial reviews as follows:

Project Description	Fee (in dollars)
Non-Residential/Non-permitted Projects	\$500 base fee plus 100/acre
Non-Residential/Permitted Projects	500 base fee plus 100/acre
Residential Subdivision Projects	500 base fee plus 50/lot

Chapter 105 – E&S plan reviews associated with a Chapter 105 general permit are charged a base fee of \$100.

CAMERON – 12/10/14

Chapter 102 – The following E&S plan review fees are charged:

Project Description	Project Acres	Fee (in dollars)
Industrial/Commercial	Less than 1 acre	\$100
	1-4.99	250
	5-9.99	400
	10-14.99	550
	15-24.99	700
	25 plus	850 plus 15/acre over 25
Residential Subdivision		75/lot

Chapter 105 – Stream activities associated with general permits 1 & 3 are charged a \$25 E&S plan review fee. Other Chapter 105 general permits are charged a \$75 E&S plan review fee.

CARBON

Chapter 102 – The following fees are charged for the review of an E&S plan:

Project Description	Project Acres/Number of Proposed Lots	Fee (in dollars)
Industrial/Municipal Government/Authorities/School Districts/Commercial/Mining/Residential Land Development Plans/Roads	0-0.99 acres	\$1,220
	1-4.99	2,120
	5-9.99	3,080
	10-14.99	3,520
	15-19.99	4,150
	20-24.99	4,925
	25 plus	4,925 plus 75/acre over 24.99
Residential Developments	1 lot	250
	2-4	860
	5-10	1,625
	11-25	2,540
	26-40	3,300
	41-55	4,525
	56-70	5,050
	70 plus	5,050 plus 70/lot over 70

Chapter 105 – The following fees are charged:

Disturbed Acres	Fee (in dollars)
Less than 25 acres	\$325
25-49.99	475
50-249.99	625
50 plus	625 plus 2.50/acre over 249.99

CENTRE – 2/16/13

Chapter 102 – E&S plan review is \$400 plus \$75 per disturbed acre.

Chapter 105 – General permits require separate fees, but will not be required to pay an E&S review fee.

CHESTER – 5/21/18

Chapter 102 – The following fees cover meetings and the first technical review of E&S plans:

Project Description	Project Acres/Number of Units	Fee (in dollars)
Residential/Industrial/Commercial/Institutional	0-1 acre	\$1,125
	> 1-5	1,500
	> 5-10	3,000
	> 10-20	5,000
	Each additional acre	200
	Oil & Gas additional acre	450
Single Residential Unit	Individual lot	225

Chapter 105 – The CCD will not assist with acquiring Chapter 105 permits, however they will review the E&S portion of the application for a fee of \$250.

CLARION – 5/1/11

Chapter 102 – The fees for the review of an E&S plan are \$150 per plan if the acreage is 0-0.99 acres and \$150 per acre if the plan is an acre or more.

Chapter 105 – This CCD does not process Chapter 105 general permits.

CLEARFIELD

Chapter 102 – The following fees are charged for E&S plan reviews:

Project Description	Fee (in dollars)
Commercial/Industrial/Municipality Projects	\$700 for first acre plus \$100 each additional acre
Residential/Individuals	150 for first acre plus 25 each additional acre

Chapter 105 – The same fees as the Chapter 102 program apply to E&S plans associated with Chapter 105 general permits.

CLINTON – 4/1/15

Chapter 102 – The following fees are charged for E&S plan reviews as follows:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential/Charitable/Religious/Environmental Organizations/Municipal Authorities	0-0.25 acres	\$70
	0.26-0.99	125
	1-2.99	210
	3-4.99	320
	5 plus	370 plus 25/acre over 5
Residential Subdivisions/Individuals/Commercial	Less than 1 acre	370
	1-2.5	525
	2.51-4.99	735
	5-9.99	1,050
	10-14.99	1,315
	15-24.99	1,575
	25 plus	1,680 plus 50/acre over 25
Industrial/Commercial (Non-Structural)	0-0.5 acres	110
	0.5-0.99	220

Chapter 105 – There is no fee charged for the review of an E&S plan associated with Chapter 105 general permits.

COLUMBIA – 6/1/16

Chapter 102 – The following E&S plan review fees include the initial review and a second review:

Residential Developments: \$200 base fee plus \$100 per unit

Industrial/Commercial Sites: \$500 base fee plus \$75 per acre of disturbed area

Chapter 105 – If the disturbance is less than ½ acre there is a \$100 fee but that is waived if the plan is submitted at the same time as the general permit application. Anything over ½ acre of disturbance will follow the same fee schedule for industrial/commercial sites as outlined above.

CRAWFORD – 2/21/13

Chapter 102 – The following fees cover the initial review and one revision of a project, if submitted within 60 days of the deficiency letter. Fees are broken down by project type:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential/Agricultural	0-1 acre	\$50
	2	100
	3-5	200
	6-10	300
	11-15	400
	16-20	500
Commercial/Industrial	0-1 acre	200
	2-50	300 plus 100/acre
	51-100	3,000 plus 50/acre
	101 plus	4,500 plus 35/acre
Residential Development	0-15 units	500 plus 65/unit
	16-20	1,000 plus 50/unit
	21-25	1,500 plus 45/unit
	26-35	2,000 plus 40/unit
	36-50	2,500 plus 35/unit
	51-75	3,000 plus 30/unit
	76-100	3,500 plus 25/unit
	100 plus	4,000 plus 20/unit

Chapter 105 – The E&S review fee does not apply when the applicant is submitting for Chapter 105 general permits.

CUMBERLAND

Chapter 102 – The following fees cover the initial plan submission and one re-submission:

Project Description	Disturbed Project Acres/Number of Units	Fee (in dollars)
Industrial/Commercial/Utility	Less than 1 acre	\$500
	1-5	500 plus 200/acre
	6-25	1,000 plus 150/acre
Residential	26 plus	3,000 plus 100/acre
	1-10 units	200/unit
	10 plus	1,500 plus 100/unit

Chapter 105 – There is a fee waiver for the review of E&S plans associated with Chapter 105 general permits.

DAUPHIN – 9/1/18

Chapter 102 – The following fees are charged for a review of an E&S plan:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Industrial/Commercial/Residential	Less than 1 acre	\$1,150.00
	1-5	1,140 plus 340/acre
	6-25	2,280 plus 230/acre
	26-100	6,840 plus 115/acre
	101 plus	13,680 plus 70/acre
Single Family Residence	Less than 1 acre	500

Chapter 105 – The review of an E&S plan associated with a Chapter 105 general permit is \$95. E&S plan reviews for Chapter 105 general permits that are part of the E&S review for larger projects will not be charged an additional E&S review fee.

DELAWARE – 2/7/15

Chapter 102 – The following fees for an E&S plan review cover the cost of an initial review plus one follow-up revision submitted in response to the first review letter:

Project Acres	Fee (in dollars)
0-0.99 acres	\$490
1-4.99	780
5-9.99	1,120
10-19.99	1,510
20-29.99	1,705
30-39.99	2,050
40-49.99	2,240
50-74.99	2,730
75-99.99	3,215
100 plus	3,215 plus 20/acre over 100

Chapter 105 – Will require a separate E&S plan and a \$150 fee unless the application is part of a larger plan being reviewed by the CCD.

ELK – 2/25/13

Chapter 102 – The following review fees apply to the review of E&S plans:

Project Description	Disturbed Acres	Fee (in dollars)
Residential/Municipalities/Authorities/Schools/Religious Organizations	Less than 2 acres	\$100
	2-4.99	200
	5-9.99	300
	10-14.99	800
	15 plus	800 plus 35/acre over 15
Industrial/Commercial/Gas & Oil	Less than 1 acre	250
	1-4.99	400
	5-9.99	550
	10-14.99	700
	15-24.99	850
	25 plus	950 plus 50/acre over 25

Chapter 105 – Projects that are limited to earth disturbance for the general permit activity only are not required to pay additional E&S review fees. Entities (municipalities, municipal authorities, county, state, and federal governments) that are exempt from paying the Chapter 105 application fees are required to pay a \$25 E&S plan review fee. Projects that involve earth disturbance in addition to the general permit activity are required to follow the Chapter 102 fee schedule above.

ERIE – 1/1/18

Chapter 102 – The following fees cover the initial review of the E&S plan as well as one review of a subsequent revision if submitted within 60 days of a deficiency letter:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential	1 unit	\$200
	2-5	250/unit
	6-15	1,000 plus 60/unit
	16-25	1,500 plus 50/unit
	26-50	2,000 plus 40/unit
	51-75	3,500 plus 30/unit
	76 plus	4,500 plus 20
Commercial/Industrial/Other Land Development	Up to 1 acre	500
	1.1-5	500 plus 250/acre
	6-25	2,000 plus 100/acre
	26-75	3,000 plus 70/acre
	76-99	5,000 plus 50/acre
	100 plus	6,000 plus 40/acre

Chapter 105 – Requires the appropriate administrative fee, per the DEP Chapter 105 fee schedule and an E&S plan review fee, unless otherwise noted. Chapter 105 fees:

Cumulative Length Impact (in feet)	Fee (in dollars)
0-50 feet	\$150
50-250	250
250 plus	300 plus 50/50 feet over 250

FAYETTE – 10/1/17

Chapter 102 – The following review fees apply to all plans that are submitted for E&S review and are based on the number of disturbed acres and is intended to cover the entire review process:

Disturbed Acreage	Fee (in dollars)
0-0.99 acres	\$400
1-1.99	600
2-2.99	700
3-3.99	800
4-4.99	900
5-5.99	1,000
6-6.99	1,100
7-7.99	1,200
8-8.99	1,300
9-9.99	1,400
10 plus	1,500 plus 100/disturbed acre over 10

Chapter 105 – This CCD does not process Chapter 105 general permits.

FOREST

Forest County does not conduct permit reviews.

FRANKLIN – 8/1/18

Chapter 102 – The following fee schedule is for review and inspection services of E&S plans:

Disturbed Acres	Fee (in dollars)
0.1-0.99 acres	\$500 flat fee
1-4.99	825 base fee plus 325/acre
5-9.99	950 base fee plus 300/acre
10-24.99	1,200 base fee plus 275/acre
25-49.99	1,800 base fee plus 250/acre
50 plus	4,300 base fee plus 200/acre

Chapter 105 – Projects requiring the review of E&S plans associated with Chapter 105 general permits are charged a district flat fee of \$250.

FULTON – 6/9/16

Chapter 102 – The following review fees include planning meetings, E&S reviews, construction meetings and inspections:

Project Description	Disturbed Acres	Fee (in dollars)
Residential/Industrial/Commercial/Utility Projects	0-1 acre	\$875
	1-5	1,750 plus 350/acre
	5-25	3,500 plus 265/acre
	25 plus	5,250 plus 175/acre
Single Family Residence	Less than 1 acre	350

Chapter 105 – This CCD does not process Chapter 105 general permits.

GREENE – 2/15/05

Chapter 102 – The following E&S review fees apply:

Disturbed Acres	Fee (in dollars)
0-0.24 acres	\$300
0.25-0.49	350
0.50-0.74	400
0.75-0.99	500
1-1.99	600
2-2.99	700
3-3.99	800
4-4.99	900
5-5.99	1,100
6-6.99	1,150
7-7.99	1,200
8-8.99	1,250
9-9.99	1,300
10 plus	1,500 plus 100/additional acre

Chapter 105 – Permit applications for Chapter 105 general permits follow the DEP schedule and a separate E&S review fee is required for each Chapter 105 permit submitted for review and is based on the fee schedule outlined above under Chapter 102.

HUNTINGDON – 3/17

Chapter 102 – The following fees are charged for E&S plan reviews:

Project Description	Fee (in dollars)
Commercial/Industrial Development	\$400.00 base fee plus \$150/acre
Residential Subdivision (3 plus lots)	300 base fee plus 100/acre
Other Types of Development	100 base fee plus 50/acre

Chapter 105 – This CCD does not process Chapter 105 general permits.

INDIANA – 2/1/17

Chapter 102 – The E&S review fee is intended to cover the initial E&S plan review and one subsequent re-revision:

Project Description	Fee (in dollars)
Earth Disturbance greater than 1 acre	NPDES fee (\$500 or \$1,500) plus \$175/acre
Earth Disturbance less than 1 acre	175

Chapter 105 – This CCD follows the DEP fee schedule for Chapter 105 general permits. Projects that are limited to earth disturbance for the general permit activity only are not required to pay additional E&S plan review fees.

JEFFERSON – 1/1/18

Chapter 102 – The following fee schedule will apply whenever the application and the E&S plan are submitted for an adequacy determination or environmental review. A separate review fee will accompany each submission for a plan review on the same tract of land:

Project Description	Disturbed Acres	Fee (in dollars)
Commercial/Industrial/Municipal/Non-Profit of 1 acre or greater	Up to the first disturbed acre	\$500
	Additional disturbed acre	150
Residential/Individual/Municipal/Non-Profit less than 1 acre	Up to first disturbed acre	150
	Additional disturbed acre	25

Chapter 105 – No additional E&S review fees.

JUNIATA – 5/15/17

Chapter 102 – The following fees include planning meetings, E&S plan review, construction meetings, and inspections:

Project Description	Disturbed Project Area	Fee (in dollars)
Residential/Industrial/Commercial/Utility Projects	Under 1 acre	\$500
	1-4	650 plus 250/acre
	5-24	1,000 plus 200/acre
	25 plus	2,250 plus 150/acre
Single Family Residence	Less than 1 acre	300

Chapter 105 – This CCD does not process Chapter 105 general permits.

LACKAWANNA – 4/19/12

Chapter 102 – The following fees cover an initial review plus one review of a revision in response to the first technical deficiency letter:

Project Description	Disturbed Acres/Number of Lots	Fee (in dollars)
Residential Developments	1 lot	\$120
	2-4	250
	5-10	650
	11-25	1,000
	26-50	1,400
	51-70	2,000
	71 plus	2,000 plus 60/additional lot
Industrial/Commercial/Other	Less than 0.33 acres	75
	0.34-0.99	500
	1-4.99	900
	5-14.99	1,800
	15-30	3,000
	30 plus	3,000 plus 60/additional acre

Chapter 105 – E&S plans associated with Chapter 105 general permits that are not part of larger projects are charged \$75 for the review.

LANCASTER – 10/12/16

Chapter 102 – The following fees cover a pre-application meeting, initial plan review and one resubmission:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential Subdivisions	1 unit – 105 units	\$300 - \$7,300
Commercial/Industrial/Agricultural/Land Development Plans/Other	Less than 1 acre	600
	1-1.99	750
	2-2.99	1,000
	3-3.99	1,250
	4-4.99	1,500
	5 plus	1,500 plus 100/acre over 5

Chapter 105 – Refer to the DEP Chapter 105 fee schedule in Section V of this report.

LAWRENCE – 3/1/17

Chapter 102 – The following fees, based on total project acres, are charged for initial the review of an E&S plan with subsequent reviews charged the revision fee for each resubmission:

Total Project Acres	Initial Fee (in dollars)	Revision Fee (in dollars)
0-0.99 acres	\$250	\$50
1-4.99	1,500	400
5-14.99	3,000	600
15-30.99	5,000	1,200
31-50.99	6,750	1,600
51-69.99	9,500	2,000
70-94.99	10,000	3,000
95 plus	10,000 plus 25/acre	25 percent of initial fee

Chapter 105 – E&S reviews accompanying a Chapter 105 general permit are charged a \$250 fee.

LEBANON – 1/1/13

Chapter 102 – The following fees are charged for the review of E&S plans:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential Subdivisions	1-10 units	\$300/unit
	10 plus	3,000 plus 75/unit
Non-Residential Development	Less than 1 acre	1,300
	1-25	1,300 plus 300/acre
	25 plus	8,800 plus 90/acre

Chapter 105 - This CCD does not process Chapter 105 general permits.

LEHIGH – 4/2/18

Chapter 102 – The following fee schedule is charged for E&S reviews:

Project Description	Disturbed Acres	Fee (in dollars)
Residential/Industrial/Commercial	Single Residential Lot	\$2,500
	0-0.99 acres	2,937
	1-4.99	4,895
	5-9.99	8,668
	10-14.99	11,462
	15-19.99	15,400
	20-25	17,259
	25 plus	17,259.00 plus 150/acre
Commercial	0-0.99	1,474
Residential	0-0.99	500
Stockpile sites/Offsite Support Areas	0-0.99	500

Chapter 105 – E&S plans submitted as part of Chapter 105 general permit application and are is part of a larger project and/or involve additional earthmoving, the fee is according to those outlined for Chapter

102. General permits, joint permits and small projects and pond or lake construction/rehabilitation are charged \$500.

LUZERNE – 2/20/14

Chapter 102 – The following fees are charged for the review of E&S plans:

Project Description	Disturbed Acres/Number of Units/Lots	Fee (in dollars)
Residential	1-2 units/lots	\$325
	3-4	650
	5-10	1,300
	11-20	1,700
	21-30	2,400
	31-40	3,000
	41-50	3,500
	51-75	3,900
	76-100	4,500
	101-125	5,000
	126-150	5,700
	151-175	6,300
	176-200	6,800
	200 plus	6,800 plus 50/lot over 200
Industrial/Commercial/Institutional	0-0.99 acres	1,200
	1-4.99	2,000
	5-9.99	2,800
	10-14.99	3,200
	15-19.99	3,800
	20-25	4,600
		25 plus
Underground Utility Lines	0-899 linear feet	1,200
	900-4,499	2,000
	4,500-8,999	2,800
	9,000-13,499	3,200
	13,500-17,999	3,800
	18,000-22,500	4,600
	22,500 plus	4,600 plus 25/every 900 ft.

Chapter 105 – This CCD does not process Chapter 105 general permits.

LYCOMING – 1/25/11

Chapter 102 – The following fees are charged for the review of an E&S plan:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
		\$75.00/lot plus assessment for infrastructure disturbances <0.5 acres
Single Unit Residential Lots	0.5-0.99 acres	125
	1-4.99	250
	5-9.99	325
	10 plus	500
Industrial/Commercial	Less than 1 acre	220
	1-4.99	385
	5-9.99	550
	10-14.99	715
	15-24.99	880
	25 plus	1,000 plus 25/acre over 25

Chapter 105 – Chapter 105 stream encroachment project fees:

Disturbed Acres	Fee (in dollars)
Less than 1 acre	\$50
1-4.99	100
5 plus	1,500

MCKEAN – 3/18/09

Chapter 102 – The following fees are intended to cover the initial review and one revision (submitted within 60 days of deficiency letter) and are based on disturbed acreage:

Project Type	Disturbed Acres/Lots or Units	Fee (in dollars)
Residential	Up to 1 acre	\$50.00
	1 plus	50 base fee plus 25/additional acre
Commercial/Industrial/Institutional/Other Land Developments	Up to 1 acre	200
Residential Development	Single Family Residence	200
	2 plus lots/units	200 base fee plus 50 per/lot or unit

Chapter 105 – E&S review fees are waived when associated with a Chapter 105 general permit application.

MERCER – 2/7/18

Chapter 102 – The fee for the review of an E&S plan is \$110 per disturbed acre rounded to the nearest whole acre. This fee covers the initial review and one revision.

Chapter 105 - There is nothing in the fee schedule regarding Chapter 105 general permits.

MIFFLIN – 1/1/00

Chapter 102 & Chapter 105 – The following fees cover costs associated with plan submissions, initial reviews, inspections, meetings, educational/administrative support, and one resubmittal:

Commercial/Industrial:

Project Type	Disturbed Acres	Fee (in dollars)
Commercial/Industrial	Under 1 acre	\$550
	1-10	550 plus 150/acre
	11-50	1,400 plus 100/acre
	50 plus	130/acre
Residential (3 plus lots)	Under 1 acre	300
	1-10	350 plus 125/acre
	11-50	1,000 plus 120/acre
	50 plus	130/acre
Non-Commercial Low Hazard/Single Family Residential	Under 1 acre	50
	1-10	100/acre

MONROE – 1/1/09

Chapter 102 – The following fees are charged for reviewing E&S plans:

Project Description	Project Acres/Number of Lots	Fee (in dollars)
Subdivisions	1 lot	\$150
	2-3	450
	4-10	1,125
	11-25	1,650
	26-50	2,250
	51-100	3,375
	101-300	5,625
	301 plus	5,625.00 plus 45/lot over 300
Industrial/Commercial/Residential/Other Projects	Less than 1 acre	450
	1-4.99	1,350
	5-9.99	2,250
	10-14.99	2,700
	15-19.99	3,150
	20-24.99	3,600
	25-49.99	4,500
	50 plus	4,500.00 plus 45/acre over 50

Chapter 105 – Plans submitted as part of an encroachment permit application with an earth disturbance of one acre or more will follow the industrial/commercial fee schedule outlined above. There is a \$150 charge to obtain a permit waiver for Chapter 105 general permits 1, 2, 3, 4, 5, 7, 11 and 15. There is a \$50 fee for waiver for Chapter 105 general permits 6, 8, and 9. If the project is a Chapter 105 individual permit, small project, or pond or lake construction/rehabilitation there is a \$450 fee.

MONTGOMERY – 6/5/18 & 7/31/18

Chapter 102 – The following fees cover the initial review:

Disturbed Acres	Fee (in dollars)
0.10-0.99 acres	\$455
1-4.99	1,500
5-9.99	2,380
10-19.99	3,470
20 plus	3,470 plus 75/acre over 20

Single residential lot: \$200 for minimal disturbance (1/2 acre or less) on less than 3 percent slope.

Chapter 105 – E&S plan reviews for a Chapter 105 general permit are \$200 unless the application is part of a larger project plan being reviewed by the CCD.

MONTOUR – 12/1/13

Chapter 102 – The following fees include initial plan reviews, pre-application meetings, pre-construction meetings, site inspections, technical assistance, complaint response, educational programs, and administrative support:

Project Description	Total Project Acres	Fee (in dollars)
Single Residential Lots	lot	\$100
Residential Developments	0-0.99 acres	350 plus 100/lot
	1-4.99	600
	5-9.99	800
	10-14.99	1,000
	15-24.99	1,200
	25 plus	1,500 plus 50/acre over 25
Commercial/Industrial	0-0.99 acres	500
	1-4.99	1,000
	5-9.99	1,500
	10-14.99	2,000
	15-19.99	2,500
	20-24.99	3,000
	25 plus	3,000 plus 100/acre

Chapter 105 – Refer to the DEP Chapter 105 fee schedule in Section V of this report.

NORTHAMPTON – 4/1/18

Chapter 102 – The following fee schedule will cover the initial review of E&S plans:

Minor earth disturbance projects that are < 1 acre and not part of a larger common plan of development and do not require NPDES permitting.

Residential	\$200
Industrial/Commercial	\$1,200

Earth disturbance project service fees – residential, industrial, commercial, utility installation/maintenance, roadway improvements/construction/maintenance:

Project Area Acres	Fee (in dollars)
1-1.99 acres	\$2,500
2-4.99	5,000
5-9.99	7,500
10-14.99	10,000
15-19.99	12,500
20-25	15,000
25 plus	15,000 plus 200/acre over 25

Chapter 105 – Reviews of the E&S plan for general permits are \$300, joint/individual permits are \$600. These fees are for encroachment only. If a Chapter 105 activity is part of a larger project and/or involves additional earthmoving, the fee is the same as the earth disturbance project service fees outlined above.

NORTHUMBERLAND – 2/1/18

Chapter 102 – The following fees are charged for the review of E&S plans based on disturbed acres:

Single lot	\$180 plus \$30 per acre
Residential Developments	\$480 plus \$120 per lot/unit
Industrial/Commercial/Institutional	\$480 plus \$120 per acre

Chapter 105 – Refer to the DEP Chapter 105 fee schedule in Section V of this report.

PERRY – 10/10/16

Chapter 102 – The following fees apply to the review of E&S plan reviews:

Project Type	Fee (in dollars)
Small General Projects less than 1 acre	\$75.00
Single Lot Residential Construction	250 base fee plus 150
Residential Development of 2 plus lots	750 base fee plus 150/lot
Commercial/Industrial Land Development	250 plus 250/disturbed acre

Chapter 105 – This CCD does not process Chapter 105 general permits.

PIKE – 5/16/16

Chapter 102 – For applications/plans associated with earth disturbance activities that are less than one acre of earth disturbance there is a district service fee of \$150. For applications/plans associated with earth disturbance activities of more than acre, there is a district service fee of \$200 per disturbed acre.

Chapter 105 – For Chapter 105 general permit related E&S plan reviews that are not part of a larger plan of development, there is a standard district fee of \$100.

POTTER – 2/5/13

Chapter 102 – The following fees are charged for the review of E&S plans:

Project Description	Disturbed Acres/Number of Units/Lots	Fee (in dollars)
Residential Subdivision	1-2 lots	\$100
	2 plus	100 plus 10/lot
Industrial/Commercial and any Other Land Development	0-0.99 acres	300
	1-4.99	600
	5-9.99	900
	10-14.99	1,200
	15-24.99	1,500
	25 plus	1,500 plus 50/acre over 25

Chapter 105 – Reviews required for Chapter 105 permits are \$30.

SCHUYLKILL – 3/17/15

Chapter 102 – The following fees are intended to cover the initial review and one revision:

Project Description	Disturbed Acres/Number of Units/Lots	Fee (in dollars)
Residential Development	1-10 units/lots	\$200 per unit/lot
	10 plus	2,000 plus 75 per unit/lot
Commercial/Industrial/Institutional and Other Land Development	5,001 sq. ft. – 0.94 acres	500
	0.95-4.99	1,750
	5-9.99	2,500
	10-14.99	3,250
	15-19.99	4,000
	20-24.99	5,000
	25 plus	5,000 plus 200/additional acre

Chapter 105 – The review of E&S plans associated with Chapter 105 general permits is \$200.00. The CCD reserves the right to increase the review fee based on the scope of the work and will not exceed the fee schedule for the commercial section listed under Chapter 102.

SNYDER – 6/7/16

Chapter 102 – The following fees are charged for the review of E&S plans based on disturbed acreage:

Project Type	Fee (in dollars)
Residential Small Project – minimum of 5,000 sq. ft. to 1 acre	\$100
Single Family Residential – minimum of 1 acre	\$150 base fee plus 25/disturbed acre
Residential Development – minimum of 5,000 sq. ft. disturbed	400 base fee plus 100 per lot/unit
Commercial and Industrial Development – minimum of 5,000 sq. ft. disturbed	400 base fee plus 100/disturbed acre

Chapter 105 – This CCD does not process Chapter 105 general permits.

SOMERSET – 11/19/10

Chapter 102 – All E&S plans submitted for review are charged \$75 for each disturbed acre. If there is an earth disturbance of more than 5,000 sq. ft but less than 1 acre a review is recommended. For a single family home or other disturbance less than 5,000 sq. ft., there is no review required.

Chapter 105 – This CCD does not process Chapter 105 general permits.

SULLIVAN – 8/17

Chapter 102 – The following fees are charged for the review of E&S plans.

Project Description	Total Project Acres/Number of Lots	Fee (in dollars)
Subdivisions/Single Unit Residential	1-2 lots	\$100
	3 plus	50 for the first lot plus 40/additional lot
Industrial/Commercial	Less than 1 acre	200
	1-4.99	350
	5-9.99	500
	10-14.99	650
	15-24.99	800
	25 plus	950 plus 25/acre over 25

Chapter 105 – Fees for the review of E&S plans associated with Chapter 105 stream encroachment projects:

Disturbed Acres	Fee (in dollars)
Less than 1 acre	\$50
1-4.99	100
5 plus	1,500

SUSQUEHANNA

Chapter 102 – The following E&S review fees are for the initial and first review of all E&S plans.

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Residential	Single lot	\$75
	Each additional lot	50
Commercial	0-5 acres	1,000
	Each additional acre	100

Chapter 105 – The fee for a review of an E&S plan associated with Chapter 105 general permits 1-15 is charged a \$25.

TIOGA

Chapter 102 – The following E&S review fees are charged:

Project Description	Disturbed Area	Fee (in dollars)
Residential Subdivision	Greater than half an acre	\$100 assessment per lot
	0.5-1.99 acres	150
	2-4.99	350
	5-9.99	550
	10-14.99	750
	15 plus	750 plus 40/acre over 15
Industrial/Commercial (townhouses, apartments, Trailer parks)	Less than 1 acre	300
	1-4.99	500
	5-9.99	700
	10-14.99	900
	15-24.99	1,100
	25 plus	1,200 plus 250/acre over 25
Other Land Development	Less than 1 acre	150
	1-2.99	200
	3 plus	200 plus 25/acre over 3

Chapter 105 – This CCD follows the DEP Chapter 105 fee schedule for general permits found in Section V.

UNION – 1/1/11

Chapter 102 – The following fee schedule are charged for the review of E&S plans:

Project Description	Project Area	Fee (in dollars)
Residential	0-0.99 acres	\$150
	1-1.99	200
	2-2.99	250
	3-4.99	300
	5-6.99	350
	7-8.99	400
	9-10.99	450
	11 plus	50/acre
Commercial	0-0.99	225
	1-1.99	300
	2-2.99	375
	3-4.99	450
	5-6.99	525
	7-8.99	600
	9-10.99	675
	11 plus	75/acre

Chapter 105 – This CCD does not process Chapter 105 general permits.

VENANGO – 4/9/15

Chapter 102 – The following E&S review fees are charged based on disturbed acreage:

Project Description	Disturbed Acres	Fee (in dollars)
Residential/Municipalities/Authorities/Schools/Religions Organizations	0-1 acre	\$150
	1.1 plus	150 plus 100/acre
Industrial/Commercial/Gas & Oil	0-1	200
	1.1 plus	200 plus 100/acre

Chapter 105 – Stream encroachment E&S plans may be submitted with the earth disturbance plan for a project or as a stand-alone project. If the encroachment plan is submitted as a part of an earth disturbance E&S plan review, this fee is charged in addition to the regular E&S plan review fee. Stand-alone encroachment projects will only be charged according to the following fee schedule based on total cumulative stream length impacted:

Total Cumulative Stream Length Impacted (in feet)	Fee (in dollars)
0-49 feet	\$125
50-100	175
101-150	225
151-200 plus	300 plus 50 every 50 ft. over 200 ft.

WARREN – 2/20/17

Chapter 102 – The following plan review fees are charged for the review of an E&S plan:

Project Description	Disturbed Acres	Fee (in dollars)
Residential	Less than 1 acre	\$100
	1-4.99	200
	5-9.99	300
	10-14.99	400
	15 plus	500
Commercial/Industrial/Residential Subdivision	Less than 1 acre	200
	1-4.99	250 plus 100/acre
	5-9.99	500 plus 100/acre
	10-14.99	1,000 plus 100/acre
	15-19.99	1,500 plus 100/acre
	20-24.99	2,000 plus 100/acre
	25 plus	2,500 plus 100/acre

Chapter 105 – Projects that are limited to earth disturbance for the general permit activity only are not required to pay additional E&S review fees. Entities that are exempt from paying the DEP Chapter 105 application fees are required to pay a \$50 E&S plan review fee, except for CCD sponsored projects. Projects that involve earth disturbance in addition to the general permit activity are required to pay the E&S review fee.

WASHINGTON - 9/17/08

Chapter 102 – E&S plan review fees:

Number of Total Acres	Fee (in dollars)
0-2 acres	\$600
2.1-3	700
3.1-4	800
4.1-5	900
5.1-6	1,000
6.1-7	1,100
7.1-8	1,200
8.1-9	1,400
9.1-10	1,500
10 plus	1,800 plus 100/acre over 10

Chapter 105 – There is a \$150 processing fee for Chapter 105 general permit applications. The processing fee is waived for single family dwellings, agricultural activities, forestry, and government entities. The expedited fee would be 2x the processing fee.

WAYNE – 1/1/10

Chapter 102 – The following fees are charged for the review of the E&S plan:

Project type	Fee (in dollars)
Residential Development	\$250 initial fee plus \$20 per lot/unit
Larger single-family residential development	75 initial fee plus 95 per acre
Commercial/Industrial/Institutional	250 initial fee plus 95 per acre

Chapter 105 – There is no review fee for Chapter 105 general permits.

WESTMORELAND - 3/16/18

Chapter 102 – The following fees are charged for the review of an E&S plan:

Disturbed Acreage	Fee (in dollars)
0-0.99 acres	\$825
1-4.99	1,540
5-9.99	2,065
10-14.99	2,585
15-19.99	3,085
20-24.99	3,605
25-29.99	4,110
30-39.99	4,300
40-49.99	6,170
50-74.99	7,400
75-99.99	9,450
100 plus	11,335

Chapter 105 – The CCD does not review Chapter 105 GP-11 applications, however they will provide assistance in completing the forms for \$50 per hour. The following fees are calculated for Chapter 105 general permits 1-9:

Cumulative Stream Length Impacted (in feet)	Fee (in dollars)
0-49.99 feet	\$125
50-199.99	225
200 plus	325 plus 50 every 50 ft. over 200 ft.

WYOMING - 11/19/10

Chapter 102 – The following fees cover the initial review and one review of revisions:

Project Description	Disturbed Acres/Number of Units	Fee (in dollars)
Single lot residential		\$50
Small industrial		75
Other small project		50
Residential/Subdivision		50/lot
Industrial/Commercial/Other	Less than 1 acre	600
	1-4.99	1,200
	5-9.99	1,800
	10-14.99	2,400
	15-19.99	3,000
	20-24.99	3,600
	25 plus	3,600 plus 50/acre

Chapter 105 – The following fees are based on acres disturbed:

Disturbed Acres	Fee (in dollars)
0-9.99 acres	\$50 plus \$5/acre
10-24.99	75 plus 5/acre
25-49.99	150 plus 5/acre
25 plus	350 plus 5/acre

YORK - 7/1/16

Chapter 102 – The following fees include pre-application meetings; completing technical E&S plan reviews; completing initial; routine and final inspections where voluntary compliance is being obtained; attending site meetings; investigating complaints; attending pre-construction meetings; conducting educational programs; and providing administrative support:

Single Family Residential Unit: <1 acre and not associated with a larger plan of development - \$150.

Other land development: includes residential, commercial, industrial, agricultural buildings/structures, highway, and utility line projects. There is an additional fee of \$300 per stream or wetland for linear projects.

Disturbed Acres	Fees
0.1-1 acre	\$750
2-5	750 plus 225/acre
6-25	1,500 plus 150/acre
26-100	4,500 plus 75/acre
101 plus	9,000 plus 45/acre

Chapter 105 – There is a \$150 charge for stand-alone projects with less than 1 acre of earth disturbance. Where the permitted activity is associated with larger common plan of land development, timber harvest operation, spoil and borrow site or clearing and grubbing site the fee for the overall project shall apply.

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Appendix C - Conservation District Levels of Program Delegation Responsibilities and Required Output Measures

Chapter 102 - Level I- Education/Information and Outreach

The CCD Will:

Provide education and outreach services for the Erosion and Sediment Control (E&S) Program, the Post Construction Stormwater Management (PCSM) Program, and the National Pollutions Discharge Elimination System (NPDES) Program.

Required Output Measures:

- Develop and conduct programs concerning the E&S, PCSM and NPDES programs. This also includes Agriculture E&S.
 - Conduct a minimum of two informational and/or educational programs per calendar year on: general programs for school students, watershed groups, agricultural producer groups, civic groups or the general public; and specialized educational programs for the regulated community, training seminars on the correct procedures for completing NPDES and E&S Control Permit applications, etc. (joint programs with neighboring CCDs will count as one credit for each sponsoring CCD).
 - Issue minimum of two news releases per calendar year (includes newsletters, newspaper articles, television, and radio announcements).
- Maintain an adequate supply of up-to-date applications and other forms developed by DEP on the E&S, PCSM and NPDES programs.
- Maintain and update all E&S, PCSM, and NPDES Program agreements in affect between the CCD and municipalities and/or other governmental agencies.
- Provide DEP with quarterly reports that detail accomplishments under their level of delegation. The CCD will submit forms to DEP by the 15th day following the end of each quarter. Failure to provide timely report information to DEP may result in Program payment being withheld by DEP until the required information has been submitted.
- Provide DEP with other reporting data as required.
- Refer complaints received to the appropriate agency within eight business days of receipt.

Chapter 102 - Level II- Program Administration and Compliance

The CCD Will:

- Perform all Level I responsibilities and required output measures.
- Maintain a system, developed by DEP with input from CCDs, including appropriate files for the receipt, assessment, and resolution of complaints. This system shall include complaints regarding agricultural operations.
- Receive, process, and review all permit application forms/NOIs, GIFs, and E&S plans for new or renewed general and individual NPDES permits involving equal to or greater than one acre of earth disturbance, and for E&S control permits. Complete the review process and timeframes in accordance with the items listed below or as specified in the Standard Operation Procedures (SOPs).
 - Conduct completeness reviews of all permits, including a completeness review of the PCSM components of the permit applications, within 15 business days of receipt. Pro-

vide notification to the applicant of completeness/incompleteness within the 20 business day timeframe. CCDs are required to verify that the items listed under the PCSM plan in the NOI Checklist are present in the plan and narrative. As per the SOP, delegated CCDs are expected to confirm that the required information is complete and adequate in the application package. Delegated CCDs may consult with the appropriate DEP regional office and elevate when necessary, inconsistencies related to the technical elements of the PCSM plan and narrative.

- Conduct initial technical review of the E&S plan for **general** NPDES permits within 22 business days after the 20 business day completeness timeframe lapses. Notify the regional office of permit coverage or of technical E&S plan deficiencies within the 22 business days. Total processing time for a general NPDES permit is 71 business days.
- Conduct a second technical review of the E&S plan, where necessary, within 17 business days from receipt of E&S plan resubmittal. If the E&S plan meets the technical requirements, approve coverage under the general NPDES permit within 17 business days. If the E&S plan is deemed inadequate, make a recommendation to deny permit coverage to the appropriate DEP regional office.
- Conduct an initial technical review of the E&S plan for NPDES **individual** permits and E&S control permits within 47 business days after the 20 business day completeness timeframe lapses. Total processing time for an individual NPDES permit is 107 business days.
- If the E&S plan meets the technical requirements, make a permit recommendation to the DEP regional office to issue the permit within the 47 business day timeframe. If the E&S plan does not meet the technical requirements, notify the regional office of the deficiencies within the 47 business days, and request resubmission of the E&S plan within 60 calendar days of the date that the deficiency letter is sent out by the CCD.
- Conduct a second technical review of the E&S plan, where necessary, within 22 business days of receipt of E&S plan resubmittal. Notify the regional office if the E&S plan is adequate or inadequate, and recommend issuance or denial of the permit to the appropriate DEP regional office.
- The above mentioned timeframes are associated with permit applications and are consistent with DEP's Permit Review Policy and Permit Decision Guarantee Program (PDG) timeframes.
- Conduct E&S plan reviews pursuant to other DEP regulations and notify the appropriate party of E&S plan adequacy or inadequacy within 35 business days of receipt. This requirement does not supersede any other E&S plan review timeframes established under agreements with other local, state, or federal agencies.
- Perform E&S plan reviews under agreements with municipalities or other governmental agencies in accordance with the applicable laws, rules and regulations, policies, and procedures.
- Receive, process and acknowledge co-permittee/transferee application forms within 20 business days of receipt of a complete application. Receive, process, and conduct a site inspection for notice of termination (NOT) forms within 20 business days of receipt. PSCM Best Management Practices (BMPs) should be inspected as part of the NOT final inspection.

Required Output Measures:

- Respond to all complaints within 8 business days of receipt. Within 10 business days of receipt, refer problems dealing with situations outside the programs to DEP or other appropriate governmental agencies.
 - Document all complaints utilizing forms developed by DEP.
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- For situations involving the authority under this agreement, including those on agricultural operations, schedule and make site visits to assess the situation, conduct site inspections of the earth disturbance activity, document site conditions and violations of applicable laws and regulations on standard inspection report forms provided by DEP, and attempt to attain voluntary compliance. When voluntary compliance cannot be attained, refer these cases to the appropriate DEP regional office for appropriate enforcement action.
 - Respond to and document situations, including those on agricultural operations, where sediment pollution, or a danger thereof, is being observed or a violation of applicable laws or regulations has occurred.
 - Use the criteria established by the department for documentation and preparation of enforcement actions. Documentation could include actions, reports, letters of correspondence, and other forms of documentation, including personal observations.
 - Conduct site inspections of earth disturbance activities and document site conditions and violations of applicable laws and regulations, including those in regard to PCSM activities, on the standard inspection report forms provided by DEP. The site inspection should include the entire site, therefore any observable site conditions relating to PCSM practice installation should be documented by the CCD. Complete the site inspection process and timeframes in accordance with the items listed below or as specified in most current approved SOPs.
 - Inspect all active E&S control permitted and **individual** NPDES permittees sites once within the first 20 business days of commencement of earth disturbance activities, and then once every 65 business days at minimum during active construction.
 - Conduct more frequent inspections where there is higher pollution potential, sensitive environmental resources, continuing violations, or when the permittee has shown a lack of ability or intention to comply with a DEP regulation.
 - Inspect active NPDES **general permitted** sites involving **5 or more acres** of earth disturbance once within the first 35 business days of earth disturbance and then on an as-needed basis.
 - Inspect active NPDES **general permitted** sites involving **1 to less than 5 acres** of earth disturbance on an as-needed basis. Inspections should be prioritized based on E&S plan review, complaints, pollution potential, sensitive environmental resources, continuing violations, or a history of non-compliance.
 - Follow-up site inspections on sites with either major or severe violations should be conducted within 20 business days of the previous site visit. Inspections and reinsertions at active non-permitted sites are to be conducted on an as needed or complaint driven basis.
 - Establish and maintain a separate District Clean Water Fund for the deposit of any and all base administrative filing fees to be retained by the CCD under the E&S and NPDES programs. Fees must be deposited into the Clean Water Fund within 10 calendar days of receipt of the permit application package. The fees deposited in the District Clean Water Fund shall be used by the CCD to support the NPDES and E&S programs. The District Clean Water Fund shall be subject to monitoring and audit by DEP at all times.
 - The CCD shall remit all disturbed acre fees under the E&S and NPDES programs to the DEP regional office. The delegated CCD may forward the disturbed acre checks to the DEP regional office as they are received or may bundle them and forward to the DEP regional office at least once a week.
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Chapter 102 - Level III- Program Enforcement

The CCD Will:

- Perform all Level I and II responsibilities and required output measures. Prepare, commence and execute summary proceedings, issue notices or violations, schedule and conduct administrative enforcement conferences, seek civil penalties and available remedies through consent assessment or consent adjudications, and related actions as established in the Program Compliance Assistance and Enforcement Manual.
- Retain own legal counsel, except for those services related to delegated programs as set forth in Section 4, Subsection 2, of the Conservation District Law. For those services related to the delegated programs, the CCD may utilize DEP's legal counsel. DEP's legal counsel or the CCD's legal counsel shall review and sign all final settlement documents in accordance with DEP's policies and procedures.

Required Output Measures:

- Advise DEP of all enforcement actions initiated and provide this information on DEP's program quarterly report form detailing final compliance agreements, penalties and other actions. Provide copies of all final enforcement documents used to resolve cases to DEP's regional office. Forward all penalties collected to DEP's regional office within eight business days of receipt, unless otherwise directed or requested by DEP's regional office.
- Prior to initiation of any equity action, civil penalty action, or any other court proceeding, notify DEP in writing of filing and prosecution of such action or proceeding. For summary or misdemeanor prosecutions, the CCD must obtain approval from their County District Attorney's Office.

Chapter 105 County Conservation Delegation Agreement Expectations

The CCD Will:

- Provide education and outreach services on the Chapter 105 Program.
- Maintain a system for the receipt, assessment, and resolution of water obstruction and encroachment complaints.
- Receive, process, and review all new permit applications subject to review under DEP's Chapter 105 regulations. The permit review guidance is found in DEP's SOPs.
- Retain records according to the DEP Agency File Plan Retention Disposition Schedule.
- General Permit (GP) Acknowledgement/Completeness Reviews.
 - Receive, review, and acknowledge registration of authorized GP's issued by DEP under 25 Pa. Code Chapter 105.
 - GP-1 Fish Enhancement Structures
 - GP-2 Small Docks and Boat Launching Ramps
 - GP-3 Bank Rehabilitation, Bank Protection and Gravel Bar Removal
 - GP-4 Intake and Outfall Structures
 - GP-5 Utility Line Stream Crossings
 - GP-6 Agricultural Crossings and Ramps
 - GP-7 Minor Road Crossing
 - GP-8 Temporary Road Crossing
 - GP-9 Agricultural Activities
 - Receive, review, and process GP permit registration transfers.

- Complete a review to determine if a submerged land license agreement (SLLA) is required prior to acknowledgement. Information is to be sent to DEP Central Office for agreement preparation.
- Process permit transfers involving SLLAs with DEP Central Office. Information is to be sent to DEP Central Office for agreement preparation prior to permit transfer.
- GPs will be acknowledged by the CCD once the CCD has completed a review of the required E&S plan and determined that the E&S plan meets the minimum requirements of PA Title 25, Chapter 102. Permitted construction activities may not commence until the E&S approval has been received by the permittee.
- Ensure that Pennsylvania State Programmatic General Permit (PASPGP) federal authorization is attached where appropriate, or properly inform the permit registrant that separate Federal authorization is required as outlined in the PASPGP SOPs.

Required Output Measures:

- Complaint Investigations and Referrals.
 - Respond to complaints from the general public within 10 calendar days of receipt. For complaints received from a DEP regional office, investigate and document the complaint investigation within 15 calendar days of receipt of the complaint. All complaints will be documented on the prescribed DEP Chapter 105 inspection report form. All significant violations that cannot be resolved through voluntary compliance after first inspection should be referred to DEP for enforcement.
 - Attempt to achieve voluntary compliance and site resolution within 30 calendar days of complaint investigation which involves a delegated Chapter 105 related activity. Inspect site after 30 calendar days for compliance. Once compliance is achieved, close the case and notify DEP.
 - If unable to achieve voluntary compliance, refer the complaint to the appropriate DEP regional office with appropriate supporting documentation including, but not limited to: inspection reports, photographs, and case chronology within 15 calendar days after the voluntary compliance attempts have closed.
 - Develop and conduct programs concerning Chapter 105:
 - Conduct a minimum of two informational and/or educational programs per calendar year on: general programs for schools students, watershed groups, civic groups or the general public; and specialized educational programs for the regulated community, training seminars on the correct procedures for completing Chapter 105 General permit applications, etc.
 - Issue a minimum of two news releases per calendar year (includes newsletters, newspaper articles, television, and radio public announcements).
 - Maintain an adequate supply of up-to-date Chapter 105 applications and other forms developed by DEP.
 - Maintain and update all Chapter 105 general permit program agreements in affect between the CCD and municipalities and/or other governmental agencies.
 - Provide the DEP Central Office with quarterly reports that detail accomplishments under their delegation. The CCD will submit the forms to DEP by the 15th day following the end of each quarter. Failure to provide timely report information to DEP may result in program payment being withheld by DEP until the required information has been submitted.
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- Provide DEP Central Office with quarterly report that detail GPs acknowledged, including fees and impact data. Failure to provide timely report information may result in a negative evaluation and/or temporary suspension of delegation.
 - Establish and maintain a separate accounting system for the deposit of any and all permit application fees under Chapter 105. Fees must be deposited into the District Clean Water Fund within seven calendar days of receipt of a permit application. The fees deposited in the District Clean Water Fund shall be used by the CCD to support the Chapter 105 permitting program, i.e., administrative expenses, travel expenses for site inspections, district technician reimbursement, field and office equipment, abatement of environmental problems, training sessions, conferences, and professional development related to Chapter 105. The District Clean Water fund shall be subject to monitoring and audit by DEP at all times.
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CCD Levels of Program Delegation Responsibilities and Required Output Measures for PCSM

In addition to all delegated responsibilities and required output measures per the level chosen for the E&S Program the CCD will:

- Provide education and outreach services on the PCSM & NPDES programs.
 - Maintain a system, developed by DEP, including appropriate files for the receipt, assessment, and resolution of PCSM complaints associated with active NPDES permitted sites prior to the submittal and acknowledgement of the NOT.
 - Conduct technical (engineering) review for PCSM plans that have been designed in accordance with the PA Stormwater BMP Manual. PCSM plans using standards and design criteria other than those contained in the PA Stormwater BMP Manual shall be forwarded to the DEP regional office for review. The technical review and review timeframes shall be conducted in accordance with the items listed below or the most current, approved SOPs and checklists provided by DEP.
 - For Individual NPDES permits, the technical review of both the E&S plan and the PCSM plan will be completed within 47 business days of the date the permit application is considered complete.
 - If the PCSM plan meets the requirements of checklist, make a permit recommendation along with the items described in C. 4a. to the DEP regional office to issue the permit within the 47 business day timeframe. If the PCSM plan does not meet the technical requirements, notify DEP of the deficiencies within the 47 business day timeframe, and request PCSM plan resubmission within 60 calendar days of the date that the deficiency letter is sent out by the CCD.
 - Conduct a second technical review of the E&S plan and the PCSM plan, where necessary, within 22 business days of receipt of resubmittal. Any technical deficiencies that remain in both the E&S and PCSM plans should be documented in a letter attached to an email to the DEP application manager.
 - If the PCSM plan is found to be technically adequate for an Individual NPDES permit, the CCD will forward the following information and documents to the DEP regional office:
 - Completed recommendation for permit action letter, completed E&S technical plan review checklist, two sets of approved and stamped E&S plans, completed PCSM plan, engineering review checklist, two sets of the approved stamped PCSM plans and narratives. The CCD will retain the third set of plans.
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- Conduct the initial technical (engineering) PCSM plan reviews for General NPDES permits within the timeframes allotted for the General NPDES permit review process as staff resources and other responsibilities permit.
- Perform PCSM plan reviews under agreements with municipalities or other governmental agencies in accordance with the applicable laws, rules and regulations, policies, and procedures.
- Conduct inspections of PCSM BMPs and make notes in the standard inspection report forms when on site to perform E&S program duties during the construction phase of the project. Conduct an inspection of installed PCSM BMPs when performing a final site inspection in conjunction with an NOT. After project construction is complete and an NOT has been acknowledged by the CCD or DEP, forward all complaints related to PCSM BMPs to the appropriate DEP regional office service representative.
- In coordination with the appropriate DEP regional office, Level III delegated CCDs may initiate enforcement actions on active NPDES permitted sites prior to the submittal and acknowledgment of the NOT

Required Output Measures:

- Develop and conduct programs concerning the PCSM program.
 - Conduct PCSM educational programs in conjunction with E&S educational programs when and where applicable: general programs for school students, watershed groups, civic groups or the general public; specialized educational programs for the regulated community, training seminars on the correct procedures for completing NPDES and E&S Control Permit applications, PCSM plan preparation, etc. (joint programs with neighboring CCDs will count as one credit for each sponsoring CCD).
 - Issue minimum of two news releases per calendar year (includes newsletters, newspaper articles, television, and radio announcements).
- Maintain an adequate supply of up-to-date applications and other forms developed by DEP on the PCSM program.
- Respond to all PCSM complaints within 8 business days of their receipt on active construction projects with NPDES permits. For completed construction projects refer PCSM complaints to the appropriate DEP regional office service representative within 5 business days of receipt.
- Document all complaints utilizing forms developed by DEP.
- Conduct site inspections of the active earth disturbance activity under the authority of this agreement to include NPDES active permitted sites and associated PCSM BMPs prior to the submittal and acknowledgement of the NOT. Document site conditions and violations of applicable laws and regulations on standard inspection report forms provided by DEP, and attempt to attain voluntary compliance. When voluntary compliance cannot be attained, refer these cases to the appropriate DEP regional office for appropriate enforcement action.
- Respond to and document situations where sediment pollution, or a danger thereof, is being observed, or where stormwater runoff water quality or quantity is not in compliance with the approved PCSM plan or a violation of applicable laws or regulations has occurred.
- Use the criteria established by DEP for documentation and preparation of enforcement actions. Documentation could include actions, reports, letter of correspondence and other forms of documentation, including personal observations.
- The PE employed by the CCD to conduct the engineering review of the PCSM plan will provide DEP with a record of decision.

Source: Developed by LBFC staff from information provided by DEP.

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Appendix D - CCD Staff Resources (FTEs) for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	4.0	4.0	4.0
Allegheny	No Data Provided		
Armstrong	1.0	1.0	1.0
Beaver	1.0	1.5	1.0
Bedford	1.5	1.5	1.5
Berks	1.5	1.5	1.5
Blair	2.5	2.5	2.5
Bradford	1.0	1.0	1.0
Bucks	5.5	5.5	5.5
Butler	3.5	3.0	3.0
Cambria	2.2	2.2	2.0
Cameron	0.5	0.5	0.5
Carbon	3.0	3.0	3.0
Centre	2.5	2.5	2.8
Chester	8.0	8.0	8.0
Clarion	2.0	2.0	2.0
Clearfield	1.75	1.75	1.75
Clinton	1.0	1.0	1.0
Columbia	1.0	1.0	1.0
Crawford	0.5	0.5	0.5
Cumberland	4.0	4.0	4.0
Dauphin	3.5	3.5	3.5
Delaware	3.0	3.0	3.0
Elk	1.0	1.0	1.0
Erie	2.0	2.0	2.0
Fayette	1.0	1.0	2.0
Forest	0.0	0.0	0.0
Franklin	2.5	2.5	2.5
Fulton	0.3	0.3	0.5
Greene	3.0	3.0	3.0
Huntingdon	0.8	0.8	1.3
Indiana	1.0	1.0	1.0
Jefferson	2.5	2.5	2.5
Juniata	0.8	0.8	1.0
Lackawanna	3.0	4.0	4.0
Lancaster	2.4	3.0	3.0
Lawrence	3.0	3.0	3.0

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lebanon	3.0	3.0	3.0
Lehigh	6.8	6.8	6.8
Luzerne	3.0	2.0	2.0
Lycoming	1.0	1.0	1.0
McKean	1.0	1.0	1.0
Mercer	0.8	0.8	0.8
Mifflin	1.0	1.0	1.0
Monroe	6.0	6.0	6.0
Montgomery	8.5	8.5	8.5
Montour	1.0	1.0	1.0
Northampton	6.0	4.0	7.0
Northumberland	1.0	1.0	1.0
Perry	1.0	1.0	1.0
Pike	6.0	6.0	6.0
Potter	0.5	0.5	0.5
Schuylkill	2.5	2.5	2.5
Snyder	1.0	1.0	1.0
Somerset	1.0	1.0	1.0
Sullivan	0.5	0.5	0.5
Susquehanna	No Data Provided		
Tioga	0.5	0.5	0.5
Union	1.5	1.5	1.5
Venango	2.0	2.0	2.0
Warren	0.5	0.5	0.5
Washington	3.0	3.0	3.0
Wayne	1.4	1.4	1.4
Westmoreland	4.9	4.9	4.9
Wyoming	1.0	1.0	1.0
York	7.0	7.0	7.0
TOTAL	150.5	149	153.5

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix E - CCD Staff Resources (FTEs) for the Chapter 105 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Allegheny		No Data Provided	
Beaver	1.0	1.5	1
Berks	1.5	1.5	1.5
Bradford	1.0	1	1
Butler	3.0	3	3
Cambria	0.5	0.5	0.4
Cameron	0.5	0.5	0.5
Centre	0.5	0.5	0.75
Clearfield	0	0	0
Clinton	1.0	1	1
Columbia	1.0	1	1
Crawford	0.5	0.5	0.5
Delaware	0.5	0.5	0.5
Elk	1.0	1	1
Erie	2.0	2	2
Greene	3.0	3	3
Indiana	1.0	1	1
Jefferson	2.5	2.5	2.5
Lancaster	2.4	3.0	3.0
McKean	1.0	1.0	1.0
Mercer	0.3	0.3	0.3
Monroe	4.0	4.0	4.0
Montour	1.0	1.0	1.0
Northumberland	0.2	0.2	0.2
Pike	6.0	6.0	6.0
Potter	0.5	0.5	0.5
Susquehanna		No Data Provided	
Tioga	0.5	0.5	0.5
Union	0.4	0.4	0.4
Venango	1.5	1.5	1.5
Warren	0.5	0.5	0.5
Washington	0.5	1.8	1.8
Wayne	1.4	1.4	1.4
Westmoreland	1.2	1.2	1.2
TOTAL	41.9	44.2	43.9

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix F - CCD Expenditures for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	\$ 155,992	\$ 123,993	\$ 131,993
Allegheny	No Data Provided		
Armstrong	55,000	55,000	55,000
Beaver	14,489	10,647	34,228
Bedford	65,300	63,800	58,600
Berks	106,178	105,162	152,778
Blair	121,300	121,300	124,900
Bradford	75,329	75,329	75,329
Bucks	173,409	182,360	194,330
Butler	205,023	257,657	276,601
Cambria	107,944	99,751	100,307
Cameron	No Data Provided		
Carbon	221,266	188,908	251,274
Centre	153,353	164,439	196,652
Chester	673,784	673,784	673,784
Clarion	16,000	16,000	16,000
Clearfield	85,808	92,741	92,026
Clinton	86,116	83,887	82,055
Columbia	16,782	15,384	15,384
Crawford	No Data Provided		
Cumberland	260,000	253,000	339,000
Dauphin	271,500	258,820	266,571
Delaware	218,702	209,147	201,792
Elk	No Data Provided		
Erie	151,917	155,942	124,010
Fayette	39,208	40,101	40,976
Forest	Not Chapter 102 Delegated		
Franklin	187,408	212,659	208,141
Fulton	No Data Provided		
Greene	77,000	77,000	77,000
Huntingdon	62,064	60,082	49,206
Indiana	47,251	48,112	52,628
Jefferson	45,535	41,940	60,179
Juniata	35,061	38,658	52,945
Lackawanna	156,000	156,000	156,000
Lancaster	272,802	337,974	320,597
Lawrence	76,007	134,473	233,866

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lebanon		No Data Provided	
Lehigh	710,581	896,940	899,286
Luzerne	257,964	217,515	223,724
Lycoming	85,000	85,000	85,000
McKean	30,881	36,197	29,283
Mercer	42,584	27,844	31,119
Mifflin	63,427	53,879	66,213
Monroe	435,036	441,719	430,899
Montgomery	242,057	438,028	387,062
Montour	57,000	57,000	57,000
Northampton	381,294	421,685	518,634
Northumberland	60,768	61,919	61,804
Perry	87,931	33,819	67,639
Pike	236,538	206,012	241,189
Potter	52,551	22,522	30,029
Schuylkill			206,097
Snyder	28,800	28,800	28,800
Somerset	18,000	18,000	18,000
Sullivan	30,027	18,395	11,248
Susquehanna		No Data Provided	
Tioga		No Data Provided	
Union	88,800	88,800	88,800
Venango	58,911	64,272	65,205
Warren		No Data Provided	
Washington	230,379	241,509	265,374
Wayne	120,731	143,082	24,746
Westmoreland	320,709	317,977	294,347
Wyoming	75,034	74,387	79,065
York	338,100	371,524	385,700
TOTAL	\$ 8,286,629	\$ 8,720,876	\$ 9,310,415

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix G - CCD Expenditures for the Chapter 105 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Allegheny	No Data Provided		
Beaver	\$ 13,499	\$ 17,307	\$ 27,137
Berks	54,650	79,276	92,116
Bradford	30,095	30,095	30,095
Butler	46,140	32,123	44,431
Cambria	22,923	21,277	20,444
Cameron	No Data Provided		
Centre	32,685	28,786	30,161
Clinton	26,797	36,619	30,970
Columbia	7,523	6,319	5,718
Crawford	No Data Provided		
Delaware	10,402	9,660	10,773
Elk	No Data Provided		
Erie	44,655	44,243	41,522
Forest	Not Chapter 105 Delegated		
Greene	77,000	77,000	77,000
Indiana	24,568	29,540	33,246
Jefferson	14,181	20,037	30,991
Lancaster	178,252	158,200	198,288
McKean	44,881	53,018	40,136
Mercer	15,223	15,223	16,046
Monroe	116,945	73,620	102,427
Montour	5,000	5,000	5,000
Northumberland	12,340	12,147	11,698
Pike	39,701	49,903	55,847
Potter	23,159	21,229	14,153
Susquehanna	No Data Provided		
Tioga	No Data Provided		
Union	23,600	23,600	23,600
Venango	1,687	6,417	4,393
Warren	No Data Provided		
Washington	48,440	79,830	104,800
Wayne	6,475	7,941	4,621
Westmoreland	119,931	118,810	112,959
TOTAL	\$ 1,040,752	\$ 1,057,221	\$ 1,168,571

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix H - CCD Permits Disposed for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	39	31	33
Allegheny	199	180	171
Armstrong	5	6	9
Beaver	15	32	34
Bedford	12	13	19
Berks	68	65	68
Blair	23	26	17
Bradford	16	16	16
Bucks	123	149	128
Butler	65	54	74
Cambria	29	24	24
Cameron	-	0	0
Carbon	6	8	11
Centre	46	53	42
Chester	113	113	99
Clarion	35	35	35
Clearfield	27	9	12
Clinton	13	10	14
Columbia	12	11	11
Crawford	12	5	11
Cumberland	51	79	62
Dauphin	45	51	51
Delaware	51	45	54
Elk	8	4	6
Erie	108	107	111
Fayette	19	15	8
Forest	Not Chapter 102 Delegated		
Franklin	55	42	22
Fulton	4	4	9
Greene			
Huntingdon	3	7	5
Indiana	16	13	20
Jefferson	8	9	11
Juniata	10	7	27
Lackawanna	26	27	32
Lancaster	176	188	173

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lawrence	13	23	40
Lebanon	82	112	103
Lehigh	114	143	161
Luzerne	44	50	70
Lycoming	34	26	18
McKean	6	7	9
Mercer	26	17	19
Mifflin	8	6	11
Monroe	93	102	122
Montgomery	342	437	438
Montour	No Data Provided		
Northampton	105	108	111
Northumberland	15	12	14
Perry	13	5	10
Pike	7	15	13
Potter	7	3	4
Schuylkill	79	76	86
Snyder	17	9	9
Somerset	24	10	15
Sullivan	-	0	0
Susquehanna	8	12	15
Tioga	9	10	13
Union	13	20	15
Venango	8	7	2
Warren	2	2	6
Washington	66	60	79
Wayne	3	9	2
Westmoreland	53	72	77
Wyoming	15	24	39
York	114	100	118
TOTAL	2,758	2,915	3,038

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix I - CCD Permits Disposed for the Chapter 105 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Allegheny	131	198	167
Beaver	31	46	68
Berks	35	49	41
Bradford	63	63	63
Butler	44	42	39
Cambria	28	51	45
Cameron	9	21	7
Centre	39	39	58
Clinton	20	23	12
Columbia	25	21	19
Crawford	41	38	32
Delaware	25	28	43
Elk	36	49	26
Erie	48	36	63
Greene	75	82	76
Indiana	36	48	45
Jefferson	25	44	33
Lancaster	115	88	107
McKean	32	48	27
Mercer	37	37	39
Monroe	25	17	29
Northumberland	36	31	31
Pike	49	30	33
Potter	36	33	22
Susquehanna	52	43	118
Tioga	49	86	40
Union	22	24	13
Venango	2	12	9
Warren	23	43	33
Washington	77	143	132
Wayne	31	49	18
Westmoreland	103	195	153
TOTAL	1,400	1,757	1,641

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix J - CCD Expenditures per FTE for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	\$ 44,569	\$ 35,427	\$ 37,712
Allegheny	No Data Provided		
Armstrong	55,000	55,000	55,000
Beaver	14,489	7,098	34,228
Bedford	43,533	42,533	39,067
Berks	70,785	70,108	101,852
Blair	48,520	48,520	49,960
Bradford	75,329	75,329	75,329
Bucks	31,529	33,156	35,333
Butler	58,578	85,886	92,200
Cambria	50,207	46,396	51,439
Cameron	No Data Provided		
Carbon	73,755	62,969	83,758
Centre	61,341	65,776	71,510
Chester	84,223	84,223	84,223
Clarion	8,000	8,000	8,000
Clearfield	49,033	53,995	52,586
Clinton	86,116	83,887	82,055
Columbia	16,782	15,384	15,384
Crawford	No Data Provided		
Cumberland	65,000	63,250	84,750
Dauphin	77,571	73,949	76,163
Delaware	72,901	69,716	67,264
Elk	No Data Provided		
Erie	75,959	77,971	62,005
Fayette	39,208	40,101	20,488
Forest	Not Chapter 102 Delegated		
Franklin	74,963	85,064	83,256
Fulton	No Data Provided		
Greene	25,667	25,667	25,667
Huntingdon	77,580	75,103	37,851
Indiana	47,251	48,112	52,628
Jefferson	18,214	16,776	24,072
Juniata	46,748	51,544	52,945
Lackawanna	52,000	39,000	39,000
Lancaster	112,728	112,658	106,866

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lawrence	25,336	44,824	77,955
Lebanon	No Data Provided		
Lehigh	105,271	132,880	133,227
Luzerne	85,988	108,758	111,862
Lycoming	85,000	85,000	85,000
McKean	30,881	36,197	29,283
Mercer	56,779	37,125	41,493
Mifflin	63,427	53,879	66,213
Monroe	72,506	73,620	71,816
Montgomery	28,477	51,533	45,537
Montour	57,000	57,000	57,000
Northampton	63,549	105,421	74,091
Northumberland	60,768	61,919	61,804
Perry	87,931	33,819	67,639
Pike	39,423	34,335	40,198
Potter	105,101	45,043	60,058
Schuylkill	-	-	82,439
Snyder	28,800	28,800	28,800
Somerset	18,000	18,000	18,000
Sullivan	60,054	36,790	22,497
Susquehanna	No Data Provided		
Tioga	72,358	66,548	79,369
Union	59,200	59,200	59,200
Venango	29,456	32,136	32,603
Warren	No Data Provided		
Washington	76,793	80,503	88,458
Wayne	86,236	102,201	17,676
Westmoreland	65,585	65,026	60,194
Wyoming	75,034	74,387	79,065
York	48,300	53,075	55,100
AVERAGE	\$ 57,943	\$ 57,690	\$ 58,757

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix K - CCD Expenditures per FTE for the Chapter 105 Permitting Program

CCD	CY 2015		CY 2016		CY 2017
Allegheny	No Data Provided				
Beaver	\$	13,499	\$	11,538	\$ 27,137
Berks		36,434		52,851	61,411
Bradford		30,095		30,095	30,095
Butler		15,380		10,708	14,810
Cambria		45,846		42,554	51,110
Cameron	No Data Provided				
Centre		65,370		57,572	40,215
Clinton		26,797		36,619	30,970
Columbia		7,523		6,319	5,718
Crawford	No Data Provided				
Delaware		20,804		19,320	21,546
Elk	No Data Provided				
Erie		22,328		22,122	20,761
Forest	Not Chapter 105 Delegated				
Greene		25,667		25,667	25,667
Indiana		24,568		29,540	33,246
Jefferson		5,672		8,015	12,396
Lancaster		73,658		52,733	66,096
McKean		44,881		53,018	40,136
Mercer		50,744		50,744	53,487
Monroe		29,236		18,405	25,607
Montour		5,000		5,000	5,000
Northumberland		82,268		80,980	77,985
Pike		6,617		8,317	9,308
Potter		46,318		42,458	28,305
Susquehanna	No Data Provided				
Tioga	No Data Provided				
Union		59,000		59,000	59,000
Venango		1,125		4,278	2,929
Warren	No Data Provided				
Washington		96,880		45,617	59,886
Wayne		4,625		5,672	3,301
Westmoreland		98,304		97,385	92,589
AVERAGE	\$	34,764	\$	32,464	\$ 33,285

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix L - CCD Expenditures per Permit Disposed for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	\$ 4,000	\$ 4,000	\$ 4,000
Allegheny	No Data Provided		
Armstrong	11,000	9,167	6,111
Beaver	966	333	1,007
Bedford	5,442	4,908	3,084
Berks	1,561	1,618	2,247
Blair	5,274	4,665	7,347
Bradford	4,708	4,708	4,708
Bucks	1,410	1,224	1,518
Butler	3,154	4,771	3,738
Cambria	3,722	4,156	4,179
Cameron	No Data Provided		
Carbon	36,878	23,614	22,843
Centre	3,334	3,103	4,682
Chester	5,963	5,963	6,806
Clarion	457	457	457
Clearfield	3,178	10,305	7,669
Clinton	6,624	8,389	5,861
Columbia	1,399	1,399	1,399
Crawford	No Data Provided		
Cumberland	5,098	3,203	5,468
Dauphin	6,033	5,075	5,227
Delaware	4,288	4,648	3,737
Elk	No Data Provided		
Erie	1,407	1,457	1,117
Fayette	2,064	2,673	5,122
Forest	Not Chapter 102 Delegated		
Franklin	3,407	5,063	9,461
Fulton	No Data Provided		
Greene	No Data Provided		
Huntingdon	20,688	8,583	9,841
Indiana	2,953	3,701	2,631
Jefferson	5,692	4,660	5,471
Juniata	3,506	5,523	1,961
Lackawanna	6,000	5,778	4,875
Lancaster	1,550	1,798	1,853

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lawrence	5,847	5,847	5,847
Lebanon	No Data Provided		
Lehigh	6,233	6,272	5,586
Luzerne	5,863	4,350	3,196
Lycoming	2,500	3,269	4,722
McKean	5,147	5,171	3,254
Mercer	1,638	1,638	1,638
Mifflin	7,928	8,980	6,019
Monroe	4,678	4,331	3,532
Montgomery	708	1,002	884
Montour	No Data Provided		
Northampton	3,631	3,904	4,672
Northumberland	4,051	5,160	4,415
Perry	6,764	6,764	6,764
Pike	33,791	13,734	18,553
Potter	7,507	7,507	7,507
Schuylkill			2,396
Snyder	1,694	3,200	3,200
Somerset	750	1,800	1,200
Sullivan	No Data Provided		
Susquehanna	No Data Provided		
Tioga	4,020	3,327	3,053
Union	6,831	4,440	5,920
Venango	7,364	9,182	32,603
Warren	No Data Provided		
Washington	3,491	4,025	3,359
Wayne	40,244	15,898	12,373
Westmoreland	6,051	4,416	3,823
Wyoming	5,002	3,099	2,027
York	2,966	3,715	3,269
AVERAGE	\$ 6,348	\$ 5,207	\$ 5,449

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix M - CCD Expenditures per Permit Disposed for Chapter 105 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Allegheny		No Data Provided	
Beaver	\$ 435	\$ 376	\$ 399
Berks	1,561	1,618	2,247
Bradford	478	478	478
Butler	1,049	765	1,139
Cambria	819	417	454
Cameron		No Data Provided	
Centre	838	738	520
Clinton	1,340	1,592	2,581
Columbia	301	301	301
Crawford		No Data Provided	
Delaware	416	345	251
Elk		No Data Provided	
Erie	930	1,229	659
Greene	1,027	939	1,013
Indiana	682	615	739
Jefferson	567	455	939
Lancaster	1,550	1,798	1,853
McKean	1,403	1,105	1,487
Mercer	411	411	411
Monroe	4,678	4,331	3,532
Montour		No Data Provided	
Northumberland	343	392	377
Pike	810	1,663	1,692
Potter	643	643	643
Susquehanna		No Data Provided	
Tioga		No Data Provided	
Union	1,073	983	1,815
Venango	844	535	488
Warren		No Data Provided	
Washington	629	558	794
Wayne	209	162	257
Westmoreland	1,164	609	738
AVERAGE	\$ 968	\$ 922	\$ 1,032

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix N - CCD Permits Disposed per FTE for the Chapter 102 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Adams	11	9	9
Allegheny	No Data Provided		
Armstrong	5	6	9
Beaver	15	21	34
Bedford	8	9	13
Berks	45	43	45
Blair	9	10	7
Bradford	16	16	16
Bucks	22	27	23
Butler	19	18	25
Cambria	13	11	12
Cameron	No Data Provided		
Carbon	2	3	4
Centre	18	21	15
Chester	14	14	12
Clarion	18	18	18
Clearfield	15	5	7
Clinton	13	10	14
Columbia	12	11	11
Crawford	24	10	22
Cumberland	13	20	16
Dauphin	13	15	15
Delaware	17	15	18
Elk	8	4	6
Erie	54	54	56
Fayette	19	15	4
Forest	Not Chapter 102 Delegated		
Franklin	22	17	9
Fulton	13	13	18
Greene	No Data Provided		
Huntingdon	4	9	4
Indiana	16	13	20
Jefferson	3	4	4
Juniata	13	9	27
Lackawanna	9	7	8
Lancaster	73	63	58

LEGISLATIVE BUDGET AND FINANCE COMMITTEE
Performance Evaluation - DEP Permitting Programs

CCD	CY 2015	CY 2016	CY 2017
Lawrence	4	8	13
Lebanon	27	37	34
Lehigh	17	21	24
Luzerne	15	25	35
Lycoming	34	26	18
McKean	6	7	9
Mercer	35	23	25
Mifflin	8	6	11
Monroe	16	17	20
Montgomery	40	51	52
Montour	No Data Provided		
Northampton	18	27	16
Northumberland	15	12	14
Perry	13	5	10
Pike	1	3	2
Potter	14	6	8
Schuylkill	32	30	34
Snyder	17	9	9
Somerset	24	10	15
Sullivan	No Data Provided		
Susquehanna	No Data Provided		
Tioga	18	20	26
Union	9	13	10
Venango	4	4	1
Warren	4	4	12
Washington	22	20	26
Wayne	2	6	1
Westmoreland	11	15	16
Wyoming	15	24	39
York	16	14	17
AVERAGE	17	16	18

Source: Developed by LBFC staff from information provided by the CCDs.

Appendix O - CCD Permits Reviewed per FTE for the Chapter 105 Permitting Program

CCD	CY 2015	CY 2016	CY 2017
Allegheny	No Data Provided		
Beaver	31	31	68
Berks	23	33	27
Bradford	63	63	63
Butler	15	14	13
Cambria	56	102	113
Cameron	18	42	14
Centre	78	78	77
Clinton	20	23	12
Columbia	25	21	19
Crawford	82	76	64
Delaware	50	56	86
Elk	36	49	26
Erie	24	18	32
Forest	Not Chapter 105 Delegated		
Greene	25	27	25
Indiana	36	48	45
Jefferson	10	18	13
Lancaster	48	29	36
McKean	32	48	27
Mercer	123	123	130
Monroe	6	4	7
Montour	No Data Provided		
Northumberland	240	207	207
Pike	8	5	6
Potter	72	66	44
Susquehanna	No Data Provided		
Tioga	98	172	80
Union	55	60	33
Venango	1	8	6
Warren	46	86	66
Washington	154	82	75
Wayne	22	35	13
Westmoreland	84	160	125
AVERAGE	53	59	52

Source: Developed by LBFC staff from information provided by the CCDs.

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Appendix P – DEP Response



June 17, 2019

Patricia A. Berger
Pennsylvania Legislative Budget and Finance Committee Room400
Finance Building
Harrisburg, PA 17105-8737

Dear Patricia Berger:

The Department of Environmental Protection (DEP) is disappointed in the overall conclusions that the Legislative Budget and Finance Committee (LBFC) report found with regards to the Chapter 102 and 105 programs. While DEP appreciates the time the LBFC staff took to revise the report on the Performance Evaluation of the DEP Chapter 102 and 105 Permitting Programs based on DEP recommendations, overall the report does not acknowledge the purpose of these programs.

Fundamentally, the Chapter 102 and 105 regulations, and the permits that are derived from those regulations, are designed to protect the water resources of the Commonwealth of Pennsylvania. Permits issued under these regulations must be done in ways that ensure that development meets the standards of the Clean Streams Law and does not negatively affect waters of the commonwealth.

We are pleased that the suggestions offered by DEP on June 5, 2019, were helpful and commend the decision to make changes to the report after receiving the initial response to your May 17, 2019, draft. However, we remain concerned that LBFC did not address some of the major concerns DEP raised in the draft of this report the committee provided DEP for review. In addition, DEP is concerned that committee staff provided a copy of the report to committee members without DEP's written reply to the draft report or acknowledgement of any changes made based on that reply.

In response to our initial letter, DEP appreciates that LBFC clarified one of the recommendations, removed another, revised Full Time Equivalent (FTE) calculations for Delaware County Conservation District, and made additional changes throughout the report to support these actions. Modified in response to our letter were:

- Report Summary;
- Section II subsections A, B and Exhibit 3;
- Section III Exhibit 13;
- Section IV in all subsection and exhibits apart from exhibits 15, 17, 32, 34 and subsection B;
- Section V subsections A and E;
- Section VI subsections D and E;
- Appendices D-E and H-O

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Many of the modifications were related to the error DEP identified related to the FTEs used for Delaware County and the recognition that the draft report failed to explicitly acknowledge the basic difference between an authorization under review versus one that has been reviewed to completion, known as an authorization that has been disposed.

We wish the revised report would have better explained the breadth of the Chapter 102 and 105 Permitting Programs and accurately reflected FTEs and their responsibilities beyond simply permit review. DEP stresses that this performance evaluation of these highly technical programs did not include a substantive technical evaluation of the permits subject to this audit.

Given the time constraints for the completion of this report and DEP's opportunity to review, we cannot confirm that the FTEs provided by the 66 county conservation districts to LBFC are accurate. Further, we understand that the report was to only evaluate permitting timeframes; however, additional context for the full responsibilities of the programs would have been appropriate to provide both the committee and the public. We thank you for your responsiveness to our letter but would like the committee and public to recognize that the report did not fully address DEP's concerns, thus, please find included DEP's original response to the May 17, 2019, report draft.¹

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick McDonnell', with a vertical line extending downwards from the end of the signature.

Patrick McDonnell
Secretary

¹ LBFC has included and labelled these attachments A, B, and C.

Attachment A – DEP 6/05/19 Letter



June 5, 2019

Patricia A. Berger, Executive Director
Legislative Budget and Finance Committee
Room 400
Finance Building Harrisburg,
PA 17105-8737

Dear Ms. Berger:

The Department of Environmental Protection (DEP) appreciates the time and effort the Legislative Budget and Finance Committee (LBFC) has spent in the evaluation of the Chapter 102 Erosion and Sedimentation Control and Chapter 105 Water Obstruction and Encroachment Programs. DEP has reviewed the LBFC's draft report entitled "Performance Evaluation of the Chapter 102 and 105 Permitting Programs" (report), however finds glaring inconsistencies and inadequacies, stemming from flawed correlations between staffing levels and the number of permit applications received, a lack of understanding of the scope of the program, and a lack of technical expertise of the reviewers. We first must state that DEP viewed this audit as an opportunity to obtain a third-party view into these two programs which serve many persons in Pennsylvania. A much more meaningful evaluation would have been a comparison of DEP's technical review of permit applications with a) current engineering state of practice; b) current environmental science; and, c) compliance with existing Pennsylvania law. This was not done in this audit, rather, merely permit approval/authorization timeframes were superficially evaluated. While the report sought to evaluate consistency in permit application reviews and the timeliness of these reviews, the audit relies on critical, vague and rather general comments that do not provide meaningful insight into the root of issues nor a solution to them.

In particular, one of the primary findings of the report is that, based on statistical analysis conducted by LBFC, there is not a strong relationship between DEP expenditures and staffing, and the total number of Chapter 102 and Chapter 105 applications with final actions by DEP regional offices. The report notes, in contrast, that a strong relationship was found between expenditures and staffing and the number of applications with final actions by the County Conservation Districts (CCDs). In order to establish these results, LBFC examined three years of data, FY 2015-16 through FY 2017-18. In these years, for both DEP and the CCDs, staffing and expenditures on the program remained relatively consistent, increasing slightly in each year.

For the CCDs, the number of applications with a final action taken in Chapter 102 and Chapter 105 programs also remained relatively stable, rising from 4,158 in 2015 to 4,672 in 2016 to 4,679 in 2017. However, the information reported by CCDs on their Full Time Equivalent (FTE) does not appear to be accurate (see Chapter 102 attachment). For DEP, the number of applications with final action in the middle year dipped significantly, from 2,139 in FY 2015-16, to 1,131 in FY 2017-17, before returning to 2,135 in FY 2017-18. Based on this information, the decrease in applications with final actions in the middle year for DEP, LBFC draws its series of conclusions about the relationship between expenditures and staffing, and number of applications with final actions by the Chapter 102 and Chapter 105 permitting programs.

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The logic underlying this analysis is seriously flawed because the number of Chapter 102 and Chapter 105 applications with final actions within a given year, as well as the complexity of the applications received, can vary based on numerous factors, all of which are outside of DEP's control. The logic includes an incorrect presumption that DEP only reviews permits that final actions were taken on in a given year. There are a number of permit applications received annually that DEP received and reviewed but does not take a final action on until a subsequent year, due to factors such as complexity, responsiveness of the applicant, etc. For example, a reviewer may only take action on ten permits in a year but has simultaneously received and reviewed twenty-five applications. The formula fails to take that factor into consideration.

Additionally, while DEP adjusts staffing and expenditures based on long term workload trends within all of its programs, it is not possible, nor would it be advisable, to do so based on short term variations. Had DEP reduced staff in FY 2016-17, when less applications had final actions, it would have been completely unprepared in FY 2017-18 when volume returned to normal.

Reliance on such a small amount of information paints a misleading picture of the relationship between the costs of DEP's programs and their supposed productivity. Instead of acknowledging these methodological shortcomings, LBFC inexcusably highlights the results as the primary finding of this audit. DEP recognizes that data requested by LBFC was not available in the required format for their desired sampling size and DEP is continuing to evaluate opportunities for further improvements.

The audit report also contains contradictory comments when comparing the report summary to the body of the report, which are difficult to reconcile or use toward measurable improvement. For example, LBFC recommended that DEP should develop a permit submission system similar to the Keystone Environmental ePermitting System (KEES) with the explicit purpose of eliminating permit review inconsistencies and quality control issues. As DEP explained to the auditors, and as outlined in the report, DEP has already developed an ePermitting system for Chapter 105 permit authorizations and Chapter 102 Erosion and Sediment Control General Permits and is currently developing ePermitting for all other Chapter 105 and Chapter 102 permit authorizations. This ePermitting system is similar to the KEES system.

It is apparent that the LBFC report does not address the full scope of the Erosion and Sedimentation Control and Water Obstruction and Encroachment Programs, but only focused on the aspect of permit approval timeframes. These regulatory programs are not structured solely for the goal of permit approval, but for ensuring compliance with the regulatory requirements for the activities that occur after the permit has been approved. The overall Chapter 102 and 105 programs include inspections, compliance assistance, and enforcement. Since these activities, along with education, outreach, and training, are not part of the permitting outputs of the program the auditors viewed them as "indirect activities," as noted in the footnote on page S-3. This approach and perspective of the audit demonstrates a fundamental misunderstanding of the scope of these programs and, more importantly, it ignores many of the most important parts of these programs, such as ensuring projects are not damaging property and infrastructure or degrading water quality.

There are many different aspects of the implementation of the programs that are direct activities not related to reviewing permit applications, that are required programmatic and administrative functions necessary to manage the programs and to monitor compliance with permits and regulations. For example, included in the items required to manage the federally delegated NPDES permitting and compliance program are eReporting requirements to EPA's Integrated Compliance Information System (ICIS), for Chapter 102 and the coordination and reporting requirements necessary to implement the

Pennsylvania State Programmatic General Permit (PASPGP) with the Army Corps of Engineers (ACOE) for Chapter 105.

Because of these additional program responsibilities, DEP believes that this review is flawed by including “indirect activities” in the FTE count towards the permit review metric. For example, if DEP were to create a new position or positions to significantly increase training and program evaluations (which are recommendations of the LBFC report), by this measure, the result would be a decrease to the number of permit reviews assessed against a single FTE.

The conservation district FTEs that are identified within this document not only review and approve permits, but they also provide compliance assistance through complaint investigations, inspections and follow-up consultations throughout the life of each permit. In fact, statewide, more than 10,000 inspections are completed by conservation district staff annually. The Department FTEs that are identified within this document review and approve permits, but also concurrently provide program administration, management, training given and received, compliance assistance, enforcement, participate in litigation matters, and respond to Right-to-Know Law requests – all of which are core functions of the program and all of which were effectively ignored as separate obligations for the same staff personnel by the auditors. These programs also require the development and dissemination of policies, procedures, guidance, and training to the regulated community as well as to the regulators, both DEP and Conservation District staff. The very same staff also respond to walk-in, or public communications, telephone and email inquiries of a general nature which are not always directly related to specific applications or program tasks. Including this time by DEP and Conservation District staff in the analysis of permit approvals results in highly inaccurate and misleading results and conclusions contained in this report.

The audit analysts attempted to compare the reviews of permit applications between project reviewers and across DEP regions and with different Conservation Districts, absent recognition of differences and absent any attempt to compare apples to apples. No two projects are identical, the review of 102 and 105 projects is driven by the site conditions. Projects requiring permits vary greatly in size and complexity. For example, larger scale projects such as a road or pipeline, or projects in sensitive areas, which require multiple authorizations, often require multi-program coordination and in-depth environmental and engineering technical review. The audit failed to evaluate similar permit applications or projects, but rather looked at all as though they all are simple, relatively minor projects. For example, erosion and Sedimentation (102) projects can range from a few hundred acres with special protection or endangered species to a one-acre site with no protected resources present. On the wetland and encroachment side, sites vary dramatically in size, resources, limitations, and engineering requirements. For example, the review of a minor road crossing for a driveway across a small stream will be vastly different from a 75-acre development with 30 stream crossings, 15 utility crossings, endangered species, and special protection water resources. The review and analysis required for 102 and 105 permits varies greatly and should have been properly considered in this audit.

Additionally, complex projects can be particularly difficult and may appear delayed for reasons wholly outside of DEP’s control, including but not limited to, difficult site conditions, technical challenges for applicant professionals, resolution of outstanding violations or compliance actions, the need for approval by or coordination with a federal, state or municipal agency, and reviews by other Department programs. The LBFC report does not distinguish the difference between the level of technical review needed for an individual permit in comparison to a general permit. Not being subject matter experts, the analysts appear to not have the background to evaluate technical deficiency comments, nor were they

capable of assessing the comments from one project to another. Without the understanding of the nature of the permits being reviewed, the conclusions about the efficiency of permit review timeframes of the program are flawed at best.

DEP further observes that the quantitative number of permits reviewed and processed as reflected in the LBFC report does not adequately capture the distinction of the Chapter 102 and Chapter 105 programs being unpredictable, the number of permit applications submitted during any given time frame can vary based on several considerations, all of which are outside of DEP's control.

DEP appreciates the recommendations to submit the three-year fee reports for both programs, and to pursue the appropriate adjustment of fees. The Chapter 102 report will be submitted to the Environmental Quality Board (EQB) this summer and the Chapter 105 report will be submitted in the appropriate time. The preparation of these fee reports will address several of the "administrative control" recommendations identified in this report by LBFC. Please note that staffing levels are addressed in various ways in addition to the results of the three-year fee report.

LBFC's draft report asserts that DEP's overall goal is to issue permits that protect the environment and natural resources and the health and safety of Pennsylvania residents while ensuring projects are using and maintaining construction methods that are both environmentally sound and of the latest approved BMPs and concludes that DEP does not document whether its programs meet this standard. This is an inaccurate assertion and DEP strongly disagrees with this conclusion. DEP reviews permit applications, including plans and specifications, to ensure compliance with the regulatory requirements. DEP and Conservation District staff review permit applications in accordance with established Standard Operation Procedures. Staff utilize the corresponding authorization type completeness checklist to ensure all required items have been submitted and any applicable program guidelines to ensure that these applications meet the regulatory requirements and, where applicable, the terms and conditions of general permits.

Record of decision reports are developed by DEP staff for all individual permit applications documenting the review and decision-making process in accordance with applicable rules and regulations. These record of decision documents are included in the individual permit files for each permit action taken by DEP.

The reporting of permit reviews that were administratively and technically complete in the summary section of the report seemed to be negatively skewed. Those applications averaged about half the days of the Permit Decision Guarantee timeframe. While DEP can evaluate the appropriateness of increasing the number of days for elevated review for certain permit types, it is clear from statistics provided that complete and technically sound applications generally enjoy timely reviews. Delays become a factor when applications are incomplete and/or have technical deficiencies; these applications are sent back to the applicant to revise and resubmit.

Admittedly, DEP recognizes flaws in the programs and have taken action to address them. During the time of the audit, the Regional Permit Coordination Office (RPCO) was established as a brand-new office within DEP, utilizing existing vacancies. RPCO's main purpose is to provide a centralized permitting office that reviews permit applications for large-scale, multi-county or multi-regional infrastructure projects, such as pipelines and highways. RPCO will also work with existing DEP bureaus to provide statewide technical support to regions and add additional emphasis on project coordination and consistency. RPCO was staffed with new employees who received training within one year after a permanent manager was assigned to this office. RCPO started reviewing permit applications in January

2019 and is currently accepting work. RPCO's functions will improve the permit review efficiency, consistency, and predictability.

In addition, DEP has begun to implement ePermitting for Chapter 105 general permits and many features were still being added into the system. As with any new software, it has some development issues that are actively being address and is not yet at a level of function at which anyone should be making judgements about its long-term performance.

DEP is currently working to include all Chapter 102 permits in the ePermitting system. The ePermitting system will improve the quality of permit applications by ensuring that the applications submitted to DEP for review are complete. The ePermitting system will also help to eliminate permit review inconsistencies and the primary cause of delays in the permitting process— poorly prepared/incorrect permit applications.

In an effort to improve the quality of permit applications submitted by consultants, and the technical understanding of the regulated community, DEP is currently updating its Stormwater BMP Manual and implementing new training initiatives. DEP has developed a Clean Water Academy website that serves as a resource for training Department, Conservation District staff, and the regulated community.

DEP is also moving forward with plans to develop a model post construction stormwater (PCSM) plan for well pads and will issue a new statewide NPDES general permit for small construction activities under five acres of earth disturbance, which would be in addition to the current PAG-02. This proposed general permit, which is being referred to as PAG-01, will include a standard suite of low maintenance BMPs to select from, which will streamline the development of PCSM plans and their review.

DEP recently approved a statewide alternative BMP known as the Managed Release Concept that will allow projects in sensitive environmental areas to move forward. These sensitive areas include contaminated sites, karst areas, sites with limited infiltration capabilities, and for sites which otherwise cannot reduce the post-construction runoff volume.

Additionally, DEP continues to implement a permit management tool, which we developed two years ago, resulting in a drastic reduction in permit backlog.

DEP has also completed an overall response to the draft report, including the nine recommendations, as it relates specifically to each program; those responses are included as attachments to this letter.

On multiple occasions, DEP provided LBFC with information to assist the audit analysts with their understanding of these technical programs. DEP program staff who implement these programs have scientific and engineering degrees, some have obtained graduate degrees and many possess professional licensures. It is not possible for auditors without a scientific or engineering background and no environmental regulatory experience to grasp the complexities associated with these programs in a matter of the few months they were working with us.

However, it seems that materials provided to them were ignored partially or in their entirety. Instead the analysts chose to rely on negatively vague and overly general comments from stakeholders and their own inaccurate conclusions about technical and legal determinations outside of their purview and competence. DEP is willing to contract with a qualified technical expert to adequately audit the program performance.

Patricia A. Berger, Executive Director

June 5, 2019

Again, thank you for the time and effort the LBFC has spent in the evaluation of the Chapter 102 Erosion and Sedimentation Control and Chapter 105 Water Obstruction and Encroachment Programs. DEP would like to discuss this response and recommendations with LBFC and address the possible inaccuracies prior to public release.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is fluid and cursive, with a large initial "P" and "M".

Patrick McDonnell
Secretary

Enclosures

Chapter 102 Response to LBFC Report

(Footnotes identify the adjustments made to the report by the LBFC in response to DEP comments)

Responses to Report Recommendations from Report Summary

1. To address conflicting interpretations of application requirements we recommend DEP:

- a. Convene a working group of consultants, CCDs, and DEP regional offices to standardize interpretation of program requirements.

DEP Response: *DEP believes that such a work group may provide useful information. We will review and determine if this something that can be achieved with our available resources and staffing.*

- b. Establish a mechanism to resolve conflicting interpretation decisions between DEP regional offices and the CCDs when they arise.

DEP Response: *A mechanism currently exists to resolve any conflict between DEP regional office and CCDs. All project/permit application specific questions from a CCD should be directed to the DEP regional office to answer, as they are the portion of DEP that makes decisions on permit applications. If the DEP regional office is unsure of an answer or the question does not fit into previously provided guidance, the DEP regional office would then contact the DEP Bureau of Clean Water. The Bureau staff would provide the answer back to the DEP regional office, with the ultimate determination resting with the Bureau Director. Such determinations are then provided to the entire program via revisions to SOPs and PCMs.¹*

- c. Conduct permit requirement interpretation sessions around the state to train regional and CCD staff and ensure the consistent interpretation of program requirements.

DEP Response: *Over the past couple of years DEP has developed many new initiatives and revised training methods in an attempt to consistently implement the Chapter 102 program; which include:*

- *A new initiative that the department has undertaken, which was not referenced in your report because it is new, is the Clean Water Academy. This on-line training tool has multiple applications for the Chapter 102 program. It includes courses that contain videos, eLearning modules, webinars and other media. This year, a program of Clean Water Academy was used as a “prerequisite” for the Spring 102/105 Basic Technical Training held in March. This effort will expand to include other DEP program areas and will allow for training and information that will provide for more consistent interpretation of applicable statutes, regulations and programs. The Clean Water Academy can be found at: <https://pacleanwateracademy.remote-learner.net/>*
- *In the Fall of 2017, DEP revised the annual Chapter 102/105 training of DEP and CCD program staff. The previous training format was a multi-day training event with break-out session for all staff in a single location. DEP recognized that this training format was not the most effective format. Beginning in Fall of 2017, the new format is now a single day training, given to a smaller audience on a regional level (i.e., the same training is given six (6) times). The new format will allow for a more conducive learning environment and allows DEP to train on more area appropriate items.*

¹ LBFC changed wording to: Establish a state-wide, effective mechanism to resolve conflicting interpretation decisions between and within DEP regional offices and between and within the CCDs when they arise. See pages S-6 and 35.

- *A new standard for the NPDES Permitting Division in the Bureau of Clean Water is to have talking points or a narrative script that accompanies each training presentation. This will ensure that, no matter who gives the training, a consistent message will be delivered.*
 - *Lesson plans are also being developed by the Bureau of Clean Water for one- on-one or small group training for DEP and CCD staff. These lesson plans will allow anyone to provide the training, which will allow for consistent training provided.*
- d. Develop a test project, with the same permit application, for review by both CCDs and its regions to test for consistency in interpretation of all applicable statutes and regulations in the application review process.

DEP Response: *DEP has engaged the Pennsylvania Association of Conservation Districts (PACD) who is working with an engineering consultant to develop a single test project for training purposes. This training plan will allow DEP to train staff on the same project, for completeness review of the Erosion and Sediment Control (E&S) and the Post-Construction Stormwater Management (PCSM) Plans and for technical review of the E&S Plan.*

2. To provide administrative control and guidance, DEP should:

- a. Systematically collect, compile, analyze, and report data related to:
- FTEs and the number of permits reviewed.
 - Expenditures and the number of permits reviewed.
 - The reasons for a positive correlation between FTEs, expenditures, and permits reviewed by the CCDs.
 - The reasons for a negative correlation between FTEs, expenditures, and permits reviewed by DEP regional offices.

DEP Response:

In order for DEP's permitting program to function effectively, permit applications need to be tracked through the entire timeline of the application, from submission to final resolution. This effort directly results in accurate performance measurement and enables the agency to balance workload effectively for efficient performance. DEP has developed and implemented a data dashboard which allow managers to have significantly greater oversight of both individual programs, as well as the programs they are responsible for as a whole. This new dashboard gives managers a clearer picture of backlogs and current permit timeframes and helps DEP to prevent a backlog before it begins. Because FTEs and permit numbers are already included, as the tool is continuously being updated, DEP can explore incorporating expenditure tracking and reporting.

Additionally, DEP has started to work with the Independent Fiscal Office (IFO) to develop performance-based budget plan for our agency. Performance-based budgeting is a framework used to better allocate state resources in order to improve outcomes for citizens, emphasizes program results and performance management to inform high-level budget decisions, and matches funding levels with expected results from the use of funds. It also reinforces state-wide performance management and increases transparency and accountability in agency's use of state resources.

- b. Periodically conduct random audits of permit application files to ensure that:
- DEP regional offices and CCDs are adhering to internal controls.
 - DEP regional offices and CCDs are meeting maximum review time requirements.

DEP Response: *In 2018, DEP recognized that evaluations (or audits, as used LBFC) are a critical component of the Chapter 102 delegation agreement between DEP and the county conservation districts. Over the past year, DEP has revised the evaluation format and process for the evaluation of county conservation districts.*

This new format and process will allow DEP to better review permit applications and files. This new format/process focuses on meeting the identified goals in the delegation agreement. DEP has recently evaluated one county conservation district under the new format and process and we are working on scheduling other evaluations. DEP Central Office has not previously performed direct evaluations on DEP Regional Offices; however, we will assess our ability to perform such evaluations as workload and staff levels allow.

- c. Standardize required internal controls across DEP regional offices and CCDs.

DEP Response: *In order to bring better consistency to the administrative portion of the Completeness Review of permit applications, DEP is currently working to develop a specific training module in the Clean Water Academy (see response to Recommendation 1.c). This will allow for a consistent training message provided to all county conservation district and DEP staff. Additionally, when ePermitting is implemented (see response to Recommendation 9), the permit applicant will not be able to submit their application if components of the permit application are missing. This will help to ensure that the required information is consistently being submitted with all permit applications.*

- d. Clearly define appropriate and measurable goals, actions, and performance measures to improve the administration of the Chapter 102 and Chapter 105 permitting programs.

DEP Response: *DEP is always working to improve the programmatic administration, including permit reviews, for the Chapter 102 program. DEP is currently undertaking new initiatives for Chapter 102 related to improving permit review efficiencies; this includes ePermitting (see response to Recommendation 9) and the creation of a new General NPDES Permit for small sites.*

- e. Submit the mandated Chapter 102 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

DEP Response: *DEP appreciates your recommendations to submit the Three-Year Fee Reports for the Chapter 102 program. The Chapter 102 report will be submitted to the EQB this summer. We also appreciate the LBFC's recommendation that DEP recommends appropriate adjustment of fees. The preparation of this fee report will address several of the "administrative control" recommendations identified by this report.*

- f. Submit the mandated Chapter 105 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

DEP Response: *While we appreciate this recommendation, this report is not applicable to Chapter 102. Additionally, this report is not due to EQB until next year.*

3. To ensure protection of the environment, DEP and the CCDs should systematically collect, compile, analyze, and report data that measure and explain the environmental effects of the Chapter 102 and Chapter 105 permitting programs.

DEP Response: *A large portion of the Chapter 102 program that was not included in LBFC's report is the compliance and enforcement side, which includes site inspections during the earth disturbance activity. DEP is currently evaluating potential solutions to providing more assurance for post-construction compliance and BMP functioning. It should be noted that the current MS4 permit requires the MS4 permittee to ensure long-term operation and maintenance is occurring for the PCSM BMPs related to a Chapter 102 permit that are within the MS4 jurisdiction.*

4. DEP should systematically collect, compile, analyze, and report whether or not an NOT has been submitted and the final inspection has taken place.

DEP Response: *In late summer 2018, DEP developed an internal Standard Operating Procedure (SOP) related to Chapter 102 expiring or expired permits. This SOP identified and included steps for how to request an NOT and when to perform final inspections at sites. Additionally, at this past spring's Topic-Based Training, DEP presented new forms that are to be used by inspection staff when performing PCSM inspections at sites, as these forms will now (in a consistent manner) document what visual inspections should be performed to determine whether the BMPs are properly functioning.*

5. DEP should systematically inspect completed construction sites to determine if the elements of approved permits have been properly installed and are functioning.

DEP Response: *See response to Recommendation 4. These items are all addressed in the delegation agreement Required Output Measures (ROM)*

6. DEP should establish consequences for DEP regional offices and CCDs that do not meet PDG time frames.

DEP Response: *Only the 8 CCDs with PCSM delegation are not subject to PDG timeframe, the delegation sets the expectation for review time frames. See DEP's Permit Review Process and Permit Decision Guarantee Policy (PRP/PDG Policy) http://files.dep.state.pa.us/ProgramIntegration/PermitDecisionGuaranteePortalFiles/Drift_PRP_and_PDG_8-22-12.pdf*

7. DEP should systematically collect, compile, analyze, and report data on PDG-eligible applications and implement a plan of action to ensure eligible applications are approved within the guaranteed time frame.

DEP Response: *This information is currently compiled with DEP's eFACTS. The two Chapter 102 permits that are eligible for PDG are the Individual National Pollutant Discharge Elimination System (NPDES) Permit and the Erosion and Sediment Control General Permit (ESCGP). The Individual NPDES Permit is entered into and tracked by eFACTS. The PRP/PDG Policy identifies four levels of permit application tracking by DEP.*

Due to staffing issues, the ESCGPs that are authorized by the county conservation districts are not currently entered into eFACTS. However, when Chapter 102 ePermitting goes live, all Chapter 102 permit applications, including ESCGPs, will be automatically entered into and track by eFACTS.

8. DEP should revisit its PDG policy, and establish appropriate review time standards for projects that are more complex, for example, those that are five acres or greater.

DEP Response: *DEP will explore the PRP/PDG Policy to determine if revisions need to be made for the PDG time associated with more complex Chapter 102 permit applications.*

9. DEP should develop a permit submission system similar to the KEES system, with the explicit purpose of eliminating permit review inconsistencies and quality control issues.

DEP Response: *DEP is currently undergoing requirements gathering for ePermitting for Chapter 102 permit applications. Development of the ePermitting effort for Chapter 102 has built on the Oil and Gas Management ePermitting effort and has engaged conservation district partners in its development. The ePermitting system should help to alleviate the issue of missing items from permit applications.*

High level items of concern from Report

Section I: Objectives, Scope and Methodology:

No comment.

Section II: Background: Chapter 102 regulatory history

Overview, Page 5: The second paragraph identifies that all earth disturbances in excess of 1 acre require a Chapter 102 permit.

This general description does not accurately capture the permitting requirements of Chapter 102. Generally, Chapter 102 requires an NPDES permit for earth disturbances associated with construction activities for earth disturbances of 1 acre or more, an E&S permit for oil and gas activities with earth disturbances of 5 acres or more, and an E&S permit for timber harvesting and road maintenance activities involving 25 acres or more of earth disturbance. No permit is required under Chapter 102 for agricultural plowing or tilling activities or animal heavy use areas.

Programs, Page 9: The information related to permit applications only touches on the administrative side of completeness reviews (this is also applicable to the Individual Permit section on Page 11).

It appears that the LBFC believes that a permit application package must be submitted as complete or it will not be accepted, which is not correct. If a permit application is submitted, a completeness review will be performed. Additionally, the completeness review is the process by which applications are reviewed to determine if they are complete and technically adequate. A complete and technically adequate application is an application package that includes all necessary documents and information, which is provided in sufficient detail to perform a technical review.

Programs, Page 10: The information provided does not describe the process that occurs if a permit application has been deemed incomplete (this is also applicable to the Individual Permit section on Page 11).²

When DEP determines that an application is incomplete, it provides notice to the applicant, identifying the deficiencies found in the application. The applicant is provided 60 days to respond (per regulatory requirement). If the response is received and the deficiencies are addressed, the application will be deemed complete. However, if the response is received and the deficiencies are not addressed, the application should be denied (per the PRP/PDG Policy). If a response is not received within the 60 days, then the application is considered withdrawn by the applicant. An applicant can request additional time to respond to the completeness deficiencies.

Programs, Page 10: Footnote 15 identifies the species of special concern are evaluated during the Chapter 102 permit application process.

Species of special concern are not evaluated during Chapter 102 permit applications, as it is not required by the regulations or by the PNDI Policy.

Programs, Page 11: The compliance and enforcement side of the program, including the required field inspections during the earth disturbance activities are not identified (this is also applicable to the Individual Permit section on Page 12).

The LBFC's report did not include the more critical side of the Chapter 102 program, which is the field inspections performed by the county conservation district staff.³

² LBFC added the following language: If an NOI is found to be incomplete, the CCD will send the applicant an incompleteness letter that outlines the statutory and/or regulatory deficiencies and give them 60 calendar days to provide the necessary information to make the NOI complete. If the applicant fails to provide the necessary information, the NOI will be considered withdrawn and a letter will be sent to the applicant informing them of the withdrawn NOI. See pages 10 and 12.

³ LBFC had already included information on field inspections performed by the CCDs in Appendix C. See page 125.

Section III: Stakeholder Comments:

DEP will review and evaluate the constructive comments received from regulators and regulated community as part of this draft report. It is noted that some of the stakeholder comments are generalized and vague, conclusory or not consistent with DEP’s regulatory authority. In other instances, comments appear contradictory.

Section IV: Analysis of Workloads:

Total and Individual Staff Resources, Page 39: Exhibit 7 identifies DEP staff resources for the Chapter 102 permitting program.

The FTEs identified are based upon the entire program implementation, which includes administration, permitting, compliance and enforcement, litigation, Right to Know Requests, etc. These FTEs should be based upon the time spent and coded to permitting. Looking at FY 15/16 & FY 16/17, the following is identified:

	FY 2015-16		FY 2016-17	
	Reported	Adjusted	Reported	Adjusted
Central	6.7	1.3	6.0	0.8
SERO	5.8	3.0	8.0	4.4
NERO	4.2	2.3	4.3	2.4
SCRO	4.1	2.7	3.7	2.5
NCRO	1.6	1.1	1.6	1.3
SWRO	2.9	1.6	2.8	1.1
NWRO	0.7	0.6	1.5	1.3
TOTAL	25.9	12.6	27.9	13.8

Total and Individual Permits Reviews, Page 44: Exhibit 26 identifies the total number of permits reviewed by DEP and CCDs and then adds the DEP and CCD numbers together for a yearly total.

Adding the number of permits reviewed by DEP with the number of permits reviewed by CCDs is not appropriate, because the permit application that is reviewed by DEP would also have been reviewed by a CCD. Therefore, the number of permit applications reviewed by DEP would be counted twice (once for the CCD and again for DEP).

Section V: DEP Policies, Performance Levels and Fees:

File Reviews, Page 72: The identification of average review times based upon review criteria identified in Exhibit 58.

The Review Criteria is difficult to follow, because it appears LBFC has mis- applied certain terms associated with the review of permit applications (“complete and technically adequate” is used by DEP to identify that an application is complete and can move into technical review). LBFC did not define the Review Criteria terms.

LBFC should review the files by first looking at applications that were initially submitted as complete or as incomplete. Then for the applications that were initially submitted as complete, they should then look at the applications that have technical deficiencies versus the applications that do not have technical deficiencies. Those applications that do not have technical deficiencies would then be subject to the PDG time of 107 business days for the Individual NPDES permit.

Additionally, it does not appear that the LBFC accounted for any time associated with waiting for the applicant to respond to deficiencies. If an applicant takes the full 60 calendar days to respond, then that equates to 43 business days that are counted against DEP for the review.

It must also be noted that review times can be affected by the Permit Review Process (PRP) in the PRP/PDG Policy. The PRP/PDG Policy identifies that permit applications are reviewed on a hierarchy basis, which is set by the Regional Director. That means when a higher priority permit application is submitted it will go towards the top of the review “stack” for the permit reviewer, and this can affect the total average time associated with permit application reviews.

Completeness of Applications, Page 74: It is identified that DEP policies do not limit how many incomplete notices can be issued during the review process. This is again repeated on Page 75 in the Technical Adequacy of Applications section but related to deficiency notices.

This statement/identification is inaccurate. The PRP/PDG policies identify that if a permit application is submitted as incomplete it is to be denied; however, the Chapter 102 regulations require DEP to provide an applicant the opportunity to correct their deficiencies. Additionally, the Chapter 102 SOPs identify that a single incompleteness review letter will be sent, and that if an application is not complete after a response that then application should be denied. For the technical review, the PRP/PDG policies identify that one technical deficiency letter will be sent, except for complex projects identified by the PRP/PDG policies, (Chapter 102 permits are not complex under the policies), and that if an application still has technical deficiencies after a response, then the Elevated Review is triggered. The sending of one technical deficiency letter is also supported by the Chapter 102 SOPs.

Section VI: Initiatives to Improve Permitting Programs:

Permit Decision Guarantee Program (PDG), Page 83: Only “Chapter 102 Individual Permits” are identified as being subject to PDG for the Chapter 102 program.

The Individual NPDES Permit and the ESCGP are subject to a PDG. The Individual E&S Permit is not subject to a PDG.

Section VII: Appendices:

Appendix A

No comment.

Appendix B

No comment.

Appendix C

The PCSM delegation information was not included. ⁴

⁴ LBFC added information regarding PCSM delegation to Appendix C. See page 128.

Appendix D

The information reported by the Conservation Districts on their FTEs does not appear to be accurate.⁵

For example:

1. Pike County reported 6.0 FTEs for all three years for Chapter 102 and for Chapter 105, which equates to 12 FTEs for Pike County. However, their website only identifies six staff who would work in either program, therefore it appears that they double counted their FTEs.
2. Adams County reported 4 FTEs for all three years; however, a verification against their Quarterly Report identified 0.77, 0.75, and 0.75 FTEs for CY 15, 16, & 17, respectively (this is based from the reported permitting hours by the District and includes the 15.33% ACDA adjustment and 1657.5 hrs = 1 FTE).
3. Delaware County reported 0.5 FTEs for all three years for Chapter 102; however, based upon their Quarterly Report they had 1.39 FTEs for CY 15 (this is based from the reported permitting hours by the District and includes the 15.33% ACDA adjustment and 1657.5 hrs = 1 FTE).

Appendix E

No comment.

Appendix F

No comment.

Appendix G

No comment.

Appendix H

No comment.

Appendix I

No comment.

Appendix J

Based upon the previous data in Appendices D & H being in accurate, this information would also be not accurate.

Additionally, DEP does not believe that it is appropriate to evaluate the number of permit applications against an entire programmatic implementation cost (as previously identified by DEP in Section IV).

For example, Delaware County is identified as having over \$400,000 each year of expenditure for one FTE.⁶

⁵ LBFC adjusted these numbers as appropriate. Adjustments had no material impact on outcomes.

⁶ LBFC adjusted the expenditure data for Delaware County.

Appendix K

No comment.

Appendix L

Based upon the previous data in Appendices D & H being in accurate, this information would also be not accurate.

Same comments as previously identified, that it is not appropriate to evaluate total program costs, expenditures, and time against strictly permit reviews.

Appendix M

No comment.

Appendix N

Based upon the previous data in Appendices D & H being in accurate, this information would also be not accurate.

Same comments as previously identified, that it is not appropriate to evaluate total program costs, expenditures, and time against strictly permit reviews.

Appendix O

No Comment.

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Chapter 105 Response to LBFC Report

(Footnotes identify the adjustments made to the report by the LBFC in response to DEP comments)

Responses to Report Recommendations from Report Summary

1. To address conflicting interpretations of application requirements we recommend DEP:

DEP Response: *The Wetlands, Encroachment and Training Division prepares and participates in various training events such as Annual 102/105 training for CCDs and DEP staff where basic permitting and program interpretation has historically been, and continues to be, a topic. Also, when an interpretation or program clarification is needed the information is provided in various formats such as Standard Operating Procedures (SOPs), Program Clarification Memos (PCMs), Power Point presentations and webinars. Public outreach efforts such as training events include, but are not limited to, Pennsylvania State Association of Township Supervisors (PSATS), Marcellus Shale Coalition (MSC), Society of Women Environmental Professionals (SWEPE), Conservation District Roundtables, and other environmental consultants.*

DEP agrees with LBFC's recommendation that DEP and CCD staff commit to improvement through collaboration and training. DEP Chapter 105 staff will explore new ways to engage DEP staff and CCDs, in training particularly, since longtime DEP employees with institutional knowledge are retiring and being replaced with newer DEP and CCD staff. In lieu of these transitions, training is important to DEP.

- a. Convene a working group of consultants, CCDs, and DEP regional offices to standardize interpretation of program requirements.

DEP Response: *DEP believes that work groups often provide useful information. As such, there are current Chapter 105 workgroup efforts, which include horizontal directional drilling, alternative analysis and agriculture.*

- b. Establish a mechanism to resolve conflicting interpretation decisions between DEP regional offices and the CCDs when they arise.

DEP Response: *A mechanism currently exists to resolve any conflict between DEP regional offices and CCDs. All project/permit application specific questions from a CCD should be directed to the DEP regional office to answer, as they are the portion of DEP that makes decisions on permit applications. If the DEP regional office is unsure of an answer or the question does not fit into previously provided guidance, the DEP regional office would then contact the DEP Bureau of Waterways Engineering and Wetlands. The Bureau staff would provide the answer back to the DEP regional office, with the ultimate determination resting with the Bureau Director. Such determinations are then provided to the entire program via revisions to SOPs and PCMs.¹*

- c. Conduct permit requirement interpretation sessions around the state to train regional and CCD staff and ensure the consistent interpretation of program requirements.

¹ LBFC changed wording to: Establish a state-wide, effective mechanism to resolve conflicting interpretation decisions between and within DEP regional offices and between and within the CCDs when they arise. See pages S-6 and 35.

DEP Response: *Over the past few years DEP has developed many new initiatives and revised training methods in an attempt to consistently implement the Chapter 105 program, including, but not limited to:*

- *A new initiative that the department has undertaken, which was not referenced in your report because it is new, is the Clean Water Academy. This on-line training tool has multiple applications for the Chapter 102 program. It includes courses that contain videos, eLearning modules, webinars and other media. This year, a program of Clean Water Academy was used as a “prerequisite” for the Spring 102/105 Basic Technical Training held in March. This effort will expand to include other DEP program areas, Chapter 105 has just begun development, and will allow for training and information that will provide for more consistent interpretation of applicable statutes, regulations and programs. The Clean Water Academy can be found at: <https://pacleanwateracademy.remote-learner.net/>*
- *In the Fall of 2017, DEP revised our annual Chapter 102/105 training of DEP and CCD program staff. The previous training format was a multi-day training event with break-out session for all staff in a single location. DEP recognized that this training format was not the most effective format. Beginning in Fall of 2017, the new format is now a single day training, given to a smaller audience on a regional level (i.e., the same training is given six (6) times). The new format will allow for a more conducive learning environment and allows DEP to train on more area appropriate items.*

- d. *Develop a test project, with the same permit application, for review by both CCDs and its regions to test for consistency in interpretation of all applicable statutes and regulations in the application review process.*

DEP Response: *DEP will review and determine if this recommendation is something that can be achieved with the available resources and staffing.*

2. To provide administrative control and guidance, DEP should:

DEP Response: *Appropriate time coding to determine FTEs and expenditures is a time-consuming task. Permitting is not the only function performed to administer the Chapter 105 program. Program staff currently collect data that is useful to determine total program costs. The program has performance measures which identify the resources needed to administer the program. When positions cannot be filled due to budgetary concerns the program cannot meet the performance goals and objectives.*

- a. Systematically collect, compile, analyze, and report data related to:
- FTEs and the number of permits reviewed.
 - Expenditures and the number of permits reviewed.
 - The reasons for a positive correlation between FTEs, expenditures, and permits reviewed by the CCDs.
 - The reasons for a negative correlation between FTEs, expenditures, and permits reviewed by DEP regional offices.

DEP Response: *In order for DEP’s permitting program to function effectively, permit applications need to be tracked through the entire timeline of the application, from*

submission to final resolution. This effort directly results in accurate performance measurement and enables the agency to balance workload effectively for efficient performance. DEP has developed and implemented a data dashboard which allow managers to have significantly greater oversight of both individual programs, as well as the programs they are responsible for as a whole. This new dashboard gives managers a clearer picture of backlogs and current permit timeframes and helps DEP to prevent a backlog before it begins. Because FTEs and permit numbers are already included, as the tool is continuously being updated, DEP can explore incorporating expenditure tracking and reporting.

Additionally, DEP has started to work with the Independent Fiscal Office (IFO) to develop performance-based budget plan for our agency. Performance-based budgeting is a framework used to better allocate state resources to improve outcomes for citizens, emphasizes program results and performance management to inform high-level budget decisions, and matches funding levels with expected results from the use of funds. It also reinforces state-wide performance management and increases transparency and accountability in agency's use of state resources.

- b. Periodically conduct random audits of permit application files to ensure that:
- DEP regional offices and CCDs are adhering to internal controls.
 - DEP regional offices and CCDs are meeting maximum review time requirements.

DEP Response: *DEP has recently recognized that evaluations (or audits, as used LBFC) are a critical component of the Chapter 105 delegation agreement between DEP and the county conservation districts. DEP has begun to review the evaluation format and process for the evaluation of county conservation districts to assess the ability to perform such a revision and subsequent evaluations with the available resources and staffing.²*

- c. Standardize required internal controls across DEP regional offices and CCDs.

DEP Response: *To bring better consistency to the administrative portion of the Completeness Review of permit applications, DEP has implemented two electronic permit submission and review systems (ePermitting and KEES). Submissions through these systems will not allow an applicant to submit their application if components of the permit application are missing. This will help ensure that the required information is consistently being submitted with all permit applications.³*

Clearly define appropriate and measurable goals, actions, and performance measures to improve the administration of the Chapter 102 and Chapter 105 permitting programs.

² LBFC added the sentence: According to a DEP official, ePermitting was intended to make an electronic process available to all applicants in an effort to streamline the process, as the KEES system has done for PennDOT applications. See pages S-6 and 89.

³ See previous footnote. LBFC also deleted a recommendation regarding ePermitting and KEES.

DEP Response: *DEP is always working towards is how to improve the programmatic administration, including permit reviews, for the Chapter 105 program. During the course of this audit DEP implemented new initiatives related to improving permit review efficiencies continues to develop new initiatives, detailed throughout this response document.*

- d. Submit the mandated Chapter 102 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

DEP Response: *N/A to Chapter 105*

- e. Submit the mandated Chapter 105 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

DEP Response: *The Chapter 105 fee report is due this year and will be completed in a timely manner.*

3. To ensure protection of the environment, DEP and the CCDs should systematically collect, compile, analyze, and report data that measure and explain the environmental effects of the Chapter 102 and Chapter 105 permitting programs.

DEP Response: *Chapter 105 general permit data is collected and reported quarterly by both DEP and delegated county conservation districts, data reports include, but are not limited to, number and type of authorization, number of activities and/or structures, and authorized aquatic resource impacts. The quarterly report template has been in use for several years is updates as program data needs change.*

DEP utilizes the eFACTS data system for Water Obstruction and Encroachment Permits (Joint Permit Applications) and those general permits in PDG, plus other general permits on a volunteer basis. Data reporting is a time-consuming effort for the CCDs and Regional Offices, compilation and analysis of that data is very time consuming for Central Office. Recent electronic permitting efforts have made significant process in the collection and reporting of permit data; the KEES system loads the data for all Chapter 105 authorizations into eFACTS, and the new ePermitting initiative loads the general permit data into eFACTS. ePermitting is particularly helpful in collecting general permit data (and loading it into eFACTS) for those applications reviewed by the CCDs which would normally be a manual process.

4. DEP should systematically collect, compile, analyze, and report whether or not an NOT has been submitted and the final inspection has taken place.

DEP Response: *The Chapter 105 program does not have a Notice of Termination (NOT). DEP's Chapter 105 regulations outline the process an applicant must follow to abandon or remove a water obstruction or encroachment in 25 Pa. Code § 105.47. Additionally, if a Chapter 105 permitted structure is being proposed to be removed the owner is required to notify DEP for further direction. DEP notes that older legacy structures such as coal mooring and terminal areas and bridges have been abandoned throughout the state.*

5. DEP should systematically inspect completed construction sites to determine if the elements of approved permits have been properly installed and are functioning.

DEP Response: *DEP regional staff randomly inspect sites to determine if the activity or structure has met the terms and conditions of the permit authorization. In some cases, DEP will perform the inspection after being notified via a complaint, however that inspection is a compliance and enforcement responsibility, not a permitting requirement.*

6. DEP should establish consequences for DEP regional offices and CCDs that do not meet PDG time frames.

DEP Response: *PDG is a Department-wide policy and is based on the information provided by a permit applicant to provide a timely permit decision. Consequences of not meeting a timeframe is not a proactive approach to meet timeframes. Applicants can request an elevated review if the PDG timeframe is not met.*

Additionally, the LBFC draft report does not assess the experience of the DEP or CCD employees reviewing and processing Chapter 105 permit applications, nor does it appear to take into consideration the number of times an application was determined to be deficient nor the time the application spent back with the applicant. It is common for lengthy review times to be indicative of multiple deficiencies and time where the application is with the applicant, not with DEP or CCD staff.

7. DEP should systematically collect, compile, analyze, and report data on PDG-eligible applications and implement a plan of action to ensure eligible applications are approved within the guaranteed time frame.

DEP Response: *DEP currently does collect, compile, analyze and report data on PDG-eligible applications. Complications tend to arise when larger projects need multiple authorizations which utilize concurrent review timeframes. DEP observed and LBFC should recognize that each Chapter 105 permit application is different; applicant projects and the environmental and engineering components, and therefore DEP's review, have a level of uniqueness on a project-specific basis.*

8. DEP should revisit its PDG policy, and establish appropriate review time standards for projects that are more complex, for example, those that are five acres or greater.

DEP Response: *DEP will review the PRP/PDG Policy to determine if revisions are appropriate for the PDG time associated with more complex Chapter 105 permit applications. (NOTE: five acres or greater is a Chapter 102 threshold and not applicable to Chapter 105.)*

9. DEP should develop a permit submission system similar to the KEES system, with the explicit purpose of eliminating permit review inconsistencies and quality control issues.

DEP Response: *The new ePermitting initiative for Chapter 105 permits is similar to the KEES system and had an overlapping group of Chapter 105 program staff involved in the development of both efforts. ePermitting for Chapter 105 general permits has admittedly gotten off to a bumpy start, but issues have been and continue to be addressed with additional enhancements planned for the near future. The system is meeting its current intent and is being used by 34 CCDs, six regional offices and three oil & gas permitting offices.*

*The report misrepresents the concept of an Electronic File Administrator and the numbers are out dated. Additionally, it is the experience of the Chapter 105 staff that those users comparing ePermitting to KEES often forget that KEES has a similar process to gain access to the system and most KEES users are accustomed to using an electronic system as they typically used “JPA2” the predecessor to KEES for PennDOT’s 105 applications, most ePermitting users are brand new to an electronic system so the learning curve is steeper than that experienced for KEES.*⁴

High Level Items of Concern from Report

Section I: Objectives, Scope and Methodology:

- Although mentioned in a footnote, LBFC should provide the number of 34 Chapter 105 delegated CCDs upfront in the overview since there are not 66 delegated CCDs for Chapter 105 (p. 5).

Section II: Background: Chapter 105 regulatory history

- LBFC’s explanation of the Chapter 105 program is a confusing and inaccurate description only as it relates to the Army Corps of Engineers permitting program under Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403), which is not mentioned at all. None of the information provided actually describes the Chapter 105 program. For example, DEP’s regulatory authority under Chapter 105 comes from the Clean Streams Law (32 P.S. §§ 691.1- 691.1001) and Dam Safety and Encroachments Act (32 P.S. §§ 693.1-693.27), which is completely absent from this section of the report. Section 17 of the Dam Safety and Encroachments Act (32 P.S. § 693.17) and 25 Pa. Code § 105.24 require DEP to coordinate federal and state requirements with the Army Corps of Engineers (ACOE), when possible, which DEP already does with the ACOE does through PASPGP and the Joint Permit Application process. (p. 13).⁵

DEP’s state program pre-dates the Section 404 program.

- LBFC should note PASPGP-5 authorizes work under Section 404 of the Clean Water Act in addition to Sections 9 and 10 of the Rivers and Harbors Act. (p. 13). The complexity and detail of review under PASPGP-5 has changed since PASPGP in the early 1990s.⁶
- LBFC should cite the ACOE Standard Operating Procedures for a complete list of reporting activities as well as background information on PASPGP-5. (p. 13-14).⁷

⁴ LBFC added the following sentence: According to a DEP official, ePermitting was intended to make an electronic process available to all applicants in an effort to streamline the process, as the KEES system has done for PennDOT applications. See pages S-6 and 89. We also deleted the recommendation.

⁵ LBFC added the following paragraph: DEP’s regulatory authority under Chapter 105 comes from the Clean Streams Law, 32 P.S. §§ 691.1- 691.1001, and Dam Safety and Encroachments Act, 32 P.S. §§ 693.1-693.27. Section 17 of the Dam Safety and Encroachments Act and 25 Pa. Code § 105.24 require DEP to coordinate federal and state requirements with the Army Corps of Engineers when possible, which DEP does through PASPGP-5. See page 13.

⁶ LBFC added footnote 22. See page 13.

⁷ LBFC added footnote 24. See page 14.

- The draft report also does not discuss water quality certification requests under Section 401 of the Clean Water Act or review of these requests for any type of project in Pennsylvania, for which, a Chapter 102 or 105 permit is needed such as ACOE projects and those projects seeking a license from the Federal Energy Regulatory Commission for hydropower facilities and interstate natural gas pipelines, and natural gas storage facilities. As with state permit applications, these 401 water quality certification evaluations are subject to the Commonwealth's procedural due process requirements (public notice and hearing) and require coordination among multiple DEP programs. (p. 15).
- LBFC should include procedural due process requirements for the Chapter 105 program in the Application Process for Individual Permits, and include DEP's policy on public participation and enhanced public participation for environmental justice areas. (p. 16). Also, there should be a discussion on requests for and conducting public hearings.⁸
- LBFC does not fully discuss the requirements for permitting structures and activities in EV wetlands under 25 Pa. Code § 105.18a(a) omitting requirements §§ 105.18a(a)(3)-(7) and should also mention the requirements under §§ 105.18a(b)(1)-(7) for other wetlands.
- There is very little, if any, discussion of the engineering review aspects of a GP-11 or individual permit application, or in certain instances, the application of 25 Pa. Code Chapter 106. This is a very noticeable omission by LBFC.
- LBFC should indicate for waiver activities, DEP maintains discretion to require a permit for the structure or activity if determined to be necessary by DEP under § 105.12(a). (pp. 21-22).⁹

Section III: Stakeholder Comments:

- DEP will review and evaluate the constructive comments received from regulators and regulated community as part of this draft report. It is noted that some of the stakeholder comments are generalized and vague, conclusory or not consistent with DEP's regulatory authority. In other instances, comments appear contradictory.

Section IV: Analysis of Workloads:

- LBFC draft report conclusions do not consider DEP staff review of requests for water quality certification under Section 401 of the Clean Water Act (33 U.S.C. § 1341).
- LBFC's finding number 7 asserting that "Data provided by DEP failed to establish a strong relationship between total expenditures and the total number of permits reviewed by DEP regional offices" does not consider the complexity of the projects. For example, reviews for larger scale projects requiring individual permits often require a greater amount of work by both the applicant and review by both environmental and engineering program staff. These projects are more time consuming than GP notifications, which CCDs also review with exception of GP-11.

⁸ LBFC added footnote 26. See page 16.

⁹ LBFC added the following sentence: DEP maintains discretion to require a permit for the structure or activity if DEP determines it to be necessary, under regulations at 105.12(a). See page 21.

Second, this finding does not appear to consider the level of experience of DEP staff. Accordingly, simply because less applications are reviewed does not mean that staff was somehow less productive due to the type of project applications received and the multiple other duties staff perform (p. 38).

- Chapter 105 permits reviewed: The LBFC data with respect to permits reviewed should preface the number of permits reviewed with the caveat that permit applications received, permit type, project complexity or skill level of the reviewer were among the factors not taken into consideration. (p. 45).
- Expenditures per permit reviewed (p. 50): Please see the above referenced comment.
- Correlation Coefficient for Expenditures and Permits reviewed (p. 58): Please see comment referenced above.

Section V: DEP Policies, Performance Levels and Fees:

- With respect to fees, the LBFC report does not distinguish that governmental project applicants (federal, state, local or water authorities) are exempt from paying fees under the Chapter 105 regulations. The LBFC does not address the number of governmental permits reviewed by DEP staff, for which, no fees are received.¹⁰
- The LBFC “Fast Facts” state “Revenues from fees are adequate to administer both permitting programs”. LBFC should clarify this statement in lieu of the past Chapter 105 report showing the program runs an annual deficit, in part, due to the exemption of government applicants from permit application fees. DEP agrees with LBFC’s Recommendation on p. S-7 to submit the upcoming mandated fee report to the EQB and include recommendations to adjust fees as appropriate to ensure efficient funding of the program to administer the duties under the Dam Safety and Encroachments Act and Chapter 105 regulations. (p. 63, but see p. S-7).¹¹
- DEP agrees with LBFC “Fast Facts” that “Completeness and technical adequacy have impacts on review times”. (p. 63). It is noted that 3 of the 5 permit types averaged have the Permit Decision Guarantee timeframes if they were complete. It is also unclear if LBFC took into consideration the amount of time the applications were back with the applicant due to incompleteness and/or deficiencies. The time required to make a permit decision is frequently not only DEP’s time, but applicant time too.
- As raised earlier, LBFC should indicate that several types of Chapter 105 permit applications are subject to public notice requirements in 25 Pa. Code Chapter 105 and DEP staff may determine that further public participation (hearing; comment period extension) may be warranted for certain projects. LBFC should indicate that public participation is an important part of the Chapter 105 application process and that sometimes, DEP staff needs time to review, consider and respond to public comments as part of the application process. Public transparency and participation as well as adequate time for DEP to consider public comments is crucial to the Chapter 105 permit review process. Accordingly, LBFC should add DEP’s public participation and enhanced public participation policies as potentially applicable as well to Section V. (pp. 65 and 66).¹²

¹⁰ LBFC added footnote 43. See page 79.

¹¹ LBFC deleted this bullet point.

¹² LBFC added footnote 26. See page 16. Additionally, DEP’s two public participation policies were added to page 66.

Section VI: Initiatives to Improve Permitting Programs:

- LBFC report omits discussion of certain initiatives DEP has implemented to improve Chapter 105 permitting and fails to analyze specific DEP improvements versus past practices to give the reader a practical understanding of DEP's goals when implementing such initiatives. The report also fails to assess or gather regulator and regulated community feedback regarding the following DEP initiatives:
- DEP's issuance of key technical guidance. DEP issued interim final guidance in January 2017 and then final guidance on December 16, 2017 (47 Pa. B. 7645). to assist project applicants and environmental consultants in clarifying the regulatory requirements for larger scale projects entitled *Comprehensive Environmental Assessment of Proposed Project Impacts for Chapter 105 Water Obstruction and Encroachment Permit Applications* (310-2137-006). DEP issued this technical guidance after conducting outreach and receiving input from stakeholders, the Water Resources Advisory Committee and DEP staff. The Comprehensive Environmental Assessment guidance provides clarity on what information requirements should be submitted to DEP to satisfy the Chapter 105 regulatory requirements for the overall project.
- The LBFC report does not mention or assess DEP efforts to collaborate with the U.S. Army Corps of Engineers (ACOE) to reduce and simplify General Permit registration applications under the Pennsylvania State Programmatic General Permit-5 (PASPGP-5). DEP and the ACOE have been implementing PASPGP in Pennsylvania since 1995 and federal information requirements and aspects of project review significantly changed since PASPGP-1 and PASPGP-5, necessitating more information requirements for the federal authorization. DEP met with the U.S. Army Corps of Engineers Baltimore, Philadelphia and Pittsburgh Districts in 2016 and early 2017 in an effort to simplify the general permit registration process and federal coordination under PASPGP-5. Through this process, DEP was able to eliminate or simplify areas that were overly burdensome, confusing or not necessary for review under Pennsylvania law and held webinar outreach in the spring of 2017 for DEP and CCD staff and external stakeholders. DEP held internal and external training webinars for DEP and CCD staff and consultants on the simplified GP registration process under PASPGP-5. This process has led to more efficient processing of GP registration applications.¹³
- The LBFC does not discuss or analyze DEP's changes to the CCD and DEP Standard Operating Procedures for General Permits Covered and Not Covered by Permit Decision Guarantee. The revised 2018/2019 standard operating procedures are located online, here: <https://www.dep.pa.gov/Business/ProgramIntegration/DecisionGuarantee/Pages/StandardOperatingProcedures.aspx>

Two significant changes from the original 2013 SOPs to the new included making completeness and eligibility review a one step process, as historically implemented, as opposed to a two-step process as set forth in the 2013 Standard Operating Procedures. The practical effect is that under 25 Pa. Code § 105.13a, an applicant has 60 days to respond to completeness and technical deficiencies for GP registration applications with the possibility of an additional 60 day extension if requested and granted. Under the old SOPs, the separate two-step process created the potential for 240 days for project applicants and consultants to respond to completeness and eligibility deficiencies.

¹³ LBFC added this initiative. See page 90.

Further, through the SOP revisions, GP-5 relating to utility line stream crossings was taken out of the PDG, which consisted of an 86-day timeframe. DEP discovered that multiple GPs are often needed for and associated with the same type of projects (GP-5, GP-7 or GP-8s), but were on different review timeframes. Accordingly, GP-5 is now on the 43-day timeframe along with the other GPs.

- As mentioned above, LBFC did not mention three key DEP initiatives to improve Chapter 105 permitting over the past three years. Instead, SR 226 (introduced on October 19, 2017, the Senate Environmental Resources and Energy Committee on January 30, 2018) backtracked to begin an audit in the time period before these initiatives were underway, yet does not acknowledge or analyze these DEP improvement initiatives versus past practices. This means LBFC also did not reach out to stakeholders to provide feedback on these DEP improvement initiatives. (see pp. 83 to 87 and S-5 and S-6).

Additional Observation:

- The report does not examine administrative support personnel staffing or make any recommendations about staffing levels necessary to track data; etc. as recommended by LBFC.

Appendix Q - LBFC Response to DEP

The Department of Environmental Protection's June 17, 2019, response to our revised draft report references modifications made to our draft report based on their initial response. Our adjustments are footnoted on Attachments B and C included in Appendix P. The majority of their comments resulted in the addition of material to the report. The clarification of the ePermitting program and its relationship to the KEES program resulted in the deletion of a recommendation related to ePermitting program. In all other instances, our underlying conclusions and recommendations remained unchanged.

The Department of Environmental Protection's June 5, 2019, response to our draft report expressed concerns regarding the conduct of this study. In general, our report speaks for itself, however, in several cases, we believe clarification would be helpful to the reader to better understand our work. We address these areas below:

Scope of Report: On page 1 of its response (page 157), the Department states that "A much more meaningful evaluation would have been a comparison of DEP's technical review of permit applications with a) current engineering state of practice; b) current environmental science; and, c) compliance with existing Pennsylvania law." The evaluation as described by the Department was outside the scope of our review as directed by Senate Resolution 226.

On page 2 (page 158) of its response, the Department states that the report "does not address the full scope of the Erosion and Sedimentation Control and Water Obstruction and Encroachment Programs, but only focused on the aspect of permit approval timeframes." Senate Resolution 226 specifically highlighted aspects of the programs that were to be included in our review. Given the complexity of these programs, we, therefore, focused our work on the "permit review times, performance levels, and goals. . . ." as directed by the resolution. In addition, the resolution sought recommendations to improve "administration, timing, and outcomes of the permitting programs" and our recommendations were directed to those ends.

Competence of LBFC Staff: On pages 1 (page 157) and 6 (page 161) of its response, the Department indicates that the LBFC staff did not have the technical expertise to conduct this evaluation, stating in part, on page 6 (page 161), that "It is not possible for auditors without scientific or engineering background and no environmental regulatory experience to grasp the complexities associated with these programs in a matter of the few months they were working with us." Senate Resolution 226 did not direct the LBFC to review projects on their merits, and we did not do so. Our work was to evaluate the administration of the Chapter 102 and 105 programs and to specifically compare resources and workloads, review times, and goals of the program.

Methodology: On pages 1 (page 157) and 2 (page 158) of its response, the Department disagrees with the LBFC staffing level analysis (FTEs) since it was based on final actions versus all applications reviewed. LBFC is aware that Department staff review more permits than those in which a final action was taken. LBFC used the final action on a permit application in our analysis, in part, because it is the standard used by the Department as reflected in the Governor's Executive Budget (page E17-B).

On page 2 (page 158) of its response, the Department questions the LBFC analysis as it is based on only three years of data. The Department states "DEP recognizes that data requested by LBFC was not available in the required format for their desired sampling size" As presented to the LBFC, the Department was not able to provide additional years of data because they were concerned with the reliability of their own data going back more than three years.

On page 3 (page 159) of its response, the Department raises additional concerns about the validity of the FTE analysis since it includes "indirect activities" in the FTE count towards the permit review metric. The "indirect activities" were included in order to properly account for all that goes into producing a DEP permit. We used the same analysis for both DEP central and regional staff and CCD staff.

Reliance on Stakeholder Comments: On page 6 (page 161) of its response, the Department states that the LBFC analysts chose to rely on "negatively vague and overly general comments from stakeholders and their own inaccurate conclusions about technical and legal determinations outside their purview and competence." Senate Resolution 226 specifically directed the LBFC to include the concerns expressed by stakeholders including the Department, regulated municipality, business, and industry representatives. The comments in the report reflect the concerns of both the regulators and the regulated community and include comments from Department and County Conservation District staff. In addition, we include comments that reflect positively on the performance of the Department. Finally, we made no conclusions about technical and legal determinations.

We commend the Department on its willingness to implement several of our recommendations and engage a third party expert to audit the programs' performance.