

PADEP Publishes Proposed Erosion and Sediment Control General Permit for Oil and Gas Industry for Public Comment

September 2, 2024

Pittsburgh, PA and Washington, DC

FNREL Mineral and Energy Law Newsletter

Pennsylvania – Oil & Gas

(**Joseph K. Reinhart**, **Sean M. McGovern**, **Gina F. Buchman** and **Matthew C. Wood**)

On June 29, 2024, the Pennsylvania Department of Environmental Protection (PADEP) published notice in the *Pennsylvania Bulletin* that the [proposed Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities](#) (ESCGP-4) was available for public comment. 54 Pa. Bull. 3717 (June 29, 2024). The current ESCGP-3 is scheduled to expire on January 6, 2025. PADEP issues ESCGPs under the authority of the Pennsylvania Clean Streams Law, 35 Pa. Stat. §§ 691.1—1001.

In the *Pennsylvania Bulletin* notice, PADEP stated that it was not proposing “significant changes” to the ESCGP-4 as compared to the ESCGP-3, but there are several noteworthy differences between the two permits. First, as a threshold matter, the ESCGP-4 contains a requirement that in discharges approved under the ESCGP-4 that exhibit a condition rendering it ineligible for coverage, “the permittee promptly shall take action to restore eligibility, to notify the Department in writing of the condition, and, if eligibility cannot be restored, to submit an individual erosion and sediment control permit (Individual E&S Permit) application to the Department.”

Next, the ESCGP-4 proposes to now require operators to submit a notice of intent (NOI) for coverage under the ESCGP-4 at least 60 days prior to the planned date for commencing any new discharge. The ESCGP-3 did not contain an NOI submission deadline. Further, PADEP has removed the expedited review option that was available under the ESCGP-4 for projects meeting specific criteria.

PADEP is also proposing new substantive requirements in the ESCGP-4. Under the ESCGP-3, weekly inspections of controls were required, as well as inspections following stormwater events. The ESCGP-4 adds an inspection requirement following “snowmelt sufficient to cause a discharge” and requires that inspections be documented using PADEP’s Chapter 102 Visual Site Inspection Report form (Doc. ID No. 3800-FM-BCW0271d) or a similar form that contains the same information. The ESCGP-4 also requires that the inspections be completed by “qualified personnel, trained and experienced in erosion and sediment control and post-construction stormwater management” and outlines requirements for such qualifications. Further, where the ESCGP-3 required “immediate” action to restore controls, the ESCGP-4 requires the initiation of repair or replacement within 24 hours of discovery of an issue.

Finally, the ESCGP-4 also proposes to require that any stormwater control measure (SCM) implemented by an operator that is not in PADEP’s Erosion and Sediment Pollution Control Manual (No. 363-2134-008) or the Water Quality Antidegradation Guidance (No. 391-0300-002) must be approved by PADEP. The ESCGP would also require confirmation testing for infiltration capacity of SCMs that must be reviewed by a licensed professional. Operators will also have to document the implementation of each structural SCM using a PADEP form and submit this documentation to PADEP within 30 days of completion of construction.

Comments on the ESCGP-4 were due by July 29, 2024.

Copyright © 2024, The Foundation for Natural Resources and Energy Law, Westminster, Colorado

Babst | Calland
Attorneys at Law

PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC