



## INSTRUCTIONS FOR NOTICE OF TERMINATION FOR A GENERAL (PAG-02) OR INDIVIDUAL NPDES PERMIT, ESCP, or ESCGP FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

### GENERAL INFORMATION

This form serves to fulfill the obligations referenced in 25 Pa. Code §102.7 (related to Permit Termination).

#### Applicability

A permittee(s) presently covered under an Individual National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities, the General NPDES Permit for Stormwater Discharges Associated with Construction Activities (PAG-02), an Erosion and Sediment Control Permit (ESCP), or an Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing, or Treatment Operations or Transmission Facilities (ESCGP) shall submit this Notice of Termination (NOT) form to the delegated county conservation district or Department of Environmental Protection (DEP) Regional Office (whichever is the appropriate processing entity) for permit applications submitted **after November 19, 2010**.

Per 25 Pa. Code §102.7, the NOT form is to be submitted once the following have been achieved: permanent stabilization of earth disturbance activities per 25 Pa. Code §102.22(a)(2) and implementation of post construction stormwater management (PCSM) best management practices (BMPs) per the approved PCSM Plan or site restoration/reclamation via the approved Restoration/Reclamation Plan. Per 25 Pa. Code §102.22(a)(1), once permanent stabilization has been established, the temporary erosion and sediment control (E&S) BMPs shall be removed. Any areas disturbed in the act of removing temporary E&S BMPs shall be permanently stabilized upon completion of the removal activity.

Per 25 Pa. Code §102.7, until written approval of a NOT is received, the permittee and any co-permittees will remain responsible for compliance with the permit terms and conditions, including long-term operation and maintenance of all PCSM BMPs on the project site. Permit expiration does not relieve the permittee and any co-permittees of this responsibility; only permit termination may provide such relief.

#### NOT Form Submission

The Department of Environmental Protection (Department) requires use of the most current NOT form available. The current NOT form and other related documents may be found under "E&S Resources" at: [www.dep.pa.gov/constructionstormwater](http://www.dep.pa.gov/constructionstormwater). Please type

or print clearly when completing the form. If information needed is more than space allows, attach additional sheets.

NOT forms should be submitted to the conservation district office for the county in which the project is located, except for the following two counties:

- NOT forms for projects located in Forest county should be submitted to DEP's Northwest Regional Office in Meadville.
- NOT forms for projects located in Philadelphia county should be submitted to DEP's Southeast Regional Office in Norristown.

If your project occurs in multiple counties, the NOT form should be submitted to the county conservation district where the greatest amount of the project is located. Contact information for the county conservation districts may be found at: [https://pacd.org/?page\\_id=59](https://pacd.org/?page_id=59). A list of DEP regional offices can be found at <http://www.dep.pa.gov/About/Pages/Office-Locations.aspx>.

#### PCSM Requirements

Per 25 Pa. Code §102.8(k), a licensed professional or a designee shall be present onsite and be responsible during critical stages of implementation of the approved PCSM Plan. The critical stages may include the installation of underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department or the conservation district. Per Pa. Code §102.8(l), the permittee shall include with the notice of termination record drawings which accurately reflect the as-built conditions with a final certification statement from a licensed professional, as provided in section 5 of the NOT form.

#### PCSM Long-Term Operation and Maintenance Requirements

Per 25 Pa. Code §102.8(m), the permittee or co-permittee shall remain responsible for long-term operation and maintenance of PCSM BMPs unless a different person is identified in Appendix C of the NOT form and has agreed to long-term operation and maintenance of PCSM BMPs.

For any property (not commonwealth- or federally-owned) containing PCSM BMP(s), the permittee or co-permittee shall record an instrument with the recorder of deeds which will assure disclosure

of the PCSM BMP(s) and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must:

1. Identify the PCSM BMP(s),
2. Provide for necessary access related to long-term operation and maintenance for PCSM BMP(s),
3. And provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP(s) is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees.

A sample instrument may be found here: [Instrument for the Declaration of Restrictions and Covenants](#). This is a legal document which should be used with the advice of legal counsel. Proof of filing such an instrument is to be provided with the NOT form. The sample instrument, alone, addresses bullet #3 above, but does not address bullets #1 and #2 above. When attached to the instrument, the record drawings and the operation and maintenance schedule contained within the record drawings address bullets #1 and #2.

Per permit condition, unless the Department authorizes a different procedure, the long-term operation and maintenance plan shall be recorded along with the instrument. The long-term operation and maintenance plan, which is synonymous with the long-term operation and maintenance schedule which was contained in the PCSM Plan, shall be in a narrative format and:

1. List the PCSM BMP(s),
2. Provide for routine maintenance activities and an inspection schedule for each PCSM BMP,
3. Provide for repair or replacement of the PCSM BMP(s) as needed to ensure continual function as designed, and
4. Describe how access to the PCSM BMP(s) will be provided.

Per permit condition, unless an alternative process is approved by the Department in writing, upon sale or transfer of any parcel, lot, road, or other real property included within the permit boundary, the permittee shall notify the purchaser, grantee, or transferee of the long-term PCSM BMP operation and maintenance requirements. The permittee shall expressly identify:

1. The PCSM BMPs on each property,
2. The schedule for inspection and reporting,
3. The person or entity responsible for long-term operation and maintenance of the PCSM BMPs, and
4. How access to the BMPs will be achieved, and shall obtain approval from the purchaser, grantee or transferee.

A sample of such "landowner notice" may be found here: [New Property Owner Post-Construction Stormwater Management Best Management Practice\(s\) Notification and Operation and](#)

[Maintenance Agreement](#). This is a legal document which should be used with the advice of legal counsel. Any such landowner notices are not required to be recorded with the instrument (unless they are also acting as operation and maintenance agreements); however, they must be submitted with the NOT form. NOTE: A planned community declaration may be considered landowner notice if the declaration addresses the preceding bulleted items.

## **INFORMATION REQUIRED FOR THE NOT FORM TO BE DETERMINED COMPLETE**

The reviewing entity will review the NOT form and attachments against the NOT Completeness Review and Fieldwork Checklist to document the submission of all required NOT paperwork. If the NOT contains minor deficiencies, the permittee will be notified via telephone or email to explain the deficiencies and to offer the opportunity to submit the necessary materials within 20 business days of the original NOT receipt. If the NOT is deemed to be incomplete, or if information requested is not received within the 20-business day review period, a written notice of denial, and reasons for such denial, will be provided to the permittee, along with a request to resubmit a NOT form. Once a NOT form is deemed complete, the reviewing entity will schedule and conduct an onsite inspection to verify project completion and permanent stabilization.

The following information must be submitted for the application to be considered complete.

### **Section 1. Permit Information**

Check the appropriate box for the permit type and provide the permit number.

### **Section 2. Project Location or Physical Address**

Provide the facility/development name, address, municipality, and county. Provide the latitude and longitude coordinates for the approximate center of the project area or facility, in degrees, minutes, and seconds.

### **Section 3. Reason for Permit Termination**

Check the appropriate box which describes the reason for the submittal of the NOT form. In most cases, the NOT form should not be submitted until all construction activity identified in the E&S/PCSM plan is complete and all disturbed areas have been stabilized. For example, for a subdivision where the operator will construct the infrastructure (roads, utilities, etc.) and houses, the operator should not submit the NOT form until all construction activity identified in the plans are complete and all disturbed areas have been stabilized. This includes individual lot development (i.e. house, driveway, and lawn construction). Thus, the first box should be checked.

However, circumstances may warrant a full permit termination after either some or none of the planned

activities (i.e. any earth disturbance activities, such as clearing, grubbing, grading or the installation of E&S BMPs) were conducted, the site has been stabilized, and there is no intention for the permittee to commence or continue construction at the project site.

- For full terminations where **some of the planned activities were conducted including the installation or utilization of PCSM BMPs**, complete Sections 1 through 6 and other applicable sections of the NOT form (as described in Section 6 of the NOT instructions) as well as the applicable sections of the Completeness Review and Fieldwork Checklist.
- For full terminations where **some of the planned activities were conducted yet no PCSM BMPs were installed or utilized**, complete Sections 1 through 4 of the NOT form and Section 4 of the Completeness Review and Fieldwork Checklist. In lieu of the Section 8 certification, submit a signed cover letter and indicate in the letter that some earth disturbance activities took place, no PCSM BMPs were installed, and the site has been permanently stabilized.
- For full terminations where **no planned activities were conducted**, complete Sections 1 through 4 of the NOT form and Section 4 of the Completeness Review and Fieldwork Checklist. In lieu of the Section 8 certification, submit a signed cover letter and indicate in the letter that no earth disturbance activities took place and no temporary E&S BMPs were installed.

If a permittee(s) wishes to terminate permit coverage on a portion of a project which is complete and permanently stabilized while continuing to maintain permit coverage on the remaining portion of a project until completion, this can be achieved through a partial permit termination. The following criteria must be met to utilize a partial permit termination:

1. Both the area of land to be terminated and the remaining land must be five (5) acres or greater. Therefore, the total project site must be ten (10) acres or greater.
2. Except for linear projects that involve restoration to pre-construction conditions, to the extent practicable, in accordance with 25 Pa. Code §102.8(n), both portions of the project must not be hydrologically connected to (contributing stormwater drainage/flows to or receiving stormwater drainage/flows from) each other, up to and including the 100-year storm event. For example, if a BMP is located within the completed portion of the site and infiltrates the 2-year/24-hour storm but overflows during larger storm events to a larger basin which is not contained within the

completed portion of the site, the partial NOT will not be approved.

3. Single lot terminations are permitted, so long as they meet the criteria above.

Provide a description of the portion of the project site to be terminated and provide the metes and bounds (attach additional sheet, if necessary). If submitting a NOT form for a partial termination, a notice of intent or permit application for an amendment to the permit to reflect the reduction in the project site must be submitted concurrently.

#### Section 4. Permittee Information

Provide the name, address, telephone number, and email address of the permittee and any additional permittees (those who had been listed as co-applicants on the permit application). The name(s) and address(es) provided here must match the name(s) and address(es) of the applicant(s) on the permit application, unless the permit was transferred to a new permittee(s); in which case, the name(s) and address(es) must match the name(s) and address(es) listed on any applicable transfer form.

#### Section 5. Final Certification of Licensed Professional

Per 25 Pa. Code §102.8(k), a licensed professional or a designee shall be present onsite and be responsible during critical stages of implementation of the approved PCSM Plan. A licensed professional, *which is defined in 25 Pa. Code §102.1 as professional engineers, landscape architects, geologists, and land surveyors to practice in this Commonwealth*, must complete, sign, and seal this section. Although a designee of the licensed professional may have provided oversight during critical stages on behalf of the licensed professional, the designee may not complete this section. This section must be completed by a licensed professional. This section must be completed for all NPDES permitted projects regardless of whether the project either contains installed PCSM BMPs or is a restoration/reclamation activity.

In conjunction with this section, **Appendix A** must be completed to provide a summary of installed PCSM BMPs, and a copy of the project's record drawings must be attached to the NOT form. The record drawings must accurately reflect as-built conditions and need to contain a level of detail sufficient for the person responsible for the long-term operation and maintenance of the BMPs to locate, access, and properly maintain the BMPs. The record drawings should contain the same information as the PCSM Plan contained and note any changes from the PCSM Plan (preferably overlain). *Note: Changes made to a PCSM Plan may result in an amendment to the permit.* **Appendix B**, the Record Drawings Checklist, must be completed as verification that all applicable items are

included in the record drawings. If applicable items are missing, the reviewing entity may request resubmittal of the record drawings.

### Section 6. Long-Term Operation and Maintenance and Restoration/Reclamation

Check the box which describes the final status of the site. If any non-restoration or non-reclamation PCSM BMPs were installed, or utilized (including non-structural BMPs which do not require installation but are utilized as a part of the PCSM Plan, e.g., street sweeping), (per 25 Pa. Code §102.8(a) through (m)) within the project area encompassed by this Notice of Termination, then the first box must be checked (and NOT form Section 7 as well as Appendices A, B, and C are required to be completed). If the project area encompassed by this Notice of Termination is to be completely restored or reclaimed (per 25 Pa. Code §102.8(n)), then the second box must be checked (and NOT form Section 7 as well as Appendices A, B, and C are not required to be completed).

### Section 7. Proof of Instrument Filing with the Recorder of Deeds Office

An instrument addressed in 25 Pa. Code §102.8(m)(2) must be filed with the County Recorder of Deeds office, and proof of filing must be submitted with the NOT form. However, if the answer to question 7.a is "yes," an instrument filing is not necessary at this time (but will be required at the time of a future property transfer) and the permittee is not required to complete section 7.b. The previously mentioned sample Instrument for the Declaration of Restrictions and Covenants does not, by itself, address all of the requirements of 25 Pa. Code §102.8(m). In order to address these requirements, the following items must be recorded with the instrument:

1. Record drawings which accurately reflect as-built conditions
2. Long-term operation and maintenance plan (which may be contained within the record drawings)
3. Operation and maintenance agreements (for cases in which an entity(ies) or person(s) other than the permittee has agreed to perform long-term operation and maintenance) NOTE: A planned community declaration may be considered an operation and maintenance agreement for PCSM BMPs which are to be operated and maintained by a Property Owners Association (POA). If the project contains PCSM BMPs which are not operated and maintained by the POA, then a separate agreement(s) may be warranted.

For most projects, the instrument and attachments which were recorded during the initial filing (within 45 days of permit authorization/issuance) will need to be amended at the time of permit termination so that the most recent plan on record is an accurate reflection of as-built conditions for the benefit of current and

future responsible parties. The only exception would be projects where:

1. The location and dimensions of the BMPs on the record drawings are the same as those on the PCSM plan,
2. there are no subsurface BMPs,
3. All BMPs are non-engineered and require minimal maintenance, and
4. The operation and maintenance plan has not changed.

Proof of filing the instrument and attachments with the Recorder of Deeds must be submitted with the NOT form. The combination of these two items is considered sufficient proof of filing:

1. A copy of the Recorder of Deeds receipt and
2. Completed Section 7.b of the NOT form.

In conjunction with this section, **Appendix C** must be completed to identify those individuals who have agreed to be responsible for long-term operation and maintenance of the PCSM BMPs. Complete the table as follows: In the first column, each PCSM BMP must be listed in a separate row, with each corresponding latitude and longitude provided in the second column of the same row. The full name, address, and phone number of the individual responsible for each BMP must be provided in each row for which a BMP is listed.

### Section 8. Permit Termination Certification

The person listed in Section 4 is to complete this certification. If an additional permittee is listed in Section 4, print an additional Section 8 to be completed by the additional permittee. There is no need for a co-permittee, who was brought onto the permit after permit authorization/issuance, to complete the certification. Upon permit termination, all remaining co-permittees who had been brought onto the permit after authorization/issuance are automatically released from liability. The information provided in the certification must match the information provided on the permit application certification section or on any applicable permit transfer forms.

The permittee must complete the required certification by printing the permittee name in the first paragraph, checking the appropriate box as indicated below, entering the entity name both in the second paragraph and next to the appropriate checkbox, and providing the printed permittee name and title, permittee signature, and date:

a. Corporations:

- 1) A president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or

decision-making functions for the corporation;  
or

- 2) The manager of one or more manufacturing, production or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- b. Partnerships or sole proprietorships -a general partner or the proprietor, respectively.
- c. Municipalities, State, Federal or other public agencies -either a principal executive officer or ranking elected official:
- 1) The chief executive officer of the agency; or
  - 2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
- d. For individuals, no indication of entity name or title is necessary.

If anyone else signs on behalf of a corporation, partnership, or public agency, documentation supporting delegation of contracting authority must be provided.

#### **Notice of Termination Completeness Review and Fieldwork Checklist**

The NOT paperwork, required to be submitted, is to be completed based on property ownership and the type of PCSM BMPs (see NOT form Section 6). Under the Paperwork Requirements section:

- If your project contains PCSM BMPs installed per 25 Pa. Code §102.8(a) through (m), and the property is not commonwealth- or federally-owned, check the boxes in the "Permittee Included" column in Section 1 of the checklist.
- If your project contains PCSM BMPs installed per 25 Pa. Code §102.8(a) through (m), and the property is entirely commonwealth- or federally-owned, check the boxes in the "Permittee Included" column in Section 2 of the checklist.
- If your project contains PCSM BMPs installed per 25 Pa. Code §102.8(n), regardless of ownership, check the boxes in the "Permittee Included" column in Section 3 of the checklist.

Under Section 4, "Field Inspection," all project types must check the boxes in the "Permittee Addressed" column.

The permittee shall retain a copy of the record drawings and shall also provide a copy, as part of the approved PCSM Plan, to the person(s) identified in Appendix C,

as being responsible for the long-term operation and maintenance of the PCSM BMP(s). Additional copies of the NOT form and record drawings shall also be provided to the local municipality.

#### **AFTER PERMIT TERMINATION**

Upon any reduction, loss, or failure of any PCSM BMP, the Grantor identified in the recorded instrument shall take immediate action to restore, repair, or replace the BMP or provide an alternative method of treatment. If a modification to the installed PCSM BMPs is proposed for any reason, the recorded instrument shall not be amended, terminated, or in any way modified by the Grantor without the express prior written approval of the Commonwealth of Pennsylvania Department of Environmental Protection (Department).

If an amendment or modification of the instrument is needed for reasons other than PCSM BMP modification or site redevelopment, the Grantor identified in the recorded instrument shall provide notice to the Department or delegated county conservation district in writing at least 20 business days prior, unless otherwise approved by Department, to recording any amendment, termination, or modification of the instrument. After 20 business days have elapsed without written notification from the Department, the Grantor may record any such amendment, termination, or modification of the instrument.