



February 3, 2021

The Honorable Patrick McDonnell, Chairman  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Re: Comments on the Proposed Amendments to Chapter 105 – Dam Safety and Waterway Management [ 25 PA. CODE CH. 105, 50 Pa.B. 6863] – submitted electronically via - <https://www.ahs.dep.pa.gov/eComment/>

Dear Chairman McDonnell:

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

The MSC appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's (PA DEP or Department) proposed Amendments to Chapter 105, Relating to the Dam Safety and Waterway Management. The Department is proposing significant revisions to the existing waiver process, has added several new terms and definitions and lastly has added many undefined terms that may lead to inconsistent interpretation and subjective reviews under the proposed amendments. The MSC submits the following comments on the proposed Amendments to Chapter 105.

### General Comments

1. It is the MSC's impression that the PA DEP regulates by issuing guidance and then updating the regulations later. In 2017, the Department responded to comments related to the "Final Technical Guidance: Comprehensive Environmental Assessment of Proposed for Chapter 105 Water Obstruction and Encroachment Permit Applications (DEP ID: 310-2137-006). The Department received many comments that stated the regulations did not support implementing the guidance document as it was proposed. However, the Department responded that the guidance document was to provide guidance on what was already required by Chapter 105. The power point presentation supplied as part of these proposed revisions indicated that the need for these revisions were to "incorporate new or revised sections and definitions to codify existing practices." These are only "existing practices" now because the Department has been regulating through that and other guidance documents. The MSC recommends that PA DEP reinforce that guidance is simply that, guidance and if it is not in regulation it is optional and not a requirement of a permit application.

2. There is no definition provided for “public water supplies.” The MSC recommends that PA DEP provide a definition and if it is associated with an actual public water (for distribution), those locations are no longer publicly available following 9/11.

### § 105.1 – Definitions

1. “Geomorphic” – The term “geomorphic” does not appear in the current Chapter 105 regulations but the new terms “geomorphic stability” and “geomorphic measurements” are used in new Proposed language at §§ 105.2(4), 105.15(a)(4)(vii), and 105.161(a)(3). The MSC recommends that the Department that a definition of “Geomorphic” be added to ensure clarity on what “geomorphic stability” and “geomorphic measurements” are referring to in the proposed language where those terms are used.
2. “Incremental Dam Breach Analysis” – The current definition states “to determine the highest runoff event during which a dam failure would cause a threat to life, health, property.....” This is confusing. Should the definition actually be referring to the “highest” runoff event that causes the threats described, or should it be the “lowest” runoff event that causes those threats? The MSC suggests that PA DEP revisit this definition and provide further clarification.
3. “Maintenance” – In the proposed definition of “maintenance,” The MSC recommends removing the language at the end of the definition that reads “as authorized by the Department” to avoid a strict interpretation that every small maintenance activity on a dam, water obstruction, or encroachment must be authorized by the Department. For example, § 105.171(b) requires that for culverts, “maintenance activities shall be conducted to minimize erosion and sedimentation resulting therefrom” and it would seem unnecessary to have to ensure specific Department authorization prior to every such maintenance activity that may become necessary. In addition, we would recommend that the definition be expanded to include maintenance activities performed as a direct result of discrete 3<sup>rd</sup> party activities. Suggest that the definition be revised as shown below:

“Maintenance” - Periodic activities conducted to preserve the condition of a dam, water obstruction or encroachment, **inclusive of those activities performed as a result of 3<sup>rd</sup> party activities.** ~~as authorized by the Department.”~~

4. “Paleo-Aquatic” – MSC recommends that PA DEP should consider defining the term “paleo-aquatic,” as used in Proposed new language at § 105.15(a)(4)(vii), since that is not commonly used terminology and appears nowhere in the current Chapter 105 regulations.
5. “Project” - is defined as *“The entire area of the site encompassing a proposed dam, water obstruction or encroachment. The term includes reasonably foreseeable areas planned to contain future dams, water obstructions or encroachments.”* The MSC recommends that the second sentence of the definition is removed because the applicant should not have to pre-apply for future projects if its current project had independent utility and can function on its own.

6. “Probable Maximum Flood (PMF)” and “Probable Maximum Precipitation (PMP)” – In the definitions for both the PMF and PMP, The MSC questions the use of the term “possible” within the definitions rather than the using the word “probable” as in the terms themselves. For example, in the definition of PMP, it isn’t clear how one would be able to determine the amount of precipitation that is “physically possible,” but the amount “physically probable” could seemingly be determined from historical records (and the same for “reasonably possible” versus a recommended “reasonably probable” in the definition of PMF). The MSC recommends using the word “probable” because probability utilized by design engineers to understand the duration and intensity of storms to determine routing and flooding. Both the SCS Curve Number Method and TR-55 are based on the probability of design year storm events.
7. Stormwater management facilities – The MSC recommends that the statement for excluding swales or ditches that have not been maintained and have developed into watercourses or other bodies of water including wetlands be removed.

### § 105.2 – Purpose

1. The Department is proposing to add to the purpose of Chapter 105.

“Protect the natural resources, environmental rights and values secured by PA. CONST. art. I, § 27 and conserve, ~~and~~ protect, restore and improve the water quality, natural regime, aquatic resource functions, geomorphic stability and carrying capacity of ~~watercourses~~ regulated waters of this Commonwealth.”

Article I Section 27 states, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

The Department does not have authority to expand the definition of Article I Section 27 to include the proposed changes above, such as aquatic resource functions and geomorphic stability. The MSC recommends removing the changes in this section from the proposed amendments.

Further, the addition of “restore and improve” is inappropriate for inclusion in the Chapter 105 purpose. Restoration and improvement are tasks more closely related to mitigation monitoring and should not be related to dams, water obstructions or encroachments permitting. The addition of “aquatic resource functions” would insinuate that functional assessments would need to be completed for all wetland and stream features. This is excessive for projects with minimal and/or temporary impacts.

### § 105.12 – Waiver of Permit Requirements

1. § 105.12(a)(2) – The proposed new wording in the first sentence of this paragraph specifying that this waiver is only available if an obstruction or encroachment does not



“impede flow or aquatic life passage” is problematic since the word “impede” is undefined for purposes of this waiver, and any “obstruction or encroachment” could have at least a minimal effect of “impeding” flow to some extent. The MSC recommends that the Department add an appropriate qualifier, such as “significantly” be inserted as shown below (similar to how the concept of having a “significant effect” is already used in § 105.12(a)):

*“(2) A water obstruction or encroachment in a stream or floodway with a drainage area of 100 acres or less that will not significantly impede flow or aquatic life passage permanently.”*

In addition, the MSC recommends that this waiver should still be available for small stream fills (i.e., minor culvert installations and/or geotechnical bleeder drain outlets). We also recommend that the word “permanently” be added to the end of this, to allow for construction dewatering.

2. § 105.12(a)(5) – In the current regulation, the citation to the Oil and Gas Act in this paragraph is out of date and should be updated and revised accordingly, such as shown below:

*“(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 (52 P. S. § § 1396.1—1396.31), The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § § 3301—3326), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003), the Oil and Gas Act (58 Pa.C.S.A. § § 2301—3504 P. S. § § 601.101—601.605) and the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.1—750.20).”*

3. § 105.12(a)(11) – This section outlines the process for submitting an environmental assessment form for those seeking to utilize a waiver. The assessment form requires a significant amount of information, much of which does not appear substantively related to the underlying waiver request. Requiring an unreasonable amount of information may discourage applicants from pursuing the removal of structures that are no longer needed or useful. The MSC believes it is advantageous to remove structures no longer in use and encourages the Department to simplify this process.
4. § 105.12(a)(21) - The MSC supports the addition of this waiver, which will allow for greater flexibility in conducting geotechnical borings, infiltration testing, geomorphic studies, etc. that are helpful or necessary in guiding the project design. The addition, this waiver will allow for greater data collection resulting in more informed project designs and higher quality permits.

5. § 105.12(a)(22) – The MSC appreciates the Department’s addition of this waiver for **“The placement, maintenance and removal of temporary mats and pads used for minimizing erosion and sedimentation at a wetland crossing.”** This will allow for responsible Oil & Gas development by unrestricting the use of this useful E&S best management practice. Would this waiver replace the GP-8 for Minor Road Crossings?
6. § 105.12(b)(1) - The MSC encourages the Department to retain the existing waiver process for existing small dams that are operated and maintained for water supply purposes, and which were constructed prior to July 1, 1979. Removing these dams from an existing waiver process that has operated well since 1979, and which are not posing any concern to public health, safety or the environment, seeks to correct a problem which does not exist while creating additional work for both the department and the owners of these structures. The MSC urges the Department to reconsider this proposed change.

### § 105.13 – Regulated Activities – Information and Fees

1. This section explicitly lists what is required when submitting an “application” (Joint Permit or Small Project Joint Permit) to the PA DEP; however, nothing in this section explicitly states what information is required for a “registration” to utilize a General Permit. As written, PA DEP can require any of the information that would need to be submitted as part of a Joint Permit Application to be submitted as part of a General Permit registration which is well above what would be required for a General Permit. If the PA DEP is seeking to clarify what is required with permit applications or registrations to ensure adequate permit/registration submissions, this section should be updated to include what is required in the use of a registration to provide an applicant clarity/certainty on the required documentation. At a minimum the words “the following” should be removed to eliminate the implication that the list of required information also applies to registrations for general permits. The revisions do not meet the intentions of the PA DEP to clarify requirements.
2. § 105.13(c)(2)(iv) – This paragraph says that the “Environmental Assessment for waived activities fee” applies to use of the waivers at § 105.12(a)(11) and (16), and then goes on to say that the Environmental Assessment for these waivers is required under § 105.15(d). However, §105.15(d) does not include a reference to § 105.12(a)(16), which appears to be an inconsistency between the language in those two sections. The MSC recommends that the Department resolve the inconsistency between the two sections.
3. § 105.13(d) – The MSC supports the addition of “or multiple counties” for the submission of a single application for projects that cross county lines. Currently, a separate application must be submitted per county which is administratively burdensome, duplicative, and wasteful.
4. § 105.13(e)(1)(i)(A) states, “A complete demarcation of the floodplains and regulated waters of this Commonwealth on the site. The wetlands shall be identified and delineated in accordance with the Department’s Wetland Delineation Policy in § 105.451 (relating to identification and delineation of wetlands— statement of policy). **The demarcation of**

**floodplains and regulated waters of this Commonwealth, including wetlands, must be verified through on-the-ground investigation or must otherwise be field-verified. Copies of FEMA floodplain maps must be included for the project, when the project is located in areas where FEMA maps have been prepared.”**

For larger projects, specifically FERC regulated transmission lines, “on-the-ground” investigation, and demarcation for the entirety of the project could be significantly delayed due to eminent domain procedures. The MSC recommends adding language to provide flexibility in this requirement so the Department can initiate application review for projects also regulated by FERC that use best available technology for water resource identification on restricted properties, understanding no application or registration can be approved without on-the-ground field verification. The Department should also consider allowing for an overall approval of the use of best available technology for water resource identification. As written, this section could preclude the Department from taking advantage of rapidly advancing technological capabilities, creating a process that may soon be obsolete, defeating the purpose of the proposed regulatory updates.

In addition, the MSC would like to request clarification from PA DEP on the inclusion of FEMA maps with all permit applications. Typically, applicants include them in applications only when projects were in areas designated Zone AE. In addition, absent a FEMA evaluation, floodplains (flood elevations) are calculated and not potentially evident in the field.

5. § 105.13(e)(1)(iii)(D) – The proposed language in this paragraph with regard to water dependency would appear to require (or at least could be interpreted to require) that there not be “any alternative location” available. A qualifier should be inserted, such as “any practicable non-water dependent alternative” to ensure that there be some appropriate boundaries on the limits of required alternative locations to be utilized. Further in that same sentence, it’s also unclear which location (the selected location or the alternate location) is being referred to where it reads “... and the use of location ....” It would seem that the intent there is to refer to the selected location, so that clarification should be inserted as well. These same comments and suggested edits also apply to the similar sentence in § 105.14(b)(7). The MSC suggests the following edits for § 105.13(e)(1)(iii)(D):

*“(D) A narrative discussion and analysis on water dependency. Water dependency must be based on the demonstrated unavailability of any practicable non-water dependent alternative location, route or design and the use of the selected location, route or design to avoid or minimize the adverse impact of the dam, water obstruction or encroachment upon the environment and protect the public natural resources of this Commonwealth.”*

6. § 105.13(e)(1)(v) – In the first sentence of this paragraph, it is no longer clear what the word “analysis” is referring to since the prior usage of that term in the sentence is being removed. The MSC recommends that the word “analysis” in that sentence be replaced with wording such as the “project’s consistency with the stormwater management plan,



as shown below:

*“(v) Stormwater management consistency. If a watershed stormwater management plan has been prepared or adopted, and is current under the Storm Water Management Act (32 P. S. §§ 680.1—680.17), a letter from the county or municipality commenting on the analysis project’s consistency with the stormwater management plan must be included as part of the application, when provided by the county or municipality.”*

7. § 105.13(e)(1)(viii) – Alternatives Analysis. This preparation of an Alternatives Analysis should not be required for projects that qualify for General Permits. The Department should also review the draft Alternatives Analysis Technical Guidance Document currently being prepared by a multi-stakeholder workgroup to resolve any potential conflicts between the two documents. The proposed revisions raise several questions regarding the meaning of “commensurate with the anticipated environmental impact,” “reliable and convincing evidence,” and “reliable and representative demonstration.” How will applicants know how much detail these thresholds require?

The proposed additions set forth by subsections (A)-(C) appear to require that the analysis of each alternative be comprised of, in essence, its own administratively and technically complete permit package. Subsections (D) and (E) should not be included as these expand the analysis to future projects, which is purely speculative and would not provide value to the analysis. The alternatives analyses for future projects will be addressed when a permit (if required) is submitted for those projects. The alternatives analysis should focus on the project at hand and should not include future projects.

In addition to Chapter 105 criteria, there are numerous factors involved that must be weighed including endangered species habitat, archeological and historical concerns and landowner wishes (i.e. there is a significant amount of information that must be weighed as part of an alternatives analysis). Alternatives are identified at a macro, intermediate and micro level. If on the ground field reviews are required to support the collection of information for all alternatives, this would require an unreasonable amount of landowner coordination and subsequent survey approval acquisition, creating costly permit preparation and approval delays.

The use of highly effective GIS-based comparisons of macro and intermediate level alternatives and route variations will result in highly effective alternatives comparison. Data collected from “boots on the ground” surveys should only be required for the primary or preferred alternative being permitted.

8. § 105.13(e)(1)(xiii) – Cumulative Impact Analysis. This is contrary to the current “single and complete” project definition in the Pennsylvania State Programmatic General Permit and should be removed. Additionally, the MSC is concerned that reviewers would provide their own interpretation on this section that would result in minor impact wetland projects being denied especially since impairment is not defined in the Chapter 105. Requiring wetland areas potentially miles apart to be considered as a single complete and interrelated wetland area is unreasonable and should be eliminated.

9. § 105.13(e)(1)(xiii)(4) states, “When the Department, conservation district or delegated local agency determines that an application or registration is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have a specified period of time, as stated by the Department in writing, [60 days] to provide the information necessary to complete the application or registration and provide the information necessary for the Department, conservation district or delegated local agency to determine compliance with this chapter.”

The MSC would like clarification as to if these changes eliminate the 60-day time period for responding to comments before the application is considered withdrawn. If so, the MSC opposes this change. Historically, our members have been instructed by PA DEP to respond to comments quickly if we wanted to keep project reviews moving. As currently drafted, this may allow for unrealistic comment response time frame. This revision removes regulatory certainty or predictability when it comes to permit reviews.

10. § 105.13(h) – In the third sentence of this paragraph, with regard to who must sign a permit application for a corporation, the current wording in § 105.13(i) that allows for an application to be signed by an “other responsible official” no longer appears in the proposed in § 105.13(h). The MSC believes this language should be retained since it is common practice for corporations to delegate permit application signature authority to appropriate officials responsible for the permitted activity at the regional or local level where the specified corporate officers are not directly engaged with those activities. The MSCs suggested revisions in that sentence of proposed § 105.13(h) are shown below:

*“(h) .... In the case of a corporation, the president or vice president and the treasurer, assistant treasurer, secretary, ~~or~~ assistant secretary, or other responsible official authorized to sign on behalf of the corporation shall sign and submit the application.”*

#### § 105.14 – Review of Applications

1. § 105.14 - The MSC urges the Department not to add the qualifying criteria of “with an adequate margin of safety” to Section 105.14. The current language within this section has been well understood and applied by the regulated community for several decades. No compelling rationale is offered as to why this new criteria is to be added. Indeed, the very construct and overarching requirements of Chapter 105 are to ensure that projects and structures are constructed “with an adequate margin of safety.” Inserting this specific phrase, without either a compelling rationale or an accompanying definition that guides the regulated community and department staff, is unnecessarily confusing. The Department is urged to retain this section without the new additional language.
2. § 105.14(b)(7) – Similar to the comments above at § 105.13(e)(1)(iii)(D), the proposed language in the second sentence of § 105.14(b)(7) with regard to water dependency would appear to require (or at least could be interpreted to require) that there not be “any



alternative location” available. The MSC recommends that a qualifier be inserted, such as “any practicable non-water dependent alternative” to ensure that there be some appropriate boundaries on the limits of required alternative locations to be utilized. Further in that same sentence, it’s also unclear which location (the selected location or the alternate location) is being referred to where it reads “.... and the use of location ....” It would seem that the intent there is to refer to the selected location, so that clarification should be inserted as well. The MSC’s suggested edits for § 105.14(b)(7) are shown below:

*“(7) The extent to which a project is water dependent and thereby requires access or proximity to or siting within water to fulfill the basic purposes of the project. The dependency must be based on the demonstrated unavailability of any practicable non-water dependent alternative location, route or design and the use of the selected location, route or design to avoid or minimize the adverse impact of the dam, water obstruction or encroachment upon the environment and protect the public natural resources of this Commonwealth.”*

#### **§ 105.15 – Environmental Assessments**

1. § 105.15(a)(4)(vi) – It is unclear on the purpose of this section. Providing detail on the demonstration and identification of historic and modern impacts on or degradation of aquatic resources could be a daunting task without clear guidance and purpose. The MSC believes that the stream assessment studies the Department conducts every 2 years provides adequate information on historic and modern land uses. It is unnecessary to replicate these stream assessment studies.
2. § 105.15(a)(4)(viii) – The MSC recommends the removal of the word “paleo-aquatic” as it is completely unrealistic to base the success of a restoration site on paleo-aquatic conditions.
3. § 105.15(a)(4)(viii) – The information being requested for the restoration of aquatic resources seems too expansive and an unnecessarily burdensome undertaking. These types of projects are meant to benefit the environment. Requiring more information to be submitted to the Department for stream restoration projects will likely deter applicants and result in less frequency of these projects. It is recommended that the Department lessen the information requested to ensure applicants undertake more of these projects.

#### **§ 105.20a – Compensation for Impacts to Regulated Waters of this Commonwealth**

1. The MSC recommends that the title to this section include the word “Permanent” to avoid confusion with temporary impacts and associated restoration of temporary impacts.

§ 105.20a – Compensation for Permanent Impacts to Regulated Waters of this Commonwealth



2. The Compensation Protocol has not been finalized and should not be included in the proposed Chapter 105 amendments (see below).
3. § 105.20a(1) and (2) – Wetland replacement either should be based on an area ratio or it should be based on function and value replacement, but not both. If a restoration wetland meets functions and values at a ratio of 1:1, it should not also have to meet the area ratio and vice versa.
4. § 105.20a(3) – This siting criteria seems to place preference on permittee-responsible mitigation, which is in conflict with the hierarchy established by the 2008 Mitigation Rule. That rule favors mitigation banks over an in-lieu fee and permittee-responsible mitigation. The Department should clarify the siting criteria so that it is consistent with the 2008 Mitigation Rule. This will avoid any applicants being required to replace wetlands onsite by the Department and offsite at a mitigation bank by the US Army Corps of Engineers.
5. 105.20a(a) – The MSC understands that Section 404 of the CWA discusses mitigation requirements, however, this section seems vague when it comes to what types of projects will require mitigation. Will PA DEP look at culverts as affecting aquatic resources that cannot be repaired, rehabilitated, or restored, and thus require compensatory mitigation? The MSC suggests that more information should be outlined on what types of projects along with a numeric value be assigned for compensatory mitigation.
6. 105.20a(b) – In the Chapter 105 Registration Form it specifies that if permanent wetland impacts are greater than 0.05 acres then mitigation is required Will this go away to account for the no net loss of wetland section? The MSC recommends that the forms be updated when the proposed amendments are finalized.
7. 105.20a(c) – The designated watershed boundary should be defined as either HUC-10 or HUC-12 watershed as opposed to being identified by the Department. This will allow for more and better opportunities for compensatory mitigation sites.
8. § 105.20a(e) – This paragraph references technical guidance document 310-2137-001 (related to the Pennsylvania compensation protocol), which is still posted on PA DEP's eLibrary website as a Draft document. According to the Department's Non-Regulatory Agenda, published in July 2020, the compensation protocol was scheduled to be published as final in Q3 2020. The compensation protocol has yet to be published as of this date. The Chapter 105 regulations should not be referencing a Draft guidance document unless and until is it finalized. The MSC recommends removing the reference to the compensation protocol until the document is finalized.

#### **§ 105.445 – Waiver of Certain Requirements**

1. § 105.445 – In the current regulation, the citations to some of the referenced regulatory sections in § 105.445(1) to (7) appear to be somewhat out of date and MSC recommends



that they be updated and revised accordingly, such as shown below:

*“In issuing a general permit, the Department may waive the procedural requirements of any or all of the following sections of this chapter as applied to a particular category of dams, water obstructions or encroachments covered by the general permit:*

- (1) Section 105.41 (relating to notices and reports).*
- (2) Section 105.42 (relating to terms and conditions of Department permits and approvals ~~acknowledgment of conditions~~).*
- (3) Section 105.53 (relating to inspections by permittees or owners and inspection reports).*
- (4) ~~Section 105.101 (relating to notices and reports).~~*
- (45) Section 105.102**(b)** (relating to personnel and supervision).*
- (56) Section 105.108**7** (relating to completion, certification and project costs ~~certificate and final plans~~).*
- (67) Section 105.111 (relating to commencement of storage of water, fluid or semifluid storage).*”

#### **§ 105.446. Procedure for issuance.**

1. § 105.446(e) – states, *“The Department will periodically review issued general permits for adequacy and make necessary revisions, updates or revocation of a general permit, when necessary or appropriate.”*

The MSC recommends that PA DEP specify how frequently this is going to occur and/or describe the process for how they plan to inform the public that changes have been made. There should be structured process for reviews/changes. In addition, the MSC is concerned about the term “revocation of a general permit.” The concern being is this something that the Department would consider doing for general permits that have already been issued for a specific project or a general permit in its entirety. It would not seem appropriate that the Department should be allowed to change the rules for a permit that is already issued during the life of a project. Proper notice should be given to the regulated community in order to plan future projects and such decisions should not be implemented/effective immediately.

#### **§ 105.451 – Identification and Delineation of Wetlands – Statement of Policy**

1. § 105.451(b) – In the current regulation, the citation to the Oil and Gas Act in this paragraph is out of date and the MSC recommends that it be updated and revised accordingly, such as shown below:

*“(b) The use of some delineation method is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.1—*



*750.20), the Oil and Gas Act (58 Pa.C.S.A. § § 2301—3504 P. S. § § 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.”*

**§ 105.452 – Status of Prior Converted Cropland – Statement of Policy**

1. § 105.452(b) – In the current regulation, the citation to the Oil and Gas Act in this paragraph is out of date and the MSC recommends should be updated and revised accordingly, such as shown below:

*“(b) The use of some procedure for determining wetlands is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. § § 750.1—750.20), the Oil and Gas Act (58 Pa.C.S.A. § § 2301—3504 P. S. § § 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.”*

The MSC appreciates the opportunity to comment, and we remain committed to working with the Department to address the issues identified. Should you have any questions or require clarification of any of these comments, please do not hesitate to contact me or Loren Anderson.

Sincerely,



Jim Welty  
Vice President Government Affairs