



January 27, 2020

Technical Guidance Coordinator
Pennsylvania Department of Environmental Protection
Policy Office
Rachael Carson Office Building
P. O. Box 2063
Harrisburg, PA 17105-8467

Re: Comments on Draft Policy for Pennsylvania Historical and Museum Commission and Department of Environmental Protection Coordination During Permit Application Review and Evaluation of Historic Resources [*DEP ID:* 012-0700-001] - via electronic submission to Department's online eComment tool

To Whom It May Concern:

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 150 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 Draft Policy for Pennsylvania Historical and Museum Commission (PHMC) and Department of Environmental Protection (PA DEP or Department) Coordination During Permit Application Review and Evaluation of Historic Resources (Draft Policy), which was published in the December 28, 2019 *Pennsylvania Bulletin*. The MSC submits the following general comments, followed by specific comments on specific provisions of the Draft Policy.

General Comments

The proposed revisions to the Draft Policy are extensive and will result in a significant expansion of the number of projects that are required to undergo a cultural investigation as part of the permit review process. It is unclear what problem or concern the Department is attempting to fix, as the current process is well understood by the regulated community and DEP permit review staff, and incorporates cultural investigations into the permit process appropriately. This expansive new policy will impose significant time and resource constraints upon PHMC, the Department and applicants, while providing little, if any, appreciable benefit to the protection of historic and culturally significant sites. The limited staff available at PHMC will be inundated with project reviews under these proposed changes; it does not appear that either PHMC or DEP appreciate this fact.

Moreover, despite the boilerplate language contained on the first page of the Draft Policy that the intent is not to impose additional regulatory requirements, the Draft Policy does just that. It is prescriptive in nature but rather, lays out specific steps and obligations of a permit applicant that, if not adhered to, could render a denial of the permit. Moreover, it makes specific determinations as to the applicability of the policy that are not appropriate for a policy document.

If the Department seeks to expand regulatory requirements on permit applicants in this manner, it is compelled to pursue such changes through the process outlined in the Regulatory Review Act.

Comment No. 1:

Currently, proposed projects requiring state permits for earth disturbance activities are required to perform a desktop review of the PHMC CRGIS database and determine if formal consultation with PHMC is needed. This desktop review documentation is provided to PA DEP for the required state permits. The permits are conditioned that if the permittee encounters archaeological specimens or historic resources, as defined by 37 Pa.C.S. §103, during earth disturbance activities, the permittee shall immediately cease earth disturbance activities and shall immediately notify the Department and shall concurrently notify the PHMC.

Currently only proposed projects that are “near” existing historical sites in the CRGIS database and all projects needing federally authorized permits are required to formally consult with PHMC.

The Draft Policy proposes a procedure where all projects that need earth disturbance permits (state or federal) are required to formally consult with PHMC and submit a State Historic Preservation Office (SHPO) Project Review Form. Given the statutory requirements already imposed, as described above, it is unclear why the current process is insufficient. The MSC encourages the Department to maintain the current approach to reviews.

Comment No. 2:

Section IV.A Paragraph 3 states that a permit applicant “*should plan accordingly to receive PHMC review in advance of submitting a DEP permit application*”.

Requiring PHMC to review a submission prior to submitting a PA DEP permit application will lead to unnecessary delays and further extend the overall timeline of a project. Additionally, the Draft Policy does not contemplate what occurs if the PHMC fails to respond within the appropriate timeframe (i.e. 15 days or 30 days). The MSC recommends that, at a minimum, failure of PHMC to meet its obligation to provide a response shall result in PHMC’s review being deemed complete, and a technical review by PA DEP may be completed, so as not to unnecessarily impose delays and additional costs on the permit applicant.

Where a SHPO project review is warranted, the MSC recommends that PHMC consider concurrent reviews with DEP, as some other agencies have done. Examples include the Pennsylvania Natural Heritage Program (PNHP) and coordination with agencies that govern threatened and endangered species. Applicants for erosion and sediment control permits within



the oil and gas sector already experience significant permit delays, particularly in southwestern Pennsylvania where a typical earthmoving permit takes nearly 200 days to be reviewed and issued. Further exacerbating this situation, without a clear understanding of what problem the Department seeks to address, will lead to further delays and continue to discourage capital investment in the Commonwealth.

Comment No. 3:

While the policy provides for PHMC to make a determination that a *“project will have no adverse effects provided certain conditions are met”* (page 6), the qualifications of this section leave the door wide open for virtually every permit applicant to be required to conduct a cultural investigation. The experience of MSC member companies is that a desktop analysis, combined with the identification of aboveground features during the planning phase, is sufficient. Should any potentially culturally significant feature be identified below ground, the project is halted until an agency determination is rendered. This should be satisfactory.

Comment No. 4:

In the “Additional Considerations” section it states that *“PHMC may, with consent from the property owner, perform or cause to be performed an archaeological survey or field investigation pursuant to the Pennsylvania History Code”*. However, this section does not provide PA DEP or PHMC guidance on a procedure that should be followed if the property owner denies or refuses the survey or investigation from being performed on their property. This section should be expanded to account for this potential outcome created by a landowner and provide necessary guidance to both the Department and the permit applicant.

Comment No. 5:

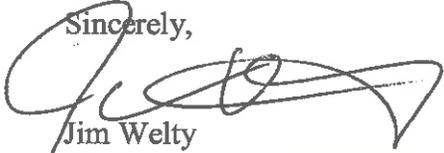
Appendix A specifies exempted activities to this policy. Exemption 9 is related to permits associated with agricultural and timber projects. The MSC recommends that PA DEP clarify the recommended procedure for a non-agricultural activity project that is co-located in an existing agriculture field where the area has been disturbed from past uses.

Comment No. 6:

Area of Potential Effect (APE) is not defined by the policy nor is it defined by the PA History Code. When PHMC determines that an archaeological survey or above-ground historic resources survey is required, what is the APE that the applicant needs to survey? By not defining this term, one would likely interpret it as being the entire project limits of disturbance. Requiring the entire project limits of disturbance to be surveyed would add significant and unnecessary cost to many projects. The Department should narrow the scope of this term by defining it to be only those areas of the project where significant archaeological or above-ground resources are believed to exist.

The MSC appreciates the opportunity to comment, and we remain committed to working with the PA DEP on this topic and any others that may arise. Please let us know if you have any questions regarding this request.

Sincerely,



Jim Welty

Vice President, Government Affairs

- cc: The Honorable Gene Yaw, Chairman
Senate Environmental Resources and Energy Committee
- The Honorable Daryl Metcalfe, Chairman
House Environmental Resources and Energy Committee
- Joint Committee on Documents

