



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Waste Management

**SHORT DURATION PROCESSING AND
BENEFICIAL USE OF OIL AND GAS LIQUID
WASTE**

GENERAL PERMIT WMGR163

COMMENT AND RESPONSE DOCUMENT

2540-PM-BWM0019 6/2022

LIST OF COMMENTATORS

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COMMENTS AND RESPONSES

6/1/2022

General Comments:

1. **Comment:** The commentator appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's Draft Base General Permit for Short Duration Processing and Beneficial Use of Oil and Gas Liquid Waste WMGR163 (General Permit). The commentator states they are committed to the responsible use of water, a vital resource to their operations as well as the world. The commentator also states at all times they seek to minimize their company's impact on water resources, and the centerpiece of this approach is to be "Fresh Water Neutral," which they have achieved for the past five years. They accomplish this primarily through water reuse and recycling. With commitment in mind, they state they offer support for, and agreement with the comments submitted by the Marcellus Shale Coalition, dated March 15, 2022. (1)

Response: The Department acknowledges the commentator's remarks and thanks the commentator for their submitted comments.

2. **Comment:** The commentator understands that House Bill 336, which became law (Act 70) in July 2021, required the Department to create this new base general permit. WMGR163 would authorize the short duration processing, transfer, and beneficial use of oil and gas liquid waste to develop or hydraulically fracture an oil or gas well. The commentator understands that this provision was slipped into the Administrative Code bill that accompanied the FY 2021-2022 budget because some legislators were unhappy that the Department issued a directive requiring public notice and comment for individual uses of WMGR123. WMGR163 would apply to the same treatment and reuse facilities as WMGR123 but has a narrower scope. WMGR163 is duplicative and unnecessary. (2, 3)

Response: The Department acknowledges the comment. While WMGR163 does authorize the same processing and beneficial use activities for oil and gas liquid waste as WMGR123, WMGR163 authorizes the operation of temporary facilities that are only going to be in operation for a maximum of 180 consecutive days at any one time and can only operate under one registration for a maximum of 1 (one) year before a new registration would need to be obtained to operate again at the same site. In order to conclude operations under a registration, a permittee would need to go through closure and post-closure.

3. **Comment:** Section A of the draft WMGR163 permit provides a general description of the draft permit and relevant definitions. Sections A.2 and A.3 define the draft permit as a one-year permit. The commentator supports this time limitation. Any sites that may host short-duration wastewater recycling operations multiple times over the course of several years should seek authorization under WMGR123, which is a 10-year permit. (2, 3)

Response: The Department agrees that entities seeking authorization to operate under the terms and conditions of WMGR163 at the same site over the course of several years should pursue coverage under WMGR123. Final WMGR163 clarifies that coverage under WMGR163 applies to only one period of operation, which can be no longer than 180 consecutive days at any one time.

4. **Comment:** The commentator also supports section A.4 of the draft WMGR163 permit. Section A.4 includes automatic expiration of coverage under WMGR163 if a permittee does not operate under the general permit within 180 days of permit issuance. Operators that wish to obtain permits far in advance of operations should apply for coverage under WMGR123. (2, 3)

Response: While the Department agrees that it is necessary to limit the duration for which permittees can operate under the terms and conditions of WMGR163 and still be considered a temporary operation, the condition unintentionally limited the ability for entities to be proactive in pursuing coverage under the general permit in advance of the intended construction schedule or the flexibility in determining when to begin to operate, as the term is defined in the general permit, due to changes in logistics, for example. DEP's other general permits allow applicants to submit applications in advance of intended operations to provide flexibility and account for circumstances that may be beyond the applicants control. For these reasons, the Department has revised Condition A.3. to state that coverage for a permittee will automatically expire 1 (one) year from the date that the permittee begins to operate, as the term is defined in the general permit, or 2 (two) years from the of issuance, whichever occurs first. In conjunction, the changes allow applicants to obtain coverage under WMGR163 in advance of when they intend to operate, but still only allow permittees to operate for a maximum of 1-year (no more than 180 consecutive days at any one time) after which their coverage will automatically expire, unless the authorization's 2-year timeframe is reached prior to 1-year of actual operation, at which point the authorization would automatically expire.

5. **Comment:** Public notice and the opportunity to comment increases transparency and ensures that communities have a voice in the environmental decisions that impact them. Therefore, if the draft WMGR163 is approved, the commentator respectfully requests that the Department issue a directive that requires Regional Offices to publicly notice for comment all applications for coverage under WMGR163. (2, 3)

Response: Receipt of applications for coverage under WMGR163 will be noticed in the *Pennsylvania Bulletin*. These notices will include instructions by which interested persons may request copies of application materials for review. While a formal comment period is not required for applications for coverage under WMGR163, the Department will still accept and consider comment(s) from interested individuals on an informal basis at any time, regardless of whether or not a formal public comment period occurs. Further, Department always retains the authority to amend, suspend or revoke coverage under a general permit if the waste or activity is not covered by the terms and conditions of the general permit, in accordance with 25 Pa. Code § 287.643(e).

6. **Comment:** The commentator believes that a short duration permit is beneficial to both the Department and permittees, while still ensuring appropriate protections for the environment and natural resources are maintained. (4)

Response: The Department acknowledges this comment.

7. **Comment:** The commentator strongly encourages the Department to include a commentator tracking code with its final Comment and Response document. This enables those who have submitted substantive comments to identify where and how the Department has responded to these comments.

Response: The Department has used the requested format, which includes assigning a number to each commentator, listed in numerical order, that is then placed after each comment, in parentheses, for each comment the commentator submitted.

8. **Comment:** The commentator appreciates the opportunity to comment, and remains committed to working with the Department on this topic and any others that may arise. (4)

Response: The Department acknowledges this comment.

9. **Comment:** The commentator agrees with and supports the comments of the Marcellus Shale Coalition (MSC), and emphasizes that, unless the changes requested by the MSC are made, this permit is not likely to be used by the industry. (5)

Response: The Department acknowledges the commentators' remarks and believes the WMGR163 in its final form, which incorporates reasonable changes based upon received public comment, will result in a general permit that will be used by the industry.

10. **Comment:** The commentator thanks you for the opportunity to provide comments on Draft General Permit WMGR163. (6, 7)

Response: The Department acknowledges the comment.

11. **Comment:** The draft general permit contains ambiguous terminology that must be properly defined to avoid loopholes.

To ensure that there is no misinterpretation of permit guidelines, all pertinent encompassing terms must be clearly defined. The term "beneficial use" is referenced multiple times throughout the draft general permit. While we can assume the definition of "beneficial use," this term is never defined, and it is unclear what would be considered a beneficial use. It is also unclear whether this "beneficial waste" would be tested before reuse, disposal of transportation, or how it will be evaluated as beneficial. The term "beneficial use" must either be clearly defined, or another term should be used. Currently, the language "beneficial use" is largely misleading and is used to elicit positive responses to citizens that are not fully informed on the impacts of fracking waste on their own public health.

We ask that the Bureau rephrase the draft general permit to substitute the term "reuse" for "beneficial use." There is no net public benefit to the reuse of this waste, as the deleterious impacts on human and environmental health are far greater than the industry's financial gain. We further suggest that, in setting the parameters for allowing "reuse," the Bureau uses the term "only" to limit what constitutes "reuse." This will close any unintentional loopholes that permittees may attempt to exploit. (6, 7)

Response: The term "beneficial use" is defined in 25 Pa. Code § 287.1 (relating to definitions). The authority to issue a general permit by the Department as stated in 25 Pa. Code § 287.611 (relating to authorization for general permit) is predicated on the fact that

the general permit is authorizing processing when processing is necessary to prepare waste for beneficial use, or for a category of beneficial use, or both, of residual waste when certain criteria are met. The Department would not issue a general permit for the processing prior to beneficial use, or beneficial use of a waste unless the proposed use of the waste met the definition of “beneficial use.” The Department disagrees with the commentator’s assertions that the use of the term “beneficial use” is for the purpose of eliciting positive responses from uniformed citizens; rather, the term refers to an action that is clearly defined in regulation and used ubiquitously across over 100 residual waste general permits.

Regardless of whether this general permit is available in Pennsylvania, oil and gas exploration and production using hydraulic fracturing would still occur in Pennsylvania through the utilization of fresh, non-waste-derived chemicals (as opposed to constituents contained in the oil and gas liquid waste authorized under WMGR123) and freshwater withdrawals. The purpose of this general permit is to encourage the reuse of oil and gas liquid waste generated on oil and gas well sites and associated activities (such as compressor stations) through a closed loop process that allows for the return of processed liquid waste to well sites for reuse, minimizing freshwater withdrawals and reducing impacts to Pennsylvania’s water resources with no greater threat of environmental harm than the use of the fresh hydraulic fracturing fluid that it replaces.

12. **Comment:** The draft general permit provides inadequate renewal guidelines that enable applicants to renew without proving that they did not violate any federal or state laws. The draft general permit allows applicants to use their original application for renewal. According to the draft general permit, “the Bureau will consider the initial application for coverage under this general permit to also be the renewal application.” The Bureau justifies this decision by stating in Section F(1) that it is “[d]ue to the short duration that permittees are authorized to operate under this general permit,” as well as the “unlikelihood that any updates to original permit application materials would occur between the time of permit issuance and base permit renewal.

However, this decision provides opportunities for permittees to violate state and federal laws and still obtain a permit if their initial application is considered adequate. The draft general permit shortens the renewal process and allows the applicant to avoid submitting any water or air quality analysis. Additionally, with such a short permit time, public comments are not required under WGMR163. This puts the public and environment at risk, even if the permit is only short-term. The comment period is an integral part of the permitting process and allows for residents to vocalize any existing or new concerns to be addressed by the Bureau or permittee. Therefore, failing to provide an opportunity and consideration for comments at the initial and renewal permitting stage from the communities impacted by diminishing residents’ property values, impinging on their property rights, and potentially violates their Constitutional rights under Article 1 Section 27. Furthermore, applicants should not be able to acquire a permit if they violate any state or federal laws. As recorded by the DEP compliance history, certain operators have received a great number of violation notices over the past five years. This includes, but is not limited to, CNX Gas Co. LLC (598), Diversified Prod LLC (563), and Olympus Energy (314). Currently any operator that has an ongoing violation should not be granted a permit, but many times this is overlooked by the permitting agency thus perpetuating future environmental crimes. To ensure accountability and better protection of our waters, the application process must be more rigorous, and the public concerns and known

violations to our right to clean water and air should be considered when approving and renewing permits.

We ask for an annual renewal process that requires applicants to provide environmental data proof that they did not violate any clauses of the permit. As part of the renewal process, applicants should prove that they are not contaminating groundwater and that their wastewater is not leaking from their storage. There should also be a maximum number of times for a renewal to be allowed to ensure all environmental compliances are being followed. (6, 7)

Response: The proposed renewal language in WMGR163 was written to apply only to permittees whose coverage overlaps with the renewal of the base general permit. It does not allow for any permittees to renew their coverage in an effort to continuously operate under the terms and conditions of WMGR163 for longer than their authorization allows, without applying for and obtaining a new registration under WMGR163.

The commentators assert that allowing an original application to be considered a renewal application “provides opportunities for permittees to violate state and federal laws and still obtain a permit if their initial application is considered adequate”; however, an inadequate, or deficient, application for initial coverage would not result in permit issuance to begin with, meaning there would be no authorization to renew. Further, using the original application as the renewal application does not mean that the Department will not be conducting a thorough review of the renewal application to ensure the permittee is operating in accordance with the terms and conditions of the general permit, the residual waste regulations and the Solid Waste Management Act, which establish standards necessary to ensure the proper management of waste materials in the Commonwealth.

Under 25 Pa. Code § 287.201, the Department will not approve a permit application unless the applicant affirmatively demonstrates to the Department’s satisfaction that certain conditions are met, including but not limited to, the compliance status of the applicant or a related party under section 503(c) and (d) of the act (35 P. S. § 6018.503(c) and (d)) does not require or allow permit denial. 25 Pa. Code § 281.201(a)(7). Section 503(d) of the Solid Waste Management Act, 35 P.S. § 6018.503(d), provides: “Any person or municipality which has engaged in unlawful conduct as defined in this act, or whose partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor or agent has engaged in such unlawful conduct, shall be denied any permit or license required by this act unless the permit or license application demonstrates to the satisfaction of the department that the unlawful conduct has been corrected.”

The Department has satisfied Article I, Section 27 of the Pennsylvania Constitution in the development of the WMGR163, in response to the legislative directive of Act 70. During the course of developing the WMGR163, in addition to ensuring the general permit satisfied the requirements of the Act 70 and the Solid Waste Management Act, the Department also undertook a thorough analysis of the impacts to public natural resources. The Department believes the terms and conditions of WMGR163, in conjunction with the residual waste regulations and the Solid Waste Management Act, all of which permittees under WMGR163 must comply with, are adequate in ensuring protection of human health and safety and the environment. WMGR163 was published for public comment on January 15th for a sixty-day comment period in response to which the Department received seven comment submittals, each of which were evaluated and considered in the finalization of WMGR163. The Department notes that each registration under WMGR163

will be published in the Pennsylvania Bulletin and any interested party may submit comments to the Department for consideration at any time and/or appeal the registration if they believe they are aggrieved.

Please also see DEP's response to comment #5.

13. **Comment:** The general permit needs to provide clear monitoring guidelines and testing data should be available to the public.

Within this permit, there are no clear regulations or guidelines denoting the waste water's final destination. There is also no requirement to continually assess the environmental impacts of the waste storage and subsequent use of waste. Furthermore, the waste water's quality is unknown before it is injected back into the ground, creating opportunities for irreversibly contaminating groundwater supplies. This threatens the health of our environment and the public.

If this permit is to move forward, it is critical that guidelines define the process for monitoring the potential impacts to our water sources and the consequences of contaminating our water sources with limitations on quantities and chemical makeup of the wastewater. With the waste temporarily stored on-site, it is unclear to the public if the waste storage containers are being properly measured, cleaned, tested, or broken down. According to a study published in 2019, eight chemicals that are characterized as toxic by the EPA's Resources Conservation and Recovery Act, as well as barium and chromium - all of which are typically found in fracking wastewater - exceeded safe limits in waste produced by 231 gas well sites in Pennsylvania. With Marcellus Shale's Radium-226 contents ranging from high to extreme in fracking waste, the chances of exposing residents who live near these sites - regardless of their temporary nature - is high. This can cause public health problems that reduce quality of life and life expectancy.

An OG71 Alternative Waste Management Practice form would identify how solid and liquid waste will be separated and how sites are going to manage and store the liquid waste. These sites should also be required to monitor their storage facilities and assure no spills or leaks are occurring and the groundwater is not being impacted. Sites containing any radioactive waste and their respective amounts as well as any known spills, leaks, or contaminants should be made public, as it is Pennsylvania citizens' "right to . . . pure water, and to the preservation of the natural, scenic, historical, and esthetic values of the environment." (6, 7)

Response: The concerns raised by the commentator are addressed in the final WMGR163. Condition E.2. requires that persons operating under the provisions of WMGR163 submit to the appropriate DEP Regional Office a final report on the beneficial use activities conducted under the permit within 60 days following the expiration date of their coverage under their permit. This report includes the dates, volumes, and locations, including the names of the facilities, to which the processed oil and gas liquid waste is transported for beneficial use, disposal, storage, transfer, or processing.

Additionally, in accordance with Condition D.1. of WMGR163, permittees must maintain records that include:

- Names of the generators and locations where the oil and gas liquid waste is generated.

- The dates and volumes of oil and gas liquid waste received by the facility.
- The dates and volumes of processed oil and gas liquid waste and wastes produced by the operation of the facility.
- The dates, volumes, and locations, including the names of the facilities to which the processed oil and gas liquid waste is transported for beneficial use, disposal, storage, transfer, or processing.
- The maximum volume of all unprocessed and processed oil and gas liquid waste and other wastes that are managed at the facility each day to demonstrate that the volumes used to calculate the bond are not exceeded. This includes all materials generated, received, processed, and stored at the facility.

The records shall be maintained by the permittee for a minimum of five years, shall be available at the facility (either in hard copy or in an electronic format), and shall be made available to DEP upon request.

Permittees, in accordance with Condition C.21 of WMGR163 must, at a minimum, perform weekly inspections of all processing and storage areas to determine compliance with the general permit, and for evidence of failure. This includes the processing and storage areas for operations permitted under WMGR163 that are located on a well pad that is actively engaged in drilling, casing, cementing, hydraulic fracturing, or flowback operations. For operations permitted under WMGR163 that are located on a well pad and are not actively engaged in processing or transfer, a monthly inspection of all storage areas is adequate.

All generators of residual waste, generating more than 2,200 pounds of residual waste per generating location in any single month in the previous year, are required to, perform a detailed analysis fully characterizing the physical and chemical composition of each type of waste it generates, including radioactivity, in accordance with 25 Pa. Code §§ 287.51(b) and 287.54(a)(1). This information is available upon request.

14. **Comment:** There are known environmental and public health impacts associated with the storage of fracking waste that must be addressed.

Section C(15) declares that this permit “shall not harm or present a threat of harm to the health, safety, or welfare of the people or environment of this Commonwealth.” However, the oil and gas industry has not proven that fracking waste is not harmful. There are numerous peer-reviewed studies and compiled research that show the devastating health impacts on public health associated with proximity and exposure to the fracking process. Fracking waste cannot be cleaned in any way that allows it to be used without conflicting with this clause. Radioactivity in fracking waste can cause complicated health issues, including cancers, pathologies, endocrine, immune system, and neurological disorders. Additionally, salts, which are major constituents of wastewaters, can diminish the quality of life for aquatic wildlife and resources by impacting the hardness of the water and affecting natural populations of species. This includes species which may be considered endangered or protected. On-site storage overflows, overfills, and liner malfunctions are common incidents even in tanks. Because of this, stringent government regulation is necessary to mitigate any risks to human and ecological health. (6, 7)

Response: Regardless of whether this general permit is available in Pennsylvania, oil and gas exploration and production using hydraulic fracturing would still occur in Pennsylvania through the utilization of fresh, non-waste-derived chemicals (as opposed to constituents contained in the oil and gas liquid waste authorized under WMGR163) and freshwater withdrawals. The purpose of this general permit is to encourage the reuse of oil and gas liquid waste generated on oil and gas well sites and associated activities (such as compressor stations) through a closed loop process that allows for the return of processed liquid waste to well sites for reuse, minimizing freshwater withdrawals and reducing impacts to Pennsylvania's water resources with no greater threat of environmental harm than the use of the fresh hydraulic fracturing fluid that it replaces. Without WMGR123 and WMGR163, it stands to reason that oil and gas operators would then rely solely upon freshwater withdrawals and non-waste derived chemicals which would ultimately lead to a substantial increase in the amount of oil and gas liquid waste and increased usage of the chemicals used in the oil and gas industry. The increased amount of waste generated by oil and gas activities in the Commonwealth would still need to be properly managed.

Nonetheless, in recognition of the chemicals used in oil and gas exploration and radioactivity that is associated with wastes generated by the industry, WMGR163 contains provisions to protect public health and the environment from and mitigate harm that may be associated with facilities operating under WMGR163. Under Pennsylvania's residual waste management regulations, any generator of residual waste is required to characterize the waste chemically and physically in accordance with 25 Pa. Code § 287.54, and as part of such, would have evaluated the expected concentrations of constituents, including radiological isotopes. The Department requires an evaluation of the waste's chemical and physical properties to occur prior to it being transferred to a WMGR163 permittee.

Additionally, all generators and shippers of radioactive materials offering such materials for conveyance on a public road are required to characterize the waste, including identification of radioisotopes and quantifying the concentration of radioactivity, prior to shipment and follow federal DOT requirements in 49 CFR.

WMGR163 facilities receiving oil and gas liquid waste must also develop a Radiation Protection Action Plan (RPAP), in accordance with DEP's technical guidance document, "Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document No. 250-3100-001, that contains methods by which a facility will detect the presence of radioactivity, identify the type of radioactivity present, measure the radiation emitted, and determine the actions needed to protect workers, the public and the environment from any radiation contained in the waste it receives. The RPAP also must include procedures for the monitoring of areas where waste is stored at the facility.

The applicable laws and regulations in the Commonwealth, as well as the Department's Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities, are designed to protect public health, safety and welfare and the environment in the Commonwealth. In combination with the terms and conditions of WMGR163, permittees operating under WMGR163 are required to operate in a manner that is protective of human health and safety and the environment.

15. **Comment:** It is imperative that your agency provides more stringent regulation with this type of permit to provide clear guidance on the oil and gas industry and protect the citizens right to clean water as outlined by the Clean Water Act and our state constitution under

Article 1, Sec. 27. Historically, there is a pattern of negligence and subsequent violations by operators that threaten the health of residents and the waterways of the Commonwealth, and these permit guidelines can potentially foster an environment for this concern to be elevated. We are thankful for your consideration and attention to these matters, as your service as the governing body for the environment in Pennsylvania is instrumental to protecting our families, our communities, and our water from the many hazards of the oil and gas industry. (6, 7)

Response: The Department believes the terms and conditions of WMGR163, in conjunction with the residual waste regulations and the Solid Waste Management Act, all of which permittees under WMGR163 must comply with, are adequate in ensuring protection of human health and safety and the environment. The Department can perform compliance inspections at permitted facilities within the Commonwealth to ensure that the facility is operating in accordance with the terms and conditions of WMGR163 and applicable laws and regulation. The Department also thoroughly reviews permit applications materials and other information submitted to the Department as a regulatory or permitting requirement to ensure a permittee can, and continues to, operate in a manner that is protective of human health and safety and the environment.

In situations when an entity does not operate in accordance with the applicable regulations or the terms and conditions of a general permit, the Department has the authority to take enforcement action against any permittees that violate the regulations or any condition of the general permit. Ultimately, if the permittee manages waste in a manner that results in negative impacts to human health or the environment, the permittee would be responsible for ensuring those impacts are appropriately addressed, which can include corrective actions, modifications to operational plans or equipment, and fines.

16. **Comment:** We are writing to request DEP's rejection of Draft Permit WMGR163 on the basis that the Draft General Permit WMGR163 strips the public of the ability to publicly comment on oil and gas liquid waste processing, transfer, and storage that would happen under this permit, and because the permit lacks the safeguards necessary to protect public health and the environment from the dangerous properties of oil and gas liquid waste. (8 - 17)

Response: The Department is required, in accordance with the language in Act 70, which became law on July 9, 2021, to submit to the Legislative Reference Bureau for final publication in the *Pennsylvania Bulletin*, a general permit under 25 Pa. Code § 287.643 (relating to registration) for use for the transfer, storage or processing of oil and gas liquid waste at temporary facilities which will be in operation for no more than 180 consecutive days at any one time by July 1, 2022. The Department disagrees with the commentators that the permit lacks the safeguards necessary to protect public health and the environment as the commenters assert.

The terms and conditions of WMGR163, and the applicable provisions of the SWMA aim to ensure permittees operate in a manner that is protective of human health, safety and the environment. This includes a permit review process that evaluates all aspects of a proposed project, such as a compliance history review of the applicant and any contractors or agents that exercise control over any aspect of the operation; appropriate setback requirements that mirror those in the residual waste regulations for individually permitted residual waste processing facilities; requiring an adequate PPC plan and RPAP; appropriate management of stormwater run-on and run-off; execution of an adequate

bond for a facility; requiring regular inspections of any waste processing and storage areas; a construction certification requirement to ensure a registered professional engineer in the state of Pennsylvania has certified that each phase of construction of the facility, including any storage tanks, has been done in accordance with a permit application, maintaining appropriate documentation and reporting pertinent information to the Department on an annual basis for review.

17. **Comment:** Draft Permit WMGR163 Permit should not be finalized because it would eliminate public comment that would otherwise be required.

The Proposed WMGR163 General Permit would create a new oil and gas liquid waste general permit that would introduce more potential harm to health and the environment by allowing for persons or municipalities to increase the number of transfers of oil and gas liquid waste in or out of a storage facility while avoiding having to comply with the public notice and comment requirements that would have otherwise applied to this activity.

Currently, in order to transfer, process, or store oil and gas liquid waste, the applicable general permit that a person or municipality would have to obtain is WMGR123. WMGR123 is a general permit that garnered significant public input and interest. For example, more than 200 commenters were listed in the Pennsylvania Department of Environmental Protection's ("DEP") Comment and Response Document on the second public comment opportunity on the 49 WMGR123 authorizations for which a second public comment opportunity was offered in 2021.

Importantly, WMGR123 is a general permit that requires a Determination of Applicability ("DOA") under 25 Pa. Code § 287.642 for coverage, rather than a Registration under 25 Pa. Code § 287.643. There are at least two critical differences between having to obtain a DOA rather than a Registration. A DOA requires that notice be placed in the Pennsylvania Bulletin for each application for a DOA, and that there is then a 60-day public comment opportunity, and potentially a public meeting or hearing, prior to the authorization being finalized. For a Registration, on the other hand, notice is placed in the Pennsylvania upon registration, at which point the registration is active and the permit can be used, with no opportunity for the public to review, comment on, or oppose the registration prior to the person or municipality who registered conducting their activities pursuant to their registration.

Consequently, if this new General Permit WMGR163 is finalized the persons and municipalities using this general permit instead of WMGR123 will be able to evade public comment opportunities, and the public would be stripped of its currently existing right and ability to comment prior to transfer, processing, or storage activities commencing in their communities. (8 - 17)

Response: Please see the Department's response to Comment #16 regarding Act 70. The Department disagrees that WMGR163 would introduce more potential harm to health and the environment by allowing for persons or municipalities to increase the number of transfers of oil and gas liquid waste in or out of a storage facility. Regardless of whether WMGR163 is created, generators of oil and gas liquid waste will continue to generate oil and gas liquid waste that must be appropriately managed. Authorizing the management of oil and gas liquid waste under the authority granted in WMGR163 will likely result in a reduction in the distance that vehicles transporting oil and gas liquid waste would need to travel compared to WMGR123 operations as it is more likely for an oil and gas operator

to pursue siting of facility on a temporary basis closer to the points of generation. The alternative would be for a permittee to obtain coverage under WMGR123, which authorize up to a 10-year operational timeframe (or potentially longer if the permittee applies to renew), and which may be sited further from the points of generation due to permitting timeframes and logistics. The Department would expect that fewer vehicles would be travelling to and from each WMGR163 facility due to the likelihood of there being more temporary facilities authorized under the general permit that are located strategically closer to the points of generation compared to a single WMGR123 that would be sited further from points of generation and would service more points of generation.

While Act 70 requires the Department to submit WMGR163 to the Legislative Reference Bureau, for final publication in the Pennsylvania Bulletin, a general permit under 25 Pa. Code § 287.643 (relating to registration), and there is no formally noticed public comment period for an application for coverage under the general permit, applications for coverage under WMGR163 will be noticed in the *Pennsylvania Bulletin* and the public may still submit comments to the Department on the application for registration. The Department considers all submitted comments regardless of whether they are submitted through a formal public comment period.

18. **Comment:** Draft Permit WMGR163 Permit should not be finalized because it creates an arbitrary “temporary” timeline that could increase the number of transfers of toxic oil and gas liquid waste to and from storage areas, increasing the risks of releases into the local environment.

Draft Permit WMGR163 is problematic because the WMGR163 draft general permit would only be applicable to persons or municipalities for “the processing and transfer of oil and gas liquid waste at facilities that operate for no more than 180 consecutive days.” Draft Permit WMGR163 limits a permit holder to only operating 180 days within the year that the permit is authorized. However, this actually means that there could be a new transfer, processing, and temporary storage of oil and gas liquid waste to and from a temporary storage facility every single year from a different permit holder for many years or in perpetuity.

This could increase the risks to the local community and environment of releases happening from spills, leaks, or emissions during the transfer and storage in and out of oil and gas liquid wastes from various operators to new sites on an annual basis. These increased risks make Draft Permit WMGR163 much more dangerous to human health and the environment than oil and gas liquid waste processing, transfer, and storage activities being conducted under WMGR123, where the rate and number of transfers of oil and gas liquid waste into and out of a site could be fewer.

This is concerning because the permit authorizes a huge quantity of oil and gas liquid waste to be stored under each registration at a time, specifically allowing the storage of up to “1,000,000 gallons of oil and gas liquid waste on site at any one time.”

This is concerning given the toxic qualities of oil and gas liquid wastes. Draft Permit WMGR163 defines “oil and gas liquid waste” as follows:

Oil and gas liquid waste – The term includes liquid wastes generated from oil and gas operations as defined in 25 Pa Code § 78a.1. The term includes contaminated water from oil and gas operations and the facility operating under

this general permit, provided the generating facility has satisfied all other permitting requirements that may apply to contaminated water. The term does not include condensate from oil and gas pipeline compressor stations that exhibits a characteristic of hazardous waste under 40 CFR 61, Subpart C, as incorporated by reference at 25 Pa. Code § 261a.1.

Oil and gas liquid waste contains a variety of toxic chemicals. “[O]il and gas exploration and production use a wide range of chemicals to drill and frack wells, mobilize additional chemicals within the oil and gas formations, and release these chemicals across nearly all environmental media.” The chemicals used by the oil and gas industry include a variety of chemicals used to drill and frack wells, including methanol, 2-butoxyethanol, and ethylene glycol, the three most commonly used chemicals as reported by a 2011 report by the Minority Staff of the U.S. House of Representatives Committee on Energy and Commerce. That report also specifically identified 29 chemicals used by companies that are known or possible human carcinogens, regulated under SDWA for risks to human health, and/or listed as hazardous air pollutants (“HAPs”) under the Clean Air Act, including diesel, naphthalene, xylene, hydrochloric acid, toluene, ethylbenzene, and formaldehyde. “When used as fracking fluids, these products and chemicals are mixed with a base fluid, typically water or reused wastewater, and anywhere between two to five million gallons of this mixture is injected to frack a single well.”

Initial drilling of the wells also uses a variety of muds and fluids that contain toxic chemicals. Drilling muds can include barite, which contains primarily barium sulfate but also a host of toxic metals, such as mercury, cadmium, and chromium. Other chemicals used in drilling and well development practices that can contaminate liquid waste from these processes include additional toxic constituents such as propargyl alcohol, a common corrosion inhibitor; heavy naphtha, a lubricant that contains the toxic BTEX compounds; and Duratone HT, a filtration control agent for drilling that contains nonylphenol. [Commenter references a table that titled “Table 1: Chemicals and Additives Used in Hydraulic Fracturing”] (8 - 17)

Response: Please see the Department’s response to Comment #17. The commentators are correct in their assertions that any entity pursuing coverage under WMGR163 could operate at a site where a facility authorized under WMGR163 had previously operated. However, in order for each subsequent facility to obtain an authorization to operate, the prior facility must cease operations, which includes progressing through closure and post closure as the terms are defined in 25 Pa. Code §287.1 (relating to definitions).

Regardless of whether this general permit is available in Pennsylvania, oil and gas exploration and production using hydraulic fracturing would still occur in Pennsylvania through the utilization of fresh, non-waste-derived chemicals (as opposed to constituents contained in the oil and gas liquid waste authorized under WMGR123) and freshwater withdrawals. The purpose of this general permit is to encourage the reuse of oil and gas liquid waste generated on oil and gas well sites and associated activities (such as compressor stations) through a closed loop process that allows for the return of processed liquid waste to well sites for reuse, minimizing freshwater withdrawals and reducing impacts to Pennsylvania’s water resources with no greater threat of environmental harm than the use of the fresh hydraulic fracturing fluid that it replaces.

19. **Comment:** Furthermore, there are toxic chemicals already present in the gas formation that get mobilized as drill cuttings and flowback water, which, in the Marcellus shale formation, can include lead, arsenic, barium, chromium, uranium, radium, radon, and benzene. “Drill cuttings can also contain naturally occurring radioactive materials (“NORMs”), which have proven to be a problem for the disposal of these wastes in landfills not capable of handling them.”

Many of these pollutants that are used or produced during fracking and can be present in oil and gas liquid waste are toxic or otherwise dangerous. According to Earthworks’ “Hydraulic Fracturing 101” page and sources cited therein:

- “Many fracturing fluid chemicals are known to be toxic to humans and wildlife, and several are known to cause cancer. Potentially toxic substances include petroleum distillates such as kerosene and diesel fuel (which contain benzene, ethylbenzene, toluene, xylene, naphthalene and other chemicals); polycyclic aromatic hydrocarbons; methanol; formaldehyde; ethylene glycol; glycol ethers; hydrochloric acid; and sodium hydroxide.
- “Very small quantities of some fracking chemicals are capable of contaminating millions of gallons of water. According to the Environmental Working Group, petroleum-based products known as petroleum distillates such as kerosene (also known as hydrotreated light distillates, mineral spirits, and a petroleum distillate blends) are likely to contain benzene, a known human carcinogen that is toxic in water at levels greater than five parts per billion (or 0.005 parts per million).
- “Other chemicals, such as 1,2-Dichloroethane are volatile organic compounds (VOCs). Volatile organic constituents have been shown to be present in fracturing fluid flowback wastes at levels that exceed drinking water standards. For example, testing of flowback samples from Texas have revealed concentrations of 1,2-Dichloroethane at 1,580 ppb, which is more than 316 times EPA’s Maximum Contaminant Level for 1,2-Dichloroethane in drinking water.
- “VOCs not only pose a health concern while in the water, the volatile nature of the constituents means that they can also easily enter the air. According to researchers at the University of Pittsburgh’s Center for Healthy Environments and Communities, organic compounds brought to the surface in the fracturing flowback or produced water often go into open impoundments (frac ponds), where the volatile organic chemicals can off gas into the air.”

In fact, pollution caused by mismanagement of oil and gas liquid (and solid) waste was even the subject of criminal charges in Pennsylvania. (8 - 17)

Response: Please see the Department’s response to Comment #18.

20. **Comment:** The quantities of liquid waste covered by Draft General Permit WMGR163, which allows for the processing and beneficial use of oil and gas liquid waste potentially containing all of these and/or other toxic pollutants, is vast. For example, in just the decade spanning 2008- 2018, shale gas drilling used over 25 billion gallons of water in the Susquehanna River basin. The natural gas industry in 2018 consumed water at an average of 24.3 million gallons per day, which constituted the third largest use of water in

the basin, even higher than agriculture. All of that water, as well as all of the toxic chemicals added to it in the oil and gas processes that result in the production of wastewater, is in the Chesapeake Bay watershed. (8 - 17)

Response: This comment is beyond the scope of WMGR163.

21. **Comment:** Draft Permit WMGR163 does not go far enough to protect health and the environment from the potential health and environmental dangers from this type of waste given the large quantity of liquid waste produced by this industry or given the large range and quantities of pollutants common to oil and gas liquid waste. (8 - 17)

Response: The Department disagrees with the commentators' assertion that WMGR163 does not go far enough to protect health and the environment. All permittees are required to operate in accordance with the terms and conditions of the general permit, the residual waste regulations and the Solid Waste Management Act, which establish standards necessary to ensure the proper management of waste materials in the Commonwealth. The Department performs routine site inspections at permitted facilities within the Commonwealth and reviews permit applications materials and information submitted to the Department as a regulatory or permitting requirement to ensure a permittee can, and continues to, operate in a manner that is protective of human health and safety and the environment.

In situations when an entity does not operate in accordance with the applicable regulations or the terms and conditions of a general permit, the Department has the authority to take enforcement action against any permittees that violate the regulations or any condition of the general permit. Ultimately, if permittee managing waste material does so in a manner that results in negative impacts to the environment, the permittee would be responsible for ensuring those impacts are appropriately addressed. Please also see the Department's responses to Comment #14, #15, and #16.

22. **Comment:** The applicable requirements in draft permit WMGR163 fail to protect health or the environment and the permit should be rejected.

Pennsylvania's Solid Waste Management Act expressly prohibits the storage, transport, or processing of residual waste unless authorized by the rules and regulations of the Commonwealth and in compliance with a permit. (Note that despite the many toxic and other dangerous pollutants commonly found in oil and gas liquid waste, this waste is nonetheless not regulated as a hazardous waste). Draft Permit WMGR163 contains several deficiencies that prevent the public from being able to ensure the applicable requirements are being met by permittees covered by this general permit, rendering the permit unenforceable. DEP must reject this Draft Permit and require all processing, transfer, and storage of oil and gas liquid waste to be through WMGR123 or through individual permits to protect public health and the environment from exposure to the toxic and dangerous components of oil and gas liquid waste. (8 - 17)

Response: Please see the Department's response to Comment #21.

23. **Comment:** Draft permit WMGR163 fails to require any monitoring or characterization of oil and gas liquid waste prior to processing, transfer, or storage or as condition for registration, blocking the public or DEP from having safety information in the event of a release.

Draft Permit WMGR163, unlike WMGR123, fails to establish any requirements for sampling oil and gas liquid waste toxic or other pollutants prior to the waste's processing, transfer, or storage under the General Permit. Draft Permit WMGR163, also unlike WMGR123, fails to require under any circumstances ongoing daily and/or weekly sampling of pollutants in order for a permit holder to continue storing processed oil and gas well liquid waste. Draft Permit WMGR163 also fails to require reporting of any sampling data, since no sampling data collection is required. Unless Draft Permit WMGR163 is revised to require, in addition to the public participation provisions referred to in Section I, above, specific sampling and reporting of common pollutants in oil and gas liquid waste as part of this Draft Permit WMGR163 both before and after transfer, processing, and storage begins, the permit cannot ensure public safety. The public would not be able to access or assess the oil and gas liquid waste's safety data and, nor would DEP be able to have any constituent data on hand if needed in the event of a release or to properly evaluate and ensure compliance with applicable requirements, or take timely and appropriate enforcement, when necessary. (8 - 17)

Response: The commentators appear to misinterpret the sampling and analysis requirements for permittees under WMGR123. Please see the Department's response to Comment #74 in the Department's WMGR123 Comment and Response Document, dated January 18, 2022, and accessible via the Department's residual waste general permit webpage:

[https://files.dep.state.pa.us/Waste/Bureau%20of%20Waste%20Management/WasteMgtPortalFiles/SolidWaste/Residual Waste/GP/WMGR123 CR Document 1-18-22.pdf](https://files.dep.state.pa.us/Waste/Bureau%20of%20Waste%20Management/WasteMgtPortalFiles/SolidWaste/Residual%20Waste/GP/WMGR123_CR_Document_1-18-22.pdf)

The ongoing sampling and analysis requirements in WMGR123 that the commentators reference pertain to permittees that treat to Appendix A standards in WMGR123 and are necessary to ensure permittees storing processed water in a facility that does not need to meet residual waste storage requirements continue to comply with the Appendix A standards. Most, if not all permittees under WMGR123, do not utilize the dewatering provision in Condition C.1.b. and therefore, do not need to treat to Appendix A standards in order to beneficially use oil and gas liquid waste. Unless a permittee is seeking to utilize the dewatering provision in Condition C.1.b., application materials do not need to contain analyticals that demonstrate compliance with Appendix A.

Because WMGR163 does not authorize the use of treatment systems similar to those authorized under WMGR123 to treat to the aforementioned Appendix A standards, the oil and gas liquid waste that is stored under WMGR163 is not dewatered by the permit, and subsequent ongoing sampling and analysis requirements, are unnecessary for inclusion in WMGR163.

According to 25 Pa. Code §§ 287.51(b) and 287.54(a)(1), a person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year must perform a detailed analysis fully characterizing the physical and chemical composition of each type of waste it generates. In addition, section B.2. of the Form 26R (Chemical Analysis of Residual Waste Annual Report by the Generator) Instructions identifies the parameters that must be sampled and analyzed for in wastewaters produced by the drilling, completion, and production of a Marcellus Shale or other shale gas well. These parameters include gross alpha, gross beta, Radium-226, Radium-228, Uranium, and Thorium. The results of the analysis are submitted to the Department as part of a 26R Form on an annual basis. WMGR163 also includes a

condition that requires all records generated by a permittee in accordance with the general permit to be maintained by the permittee for a minimum of five years; be available at the facility; and be made available to the Department upon request.

Permittees that process or transfer solely their own oil and gas liquid waste are relieved from the requirement to provide information in the annual report that is otherwise provided to the Department in accordance with unconventional monthly Oil and Gas Reporting Electronic (OGRE) requirements, which is available on the Department's website. As with all general permits, records relating to the permitted operation and the wastes authorized for processing or beneficial use may be requested and made available to the public.

24. **Comment:** Draft General Permit WMGR163's required setbacks are not far enough to protect residents or the environment from potential harm.

Draft General Permit WMGR163 provides for locational setbacks from certain land features and structures. Setbacks are important and necessary provisions for the protection of the environment, health and safety, but the distances must be increased to protect public health and welfare and the environment. For example, the Draft Permit provides for a setback of 900 feet, measured horizontally from the property line, from a school building, park, or playground, but only provides for a 300-foot setback from an occupied dwelling (see Condition C.4). Even then, the facility can be located closer than 300 feet of an occupied dwelling in certain scenarios, including with owner consent or if the operations are in an enclosed facility, the applicant demonstrates there is no zoning conflict, and they have provided the owners of dwellings within 300 feet away with notice.

If the goal of this setback provision is to ensure that oil and gas liquid wastes are not placed too close to areas where children are, it is illogical and dangerous to only require only a 300-foot setback from a property line without the written waiver from the owner consenting to the placement of a facility. This would mean that this type of facility would have to be 900 feet or more from a playground or school but could be placed 301 feet from the same child's home without any additional waivers or consent required. This does not provide an adequate degree of protection and the distance from an occupied dwelling should be increased to at least 900 feet. In addition, 900 feet should be the minimum setback from occupied dwellings in all instances with no exception; DEP should revise the permit to remove the possibility that a waiver could be granted that would allow a facility to be located closer than 900 feet from an occupied dwelling.

Similarly, Draft General Permit WMGR163 requires setbacks of 300 feet from an exceptional value wetland (Condition C.4.b), or a water source (Condition C.4.g.), but only requires a 100-foot setback from perennial streams (Condition C.4.e). It also only requires a setback of 150 feet from "high quality exceptional value waters . . . unless the storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will result." (Condition C.4.f.). It is inconsistent to require double the distance to an exceptional value wetland than to an exceptional value water. Thus, the 150-foot setback in Condition C.4.f. should be increased at least to 300 feet, and there should be a minimum of 300 feet separation required from all water sources.

Even beyond that, the Draft General Permit does not explain or define how a permittee would prove that "no adverse hydrologic or water quality impacts will result," when such a determination would have to be made, or whether and when DEP would have to concur with or approve that determination. Draft General Permit WMGR163 should be revised to

include specific requirements for what data needs to be collected and submitted by a potential permittee and what conditions would or would not confirm whether “no adverse hydrologic or water quality impacts will result” when considering location near a high quality exceptional value water.

Furthermore, while these setback distances mirror those in WMGR123, Commenters have the same concerns about these changes needing to be incorporated into that permit that we plan to raise again when it is next due for renewal. (8 - 17)

Response: The Department disagrees that the setbacks in WMGR163 are not far enough to protect residents or the environment. The WMGR163 general permit provides setback criteria consistent with the requirements of the residual waste regulations. Areas where residual waste processing facilities are prohibited are stated in 25 Pa. Code § 297.202; these same setback criteria are also incorporated into the terms and conditions of WMGR123, which authorizes operation of facilities for up to ten years (or longer if the permittee applies to renew).

Permittees issued coverage under WMGR163 must include sufficient information in the permit application to demonstrate that oil and gas liquid waste will be stored in a manner that complies with the residual waste storage requirements in 25 Pa. Code, Chapter 299. Pennsylvania regulations require immediate notification to the Department when a spill, discharge, or other incident results in a substance that would endanger downstream users, result in pollution, create a danger of pollution, or damage property being discharged to waters of the Commonwealth or being placed such that the substance might discharge, flow, be washed, or fall into waters of the Commonwealth.

In accordance with 25 Pa. Code § 91.33(a), if, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters, including sewers, drains, ditches, or other channels of conveyance into the waters, or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle, or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

Further, 25 Pa. Code § 91.33(b) describes additional requirements. In addition to the notices in 25 Pa. Code § 91.33(a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent required by 25 Pa. Code, the residual substances contained thereon or therein.

The regulatory requirements in 25 Pa. Code § 91.33 apply to spills, discharges, and other incidents that would cause, or threaten to cause, pollution of waters of the Commonwealth, endanger downstream users, or threaten property whether the spill, discharge, or other incident occurs at a facility or during an activity permitted or unpermitted by the Department. Such accidents, activities, and incidents can include spills, leaks, overflows, line breaks, existing pollution that is newly discovered, and any other manner of

unauthorized discharge of a substance that would cause or threaten pollution of waters of the Commonwealth, endanger downstream users, or threaten property, including transportation related incidents.

The Department does not believe it is necessary to revise the terms and conditions of WMGR163 to include specific requirements for what data needs to be collected and submitted by a potential permittee and what conditions would or would not confirm whether “no adverse hydrologic or water quality impacts will result” when considering a location near high quality or exceptional value waters. Permittees are required to provide information to the Department that demonstrates that they would employ appropriate controls or measures to ensure that the operations will not result in an adverse impact to the waters.

25. **Comment:** In conclusion, there are several aspects of Draft Permit WMGR163 that strip the public of their ability to have any public participation, notice ahead of operations beginning, or the ability to access safety data about the oil and gas liquid wastes that could be transferred through, processed, and/or stored in their communities under this Draft Permit. Draft Permit WMGR163 also fails to protect public health or the environment from dangerous exposures to the toxic and other dangerous constituents of oil and gas liquid waste. Commenters respectfully request that DEP abandon this general permit and require individual permits for all permittees seeking to process, transfer, or store this oil and gas liquid waste to obtain coverage using a Determination of Applicability for WMGR123. (8 - 17)

Response: Please see the Department’s response to Comment #16. The Department believes the terms and conditions of WMGR163, and the applicable provisions of the SWMA adequately convey the requirements necessary to ensure permittees operate in a manner that is protective of human health, safety and the environment.

Definitions and Descriptions:

26. **Comment:** Act 70 of 2021 states that this general permit should provide for the transfer, storage or processing of oil and gas liquid waste at temporary facilities which will be in operations for no more than 180 consecutive days at any one time. The legislation called for “temporary facilities”, and for “no more than 180 consecutive days operation at any one time”. The proposed draft general permit restricts operations to one calendar year and only one 180-day consecutive period. How has the Department determined that a “temporary facility” is one that can only be permitted for one calendar year? The Act does not state that a general permit for a temporary facility can only be good for one calendar year. (4)

Response: The Act does not define what constitutes a “temporary” facility, nor do the residual waste regulations. The Department has incorporated time limits for authorizations under WMGR163 in order to prevent circumvention of the Determination of Applicability and associated public comment periods under WMGR123. Without a more limited duration for an authorization under WMGR163 (compared to WMGR123), and a limit to the number of 180-day cycles a permittee under WMGR163 could operate, permittees could temporarily cease operations at a WMGR163 site, for as little as one day, and then continue operations again for up to another 180 days. This could be repeated for the entire life of the authorization. Realistically, there would be little difference between the duration of an operation under WMGR163 compared to WMGR123, except in regard to the

application type and the public comment period unless time limitations are imposed through the conditions of WMGR163.

In accordance with 25 Pa. Code § 287.631(a)(3) (contents of general permits), each general permit issued by the Department will include, at a minimum, a specification of registration or determination of applicability requirements established in accordance with § 287.641 (relating to inclusion in a general permit) and the fee imposed on registrants or applicants for coverage under the general permit. Additionally, 25 Pa. Code § 287.641 (inclusion in a general permit), states the Department will include registration or application requirements and time limits, if any, shall be set forth in the general permit governing each category of beneficial use or processing of residual waste.

27. **Comment:** The MSC is concerned that the draft permit does not meet the legislative intent that led to its enactment. Clearly, the language was developed in response to concerning changes the Department made to its existing WMGR123 general permit. In consultation with Governor Wolf's office, the statutory language was intended to facilitate the ease of permitting for non-permanent facilities, including use of a registration process (rather than a Determination of Applicability). Additionally, like the OG-71 permit, it seems appropriate to develop a process that allows an operator's subsequent submissions which meet the criteria of an approved OG-71 to be authorized in a more timely and predictable manner. As currently constructed, the WMGR163 is not consistent with the legislative intent of Act 70 and provides little if any value to the regulated community. (4)

Response: The Department believes the final version of WMGR163 fulfils the intent of the language in Act 70. Each application for coverage under WMGR163 will be reviewed and evaluated for all aspects of a proposed project, but it's reasonable for the processing times for registrations under the general permit to be reduced as the Department continues to review applications that contain similar information as prior submittals, without reducing the quality or protections afforded by the application review process.

28. **Comment:** As the general permit suggests, these facilities are temporary in nature and operators that propose them have a short window for them to be implemented in the field, utilized, and then closed. The draft general permit is very similar to the WMGR123 general permit and the review times, as well as construction certification approvals for these permits have varied greatly from operator to operator and regional office to regional office.

For the WMGR163 general permit to be utilized by operators, the commentator recommends that the review time be shorter and more reliable. Like other general permits for temporary activities, the permit review time should be a maximum of 60 business days. In addition, we strongly suggest that the permit be good for at least 2 years. By the language of the legislation, a desired scenario would be to be able to only operate 180 consecutive days as well development schedules dictated and have the ability to operate for additional 180 consecutive day periods elsewhere throughout the life of the permit. (4)

Response: The Department disagrees with the assertion that the review times associated with WMGR163 are similar to WMGR123. For registrations that meet the criteria in the Governor's Permit Decision Guarantee Policy, the processing time is 43 business days, compared to 86 business days for Determinations of Applicability. The Department does not believe that assertions regarding the processing time for authorizations under

WMGR163 are valid, given that WMGR163 has not yet been issued and no applications for coverage have been processed.

The Department has revised the duration of a registration under the final general permit from one year to two years, to allow permittees to be proactive in obtaining general permit coverage and flexibility in when they choose to operate under their registration after obtaining coverage. The Department will not allow a registration issued to a permittee to operate at one site to be utilized by the same permittee at a different site. A separate registration will be needed for each site where a permittee intends to operate.

29. **Comment:** The commentator encourages the Department to amend the permit to include the definition “beneficial use” as found in 25 Pa Code §287.1. Moreover, the MSC requests that the Department recognize that the use of evaporators onsite constitutes a beneficial use and thus are eligible for coverage under the proposed permit.

The commentator understands that the Department regards the use of evaporators as constituting “disposal”. Respectfully, such a narrow reading is not accurate. The commentator believes that both definitions – disposal and beneficial use – must be read in concert with each other. The use of an evaporator – which returns water to the natural hydrologic cycle – is certainly a beneficial use and advantageous to the environment. Moreover, the Commonwealth’s environmental statutes and regulations clearly seek to encourage the beneficial use of waste when appropriate. The use of an evaporator should be recognized as a beneficial use. (4)

Response: Please see the Department’s response to Comment #11. The Department’s current position regarding the use of evaporators remains the same; evaporation of oil and gas liquid waste constitutes disposal and is not eligible for consideration as a beneficial use.

30. **Comment:** Processing – The commentator recommends adding the language below to the definition to limit it only to the storage that is specifically associated with the processing activities, as noted below:

*“Processing – A method or technology used for the purpose of preparing oil and gas liquid waste for beneficial use to develop or hydraulically fracture an oil or gas well. The term includes the transfer or storage of oil and gas liquid wastes **associated with the WMGR163 permitted activities.**”* (4)

Response: The Department does not believe the recommended language is necessary, as Condition A.4. already states, “For purposes of **this general permit**, the terms identified in this paragraph are defined as follows...” For this reason, the recommended language has not been incorporated.

31. **Comment:** Section A. Description and Definition: Improperly Time Limits the Use of the Proposed Permit.

Section A of the draft WMGR163 permit provides for a general description of the draft permit and relevant definitions. Sections A.2 and A.3 specifically describe the permit as a one-year permit. This time limitation is not founded in law nor is it common across the various waste permits administered by the Department. Section 1939-A of the Administrative Code of 1929 (P.L. 177 No. 175) specifically provides that the permit shall

apply to “temporary facilities which will be in operation for no more than 180 consecutive days at any one time” but makes no reference to, nor imposes any limitation on, these operations occurring within a one-year period. By including a one-year limitation on the permit, the permit fails to recognize that a single location may host short duration water recycling operations multiple times over the course of several years.

The practical consequence will be either 1) the permit will be underutilized, if utilized at all; or 2) the Department will receive a higher frequency of permits for short duration water recycling operations on the same site over a period of years. In the case of the first potential consequence, the intended purpose of the permit would not be realized. In the case of the second potential consequence, the Department would unnecessarily experience a significantly higher administrative burden because of processing multiple permits over a period of several years for nearly identically structured and constructed short duration water recycling operations at a common site.

The unsupported one-year time limitation is further complicated by the additional step of obtaining a construction certification report (see Sections C.23-24) from the Department. It is our experience (with the WMGR123) that the timing for processing a construction certification by the Department is uncertain and lacks predictability which compounds the concerns with the very limited timeframe contained within the draft WMGR163. As a result, the actual operational timeframe for coverage will be far less than one-year in length which ultimately undermines any practical ability to appropriately plan and address operational needs within the confines of the limited timeframes of the proposed permit.

Further, Section A.4 (“For a permittee that does not operate under this general permit within 180 days from the date of issuance, coverage will automatically expire 180 days after the date of issuance”) is overly restrictive on the Department and the applicant in planning and operating a WMGR163 facility. For example, if an applicant plans to operate a WMGR163 facility in August/September 2023, and applies for the permit in December 2022 and the Department approved the coverage in early February 2023 (notably, applicants, like Range, seek to obtain such permits as far in advance of operations as possible to ensure no disruptions, which is critical when transferring and reusing significant amounts of water), Section A.4 would cause the coverage to expire prior to the operation of the WMGR163 facility due to containing a 180 day “operate or expire” provision. Not only does this shorten and restrict the potential length of coverage of the draft WMGR163 permit, but it does not achieve any known policy outcome or environmental protection in doing so. We recommend the Department remove Section A.4 from the draft WMGR163 permit.

Furthermore, Range is not aware of any other residual waste general permits with any of the severe time limitations discussed above. [Commenter references attachment for permitting timeline examples].

Therefore, for the reasons above, Range strongly recommends that the Department reconsider the improper time limitations set forth in Section A and issue a permit consistent with the statute and other general permits. We recommend the Department extend the prescribed time limitation and suggest any prescribed time limitation should be comparable to the 10-year time limitation which exists within the WMGR123. (18)

Response: The Act does not define what constitutes a “temporary” facility, nor do the residual waste regulations. The Department has incorporated time limits for authorizations

under WMGR163 in order to prevent circumvention of the Determination of Applicability and associated public comment periods under WMGR123. Without a more limited duration for an authorization under WMGR163 (compared to WMGR123), and a limit to the number of 180-day cycles a permittee under WMGR163 could operate, permittees could temporarily cease operations at a WMGR163 site, and then continue operations again for up to another 180 days. This could be repeated for the entire life of the authorization. Realistically, there would be little difference between the duration of an operation under WMGR163 compared to WMGR123, except in regard to the application type and the public comment period unless time limitations are imposed through the conditions of WMGR163.

In accordance with 25 Pa. Code § 287.631(a)(3) (contents of general permits), each general permit issued by the Department will include, at a minimum, a specification of registration or determination of applicability requirements established in accordance with § 287.641 (relating to inclusion in a general permit) and the fee imposed on registrants or applicants for coverage under the general permit. Additionally, 25 Pa. Code § 287.641 (inclusion in a general permit), states the Department will include registration or application requirements and time limits, if any, shall be set forth in the general permit governing each category of beneficial use or processing of residual waste.

The Department has revised the definition of “operate” in the general permit to read as follows:

“To receive or process solid waste; to conduct closure and post closure activities at a facility.”

As a result, the permittee would go through the process of obtaining approval of construction certification reports in accordance with Condition C.22. without beginning to operate as the term is defined in the general permit.

The Department agrees that the language in former Condition A.4. was overly restrictive and did not allow for proactive approaches in applying for coverage under WMGR163 or flexibility in beginning operations under the general permit. Former Condition A.4. has been removed.

The commentator states that they aren’t aware of any other residual waste general permits with any of the severe time limitations discussed above; however, the Department doesn’t recall any prior situations where the difference between a permittee obtaining coverage under an existing general permit (WMGR123, which requires a Determination of Applicability and associated public comment period) and a new general permit (WMGR163, which requires a registration with no public comment period) was so largely dependent upon the facilities operating under WMGR163 being “temporary,” which, as previously noted, is an undefined term in in the Act and residual waste regulations.

The Department has revised Conditions A.2 and A.3 to extend the life of an authorization under WMGR163 to 2 (two) years and to allow 1 (one) year for permittees to operate as the term is defined in the general permit; however, coverage will automatically expire 1 (one) year from the date that the permittee begins to operate, or 2 (two) years from the of issuance, whichever is less. These revisions are intended to allow permittees to be proactive in applying for coverage under the general permit and provide flexibility in terms of when the permittee chooses to operate after coverage is issued, but still limits the

duration of operations under the general permit in a manner that the Department believes constitutes a “temporary” facility. This aims to avoid circumvention of the Determination of Applicability and associated public comment periods under WMGR123.

Registration Requirements:

32. **Comment:** Section B. Registration Requirements: The Proposed Permit is Incomplete and Contains Vague and Arbitrary Requirements for Closure and Use of the Permit. Section B refers to the application for coverage being on forms provided by the Department; however, no forms, or list of required existing forms, have been provided and therefore, Range is unable to fully comment on the proposed WMGR163. Range respectfully requests the Department make these forms publicly available, and provide an opportunity to comment, prior to finalization of the proposed WMGR163 permit.

Response: Including specific forms as part of the general permit conditions is not consistent with the standard format used for general permits and may preclude DEP staff from determining whether more, or fewer, documents need to be provided based upon the proposed operation. Therefore, a list of forms is not included in WMGR163. Instead, a checklist including all of the forms required for a prospective applicant’s registration will be provided to the applicant upon reaching out to the appropriate DEP Regional Office or in response to a pre-application meeting.

33. **Comment:** Section B also requires that “[t]he application must contain a proposed closure plan for the facility.” This requirement is not included in the WMGR123 nor is it required in § 1939-A of the Administrative Code of 1929 (P.L. 177 No. 175) and Section C.5 already provides guidance for cessation of operations. Range recommends removal of this sentence.

Response: Due to the short duration during which facilities authorized under WMGR163 will operate, it’s reasonable for the Department to ask for applicants to provide a proposed closure plan to ensure the applicant has contemplated the fact that closure and post closure activities are captured in the definition of “operate” and must be performed within 2 (two) years of permit issuance.

34. **Comment:** Finally, Section B states that “[n]o activities shall commence unless approved in writing by the Department.” This sentence is overly broad and vague and should be targeted to activities or operations that would otherwise be permitted under a WMGR163 coverage. We recommend the sentence be changed to read: “No operations specifically authorized by this permit shall commence unless approved in writing by the Department.” (18)

Response: The Department has incorporated a similar revision as recommended by the commentator. The last sentence of Section B. now reads:

“No activities authorized under the terms and conditions of this general permit shall commence unless approved, in writing, by the Department.”

Operating Conditions:

35. **Comment:** The draft general permit includes inadequate and arbitrary setback regulations that are not supported by scientific data.

With the threats of a spill or leak occurring during the process of storing oil and gas liquid waste, it is crucial that there is enough distance between the stored waste and waterways, residences, and other community institutions. We find that some of the distances within this draft are irrational and arbitrary. For example, Section C(4)(h) states that the storage facility may not be located within “900 feet measured horizontally from the property line of [a building owned by a school district or parochial school and used for instructional purposes, a park, or a playground], unless a written waiver is obtained from the current property.” However, 25 Pa. Code § 78.55, which governs oil and gas well waste disposal, requires that “the operator of an unconventional well shall develop and implement an emergency response plan that provides for equipment, procedures, training, and documentation to properly respond to emergencies that threaten human health and safety for each well site”, including “a summary of the risks and hazards to the public within ½ mile of the well site.” This regulation in WMGR163 is nearly one-third of the required distance for an unconventional extraction site.

In addition to the arbitrary setback of Section C(4)(g), the general draft permit includes many other arbitrary setback values. This includes forbidding facilities located “[i]n or within 300 feet of an exceptional value wetland,” “[w]ithin 50 feet of a property line,” or “[w]ithin 100 feet of a perennial stream.” The Bureau does not provide any justifications for these values, nor is there any science to support these numbers. The setback value of section C(4)(f) is attested for by 25 Pa. Code § 93.1. However, Sections C(4)(b), C(4)(d), C(4)(e), and C(4)(g) do not cite particular acts or legislation. These setback values should be based on scientific evidence of what is safe for public health, and therefore the regulation in its current language is inadequate. (6, 7)

Response: The Department disagrees that the setbacks in WMGR163 are unsupported or inadequate. The WMGR163 general permit provides setback criteria consistent with the requirements of the residual waste regulations. Areas where residual waste processing facilities are prohibited are stated in 25 Pa. Code § 297.202; these same setback criteria are also incorporated into the terms and conditions of WMGR123, which authorizes operation of facilities for up to ten years (or longer if the permittee applies to renew).

Permittees issued coverage under WMGR163 must include sufficient information in the permit application to demonstrate that oil and gas liquid waste will be stored in a manner that complies with the residual waste storage requirements in 25 Pa. Code, Chapter 299. Pennsylvania regulations require immediate notification to the Department when a spill, discharge, or other incident results in a substance that would endanger downstream users, result in pollution, create a danger of pollution, or damage property being discharged to waters of the Commonwealth or being placed such that the substance might discharge, flow, be washed, or fall into waters of the Commonwealth.

In accordance with 25 Pa. Code § 91.33(a), if, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters, including sewers, drains, ditches, or other channels of conveyance into the waters,

or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle, or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

Further, 25 Pa. Code § 91.33(b) describes additional requirements. In addition to the notices in 25 Pa. Code § 91.33(a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent required by 25 Pa. Code, the residual substances contained thereon or therein.

The regulatory requirements in 25 Pa. Code § 91.33 apply to spills, discharges, and other incidents that would cause, or threaten to cause, pollution of waters of the Commonwealth, endanger downstream users, or threaten property whether the spill, discharge, or other incident occurs at a facility or during an activity permitted or unpermitted by the Department. Such accidents, activities, and incidents can include spills, leaks, overflows, line breaks, existing pollution that is newly discovered, and any other manner of unauthorized discharge of a substance that would cause or threaten pollution of waters of the Commonwealth, endanger downstream users, or threaten property, including transportation related incidents.

36. **Comment:** Condition C.2. – What is the Department’s rationale for limiting this to 1,000,000 gallons. Many temporary tanks currently utilized by industry exceed this volume. Typical temporary above ground tanks range from 420,000-gallons to 2,500,000-gallons. Typical set-ups may include a 1,000,000-gallon above ground tank and several (up to 25) individual 21,000-gallon frac tanks. The commentator recommends removing this limitation and/or allowing industry to propose volumes that are in concert with standard temporary tank volumes. (4)

Response: The Department had intended to limit the size of the operations based upon the typical storage capacities of similar, temporary operations that had been previously authorized under the WMGR123. This limitation has been removed as it may ultimately hinder ability for these operations to function in their intended manner.

The Department notes that regardless of the number of storage tanks on the site of a WMGR163 operation, all permittees must comply with the applicable provisions of the SWMA aim to ensure these facilities are operated in a manner that is protective of human health, safety and the environment. This includes a permit review process that evaluates all aspects of a proposed project, such as a compliance history review of the applicant and any contractors or agents that exercise control over any aspect of the operation; appropriate setback requirements that mirror those in the residual waste regulations for individually permitted residual waste processing facilities; requiring an adequate PPC plan and RPAP; appropriate management of stormwater run-on and run-off; execution of an adequate bond for a facility; requiring regular inspections of any waste processing and storage areas; a construction certification requirement to ensure a registered professional engineer in the state of Pennsylvania has certified that each phase of construction of the facility, including any storage tanks, has been done in accordance with a permit

application, maintaining appropriate documentation and reporting pertinent information to the Department on an annual basis for review.

37. **Comment:** Condition C.6. – This section asserts that activities authorized by this permit shall not, among other provisions, cause or allow conditions that are “public nuisances”. While the commentator recognizes that referencing public nuisances is a common stipulation use by the Department, it is also a subjective standard. It is not uncommon for individuals who philosophically oppose a lawful activity to make various assertions that an activity is creating a “public nuisance” in their view.

The commentator encourages the Department to further clarify that a public nuisance is an activity or condition which, if left unattended, would result in a violation of a Commonwealth environmental statute or regulation. (4)

Response: The term “public nuisance” is not a term that is currently defined in Waste Regulations. The Department believes that the current wording of the reference condition adequately conveys what would constitute a “public nuisance” and that the clarification recommended by the commentator would not prevent assertions regarding a perceived public nuisance from being made.

38. **Comment:** Condition C.23. – the commentator recommends removing “DEP must approve the certification reports, in writing” unless the Department can commit to reviewing and responding in writing within two weeks. Certain regional offices have taken more than 2-months to review these for WMGR123 permits, causing operators to absorb costs each day that the tanks/equipment are located on-site. (4)

Response: The Department’s Regional Offices prioritize review of construction certification reports, the vast majority of which are approved within two weeks. Comments related to situations where review of construction certification reports has taken more than two weeks are difficult to respond to without additional information, as reviews can be delayed by issues related to the submittal, such as technical deficiencies. The Department will consider providing guidance to the Regional Offices regarding processing timeframes for construction certification submittals. Please also see the Department’s response to Comment #51.

39. **Comment:** Condition C.24. – Why does the MWGR163 permit require the usage of a Form 19R and a WMGR123 permit require the usage of a Form 37 for construction certification? The commentator recommends the Department requires the usage of the same form for these two General Permits. (4)

Response: The forms are essentially the same except the Form 37 is intended for use by municipal waste operations and the Form 19R is intended for use by residual waste operations. The inclusion of the Form 37 in WMGR123 was an error, but realistically doesn’t impact the information submitted to the Department. The Form 19R is the correct form for use by permittees under WMGR163.

40. **Comment:** Condition C.25. – The Department states, “The oil and gas liquid waste that is processed or stored and beneficially used under this general permit shall not be mixed with other types of waste materials, including hazardous waste, municipal waste, special handling waste, or other residual waste, unless otherwise approved by DEP in writing.” Typically, at a storage facility, residual waste is mixed using manifolds and tanks. Would

a blanket approval be received from the PADEP for this, or will a written approval be needed for each day? The commentator recommends that a blanket approval be provided since these are temporary facilities. (4)

Response: The language in Condition C.25. pertains to mixing of wastes that are not authorized for processing or beneficial use under the terms and conditions of the general permit. It does not preclude permittees from using manifolds and tanks to mix oil and gas liquid waste as the term is defined in the general permit.

41. **Comment:** Condition C.26. – The commentator recommends removal of this condition. The WMGR163 permit is for temporary (180 days) storage and most air sources are exempt from regulation (non-stationary) if they are at a facility for less than one year. (4)

Response: The Department will retain Condition C.26. (now Condition C.25.). If a permittee under WMGR163 is exempt from regulation under 25 Pa. Code, Subpart C, Article III due to the limited duration of the permitted activities, permittees can support that exemption as part of the application for coverage under the general permit. To clarify this, the Department has revised Condition C.25. to state the following:

Permittees are not authorized to use open-top storage tank(s) or any other air contamination source(s) under the terms of this general permit unless the facility demonstrates that the open top tank(s) or source(s) are in compliance with 25 Pa. Code, Subpart C, Article III, pertaining to air emissions, or otherwise demonstrates that the facility is exempt from regulatory requirements under 25 Pa. Code, Subpart C, Article III.

42. **Comment:** Condition C.28. – The Department states, “Analytical testing required by this general permit shall be performed by a laboratory accredited under the Pennsylvania Environmental Laboratory Accreditation Act, Act of 2002, 27 Pa. C.S.A. §§ 4101 – 4113.” The commentator requests that PA DEP clarify where the testing is required to take place – at the location of the WMGR163 or within the 26R forms where the waste was generated. (4)

Response: The condition the commentator references is a standard general permit condition that is incorporated into every general permit, however, no analytical testing will be required for permittees under WMGR163, so the condition has been removed.

The removal of this condition does not impact the requirement for generators of waste to perform a chemical and physical characterization of wastes generated prior to transportation to a processing or disposal facility. In accordance with 25 Pa. Code §§ 287.51(b) and 287.54(a)(1), a person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year must perform a detailed analysis fully characterizing the physical and chemical composition of each type of waste it generates, including radioactivity. The results of the analysis are submitted to the Department as part of a 26R Form on an annual basis.

43. **Comment:** Similar to the WMGR123 permit, the commentator recommends that an operation condition be added to Section C:

“The permittee shall be permitted to store other operators’ oil and gas liquid waste similar to their own, whether it be co-mingled or not, with the permittee’s liquid waste.” (4)

Response: The Department does not believe inclusion of the commentators' recommended condition is necessary, as WMGR163 authorizes permittees to process oil and gas liquid waste as the term is defined in the general permit, regardless of who generates it.

44. **Comment:** Section C.2 includes a volume threshold for permitted operations. This is a departure from the existing WMGR123 and inconsistent with § 1939-A of the Administrative Code of 1929 (P.L. 177 No. 175). What is the basis for including this volume threshold and how was the volume threshold of 1,000,000 gallons arrived upon?

Response: Please see the Department's response to Comment #36.

45. **Comment:** Section C.3 discusses the treatment and classification of oil and gas liquid waste. Because this waste is not always stored at a well-site, but sometimes at temporary facilities as the draft WMGR163 permit is designed to cover, we recommend the last sentence of this section be changed to read:

"Processed or stored oil and gas liquid waste shall be managed as a residual waste ~~at the well site~~ pursuant to 25 Pa. Code Chapter 78 or 25 Pa. Code Chapter 78a until it is used to develop or hydraulically fracture an oil or gas a well."

Response: The reference to a well site in the last sentence of Condition C.3. (now Condition C.2.) is intended to ensure the de-wasting provision in this condition is not misinterpreted to apply to oil and gas liquid waste that is stored on an oil and gas well site in anticipation of being used to develop or hydraulically fracture an oil and gas well, until it is actually used to develop or hydraulically fracture an oil and gas well.

The management of oil and gas liquid waste that is not stored on an oil and gas well site is already addressed in Condition C.21., which states, "Oil and gas liquid waste, before and after processing, and all other wastes generated by the operation shall be stored and transported in accordance with 25 Pa. Code, Chapter 299 (relating to storage and transportation) and the Waste Transportation Safety Act, 27 Pa. C.S. §§ 6201 - 6209."

For these reasons, the Department has not incorporated the commentator's recommendation.

46. **Comment:** Section C.8 requires a "DEP-approved Radiation Protection Action Plan (RPAP)." As drafted, this section requires an RPAP to be immediately accessible at the facility at any point while the facility is *permitted* [emphasis added]. Because these facilities are only short duration operations, we recommend this be changed to only require the RPAP be immediately accessible at the facility at any point while the facility is in operation. The current draft WMGR163 permit would require the RPAP be immediately accessible at facilities that are not even constructed or in operation.

Response: The Department has incorporated the commentator's recommendation to Condition C.8. (now Condition C.7.).

47. **Comment:** Section C.20 requires bonding for facilities operating pursuant to the draft WMGR163 general permit. To streamline the bonding process for the Department and the operator, we recommend the Department allow for an applicant to secure and maintain a

blanket bond for facilities that would receive coverage under the draft WMGR163 permit. This would still operate as full-cost bonding, as determined by the Department, but would be in an amount to sufficiently cover the maximum number of facilities that would be operated by an applicant at any given time. If the Department afforded this option to applicants, the Department would realize reduced administrative burden, the overall permitting process would be streamlined, and the appropriate financial assurances would still be in place for the Department.

At a minimum, or in the alternative, we strongly recommend that the bonding requirements be revised as follows:

1. Provide a clear deadline or timeframe for DEP-approval of a bond;
2. Clarify the phrase: “activities that are occurring on a DEP-permitted well site” in connection with the bonding requirements and whether the activities authorized under the WMGR163 that occur on a permitted well site are covered under the existing financial bond for that well site; and
3. Given the temporary nature of the proposed permit, expressly waive any administrative notice requirements set out in 25 Pa. Code Section 287.341 for purposes of closure of a facility.

Otherwise, we respectfully request the Department clarify the bond release process and whether it must take place within the timeframe of coverage provided under the draft WMGR163 or if it can occur after coverage has expired under the prescribed timeframe for coverage under the draft WMGR163. (18)

Response: The Department currently allows for permittees to obtain a blanket bond that would adequately cover several permitted operations. The applicable portion of the blanket bond pertaining to each proposed facility would still be reviewed as part of the application process to ensure the bond is adequate based upon the bonding calculation worksheets.

The intent of the language in Condition C.20. regarding activities occurring on a DEP-permitted well site was to clarify that a permittee under WMGR163 would only need to bond for activities authorized under WMGR163, not those associated solely with other activities on the well site.

The bond release process does not need to have been completed in order for closure and post closure to have been completed, although the determination that a bond may be released is usually a determination that is made once closure and post closure activities have been completed. The actual release of the bond does not need to occur within the 180-day timeframe.

48. **Comment:** Section C.23 and C.24 require certifications for equipment installation and construction. Section C.24 is a new requirement when compared to the WMGR123. The addition of this section makes Section C.23 redundant and unnecessary. Accordingly, Range recommends the deletion of Section C.23.

Additionally, Range recommends that the draft WMGR163 should take into account the operator’s construction and installation practices at other existing facilities where the

installation and construction process is similar to a priorly permitted site. This would function like the OG71-B form that exists for practices that have been previously approved and used at a different well site. Not only would this streamline the overall permitting process for the applicant, but it would also reduce the administrative burden on the Department. (18)

Response: Condition C.24. (now Condition C.23.) of WMGR163 is the same as Condition C.25. in WMGR123, with the exception of the referenced construction certification form. Please see the Department's response to Comment #39. The Department disagrees that Condition C.23. makes Condition C.22. redundant and unnecessary, as Condition C.23. requires the registered Pennsylvania professional engineer certification of the information that is required to be submitted and reviewed and approved by the Department in Condition C.22.

Each application for coverage under WMGR163 will be reviewed and evaluated for all aspects of a proposed project, but it's reasonable for the processing times for registrations under the general permit, as well as the associated construction an installation practices, to be reduced as the Department continues to review applications that contain similar information as prior submittals, without reducing the quality or protections afforded by the application and construction certification review process.

Reporting Requirements:

49. **Comment:** Condition E.2. (a,b,c,d) – The Department should consider reducing the amount of duplicative waste reporting required in Section E. Waste generating locations that contribute liquid waste to temporary general permit facilities is already required to be reported in OGRE via the Monthly Waste Reports as well as Annual 26R reports. Liquid waste that is transferred from a general permit facility is likewise already being reported via well completion reports as a source if that water is directly reused at a current well site location. If the outbound waters are being sent to a third-party reuse or disposal location, that information would also be captured in 26R and Monthly Waste Report submissions. PA Code §78.121 allows that waste information that is submitted electronically meets the residual waste reporting requirements of §287.52 (relating to biennial report). Recently, the Department also has provided similar guidance on the revised Form 26R – specifically, that information already submitted to the OGRE system needs not submitted again. Acting on this suggestion affords the Operator (waste generator) and the Department the ability of having one system of record for waste generation data and reduces the duplicative volume reporting required in three separate manners. (4)

Response: The Department has revised Condition E.2. to include the following:

Permittees that process or transfer solely their own oil and gas liquid waste are relieved from the requirement to provide information in the final report that is otherwise provided to the Department in accordance with unconventional monthly Oil and Gas Reporting Electronic (OGRE) requirements, which is available on the Department's website. As with all general permits, records relating to the permitted operation and the wastes authorized for processing or beneficial use may be requested and made available to the public.

50. **Comment:** Section E. Reporting Requirements: Reporting Requirements Should Be Streamlined.

The Department should consider reducing the amount of duplicative waste reporting required in Section E.2 (a., b., c., and d.) by requiring waste reporting via existing reporting mechanisms as the Department is allowing in other applications. Waste generating locations are already being reported into OGRE via Monthly Waste Reports as well as Annual 26R reports. Waste that is transferred from a general permit facility is likewise already being reported via well completion reports as a source if that water is directly reused at a current frac. If the outbound waste is being sent to a third-party reuse or disposal location, that information would also be captured in Annual 26R and Monthly Waste Report submissions. In 25 Pa. Code §78a.121, the Department has allowed for waste information that is submitted electronically to meet the residual waste reporting requirements of §287.52 (relating to biennial report). Recently, the Department has also provided similar guidance on the revised Form 26R that information already submitted to the OGRE system needs not be submitted again. Acting on this suggestion affords an applicant and the Department the ability of having one system of record for waste generation data and reduces the duplicative volume reporting required in three separate manners. (18)

Response: Please see the Department's response to Comment #49.

Renewal:

51. **Comment:** Section F. Renewal: Renewal Process Should Be Streamlined.

Generally, Section F sets forth the requirements for renewals of coverage under the draft WMGR163 permit and limitations therein. As noted above, Section F, coupled with the provisions of Section A, would require an applicant to reapply for coverage for a site that may be used multiple times over multiple years for short durations. This will both limit the utility of the draft WMGR163 permit and again increase the administrative burden on the Department. As discussed earlier in this correspondence, this is only further complicated with the timeframes for approval related to equipment installation and construction certification report approvals, and bond termination/release (including ambiguity existing within the draft WMGR163 as to when bond termination/release would be required to occur as it relates to expiration of coverage). Range again recommends that the timeframe for coverage of the draft be extended, and that Section F be amended to include a more seamless and efficient renewal process. (18)

Response: The Department has revised Condition A.2. to state that coverage for a permittee will automatically expire 1 (one) year from the date that the permittee initially receives or processes waste, or a maximum of 2 (two) years from the date of permit issuance, whichever is less. In conjunction, the changes allow applicants to obtain coverage under WMGR163 in advance of when they intend to operate, but still only allow permittees to operate for a maximum of 1-year (no more than 180 consecutive days at any one time) after which their coverage will automatically expire, unless the authorization's 2-year timeframe is reached prior to 1-year of actual operation, at which point the authorization would automatically expire.

Additionally, the Department has revised the definition of “operate” in the general permit to read as follows:

“To receive or process solid waste; to conduct closure and post closure activities at a facility.”

As a result, permittees would go through the process of obtaining approval of construction certification reports in accordance with Condition C.22. without beginning to operate as the term is defined in the general permit.

Please see the Department’s response to Comment #12.