

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Policy Office**

**DOCUMENT NUMBER**      012-0900-001

**TITLE:**                      Policy for Development and Publication of Technical Guidance

**EFFECTIVE DATE:**        July 28, 2018

**AUTHORITY:**              4 Pa. Code § 1.373 and the Environmental Statutes administered by the Department.

**POLICY:**                    DEP will follow the process described in this guidance for developing, revising, approving, and publishing Technical Guidance Documents (TGDs).

**PURPOSE:**                 This policy describes the process to be used by DEP for developing, approving, and publishing TGDs.

**APPLICABILITY:**         This policy applies to DEP’s TGDs, which provide compliance related information to the regulated community, the public, and DEP Staff. This policy does not apply to internal operating procedures, the development of special reports, or to permitting processes.

**DISCLAIMER:**             The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

   The policies and procedures herein are not an adjudication or a regulation. DEP does not intend to give this guidance that weight or deference. This document establishes the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:**            5 pages

## I. WHEN TO USE THIS DOCUMENT

Technical Guidance Documents (TGDs or guidance) provide practical and specialized information to DEP Program staff, the public, and the regulated community regarding compliance with environmental statutes and regulations in Pennsylvania. This policy should be used for the development of such documents.

TGDs do not establish binding legal obligations, alter statutory or regulatory requirements, or prescribe mandated action to regulated entities. However, TGDs describe methods and information acceptable to DEP to achieve compliance consistent with existing statutory or regulatory requirements.

## II. DEFINITIONS

**eLibrary** – DEP’s official online repository for Technical Guidance Documents.

**Draft TGD** – A DEP Technical Guidance Document prepared to solicit public comment on a new TGD or substantive revision to an existing TGD prior to it becoming effective.

**Final TGD** – A DEP Technical Guidance Document that previously existed as a Draft or Interim Final document, underwent a public comment period, was appropriately revised, and announced as a final publication in the *Pennsylvania Bulletin*.

**Interim Final TGD** – A DEP Technical Guidance Document that may be used immediately upon announcement of publication in the *Pennsylvania Bulletin* to meet a statutory deadline, to accompany a final regulatory package, or in another circumstance approved by the Policy Director. Issuing Interim Final TGDs allows for the use of the document by DEP and regulated entities while it undergoes public review and comment.

**Minor Revision** – A change to a DEP Technical Guidance Document that:

- Affects a portion of the existing TGD without fundamentally altering its content;
- Entails minor editorial improvements such as revised dates, changes in DEP staff, outdated information, clarification of examples, or typographical issues;
- Changes the layout, format, or sequence of information in the existing TGD without affecting its content; or
- Reflects a non-substantive change in regulatory or statutory provisions.

**New TGD** – A DEP Technical Guidance Document that has not previously existed in any form.

**Non-regulatory Agenda** – The list of Technical Guidance Documents and other non-regulatory resources DEP plans to amend and/or develop within the next year. This agenda is updated on a rolling basis and available on DEP’s website under “Public Participation”.

**Rescission** – The removal of a Technical Guidance Document from use due to statutory or regulatory changes, outdated information, or conversion to an alternative publication format.

**Substantive Revision** – Any change made to an existing DEP Technical Guidance Document that affects large portions of the guidance or fundamentally alters the existing content.

**Technical Guidance Coordinator** – The individual in DEP’s Policy Office responsible for coordinating development and publication of Technical Guidance Documents for the agency.

**Technical Guidance Documents (TGD)** – A document developed under this policy that provides methods, practices, procedures, or other relevant information to assist DEP program staff, the public, and the regulated community regarding compliance with environmental statutes and regulations.

**Withdrawal** – The removal of a Technical Guidance Document that was published as draft but never finalized, because DEP determined it to be no longer necessary.

### **III. KEY CONSIDERATIONS FOR DEVELOPMENT OF TECHNICAL GUIDANCE**

DEP develops its TGDs using the guidelines listed below.

#### **A. CONFORMANCE WITH STATE STATUTES AND REGULATIONS**

Recommended methods or procedures in TGDs must be consistent with statutes and regulations, but TGDs do not relay the sole methods or procedures by which a regulated entity may achieve compliance. In other words, regulated entities may choose to use other approaches not included in DEP’s TGDs to comply with statutory or regulatory requirements but should do so while in communication with DEP. If the TGD is based on a specific statute or regulatory provision, DEP will identify the provision and properly cite to it. TGDs should promote consistency among the DEP regional offices, and district oil and gas and mining offices, to the maximum extent practicable, bearing in mind the flexibility described in this paragraph.

#### **B. NECESSITY AND ADMINISTRATIVE EFFICIENCY**

DEP develops TGDs when necessary to aid in the implementation of current laws and regulations. TGDs should not be redundant of the statute or regulation or suggest procedures outside the scope of the statute or regulation. TGDs should be kept up-to-date and rescinded when no longer necessary.

Where appropriate, guidance should streamline applicable Departmental administrative and approval procedures to ensure efficient use of Commonwealth resources, while still meeting regulatory requirements. In addition, DEP should

minimize costs associated with staffing, technical reviews, and compliance assistance.

C. CLARITY

TGDs should contain clear and concise language and use non-technical language where possible. TGDs should explain the methods, practices, procedures, and other information that will be acceptable to the DEP to achieve compliance with statutory and regulatory requirements..

D. ECONOMIC IMPACTS

TGDs should not diminish Pennsylvania's competitive economic advantage. TGDs should provide flexibility for cost effective alternatives, encourage innovative technology, and drive economic growth, so long as those measures do not compromise environmental and public health standards.

**IV. ENHANCING TRANSPARENCY**

A. NON-REGULATORY AGENDA

DEP develops a list of the TGDs it plans to amend or develop during the next year. This agenda will be updated on a rolling basis and housed on DEP's website under "Public Participation". The list serves as a guide and a resource to the regulated community, the general public, DEP staff, other government agencies, legislators, and DEP's advisory committees regarding the focus of DEP's TGD development activities for the next year. This agenda is separate from and in addition to the publication of the annual document inventory published each August under Executive Order 1996-1, which also lists TGDs.

B. USE OF eCOMMENT TO SOLICIT PUBLIC COMMENT ON TGDs

DEP maintains an online public comment system entitled eComment through which the public can submit comments and view all comments submitted. To increase transparency in the development of TGDs and other documents, the eComment system can be accessed via the DEP website ([www.dep.pa.gov](http://www.dep.pa.gov), Search Term: eComment). DEP will use eComment to solicit comments on TGDs.

C. ADVISORY COMMITTEE AND STAKEHOLDER INVOLVEMENT

DEP Program staff consults Advisory Committees and other relevant stakeholders during the development of TGDs. Program staff should involve Advisory Committees and other stakeholders as early in the development process as practicable when new TGDs, substantive revisions to TGDS, and Interim Final TGDs are being developed. Minor revisions are not presented to Advisory Committees because they do not include substantive changes or fundamentally alter the content. When appropriate, DEP's Director of External Affairs may assist DEP program staff with identifying additional stakeholder engagement opportunities.

## V. PROVIDING COMMENTS

DEP's Policy Office accepts comments on all Draft and Interim Final TGDs for at least 30 calendar days after publication of the document's availability for public comment in the *Pennsylvania Bulletin*. DEP will consider and respond to all comments received via eComment, email, and mail during the official public comment period.

### A. SUBMITTING COMMENTS

All comments submitted to DEP should include the commentator's full name, affiliation (if applicable), mailing address, and email address. DEP encourages commentators to submit their comments electronically via DEP's eComment website. The Technical Guidance Coordinator manages all public comments and makes them publicly available on the eComment website within five business days of receipt, when possible.

### B. COMMENT-RESPONSE DOCUMENT (if applicable)

All Final TGD packages contain a Comment-Response (CR) document, which includes a list of the individuals and organizations that provided comments, all comments received during the formal public comment period, and DEP's response to each comment or similar set of comments. DEP may consider comments received after the official comment deadline, but will not incorporate them into the CR document. Copies of the CR document are made available on DEP's eLibrary website with the Final TGD. If DEP receives no comments on a Draft or Interim Final TGD, DEP will not prepare a CR document.

## VI. MAINTENANCE AND DISTRIBUTION OF TGDs

### A. MAINTENANCE

The Technical Guidance Coordinator will ensure that an official copy of every active TGD is available through DEP's eLibrary, which serves as the online repository for DEP's TGDs. When appropriate, DEP will remove TGDs from eLibrary as necessary.

1. **Rescission:** If an existing TGD is no longer necessary it should be rescinded. Additionally, an existing TGD may be rescinded if DEP determines the information is better suited in an alternative format (such as a fact sheet, brochure, manual, or similar document). DEP publishes notice of all technical guidance rescissions in the *Pennsylvania Bulletin*.
2. **Withdrawal:** A Draft or Interim Final TGD that is not finalized because it is no longer necessary will be withdrawn. Draft and Interim Final TGDs that are not published as Final within two years following the close of the comment period will be deemed withdrawn unless an extension is approved by the Policy Office.

B. DISTRIBUTION

The public should refer to DEP's eLibrary as the official repository for DEP policies and TGDs. However, upon request DEP will provide paper copies of TGDs to persons without access to its website.