

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE**

DOCUMENT NUMBER: 012-0200-001

TITLE: Final Revision of Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure

EFFECTIVE DATE: March 6, 2004

AUTHORITY: Act 247 of 1968, as reenacted and amended by Act 170 of 1998, known as the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, as amended by Acts 67, 68 and 127 of 2000. Pertinent sections include Article VI, section 619.2 and Article XI, section 1105(a)(2). Act 14 of 1984 [71 P.S. Section 510-5, (Adm. Code Section 1905-A). Cooperation with Municipalities].

POLICY: The Department of Environmental Protection (DEP) permit review process considers, and under certain conditions relies upon, comprehensive planning and zoning ordinances in our decision making process on authorizations related to facilities and infrastructure. This document is a substantial revision to the current policy in place since June 2002.

PURPOSE: The purpose of this policy is to provide direction and guidance to DEP staff, permit applicants and local and county governments for the implementation of Acts 67, 68 and 127 of 2000 in the administration of current DEP programs to avoid or minimize conflict with local land use decisions. This policy guidance addresses how DEP considers comprehensive planning and zoning ordinances in DEP's decision making process concerning the permitting of facilities and infrastructure; and when DEP relies upon comprehensive planning and zoning ordinances in DEP's decision-making process concerning the permitting of facilities and infrastructure.

APPLICABILITY: DEP will apply this policy where it has regulatory and decision making discretion pursuant to legal authority and through the administration of DEP programs and regulations. This policy applies to DEP staff and applicants for certain DEP authorizations. Specifically, it applies to proposed projects for construction of facilities or infrastructure as listed in Appendix A of this policy.

This policy only applies to counties and local municipalities covered under the Municipalities Planning Code (MPC). The MPC does not apply to first and second class cities (Philadelphia and Pittsburgh) or first class counties (Philadelphia).

DEP's authority to rely on land use plan and zoning ordinance information in its permit decision making only applies to those projects located in areas of the state that meet conditions described in any of the following three categories:

- 1) Under Section 619.2 (a) of the MPC:
 - A) The municipality is located in a county where there is a county comprehensive plan; and
 - B) The municipality has adopted a comprehensive plan or is a part of a multi-municipal comprehensive plan; and
 - C) The county or municipality has enacted zoning ordinances; and
 - D) The municipal zoning ordinance, the municipal comprehensive plan and county comprehensive plan are generally consistent as defined by Section 107 of the MPC.
- 2) Under Section 619.2 (c) of the MPC:

The municipality has adopted a joint zoning ordinance.
- 3) Under Section 1105 of the MPC:

The municipality has entered into an implementing cooperative agreement and adopted zoning ordinances as described in Sections 1104 and 1105 of the MPC.

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. There is no intent on the part of DEP to give the rules in these policies 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:

17 Pages

LOCATION:

Volume 1, Tab 5B

DEFINITIONS:

N/A

I. WHAT THIS POLICY IS ABOUT

A. Acts 67, 68 and 127 of 2000 (Acts 67, 68 and 127) amended the Municipalities Planning Code to provide new tools for local governments to plan for and manage growth. Section 1105 of Act 67 of 2000 and Section 619.2 of Act 68 directs that state agencies “shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or *permitting of infrastructure or facilities.*”

B. Definitions

“Authorizations” are approvals given by the department to undertake a proposed project as required by state statute or regulation. These include permits, plan approvals, certificates, licenses and registrations.

“Comprehensive plans and zoning ordinances” are county, municipal or multi-municipal comprehensive plans adopted under the MPC and zoning ordinances adopted under the MPC.

A “Designated Growth Area” is a region within a county or counties described in a municipal or multi-municipal plan that preferably includes and surrounds a city, borough, or village and within which residential and mixed use development is permitted or planned for at densities of one unit to the acre or more, commercial, industrial and institutional uses are permitted or planned for, and public infrastructure services are provided or planned for.

“eFACTS” is the Environment, Facility, Application, Compliance Tracking System, developed to combine electronic data from legacy systems into one department-wide database to provide the means for a holistic view of the clients and sites (including facilities) that DEP regulates.

“Facilities” are buildings and other structures.

The “General Information Form” (GIF) is a multi-page form used for most DEP applications. Its purpose is to facilitate coordination between different types of applications for the same project, to provide specific information that facilitates the entry of data into the eFACTS system, and collect other necessary information. A full application for a particular DEP authorization will generally consist of a GIF and additional forms related to the particular permit or other authorization.

“Infrastructure” is permanent structures for transportation, sewer and water facilities, schools, parks, greenways and open space, electric and gas delivery systems and telecommunications networks.

II. WHICH AUTHORIZATIONS ARE AFFECTED BY THIS POLICY

A. To determine which permit authorizations are covered by this policy, applicants need to answer two questions: 1) Is the authorization on the list found in Appendix A of this document; and 2) If it is an air program authorization, does the permit authorize the construction of facilities outside an existing permitted area? These questions are asked of

applicants on DEP's General Information Form (GIF), which is a required component of most DEP permit authorization applications. Section 3(A) discusses the GIF in more detail.

The list provided in Appendix A of this document is based primarily upon the definition of "facilities" and "infrastructure" found in section I(B) of this policy. Any authorization not appearing on the list is not required to undergo the land use review outlined in this policy.

- B. Permits-by-rule are not subject to the requirements of this policy. By definition, permits-by-rule are for facilities or activities that have a minor impact on the environment and therefore land use. Only one General Permit program, DEP's General Permit for stormwater construction activities (PAG-2), is covered by this policy with the exception of PAG-2 activities related to oil and gas wells. This exclusion exists because it is unlikely that oil and gas production activities will change current land use and access roads that may result are usually those that would not typically support increased residential, commercial or other development. All other General Permit programs are not covered at this time. In the future, DEP may consider the feasibility of integrating land use considerations pursuant to Acts 67, 68 and 127, into other General Permit programs on a case-by case basis.
- C. Authorizations under the Sewage Facilities Act and sewage planning program (Act 537), are not included in the list of affected authorizations. The current consideration of land use within the 537 program already includes a mechanism to address land use. For that reason, reviews in the Act 537 planning program *at this time* will continue unchanged. For a description of the Act 537 program and its related land use process, see the Pennsylvania Sewage Facilities Act (35 P.S. Sections 750.1-750-20), Section 5, Official Plans Subsection (d)(1), (2), (4), (5), (8), Section 7(b)(4), Section 10 (1), (2), (3) and Title 25, Chapter 71, Administration of Sewage Facilities Program. The following specific sections of Chapter 71 relate to coordination with local land use and other plans, how Act 537 Official plans and Official plan revisions must consider comments from appropriate official planning agencies at the local and county level and how sewage alternatives must be evaluated for consistency with respect to comprehensive plans:
- 71.31(b)
 - 71.21(a)(3)(iv)
 - 71.21(a)(5)(i)(A & D)
 - 71.21(a)(5)(ii)
- D. Permit applications for railroad facilities and operations are not subject to the requirements of this policy because these facilities and operations are not subject to local land use control. The local regulation of railroad facilities and operations by local governments is preempted by the federal Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. Section 10501(b).

III. WHAT IS THE LAND USE REVIEW PROCESS?

The land use review process established by this policy is designed to assist DEP in meeting its legal obligation under sections 619.2 and 1105 of the MPC. The land use review policy applies to affected authorizations listed in Appendix A that were received on or after August 21, 2000, the effective date of Acts 67, 68 & 127.

The land use review process has two major components: 1) The inclusion of land use questions as part of the permit application process (i.e. on the DEP GIF or as part of the permit application form in programs that do not use the GIF) and 2) An opportunity for municipal and county comment to DEP on the accuracy of a permit applicant's answers to the referenced land use questions. These two components are addressed individually below.

A. Land Use Questions in the General Information Form

DEP's General Information Form (GIF) is a required component of most DEP permit authorization applications. That form includes questions designed to facilitate the land use review process. An excerpt of the GIF containing the land use questions is provided in Appendix C. The "Project Information" Section of the GIF includes the following questions to determine the applicability of the land use review process:

- 1) Is this application for an authorization type on the list of authorizations affected by the land use policy? (For referenced list, see Appendix A attached to GIF instructions)
- 2) If you are applying for an Air program authorization: a) is the permit for a new source at a new facility? b) is the permit for a new source at an existing facility that will be located beyond the existing facility's property boundary as defined at the time of the last permit issuance by the Bureau of Air Quality?
- 3) Have you attached or submitted municipal and county "early opt-out" approval letters for the project? If yes, attach letters. If no, complete the "Land Use Question" section of the GIF.

These questions help the applicant determine if the permit authorization they are seeking is covered by the land use policy. It also provides for an "Early Opt-Out" option described in more detail in Section III(F) of this policy.

If applicant answers "no" to either questions #1 or #2 above, then they do not need to continue with the land use review process outlined by this policy and the additional GIF questions below. If applicant answers "yes" to question #1 and, if applicable, yes to question #2(a) or 2(b) above, then applicant must answer the additional GIF questions below or, if they wish, choose the "early opt-out" option.

1. Is there a municipal comprehensive plan(s)? Yes or No.
2. Is there a county comprehensive plan(s)? Yes or No.
3. Is there a multi-municipal or multi-county comprehensive plan(s)? Yes or No.
4. Is the proposed project consistent with these plan(s)? Yes or No. If no plan(s) exist, answer "yes".

5. Is there a municipal zoning ordinance(s)? Yes or No.
6. Is there a joint municipal zoning ordinance? Yes or No.
7. Will the proposed project require a zoning approval (e.g. special exception, conditional approval, rezoning, variance)? Yes or No. If zoning approval has already been received attach documentation.
8. Are any zoning ordinances that are applicable to this project currently the subject of any type of legal proceeding?
9. Will the project be located on a site that is being or has been remediated under DEP's Land Recycling Program?
10. Will the project result in reclamation of abandoned mine lands through re-mining or as part of DEP's RECLAIM PA Program?
11. Will the project be located in an agricultural security area or an area protected under an agricultural conservation easement?
12. Will the project be located in a Keystone Opportunity Zone or Enterprise Development Area?
13. Will the project be located in a Designated Growth Area as defined by the Municipalities Planning Code?

Answers to questions #9-13 above are for informational and tracking purposes only and will not be used as a basis for a permit decision under this policy. Information for answering questions #9 and #10 should be able to be obtained from the appropriate DEP regional or district mining office respectively. For information relative to question #12 direct questions to the Department of Community and Economic Development Customer Service Center at 1-800-379-7448. The local municipal and/or county should be able to provide information for questions #11 or #13 as they typically make these determinations. The term "Designated Growth Area" is defined on page 3 of this policy.

The questions in the GIF discussed above apply only to applications for authorizations on the affected authorizations list in Appendix A. When an applicant uses a GIF for an application type not listed in Appendix A, the applicant is not required to complete the Land Use Section of the GIF.

As part of their GIF/application package, applicants are also encouraged to submit copies of local land use approvals and evidence of compliance with local comprehensive plans and zoning ordinances.

For more information on how to complete the GIF, including the land use questions, consult the "GIF Instructions" provided on DEP's website at www.dep.state.pa, Keyword: "DEP Permits".

In programs where the GIF is not used, the program specific permit application form should include appropriate questions and instructions that implement Acts 67 and 68.

The DEP eFACTS system accommodates the land use questions contained in the GIF. All appropriate information from the GIF dealing with land use should be entered into eFACTS by DEP program staff already assigned to manage eFACTS data.

B. Municipal/County Notice and Opportunity to Comment

As part of the land use review process, DEP is specifically inviting affected municipalities and counties to submit comments to DEP related to pending permit applications and their relationship to comprehensive plans and zoning ordinances under Acts 67, 68 and 127. Upon receipt of the application, DEP permit review staff will attempt to contact both the municipality and the county planning commission by telephone to discuss the project and its relation to planning and zoning, and the municipality's role in the land use review process. Staff should make a notation of the contact in the file. Where DEP staff is aware that there may be a land use conflict, they must notify the Regional Director and engage the RD's help to ensure that the department has successfully alerted municipal officials. The notification should be appropriate for the municipalities involved, and should also include contacting the county planning commission.

In addition, DEP will build upon the existing Act 14 of 1984 (Act 14) municipal/county notice requirement that is currently in place for most DEP permit programs. Act 14 requires that notice of certain permit applications be sent to the municipality and to the county. This notice letter has been broadened as shown below to provide an opportunity for local and county government to identify any potential land use conflicts associated with a proposed project before DEP completes its review of a permit application. Act 14 notices for applications on the affected authorizations list in Appendix A must be amended by permit applicants to include the following language:

“Acts 67, 68 and 127, which amended the Municipalities Planning Code, direct state agencies to consider comprehensive plans and zoning ordinances when reviewing applications for permitting of facilities or infrastructure, and specify that state agencies may rely upon comprehensive plans and zoning ordinances under certain conditions as described in Sections 619.2 and 1105 of the Municipalities Planning Code. Enclosed is a General Information Form (GIF) we have completed for this project. DEP invites you to review the attached GIF and comment on the accuracy of answers provided with regard to land use aspects of this project; please be specific to DEP and focus on the relationship to zoning ordinances. If you wish to submit comments to DEP to become part of a land use review of this project, you must respond within 30 days to the DEP regional office referenced in this letter. If there are no land use comments received by the end of the comment period, DEP will assume that there are no substantive land use conflicts and proceed with the normal application review process. For more information about this land use review process, visit DEP's website at www.state.pa.us, Keyword: “DEP Land Use Reviews”.

For all authorization types listed in Appendix A that do not normally use an Act 14 notice (e.g. public water supply and mining permits), a similar notice letter to the municipality and to the county that contains the completed GIF, or other program specific permit application forms that address Acts 67 and 68 requirements, must be sent. For this purpose, a sample notice letter is attached as Appendix B. For questions on the notice requirement for programs that do not use the Act 14 notice, contact the appropriate regional or district mining office.

When sending notice letters, a return receipt and copy of notification letter must be submitted to DEP as proof of municipal and county notification. All notices to a municipality should be sent to the municipal secretary. All notices to a county should be sent to the county commissioners with a copy to the county planning office.

The municipality and county have 30 days from the date of receipt of a notice letter to respond to DEP. If Act 14 allows for a longer comment period for a particular application (e.g. municipal waste landfills), the longer period will apply. DEP staff will conduct technical reviews concurrently with the municipal/county comment period. DEP may consider municipal and county comments concerning land use at any time during the review process, but DEP staff should not take a final permit action before the initial 30-day period has ended. In cases where the comment period extends beyond the issue date suggested by the Department's Money-back Guarantee Program (MBG), the MBG clock will stop until the comment period ends.

When DEP has the authority to do so, it is the Department's intent to rely only on comments received from municipal and county officials or their designated planning agencies to determine whether a project may conflict with comprehensive plans and zoning ordinances.

If there are no land use comments received at the end of the comment period, DEP will assume that there is no substantive land use conflict and proceed with the normal application review process. If projects involve multiple permits and are of a complex nature, DEP will consider, on a case-by-case basis, granting an extension in the comment deadline if requested by a municipality or county.

DEP will work with the Governor's Center for Local Government Services and local government associations to ensure that local governments are aware of this opportunity to review DEP permit forms (e.g. GIF) and provide comments in relation to land use plans and zoning.

C. Projects with Multiple Permits

If permit applicants choose to submit an application package that includes one GIF and all necessary permits for the project at one time, the land use review process called for in this policy occurs only one time. If applicants choose to submit applications for each individual permit, the land use review process, including the municipal/county notice requirement, occurs each time that permit application is submitted. Where feasible, the Department would like to encourage applicants to submit all necessary applications at the same time. In this situation, only a single notice letter, comment period and land use review would need to be done. However, with certain phased projects, we understand that this may not be possible.

D. Projects that Include Facilities and Infrastructure in More Than One Municipality or County

If a project involves permits for facilities and infrastructure in more than one municipality or county, applicants must ensure that each jurisdiction involved receives

the municipal/county notice and has an opportunity to comment on whether their comprehensive plans and zoning are consistent with the proposed project.

E. Relationship to the DEP Money-Back Guarantee Permit Review Program

All permit applications will be exempt from the DEP Money-Back Guarantee Permit Review Program under Section I.A. of the Policy for Implementation of the DEP Money-Back Guarantee Permit Review Program when the department has determined that there is a conflict under Section IV (B) of this policy. This provision is intended to ensure a thorough review of the land use issues raised, but DEP staff is directed to conduct the technical review and land use component of the technical review in a timely manner.

In addition, the Money-Back Guarantee Program clock will stop where the 30-day comment period extends beyond the suggested issue date, as noted in Section III (B) above.

F. Early Opt-out Option Through Submission of Municipal and County Approval Letters

To exercise this option, an applicant must submit with the GIF and/or permit application, approval letters signed by the elected officials of the municipal governing body and county or by planning agencies specifically designated by an action of the elected officials. The letters should indicate that the project is not inconsistent with comprehensive plans and zoning ordinances and all required zoning approvals have been secured. If these letters can be obtained from the municipal and county governments involved, then the applicant does not need to fill out the questions in the "Land Use Information" section of the GIF nor continue further with the land use review process outlined by this policy.

If the project will be located in more than one municipality or county, such approval letters must be submitted from each municipal and county governing body involved.

The applicant should note selection of this option when they fill out the GIF and a question has been added to the GIF to reflect this.

If this option is used and an Act 14 notice is required for the authorization in question, the applicant does not need to include in that letter the specific land use review language contained in Section III. 2 (relating to Municipal/County Notice) of this policy. If there is no Act 14 notice requirement for that authorization, no additional land use notice is required by this policy if the option for the early opt-out is exercised.

IV. HOW DOES DEP CONSIDER COMPREHENSIVE PLANS AND ZONING ORDINANCES WHEN MAKING PERMIT DECISIONS?

- A. Acts 67, 68 and 127 of 2000 require state agencies to consider comprehensive plans and zoning ordinances when reviewing applications for the permitting of infrastructure or facilities. The purpose of DEP's review is to avoid or minimize conflicts between department permit decisions and local land use decisions.

The “shall consider” language requires consideration of comprehensive plans and zoning ordinances. The consideration phase includes verification that DEP has authority to rely on planning and zoning in its permit decision as discussed in Section V of this policy. It also includes asking specific land use questions of permit applicants and reviewing all of the information received from both the permit applicant and local municipality and county.

When reviewing permit applications, DEP will consider the information provided by the applicant in the GIF and materials related to land use plans and zoning ordinances submitted by the applicant. DEP will also consider information on land use plans and zoning ordinances submitted in writing by the municipality and county officials. Comprehensive plans and zoning ordinances in effect up until the date that DEP makes the permit decision will be those considered by the Department.

Even though DEP will consider information submitted by the applicant and that provided in local/county comment, DEP can only rely, or base a permit decision, upon this information in certain circumstances as described in more detail in Section V of this policy.

- B. A potential conflict arises when DEP staff receives a response letter from the county or local municipality indicating that the project may conflict with comprehensive plans or zoning ordinances or if the applicant submits information on the GIF that indicates that there is such a conflict. If potential conflicts are identified, DEP permit reviewers shall immediately notify the DEP Policy Office and forward to the office the original notice letter with return receipt, the GIF and any comment letter(s) received from municipal and local officials.

The DEP Policy Office will do the following when information referenced above is received from DEP permit staff:

- Review all information received regarding land use conflict;
- Make a recommendation to regional director, district mining manager or bureau director on whether to suspend further technical review of the application.
- Determine whether DEP has the authority to base permit decision on comprehensive planning and zoning;
- Determine whether to notify or involve other state agencies, including the Governor’s Center for Local Government Services;
- Contact DEP Office of Chief Counsel (OCC) to obtain legal review; and
- Provide written guidance to appropriate permitting and senior staff on whether, based on Acts 67, 68, and 127, the permit application should be approved, approved with a condition, or denied.

Contact information for the Policy Office: DEP, Policy Office, P.O. Box 2063, 15th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-2063.
Telephone: 717-783-8727, Fax: 717-783-8470.

In general, the Policy Office and Office of Chief Counsel should complete their review within 30 days of notification of the potential conflict by DEP staff or sooner. This review will take place concurrently with technical reviews done by permit review staff.

A final permit action should not be taken by DEP until the Policy Office and Office of Chief Counsel complete their portions of the review process outlined above.

V. HOW DOES DEP RELY UPON COMPREHENSIVE PLANS AND ZONING ORDINANCES?

A. DEP's authority to rely on land use plan and zoning ordinance information in its permit decision making only applies to those projects located in areas of the state that meet conditions described in any of the following three categories:

- 1) Under Section 619.2 (a) of the MPC:
 - a) The municipality is located in a county where there is a county comprehensive plan; and
 - b) The municipality has a comprehensive plan or is a part of a multi-municipal comprehensive plan; and
 - c) The county or municipality has enacted zoning ordinances; and
 - d) The municipal zoning ordinances, the local municipal comprehensive plan and the county comprehensive plan are generally consistent with each other as defined in Section 107 of the MPC.

2) Under Section 619.2 (c) of the MPC:

The municipality has adopted a joint ordinance.

3) Under Section 1105 of the MPC:

The municipality has entered into an implementing cooperative agreement and adopted zoning ordinances as described in Sections 1104 and 1105 of the MPC.

Acts 67, 68 and 127 of 2000 do not specifically define what the term "rely upon" means. DEP interprets the "may rely upon" statutory language to grant DEP discretion as to how to rely upon planning and zoning in its permit decision-making. When DEP's authority exists to rely upon planning and zoning information and conflicts have been identified, DEP has chosen to rely upon this information in several ways. DEP can deny an application, approve the application or put a special condition on a permit. DEP may also decide to suspend further review of an application until the conflict has been resolved.

However, DEP does not interpret the law to authorize DEP "to rely" solely upon a comprehensive plan in situations where the zoning ordinance would not preclude the proposed activity. Because comprehensive plans do not have the force of law as zoning ordinances do, when DEP has the authority to rely on comprehensive planning and zoning it will place more emphasis on conflicts with zoning ordinances.

In order to determine if planning and zoning are "generally consistent", DEP will presume that the county comprehensive plan, the municipal comprehensive plan and zoning ordinances are all generally consistent in the absence of clear and compelling evidence that they are inconsistent. This is because Section 301 (a)(5) and Section 603(j) require general consistency.

Where a municipality or county has identified a conflict with a project located in a municipality that does not meet the above requirements, DEP cannot rely upon the information provided by the municipality or county when making permitting decisions. DEP will notify the Governor's Center for Local Government Services that the county or municipality has concerns with the project but that the comprehensive plans and zoning ordinances do not meet the requirements of Acts 67, 68 and 127.

Consistent with existing regulatory authority, DEP may also choose to evaluate the extent to which a project would provide a public health or environmental benefit, and whether the project will comply with other applicable environmental laws and regulations.

Where a conflict has been identified, DEP may suspend further review of the application until the conflict has been resolved. It is the responsibility of the Policy Office to coordinate the review of the land use information submitted and consult with the Bureau of Regulatory Counsel, the regional director, executive staff and permit review staff to make a recommendation to the regional director (or by the bureau director for permits reviewed by Central Office staff, or the district mining manager for mining permits) on whether to suspend further review of the application. The decision to suspend further review of an application will be made on a case-by-case basis and will only be made by the Regional Director, bureau director or district mining manager.

B. Preemption of Local Authority to Regulate Certain Activities

Acts 67, 68 and 127 recognize the distinction between regulating certain activities as particular regulated activities, and the authority of local municipality to enact zoning ordinances which impose zoning restrictions on a wide range of activities. Prior to the enactment of Acts 67, 68 and 127, local municipalities were preempted from regulating certain activities such as mining activities. The local municipality, nevertheless, retained the authority under the MPC to establish valid zoning requirements for such activities. Acts 67, 68 and 127 maintain the status quo concerning these activities. Local municipalities can establish valid zoning requirements that can be imposed on these activities where state law preempts local regulation of these activities.

Acts 67, 68 and 127 of 2000 address local government's zoning authority to regulate certain activities or resources such as mineral extraction, agricultural operations, allocation of water resources and forestry in several ways. First, Act 68 preserves preexisting state preemption of local regulation of certain activities. Second, in those areas of local regulation not preempted, Act 68 establishes that comprehensive plans shall be consistent with and may not exceed requirements established under certain identified state environmental statutes currently regulating these activities or resources. Finally, for mineral extraction Act 68 provides that zoning ordinances shall provide for reasonable development of minerals in each local municipality. The authority of local government to regulate in these statutorily identified areas is limited. Local government, however, retains zoning authority in these areas under the MPC, and DEP will still need to assess conflicts in these areas arising under the zoning ordinances enacted under the MPC.



APPENDIX A

**AUTHORIZATION/APPLICATION TYPES AFFECTED BY
DEP'S LAND USE POLICY**

The following permit/authorization types are affected by DEP's Land Use Policy. The last column is for crosswalk to DEP's eFACTS data system codes and is added for DEP staff reference or for electronic permit submissions.

AIR QUALITY PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Major Facility Plan Approval - <ul style="list-style-type: none"> • Case-by-Case MACT • Hazardous Air Pollutant Standard Part 61 • MACT Air Toxics Part 63 • New Facility Review Prevention of Significant Deterioration • New Source Performance Standard • New Source Review Non-Attainment • State Regulation 	MASAT/NEW MFAP/NEW MAAT/NEW MNSRP/NEW MFSP/NEW MNSRN/NEW MFSR/NEW
Minor Facility Plan Approval - <ul style="list-style-type: none"> • Hazardous Air Pollutant Standard Part 61 • MACT Air Toxics • New Source Performance Standard • State Regulation 	MISAT/NEW MSATM/NEW MISPS/NEW MSSR/NEW
COAL MINING PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Preparation-Processing Plant Permit	P/NEW
Refuse Disposal Permit	RD/NEW
Surface Mining Permit	SM/NEW
Underground Mining Permit (surface facilities only)	UM/NEW
INDUSTRIAL MINERALS (NONCOAL) MINING PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Bluestone Surface Mining Permit	BS/NEW
Large Surface Mining Permit (includes underground mining, surface facilities)	LSM/NEW
Small Surface Mining Permit	NSM/NEW
OIL & GAS MANAGEMENT PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Drilling or Altering a Well (Disposal Wells Only)	DOWDR/NE W
NPDES Permit Industrial Wastewater Discharge Minor	8NIWM/NEW
NPDES Permit Stormwater-Construction (Individual)	8NSC/NEW
NPDES Permit Stormwater Industrial Site Runoff (Individual)	8NSIR/NEW
Water Obstruction & Encroachment Permit	8WOJP/NEW
Water Quality Mgmt Part II, Industrial Wastewater Facility	8W2IW/NEW

WASTE MANAGEMENT – HAZARDOUS WASTE PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Captive Disposal Permit	CD/NEW
Captive Storage Permit	CS/NEW
Captive Treatment Permit	CT/NEW
Commercial Disposal Permit	COD/NEW *
Commercial Recycling Permit	COR/NEW
Commercial Storage Permit	COS/NEW
Commercial Treatment Permit	COT/NEW *
WASTE MANAGEMENT – MUNICIPAL WASTE PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Construction/Demolition Landfill Permit (Alternative Project) <ul style="list-style-type: none"> (new facility) Expansion or Increased Capacity/ADV/MDV/Acreage 	CDLA/NEW * CDL/MODEO *
Municipal Landfill <ul style="list-style-type: none"> (new facility) Expansion or Increased Capacity/ADV/MDV/Acreage 	LA/NEW * L/MODEO *
MW Composting Permit	C/NEW
Resource Recovery & Other Processing Permit	RRO/NEW
Transfer Station Permit	TS/NEW
WASTE MANAGEMENT – RESIDUAL WASTE PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Landfill-Class I, II or III Permit (commercial or captive) <ul style="list-style-type: none"> (new facility) (major modification for new acreage) 	RL3A/NEW RL3/MOD
Commercial Landfill-Class I, II or III Permit (Alternative Project) <ul style="list-style-type: none"> (new facility) (major modification for new acreage) 	RL3AP/NEW * RL3AP/MOD *
Disposal Impoundment-Class I or II Permit	DI2/NEW *
Processing and/or Incinerator Permit	PI/NEW
RW Composting Permit	RC/NEW
Transfer Station Permit	T/NEW
WASTE MANAGEMENT – STORAGE TANKS PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Site Specific Installation Permit	SSIP/NEW
WATER MANAGEMENT – DAM SAFETY PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Dam Safety Permit	DSP/NEW
Limited Power Permit	LPP/NEW

WATER MANAGEMENT – NPDES PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Concentrated Animal Feed Operations Individual NPDES Permit	NCAF/NEW
NPDES Permit for New & Existing Industrial Discharger, Major	NIWMA/NEW
NPDES Permit Industrial Wastewater Discharge Minor	NIWM/NEW
NPDES Permit Stormwater Industrial Site Runoff (Individual)	NSIR/NEW
WATER MANAGEMENT – STATE WATER POLLUTION CONTROL PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Water Quality Mgmt Part II, Industrial Wastewater Facility	W2IW/NEW
Water Quality Mgmt Part II, Manure Storage Facility for CAFO	W2CAF/NEW
WATER MANAGEMENT – SAFE DRINKING WATER PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Public Water Supply Permit Bottled Water System Construction	BWSC/NEW
Public Water Supply Permit Bottled Water System-Finished Water Source Construction	BWSFC/NEW
Public Water Supply Permit Bulk Water Hauler-Finished Water Source Construction	BWHF/NEW
Public Water Supply Permit Bulk Water Hauler Construction	BWHC/NEW
Public Water Supply Permit Community Water System Construction	CWSC/NEW
Public Water Supply Permit Retail Water System Construction	RWSC/NEW
Public Water Supply Permit Retail Water System-Finished Water Source Construction	RWSFW/NEW
Public Water Supply Permit Vended Water System Construction	VWSC/NEW
WATER MANAGEMENT – EROSION & SEDIMENT PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Erosion & Sediment Control Permit	EDP/NEW
NPDES Permit Stormwater-Construction (Individual)	NSC/NEW
PAG-02 NPDES Stormwater-Construction (general permit; includes all PAG-02s except those required for Oil & Gas activities)	NSC2/NEW
WATER MANAGEMENT – WATER OBSTRUCTION & ENCROACHMENT PROGRAM	
Authorization/Permit Type & Description	eFACTS Codes
Water Obstruction & Encroachment Permit	WOJP/NEW

* If a different project timeline is negotiated, a special eFACTS code will be established.

Appendix B

**Sample Notice Letter To Municipality and County
For Permits That Do Not Use Act 14 Notice**

Dear (Municipal Secretary:) or
Dear (County Commissioners:)

The purpose of this notice is to inform you that the Pennsylvania Department of Environmental Protection (DEP) has received the following application(s):

Permit Application Type(s): _____

Applicant Contact: _____

Project Location: _____

Project Description: _____

DEP Office Contact Information: Acts 67, 68 and 127 of 2000, which amended the Municipalities Planning Code (MPC) to direct state agencies to consider comprehensive plans and zoning ordinances when reviewing applications for permitting of facilities or infrastructure, and specify that state agencies may rely upon comprehensive plans and zoning ordinances under certain conditions as described in Sections 619.2 and 1105 of the MPC.

Enclosed is a General Information Form (GIF) completed by the applicant for this project. DEP invites you to review the attached GIF and comment on the accuracy of answers provided with regard to land use aspects of this project; please be specific to DEP and focus on relationship to zoning ordinances. If you wish to submit comments to DEP to become part of a land use review of this project, you must respond within 30 days to the DEP regional office referenced in this letter. If there are no land use comments received by the end of the comment period, DEP will assume that there are no substantive land use conflicts and proceed with the normal application review process.

For more information about this land use review process, please visit www.dep.state.pa.us,
Keyword: "DEP Land Use Reviews."

Sincerely,

cc: /county planning agencies

Appendix C
Excerpt from the General Information Form

1) Is this application for an authorization type on the list of authorizations affected by the land use policy? Yes No

Note: If “Yes”, continue with Question 2 below.
If “No”, skip Questions 2 & 3 below as well as the following Land Use Information section.
For referenced list, see Appendix A attached to the GIF Instructions.

2) If you are applying for an Air program authorization:
a) Is the permit for a new source at a new facility? Yes No

b) Is the permit for a new source at an existing facility that will be located beyond the existing facility’s property boundary as defined at the time of the last permit issuance by the Bureau of Air Quality? Yes No

Note: If “Yes” to Question 1 above and “No” to Question 2(a) or 2(b), skip Question 3 below as well as the following Land Use Information section.
If “Yes” to both Questions 1 & either 2(a) or 2(b), continue with Question 3 below.

3) Have you attached or submitted municipal and county ‘Early Opt Out’ approval letters for the project? Yes No

Note: If “Yes” to Question 3, skip the following Land Use Information section. This should only be checked “Yes” if applicant is choosing the early opt-out option. Required approval letters described in the GIF Checklist and Instructions should be attached.
If “No” to Question 3, continue with the following Land Use Information section.

LAND USE INFORMATION

Note: Applicants are encouraged to submit copies of local land use approvals or other evidence of compliance with local comprehensive plans and zoning ordinances.

- | | | | | |
|---|--------------------------|-----|--------------------------|----|
| 1. Is there a municipal comprehensive plan(s)? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 2. Is there a county comprehensive plan(s)? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 3. Is there a multi-municipal or multi-county comprehensive plan? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 4. Is the proposed project consistent with these plans? If no plan(s) exists, answer “Yes”. | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 5. Is there a municipal zoning ordinance(s)? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 6. Is there a joint municipal zoning ordinance(s)? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 7. Will the proposed project require a zoning approval (e.g., special exception, conditional approval, re-zoning, variance)? If zoning approval has already been received, attach documentation. | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 8. Are any zoning ordinances that are applicable to this project currently the subject of any type of legal proceeding? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 9. Will the project be located on a site that has been or is being remediated under DEP’s Land Recycling Program? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 10. Will the project result in reclamation of abandoned mine lands through re-mining or as part of DEP’s Reclaim PA Program? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 11. Will the project be located in an agricultural security area or an area protected under an agricultural conservation easement? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 12. Will the project be located in a Keystone Opportunity Zone or Enterprise Development Area? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 13. Will the project be located in a Designated Growth Area as defined by the Municipalities Planning Code? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |