



The Power of P3s

Working Together: A P3 with DEP Would Lead to More Efficiency, Enhanced Economic Development

By Brian Clark

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McDonnell recognizes and acknowledges the need for timely and efficient review of permit applications filed under the various programs that DEP administers. The agency has embarked on several initiatives to improve response time through electronic filing and other methods to reduce the dependence on paper copies; however, with the DEP budget at an historic low and the continued funding of federally-delegated state programs in question, the need to implement other methods is paramount. A third party review program for critical time-sensitive and resource demanding permits is a valuable tool for DEP in the era of smaller government. If done correctly, permit reviews would be promptly completed by independent third parties, allowing the state's regulatory agency to maintain the final permit decision-making role.

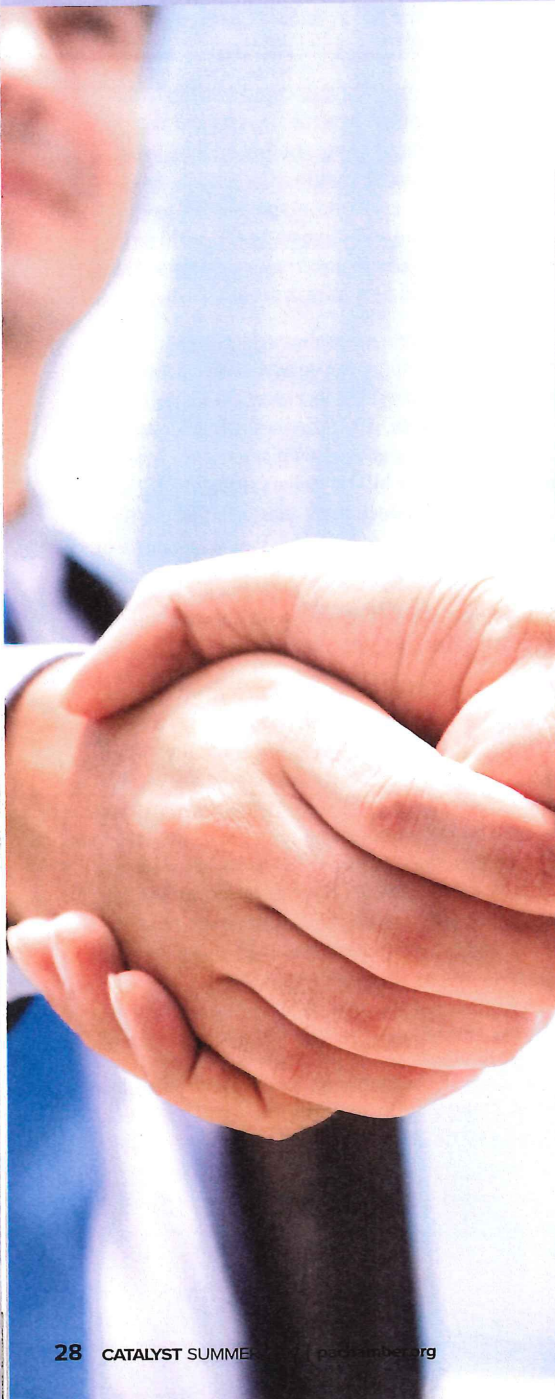
What would a DEP third-party review program look like?

As a starting point, one approach would be for DEP (by policy) or the General Assembly (by legislation) to focus on programs that are both resource intensive and time sensitive. DEP's proposed third-party review policy would establish a process for both individual permits and general permits — and both 25 Pa. Code and Chapter 102 (individual and general) meet these criteria.

Chapter 102 requires those proposing to conduct earth-moving activities to implement and maintain best management practices in order to prevent erosion and sedimentation during construction, and to manage post-construction stormwater. Chapter 105 is issued under the Pennsylvania Dam Safety and Encroachments

The reason public-private partnerships have grown in popularity over the past few years is simple: they work. With government agencies being stretched thinner and thinner, few have the capacity to handle the number of requests they receive on a regular basis. Public-private partnerships are a simple and effective way to reduce the amount of inbound requests departments are required to handle, while also expediting the process for companies looking for permit approvals.

In Pennsylvania and other states, a number of examples of successful public-private partnerships have proven track records. Fortunately, Pennsylvania Department of Environmental Protection Secretary Patrick



Act, among other laws, and regulates dam safety and activities that obstruct or encroach into waters, floodways or other bodies of water, including wetlands.

Essentially, the policy creates a separate track for review of and decision on certain permits with low environmental risk within the DEP issued under Chapters 102 and 105. There is an additional cost charged by the DEP for this review paid for by the applicant.

What are the benefits of public-private partnerships?

It is not surprising that like many state agencies, DEP is somewhat understaffed. Often, there simply aren't enough qualified engineers and other professionals to keep up with the demand for issuing permits in a timely manner. Budgetary constraints prevent DEP from hiring more professionals to manage this backlog. This program would seek to focus on permits associated with low risk activities and that can be evaluated and drafted by qualified professionals and then submitted to DEP for final review and permit decision. A public-private partnership is one way to work through those limitations.

However, review of permit applications through a public-private partnership brings with it more than enhanced efficiency at the DEP. The real value of providing expedited avenues for permit approvals is to provide Pennsylvania with the ability to focus on the environmental issues that pose a higher risk to the public, such as contamination in public drinking water supplies or contaminated sites impacting the public through direct exposure. Quicker permit approvals that support economic development means more jobs, more money flowing into Pennsylvania and quicker infrastructure improvements throughout the Commonwealth.

Similar public-private partnerships, both within Pennsylvania and in other states, have been successful at increasing efficiency, providing more breathing room for government professionals and driving economic growth. In Pennsylvania, for example, the Department of Transportation uses consultants for a variety of engineering and other services related to transportation infrastructure construction. PennDOT's electronic Engineering and Construction Management System allows applicants to register, present their qualifications and submit a statement of interest. PennDOT then uses what it calls a "standard selection procedure" to choose consultants for projects across the state. Last year, this program generated more than \$1 million in savings for projects like the construction of salt storage buildings, roofing work and HVAC installation.¹

In 2009, the Site Remediation Reform Act was signed into law in New Jersey, and established the Licensed Site Remediation Professional program, which allowed third-party licensed professionals to oversee contaminated site remediation. Prior to its enactment, there were nearly 20,000 old contaminated sites that were in need of remediation. The NJDEP simply couldn't keep up with the workload. Five years after the SRRRA went into effect, 5,792 of those cases had been resolved.² The program continues to increase efficiency today and has significantly decreased the once-heavy backlog of cases.

Other states such as Maine, Washington and Massachusetts have comparable third-party

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review programs within their Departments of Environmental Protection and have seen similar successes. All are designed to free departments from the often-tedious task of approving permits or conducting inspections and allow them to direct attention to evaluating compliance and ensuring environmental safety and protection. Because of the reduced time to acquire permit approvals, these programs also make it easier to move economic development projects forward and enable growth to flourish within their states.

How will DEP third-party review policy work?

For those familiar with DEP's existing permit review process who want to use this voluntary expedited review procedure, there will be very little noticeable change. The third-party review policy will feature nearly identical process, forms and procedures as the existing permit review process. Applicants who specifically request this expedited procedure will, however, be required to pay a separate application review fee directly to the consultant chosen by DEP who conducts the technical review of the application.

Once submitted, permit applications will be reviewed by DEP for administrative completeness to ensure all forms and documents required by the application have been submitted

and are completed. If the application is incomplete, it will be returned to the applicant with instruction to resubmit the application within 60 days, or it will be marked as withdrawn.

After all forms have been completed, DEP then chooses a Qualified Licensed Professional to review the permit application. This list of approved QLPs will be compiled by DEP using a request for information inviting qualified consultants, including professional engineers, professional land surveyors and professional geologists to submit their qualifications to be included on the list. Prior to becoming an approved QLP, each professional must also complete training in a DEP-approved environmental educational program. Of course, to ensure fairness in permit application reviews, the QLPs will be chosen on a rotating basis with the agency routinely updating the list with new QLPs.

During the review process, the QLP will have one opportunity to submit a technical review letter back to the applicant to potentially resolve problems or questions before the application review is completed and submitted back to DEP. After the QLP has completed the application review and any issues have been resolved, he or she would make a recommendation and submit it to the agency. DEP would then act on the application in a previously agreed upon timeframe.

In the end, this proposed third-party review will reduce DEP's burden of reviewing application after application by using the numerous QLPs available within Pennsylvania. The policy will decrease the time it takes to get infrastructure projects off the ground and make it easier for the Commonwealth's businesses to create more work and more jobs.

Creating economic development opportunities should be a key part of any new policy proposal, and this new DEP third party review policy will do just that. ■

¹ <http://gantdaily.com/2016/12/01/year-in-review-penn-dot-supports-local-economies-improves-customer-service/>

² https://njbmagazine.com/special_sections/assessing-the-transition/metrics-show-a-record-of-success-for-lsrp-program/

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