

**Chapter 102
Erosion and Sediment
Control and Stormwater
Management
Proposed Final Rulemaking**

Water Resources Advisory Committee
February 19, 2010

Framework for Presentation

- Summary of Proposed Rulemaking
- Summary of Public Comments Received
- Overview of Proposed Revisions for Final Rulemaking

Summary of Proposed Rulemaking

1. Updated agricultural soil erosion and sedimentation control
 - animal heavy use areas
2. Updated E&S Control Requirements
3. Codification of Post Construction Stormwater Management (PCSM) Requirements
4. Updated Permit Requirements and Fees
5. Riparian Forest Buffers
6. Permit-by-Rule (PBR)

**WRAC Questions Posed in the
Preamble**

1. How should the proposed rulemaking address responsibility for long-term operation and maintenance of PCSM BMPs?
2. Should the proposed rulemaking include a provision for mandatory riparian forest buffers?
3. Should the proposed rulemaking limit or expand the availability of the proposed permit-by-rule?

90 Day Public Comment Period

- Published in Pa Bulletin on Saturday, August 29, 2009 (39 Pa.B. 5131)
 - 90 Day Public Comment Period
 - Three Public Meetings and Hearings
- **Total commentators**
 - 1311 (adjusted to delete duplicates)
 - **General Public**
 - 1119 commentators (86%)
 - **Industry**
 - 106 (8%)
 - **Academia, Environmental and other NGOs**
 - 44 (3%)
 - **Governmental, Legislators, Conservation Districts & Attorneys**
 - 41 (3%)

Key Issues Raised in Comments

- Definitions § 102.1
- Agriculture § 102.4(a)
- Permit Requirements § 102.5
- Permit Fees § 102.6
- PCSM and O&M § 102.8
- Buffers § 102.14
- PBR § 102.15

Definitions § 102.1
Overview of Comments and
Proposed Changes

Clarify:

- Animal Heavy Use areas
- Soil Loss Tolerance "T"
- Road Maintenance Activity

Agriculture § 102.4(a)
Overview of Comments

- Clarify the use of "Cost Effective and Reasonable" BMP language
- Clarify the requirements when there is less than 25% cover
- Clarify that the Chapter only regulates accelerated erosion & sedimentation
- Animal Heavy Use areas
 - Request to Clarify
 - Request to Delete

Agriculture § 102.4
Proposed Changes for Final Rulemaking

- Retain the language in the proposed rulemaking with minor modifications in response to comments
- Clarify definition of animal heavy use areas

Permit Requirements § 102.5
Overview of Comments

- Incorporation of Federal Requirement for Permitting Small Construction Activities §102.5(a)(1)
 - EPA requested that DEP delete the language "with a point source discharge to surface waters"
- Permit requirements for earth disturbance activities associated with timber harvesting
 - Request to reduce permit threshold to 5 acres
 - Request to retain and clarify that permit threshold is 25 acres

Permit Requirements § 102.5
Proposed Changes for Final Rulemaking

- Remove the language "with a point source discharge to surface waters" in §102.5(a)(1)
- Retain the current permit requirement threshold of 25 acres for earth disturbance activities associated with timber harvesting

Permit Fees § 102.6
Overview of Comments

- Commentators expressed concern with fee increases
- Commentators recommended either a tiered approach or a fee based approach on project size or disturbed acreage

Permit Fees § 102.6

Proposed Changes for Final Rulemaking

- Revise fee structure based upon the recommendations (Administrative fee plus disturbed area)
- Administrative fee would be different for GPs v. Individual Permits

PCSM and O&M § 102.8

Overview of Comments

- Requested clarification on technical aspects of PCSM (Plans, storm events, BMPs)
- Comments on this section focused mainly on O&M
- Raised concerns about long term O&M of PCSM BMPs
- Recommended that non-profit organizations or Conservation Districts could provide service for long term O&M for a fee

PCSM and O&M § 102.8

Proposed Changes for Final Rulemaking

- General modifications in response to comments (Plans, BMPs)
- Clarify the performance standard and a storm event for compliance
- Clarify requirements for long term O&M of PCSM BMPs, including references to various legal instruments

Comments and Proposed Changes on Federal Effluent Limit Guidelines (ELG)

- Comments recommended that the EQB incorporate the new EPA stormwater construction ELG or include provisions to meet the ELG
- DEP proposes to incorporate the new federal ELG by reference in Section 102.11

Riparian Forest Buffers § 102.14

Overview of Comments

- Many supported mandatory buffers
- Many supported the expansion of mandatory buffers widths and applicability
- Some opposed mandatory buffers
- Recommendation that § 102.14 establish riparian forest buffers as a BMP that attains Chapter 93 antidegradation and NPDES requirements
- Recommend inclusion of exceptions or variances for buffers

Riparian Forest Buffers § 102.14

Proposed Changes for Final Rulemaking

- Regulatory requirement to **maintain and protect** a 150 foot **riparian buffer** when the project site contains, is along or within, 150 feet of a river, stream, creek, lake, pond or reservoir, AND:
 - located in a EV watershed meeting its designated use at the time of application
 - located in a HQ watershed meeting its designated use at the time of application

Riparian Forest Buffers § 102.14
Proposed Changes cont'd

- Regulatory requirement to **establish and protect** a new riparian **forest** buffer when the project site contains, is along or within, 150 feet of a river, stream, creek, lake, pond or reservoir, where no riparian **forest** buffer currently exists AND;
 - Located in an EV watershed that is listed as **impaired** at the time of the application
 - Located in an HQ watershed that is listed as **impaired** at the time of application

Riparian Forest Buffers § 102.14
Proposed Changes cont'd

- Voluntary Riparian Forest Buffers
 - The regulation will express a legal presumption that the project will satisfy antidegradation requirements related to Antidegradation Best Available Combination of Technologies (ABACT) and/or non-discharge alternatives when an applicant establishes a new or enhances an existing buffer to meet the riparian forest buffer width, composition and other requirements of §102.14, as well as the other requirements of the chapter
 - Trading/offsetting credits, above baseline, will be available where the riparian forest buffer is included in a project and meets the requirements of this chapter

Riparian Forest Buffers § 102.14
Proposed Changes cont'd

- Revisions to clarify technical requirements for riparian forest buffers
- Propose explicit waiver language to clarify variances to mandatory requirements for riparian forest buffers

Permit-by-Rule (PBR) § 102.15
Overview of Comments

- General opposition to PBR
- Minimal support for PBR
- Recommendations to delete PBR entirely
- Supported a streamlined approach but did not support the proposed PBR
- Few comments on ways to improve the proposed PBR

PBR § 102.15

Proposed Changes for Final Rulemaking

- DEP plans to remove this section from the final rulemaking

Summary of Proposed Final
Rulemaking Revisions

- Clarify and revise agricultural E&S provisions
- Incorporate updated federal permit requirements
- Revise permit fees based on the size of the disturbance
- Clarify long term O&M
- Incorporate federal ELG requirements
- Modify buffer implementation criteria
- Delete PBR

Next Steps

- Meeting with various stakeholders to discuss proposed "key" revisions
- Agricultural Advisory Board **February 17**
- Discuss proposed "key" revisions with WRAC on **February 19**
- Discuss proposed "key" revisions with IRRC
- Special meeting with WRAC to go over all changes and finalize regulation on **March 17**
- Goal is to go to EQB as final on **June 15**
- Final Regulation Process