

# **CHAPTER 102. EROSION AND SEDIMENT CONTROL & STORMWATER MANAGEMENT**

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## GENERAL PROVISIONS

### § 102.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Accelerated erosion*—The removal of the surface of the land through the combined action of human activities and the natural processes, at a rate greater than would occur because of the natural process alone.

*Agricultural operation*—The management and use of farming resources for the production of crops, livestock, or poultry or for equine activity.

*Agricultural plowing or tilling activity*—Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops. The term includes no-till cropping methods.

*Animal heavy use area*—Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where because of the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.

*BMPs—Best management practices*—Activities, facilities, measures, planning, or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities.

*Channel*—A natural or manmade water conveyance.

*Collector*—A channel, dike or other conveyance, constructed downslope of an earth disturbance activity for the purpose of collecting stormwater runoff from that [an existing or proposed disturbed] area and conveying it to facilities for sediment retention or removal.

*Conservation Plan*—A plan that identifies conservation practices and includes site specific BMPs ~~which minimize the potential for accelerated erosion and sediment from~~

for agricultural plowing or tilling activities, animal heavy use areas and farm lanes.

~~(i) BMPs for agricultural plowing or tilling activities, including soil loss tolerance values (T), are identified in the *Pennsylvania Soil and Water Conservation Technical Guide*, United States Department of Agriculture, Natural Resources Conservation Service, 1991.~~

~~—(ii) The Conservation Plan shall include a schedule for the implementation of the BMPs.~~

~~*County eConservation district*—A conservation district, as defined in section 3(c) of the Conservation District Law (3 P. S. § 851(c)), *as amended*, which has the authority under a delegation agreement executed with the Department to administer and enforce all or a portion of the erosion, and sediment, and stormwater management control program in this Commonwealth.~~

~~*Dewatering zone*—The zone within a sediment basin where stormwater runoff is held and released in a controlled manner.~~

~~*Disturbed area*—Unstabilized land area where an earth disturbance activity is occurring or has occurred.~~

~~*Diversion*—A facility, including a channel, terrace or dike or a conveyance constructed up-slope of an earth disturbance activity for the purpose of diverting the disturbed area to divert clean offsite runoff away from an existing or proposed disturbed area the earth disturbance activity.~~

~~*Earth disturbance activity*—A construction or other human activity which disturbs the surface of the land, including but not limited to, land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.~~

~~*Erosion*—The natural process by which the surface of the land is worn away by water, wind or chemical action.~~

~~*Erosion and Sediment Control Permit (E&S Permit)*—A permit required for earth disturbance activities of 25 acres (10 hectares) or more where the earth disturbance is associated with timber harvesting, or road maintenance activities, or oil and gas activities.~~

~~*Erosion and Sediment Control Plan (E&S Plan)*—A site-specific plan consisting of both drawings and a narrative that identifies BMPs to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities. For agricultural plowing or tilling activities, the Erosion and Sediment Control Plan is that portion of a conservation plan identifying BMPs to minimize accelerated erosion and sedimentation.~~

Forest Stewardship Plan – A written plan that provides an overview of a woodland property in the context of a landowner’s needs and objectives and serves as a means of communicating technical information in a concise form that is useful to the landowner.

Licensed Professional – Professional engineers, landscape architects, geologists, and land surveyors licensed to practice in Pennsylvania.

Municipality— (i)—A county, city, borough, town, township, school district, institution or authority ~~created by any one or more of the foregoing.~~ or another public body created by or pursuant to state law. (ii) For purposes of this definition, town includes an incorporated town.

NOI—Notice of Intent—A request, on a form provided by the Department ~~or county conservation district,~~ for coverage under a General NPDES Permit for Stormwater Discharges Associated With Construction Activities.

Normal pool elevation-

- (i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.
- (ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control or dam crest which maintains the body of water at a specified height.
- (iii) This term does not apply to wetlands.

NOT—Notice of Termination – A request, on a form provided by the Department to terminate coverage under a permit-by-rule, General or Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities or other permits under this chapter.

NPDES—National Pollutant Discharge Elimination System—The National system for the issuance of permits under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342) including a state or interstate program which has been approved in whole or in part by the EPA. In Pennsylvania, the NPDES program is also regulated under 25 Pa. Code Chapter 92, as amended and updated, and as specified herein.

NPDES Permit for Stormwater Discharges Associated With Construction Activities—A permit required for the discharge or potential discharge of stormwater ~~into waters of this Commonwealth~~ from construction activities, including clearing and grubbing, grading and excavation activities involving ~~5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project.~~:

(i) Equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters of this Commonwealth, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 to less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters of this Commonwealth over the life of the project.

(ii) 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project.

Oil and gas activities—Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Operator—A person who has one or more of the following:

(i) Oversight responsibility of earth disturbance activity on a project site or a portion thereof which who has the ability to make modifications to the E&S Plan, Erosion and Sediment Control Plan, PCSM Plan or site specifications.

(ii) Day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the Erosion and Sediment Control E&S Plan or PCSM Plan.

Perimeter BMPs—BMPs placed or constructed along the perimeter of an earth disturbance area to prevent runoff from entering the disturbed area, or to capture and treat sediment runoff prior to leaving a disturbed area.

Person—Any operator, individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of state, federal or local government, or an agent or employee thereof; or any other legal entity. An operator, natural person, partnership, association or corporation or an agency, instrumentality or entity of Federal or State government, including a municipality.

Permanent stabilization—Long term protection of soil and water resources from accelerated erosion.

Permanent pool—The area within a sediment basin which is designed to be inundated with water at all times.

Principal spillway—The structure within a sediment basin which controls the discharge of water from the facility.

Point source -

(i) Any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated aquatic animal production facility, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

(ii) This term includes concentrated or channelized flow associated with stormwater.

(iii) This term does not include sheet flow associated with stormwater.

Post Construction Stormwater -Stormwater associated with a project site after earth disturbance activity has been completed and the project site is permanently stabilized.

PCSM—Post Construction Stormwater Management.

PCSM Plan—A site-specific plan identifying BMPs to manage changes in stormwater runoff volume, rate, and water quality after earth disturbance activities have ended and the project site is permanently stabilized.

PPC Plan—Preparedness, Prevention and Contingency Plan—A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of this Commonwealth.

Project site—The entire area of activity, development, lease or sale including:

- (i) The area of an earth disturbance activity.
- (ii) The area planned for an earth disturbance activity.
- (iii) Other areas which are not subject to an earth disturbance activity.

Riparian forest buffer—A BMP that is an area of permanent vegetation consisting of native trees, shrubs and forbs along surface waters that is maintained in a natural state or sustainably managed to protect and enhance water quality, stabilize stream channels and banks, and buffer land use activities from surface waters.

Road maintenance activities—Earth disturbance activities within the existing road cross-section, such as grading and repairing existing unpaved road surfaces, cutting road banks, cleaning or clearing drainage ditches and other similar activities.

Sediment—Soils or other erodible materials transported by surface water as a product of erosion.

Sedimentation—The action or process of forming or depositing sediment in waters of

this Commonwealth.

~~*Skim*—To remove the uppermost portion of water within a sediment basin.~~

*Soil loss tolerance (T)*—The maximum amount of soil loss, in tons/acre/year, that a given soil type can tolerate and still permit a high level of crop production to be sustained economically and indefinitely.

*Stabilization*—The proper placing, grading, constructing, reinforcing, lining, and covering of soil, rock or earth to insure their resistance to erosion, sliding or other movement.

*Stormwater*- Runoff from precipitation, snowmelt runoff and surface runoff and drainage.

*Surface waters* —Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

*Timber harvesting activities*—Earth disturbance activities including the construction of skid trails, logging roads, landing areas and other similar logging or silvicultural practices.

*Top of Streambank* - First substantial break in slope between the edge of the bed of the stream and the surrounding terrain. The top of streambank can either be a natural or constructed (i.e. road or railroad grade) feature, lying generally parallel to the watercourse

*Waters of this Commonwealth*—Rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

## **§ 102.2. Scope and purpose.**

- (a) This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation and to manage post construction stormwater.
- (b) The BMPs shall be undertaken to protect, maintain, reclaim and restore water quality and the existing and designated uses of waters of this Commonwealth.

§ 102.3. [Reserved].

§ 102.4. Erosion and sediment control requirements.

(a) For agricultural plowing and tilling and animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of ~~erosion and sediment control~~ E&S BMPs are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) Written ~~Erosion and Sediment Control~~ E&S Plans are required for agricultural plowing or tilling activities and for animal heavy use areas that disturb 5,000 square feet (464.5 square meters) or more of land.

(3) The landowner, and any lessee, renter, tenant or other land occupier, conducting or planning to conduct agricultural plowing or tilling activities, or operating an animal heavy use area, are jointly and individually responsible for developing a written ~~Erosion and Sediment Control~~ E&S Plan and implementing and maintaining BMPs, including those identified in the ~~Erosion and Sediment Control~~ E&S Plan.

(4) The ~~Erosion and Sediment Control~~ E&S Plan shall include cost effective and reasonable BMPs ~~be~~ designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing or tilling activities and animal heavy use areas.

(i) For agricultural plowing or tilling activities, the E&S Plan shall, at a minimum, limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation. Additional BMPs shall be implemented for fields with less than 25% cover within 100 feet of surface water to prevent sediment loss to a surface water.

(ii) For animal heavy use areas, the E&S Plan shall, at a minimum, implement the current amended and updated version of Natural Resource Conservation Service's Heavy Use Protection Conservation Practice Standard, and the current amended and updated version of any applicable companion practices such as Critical Area Planting, Fencing, Wastewater Treatment Strip, Constructed Wetland, Use Exclusion, Animal Trails and Walkways, Diversions, and Roof Runoff Structure.

(5) The ~~Erosion and Sediment Control~~ E&S Plan shall contain plan maps, ~~soils maps,~~ that show the location of features including surface waters of this Commonwealth, and drainage patterns, field and property boundaries, buildings and farm structures, animal heavy use areas, manure application setbacks and buffers, roads and crossroads, and BMPs; soils maps; and a description of BMPs including animal heavy use area practices and procedures, tillage systems, schedules, and crop rotations, and cost effective and technically practical BMPs. The plan must describe the current conditions and activities on the agricultural operation.



(6) The E&S Plan must contain an implementation schedule. The plan must be implemented according to the schedule, and the BMPs shall be operated and maintained as long as there are agricultural plowing or tilling activities, or animal use areas on the agricultural operation.

(7) The portion of a conservation plan that identifies BMPs to minimize accelerated erosion and sedimentation from agricultural plowing or tilling activities, or from operation of animal heavy use areas may be used to satisfy the E&S Plan requirements of this subsection if it meets the requirements of subsections (4)–(6).

(8) The ~~Erosion and Sediment Control~~ E&S Plan shall be available for review and inspection at the ~~project site~~ agricultural operation during each stage of the agricultural plowing or tilling activity.

(9) Nothing in this section affects the requirements under other provisions of this chapter, such as those applicable to construction activities.

(b) For earth disturbance activities other than agricultural operations, agricultural plowing and tilling, and animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of ~~erosion and sediment control~~ E&S BMPs are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) A person proposing earth disturbance activities shall develop and implement a written ~~Erosion and Sediment Control~~ E&S Plan under this chapter if one or more of the following criteria apply:

(i) The earth disturbance activity will result in a total earth disturbance of 5,000 square feet (464.5 square meters) or more.

(ii) The person proposing the earth disturbance activities is required to develop an ~~Erosion and Sediment Control~~ E&S Plan pursuant to this chapter under Department regulations other than those contained in this chapter.

(iii) The earth disturbance activity, because of its proximity to existing drainage features or patterns, has the potential to discharge to a water classified as a High Quality or Exceptional Value water pursuant to Chapter 93 (relating to water quality standards).

(3) The ~~Erosion and Sediment Control~~ E&S Plan shall be prepared by a person trained and experienced in erosion and sediment control methods and techniques, ~~and shall be designed to minimize the potential for accelerated erosion and sedimentation.~~

(4) ~~Earth disturbance activities shall be planned and conducted to minimize the extent and duration of the disturbance.~~ Unless otherwise authorized by the Department, all earth disturbance activities shall be planned and implemented in accordance with the following:

(i) Minimize the extent and duration of the earth disturbance.

(ii) Maximize protection of existing drainage features and vegetation.

(iii) Minimize soil compaction.

(iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.

(v) Protect, maintain, reclaim, and restore the quality of water and the existing and designated uses of waters within this Commonwealth.

(5) ~~The Erosion and Sediment Control~~ E&S Plan shall contain drawings and narrative which describe the following:

(i) The existing topographic features of the project site and the immediate surrounding area.

(ii) The types, depth, slope, locations and limitations of the soils.

(iii) The characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site.

(iv) The amount of runoff from the project ~~area~~ site and its upstream watershed area.

(v) The location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification pursuant to Chapter 93.

(vi) A ~~written depiction~~ narrative description of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity.

(vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities.

(viii) Supporting calculations and measurements.

(ix) Plan drawings.

(x) A maintenance program which provides for the operation and maintenance of BMPs, for inspection of BMPs on a weekly basis and after each measurable rainfall stormwater event, including the repair of the BMPs to ensure effective and efficient

operation. The program shall provide for completion of a written report documenting each inspection and all BMP repair and maintenance activities.

(xi) Procedures which ensure that the proper measures for the recycling or disposal of materials associated with or from the project site will be undertaken in accordance with this title.

(xii) Identify naturally occurring geologic formations, or soil conditions that may have the potential to cause pollution during earth disturbance activities and include BMPs to avoid or minimize potential pollution and its impacts from such formations.

(xiii) Evaluate the potential for thermal impacts to surface waters from the earth disturbance activity and include BMPs to avoid, minimize or mitigate potential pollution from thermal impacts.

(xiv) E&S BMPs shall be planned, designed, and conducted to be consistent with the implementation PCSM BMPs and the PCSM Plan pursuant to § 102.8 (relating to Post Construction Stormwater Management Requirements). Unless otherwise approved by the Department, the E&S Plan must be separate from the PCSM Plan and labeled "E&S" or "Erosion and Sediment Control Plan" and be the final plan for construction.

(xv) Identify and protect existing and proposed forest riparian buffers when applicable.

(6) Where an earth disturbance activity may result in a discharge to a water of this Commonwealth classified as High Quality or Exceptional Value pursuant to Chapter 93, the person proposing the activity shall, as applicable, use ~~the following Special Protection no discharge and Antidegradation best available combination of technologies (ABACT) BMPs to maintain and protect the water from degradation; Nondischarge alternatives and ABACT BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual (Document number 363-2134-008) as amended and updated.*~~

~~(i) Special sediment basin requirements:~~

~~— (A) Principal spillways shall be designed to skim water from the top 6 inches (15 centimeters) of the dewatering zone, or shall have permanent pools greater than or equal to 18 inches (46 centimeters) deep.~~

~~— (B) The basin shall be designed with a flow length to basin width ratio of 4:1 or greater.~~

~~— (C) The basin shall be designed so that it dewateres in at least 4 days and no more than 7 days when at full capacity.~~

- ~~—(ii) Channels, collectors and diversions shall be lined with permanent vegetation, rock, geotextile or other nonerosive materials.~~
- ~~—(iii) BMPs that divert or carry surface water shall be designed to have a minimum capacity to convey the peak discharge from a 5-year frequency storm.~~
- ~~—(iv) Upon completion or temporary cessation of the earth disturbance activity, or any stage thereof, the project site shall be immediately stabilized.~~

(v) The Department ~~or county conservation district~~ may approve alternative BMPs which will maintain and protect existing water quality and existing and designated uses.

(7) ~~The Erosion and Sediment Control~~ E&S Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the ~~county~~ conservation district at the project site during all stages of the earth disturbance activity.

(8) Upon complaint or site inspection, the Department or ~~county~~ conservation district may require that the E&S Plan be submitted for review and approval to ensure compliance with this chapter.

(c) The Department may require or ~~county~~ conservation district may require after consultation with the Department, other information necessary to adequately review a plan, or may require additional BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

(d) A person proposing or conducting an earth disturbance activity shall obtain all other necessary permits and authorizations from the Department or conservation district, related to the earth disturbance activity, before commencing with the earth disturbance activity.

(e) Persons proposing an earth disturbance activity that requires permit coverage under § 102.5 (relating to activities requiring a permit, and relating to types of permit coverage) must have permit coverage prior to commencing the earth disturbance activity.

### **§ 102.5. Permit requirements.**

(a) NPDES Permit Stormwater Discharges Associated with Construction Activities.

(i) Other than agricultural operations, agricultural cultivation, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development sale that involves equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a point source discharge to surface waters over the life of the project, shall obtain an individual NPDES Permit or

coverage under a general NPDES permit or NPDES permit-by-rule for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity.

(ii) Other than agricultural operations, agricultural cultivation, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project, shall obtain an individual NPDES Permit for Stormwater Discharges Associated With Construction Activities or coverage under a general NPDES permit or NPDES permit-by-rule for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity.

(iii) In addition to other applicable requirements, persons required to obtain an Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities for projects proposed in special protection watersheds shall evaluate and use nondischarge alternative BMPs or best available combination of environmentally sound and cost effective technology BMPs, in accordance with the antidegradation requirements of Chapter 93 regardless of whether the discharge is new, additional or increased.

(b) A person proposing a timber harvesting or road maintenance activity involving 25 acres (10 hectares) or more of earth disturbance shall obtain an Erosion and Sediment Control Permit E&S under this chapter prior to commencing the earth disturbance activity.

(c) A person proposing oil and gas activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project, shall obtain an E&S permit under this chapter prior to commencing the earth disturbance activity.

(d) A person proposing earth disturbance activities requiring a permit or permit coverage under this section shall be responsible to ensure long term operation and maintenance of the PCSM Plan.

~~(e)~~ (e) A person proposing or conducting an earth disturbance activity approved under a Department permit issued under a chapter other than Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) or this chapter, which includes requirements to comply with Chapter 92 and this chapter, need not obtain an additional Erosion and Sediment Control E&S Permit or NPDES Permit for Stormwater Discharges Associated with Construction Activities.

(f) A person proposing or conducting an earth disturbance activity associated with discharging dredged or fill material to waters of the United States which are required to obtain a permit or coverage under a permit pursuant to §404 of the Clean Water Act (33

U.S.C.A. § 1344) need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated with Construction Activities.

~~(d)~~ (g) A person proposing or conducting agricultural ~~plowing or tilling operations,~~ agricultural cultivation, and animal heavy use areas activities is not required to obtain an ~~Erosion and Sediment Control~~ E&S Permit, or an NPDES Permit for Stormwater Discharges Associated with Construction Activities, for these activities under this chapter.

~~(e)~~ (h) A person proposing or conducting an earth disturbance activity who is not required to obtain a Permit under this chapter shall comply with the other provisions of this chapter.

### **§ 102.6. Permit applications and fees.**

(a) Permit *requirements*. A person proposing or conducting an earth disturbance activity which requires an ~~Erosion and Sediment Control Permit or an NPDES Permit for Stormwater Discharges Associated With Construction Activities~~ a permit under § 102.5 (relating to permit requirements), shall:

(1) Submit to the Department or a conservation district a complete application, ~~or~~ notice of intent, ~~or registration of coverage,~~ an ~~Erosion and Sediment Control~~ E&S Plan meeting the requirements of § 102.4 (relating to erosion and sediment control requirements), a PCSM Plan meeting the requirements of section 102.8 (relating to post construction stormwater management requirements) and other information the Department may require.

(2) Provide proof of consultation with the Pennsylvania Natural Heritage Program ~~Diversity Inventory (PNDI)~~ (PNHP) regarding the presence of a State or Federal threatened or endangered species on the project site. If the Department or conservation district determines, based upon ~~PNDI~~ PNHP data or other sources, that the proposed earth disturbance activity may adversely impact the species or critical habitat, the person proposing the earth disturbance activity shall consult with the Department or conservation district to avoid or prevent the impact. If the impact cannot be avoided or prevented, the person proposing the activity shall demonstrate how the impacts will be minimized in accordance with State and Federal laws pertaining to the protection of threatened or endangered flora and fauna and its habitat.

(3) Prepare and implement a PPC Plan when storing, using or transporting materials including: fuels, chemicals, solvents, pesticides, fertilizers, lime, petrochemicals, wastewater, wash water, core drilling wastewater, cement, sanitary wastes, solid wastes, or hazardous materials onto, on or from the project site during earth disturbance activities. The PPC Plan must be available upon request by the Department or conservation district.

(b) Permit *fees*.

~~–(1) Erosion and Sediment Control Permit applications for timber harvesting and road maintenance activities shall be accompanied by an application fee of \$500.~~

~~–(2) Applications and Notices of Intent for an NPDES Permit for Stormwater Discharges Associated with Construction Activities shall be submitted and accompanied by the fee established pursuant to Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).~~

(1) A person submitting a permit application, notice of intent, or registration of coverage shall submit a fee as follows:

- (i) NPDES PBR \$500
- (ii) General NPDES Permit \$2500
- (iii) Individual NPDES Permit \$5000
- (iv) ESCGP for Oil and Gas Activities \$2500
- (v) ESCP for Timber Harvesting and Road Maintenance Activities \$1000
- (vi) Other permits under this Chapter will not exceed a fee of \$5000.

(2) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the Environmental Quality Board. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it must contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

(3) Conservation Districts may charge additional fees in accordance with the Conservation District Law (3 P.S. § 857(13)) as amended and updated.

(4) The Department or conservation district shall return an application or NOI that is incomplete or otherwise deficient. If the incomplete or deficient application is returned, the fees associated with filing the application will not be refunded and will have to be paid again upon resubmission or reapplication.

#### **§ 102.7. Permit termination.**

(a) Upon permanent stabilization of the earth disturbance activity under § 102.22(c) (relating to permanent stabilization), the person who obtains permit coverage under this chapter shall submit a notice of termination to the Department or conservation district.

(b) The notice of termination shall include:

- (1) The facility name, address and location.
- (2) The operator name and address.
- (3) The permit number.

(4) The reason for permit termination.

(5) Identify the person(s) who will be responsible for O&M of the PCSM BMPs in accordance with the approved PCSM Plan.

(c) Until such time as the permittee has received written acknowledgement of a notice of termination, the permittee will remain responsible for compliance with all permit terms and conditions including operation and maintenance of all PCSM BMPs on the project site and is responsible for violations occurring on the project site.

**§ 102.8. Post Construction Stormwater Management Requirements**

(a) A person proposing an earth disturbance activity that requires NPDES permit coverage under this chapter shall be responsible to ensure that a written PCSM Plan is developed, implemented, operated and maintained.

(b) All management of post construction stormwater shall be planned and conducted to:

(1) Preserve the integrity of stream channels and protect the physical, biological, and chemical qualities of the receiving stream.

(2) Prevent an increase in the rate of stormwater runoff.

(3) Minimize any increase in stormwater runoff volume.

(4) Minimize impervious areas.

(5) Maximize the protection of existing drainage features and existing vegetation.

(6) Minimize land clearing and grading.

(7) Minimize soil compaction.

(8) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff and pollutants.

(c) PCSM BMPs must be planned, designed, and conducted to be implemented consistent with E&S BMPs pursuant to § 102.4(b) (relating to E&S requirements for earth disturbance activities other than agricultural operations).

(d) Unless otherwise approved by the Department, the PCSM Plan must be separate from the E&S Plan and labeled "PCSM" or "Post Construction Stormwater Management Plan" and be the final plan for construction.



(e) The PCSM Plan must be prepared by a person trained and experienced in PCSM design methods and techniques.

(f) Persons who prepare or implement PCSM Plans for projects under this chapter shall ensure the proper implementation, operation, and maintenance of the PCSM BMPs.

(g) The PCSM Plan must contain drawings and narrative requirements as described within this chapter and other supporting documentation. The PCSM Plan must be designed to minimize the threat to human health, safety, and the environment to the greatest extent practicable. All PCSM Plans must contain at a minimum the following:

(1) The existing topographic features of the project site and the immediate surrounding area.

(2) The types, depth, slope, locations, and limitations of the soils and geologic formations.

(3) The characteristics of the project site, including the past, present, and proposed land uses and the proposed alteration to the project site.

(4) Identify the net change in volume and rate of stormwater from preconstruction hydrology to post construction hydrology for the entire project site and each drainage area.

(5) Identify the location of surface waters, which may receive runoff within or from the project site and their classification pursuant to 25 Pa. Code 93.

(6) A written description of the location and type of PCSM BMPs including construction details for permanent stormwater BMPs including permanent stabilization specifications and locations.

(7) A sequence of PCSM BMP implementation or installation in relation to earth disturbance activities of the project site.

(8) Supporting calculations.

(9) Plan drawings.

(10) A long-term operation and maintenance schedule, which provides for inspection of PCSM BMPs, including the repair, replacement, or other routine maintenance of the PCSM BMPs to ensure effective and efficient operation. The program shall provide for completion of a written report documenting each inspection and all BMP repair and maintenance activities.

(11) Identification of the person(s) responsible for long-term operation and maintenance of the PCSM BMPS.

(12) Procedures, which ensure that the proper measures for the recycling or disposal of materials associated with or from the PCSM BMPs, are in accordance with Department laws, regulations, and requirements.

(13) Identify natural occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational, and develop a management plan to avoid or minimize potential pollution and its impacts.

(14) Riparian Forest Buffer Management Plan when required under section 102.14.

(15) Additional information requested by the Department.

(h) PCSM Plans for proposed activities requiring a permit under this chapter require the following additional information:

(1) Analytical testing and assessment of soil, geology, and other predevelopment site characteristics including infiltration and geotechnical studies that identify location and depths of test pits for infiltration.

(2) Analysis for all storms up to and including the 2-year/24-hour event to demonstrate that the use of PCSM BMPs will manage the net change in post construction runoff volume from preconstruction runoff volume. The analysis must be conducted using the following minimum criteria:

(i) Existing predevelopment non-forested pervious areas must be considered meadow in good condition or its equivalent.

(ii) When the existing project site contains impervious area, 20% of the existing impervious area to be disturbed must be considered meadow in good condition or better.

(3) Routing analysis for the 2-year/24-hour, 5-year/24-hour, 10-year/24-hour, 25-year/24-hour, 50-year/24-hour and 100-year/24-hour events to demonstrate that the use of PCSM BMPs will manage the net change in post construction rate of runoff from preconstruction rate of runoff.

(4) Identify the methodologies for calculating the total runoff volume and peak rate of runoff, and provide supporting documentation and calculations.

(5) Construction techniques or special considerations to address soil and geologic limitations.

(6) The Department may require, or after consultation with the Department a conservation district may require, additional information necessary to adequately review

a PCSM Plan or may require additional BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

(i) Where a PCSM Plan is being developed for an activity that may result in a discharge to a water of this Commonwealth classified as High Quality or Exceptional Value pursuant to Chapter 93, the person proposing the activity shall use nondischarge and antidegradation best available combination of technologies (ABACT) BMPs to maintain and protect the water from degradation. Specifically, the person proposing the activity shall use PCSM BMPs that collectively achieve no net change when compared to preconstruction discharges, in stormwater runoff volume, rate and water quality during storm events up to and including the 2-year/24-hour storm event. Nondischarge alternatives and Antidegradation Best Available Combination of Technologies (ABACT) BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual (Stormwater BMP Manual) Document Number 363-0300-002 (December 2006), as amended and updated.*

(j) Upon complaint or site inspection, the Department or conservation district may require that the E&S Plan be submitted for review and approval to ensure compliance with this chapter.

(k) The PCSM Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district.

(l) An appropriate licensed professional shall be present on site during critical stages of construction including underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department.

(m) The “Record Drawings” with a final certification statement from the licensed professional, which shall read as follows:

“I (name) do hereby certify pursuant to the penalties of 18Pa.C.S.A. Section 4904 to the best of my knowledge, information and belief, that the accompanying record drawings accurately reflect the redline drawings, are true and correct, and are in conformance with Chapter 102 of the rules and regulations of the Department of Environment Protection and that the project site was constructed in accordance with the approved PCSM Plan and accepted construction practices.”

(i) The permittee shall retain a copy of the record drawings as a part of the approved PCSM Plan.

(ii) The permittee shall provide a copy of the record drawings as a part of the approved PCSM Plan to the person identified in this section as being responsible for the operation and maintenance of the PCSM BMPs.

(n) Operation and maintenance requirements. Unless a different approach is approved in writing by the Department, O&M of PCSM BMPs shall be the responsibility of the landowner of the property where the PCSM BMP is located. The deed for any property containing a PCSM BMP shall identify the PCSM BMP and provide notice that the responsibility for O&M of the PCSM BMP is a covenant that runs with the land and that is enforceable by subsequent grantees. Any grantor that fails to comply with this requirement shall remain jointly responsible with the landowner for O&M of the PCSM BMPs located on the property.

## **EROSION AND SEDIMENT CONTROL & POST CONSTRUCTION STORMWATER MANAGEMENT BMPs**

### **§ 102.11. General requirements.**

(a) A person conducting or proposing to conduct an earth disturbance activity shall:

(i) Design, implement and maintain erosion and sediment control E&S BMPs to minimize the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses. Various erosion and sediment control E&S BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (Manual), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (January 1996 April 2000), as amended and updated.

(ii) If required to develop a PCSM Plan, design, implement and maintain post construction stormwater management BMPs to mimic preconstruction stormwater runoff conditions in order to protect, maintain, reclaim and restore water quality and existing and designated uses. Various post construction stormwater management BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual* (Stormwater BMP Manual), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(iii) If required to develop a riparian forest buffer, design implement and maintain the buffer in accordance with section 102.14 of this Chapter. Various design, construction and maintenance standards are listed in the *Riparian Forest Buffer Guidance*, (Buffer Guidance) Commonwealth of Pennsylvania, Department of Environmental Protection, Document #395-5600-001 (2009), as amended and updated.

(b) BMPs and design standards other than those listed in the *Manuals or Buffer Guidance* may be used when a person conducting or proposing to conduct an earth disturbance activity demonstrates to the Department or a county conservation district that the alternate BMP or design standard minimizes accelerated erosion and sedimentation or manages stormwater during and after the completion of earth disturbance activities to achieve the regulatory standards in subsection (a).

§ 102.12. [Reserved].

§ 102.13. [Reserved].

**§ 102.14 Riparian Forest Buffer Requirements**

(a) General requirements.

- (1) Persons proposing earth disturbance activities shall incorporate a riparian forest buffer if:
  - i. The activity is located within an EV watershed and requires a permit under this chapter;
  - ii. The activity is authorized utilizing the PBR under this chapter; or
  - iii. A riparian forest buffer is required by other Department rules and regulations.
- (2) Concentrated flow and accelerated erosion and sedimentation shall be controlled in the up-gradient area immediately adjacent to the riparian forest buffer.
- (3) An existing riparian forest buffer must: meet the width requirements of subsection (d) of this section; consist predominantly of native trees and shrubs that provide at least 60% uniform canopy cover; have no noxious weeds; and have less than 25% invasive species.
- (4) Sites with existing native woody vegetation that do not meet all of the criteria in (3), must be enhanced and/or widened by additional plantings in open spaces around existing native trees and shrubs to establish a riparian forest buffer. Noxious weeds must be removed and the amount of invasive species must be decreased so that they total less than 25% cover.
- (5) On sites with no native woody vegetation a riparian forest buffer must be established in accordance with this chapter.
- (6) Wetland must be protected and maintained and incorporated into the riparian forest buffer consistent with the requirements in Chapter 105.
- (7) Applicant shall prepare and submit a plan for riparian forest buffer management to the Department or conservation district as part of the Post Construction Stormwater Management Plan. The riparian forest buffer management plan must describe how the management requirements of this section will be met.

(b) Composition.

- (1) At a minimum, newly established Riparian Forest Buffers must be composed of two distinct zones, Zones 1 and 2, (see #2 below). Concentrated flow and

accelerated erosion and sedimentation shall be controlled in the up-gradient area immediately adjacent to the riparian forest buffer.

(2) Zones:

- i. Zone 1 – Undisturbed Forest (Trees) must begin at the top of the streambank or normal pool elevation of a lake, pond, or reservoir and occupy a strip of land measured horizontally on a line perpendicular to the top of streambank or normal pool elevation of a lake, pond, or reservoir. Dominant vegetation must be composed of a variety of native riparian tree species.
- ii. Zone 2 – Managed Forest (Trees and Shrubs) must begin at the landward edge of Zone 1 and occupy an additional strip of land measured horizontally on a line perpendicular to the top of streambank or normal pool elevation of a lake, pond, or reservoir. Dominant vegetation must be composed of a variety of native riparian tree and shrub species.

(c) Measurements: Riparian forest buffers must be measured horizontally from the normal pool elevation for lake, pond, or reservoir and from top of streambank or top of slope for streams to the edge of earth disturbance activity.

(d) Minimum widths:

(1) All Waters: 100 feet (50 feet Zone 1 and 50 feet Zone 2 for newly established riparian forest buffers) along all rivers, perennial or intermittent streams (both sides), lakes, ponds or reservoirs. Concentrated flow and accelerated erosion and sedimentation shall be controlled in the up-gradient area immediately adjacent to the riparian forest buffer.

(2) Impaired Waters: 150 feet (75 feet Zone 1 and 75 feet Zone 2 on newly established riparian forest buffers) along all rivers, perennial or intermittent streams (both sides), lakes, ponds, or reservoirs. Concentrated flow and accelerated erosion and sedimentation shall be controlled in the up-gradient area immediately adjacent to the riparian forest buffer.

(3) Special Protection Waters: 150 feet (75 feet Zone 1 and 75 feet Zone 2 on newly established riparian forest buffers) in Special Protection Waters (High Quality and Exceptional Value designations) on all rivers, perennial or intermittent streams (both sides), and the shoreline of lakes and ponds. Concentrated flow and accelerated erosion and sedimentation shall be controlled in the up-gradient area immediately adjacent to the riparian forest buffer.

(4) Existing riparian forest buffers must meet minimum aggregate widths of this Chapter.

(e) Management requirements

- (1) Both existing and newly established riparian forest buffers, including wetlands and floodplains, must be managed and maintained to enhance and maximize the unique value of these resources.
- (2) Newly established riparian forest buffers and sites with existing woody vegetation must be managed to meet the criteria in Section 102.14(a)(3) within five years of planting.
- (3) Except as approved by the Department, the following practices and activities are prohibited within the riparian forest buffer:
  - (i) Disturbing existing vegetation including tree removal, shrub removal, clearing, mowing, burning, spraying, and grazing.
  - (ii) Soil disturbance by grading, stripping of topsoil, plowing, cultivating, or other practices.
  - (iii) Draining by ditching, underdrains, or other drainage systems
  - (iv) Housing, grazing, or otherwise maintaining animals.
  - (v) Storing or stockpiling materials.
  - (vi) Vehicular travel.
  - (vii) Construction or placement of roads, bridges, trails, storm drainage, utilities or other structures.
- (4) The following are permitted in the riparian forest buffer:
  - (i) Restoration projects, facilities, emergency response and other activities approved by the Department.
  - (ii) Scientific studies approved by the Department, including water quality monitoring and stream gauging.
  - (iii) Activities or practices used to maintain the riparian forest buffer.
  - (iv) Timber harvesting operations only in Zone 2, as described in this section, that maintain at least 60% uniform canopy cover of native trees and shrubs and are identified in a Forest Stewardship Plan approved by the Department of Conservation and Natural Resources.

(f) Permanent Protection of riparian forest buffers –

(1) Existing and newly established riparian forest buffers including access easements must be protected in perpetuity through deed restriction, conservation easement, local ordinance, or post construction permit conditions.

(2) For any existing or newly established riparian forest buffer permanent boundary markers must be installed to identify the limits of the riparian forest buffer.

*(g) Reporting*

Permittees shall complete data form(s) provided by the Department for newly established and permanently protected existing riparian forest buffers and submit it to the Department or conservation district as part of the Post Construction Stormwater Management Plan.

**§ 102.15 Permit-by-Rule for Low Impact Projects with Riparian Forest Buffers**

(a) Persons proposing or conducting an earth disturbance activity requiring a permit authorization under this Chapter shall qualify for permit coverage under this rule if they meet the requirements of this Section and obtains a verification of coverage, which supersedes any requirements of 25 Pa. Code Chapter 92, as amended and updated. An earth disturbance activity that requires a permit authorization under this Chapter that is not consistent with this Section shall obtain coverage under a general or individual NPDES Permit for Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.

(b) Permit-by-rule exclusions. The following sites or the activities associated with the project are not eligible for coverage under the permit-by-rule:

- 1) Projects located in or with the potential to discharge to a watershed with waters that have a designated or existing use of Exceptional Value pursuant to 25 Pa. Code Chapter 93;
- 2) Earth disturbance activities conducted in or on the following sensitive areas:
  - a. Highly erodible soils in combination with percent slope as follows:
    - i. 3% to 8% slope with soil K value greater than 0.37;
    - ii. 8% to 15% slope with soil K value greater than 0.28; or
    - iii. 15% slope with soil K value greater than 0.18
  - b. Geological formations that present a risk to public health, safety and the environment including:
    - i. Sinkhole development;
    - ii. Land sliding; or
    - iii. With the significant potential to cause or contribute to pollution when disturbed including acid, radioactive, and arsenic bearing formations.
  - c. Wetlands or floodplains, unless earth disturbance in these areas is required and is authorized under Pa Code 25 Chapters 105 or 106.
- 3) Lands that are contaminated from a spill or release or which pose a risk or threat to public health, safety or the environment, including sites such as: brownfields or



other areas contaminated from past land use practices or by a spill or release of a hazardous material, or hazardous, toxic or other regulated substance as these terms are defined in Pa Code 25 of the Pennsylvania Code;

- 4) The earth disturbance is being proposed or conducted by a person who has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit and schedule of compliance or order issued by DEP; or
- 5) The earth disturbance activities or potential discharges will adversely affect a Pennsylvania or federal endangered or threatened species.

(c) Permit Conditions. Persons conducting earth disturbance activities under this permit shall meet all of the following:

- 1) When the project site contains, is adjacent to or within 100 feet of a natural or man-made river, stream, dammed water, creek, lake, pond, or reservoir, the registrant shall:
  - a. Establish new or preserve existing riparian forest buffers at least 100 feet in width between the top of streambank or normal pool elevation of a lake, pond or reservoir and areas of earth disturbance.
  - b. Establish new or preserve existing riparian forest buffers at least 150 feet in width between the top of streambank or normal pool elevation of a lake, pond or reservoir and disturbed areas for projects located in high quality or impaired watersheds.
  - c. Design and/or maintain a riparian forest buffer in accordance with DEP's Riparian Forest Buffer Guidance (Document #).
- 2) The earth disturbance shall not exceed twenty five (25) acres at a time.
- 3) The registrant shall, when applicable, provide a letter from the municipality confirming consistency with:
  - a. DEP approved and current (within five years) county 167 Stormwater Management Act Watershed Plan, and associated stormwater ordinances without variance, or exemptions; or ordinances meeting the requirements of a current (within five years) NPDES Permit for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems; and
  - b. Local erosion and sediment control ordinances.
- 4) The proposed post construction stormwater discharge volume results in a no net change compared to the pre-construction discharge volume for a 2 year/24 hour storm.

- 5) The proposed post construction stormwater discharge rate is no greater than the pre-construction discharge rate for the 2, 10, 25, 50, and 100 year 24 hour storms, for each pre-construction discharge point.
  - 6) Retain the services of a Professional Engineer or Geologist registered in the Commonwealth of Pennsylvania who shall:
    - a. Prepare and seal E&S and PCSM Plans to be submitted with the Registration of Coverage;
    - b. Include in the E&S Plan a schedule of inspections to be conducted by the Professional Engineer or Geologist registered in the Commonwealth of Pennsylvania during critical stages of E&S and PCSM BMP installation;
    - c. Oversee and seal any necessary modifications to E&S and PCSM plans; and
    - d. Prepare and seal record drawings, and provide certification that the E&S and PCSM BMPs were installed consistent with E&S and PCSM plans submitted with the Registration of Coverage.
  - 7) Pre-Construction Notification. Upon receipt of the Verification of Coverage, the registrant shall notify the Department or conservation district at least seven business days before commencing construction.
  - 8) The registrant or co-registrant shall have the E&S Plan, PPC Plan, PCSM Plan, and other documents required by this permit-by-rule available at the site for review by the Department, Conservation District or other authorized local, state, or federal government official.
  - 9) The registrant must implement the plans developed and verified in accordance with this Section.
- (d) *Projects Located in High Quality Watersheds or Watersheds Impaired for Sediment or Stormwater.*
- 1) Permit-by-rule registrants proposing projects that are located in watersheds that have a designated or existing use of high quality, or non-special protection waters impaired for sediment or stormwater must demonstrate that all construction and post construction discharges will not degrade the physical, chemical or biological characteristics of the surface waters and may not utilize the social or economic justification process established pursuant to § 93.4c(b)(iii). In addition to the 150' riparian forest buffer, registrants shall utilize “non-discharge” BMPs in their E&S and PCSM Plans.
  - 2) Public Notice.
    - a. The registrant shall provide a public notice once a week for three consecutive weeks in at least one newspaper of general circulation within the geographical

area of the project site prior to submission for the Registration of Coverage. The contents of every public notice must include the following:

- i. The name, address, and phone number of the registrant.
  - ii. The notice must include a thirty-day period following publication of the notice during which written comments may be submitted by interested persons to the applicant.
  - iii. A brief description of each registrant’s activities and project location which result in the discharge proposed for the permit-by-rule.
  - iv. The name of the receiving water and watershed to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether the discharge is a new or an existing discharge.
  - v. The location of the nearest downstream potable water supply, or a finding that no potable water supply will be affected by the proposed discharge.
  - vi. The means by which interested persons may comment upon the proposed project.
  - viii. Contact information including the name, address and phone number where interested persons may obtain further information regarding the project.
  - ix. The existing or designated use of the receiving surface water under pursuant to Chapter 93.
- b. Proof that public notice has been published in a newspaper of general circulation covering the locality or localities in which the activity is or will be located. The proof of public notice, along with any comments and responses, shall be submitted with the ROC.
- (e) Registration of coverage under the Permit-by-Rule. - The registrant shall prepare and submit a complete and accurate Registration of Coverage (ROC), as described in this section. Discharges are not authorized if the ROC is incomplete, inaccurate or if the activity is ineligible for permit coverage.
- (f) Municipal Notification. - At least 30 days prior to submission of the ROC, the registrant shall provide written notification to every municipality in which the proposed earth disturbance activity will be located pursuant the Act 14 of 1984, 71 P.S. §510-5, (Administrative Code §1905-A). Proof of this notification shall be submitted with the complete ROC.
- (g) Written E&S Plan, PCSM Plan, and PPC Plan. The registrant shall develop and submit with the ROC an E&S Plan PCSM Plan, and PPC Plan in accordance with the requirements of Section 102, and the following:
- 1) The E&S BMPs required by this section shall be designed and implemented to meet the standards and specifications identified in the Department’s *Erosion and Sediment Pollution Control Manual*, No. 363-2134-008, as amended and updated.

- 2) PCSM BMPs shall be designed and implemented to meet the standards and specifications identified in the *Pennsylvania Stormwater Best Management Practices Manual*, No. 363-0300-002, as amended and updated.
  - 3) Both the E&S Plan and the PCSM Plan shall include a riparian forest buffer designed in accordance with Section 102.14 and this Section.
  - 4) Both the E&S Plan and PCSM Plan shall minimize the accelerated erosion and sedimentation and shall eliminate the net change in post construction stormwater runoff as compared to the amount of preconstruction stormwater runoff. This shall be accomplished first through the use of site design and nonstructural BMP approaches, and if necessary, structural filtration, infiltration, and runoff control BMPs in accordance with *Erosion and Sediment Pollution Control Manual*, No. 363-2134-008, and *Stormwater Best Management Practices Manual*, No. 363-0300-002, as amended and updated.
  - 5) Both the E&S Plan and PCSM plan shall be prepared and sealed by a Professional Engineer or Geologist registered in the Commonwealth of Pennsylvania.
  - 6) Prepare a PPC Plan in accordance with DEP Guidance (document #400-2200-001.)
- (h) *E&S Plan for the permit-by-rule.* The E&S plan submitted under this Section shall meet the requirements of Section 102.4, and must also include the following categories of E&S BMPs, to be installed and maintained. The installation of practices shall be conducted in the following sequence:
- 1) *Site Preparation, Sensitive Area and Buffer Protection* - Prior to commencement of any earth disturbance activity including clearing and grubbing, the registrant shall clearly delineate sensitive areas, riparian forest buffer boundaries, areas proposed for infiltration practices, the limits of clearing, and trees that are to be conserved within the project site, and shall install appropriate barriers where equipment may not be parked, staged, operated or located for any purpose.
  - 2) *Site access* – This is the first land-disturbance activity to take place at the site and the registrant should provide BMPs to minimize accelerated erosion and sedimentation from the following areas: entrance to the site, construction routes, and areas designated for equipment or other use at the site including parking areas and soil stockpiles.
  - 3) *Sediment Barriers* – Install perimeter BMPs after the construction site is accessed, keeping associated clearing and grubbing limited to only that amount required for installing perimeter BMPs.
  - 4) *Diversion* – Including outlet protection are constructed to divert upslope clean water runoff around the disturbed area (when necessary).
  - 5) *Sediment Basins and Traps* – Including outlet protection shall be constructed prior to the remaining clearing /grubbing and other earth disturbance activities.

- 6) Sediment Laden Water Channels or other Conveyance– Used to divert stormwater runoff water to the appropriate BMPs such as traps and ponds should be installed prior to the remaining clearing/grubbing and other earth disturbance activities.
  - 7) Land Clearing and Grading – Implement clearing and grading only after all downslope E&S BMPs have been constructed and stabilized.
  - 8) Surface Stabilization – Apply temporary or permanent stabilization measures immediately to any disturbed areas where work has reached final grade, has been delayed or otherwise temporarily suspended.
  - 9) Construction of Buildings, Utilities, and Paving – During construction, install and maintain any additional E&S BMPs that may be required and implement structural post construction stormwater BMPs.
  - 10) Landscaping and Final Stabilization, Topsoiling, Trees and Shrubs - After construction is completed install stabilization BMPs including: permanent seeding, mulching, sodding and riprap, and complete implementation of post construction stormwater BMPs in this last construction phase. Stabilize all open areas, including borrow and spoil areas, and remove all temporary BMPs and stabilize any disturbances associated with the removal of the BMP.
- (i) PCSM Plan for the permit-by-rule - The PCSM plan submitted under this Section shall meet the requirements of Section 102.8, and shall also include the following categories of BMPs to be installed and maintained:
- 1) Non-Structural BMPs - Which promote the treatment, infiltration, evaporation, and transpiration of stormwater runoff shall be used.
  - 2) Low Impact, Conservation, and Green Infrastructure Designs - Shall be used to minimize the generation of runoff by preserving open space, preserving natural areas, reducing the amount of impervious surface, and other green infrastructure design principles that utilize or mimic infiltration or evapotranspiration.
  - 3) Infiltration practices - Shall include either engineered structures or landscape features designed to capture and infiltrate runoff that mimic pre-construction conditions.
  - 4) Runoff practices - Shall be designed and constructed to convey runoff, increase evaporation, and manage rate. Such practices are to also promote infiltration, filtration, and biological uptake of pollutants.
  - 5) Filtration practices - Shall be used to treat runoff through filter media that are designed to capture pollutants through the processes of physical filtration of solids or cation exchange of dissolved pollutants.
- (j) Submit the ROC - Registrants who wish to be covered by this permit-by-rule, shall submit an administratively complete ROC to the Department or Conservation District. The ROC shall demonstrate compliance with the 102.15(b) and (c) and shall include:

- 1) An ROC Checklist.
  - 2) E&S Plan prepared by a professional engineer or geologist registered in the Commonwealth of Pennsylvania.
  - 3) PCSM Plan prepared by a professional engineer or geologist registered in the Commonwealth of Pennsylvania.
  - 4) PPC Plan.
  - 5) Proof of Municipal Notice.
  - 6) Proof of Consistency with Act 167 or MS4 stormwater ordinances and local erosion and sediment control ordinances. Proof of this consistency in a letter from the municipal engineer shall be submitted with the complete ROC.
  - 7) Provide proof of consultation with the Pennsylvania Natural Heritage Program (PNHP) regarding the presence of a State or Federal threatened or endangered species on the project site.
  - 8) All Applicable Fees
- (k) Eligibility Verification. Upon submission of the ROC, DEP or the conservation district will review the ROC for consistency with the eligibility criteria, conditions and other requirements of this section, and make a determination of coverage within fifteen calendar days. Upon determination of eligibility the DEP or the conservation district will provide written verification of coverage for a period of five years. The registrant may apply for other permit coverage as referenced in this Section, if coverage under this permit-by-rule is denied.
- (l) Bulletin Notice. The Department will provide notice in the Pennsylvania Bulletin of every approval of coverage under this permit-by-rule.
- (m) Requiring Coverage Under an Individual Permit or General Permit.
- 1) The Department may deny coverage under this permit-by-rule, or may amend, revoke, suspend or terminate previously issued coverage under this permit-by-rule, and require the registrant to apply for and obtain either a general or an individual NPDES permit for failure to meet the requirements of this Section. An interested person may petition the Department to take action under this subsection. If a permittee is notified by the Department that previously authorized coverage under this permit is revoked, terminated, or suspended and that a general or individual NPDES permit is required, the registrant shall submit a complete NPDES NOI or application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid general or individual NPDES permit. Failure to submit the NOI or application within 90 days shall result in automatic termination of coverage under the permit-by-rule. If the project site is in compliance with this chapter, a timely submission of a complete NOI or application shall result in continuation of coverage under the permit-by-rule, until the Department takes final action on the pending NOI or permit application.

- 2) An action of DEP or the conservation district denying coverage under this permit-by-rule, or requiring a general or an individual NPDES permit, is not a final action of DEP until the registrant submits and DEP takes final action on a individual permit application.

(n) *Renewal of coverage.* Persons requesting a renewal of coverage under this permit-by-rule shall submit to the Department or Conservation District an administratively complete and acceptable ROC, at least 30 days prior to the expiration date of the coverage. In the event that a timely, administratively complete, and acceptable application for renewal of coverage has been submitted and the Department or Conservation District is unable, through no fault of the permittee, to reissue the approval for coverage before the expiration date of the approved coverage, the terms and conditions of the approved coverage will be automatically continued and will remain fully effective and enforceable pending the issuance or denial of the renewal of coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit-by-rule.

(o) *Program Audit.*

- 1) The Department shall audit the permit-by-rule to verify the effectiveness and the level of environmental protection that the permit provides. The audit shall include:
  - a. Evaluation of whether the objectives of riparian forest buffers, conservation design, and permittee compliance are being met;
  - b. Whether the Professional Engineer or Geologist registered in the Commonwealth of Pennsylvania plan certifications are accurate and effective;
  - c. The adequacy of permittee plan development, and BMP implementation and maintenance; and
  - d. The effectiveness of achieving the desired environmental results.
- 2) This audit process shall not only report non-compliance and corrective actions, but also highlight areas of good practices and favorable results. Such information will be used to develop policy or amend regulations for enhanced and continual improvement.

**§ 102.21. [Reserved].**

**§ 102.22. Permanent Site stabilization.**

(a) *Permanent Stabilization.* Upon final completion of an earth disturbance activity or any stage or phase of an activity, the site shall be immediately seeded, mulched or otherwise permanently stabilized and protected from accelerated erosion and sedimentation.

(b) ~~Erosion and sediment control~~ E&S BMPs shall be implemented and maintained until the permanent stabilization is completed. Once permanent stabilization has been established, all temporary E&S BMPs must be removed. Any areas disturbed in the act of removing temporary E&S BMPs must be permanently stabilized upon completion of the temporary E&S BMP removal activity.

(c) For an earth disturbance activity or any stage or phase of an activity to be considered permanently stabilized, the disturbed areas shall be covered with one of the following:

(1) A minimum uniform 70% perennial vegetative cover, with a density capable of resisting accelerated erosion and sedimentation.

(2) An acceptable BMP which permanently minimizes accelerated erosion and sedimentation.

(d) Temporary Stabilization. Upon temporary cessation of an earth disturbance activity or any stage or phase of an activity, where a cessation of earth disturbance activities will exceed 3 days, the site shall be immediately seeded, mulched or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities.

(e) For an earth disturbance activity or any stage or phase of an activity to be considered temporarily stabilized, the disturbed areas shall be covered with one of the following:

(1) A minimum uniform coverage of mulch and seed, with a density capable of resisting accelerated erosion and sedimentation.

(2) An acceptable BMP which temporarily minimizes accelerated erosion and sedimentation.

§ 102.23. [Reserved].

§ 102.24. [Reserved].

## ENFORCEMENT

§ 102.31. **Applicability.**

The Department or a ~~county~~ conservation district may enforce this chapter under The Clean Streams Law (35 P. S. § § 691.1—691.1001).

§ 102.32. **Compliance and enforcement provisions.**

(a) Compliance and enforcement actions under this chapter which may be pursued include the following. The actions listed are cumulative and the exercise of one action does not preclude the exercise of another. The failure to exercise an action will not be deemed to be a waiver of that action:



- (1) Investigations and inspections.
- (2) Response to complaints.
- (3) Orders (including orders to remediate or restore).
- (4) Civil penalty proceedings, except as provided in subsection (b).
- (5) Summary proceedings.
- (6) The suspension, revocation, withholding or denial of permits or approvals.
- (7) Notices of violation.
- (8) Actions in a court of competent jurisdiction, including requests for injunctive relief.
- (9) Other administrative, civil, criminal or equitable action authorized by law.

(b) If the Department finds that pollution or a danger of pollution results from an act of God in the form of sediment from land for which a complete Conservation Plan has been developed by the ~~county~~ conservation district and the Natural Resource Conservation Service, and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of the act.

(c) Any person aggrieved by an action of a conservation district under this chapter may request an informal hearing with the Department within 30 days following the notice of the action. Any final determination by the Department pursuant to the informal hearing may be appealed to the Environmental Hearing Board in accordance with established administrative and judicial procedures.

(d) For enforcement action taken under this subchapter, the Department or conservation district may collect or recover, from the responsible party, costs and expenses involved in taking enforcement action in accordance with this subchapter and initiating cost recovery actions under this subchapter. The Department or conservation district, may collect the amount in the same manner as civil penalties are collected under Section 605 of the Clean Streams Law (35 P. S. 691.1 et. seq.).

## RESPONSIBILITIES OF LOCAL GOVERNING BODIES

### § 102.41. Administration by ~~county~~ conservation districts.

(a) The Department may delegate by written agreement the administration and enforcement of this chapter to ~~county~~ conservation districts if they have adequate and

qualified staff, and are or will be implementing the program identified in the delegation agreement.

(b) An acceptable program shall have the concurrence and approval of the governing body of the county in which the county conservation district operates.

(c) The Department will retain program administration and enforcement over projects which cross the political boundaries of county conservation districts unless otherwise authorized by the Department.

**§ 102.42. Notification of application for permits.**

A municipality or county which issues building or other permits shall notify the Department or county conservation district within 5 days of receipt of an application for a permit involving an earth disturbance activity consisting of ~~5~~ 1 acres (~~2~~ 0.4 hectares) or more.

**§ 102.43. Withholding permits.**

With the exception of local stormwater approvals or authorizations, A municipality or county may not issue a building or other permit or final approval to those proposing or conducting earth disturbance activities requiring a Department permit until the Department or a county conservation district has issued the ~~Erosion and Sediment~~ E&S Control or individual NPDES Permit, or approved coverage under the general NPDES Permit for Stormwater Discharges Associated With Construction Activities under § 102.5 (relating to permit requirements).

**§ 102.51. [Reserved].**