

# 3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

## Chapter 102 Erosion and Sediment Control Permit Fees

### BACKGROUND

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The current regulations governing erosion and sediment control and stormwater management at 25 Pa. Code Chapter 102 became effective November 19, 2010. Under 25 Pa. Code § 102.6(b)(2), the Department of Environmental Protection (DEP) must review the adequacy of permit fees once every three years and report this information to the Environmental Quality Board (EQB). As provided in 25 Pa. Code § 102.6(b)(2), DEP's report to the EQB must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

The fees for Chapter 102 permits under 25 Pa. Code § 102.6(b)(1) are identified in Table 1 below. These fees must accompany all applications or Notices of Intent (NOIs) for approvals of coverage under general and individual National Pollution Discharge Elimination System (NPDES) permits for stormwater discharges associated with construction activities; approvals of coverage under the Erosion and Sediment Control General Permit (ESCGP) for oil and gas activities; and Erosion and Sediment Control (E&S) permits for timber harvesting and road maintenance activities.

**Table 1.** Fees for Chapter 102 permits under 25 Pa. Code § 102.6(b)(1).

Fee Type	Permit Type	Fee	Regulatory Citation
Base Administrative Filing Fee	General Permits (NPDES PAG-01, PAG-02 and ESCGP)	\$500	25 Pa. Code § 102.6(b)(1)
Base Administrative Filing Fee	Individual Permits (NPDES and E&S)	\$1,500	25 Pa. Code § 102.6(b)(1)
Disturbed Acreage Fee	All Permits	\$100 x each disturbed acre	25 Pa. Code § 102.6(b)(1)
Annual Fee	Individual Permits (NPDES)	\$500	25 Pa. Code § 92a.62(b)

DEP has entered into delegation agreements with 65 county conservation districts (CCDs) throughout the Commonwealth to carry out permitting and compliance responsibilities under Chapter 102. As part of these delegation agreements, the Base Administrative Filing Fee is retained by the CCD that processes the permit application or NOI and must be deposited into the CCD's Clean Water Fund account. The Disturbed Acreage Fee is directed to DEP for deposit into the Commonwealth of Pennsylvania Clean Water Fund. The Disturbed Acreage Fee is paid to the Commonwealth to help offset the costs to implement the Chapter 102 program.

## **PROGRAM COSTS AND FEES COLLECTED**

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The following Chapter 102 program costs were analyzed for this report.

### **DEP Program Costs**

Based on the fiscal year, modifiers of 24-30% were applied to the below detailed personnel costs to account for incidental costs associated with DEP employees, which is a standard practice for this type of report. These modifiers reflect overhead costs reported by DEP's Bureau of Fiscal Management. For example, use of a 30% modifier for fiscal year (FY) 2021-2022 resulted in DEP personnel costs being multiplied by 1.30 (that is, wages of \$1,000,000 would be reported as \$1,300,000).

- Direct personnel costs for the Bureau of Clean Water (BCW). These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to the Chapter 102 program, based upon timesheets.
- Direct personnel costs for the Regional Waterways and Wetlands (W&W) Program and the Regional Permit Coordination Office (RPCO). These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to the Chapter 102 program, based upon timesheets.
- Direct personnel costs for DEP's Office of Oil and Gas Management (OOGM). These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to the Chapter 102 program, based upon timesheets. While Oil and Gas Program employees charge the Oil and Gas Well Plugging Fund and not the Clean Water Fund, these expenses must nevertheless be included in any analysis that considers overall program costs.
- Estimated personnel costs for the Bureau of Watershed Restoration and Nonpoint Source Management (BWRNSM). BWRNSM implements parts of the Chapter 102 program; however, during the fiscal years analyzed in this report, BWRNSM did not have independent Work Codes for Chapter 102 program work. BWRNSM has identified that the approximate staff time spent related to Chapter 102 programmatic implementation is equivalent to 25% of one full-time environmental group manager (at Pay Scale 9, Step 10), 25% of three full-time water program specialist staff members (at Pay Scale 8, Step 10), and 75% of one water program specialist staff member (at Pay Scale 8, Step 10).
- Estimated personnel costs for the Bureau of Abandoned Mine Reclamation (BAMR). The BAMR program implements parts of the Chapter 102 program; however, BAMR does not have independent Work Codes for Chapter 102 program work. In discussions with BAMR, an assumed one FTE (at Pay Scale 8, Step 10) was associated with Chapter 102 programmatic implementation.
- Estimated personnel costs for the Bureau of Mining Programs. The Bureau of Mining Programs implements parts of the Chapter 102 program; however, the Bureau of Mining Programs does not have independent Work Codes for Chapter 102 program work. Bureau of

Mining Programs has identified that the approximate staff time spent related to Chapter 102 programmatic implementation is equivalent to one full-time engineering staff member and one full-time water program specialist staff member (both at Pay Scale 8, Step 10).

Staff in the Bureau of Waterways Engineering and Wetlands (BWEW) implement parts of the Chapter 102 program; however, these costs were considered too low to be appreciable to this report and were not included in DEP's program costs.

DEP costs also include estimated training and research costs associated to the Chapter 102 program. These costs include items such as the maintenance of DEP's Clean Water Academy (a vital training tool for DEP, CCDs, and the regulated community), software licensing needed to create virtual training, in-person training events such as the annual Chapter 102 Basic Technical Training, and research grants given for assistance with technical guidance development.

#### CCD Program Costs

- Direct or estimated district personnel costs. This information was obtained from the quarterly reporting required of all delegated CCDs. On these quarterly reports, the CCDs can either report an actual program implementation cost or an estimated program implementation cost. DEP applied a modifier to the reported costs to account for costs not reported by CCDs, including training, managerial, and administrative costs. The modifier was set to 44% based on a detailed review of a subset of CCDs' costs and is higher than the modifier used for DEP because certain costs such as training and outreach are not generally captured through the quarterly reports. Use of the 44% modifier resulted in CCD personnel costs being multiplied by 1.44. For example, wages of \$1,000,000 would be reported as \$1,440,000.

The following fees collected associated with the Chapter 102 program were analyzed for this report.

#### Fees Collected by DEP

- Base Administrative Filing and Disturbed Acreage Fees collected by DEP's W&W Program and RPCO. These fees were identified from the deposits into the Clean Water Fund.
  - All Disturbed Acreage Fees are made payable to the Commonwealth of Pennsylvania Clean Water Fund, regardless of who processes the NOI or application.
  - The entity who processes the completeness review of an NOI or application is the entity that receives the Base Administrative Filing Fee.
    - For a permit in Forest or Philadelphia counties, DEP performs the review (as these counties do not have that level of delegation authority).
    - For a permit that spans three or more counties in one DEP region, DEP's W&W Program performs the completeness review.

- For a permit that spans three or more counties and two or more DEP regions (and a few other select types of projects), RPCO performs the completeness review.
- For all other permits (projects that are in one county and projects that span two counties), the CCD performs the completeness review.
- Base Administrative Filing and Disturbed Acreage Fees collected by DEP's Oil and Gas Program. These fees were identified from the deposits into the Clean Water Fund.
- Annual fees under the authority of 25 Pa. Code § 92a.62 that became effective on August 28, 2021 for Chapter 102 projects under individual NPDES permits. The annual fee is \$500.

No Base Administrative Filing and Disturbed Acreage Fees are collected by BAMR, the Bureau of Mining Programs, or BWEW.

#### Fees Collected by CCDs

- Base Administrative Filing Fee. This information was obtained from the quarterly reporting required of all delegated CCDs.
- CCD Service Fee. This is the fee set by and paid directly to a CCD. This information was obtained from the quarterly reporting required of all delegated districts.
- CCD PCSM Fee. If a CCD has the Post-Construction Stormwater Management (PCSM) Delegation, this is the fee set by and paid directly to a CCD. This information was obtained from the quarterly reporting required of all delegated CCDs.

## **ANALYSIS OF PROGRAM COSTS AND FEES COLLECTED**

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This report analyzes FYs 2021-2022, 2022-2023, and 2023-2024 for Chapter 102 program implementation. The past three fiscal years are examined because the previous Chapter 102 fee report presented to EQB in 2022 included an analysis of FY 2013-2014 through FY 2020-2021.

Table 2 presents DEP's costs and fees collected associated with implementation of the Chapter 102 program, which have varied with each fiscal year. This table includes total program costs and fees collected, including costs incurred and fees collected by DEP's Oil and Gas Program.

**Table 2.** Costs and fees collected associated with DEP's implementation of the Chapter 102 program.

	<b>FY 2021-2022</b>	<b>FY 2022-2023</b>	<b>FY 2023-2024</b>
<b>Program Costs</b>	\$7,669,640	\$7,595,761	\$8,509,837
<b>Fees Collected</b>	\$3,972,480	\$4,324,012	\$3,918,888

To summarize the information presented in Table 2, DEP implemented the Chapter 102 program at a cost above the amount of fees collected ("in the red") for all fiscal years analyzed in this report. Totaled across the three years included in this report, DEP's program costs exceeded fees collected by approximately \$11.5 million (that is, an average of approximately \$3.8 million annually).

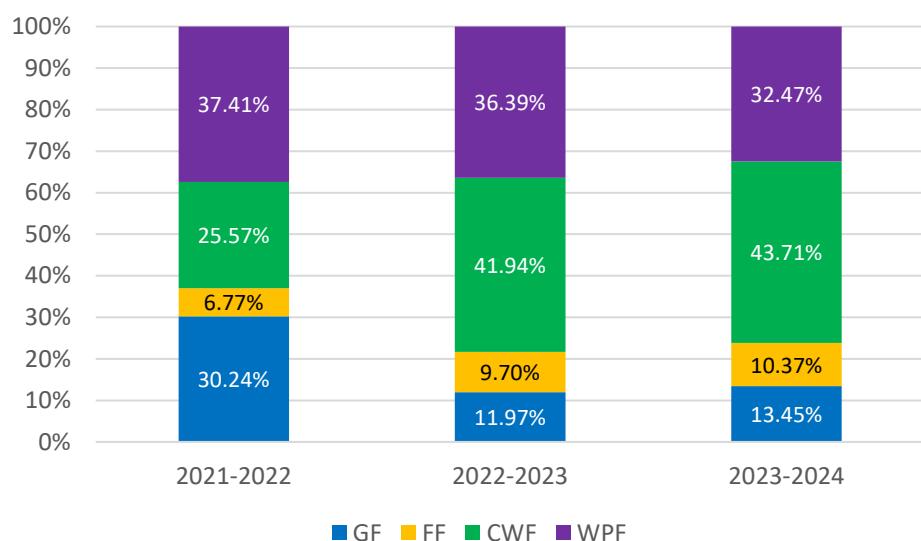
The difference between program costs and fees collected for FY 2021-2022 through FY 2023-2024 has been made up through the following funding sources:

- DEP's general fund (GF) – DEP's general operating fund as allocated annually by the legislature and approved by the governor.
- DEP's Clean Water Fund (CWF) – A restricted fund established by the Clean Streams Law. Chapter 102 fees are deposited into the CWF.
- Federal Funds (FF) – As a result of its delegation agreement with the U.S. Environmental Protection Agency (EPA) for the NPDES program, DEP receives an annual grant under the authority of Section 106 of the Clean Water Act. This grant goes toward implementation of the statewide water pollution control program, including NPDES permitting and compliance activities (including Chapter 102 activities), water quality assessment and reporting, water quality standards development, and Total Maximum Daily Load (TMDL) development.
- DEP's Oil and Gas Well Plugging Fund (WPF) – This fund collects permit application fees for conventional and unconventional oil and gas well drilling. The fund covers all operating costs associated with DEP's Oil and Gas Program but does not pay for the plugging of orphan or abandoned wells (covered under other funds). The fund receives \$6 million annually from the Act 13 Impact Fee, as well as collected fines and penalties. Historically the WPF was considered self-sufficient and used to supplement the difference in Chapter 102 program costs and fees. However, the amount in this fund has declined over time, and it should no longer be considered a sustainable supplemental funding source. Starting with FY 2024-2025, the WPF

began receiving funds from DEP's GF to offset the decline, receiving \$11 million. The amount needed from DEP's GF to continue sustaining the WPF for FY 2025-2026 is still being negotiated but is expected to be even higher.

Figure 1 illustrates the allocation of funding sources for DEP's Chapter 102 program costs for the three years in this analysis. These data indicate significant variability in funding over the last three years from both the general fund (GF) and federal funds (FF). Special funds – namely, the Clean Water Fund (CWF) and Well Plugging Fund (WPF), both of which are funded by permit fees or surcharges paid by regulated entities, and therefore also variable – have also been utilized to make up the difference between program costs and fees collected. However, this approach of relying on various funding sources is not sustainable.

**Figure 1.** Allocation of Funding Sources for DEP's Chapter 102 Program Costs, FY 2021-2022 to FY 2023-2024



GF funding has been variable and generally decreased over the past three fiscal years, and FF funding has accounted for 9% of Chapter 102 program costs on average over the past three fiscal years (Figure 1). As such, the majority of funding for Chapter 102 program costs over the past three fiscal years has come from permit fees or surcharges paid by regulated entities into special funds, the CWF and WPF (Figure 1).

**Table 3.** Costs and fees collected associated with DEP's implementation of the Chapter 102 program illustrating the revenue to cost ratio.

	<b>FY 2021-2022</b>	<b>FY 2022-2023</b>	<b>FY 2023-2024</b>
<b>Program Costs</b>	\$7,669,640	\$7,595,761	\$8,509,837
<b>Fees Collected</b>	\$3,972,480	\$4,324,012	\$3,918,888
<b>Difference</b>	<b>(\$3,697,160)</b>	<b>(\$3,271,750)</b>	<b>(\$4,590,949)</b>
<b>Ratio</b>	52%	57%	46%

As shown in Table 3, DEP has collected 46-57% of the revenue it needs through fees over the past three years, with the difference being made up by the GF, CWF, FF, and WPF. Chapter 102 program costs covered by the CWF are higher than 102 program revenues deposited into the CWF. While the August 2021 addition of a new \$500 annual fee assessed for Chapter 102 Individual NPDES Permit projects under the authority of 25 Pa. Code § 92a.62 increased revenue to the CWF, these ratios show that the CWF is still unable to make up the difference. Furthermore, even though the WPF has funded 35% of Chapter 102 program costs on average over the past three fiscal years (Figure 1), as of FY 2024-2025 the WPF is also now being supported by the GF. These trends further indicate that the current funding approach is not sustainable.

For this report, DEP also evaluated program revenues (including transfers from the State Conservation Commission) and expenses for CCDs. As seen in Table 4, CCDs cumulatively have received only 77-83% of the funding necessary through permit application fees and transfers to offset their costs to implement the Chapter 102 program. There is significant variability amongst CCDs in their revenue-to-cost ratios due to a number of factors including location, development opportunities, and affiliation with county government. However, CCDs have indicated for many years that, overall, they are not collecting enough revenue to support the program and DEP's analysis finds this to be accurate.

**Table 4.** Costs and fees collected associated with CCDs' implementation of the Chapter 102 program illustrating the revenue to cost ratio.

	<b>FY 2021-2022</b>	<b>FY 2022-2023</b>	<b>FY 2023-2024</b>
<b>Program Costs</b>	\$22,746,079	\$22,915,289	\$23,503,029
<b>Fees Collected</b>	\$16,140,398	\$17,190,428	\$17,879,983
<b>Transfer*</b>	\$1,292,082	\$1,617,000	\$1,617,000
<b>Difference</b>	<b>(\$6,605,681)</b>	<b>(\$5,724,861)</b>	<b>(\$5,623,046)</b>
<b>Ratio</b>	77%	82%	83%

\* DEP's General Fund appropriation has included funds that are transferred to the Conservation District Fund and subsequently allocated to CCDs by the State Conservation Commission. The funds provided to the districts in the "Transfer" line item are to be used toward the district's Chapter 102 program, and in particular, toward their Manager (15% funded) and their first E&S Technician (100% funded). The amount of the transfer varies from year to year.

## PROJECTIONS

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Table 5 and Table 6 present projected program costs and fees collected for the most recent fiscal year (FY 2024-2025) and the following two fiscal years for DEP and the CCDs, respectively. Program costs were estimated to grow 4% yearly based on estimated growth of personnel costs. The American Institute of Architects (AIA) Consensus Construction Forecast projects that growth in the construction industry will be 2.2%, 2.6%, and 2.6% respectively over the next three years, which was used to calculate fees collected for FY 2024-2025, 2025-2026, and 2026-2027.

**Table 5.** DEP's projected costs and fees collected associated with the Chapter 102 program

	<b>FY 2024-2025</b>	<b>FY 2025-2026</b>	<b>FY 2026-2027</b>
<b>Projected Program Cost</b>	\$8,850,231	\$9,204,240	\$9,572,409
<b>Projected Fees Collected*</b>	\$4,005,104	\$4,109,237	\$4,216,077
<b>Projected Difference</b>	(\$4,845,127)	(\$5,095,003)	(\$5,356,333)
<b>Ratio**</b>	45%	45%	44%

\* Includes estimated Chapter 102 Disturbed Acreage Fees, Base Administrative Filing Fees collected by DEP, as well as annual fees under Chapter 92a.

\*\* Indicates percentage of program costs funded through receipt of Chapter 102 fees.

**Table 6.** CCDs' projected costs and fees collected associated with the Chapter 102 program

	<b>FY 2024-2025</b>	<b>FY 2025-2026</b>	<b>FY 2026-2027</b>
<b>Projected Program Costs</b>	\$24,443,150	\$25,420,876	\$26,437,711
<b>Projected Fees Collected</b>	\$18,273,343	\$18,748,450	\$19,235,909
<b>Transfers*</b>	\$1,617,000	\$1,617,000	\$1,617,000
<b>Projected Difference</b>	(\$4,552,808)	(\$5,055,427)	(\$7,201,802)
<b>Ratio**</b>	75%	74%	73%

\* Anticipated transfers from DEP to Conservation District Fund. The "Transfers" line item is to be used toward the CCDs' Chapter 102 Program for their Manager and their first E&S Technician (assumed \$24,500 transfer each year per CCD for these projects).

\*\* Indicates percentage of program costs funded through receipt of fees and transfers collected by CCD.

In summary, for each of the next three fiscal years, Chapter 102 program fees collected by DEP are projected to cover approximately 45% of DEP's program costs if changes to these fees are not made. This deficit could increase further if available federal funding is decreased. For CCDs, expected revenues and transfers are projected to cover approximately 74% of program costs for the next three fiscal years.

## **RECOMMENDATIONS**

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As noted previously, 25 Pa. Code § 102.6(b)(2) requires DEP to recommend to the Board every three years regulatory changes to Chapter 102 permit fees to eliminate any disparity between the program income generated by fees and the costs to administer the program. Additionally, the Legislative Budget and Finance Committee, in its June 2019 *Performance Evaluation of DEP's Chapter 102 and Chapter 105 Permitting Programs*, recommended that, “DEP should submit the mandated Chapter 102 fee report to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.”

Based on the analysis in this report, DEP recommends an increase in Chapter 102 permit fees and intends to begin drafting a proposed rulemaking to address the disparity between program costs and sustainable funding sources including fee revenues.

While this report indicates approximately 52% cost recovery for DEP and approximately 81% cost recovery for CCDs on average from FY 2021-2022 to FY 2023-2024, recent advances in data collection lead DEP to believe that the cost of this program, to both DEP and CCDs, may be higher. Therefore, the cost recovery from fees is likely lower. For example, the total program cost is based largely on personnel costs as reported by Work and Activity Codes captured on timesheets. While this data is very reliable, this approach to personnel costs does not account for various vacancies over the time of the analysis, nor does it consider estimated personnel costs not accounted for by timesheets. If the program was fully staffed, the personnel costs would be higher.

Additionally, as DEP develops new initiatives to increase efficiencies, create more transparency with the regulated community, and modernize permit review processes, there are IT-related costs for things such as developing new systems and bringing both DEP and CCD permit data under one umbrella. Other continued costs include things like research grants to assist with updating and revising guidance, as well as training development and maintaining licenses for DEP's Clean Water Academy. Any future proposed rule would include a more detailed evaluation of program costs and needs, such as vacancies, training, technology needs, etc.