



**pennsylvania**

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waterways Engineering and Wetlands

# Implementation of Act 162 of 2014

Citizens Advisory Council

January 21, 2015

# Agenda

1. Overview of Act 162
2. Impact of Act 162
3. Demonstrating buffer equivalence
4. Offsetting
5. Impact to permitting
6. Implementation tools

# What is Act 162 of 2014?

- Introduced as HB 1565
- Amended Pennsylvania Clean Streams Law (CSL)
  - New Section 402(c)
  - NPDES stormwater construction permit applicants may choose either to implement riparian buffers or riparian forest buffers OR to implement equivalent best management practices (BMPs) in certain cases
  - Requires offsetting buffers in certain cases
- Does not eliminate use of riparian buffers as a BMP

# Scope of Act 162

- NPDES permits located within 150 feet of certain High Quality or Exceptional Value waters
- Does not apply to, nor change process in 25 Pa. Code § 102.14, for non-NPDES permits
  - ESCGP permits for oil and gas activities or
  - ESC permits for road maintenance and timber harvesting
- Does not affect voluntary riparian buffer programs; example CREP

# Impacts on NPDES Permitting

- New § 402(c)(1) of CSL provides an alternative to mandatory riparian buffers or riparian forest buffers
- New § 402(c)(2) of CSL provides that when a buffer is not used and if earth disturbance is conducted within 100 feet of a surface water, offsetting is required

# Equivalency Demonstration

- New § 402(c)(1)(ii)
- Applicants choosing not to implement the riparian buffer or riparian forest buffer, must make a demonstration that the BMPs that they will implement will be equivalent to the type of buffer required in 102.14(a)(1) and (2)
- Demonstration is both quantitative and qualitative in nature

# Offsetting

- New § 402(c)(2) triggered when applicant proceeds under 402(c)(1)(ii)
- New § 402(c)(2) requires offsetting:
  - As close as feasible and be within the same drainage list of the project
  - 1:1 ratio for replacement riparian buffer is required
  - Include other BMPS to manage stormwater

# Impact on Permits – New Permits

|  | <b>Prior to 12/21/2014</b>  | <b>On or after 12/21/2014</b>  |
|--|---|--|
| <b>Applications for new individual NPDES stormwater construction permits</b> | Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver. | Must be consistent with Act 162. <ul style="list-style-type: none"><li>• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir</li><li>• If not using a riparian buffer, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.</li><li>• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.</li></ul> |

# Impact on Permits - Renewals

|  | Prior to 12/21/2014   | On or after 12/21/2014  |
|--|---|---|
| <b>Applications for individual NPDES stormwater construction permit renewals with grandfathering related to 102.8</b>    | Grandfathering applies; the riparian buffer and riparian forest buffer requirements do not apply.   | Grandfathering applies; the riparian buffer and riparian forest buffer requirements do not apply.   |
| <b>Applications for individual NPDES stormwater construction permit renewals without grandfathering related to 102.8</b> | Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver. | <p>Must be consistent with Act 162.</p> <ul style="list-style-type: none"> <li>• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir</li> <li>• If a riparian buffer is not used, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.</li> <li>• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.</li> </ul> |

# Impact on Permits - Modifications

|  | Prior to 12/21/2014   | On or after 12/21/2014  |
|--|---|---|
| <b>Minor modifications-<br/>Individual NPDES<br/>stormwater<br/>construction</b> | There are no changes created by the act.  | There are no changes created by the act.  |
| <b>Major modifications-<br/>Individual NPDES<br/>stormwater<br/>construction</b> | Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver. | <p>Must be consistent with Act 162.</p> <ul style="list-style-type: none"> <li>• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir</li> <li>• If no riparian buffer and earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.</li> <li>• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.</li> </ul> |

# Impact on Permits - Phased

|   | <b>Prior to 12/21/2014</b>  | <b>On or after<br/>12/21/2014</b>  |
|---|---|--|
| <b>Phased permits-<br/>Individual NPDES<br/>stormwater<br/>construction permits</b> | Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver. | Must be consistent with Act 162. <ul style="list-style-type: none"><li>• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone. measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir</li><li>• If no riparian buffer is used earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset</li><li>• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.</li></ul> |

# Implementation Tools

- Interim Final Policy: Implementation Plan for Act 162 of 2014 (310-2135-001)
  - December 20, 2014 *Pennsylvania Bulletin*
  - Department’s website: [www.dep.state.pa.us](http://www.dep.state.pa.us)
- Choose:
  - “Public Participation Center” then;
  - “Public Comments” then;
  - “Technical Guidance”
- Frequently Asked Questions (FAQ)

# Implementation Tools

- Equivalency Demonstration Interim Technical Guidance (310-2135-002)
- Offsetting Interim Technical Guidance (310-2135-003)
- Training
- Rulemaking



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# Questions?

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