

Chapter 102

Erosion and Sediment Control and Stormwater Management

Proposed Final Rulemaking

Environmental Quality Board

May 17, 2010

John Hines

Deputy Secretary

Water Management

Purpose

- Protect the surface waters of the Commonwealth from adverse effects of accelerated erosion, sedimentation and stormwater
- Accomplished through Best Management Practices (BMPs)
 - minimize accelerated erosion and sedimentation during and after earth disturbance activities

90 Day Public Comment Period

- Published in Pa Bulletin (39 Pa.B. 5131) on August 29, 2009
 - 90 Day Public Comment Period
 - Three Public Meetings and Hearings
- Over 1300 commentators with divergent opinions-4 key sectors:
 - General Public-86% of commentators
 - Governmental, Conservation Districts
 - Industry
 - Academia, Environmental and other NGOs
- Legislators and IRRC

Response to Comments

➤ Key amendments in response to comments:

- Agriculture § 102.4(a)
- Permit Requirements § 102.5
- Permit Fees § 102.6
- Post Construction Stormwater Management (PCSM) and Operation and Maintenance (O&M) § 102.8
- Riparian Buffers § 102.14
- Permit-By-Rule (PBR) § 102.15

Stakeholder Outreach Efforts

- Pa Home Builders
- Pa Chamber of Business and Industry
- Campaign for Clean Water
- Chesapeake Bay Foundation
- Forestry Industry
- PennDot
- DCNR
- Oil and Gas industry
- Pa Association of Conservation Districts
- Professional Engineers and Geologists
- State Conservation Commission
- Railroad Industry
- Waste Industry
- Pa Farm Bureau
- Penn Ag Industries
- Water Resources Advisory Committee
- Agriculture Advisory Committee
- IRRC
- Representatives from the House and Senate Environmental Committees

Agriculture § 102.4

- Clarifies that for agricultural plowing and tilling activities on fields with less than 25% plant cover or crop residue cover and within 100 feet of a river, or perennial or intermittent stream, additional BMPs shall be implemented to minimize accelerated erosion and sedimentation.

Permit Requirements § 102.5

- Incorporates the federal Clean Water Act “Phase II” NPDES permit requirements for stormwater discharges associated with construction activities that disturb one acre or more
- Incorporates provisions for general permits



Permit Fees § 102.6

- Revised the permit fees and fee structure to include an administrative filing fee and a tiered fee approach based on acreage
 - GP \$500 plus \$100/disturbed acre
 - IP \$1500 plus \$100/disturbed acre
- Fees deposited into Clean Water Fund
- The adequacy of the fees will be reviewed once every 3 years, with a report provided to the EQB

PCSM and O&M § 102.8

- Exemption from detailed stormwater analysis calculation requirements for certain activities that require reclamation or restoration
- Public health and safety considerations
- Added “grandfathering” provision for NPDES permit renewals related to PCSM Plans
- O&M requirements provided in 102.8(m)

Riparian Buffers § 102.14

- Persons proposing earth disturbance activities that require a permit under this Chapter shall not conduct earth disturbance within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond, or reservoir, and must protect any existing riparian buffer where the project site is located in an EV or HQ watershed attaining its designated use.
- If the project site is located in an EV or HQ watershed failing to attain one or more of its designated uses, and the project site is within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond, or reservoir, the person proposing the earth disturbance must protect an existing riparian forest buffer, convert an existing riparian buffer to a riparian forest buffer, or establish a new riparian forest buffer meeting the criteria of Section 102.14.

Riparian Buffers § 102.14

- Clarify establishment and management requirements
- Addition of 9 exemptions and 6 waivers from the mandatory riparian buffer requirements
- Establishes an antidegradation and thermal presumption and allows for offsets/trading related to riparian forest buffers

PBR § 102.15

- Removes the proposed permit-by-rule which was opposed as drafted by most commentators.

- Balanced approach to controlling accelerated erosion, sedimentation, and stormwater from earth disturbances
- Recommend effective date of this final form rulemaking be 90 days after publication in the *Pa. Bulletin* to allow for implementation of the rule
- Request the approval of the revisions to Chapter 102 as final-form rulemaking