

Executive Summary
Title 25 Pa. Code Chapter 102
Erosion and Sediment Control and Stormwater Management

The purpose of Chapter 102 is to protect surface waters of the Commonwealth from sediment and stormwater pollution through the utilization of Best Management Practices (BMPs) that minimize accelerated erosion and sedimentation during earth disturbance activities, and manage post construction stormwater runoff after earth disturbance activities. The existing erosion and sediment control regulations found at Title 25, Chapter 102 describe the requirements for controlling accelerated erosion and preventing sediment pollution from various earth disturbance activities.

This final-form rulemaking amends the existing erosion and control regulations found at Title 25, Chapter 102. Since 1972, earth disturbance activities related to agricultural plowing and tilling, as well as, non-agricultural earth disturbance activities have been regulated under this Chapter by requiring persons to develop, implement, and maintain BMPs. These regulations were last amended in 2000. The major purposes of the current Chapter 102 revisions are to: incorporate the federal Clean Water Act “Phase II” National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with construction activities, codify post construction stormwater management (PCSM) requirements, including long-term operation and maintenance requirements of PCSM best management practices (BMPs), include specific antidegradation implementation provisions, update agricultural planning and implementation requirements, update erosion and sediment (E&S) control requirements, and establish riparian buffer and riparian forest buffer provisions.

The significant revisions to the final-form rulemaking in response to public comments, the input from advisory committees and the Independent Regulatory Review Commission (IRRC) include: the removal of the proposed permit-by-rule, which was opposed as drafted by most commentators, including the U.S. Environmental Protection Agency; the addition of exemptions and waivers from the mandatory riparian buffer requirements, as requested by various sectors of the regulated community; and the addition of grandfathering provision for NPDES permit renewals related to post construction stormwater management.

Specifically the final-form rulemaking includes revisions to: 1) definitions 2) agriculture plowing and tilling and animal heavy use areas 3) erosion and sediment control planning requirements; 4) permit application requirements and permit fees, 5) post construction stormwater management including long-term operation and maintenance; 6) antidegradation implementation, 7) general requirements 8) riparian buffer requirements; and 9) permit-by-rule. Specifically, in § 102.1, several definitions were added, deleted, or modified; the agricultural provisions in § 102.4(a) to clarify requirements for plowing and tilling, and animal heavy use areas; in § 102.6 the permit fee was revised to include a administrative filing fee and a tiered fee approach based on acreage; § 102.8 relating to the PCSM provisions for long-term operation and maintenance were consolidated into one subsection (§ 102.8(m)) and clarified; § 102.11 was revised to provide a reference to PPC plans and the new federal effluent guideline for construction activities; § 102.14 the riparian forest buffer section was reorganized and refined, an exception subsection was added (§ 102.14(d)), an antidegradation presumption and offset and trading subsection (§ 102.14(e)) were added; and the permit-by-rule section (§ 102.15) was eliminated.

Summary of Amendments:

Deletion of Section 12.15 permit-by-rule -In response to comments submitted by commentators during the public comment period the entire section of 102.15 has been deleted in the final rule.

Incorporation of updated federal requirements -The federal Clean Water Act, National Pollutant Discharge Elimination System (NPDES) Program includes regulatory requirements for stormwater discharges associated with construction activities. Pennsylvania is delegated administration of the NPDES program. Chapter 102 provides the regulatory framework for the stormwater construction portion of the NPDES program in Pennsylvania. The federal requirements for stormwater construction were promulgated by EPA in two phases (effective in 1992 and 2002 respectively). The Chapter 102 amendments in 2000 included the first phase of these NPDES requirements. In order to maintain delegation of the NPDES program and to be compliant with federal law, Pennsylvania is incorporating the second phase (Phase II) of the federal requirements in this rulemaking. The Phase II regulations require any person proposing a construction activity that will result in earth disturbances of one acre or more must have permit coverage.

Codify post construction stormwater management requirements -Permanent changes to the surface of the land resulting from earth disturbance activities have the potential to cause pollution as that term is defined under both the federal Clean Water Act as well as the Pennsylvania Clean Streams Law. This rulemaking includes specific post construction stormwater management requirements, as a codification of the existing practice in Pennsylvania. Since 2002, DEP has included post construction stormwater management requirements in the NPDES stormwater permitting program in response to the need for enhanced water quality protection, long term stormwater management, and streambed and streambank protection and as a flood control measure. The inclusion of post construction requirements in this program is driven by the federal NPDES stormwater construction requirements, Environmental Hearing Board decisions, and is necessary to support implementation of stormwater management planning requirements for the Municipal Separate Storm Sewer System (MS4) NPDES program and the Pennsylvania Stormwater Management Act. The final rule provides an exemption to stormwater analysis regarding predevelopment non-forested areas for repair and reconstruction of roadways or rail lines and utility infrastructure when the site will be returned to existing conditions. It also includes a provision to allow the applicant to demonstrate that due to public health, safety or environmental limitations they can not meet the 20% requirement for existing impervious area to be considered meadow in good condition or better. PCSM long term operation and maintenance requirements have been consolidated in 102.8(m).

Enhanced requirements related to agriculture - The scope of the agricultural section (§102.4 (a)) was expanded beyond “agricultural plowing and tilling” to also include “animal heavy use areas”. The requirements related to plowing and tilling are also more clearly defined. A clarification was provided in 102.4 (a) (4)(ii) that 25% “plant cover or crop residue cover” is required when within 100 feet of a river, or a perennial or intermittent stream, or additional BMPs are required. The inclusion of animal heavy use areas will require the development and implementation of an Erosion and Sediment Control Plan (E&S Plan) that minimizes accelerated erosion and sedimentation.

Clarification of planning requirements for accelerated erosion and sediment control - Revisions were made to existing language to clarify: definitions, E&S plan requirements, requirements for the person preparing the plan, Chapter 93 antidegradation implementation requirements for earth disturbance activities that require a permit under this regulation, permitting requirements and procedures, and site stabilization requirements for both permanent and temporary stabilization.

Update permit fees -In the final-form rulemaking, the Department revised the fee structure to provide for a base administrative filing fee and a tiered fee based on the number of acres disturbed. This revision also specifies the appropriate restricted revenue accounts where the fees will be deposited for each program administering Chapter 102. In addition, the Department will review the adequacy of the fees once every three years and provide a report to the EQB.

Addition of requirements related to riparian forest buffers -Section 102.14 Riparian buffers, has been revised based on public input received during the public comment period. Persons proposing earth disturbance activities that require a permit 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 exceptional or high value waters which are attaining its designated use. If the project site is located in EV or HQ waters failing to attain one or more of its designated uses the person proposing the earth disturbance must not disturb any earth within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond, or reservoir, and protect an existing riparian forest buffer, convert an existing riparian buffer to a forest riparian buffer, or establish a new riparian forest buffer. The final rule clarifies riparian forest buffer criteria for establishment, management requirements, and exceptions to riparian buffer requirements for certain activities. The final rule also provides for an antidegradation presumption and for the trading or offsetting of credits for riparian buffers. Voluntary riparian forest buffers may also be established to qualify for antidegradation presumption and trading or credits. The final rule also identifies what activities are prohibited, allowable by Department authorization and allowed in the riparian buffers.

Advisory Committee Review:

The Department met with the Water Resources Advisory Committee (WRAC) on February 19, 2010, and the Agricultural Advisory Board (AAB) on February 17, 2010 to summarize the revisions being considered for the final-form rulemaking. On March 17, 2010 the Department presented the proposed final-form rulemaking to WRAC. After extensive discussion, WRAC voted to approve the final-form rulemaking subject to the clarifying changes discussed during the meeting.

Adoption Deadline:

The Department recommends that the Board incorporate the final-form rulemaking into the Erosion and Sediment Control and Stormwater Management regulations (25 Pa. Code Chapter 102) in order to comply with federal requirements and to strengthen water quality protection for surface waters of this Commonwealth. These regulations should be adopted during fall 2010.

Publication and Effective Date:

The proposed regulations were published in the *Pa. Bulletin* on August 29, 2009 for a 90 day public comment period. The Environmental Quality Board held three public hearings across the Commonwealth. In addition to the testimony received at these hearings, the EQB received comments from over 1300 individuals, agencies, legislators, organizations, and conservation districts. Amendments should go into effect ninety (90) days after publication in the *Pennsylvania Bulletin* as final rulemaking.