

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

Chapter 102 Erosion and Sediment Control Permit Fees

BACKGROUND

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 (Board). As provided in 25 Pa. Code § 102.6(b)(2), DEP’s report to the Board 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
Base Administrative Filing Fee	General Permits (NPDES PAG-02 and ESCGP)	\$500
Base Administrative Filing Fee	Individual Permits (NPDES and E&S)	\$1,500
Disturbed Acreage Fee	All Permits	\$100 x each disturbed acre

DEP has entered into delegation agreements with 65 conservation districts (CDs) throughout the Commonwealth to carry out permitting responsibilities under Chapter 102. As part of these delegation agreements, the Base Administrative Filing Fee is retained by the CD that processes the permit application or NOI and must be deposited into the CD’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

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

DEP Program Costs

A modifier of 28% was 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. Use of the 28% modifier resulted in DEP personnel costs being multiplied by 1.28. For example, wages of \$1,000,000 would be reported as \$1,280,000.

- Direct personnel costs from the Bureau of Clean Water (BCW). These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to Chapter 102, based upon timesheets.
- Direct personnel costs from the Regional Waterways and Wetlands Programs and the Regional Permit Coordination Office. These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to Chapter 102, based upon timesheets.
- Direct personnel costs from DEP's Office of Oil and Gas Management. These costs were the actual wages paid to DEP employees under the Work and Activity Codes associated to Chapter 102, based upon timesheets. While Oil and Gas Program employees charge the Well Plugging Account, and not the Clean Water Fund, these expenses must nevertheless be included in any analysis that considers overall program costs.
- Estimated personnel costs from 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 when staff are specifically performing 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 from 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 when staff are specifically performing Chapter 102 program work. In discussions with the Bureau of Mining Programs, an assumed two FTEs (one engineer for plan reviews and one water program specialist for field inspections; both at Pay Scale 8, Step 10) were associated with Chapter 102 programmatic implementation.

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.

CD Program Costs

- Direct or estimated district personnel costs. This information was obtained from the quarterly reporting required of all delegated CDs. On these quarterly reports, the CDs 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 CDs, including some training, managerial, and administrative costs, as well as costs associated with the review of E&S plans under agreements with municipalities. The modifier was set to 53% based on a detailed review of a subset of CDs' costs, and is higher than the modifier used for DEP because certain costs such as training costs are not generally captured through the quarterly reports. Use of the 53% modifier resulted in CD personnel costs being multiplied by 1.53. For example, wages of \$1,000,000 would be reported as \$1,530,000.

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 Regional Waterways and Wetlands Programs and the Regional Permit Coordination Office. 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 Regional Waterways and Wetlands 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), DEP's Regional Permit Coordination Office performs the completeness review.
 - For all other permits (projects that are in one county and projects that span two counties), the CD performs the completeness review.
- Base Administrative Filing and Disturbed Acreage Fees collected by DEP's Oil and Gas Management 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 CDs

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

ANALYSIS OF PROGRAM COSTS AND FEES COLLECTED

This report analyzes Fiscal Years (FYs) 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, and 2020-21 for Chapter 102 program implementation. The past eight fiscal years are examined because the previous Chapter 102 fee report presented to EQB in 2014 concluded with an analysis of FY 2012-13. Note: The delays in providing this fee report are primarily a result of a major reorganization within DEP, in which the Chapter 102 program was moved to the Bureau of Clean Water, and significant staff and management turnover.

Table 2 presents DEP’s costs and fees collected associated with implementation of the Chapter 102 program. This table includes total program costs and fees collected, including costs incurred and fees collected by DEP’s Oil and Gas Program.

As shown in Table 2, after FY 2013-14, DEP’s program costs have generally increased each fiscal year while the fees collected have decreased each fiscal year.

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

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Program Costs	\$5,450,220	\$5,674,336	\$6,248,832	\$7,173,832
Fees Collected	\$5,426,667	\$4,609,907	\$4,510,875	\$3,856,362

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Program Costs	\$7,187,495	\$7,111,103	\$7,463,643	\$7,820,512
Fees Collected	\$3,690,777	\$3,610,190	\$3,349,060	\$3,987,298

To summarize the information presented in Table 2, DEP implemented the Chapter 102 program at a cost above the amount of fees collected (i.e., “in the red”) for all fiscal years analyzed in this report except FY 2013-14. Totaled across the eight years included in this report, DEP’s program costs exceeded fees collected by approximately \$21 million (i.e., an average of approximately \$2.6 million annually).

The difference between program costs and fees collected for FY 2014-15 through FY 2020-21 has been made up through the following funding sources:

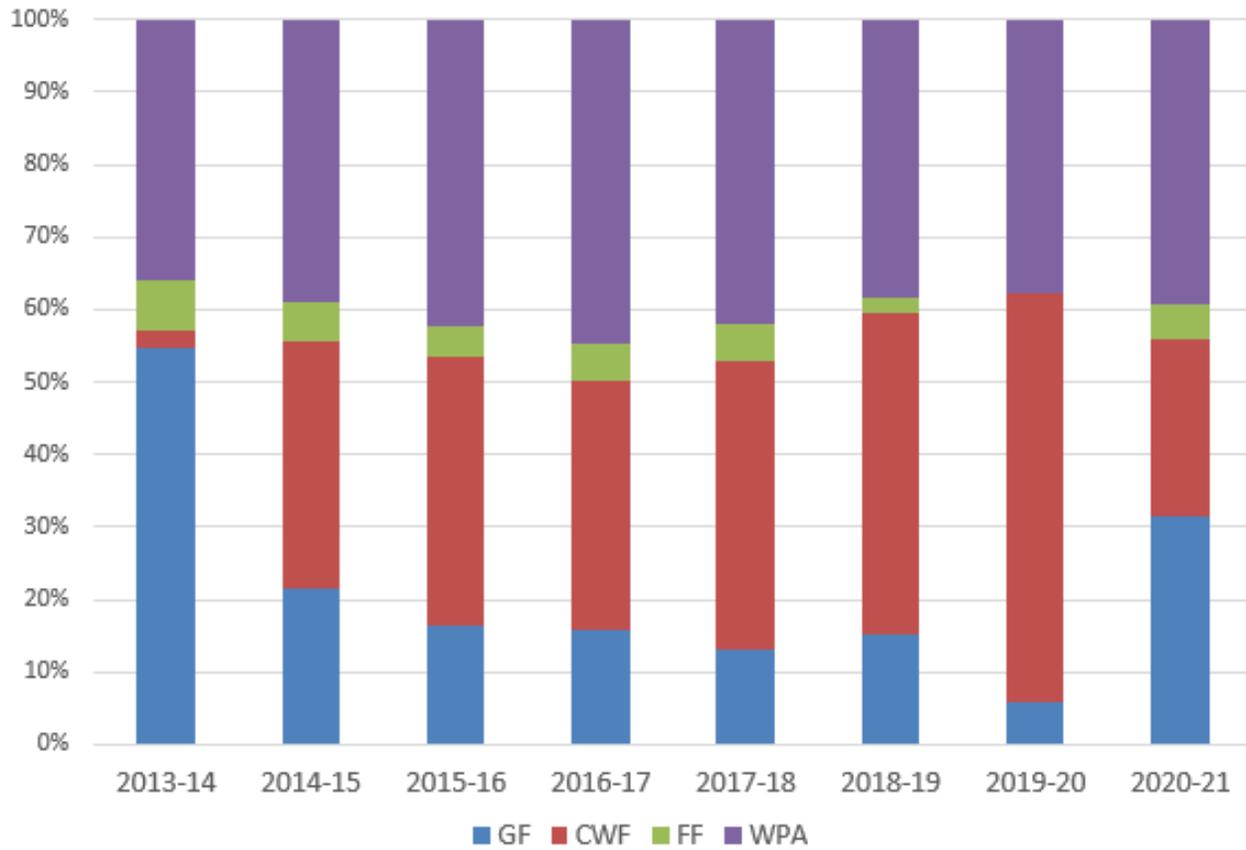
- DEP’s general fund (GF) – DEP’s general operating fund as allocated annually by the legislature and approved by the governor.
- DEP’s Clean Water Fund (CWF) – A restricted fund established by the Clean Streams Law. Chapter 102 fees are deposited into the CWF.
- Federal Funds (FF) – As a result of its 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 Well Plugging Account (WPA) – This fund collects surcharges paid by the oil and gas industry for each drilling permit that is issued and is used for plugging orphan or abandoned wells and to cover personnel expenses for staff in DEP's Oil and Gas Program for Chapter 102 activities. Oil and Gas personnel expenses are not offset by any CWF, GF or FF.

Figure 1 illustrates the allocation of funding sources for DEP's Chapter 102 total program costs for the eight years in this analysis. These data indicate significant variability and overall reductions in funding over the last eight years from both the general fund (GF) and federal funds (FF). Special funds – namely, the Clean Water Fund (CWF) and Well Plugging Account (WPA), 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. For instance, GF funding has been highly variable and generally decreasing over the past eight fiscal years, with GF funding accounting for over 50% of Chapter 102 program costs in FY 2013-14, less than 20% of Chapter 102 program costs in each of FYs 2015-16, 2016-17, 2017-18, 2018-19, and 2019-20, then increasing modestly to over 30% of Chapter 102 program costs in FY 2020-21 (Figure 1). Additionally, FF funding has accounted for less than 10% of Chapter 102 program costs in each of the past eight fiscal years (Figure 1). As such, the vast majority of funding for Chapter 102 program costs for each of the past seven most-recent fiscal years has come from permit fees or surcharges paid by regulated entities into special funds, the CWF and the WPA (Figure 1).

Figure 1. Allocation of Funding Sources for DEP’s Chapter 102 Program Costs, FY 2013-14 to 2020-21



DEP's Oil and Gas Program's Well Plugging Account covers all of the program's Chapter 102 activities and has historically been considered self-sufficient. All Chapter 102 permit application fees, including those reviewed by Oil and Gas Program staff, are deposited into the Clean Water Fund. Since none of these fees are used to cover Oil and Gas Program costs, DEP believes it is important to also show program costs and fees without the Oil and Gas Program's costs, which is presented in Table 3.

Table 3. Costs and fees collected associated with DEP's implementation of the Chapter 102 program illustrating the revenue to cost ratio without Oil and Gas Program costs

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Program Costs	\$5,450,220	\$5,674,336	\$6,248,832	\$7,173,832
Oil and Gas Costs	\$1,525,608	\$1,720,988	\$2,063,390	\$2,501,080
Program Costs minus Oil and Gas Costs	\$3,924,612	\$3,953,348	\$4,185,442	\$4,672,752
Fees Collected	\$5,426,667	\$4,609,907	\$4,510,875	\$3,856,362
Difference	\$1,502,055	\$656,559	\$325,433	(\$816,390)
Revenue:Costs	138%	117%	108%	83%

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Program Costs	\$7,187,495	\$7,111,103	\$7,463,643	\$7,820,512
Oil and Gas Costs	\$2,348,893	\$2,123,883	\$2,201,762	\$2,395,152
Program Costs minus Oil and Gas Costs	\$4,838,602	\$4,987,220	\$5,261,881	\$5,425,360
Fees Collected	\$3,690,777	\$3,610,190	\$3,349,060	\$3,987,298
Difference	(\$1,147,825)	(\$1,377,030)	(\$1,912,821)	(\$1,438,062)
Revenue:Costs	76%	72%	64%	73%

As shown in Table 3, after deducting the Oil and Gas Program's costs, DEP has collected 64% to 83% of the revenue it needs through fees over the past five years, with the difference being made up by the general fund, Clean Water Fund, and federal funds. In recent years, 102 program costs covered by the CWF are higher than 102 program revenues deposited into the CWF. This trend further indicates that this funding approach is not sustainable.

For this report, DEP also evaluated program revenues (including transfers from the State Conservation Commission) and expenses for CDs. As seen in Table 4, CDs cumulatively have received only 60% - 70% 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 CDs in their revenue-to-cost ratios due to a number of factors including location, development opportunities, and affiliation with county government. However, CDs 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 CDs’ implementation of the Chapter 102 program

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Program Costs	\$14,736,282	\$15,663,133	\$18,262,028	\$18,673,069
Fees Collected	\$8,870,311	\$9,659,101	\$10,800,234	\$10,440,288
Transfer*	\$1,493,250	\$1,254,660	\$1,254,660	\$1,254,660
Difference	(\$4,372,721)	(\$4,749,372)	(\$6,207,134)	(\$6,978,121)
Revenue:Costs	70%	70%	66%	63%

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Program Costs	\$20,627,921	\$20,186,165	\$21,014,529	\$21,553,271
Fees Collected	\$11,002,592	\$12,000,639	\$11,854,867	\$13,371,638
Transfer*	\$1,292,082	\$1,292,082	\$1,292,082	\$1,292,082
Difference	(\$8,333,247)	(\$6,893,444)	(\$7,867,580)	(\$6,889,551)
Revenue:Costs	60%	66%	63%	68%

* DEP’s General Fund appropriation has included funds that are transferred to the Conservation District Fund and subsequently allocated to CDs 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

Table 5 and Table 6 present projected program costs and fees collected for the most recent fiscal year (FY 2021-22) and the following two fiscal years for DEP and the CDs, respectively. Program costs were estimated to grow 4% yearly based on estimated growth of personnel costs. For FY 2021-22, fees collected are projected to increase by 1.5% compared to FY 2020-21 based on a projection from partial year data submitted by CDs to date. For FY 2022-23 and FY 2023-24, the American Institute of Architects (AIA) Consensus Construction Forecast projects that growth in the construction industry will be 5.4% and 6.1%, respectively, which was used to calculate fees collected for FY 2022-23 and FY 2023-24. The Projected Fees Collected for DEP (Table 5) includes a new annual fee of \$500 assessed for Chapter 102 projects under the authority of 25 Pa. Code § 92a.62, starting August 28, 2021.

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

	FY 2021-22	FY 2022-23	FY 2023-24
Projected Program Cost	\$5,742,375	\$5,968,070	\$6,202,792
Projected Fees Collected*	\$4,047,107	\$4,265,651	\$4,525,856
Projected Difference	(\$1,695,268)	(\$1,702,419)	(\$1,676,936)
Ratio**	70%	71%	73%

* Includes estimated federal funds used toward Chapter 102 activities and annual fees under Chapter 92a.

** Indicates percentage of program costs funded through receipt of Chapter 102 Disturbed Acreage Fees and the Base Administrative Filing Fees collected by DEP.

Table 6. CDs’ projected costs and fees collected associated with the Chapter 102 program

	FY 2021-22	FY 2022-23	FY 2023-24
Projected Program Cost	\$23,240,032	\$24,169,633	\$25,136,419
Projected Fees Collected	\$13,573,110	\$14,306,058	\$15,178,727
Transfers*	\$1,292,082	\$1,292,082	\$1,292,082
Projected Difference	(\$8,374,840)	(\$8,571,493)	(\$8,665,610)
Ratio**	64%	65%	66%

* Anticipated transfers from DEP to Conservation District Fund. The “Transfers” line item is to be used toward the CDs’ Chapter 102 program for their Manager and their first E&S Technician (assumed \$19,577 transfer each year per district for these projects).

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

In summary, for each of the next three fiscal years, Chapter 102 program fees collected by DEP are projected to cover approximately 70% of DEP’s program costs. For CDs, expected revenues and transfers are projected to cover less than 70% of program costs for the next three fiscal years.

RECOMMENDATIONS

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 70% cost recovery for DEP and approximately 65% cost recovery for CDs, recent advances in data collection lead DEP to believe that the cost of this program, to both DEP and CDs, 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. If the program was fully staffed, the personnel costs would be higher. Additionally, as DEP works towards better efficiencies, there are IT related costs for things such as maintaining licenses for the Clean Water Academy. The Clean Water Academy is a vital training tool for both DEP and CD staff plus the regulated community. Any future proposed rule would include a more detailed evaluation of program costs and needs, such as vacancies, training, technology needs, etc.