

## **Executive Summary**

### **Title 25 Pa. Code Chapter 102. Erosion and Sediment Control and Stormwater Management**

#### **Purpose of Proposed Rulemaking:**

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, and manage post construction stormwater runoff, both during and after earth disturbance activities.

The existing erosion and sediment (E&S) control regulations found at Title 25, Chapter 102 describe the requirements for controlling accelerated erosion and preventing sediment pollution from various earth disturbance activities. Since 1972, earth disturbance activities related to agricultural plowing and tilling, as well as non-agricultural earth disturbance activities are regulated under this Chapter by requiring persons to develop, implement, and maintain BMPs.

The proposed amendments incorporate specific language which: enhance requirements related to agriculture; clarifies existing requirements for accelerated E&S control; incorporates updated federal requirements; updates permit fees; codifies PCSM requirements; adds requirements related to riparian forest buffers; and introduces a permit-by-rule option.

#### **Summary of Amendments:**

##### ***Enhanced requirements related to agriculture***

The scope of the agricultural section (§102.4 (a)) is being enhanced beyond “agricultural plowing and tilling” to also include “animal heavy use areas”. The requirements related to plowing and tilling are also being more clearly defined. The animal heavy use area provisions of the proposed rulemaking require responsible parties to develop and implement an E&S Control Plan (E&S Plan) that minimizes accelerated erosion and sedimentation.

##### ***Clarification of existing requirements for accelerated E&S control***

Revisions to existing language are included in the proposed rulemaking to clarify: definitions, plan requirements, Chapter 93 antidegradation implementation requirements, permitting, and site stabilization.

##### ***Incorporation of updated federal requirements***

The federal Clean Water Act, NPDES Program includes regulatory requirements for stormwater discharges associated with construction activities. Pennsylvania is delegated administration of the NPDES program by EPA. 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 (Pennsylvania compliance required by 1992 and 2002 respectively). The Chapter 102 amendments in 2000 included the first phase “Phase I” 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 proposed rulemaking.

### ***Updated permit fees***

In the proposed rulemaking DEP includes the NPDES permit fees specific to the stormwater construction program, and updates the fees for other (non-NPDES) permits that may be required under Chapter 102.

### ***Codification of PCSM requirements***

Permanent changes to the surface of the land resulting from earth disturbance activities also 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 proposes to include specific PCSM requirements, as a codification of existing practices in Pennsylvania. Since 2002, DEP has included PCSM requirements in the NPDES stormwater permitting program in response to the need for enhanced water quality protection, long term stormwater management, streambed and streambank protection and as a flood control measure. The inclusion of PCSM 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.

### ***Addition of requirements related to riparian forest buffers***

Riparian forest buffers are one of the most effective and efficient BMPs for preventing pollution both during and after earth disturbance activities, and provide natural, long-term sustainability for aquatic resource protection and water quality enhancement. This proposed rulemaking includes new requirements for protecting existing riparian forest buffers and for establishing new buffers. The rulemaking also proposes mandatory riparian forest buffers for projects permitted under Chapter 102 that contain or are located along or within 150 feet of an Exceptional Value (EV) river, perennial and intermittent stream, or lakes pond, or reservoir. Requirements for buffer conservation, construction and maintenance are included.

### ***Introduction of a permit-by-rule option***

The proposed amendments include a new permitting option for low impact, low risk projects that incorporate riparian forest buffers. This permit-by-rule could be used to authorize qualifying projects that require either an NPDES permit or E&S control permit under this Chapter. The proposed permit-by-rule balances environmental protection for the Commonwealth with predictability in permitting for the applicant. The permit-by-rule includes eligibility criteria to limit applicability to “low-risk” projects and conditions requiring the use of riparian forest buffers, “low impact design” techniques, more prescriptive plan and implementation requirements, mandatory oversight by a professional engineer, geologist or landscape architect registered in the commonwealth of Pennsylvania, and a 30-day review timeframe.

## **Public Participation and Outreach:**

In developing this proposed rulemaking the Department undertook extensive outreach efforts to meet with stakeholders including: conservation districts, builders, agriculture, other industry groups, environmental groups, legislators and advisory committees.

Outreach efforts by DEP Secretary Hanger and Executive Staff on permit-by-rule and riparian forest buffers included meetings with the following groups during 2008-2009:

- Department of Community and Economic Development
- Governor's Action Team
- Interested legislators
- Pennsylvania Association of Conservation Districts (PACD)
- PA Builder's Association and building industry representatives
- PA Campaign for Clean Water (Coalition of environmental groups including: Chesapeake Bay Foundation, Clean Water Action, Delaware River Keepers, Sierra Club, Trout Unlimited PA Chapter, Penn Future)
- PA Chamber of Business and Industry
- POGAM, IOGA, and oil & gas industry representatives
- State Conservation Commission

Outreach efforts by DEP staff on Chapter 102 revisions, permit-by-rule and buffers included meetings with the following groups during 2007-2009:

- Conservation district directors, managers, and staff
- Department of Conservation & Natural Resources
- PACD
- PA Builders Association
- PA Campaign for Clean Water (Coalition of environmental groups including: Chesapeake Bay Foundation, Clean Water Action, Delaware River Keepers, Sierra Club, Trout Unlimited PA Chapter, Penn Future)
- PennAg Industries, PA Farm Bureau and agricultural representatives
- State Conservation Commission
- USDA, NRCS

Advisory Committee Meetings:

- Citizen's Advisory Council:
  - March 17, 2009 (permit-by-rule)
  - April 21, 2009
- Agricultural Advisory Board (AAB) :
  - February 21, 2007 Overview of proposed revisions
  - October 10, 2007 Overview of proposed revisions
  - December 19, 2007 Discussion of proposed draft language for agricultural activities
  - April 15, 2009 Consideration of Proposed Chapter 102 rulemaking

- Water Resources Advisory Committee (WRAC):
  - January 10, 2007 Overview of proposed revisions
  - January 9, 2008 Overview of proposed revisions
  - July 22, 2008 Overview of riparian forest buffers
  - February 25, 2009 Overview of proposed permit-by-rule
  - April 8, 2009 Consideration of Proposed Chapter 102 rulemaking
  - April 23, 2009 Special Meeting – continuation of proposed Chapter 102
  - April 29, 2009 Second Special Meeting – continuation of proposed Chapter 102 (No quorum of WRAC)

The Department incorporated many of the comments received during these meetings. The AAB and WRAC are providing unofficial letters with comments and suggested recommendations to the EQB.

**Adoption Deadline:**

The Department recommends that the Board incorporate the proposed amendments into the Erosion and Sediment Control regulations (25 Pa. Code Chapter 102) in order to comply with federal requirements and to strengthen water quality protection for Commonwealth waters. These regulations should be adopted in 2010.

**Recommendations for Public Comment Period and Public Meetings/Hearings:**

The Department recommends a 60-day public comment period with three public meetings and hearings.