

Frequently Asked Questions (FAQs) for the Chapter 102 Regulation Revisions
August 19, 2011

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I. Permitting

1. *If a project is one acre or greater but less than five acres of earth disturbance without a point source discharge [**not involving agricultural plowing and tilling, animal heavy use areas, timber harvesting, road maintenance or oil and gas activities**] what permit is required and when do the regulation changes go into effect for permit submissions?*

Under the January 2000 Chapter 102 regulations these projects did not need an NPDES permit. If such a project approved under the 2000 regulations started earth disturbance work or has received an E&S plan acknowledgement prior to November 19, 2010 it will not require an NPDES permit.

If earth disturbance began prior to November 19, 2010 and an inspection reveals violations at the site, the Department or conservation district may require the operator to apply for an NPDES permit based on the severity of violations.

2. *If a project is one acre or greater but less than five acres of earth disturbance with a point source discharge, what permit is required and when do the regulation changes go into effect for permit submissions?*

NPDES permit applications must be submitted for these projects prior to November 19, 2010. If they do not have permit coverage, an NPDES permit must be obtained prior to commencing earth disturbance activity.

3. *If a project will disturb one or more acres of earth disturbance after November 19, 2010, what permit is required and when do the regulation changes go into effect for permit submissions?*

NPDES permit applications must be submitted and permit coverage obtained prior to commencing earth disturbance activity.

4. *What is the status of permits which have applications submitted to the conservation district office or the Department regional office prior to November 19, 2010 and are in the permitting process pipeline on the effective date of the new 102 regulations?*

If the application package has been submitted by November 19, 2010 and found to be administratively complete, the applicant may proceed under the previous requirements, including permit fees. The applicant would not be required to pay additional permit fees, including the \$100.00 per disturbed acre fee.

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If the permit application package has been submitted prior to November 19, 2010 but is found administratively incomplete, the Department or conservation district will provide the applicant 60 days to provide a complete application. If after 60 days the application remains incomplete, the Department will consider the application withdrawn, and the applicant must submit a new application that meets all new permit requirements and pay any additional base application and disturbed acre fees.

The applicant does not have to pay new fees for additional submissions requested in response to a deficiency letter unless the application is considered withdrawn and is returned.

5. *How will phased projects approved prior to November 19, 2010 be administered?*

The applicant for a phased project must submit their permit application showing all planned future phases for the entire project site. The detailed E&S and PCSM plans must be submitted for the initial phase of the project. If the application package was submitted prior to November 19, 2010 and found to be administratively complete, they do not need to meet any new requirements contained in the 102 regulations that did not exist prior to November 19, 2010 **for the initial phase of the project.**

However, future phases that are submitted after November 19, 2010 are considered new earth disturbance activities and are subject to all the requirements of the Chapter including all the post construction requirements in Section 102.8.

Applicants who believe they cannot meet the buffer requirements in future phases submitted after November 19, 2010 may request a waiver of the buffer requirements under 102.14(d)(2)(vi). This waiver may be granted by the Department or by the conservation district upon demonstration by the applicant that there are reasonable alternatives for complying with this section that any existing riparian buffer is undisturbed to the extent practicable, and the action will otherwise meet the requirements of Chapter 102.

6. *A project was issued an erosion and sediment control plan approval letter prior to November 19, 2010, which did not require an NPDES permit (less than 5 acres and no point discharge). Are they exempt from the permit?*

If the project was issued an E&S plan approval letter prior to November 19, 2010, they will not need to get an NPDES permit on November 19, 2010. However, if in the future

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there are any compliance issues, then the conservation district or the Department could require them to obtain an NPDES permit for the site.

7. *102.6(c)(2) How many extensions may be granted for an applicant to respond to an incomplete application letter? Is there a limit on the number of days the applicant may request?*

There is no limit specified in the regulation on how many extensions can be requested or how long the extensions may be. This is left to the conservation district or the Department to decide.

8. *How do we handle renewals that are coming in the door now (between now and November 19, 2010)? Should they be meeting new requirements?*

Renewals that are coming in the door now are not subject to the requirements of the new regulation as they are grandfathered.

9. *If an NPDES permit is set to expire but under the pre- 11/11/10 Ch. 102 regulations, it does not need to be renewed because it is less than five acres and no longer has a point source discharge. Will that permit still be required once the new regs take effect because of the one acre threshold?*

If there is still one acre or more of disturbance remaining on that permit, it will need to be renewed. If the remaining disturbance is less than one acre, it will not need to be renewed.

10. *Prior to November 19, 2010, an E&S plan was reviewed that had over one acre of disturbance but less than five acres of disturbance without a point source discharge. E&S approval was issued. Revisions are proposed to the project with additional earth disturbance. Does this project need an NPDES permit?*

Yes. An NPDES permit would be required for the entire project area.

11. *Is an NPDES permit necessary for the establishment of a lawn?*

No, the establishment of a lawn is a stage or phase of the construction activity. If the project only proposes establishing a lawn and earth disturbance is required which exceeds 1 acre, then it would require an NPDES permit.

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II. Fees

1. *Why are Pennsylvania municipalities required to pay the permit application fees when they are exempt from application fees for other Department activities?*

The final Chapter 102 regulation requires all applicants to pay the permit application fees.

2. *It is stated that “the Department will review the adequacy of the fees established in this section at least once every 3 years”. What criteria will be used to determine the adequacy?*

The criteria used to determine the adequacy of the fees is simply whether the revenue generated by the fees covers the Department's costs in administering the program. The Department is required to provide the Environmental Quality Board (EQB) with an analysis every three years to demonstrate adequacy of the fees, including what adjustments need to be made to ensure that fees meet all program costs and those programs are self-sustaining. Fees established in the rulemaking were established to cover a majority of the costs of the Department and conservation districts in administering the program. To ensure proper public input and comment, any subsequent adjustment in fees will be required to be evaluated through the regulatory review process. Such an evaluation will be conducted by the EQB in response to a Department-generated report which will include an analysis of the fees and how they relate to the Department's costs of administering the program, with the objective of ensuring fees meet all program costs and programs are self-sustaining. Fee adjustments every three years are not “automatic”. In order to adjust the fees, the Department will need to justify that the fee structure is not adequate to cover program costs.

3. *If an application is incomplete and considered withdrawn, does an applicant have to submit the entire fee again with its resubmission?*

Yes. The application will not be returned to the applicant. Both the administrative filing fee and the disturbed acre fee will need to be resubmitted.

4. *How are fees for phased projects to be handled?*

Phased projects will pay the initial base fee and fee for the disturbance area of the phase being proposed. Disturbed acre fees will need to be paid for additional phases as they are proposed. The initial base fee will not need to be paid with each subsequent phase submittal.

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5. *Is the disturbed acre fee waived if the district waives fees for state, county, or municipal agencies?*

No.

III. Agriculture

1. *What is required if an agricultural operation expands its agricultural plowing and tilling activities or animal heavy use areas by cutting down woodland and removing the trees and stumps?*

No permit is required as agricultural plowing and tilling and animal heavy use areas are exempt from NPDES permit coverage. The implementation and maintenance of erosion and sediment control BMPs are required to minimize the potential for accelerated erosion and sedimentation. If the earth disturbance will exceed 5,000 square feet or more of land, a written erosion and sediment plan is required for the activity. In addition the owner of the agricultural operation must revise their conservation plan to reflect the change in the operation with the additional plowing and tilling fields or animal heavy use areas.

2. *What is required if an agricultural operation is proposing to construct a new farm building?*

The construction of a farm building is not part of an agricultural plowing and tilling activity or an animal heavy use area and would be subject to the same permitting requirement thresholds as other construction activities.

3. *102.4(a)(4)(ii). Does it mean 25% uniform coverage over the entire field, or simply 25% of the field covered, or 100% coverage 25% of the time? Is the cover to be vegetative cover or crop residue cover?*

Cover includes crop residue and vegetation. The percentage of cover means at least 25% cover over the entire field at any given time.

4. *Define the timeframe for which the 25% cover is required. When will 25% cover be measured? Is 25% cover 365 days per year? One could work a field after corn silage to have less than 25% cover, drill a cover crop of rye and in 3-4 weeks have a greater than 25% cover. Please define 25% cover.*

Cover includes vegetation and crop residue. The percentage of cover means at least 25% cover over the entire field at any given time. The use of 25% cover is also found in the

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setbacks and buffer requirements in Chapter 83 regulations (Chapter 83.294(f)(5)). A method of calculating cover is found in NRCS guidance (503.43) for estimating crop residue cover.

5. *In Section 102.4(a)(1), are there specific Ag BMPs? If so, where can they be found?*

The regulations specifically identify several BMPs for animal heavy use areas listed in 102.4(a)(4)(iii), which also references the NRCS Conservation practice standards. In addition, other technical standards and guidance documents for agricultural activities may be used when approved by the Department.

6. *102.4(a)(4)(i) would create an E&S plan requirement that limits soil loss to T. NRCS conservation plans can allow for two times T within their alternative cropping system.*

To meet the requirements of this regulation an E&S plan must meet T over the rotation. An NRCS written plan allowing for two times T over the rotation would not meet the requirements of this regulation.

7. *Is an NPDES permit necessary for clearing & grubbing land for agricultural production?*

No. An E&S Plan or conservation plan meeting the requirements of 102.4(a) is required.

8. *Is an NPDES permit necessary for the establishment of wildlife food plots?*

No, this is considered an agricultural activity.

9. *What types of projects on a farm need an NPDES permit and are those projects subject to PCSM and riparian buffer requirements?*

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Activity	NPDES if 1 acre or greater of disturbance	Have to address post construction stormwater management	Subject to riparian buffer requirements if in HQ/EV waters
Building a house	yes	yes	yes
Building a barn	yes	yes	yes
Building chicken/hog houses	yes	yes	yes
Building manure storage facility	yes	yes	yes
Building silos	yes	yes	yes
Installing swales	no	no	no
Installing terraces	no	no	no
Paving barnyard	no if covered in conservation plan	no, but must have BMPs to address the impervious area	no
Paving animal walkways	no if covered in conservation plan	no, but must have BMPs to address the impervious area	no
Building roofs	no if covered in conservation plan	no, but must have BMPs to address the impervious area	no

IV. Non-agricultural E&S Plans

1. *Section 102.4(b)(5)(iii) The E&S plan is to contain drawings and narrative describing the characteristics of the past earth disturbance activity, including past land uses. This must define how far back in the past this requirement extends.*

The Department's application requires applicants to designate existing land uses for the project site for the preceding five years, and the previous land use for the past 50 years or longer if known.

V. Post Construction Stormwater Management General

1. *102.8(a) requires a PCSM plan for many small repair activities that do not generate post-construction stormwater management issues of any type.*

On minor projects where there is little or no change in the runoff characteristics from the site, the PCSM plan may only be a sentence or two describing the situation.

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2. *102.8(g)(2) If there is a conflicting criteria in the Act 167 plan and Chapter 102, which one controls?*

The expectation is that an approved and current Act 167 plan needs to be at least as stringent as the state regulatory requirements. If a demonstration can be made that the alternative requirements are being met, including the more stringent requirement that protects water quality, no additional requirements would be needed.

3. *Can a non-PCSM delegated conservation district require a PCSM plan be submitted to the Department for review for General NPDES permitted sites?*

Yes. Any conservation district can ask the Regional Office for technical help when reviewing a PCSM plan.

4. *Can a conservation district recommend permit denial based on the lack of an adequate site analysis which has resulted in the project being designed without meeting post-construction stormwater volume, quality or rate control targets (i.e., more earth disturbance or impervious than the site can handle)?*

Yes, a conservation district can deny any permit application that does not meet regulatory requirements and/or would not meet permit conditions.

5. *102.8(h)(2) What year storm does non-discharge relate to? If non-discharge alternatives are utilized, does the PCSM Plan have to include ABACT? (Is there such a thing as an E&S non-discharge alternative?)*

Non-discharge relates to the 2 year/24 hour storm event. If no net change in rate, volume, or water quality from the site can be met simply by implementing non-discharge alternatives, the PCSM plan would not need to include ABACT BMPs. Non-discharge alternatives for PCSM include the following: alternative siting, low impact development, vegetated riparian buffers, infiltration, oil and grease and grit removal, and water reuse. Non-discharge alternatives for E & S control include the following: alternative siting, limiting area of disturbance, limiting extent and duration of disturbance, and vegetated riparian buffers.

6. *PCSM Requirements – (f) Plan Content Item # 7 (102.8(f)(7): Additional guidance will be needed regarding " a schedule of inspections for critical stages of PCSWM BMP Installations." Will all BMP's have a need for inspections or only infiltration facilities?*

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The regulation only specifies that the licensed professional be on site for inspections for critical stages (which include the installation of underground storage facilities, the installation of structurally engineered facilities, and anything else identified as critical by either the Department or the conservation district). However, there is nothing to say that the Department or the conservation district can't identify other parts of the PCSM BMP installation as being critical and require inspections at those stages as well.

7. *Does the meadow condition assumption apply only to those calculations for volume or for rate also?*

The meadow condition assumptions apply only to the calculation for volume.

8. *Upon renewal, what are the PCSM requirements that must be met?*

	Before 11/19/2010	After 11/19/2010
New Permit	All requirements except long-term deeding instrument, riparian buffers, and licensed professional obligations Keep the terms and conditions of the existing permit	All requirements in regulations Have terms and conditions of current permit
	Before 1/1/2013	After 1/1/2013
Renewal	All requirements except long-term deeding instrument, riparian buffers, and licensed professional obligations Keep the terms and conditions of the existing permit	All requirements in regulations Have terms and conditions of current permit

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PCSM Permit Terms and Conditions Crosswalk		
102.8 Requirements	Existing Permit requirements	102 Regulations Eff. 11-19-10
Grandfathering provision for permit renewals	No	Yes
PCSM Plan separate from E&S plan	Yes	Yes
Manage net change in volume for up to and including 2 year/24 hour storm event	Yes	Yes
Manage the net change in peak rate for the 2, 10, 50, and 100 year 24 hour storm events	Yes	Yes
Water quality treatment	Yes	Yes
Evaluate non-discharge alternatives in special protection waters	Yes	Yes

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PCSM Permit Terms and Conditions Crosswalk-Continued		
102.8 Requirements	Existing Permit requirements	102 Regulations Eff. 11-19-10
Licensed professional Oversight of Critical Stages	No	Yes
Final certification by the licensed profession on the NOT	No	Yes
Record Drawings	No	Yes
Permittee and co-permittee responsible for long term PCSM O&M until a different person is identified	Yes	Yes
For any property containing a PCSM BMP, record an instrument with the recorder of deeds to assure disclosure during title search	No	Yes
Person responsible for long term PCSM O&M may transfer responsibility for O&M	No	Yes
Site restoration or reclamation may be used to meet PCSM plan requirements	NO - NPDES Yes - ESCGP-1	Yes
Riparian buffers or riparian forest buffers as part of PCSM Plan (if required)	No	Yes

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VI. Post Construction Stormwater Management – Exceptions and Waivers to Buffering

1. *Additional clarification and discussion is requested regarding the scope of post-construction stormwater management for projects where the project site is restored to pre-construction conditions. This is specifically relevant to the utility industry and certain oil and gas activities (underground pipelines), the site is restored to its original condition. In such a situation, there are no new or specific PCSM BMPs because the post construction site is restored to its condition prior to earth disturbance.*

The requirements of a post construction stormwater management plan are met when the person conducting the earth disturbance activity for pipelines or other utilities restores or reclaims the site back to natural conditions.

2. *Do PennDOT bridge projects need to fully comply with riparian buffer guidelines since many of their projects need to cross and traverse riparian areas?*

Generally, no. There are both exemptions and waiver provisions that apply to PennDOT bridge projects. The exemption allows for road maintenance activities to occur without requiring a riparian buffer so long as the existing riparian buffer is protected to the greatest extent possible. The waiver allows for linear projects such as roadways to occur without requiring a riparian buffer so long as the existing riparian buffer is protected to the greatest extent possible and provided that the Department and conservation district grant the waiver request.

3. *Can an applicant install a Riparian Forest Buffer (RFB) as the sole nondischarge alternative (NDA) on a project site without having to develop, implement and maintain other BMPs required to meet PCSM under 102.8?*

No. Although a RFB provides the antidegradation presumption under 102.14(e)(1), this presumption requires inclusion of E&S plans and PCSM plans to meet the requirements of 102.4(b)(6) and 102.8(h). In addition, applicants must, pursuant to 102.14(c)(1), manage PCSM in accordance with 102.8 "to ensure that stormwater enters the area upgrate and along the riparian buffer as sheet flow or shallow concentrated flow during storm events up to and including the 2 year/24 hour storm." A RFB can be a valuable supplement to the basic PCSM plan compiled under 102.8, but it cannot be installed alone as a NDA that excuses the applicant from preparing and implementing an adequate PCSM Plan pursuant to, *inter alia*, 102.8(f) and (g).

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VII. Post Construction Stormwater Management – Long-Term Operation and Maintenance

1. *Section 102.8(f)(10) This requirement states that a PCSM plan must provide for a long-term O&M schedule that provides for the inspection of the PCSM BMPs. Who is doing the inspection?*

The county conservation district inspects the PCSM BMPs during construction. The applicant or another party identified as the person responsible as part of their PCSM O&M plan, is required to inspect the BMPs to ensure that they are working adequately.

2. *102.8(m)(2) How do we insure that a PCSM O&M instrument has been recorded?*

The Notice of Termination will include a section that will require the applicant to show proof of filing the instrument for PCSM O&M with the recorder of deeds. This may take the form of an attachment to the NOT, a checkbox, a receipt of recording with the recorder of deeds, or some other way. Notations in plan notes are not sufficient.

VIII. Riparian Buffers

1. *Is Section 102.14 applicable only if the earth disturbance activity requires an NPDES permit? If only a Chapter 105 permit is required, does Section 102.14(a)(2) provide the Chapter 105 program with the authority to require forested riparian buffers? If so, please explain under what circumstances. Will PennDOT be required to increase the length of bridges, which are adequately designed hydraulically in order to accommodate a new buffer area? If a project located in an EV watershed abuts a stream for a mile and approximately 0.25 miles of roadway work will involve significant disturbance, would the buffer be applied from one end of the project to the other or only in the vicinity of the earth disturbance?*

The buffer requirement does not carry over into Chapter 105 regulations unless the activity requires a permit (either E&S or NPDES) under Chapter 102.

2. *102.14(a)(1)(i) Does the description here include Exceptional Value wetlands? Example, the site is along a stream which is classified as CWF, but is on the list of trout producing streams. An area of wetlands tributary to that stream would be EV, but the actual watershed would be CWF...).*

There is no buffer requirement for wetlands within this rulemaking.

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3. *102.14(d)(1) If a site abuts a stream, clarify if you have to provide a riparian buffer on “both sides” if your site is not on both sides of the stream. Or, if your site is on both sides of a stream, but you are only proposing earth disturbance on one side, is a buffer required on both sides? Or, what if your site is within the required buffer distance, however, there is another property between your site and the stream?*

Buffers would be required on property controlled by the applicant and would not be required on adjacent property. The definition of project site includes “the entire area of activity, development, lease or sale...” therefore, if the site is on both sides of a stream, an appropriate buffer would be required on both sides of a stream.

4. *The proposed rulemaking requires riparian buffers if earth disturbance activity is within an EV watershed. Must the entire activity fall within the EV watershed to trigger the buffer requirements? What if only a portion is in an EV watershed? Must the entire project, even the non-EV portion then incorporate the buffer requirements?*

The specific portion of the proposed activity that falls within 150 feet of an EV or HQ watershed requires buffer protection.

5. *Will work done to develop or enhance buffer zones require 105 permits?*

Not unless the work would require changes to the course, current, or cross section of the watercourse, floodway, or wetlands.

6. *102.14 - Does anything need to happen with respect to buffers in a special protection watershed that is attaining its uses if the project is at least 150 ft away from waters of the commonwealth?*

Buffers are only required if the project site contains or is within 150 feet of the waterway. If the project is greater than 150 feet away from the special protection water, they do not have to implement the buffers. Applicants still have to comply with all other regulatory requirements, including antidegradation provisions.

7. *Does potential earth disturbance associated with a mandatory buffer factor into the acreage for purposes of determining whether or not a permit is required?*

No. However, once a permit is triggered for a project, the area of the buffer must be included in the area of disturbance calculations, including fee calculations. A separate E&S plan for the buffer is not required as a buffer management plan is included as part of the PCSM plan.

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8. *What about tree planting projects not associated with land development projects but that are greater than one acre (such as a TreeVitalize project or Growing Greener grant)? Is an E&S plan required to be submitted and approved for the project? And if the project area is greater than one acre, does the NPDES permitting requirement apply, including that a PCSM plan be submitted?*

Tree planting projects alone do not trigger NPDES requirements if over one acre as this is considered a silvacultural activity. An E&S plan would not need to be submitted for review.

9. *A site drains to a stream that is CWF but has EV wetlands because of wild trout production. What are the riparian buffer requirements for this project?*

No riparian buffer is necessary because the stream is not special protection and EV wetlands do not trigger the riparian buffer requirements under Chapter 102.

10. *A project is required to put in a stream crossing within a buffer area. The applicant obtains Chapter 105 authorization. Does this authorization fulfill the requirements of an allowable authorization from the Department under 102.14(f)(2)?*

Yes, the authorization fulfills the requirements of 102.14(f)(2) when authorized by the Department.

11. *A farm is proposing a house, barn, manure storage pits, and silos in an HQ watershed. What are the requirements for this site?*

Riparian buffers would need to be installed if the proposed activities/project is within 150 feet of the designated HQ water. A waiver could be requested.

12. *A project is located in a special protection watershed and has earth disturbance of over one acre. How does an applicant define their project site and what obligations do they have regarding riparian buffers?*

Because there is greater than one acre of earth disturbance, an NPDES permit is necessary for the project. The project site can be a portion of the property or the entire property; however, it is determined by the applicant. If the earth disturbance activity involves a common plan of sale or development, the project site should be synonymous with the area of the development or sale. In terms of riparian buffer requirements, the

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riparian buffer requirement varies dependent on the water quality status of the receiving water at the time of application.

- If the receiving water is attaining its designated use at the time of application, then the applicant must provide for a 150 foot riparian buffer for the perennial or intermittent river, stream or creek, or lake, pond, or reservoir that is included within 150 feet of the defined project site boundaries.
- If the receiving water fails to attain one or more designated uses, including where a TMDL is in place, then the applicant must provide for a 150 foot riparian forest buffer for the perennial or intermittent river, stream or creek, or lake, pond or reservoir that is included within 150 feet of the defined project site boundaries.

Waivers from the riparian buffer and riparian forest buffer requirements can be requested on a case-by-case basis using the NOI/application form.

13. If a stream bisects a project site and a riparian forest buffer must be installed, is the installation of the riparian buffer just in the area of earth disturbance or throughout the project site?

Depending on the status of the stream, riparian buffers would need to be protected, and/or riparian forest buffers would need to be protected, converted, or established within 150 feet of the perennial or intermittent river, stream or creek, or lake, pond or reservoir throughout the project site.

14. What is the difference between the waiver for pipelines as in 102.14(d)(2)(ii) and the allowance for pipelines in the buffer as in 102.14(f)(2)?

The waiver is for a project that involves the installation (or enhancement) of a pipeline (usually associated with a major utility company) that has no other practicable alternatives for placement and can demonstrate that there are reasonable alternatives to compliance with the buffer requirements, any existing buffer is undisturbed to the extent practicable, and the activity will otherwise meet the requirements of Chapter 102. The allowance for “utilities” in the buffer is for associated piping (or other structures) that are authorized by other DEP permits (such as 105) which have fully considered avoidance and minimization measures and water quality concerns.

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IX. Municipal coordination

- 1. What types of approvals would a municipality need to withhold approval of until an NPDES permit is issued?*

Municipalities may need to withhold approvals that allow commencement of earth disturbance activities. This would include preliminary subdivision land approvals or building permits. It would not include long-term planning approvals such as zoning approvals or sewage planning modules.

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