

Chapter 102 Road Maintenance Activities

Frequently Asked Questions (FAQ) Revised, April 13, 2023 Version 1.3

Background

A road maintenance activity (RMA) is a specific type of earth disturbance activity that is not subject to the federal National Pollutant Discharge Elimination System (NPDES) permitting requirements. However, RMA is subject to state permitting requirements under 25 Pa. Code § 102.5(b). The purpose of this FAQ document is to clarify the activities that constitute RMA and when a permit is required from the Department of Environmental Protection (DEP) or delegated county conservation districts (CCDs).

The information outlined in this document is intended to supplement existing requirements. Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP and CCDs will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

FAQ #1: What activities are considered RMA?

RMA is defined at 25 Pa. Code § 102.1 as including the following earth disturbance activities within the existing road cross-section or railroad right-of-way: shaping or restabilizing unpaved roads; shoulder grading; slope stabilization; cutting of existing cut slopes; inlet and endwall cleaning; reshaping and cleaning drainage ditches and swales; pipe cleaning; pipe replacement; support activities incidental to resurfacing activities such as minor vertical adjustment to meet grade of resurfaced area; ballast cleaning; laying additional ballast; replacing ballast, ties, and rails; and other similar activities.

The existing road cross-section consists of the original graded area between the existing toes of fill slopes and tops of cut slopes on either side of the road and any associated drainage features.

FAQ #2: Does RMA apply to only roads?

No. RMA applies to roadway cross-sections and railroad rights-of-way, which would include airports, rails-to-trails, parking lot areas, and in general those areas that have a typical pavement cross-section. The creation of new roads, parking lots or other new impervious surfaces for pedestrian or vehicular traffic, including the widening of existing impervious surfaces, would be considered construction subject to NPDES permit requirements if earth disturbance is at least one acre and would not be considered RMA.

FAQ #3: When is a permit required for RMA and what type of permit would cover RMA?

In accordance with 25 Pa. Code § 102.5(b):

“A person proposing a timber harvesting or road maintenance activity involving 25 acres (10 hectares) or more of earth disturbance shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.”

When RMA earth disturbance will be at least 25 acres, an Erosion and Sediment Control (E&S) Permit is required. An E&S Permit is an individual permit that is specifically issued to the permittee.

It is noted that certain types of RMA will result in earth disturbance and some will not. It is only when at least 25 acres of RMA resulting in earth disturbance is proposed is the E&S Permit requirement triggered. For RMA projects that will disturb less than 25 acres, the requirements to implement and maintain E&S best management practices (BMPs) and to develop and implement a written E&S Plan apply per 25 Pa. Code §§ 102.4(b)(1) and (2), respectively.

FAQ #4: How will my project be permitted if I have both RMA and non-RMA activities?

The permitting for projects that have earth disturbance activities that are considered both RMA (not subject to NPDES permit requirements) and non-RMA activities (subject to NPDES permit requirements) will be evaluated according to the regulations that apply to each type of activity. It is necessary for applicants to clearly distinguish between the two types of activities on plan drawings. This can be done by outlining the different areas as “RMA” and “non-RMA” or “NPDES”, or by hatching the areas differently. Disturbed acreage fees under 25 Pa. Code 102.6(b)(1) are not assessed for RMA under 25 acres.

EXAMPLE 4.1 – A large roadway project will involve an earth disturbance of 20 acres associated with full-depth reconstruction to subgrade (which is RMA) (see FAQ #5). The project will also include 0.75 acre of earth disturbance to lower the roadway by 2 feet for clearance under an existing bridge (which is a construction activity subject to NPDES requirements). For this example, the RMA is 20 acres, which is less than the E&S permitting threshold of 25 acres; therefore, an E&S Permit is not required. The earth disturbance that is subject to NPDES requirements is 0.75 acre, which is less than the NPDES permitting threshold of 1 acre; therefore, an NPDES Permit is not required.

EXAMPLE 4.2 - A large roadway project will involve earth disturbance of 34 acres associated with full-depth reconstruction to subgrade, shoulder grading, and reshaping drainage ditches (which are RMA). The project will also include 3 acres of earth disturbance activity for contractor staging areas, off-site support facilities, lane widening, and crossovers used to divert traffic during construction (which are construction activities subject to NPDES requirements). In this example, the RMA is 34 acres, which exceeds the permitting threshold of 25 acres; therefore, an E&S Permit is required. The earth disturbance activities that are subject to NPDES requirements will be 3 acres, which is more than the permitting threshold of 1 acre; therefore, an NPDES Permit is required. Under this scenario, an applicant would apply for both an E&S Permit and an NPDES Permit. Both applications should be completed, but one plan set could be used for both. However, if requested by the applicant, stormwater discharges associated with both RMA and non-RMA activities could be covered under one NPDES Permit.

FAQ #5: What is “full-depth reconstruction” and is it RMA or construction activity subject to NPDES requirements?

Full-depth reconstruction (FDR), also known as full-depth reclamation, is a process of reconstructing roadways utilizing the existing road materials as the base for new pavement. One example of FDR is cracking and seating concrete pavement. In FDR, the existing pavement and supporting materials are pulverized, compacted and stabilized for the new road surface, providing material cost savings. This process may disturb native soils (subgrade) below the road’s subbase to various degrees. Even when the project sponsor does not intend to disturb native soils, disturbance can occur. DEP considers the incidental disturbance associated with FDR to be RMA earth disturbance, subject to the 25-acre threshold for an E&S Permit. Where the project sponsor intends to modify the subgrade, and disturbs the subgrade to a depth of 6 inches or more, DEP considers the earth disturbance to be a construction activity rather than RMA, subject to the 1-acre threshold for an NPDES Permit.

Elevation adjustments associated with FDR are considered RMA unless they change the stormwater runoff characteristics. Potential stormwater runoff velocity increases from the change in slope due to the elevation adjustments to tie into existing grades are generally assumed to be negligible. It is recommended that applicants coordinate with DEP/CCD to ensure there are no concerns related to changes in runoff characteristics. The burden of demonstrating that an activity is RMA is on the applicant.

FAQ #6: Is RMA exempt from Chapter 102 E&S requirements under § 102.4(b)?

No. Regardless of the area of RMA earth disturbance, the operator must implement and maintain E&S BMPs (per § 102.4(b)(1)). Also, a written E&S plan must be developed and implemented if the disturbance will exceed 5,000 square feet (per § 102.4(b)(2)(i)).

FAQ #7: If I have RMA and non-RMA (NPDES) activities for my project, am I required to prepare two separate plan sets (one for RMA and one for the non-RMA activity)?

No, there is no regulatory requirement to have separate plans for separate types of earth disturbance activities. DEP highly recommends that the RMA and non-RMA earth disturbance activities be shown on the same plan set. Both types of earth disturbance activities may be occurring at the same time, be dependent upon one another for the construction sequencing, and may utilize the same BMPs. The plan preparer should appropriately identify each type of earth disturbance on the plans using labels and lines or hatching.

FAQ #8: Is a milling and paving operation considered earth disturbance?

A standard milling and paving operation would not be considered earth disturbance as the milling operation would only extend into the subbase at most. If the operation does not extend into the subgrade it is considered RMA but generally not considered earth disturbance.

FAQ #9: Should runoff characteristics remain the same after RMA?

Stormwater runoff should remain relatively the same as before the RMA was performed. No new impervious surfaces should be installed as part of RMA. Filling of incised or entrenched roadways is allowable, and this allows runoff to be converted from channelized flow, ditches, to sheet flow, in some cases.

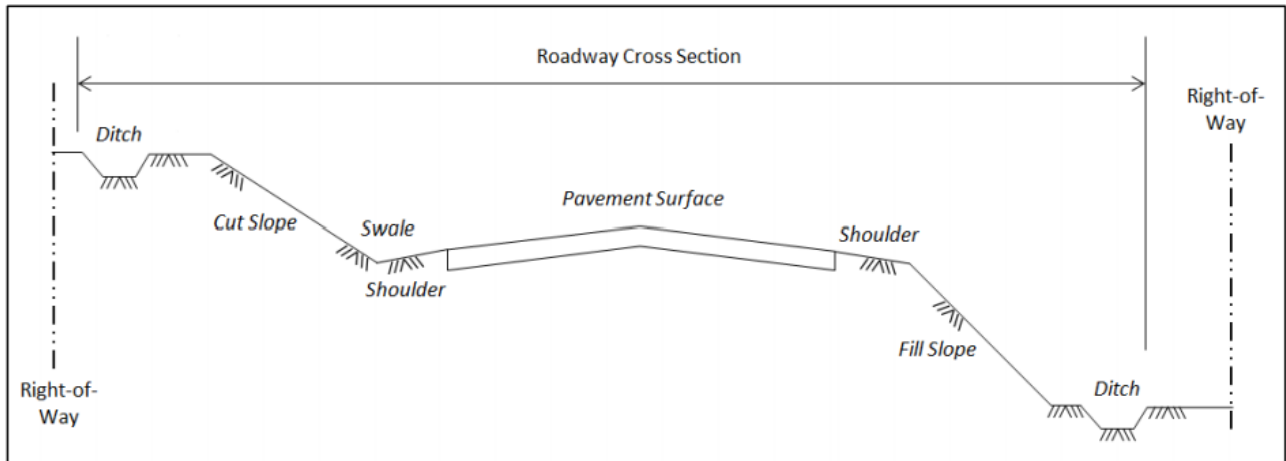
FAQ #10: Is there additional guidance available on RMA?

Yes. The Pennsylvania Department of Transportation (PennDOT) has developed detailed guidance on RMA including examples of earth disturbance and non-earth disturbance in its Publication 584, [PennDOT Drainage Manual](#), specifically Appendix E in Chapter 12. PennDOT's guidance was created as a collaboration between DEP and PennDOT. This information is also referenced in PennDOT Publication 783, [Environmental Permitting Handbook](#).

FAQ #11: Can you provide an example cross-section that is covered by RMA?

Refer to the cross-section illustration in Figure 12.E.1 of PennDOT's Publication 584 (provided below). The existing road cross-section extends from the left of the top of cut ditch to the right of the toe of fill ditch. If neither drainage feature was present, the road cross-section would be the top of cut and toe of fill. Any earth disturbance between the road cross-section and the right-of-way is not a Chapter 102 RMA; therefore, it is included in the calculation of disturbed area for NPDES requirements. Divided highways also represent some challenges when defining RMA. If the median area is mainly a vegetated swale, the median is part of the existing roadway cross-section. A very wide median, which may or may not be wooded, is normally not considered part of the existing roadway cross-section (see Figure 12.E.2 of PennDOT's Publication 584).

Figure 12E.1 Existing Cross-Section – Two Way Highway.

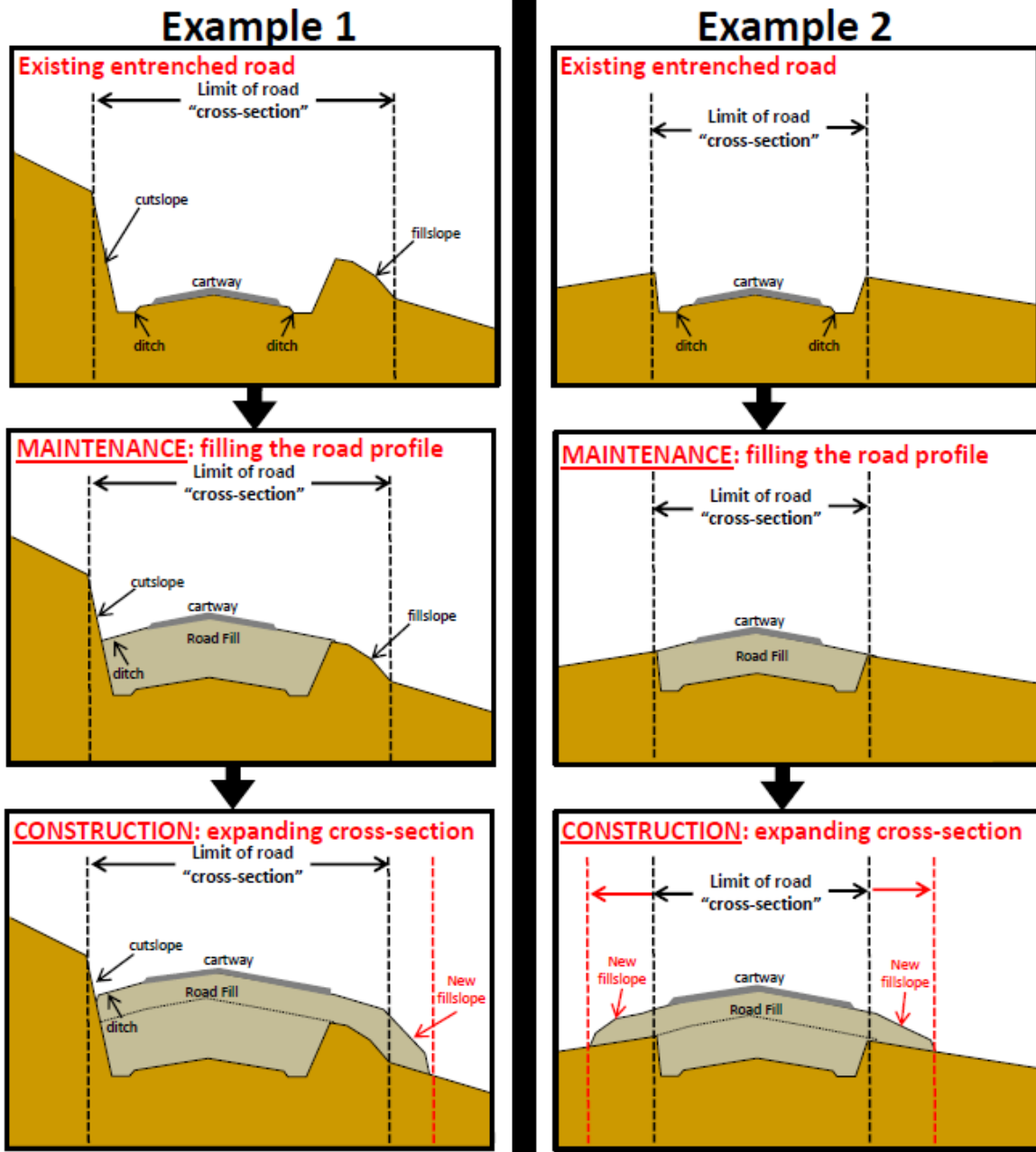


FAQ #12: Is filling of an entrenched roadway considered RMA?

Filling an entrenched roadway is considered RMA when it is done with the purpose of converting channelized flow to sheet flow. The fill must be within the roadway cross-section and the filled portion should be even with the adjacent existing slope. See diagram below.

102 Oil and Gas Clarifications on Road Fill:

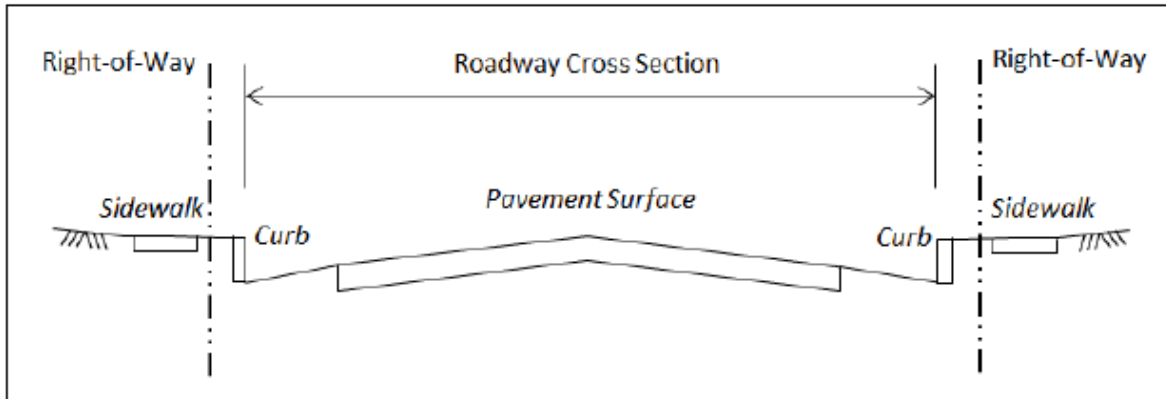
- Filling the road within the existing road cross-section is maintenance. Fill that expands the road cross-section is construction and requires applicable permits.
- Road Cross-section is defined as: "original area between the existing toe of the fillslope and top of the cutslope..."
- Filling the Road is intended to eliminate the downslope ditch in favor of sheet flow, and provide cover for drainage features. It is not intended to expand the road cross-section.



FAQ #13: Is sidewalk installation or replacement RMA?

No. Sidewalks are generally considered to be outside of RMA boundaries (see for example Figure 12E.4 of PennDOT’s Publication 584, below). The installation or replacement of sidewalks are subject to NPDES permit requirements if earth disturbance will be at least one acre. However, only new sidewalk construction would be subject to the assumptions of meadow in good condition contained at §§ 102.8(g)(2)(i) and (ii); the repair or replacement of sidewalks in kind would not be subject to these provisions.

Figure 12E.4 Existing Road Cross Sections - Curbed



FAQ #14: For road work that is not RMA do the requirements at §§ 102.8(g)(2)(i) and (ii) apply for the PCSM analysis?

25 Pa. Code § 102.8(g)(2)(i) requires the stormwater analysis to consider “Existing pre-development non-forested pervious areas as meadow in good condition except for repair, reconstruction or restoration of roadways...” and § 102.8(g)(2)(ii) requires “20% of the existing impervious area to be disturbed as meadow in good condition except for repair, reconstruction or restoration of roadways...” These requirements apply to new roadways, new roadway alignments and peripheral areas to the roadway projects, such as welcome centers.

The requirements at 25 Pa. Code §§ 102.8(g)(2)(i) and (ii) do not apply to roadway “reconstruction” projects. Roadway “reconstruction” is defined by PennDOT’s current [Publication 13M, Design Manual Part 2 \(DM-2\)](#).

Version History

Date	Version	Revision Reason
4/13/2023	1.3	Minor clarifications made to FAQs #4 and #5.
2/2/2023	1.2	Added FAQ #13 and FAQ #14.
10/28/2022	1.1	Added clarification to FAQ #5 that elevation adjustments associated with FDR are considered RMA unless they change the stormwater runoff characteristics.
11/30/2021	1.0	Original