

**Section 102. ___ Permit-by-Rule for Low Impact Projects with Riparian Forest
Buffers**

- (a) Persons proposing or conducting an earth disturbance activity requiring a permit authorization under this Chapter shall qualify for permit coverage under this rule if the person proposing or conducting the earth disturbance meets the requirements of this Section, which supersede any requirements of 25 Pa. Code Chapter 92. An earth disturbance activity that requires a permit authorization under this Chapter that is not consistent with this Section shall obtain coverage under a general or individual NPDES Permit for Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.
- (b) *Permit-by-rule exclusions.* The following sites or the activities associated with the project are not eligible for coverage under the permit-by-rule:
- 1) Projects located in or with the potential to discharge to a watershed with waters that have a designated or existing use of Exceptional Value pursuant to 25 Pa. Code Chapter 93;
 - 2) Earth disturbance activities conducted in or on the following sensitive areas:
 - a. Highly erodible soils in combination with percent slope as follows:
 - i. 3% to 8% slope with soil K value greater than 0.37;
 - ii. 8% to 15% slope with soil K value greater than 0.28; or
 - iii. 15% slope with soil K value greater than 0.18
 - b. Geological formations that present a risk to public, health, safety and the environment including features susceptible to:
 - i. Sinkhole development;
 - ii. Land sliding; or
 - iii. With the unusual or significant potential to cause or contribute to polluttional runoff when disturbed including acid, radioactive, and arsenic bearing formations.
 - c. Wetlands or floodplains, unless earth disturbance in these areas is required for access to the site and is authorized under a Title 25 Chapter 105 Permit.
 - 3) Lands that are contaminated from a spill or release or which pose a risk or threat to human health, safety or the environment, including sites such as: brownfields or other areas contaminated from past land use practices or by a spill or release of a hazardous material, or hazardous, toxic or other regulated substance as these terms are defined in Title 25 of the Pennsylvania Code;
 - 4) The earth disturbance is being proposed or conducted by a person who has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit and schedule of compliance or order issued by DEP; or

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Advisory Committee Meeting February 25, 2009

- 5) The earth disturbance activities or potential discharges will adversely affect a Pennsylvania or federal endangered or threatened species.
- (c) *Permit Conditions.* Persons seeking coverage under this permit shall meet all of the following:
- 1) When the project site contains, is adjacent to or within 100 feet of a natural or man-made river, stream, dammed water, creek, lake, pond, or reservoir, the registrant shall:
 - a. Establish new or preserve existing riparian forest buffers at least 100 feet in width between the top of bank and areas of earth disturbance.
 - b. Establish new or preserve existing riparian forest buffers at least 150 feet in width between the top of bank and disturbed areas for projects located in high quality or impaired watersheds.
 - c. The riparian forest buffer shall be designed and/or maintained in accordance with DEP's Riparian Forest Buffer Guidance (Document #).
 - 2) The earth disturbance shall not exceed twenty-five (25) acres at a time.
 - 3) For new development, the final proposed project increase in impervious surfaces shall be 20% or less from pre-construction conditions.
 - 4) The registrant shall, when applicable, provide a letter from the municipality confirming consistency with:
 - a. DEP approved and current (within five years) county 167 Stormwater Management Act Watershed Plan, and associated stormwater ordinances without variance, or exemptions; or ordinances meeting the requirements of a current (within five years) NPDES Permit for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems; and
 - b. Local erosion and sediment control ordinances.
 - 5) The proposed stormwater discharge volume results in a no net change compared to the pre-construction discharge volume for a 2 year/24 hour storm.
 - 6) The proposed post-construction discharge rate is no greater than the pre-construction discharge rate for the 2, 10, 25, 50, and 100 year storms, for each pre-construction discharge point.
 - 7) Retain the services of a Licensed Professional who shall:
 - a. Prepare and seal E&S and PCSM Plans to be submitted with the Registration of Coverage;

Draft for Discussion at the Water Resources
Advisory Committee Meeting February 25, 2009

- b. Include in the E&S Plan a schedule of inspections to be conducted by the Licensed Professional during critical stages of E&S and PCSM BMP installation;
 - c. Oversee and seal any necessary modifications to E&S and PCSM plans; and
 - d. Prepare and seal record drawings, and provide certification that the E&S and PCSM BMPs were installed consistent with E&S and PCSM plans submitted with the Registration of Coverage.
- 8) Pre-Construction Notification. Upon receipt of the Verification of Coverage, the registrant shall notify the Department or authorized County Conservation District at least seven business days before commencing construction.
- (d) *Qualifying for coverage under the Permit-by-Rule.* - A person shall have coverage under this permit-by-rule when all the requirements of this section have been met. The qualifying registrant shall prepare and submit a complete and accurate Registration of Coverage (ROC), as described in this section. Discharges are not authorized if the ROC is incomplete, inaccurate or if the activity is ineligible for permit coverage.
- (e) *Municipal Notification.* - At least 30 days prior to submission of the ROC, the registrant shall provide written notification to every municipality in which the proposed earth disturbance activity will be located pursuant the Act 14 of 1984, 71 P.S. §510-5, (Administrative Code §1905-A). Proof of this notification shall be submitted with the complete ROC.
- (f) *Develop written E&S Plan, PCSM Plan and PPC Plan.* The registrant shall develop and submit with the ROC an E&S Plan PCSM Plan, and PPC Plan in accordance with the requirements of Section 102.____, and the following:
- 1) The Erosion and sediment control BMPs required by this section shall be designed and implemented to meet the standards and specifications identified in the Department's *Erosion and Sediment Pollution Control Manual*, No. 363-2134-008, as amended and updated.
 - 2) PCSM BMPs shall be designed and implemented to meet the standards and specifications identified in the *Pennsylvania Stormwater Best Management Practices Manual*, No. 363-0300-002, as amended and updated.
 - 3) Unless otherwise provided in (HQ and Impaired) Section ____ below, both the E&S Plan and the PCSM Plan shall include the minimum 100' riparian forest buffer specifications in accordance with DEP's Riparian Forest Buffer Guidance (Document #XX) and in accordance with this permit-by-rule.
 - 4) Both the E&S Plan and PCSM Plan shall minimize the accelerated erosion and sedimentation to the maximum extent practicable and shall eliminate the net

- change in post construction stormwater runoff as compared to the amount of preconstruction stormwater runoff. This shall be accomplished first through the use of site design and nonstructural BMP approaches, and if necessary structural filtration, infiltration, and runoff control BMPs in accordance with *Erosion and Sediment Pollution Control Manual*, No. 363-2134-008, and *Stormwater Best Management Practices Manual*, No. 363-0300-002, as amended and updated.
- 5) Both the E&S Plan and PCSM plan shall be developed and sealed by a licensed professional engineer or geologist.
 - 6) Develop a PPC Plan in accordance with DEP Guidance (document #400-2200-001)
 - 7) The registrant or co-registrant shall have the E&S Plan, PPC Plan, PCSM Plan, and other documents required by this permit-by-rule available at the site for review by the Department, Conservation District or other authorized local, state, or federal government official.
- (g) *E&S Plan for the permit-by-rule.* The E&S plan submitted under this Section shall meet the requirements of Section 102.__, and shall also include the following categories of E&S BMPs, to be installed and maintained. The installation of practices shall be conducted in the following sequence:
- 1) *Site Preparation, Sensitive Area and Buffer Protection* - Prior to commencement of any earth disturbance activity including clearing and grubbing, the registrant shall clearly delineate sensitive areas, riparian forest buffer boundaries, areas proposed for infiltration practices, the limits of clearing, and trees that are to be conserved within the project site, and shall install appropriate barriers where equipment may not be parked, staged, operated or located for any purpose.
 - 2) *Site access* – This is the first land-disturbance activity to take place at the site and should provide BMPs to minimize accelerated erosion and sedimentation from the following areas: entrance to the site, construction routes, and areas designated for equipment or other use at the site including parking, stockpiles,.
 - 3) *Sediment Barriers* – Install perimeter BMPs after the construction site is accessed, keeping associated clearing and grubbing limited to only that amount required for installing perimeter BMPs.
 - 4) *Upslope Diversion Channels* – including outlet protection are constructed to divert upslope clean water runoff around the disturbed area (when necessary).
 - 5) *Sediment Basins and Traps* – including outlet protection shall be constructed prior to the remaining clearing /grubbing and other earth disturbance activities.
 - 6) *Sediment Laden Water Channels or other Conveyance*– used to divert stormwater runoff water to the appropriate BMPs such as traps and ponds should be installed prior to the remaining clearing/grubbing and other earth disturbance activities.

Draft for Discussion at the Water Resources
Advisory Committee Meeting February 25, 2009

- 7) *Land Clearing and Grading* – Implement clearing and grading only after all downslope E&S BMPs have been constructed and stabilized.
 - 8) *Surface Stabilization* – Apply temporary or permanent stabilization measures immediately to any disturbed areas where work has reached final grade, has been delayed or otherwise temporarily suspended.
 - 9) *Construction of Buildings, Utilities, and Paving* – During construction, install and maintain any additional erosion and sedimentation BMPs that may be required and implement structural post construction stormwater BMPs.
 - 10) *Landscaping and Final Stabilization, Topsoiling, Trees and Shrubs*, After construction is completed install stabilization BMPs including: permanent seeding, mulching, sodding and riprap, and complete implementation of post construction stormwater BMPs in this last construction phase. Stabilize all open areas, including borrow and spoil areas, and remove all temporary BMPs and stabilize any disturbances associated with the removal of the BMP.
- (h) *PCSM Plan for the permit-by-rule*. The PCSM plan submitted under this Section shall meet the requirements of Section 102.____, and shall also include the following categories of BMPs to be installed and maintained to the maximum extent practicable:
- 1) *Non-Structural BMPs* which promote the treatment, infiltration, evaporation, and transpiration of stormwater runoff shall be used.
 - 2) *Low Impact, Conservation, and Green Infrastructure Designs* shall be used to minimize the generation of runoff by preserving open space, preserving natural areas, reducing the amount of impervious surface, and other green infrastructure design principles that utilize or mimic infiltration or evapotranspiration.
 - 3) *Infiltration practices* shall include either engineered structures or landscape features designed to capture and infiltrate runoff that mimic pre-construction conditions.
 - 4) *Runoff practices* shall be design and constructed to convey runoff, increase evaporation, and manage rate. Such practices are to also promote infiltration, filtration, and biological uptake of pollutants.
 - 5) *Filtration practices* shall be used to treat runoff through filter media that are designed to capture pollutants through the processes of physical filtration of solids or cation exchange of dissolved pollutants.
- (i) *Submit the ROC*. - Registrants who wish to be covered by this permit-by-rule, shall submit an administratively complete ROC to the Department or authorized Conservation District. The ROC shall include:
- 1) An ROC Checklist.
 - 2) E&S Plan.

Draft for Discussion at the Water Resources
Advisory Committee Meeting February 25, 2009

- 3) PCSM Plan.
 - 4) Proof of Municipal Notice.
 - 5) Proof of Consistency with Act 167 or MS4 stormwater ordinances and local erosion and sediment control ordinances. Proof of this consistency in a letter from the municipal engineer shall be submitted with the complete ROC.
 - 6) Provide proof of consultation with the Pennsylvania Natural Diversity Inventory (PNDI) regarding the presence of a State or Federal threatened or endangered species on the project site.
 - 7) All Applicable Fees
- (j) *Eligibility Verification.* Upon submission of the ROC, DEP or the authorized conservation district will review the ROC for consistency with the eligibility criteria, standards, conditions and other requirements of this section, and make a determination of eligibility for coverage within fifteen days. Upon determination of eligibility the DEP or the authorized conservation district will provide written verification of coverage for a period of five years. The registrant may apply for other permit coverage as referenced in this Section, if coverage under this permit-by-rule is denied.
- (k) *Bulletin Notice.* The Department will provide notice in the Pennsylvania Bulletin of every approval of coverage under this permit-by-rule.
- (l) *Requiring Coverage Under an Individual Permit or General Permit.*
- 1) The Department may deny coverage under this permit-by-rule, or may amend, revoke, suspend or terminate previously issued coverage under this permit-by-rule, and require the registrant to apply for and obtain either a general or an individual NPDES permit for any of the reasons set forth in 25 Pa. Code Section 92.83(b) or this section. An interested person may petition the Department to take action under this subsection. If a permittee is notified by the Department that previously authorized coverage under this permit is revoked, terminated, or suspended and that a general or individual NPDES permit is required, the registrant shall submit a complete NPDES NOI or application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid general or individual NPDES permit. Failure to submit the NOI or application within 90 days shall result in automatic termination of coverage under the permit-by-rule. Timely submission of a complete NOI or application shall result in continuation of coverage under the permit-by-rule, until the Department takes final action on the pending NOI or permit application.
 - 2) (b) An action of DEP or the authorized conservation district denying coverage under this permit-by-rule, or requiring a general or an individual NPDES permit, is not a final action of DEP until the registrant submits and DEP takes final action on an NOI or permit application.

Draft for Discussion at the Water Resources
Advisory Committee Meeting February 25, 2009

(m) *Renewal of coverage.* Persons requesting a renewal of coverage under this permit-by-rule shall submit to the Department or authorized Conservation District an administratively complete and acceptable ROC, at least 30 days prior to the expiration date of the coverage,. In the event that a timely, administratively complete, and acceptable application for renewal of coverage has been submitted and the Department or authorized Conservation District is unable, through no fault of the permittee, to reissue the approval for coverage before the expiration date of the approved coverage, the terms and conditions of the approved coverage will be automatically continued and will remain fully effective and enforceable pending the issuance or denial of the renewal of coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit-by-rule.

(n) *Program Audit.*

- 1) The Department shall audit the permit-by-rule to verify the effectiveness and the level of environmental protection that the permit provides. The audit shall include:
 - a. Evaluation of whether the objectives of riparian forest buffers, conservation design, and permittee compliance are being met;
 - b. Whether the licensed professional plan certification are accurate and effective;
 - c. The adequacy of permittee plan development, and BMP implementation and maintenance; and
 - d. The effectiveness of achieving the desired environmental results.
- 2) This audit process shall not only report non-compliance and corrective actions, but also highlight areas of good practices and favorable results. Such information will be used to develop policy or amend regulations for enhanced and continual improvement.

(o) *Projects Located in High Quality Watersheds or Watersheds Impaired for Sediment or Stormwater..*

- 1) Permit-by-rule registrants proposing projects that are located in watersheds that have a designated or existing use of high quality or non-special protection watersheds impaired for sediment or stormwater must demonstrate that all construction and post construction discharges will not degrade the physical, chemical or biological characteristics of the surface waters. Registrants shall utilize “non-discharge” BMPs in their E&S and PCSM Plans that demonstrate:
 - a. There will not be a net increase in accelerated erosion and sedimentation from the construction runoff;

Draft for Discussion at the Water Resources
Advisory Committee Meeting February 25, 2009

- b. The post construction runoff volume equals pre-construction runoff volume for the 2 year/24 hour storm; and
 - c. The rate of post-construction stormwater equals pre-construction runoff rate for the 2, 5, 10, 25, 50 and 100 year storm events
- 2) Public Notice.
- a. The registrant shall provide public notice in at least one newspaper of general circulation within the geographical area of the project a Registration of Coverage to file an ROC.
 - b. The contents of every public notice will include at least the following:
 - i. The name, address, phone number of Department or conservation district .
 - ii. The name and address of the registrant.
 - iii. A brief description of each registrant's activities which result in the discharge proposed for the permit-by-rule.
 - iv. The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether the discharge is a new or an existing discharge.
 - v. The location of the nearest downstream potable water supply, or a finding that no potable water supply will be affected by the proposed discharge.
 - vi. The means by which interested persons may comment upon the proposed project.
 - vii. Contact information including the name, address and phone number where interested persons may obtain further information regarding the project.
 - viii. The existing or designated use of the receiving surface water under pursuant to Chapter 93.
 - c. Proof that public notice has been published in a newspaper of general circulation covering the locality or localities in which the activity is or will be located. The proof of public notice, along with any comments and responses, shall be submitted with the ROC.