



**pennsylvania**

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waterways Engineering and Wetlands

# **Grandfathering and NPDES stormwater construction permit renewals**

November 28, 2012

# ▶ Authority for grandfathering

- 102.8(a) PCSM applicability

A person conducting earth disturbance activities under a permit issued before November 19, 2010, and renewed prior to January 1, 2013, shall implement, operate and maintain the PCSM requirements in accordance with the terms and conditions of the existing permit.

# ➤ What does grandfathering mean?

- **Receive the terms and conditions of the original permit**
- **Items grandfathered**
  - **Riparian buffers**
  - **Long-term obligations**
  - **Licensed professional signoffs**

## ▶ What does it assume?

- **Application materials provided were compliant with all the necessary demonstrations in effect at the time of issuance**
- **Since 2003, both the NOI/application and the permit have addressed rate, volume and water quality**

## ▶ What does grandfathering not mean?

- **Does not exempt permittees from meeting water quality standards through managing rate, volume, water quality and antidegradation requirements in place since 2003**

# ▶ Threshold regulatory requirements

- Must meet antidegradation performance requirements for no net change in the rate, volume, and water quality of stormwater runoff from the permitted site.
- Necessary to assure that applicants have met water quality standards and will not cause or contribute to downstream impairment

# Consistency with water quality standards

- **Demonstrated by meeting the requirements of no net change in stormwater rate, volume and water quality constituents when comparing pre- to post-construction conditions**
- **Meeting no net change in these constituents of the discharge ensures that water quality standards will be met and that there will not be a negative impact on the receiving water from the discharge**
- **Meeting applicable effluent limitations is demonstrated by implementing appropriate BMPs**

## ➤ Technical provisions in place since 2003

- **Permits, application/NOI, stormwater policy**
- **Codified the performance standard in place since pre-2010 in the 2010 regulation update**



# Compliance with Federal requirements

- **40 CFR 122.44(l)(2)(i)(B)(2) relating to reissued permits**
- **In no event may a permit that was issued with less stringent effluent limitations be renewed if the implementation of such limitation would result in a violation of water quality standards applicable to such waters**

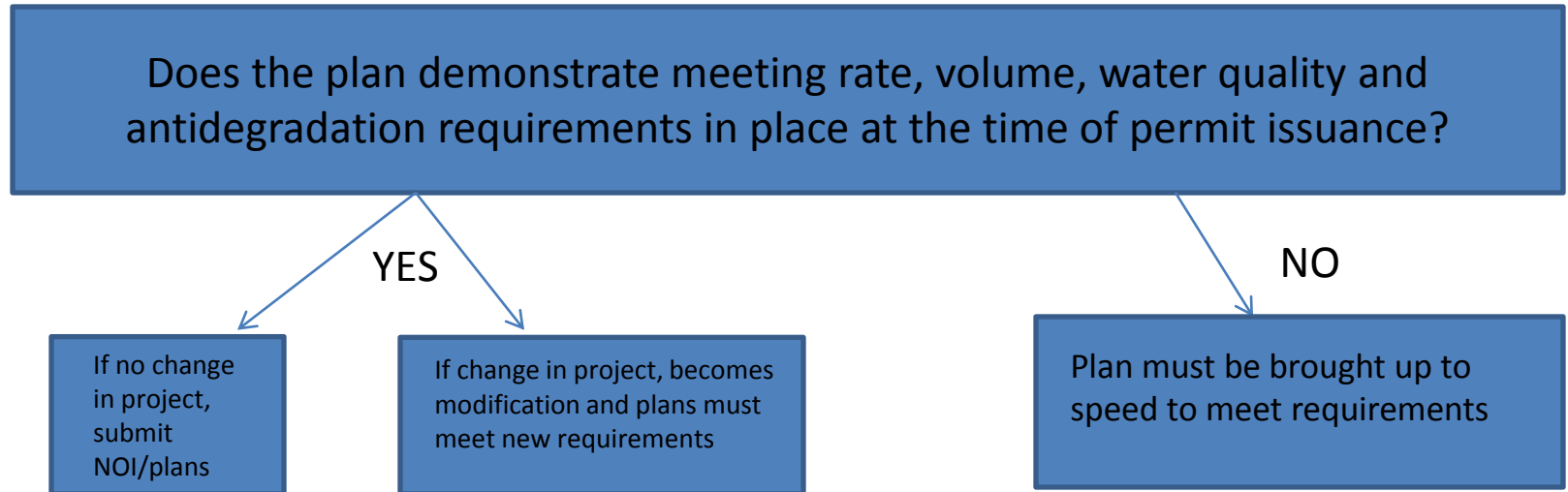
# Items that will always be grandfathered

- **Anything contained in 102.8(k-m) and 102.14**
- **New sections of the regulation NOT in practice previous to November 19, 2010**

## Process when application involves grandfathering

- **Contact conservation district and regional office early**
- **Pre-application meeting very strongly recommended to identify issues and begin formulating a plan of action**

# Flowchart for determining project pathway





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