

# UPDATE

## Overview of Revisions to Title 25 Pa. Code Chapter 102 Erosion and Sediment Control and Stormwater Management



**By: Article Provided Courtesy of the PA DEP**

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

The major purposes of the current Chapter 102 revisions are to: update agricultural planning and implementation requirements, update E&S control requirements, incorporate the federal Clean Water Act “Phase II” National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with construction activities, update and amend the permit fee requirements, codify Post Construction Stormwater Management (PCSM) requirements, including long-term operation and maintenance requirements of PCSM BMPs, include specific anti-degradation implementation provisions to satisfy requirements under 25 Pa. Code Chapter 93; and establish riparian buffer and riparian forest buffer provisions.

In response to comments, the input from advisories committees and Independent regulatory Review Commission (IRRC), the final-form rulemaking includes revisions to: definitions; agriculture plowing and tilling and animal heavy use areas; erosion and sediment control planning requirements; permit application requirements and permit fees; post construction stormwater management including long-term operation and maintenance; anti-degradation implementation; general requirements; and riparian buffer requirements.

### **Summary of Amendments:**

***Enhanced requirements related to agriculture*** - The scope of the agricultural section (§102.4 (a)) was expanded beyond “agricultural plowing and tilling” to also include “animal heavy use areas”. The inclusion of animal heavy use areas will require that these activities be incorporated into the development and implementation of an Erosion and Sediment Control Plan that minimizes accelerated erosion and sedimentation on the farm.

***Clarification of planning requirements for accelerated erosion and sediment control*** - Revisions were made to existing language to clarify: definitions; E&S plan requirements; requirements for the person preparing the plan; Chapter 93 anti-degradation implementation requirements for earth disturbance activities that require a permit under this regulation; permitting requirements and procedures; and site stabilization requirements for both permanent and temporary stabilization.

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***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. 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 rulemaking. The Phase II regulations require any person proposing a construction activity that will result in earth disturbances of one acre or more must have permit coverage.

***Update permit fees*** - In the final rule the department revised the fee structure to provide for a base administrative filing fee (\$500 for General Permits and \$1,500 for individual permits) and a tiered fee based on the number of acres disturbed (\$100/disturbed acre). This revision also specifies the appropriate restricted revenue accounts where the fees will be deposited for each program administering Chapter 102. In addition, the department will review the adequacy of the fees once every three years and provide a report to the EQB. Permit fees will be divided between the County Conservation Districts and DEP.

***Codify PCSM Requirements*** - Permanent changes to the surface of the land resulting from earth disturbance activities 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 includes specific PCSM requirements, as a codification of the existing practice 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, and streambed and stream bank 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.

The final rule provides an exemption to stormwater analysis regarding predevelopment non-forested areas for repair and reconstruction of roadways or rail lines and utility infrastructure when the site will be returned to existing conditions. It also includes a provision to allow the applicant to demonstrate that due to public health, safety or environmental limitations they can not meet the 20 percent requirement for existing impervious area to be considered meadow in good condition or better. PCSM long-term operation and maintenance requirements have been consolidated in 102.8(m).

***Addition of requirements related to riparian forest buffers*** - Section 102.14 Riparian buffers, has been revised based on public input received during the public comment period. Persons proposing earth disturbance activities that require a permit shall not conduct earth disturbance within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond, or reservoir, and must protect any existing riparian buffer where the project site is located in exceptional or high value waters which are attaining its designated use. If the project site is

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located in Exceptional Value (EV) or High Quality (HQ) waters failing to attain one or more of its designated uses the person proposing the earth disturbance must not disturb any earth within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond, or reservoir, and protect an existing riparian forest buffer, convert an existing riparian buffer to a forest riparian buffer, or establish a new riparian forest buffer. The final rule clarifies riparian forest buffer criteria for establishment, management requirements, and exceptions to riparian buffer requirements for certain activities. The final rule also provides for an anti-degradation presumption and for the trading or offsetting of credits for riparian buffers. Voluntary riparian forest buffers may also be established to qualify for anti-degradation presumption and trading or credits. The final rule also identifies what activities are prohibited, allowable by department authorization and allowed in the riparian buffers.

### **Publication, Effective Date and Next Steps:**

The proposed regulations were published in the *Pa. Bulletin* on August 29, 2009 for a 90 day public comment period. The Environmental Quality Board (EQB) held three public hearings across the commonwealth. In addition to the testimony received at these hearings, the EQB received comments from 1135 individuals, agencies, legislators, organizations, and conservation districts. The EQB approved the regulations as final rulemaking on May 17, 2010 and IRRC approved the final regulations on June 17, 2010. The regulation was also reviewed by the House and Senate committees and no actions were taken. This allows the regulation to move on to the Office of Attorney General for legal review. Upon completion of the review by the Attorney General's Office, the regulation will be prepared for publication in the *Pennsylvania Bulletin* as a final regulation in August or September. The regulation will take effect ninety (90) days after publication in the *Pennsylvania Bulletin* as a final regulation.

In the coming months, DEP will be preparing guidance documents and updating forms to reflect the amended requirements of Chapter 102. DEP will also be developing a training program for DEP Regional staff, Conservation District staff and the regulated community on implementing the E&S Program and NPDES Program under the revised Chapter 102. DEP will make this training available in the Fall/Winter of 2010.