

# CHAPTER 102. EROSION AND SEDIMENT CONTROL

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## Authority

The provisions of this Chapter 102 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402), unless otherwise noted.

## Source

The provisions of this Chapter 102 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796, unless otherwise noted.

## Notes of Decisions

### *Scope of Regulations*

The Department of Environmental Resources regulations contained in 25 Pa. Code Chapter 102 (relating to erosion control) provide protection against secondary polluting effects should they become imminent. *Delaware County Community College v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

## Cross References

This chapter cited in 7 Pa. Code § 130e.11 (relating to determination of competence); 7 Pa. Code § 130e.31 (relating to determination of competence); 7 Pa. Code § 130e.41 (relating to determination of competence); 25 Pa. Code § 71.21 (relating to content of official plans); 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.109 (relating to noncoal exploration activities); 25 Pa. Code § 77.111 (relating to permit waiver—solid waste sites); 25 Pa. Code § 77.458 (relating to erosion and sedimentation control plan); 25 Pa. Code § 77.525 (relating to sediment control measures); 25 Pa. Code § 77.527 (relating to sedimentation controls); 25 Pa. Code § 78.18 (relating to disposal and enhanced recovery well permits); 25 Pa. Code § 78.53 (relating to erosion and sedimentation control); 25 Pa. Code § 78.60 (relating to discharge requirements); 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 85.37 (relating to contents of ordinance and regulations submitted by municipality); 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects); 25 Pa. Code § 87.70 (relating to erosion and sedimentation control plan); 25 Pa. Code § 87.102 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 87.106 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 87.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.50 (relating to erosion and sedimentation control plan); 25 Pa. Code § 88.92 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.96 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.98 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.187 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.191 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.194 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.292 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.296 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.298 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 89.11 (relating to general requirements); 25 Pa. Code § 89.21 (relating to erosion and sedimentation control); 25 Pa. Code § 89.52 (relating to water quality standards, effluent limitations and best management practices); 25 Pa. Code § 89.56 (relating to stream channel diversions); 25 Pa. Code § 90.37 (relating to erosion and sedimentation control); 25 Pa. Code § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best

management practices); 25 Pa. Code § 90.106 (relating to hydrologic balance: erosion and sedimentation control); 25 Pa. Code § 90.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 92a.2 (relating to definitions); 25 Pa. Code § 92a.11 (relating to other chapters applicable); 25 Pa. Code § 92a.12 (relating to treatment requirements); 25 Pa. Code § 92a.26 (relating to application fees); 25 Pa. Code § 92a.29 (relating to CAFO); 25 Pa. Code § 92a.32 (relating to stormwater discharges); 25 Pa. Code § 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed); 25 Pa. Code § 105.12 (relating to waiver of permit requirements); 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.46 (relating to implementation of erosion and sedimentation control plans); 25 Pa. Code § 106.12 (relating to permit applications—information and fees); 25 Pa. Code § 109.503 (relating to public water system construction permits); 25 Pa. Code § 109.1005 (relating to permit requirements); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.309 (relating to MSCs for surface water); 25 Pa. Code § 250.406 (relating to relationship to surface waterquality requirements); 25 Pa. Code § 273.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 273.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 273.243 (relating to sedimentation ponds); 25 Pa. Code § 275.205 (relating to erosion control); 25 Pa. Code § 277.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 277.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 277.243 (relating to sedimentation ponds); 25 Pa. Code § 279.105 (relating to soil plan); 25 Pa. Code § 279.213 (relating to access roads); 25 Pa. Code § 279.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.132 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 281.212 (relating to access roads); 25 Pa. Code § 281.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.253 (relating to sedimentation ponds); 25 Pa. Code § 283.106 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 283.213 (relating to access roads); 25 Pa. Code § 283.218 (relating to air resources protection); 25 Pa. Code § 283.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 288.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 288.235 (relating to noncontiguous borrow areas); 25 Pa. Code § 288.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 288.243 (relating to sedimentation ponds); 25 Pa. Code § 289.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 289.243 (relating to noncontiguous borrow areas); 25 Pa. Code § 289.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 289.253 (relating to sedimentation ponds); 25 Pa. Code § 290.408 (relating to storage impoundment—scope); 25 Pa. Code § 291.106 (relating to surface water information); 25 Pa. Code § 291.205 (relating to erosion control); 25 Pa. Code § 293.105 (relating to soil plan); 25 Pa. Code § 293.213 (relating to access roads); 25 Pa. Code § 293.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.132 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 295.212 (relating to access roads); 25 Pa. Code § 295.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.253 (relating to sedimentation ponds); 25 Pa. Code § 297.106 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 297.213 (relating to access roads); 25 Pa. Code § 297.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 299.141 (relating to scope); and 25 Pa. Code § 299.153 (relating to storage and containment of coal ash).

# GENERAL PROVISIONS

## § 102.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*ABACT—Antidegradation best available combination of technologies—* Environmentally sound and cost effective treatment, land disposal, pollution prevention and stormwater reuse BMPs that individually or collectively manage the difference in the net change in stormwater volume, rate, and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities to maintain and protect the existing quality of the receiving surface waters of this Commonwealth.

*Accelerated erosion—*The removal of the surface of the land through the combined action of human activities and the natural processes, at a rate greater than would occur because of the natural process alone.

*Act 167—*The Storm Water Management Act (32 P. S. §§ 680.1—680.17)

*Agricultural operation—*The management and use of farming resources for production of crops, livestock, or poultry, or for equine activity.

*Agricultural plowing or tilling activity—*

(i) Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops.

(ii) The term includes no-till cropping methods, the practice of planting crops with minimal mechanical tillage.

*Along—*Touching or contiguous; to be in contact with; to abut upon.

*Animal heavy use area—*

(i) Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where due to the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.

(ii) The term does not include entrances, pathways and walkways between areas where animals are housed or kept in concentration.

*BMPs—Best management practices—*Activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater

to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during, and after earth disturbance activities.

*Channel*—A natural or manmade water conveyance.

*Conservation district*—A conservation district, as defined in section 3(c) of the Conservation District Law (3 P. S. § 851(c)), which has the authority under a delegation agreement executed with the Department to administer and enforce all or a portion of the erosion, sediment, and stormwater management program in this Commonwealth.

*Conservation plan*—A plan that identifies conservation practices and includes site specific BMPs for agricultural plowing or tilling activities and animal heavy use areas.

*Disturbed area*—Unstabilized land area where an earth disturbance activity is occurring or has occurred.

*Earth disturbance activity*—A construction or other human activity which disturbs the surface of the land, including land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

*Erosion*—The natural process by which the surface of the land is worn away by water, wind or chemical action.

*E&S Permit—Erosion and Sediment Control Permit*—A permit required for earth disturbance activities where the earth disturbance is associated with timber harvesting, road maintenance activities, or oil and gas activities.

*E&S Plan—Erosion and Sediment Control Plan*—A site-specific plan consisting of both drawings and a narrative that identifies BMPs to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities.

*Intermittent stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

*Licensed professional*—Professional engineers, landscape architects, geologists and land surveyors licensed to practice in this Commonwealth.

*Long-term operation and maintenance*—The routine inspection, maintenance, repair or replacement of a BMP to ensure proper function for the duration of time that the BMP is needed.

*Municipality*—A county, city, borough, town, township, school district, institution or authority or another public body created by or pursuant to State law. For purposes of this definition, town includes an incorporated town.

*NOI—Notice of Intent*—A request, on a form provided by the Department, for coverage under a General NPDES Permit for Stormwater Discharges Associated With Construction Activities or an E&S Permit.

*NPDES—National Pollutant Discharge Elimination System*—The National system for the issuance of permits under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342) including a state or interstate program which has been approved in whole or in part by the EPA, including the regulations codified in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), and as specified in this chapter.

*NPDES Permit for Stormwater Discharges Associated With Construction Activities*—A permit required for the discharge or potential discharge of stormwater into waters of this Commonwealth from construction activities, including clearing and grubbing, grading and excavation activities involving 1 acre (0.4 hectare) or more of earth disturbance activity or an earth disturbance activity on any portion, part, or during any stage of, a larger common plan of development or sale that involves 1 acre (0.4 hectare) or more of earth disturbance activity over the life of the project.

*Nondischarge alternative*—Environmentally sound and cost-effective BMPs that individually or collectively eliminate the net change in stormwater volume, rate and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities to maintain and protect the existing quality of the receiving surface waters of this Commonwealth.

*Normal pool elevation*—

(i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.

(ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control, or dam crest which maintains the body of water at a specified height.

(iii) The term does not apply to wetlands.

*Notice of termination*—A request, on a form provided by the Department, to terminate coverage under a General or Individual NPDES Permit for Stormwater Discharges Associated With Construction Activities or other permits under this chapter.

*Oil and gas activities*—Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

*Operator*—A person who has one or more of the following:

(i) Oversight responsibility of earth disturbance activity on a project site or a portion thereof who has the ability to make modifications to the E&S Plan, PCSM Plan or site specifications.

(ii) Day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the E&S Plan or PCSM Plan.

*PCSM*—Post construction stormwater management.

*PCSM plan*—A site-specific plan consisting of both drawings and a narrative that identifies BMPs to manage changes in stormwater runoff volume, rate and water quality after earth disturbance activities have ended and the project site is permanently stabilized.

*PPC plan—Preparedness, Prevention and Contingency Plan*—A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, and that is developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of this Commonwealth.

*Perennial stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macro-invertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

*Perimeter BMPs*—BMPs placed or constructed along the perimeter of an earth disturbance area to prevent runoff from entering the disturbed area, or to capture and treat sediment runoff prior to leaving a disturbed area.

*Permanent stabilization*—Long-term protection of soil and water resources from accelerated erosion.

*Person*—Any operator, individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; Department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity.

*Pollutant*—Any contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water which causes or has the potential to cause pollution as defined in section 1 of The Clean Streams Law (35 P. S. § 691.1).

*Post construction stormwater*—Stormwater associated with a project site after the earth disturbance activity has been completed and the project site is permanently stabilized.

*Project site*—The entire area of activity, development, lease or sale including:

- (i) The area of an earth disturbance activity.
- (ii) The area planned for an earth disturbance activity.
- (iii) Other areas which are not subject to an earth disturbance activity.

*Riparian buffer*—A BMP that is an area of permanent vegetation along surface waters.

*Riparian forest buffer*—A type of riparian buffer that consists of permanent vegetation that

is predominantly native trees, shrubs and forbs along surface waters that is maintained in a natural state or sustainably managed to protect and enhance water quality, stabilize stream channels and banks, and separate land use activities from surface waters.

*Road maintenance activities—*

(i) Earth disturbance activities within the existing road cross-section or railroad right-of-way including the following:

- (A) Shaping or restabilizing unpaved roads.
- (B) Shoulder grading.
- (C) Slope stabilization.
- (D) Cutting of existing cut slopes.
- (E) Inlet and endwall cleaning.
- (F) Reshaping and cleaning drainage ditches and swales.
- (G) Pipe cleaning.
- (H) Pipe replacement.
- (I) Support activities incidental to resurfacing activities such as minor vertical adjustment to meet grade of resurfaced area.
- (J) Ballast cleaning.
- (K) Laying additional ballast.
- (L) Replacing ballast, ties and rails.
- (M) Other similar activities.

(ii) 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.

*Sediment*—Soils or other erodible materials transported by stormwater as a product of erosion.

*Sedimentation*—The action or process of forming or depositing sediment in waters of this Commonwealth.

*Soil loss tolerance (T)*—The maximum amount of soil loss, in tons/acre/year, that a given soil type can tolerate and still permit a high level of crop production to be sustained economically and indefinitely. T values for various soil types may be obtained from the *Pennsylvania Soil and Water Conservation Technical Guide*, USDA NRCS, 1991 (as amended and updated).



*Stabilization*—The proper placing, grading, constructing, reinforcing, lining, and covering of soil, rock or earth to ensure their resistance to erosion, sliding or other movement.

*Stormwater*—Runoff from precipitation, snowmelt, surface runoff and drainage.

*Surface waters*—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds, and constructed wetlands used as part of a wastewater treatment process.

*Timber harvesting activities*—Earth disturbance activities including the construction of skid trails, logging roads, landing areas and other similar logging or silvicultural practices.

*Top of streambank*—First substantial break in slope between the edge of the bed of the stream and the surrounding terrain. The top of streambank can either be a natural or constructed (that is, road or railroad grade) feature, lying generally parallel to the watercourse.

*Waters of this Commonwealth*—Rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

#### **Authority**

The provisions of this § 102.1 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

#### **Source**

The provisions of this § 102.1 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (322707) to (322708) and (313625) to (313626).

#### **§ 102.2. Scope and purpose.**

(a) This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation and to manage post construction stormwater.

(b) The BMPs shall be undertaken to protect, maintain, reclaim and restore water quality and the existing and designated uses of waters of this Commonwealth.

## Authority

The provisions of this § 102.2 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

## Source

The provisions of this § 102.2 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (313626).

## Notes of Decisions

### *Duty*

Chapter 102 places the burden upon the contractor or other person involved with each disturbance, not the Department, to develop, implement and maintain controls to minimize the potential for accelerated erosion and sedimentation. *Leeward Construction Co. v. Department of Environmental Protection*, 821 A.2d 145 (Pa. Cmwlth. 2003); appeal denied 827 A.2d 431 (Pa. 2003).

## § 102.3. [Reserved].

## Source

The provisions of this § 102.3 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (234603).

## § 102.4. Erosion and sediment control requirements.

(a) For agricultural plowing or tilling activities or for animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of erosion and sediment control BMPs are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) Written E&S Plans are required for the following activities that disturb 5,000 square feet (464.5 square meters) or more of land:

- (i) Agricultural plowing or tilling activities.
- (ii) Animal heavy use areas.

(3) The landowner, and any lessee, renter, tenant or other land occupier, conducting or planning to conduct agricultural plowing or tilling activities, or operating an animal heavy use area, are jointly and individually responsible for developing a written E&S Plan and implementing and maintaining BMPs, including those identified in the E&S Plan.

(4) The E&S Plan must include cost-effective and reasonable BMPs designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing or tilling activities and animal heavy use areas.

(i) For agricultural plowing or tilling activities, the E&S Plan must, at a minimum, limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation.

(ii) For agricultural plowing and tilling activities that will occur on fields with less than 25% plant cover or crop residue cover and within 100 feet of a river, or perennial or intermittent stream, additional BMPs shall be implemented to minimize accelerated erosion and sedimentation.

(iii) For animal heavy use areas, the E&S Plan must identify BMPs to minimize accelerated erosion and sedimentation. BMPs and their design standards are listed in the current amended and updated version of the appropriate National Resources Conservation Service conservation practice standards such as Heavy Use Area Protection, Critical Area Planting, Fencing, Wastewater Treatment Strip, Constructed Wetland, Use Exclusion, Animal Trails and Walkways, Diversions and Roof Runoff Structure.

(5) The E&S Plan must contain plan maps that show the location of features including surface waters of this Commonwealth, and drainage patterns, field and property boundaries, buildings and farm structures, animal heavy use areas, roads and crossroads, and BMPs; soils maps; and a description of BMPs including animal heavy use area practices and procedures, tillage systems, schedules, and crop rotations. The plan must be consistent with the current conditions and activities on the agricultural operation.

(6) The E&S Plan must contain an implementation schedule. The plan shall be implemented according to the schedule, and the BMPs shall be operated and maintained as long as there are agricultural plowing or tilling activities or animal heavy use areas, on the agricultural operation.

(7) The portion of a conservation plan that identifies BMPs utilized to minimize accelerated erosion and sedimentation from agricultural plowing or tilling activities, or from operation of animal heavy use areas, may be used to satisfy the E&S Plan requirements of this subsection if it meets the requirements of paragraphs (4)—(6).

(8) The E&S Plan shall be available for review and inspection at the agricultural operation.

(9) Nothing in this section negates the requirements under other provisions of this chapter, such as those applicable to construction activities.

(b) For earth disturbance activities other than agricultural plowing or tilling or animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of E&S BMPs are required to minimize the potential for accelerated erosion and sedimentation, including those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) A person proposing earth disturbance activities shall develop and implement a written E&S Plan under this chapter if one or more of the following criteria apply:

(i) The earth disturbance activity will result in a total earth disturbance of 5,000 square feet (464.5 square meters) or more.

(ii) The person proposing the earth disturbance activities is required to develop an E&S Plan under this chapter or under other Department regulations.

(iii) The earth disturbance activity, because of its proximity to existing drainage features or patterns, has the potential to discharge to a water classified as a High Quality or Exceptional Value water under Chapter 93 (relating to water quality standards).

(3) The E&S Plan shall be prepared by a person trained and experienced in E&S control methods and techniques applicable to the size and scope of the project being designed.

(4) Unless otherwise authorized by the Department or conservation district after consultation with the Department, earth disturbance activities shall be planned and implemented to the extent practicable in accordance with the following:

(i) Minimize the extent and duration of the earth disturbance.

(ii) Maximize protection of existing drainage features and vegetation.

(iii) Minimize soil compaction.

(iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.

(5) The E&S Plan must contain drawings and narrative which describe the following:

(i) The existing topographic features of the project site and the immediate surrounding area.

(ii) The types, depth, slope, locations and limitations of the soils.

(iii) The characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site.

(iv) The volume and rate of runoff from the project site and its upstream watershed area.

(v) The location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification under Chapter 93.

(vi) A narrative description of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity.

(vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities that ensure the proper functioning of all BMPs.

(viii) Supporting calculations and measurements.

(ix) Plan drawings.

(x) A maintenance program which provides for the operation and maintenance of BMPs

and the inspection of BMPs on a weekly basis and after each stormwater event, including the repair or replacement of BMPs to ensure effective and efficient operation. The program must provide for completion of a written report documenting each inspection and all BMP repair, or replacement and maintenance activities.

(xi) Procedures which ensure that the proper measures for the recycling or disposal of materials associated with or from the project site will be undertaken in accordance with this title.

(xii) Identification of the naturally occurring geologic formations or soil conditions that may have the potential to cause pollution during earth disturbance activities and include BMPs to avoid or minimize potential pollution and its impacts from the formations.

(xiii) Identification of potential thermal impacts to surface waters of this Commonwealth from the earth disturbance activity including BMPs to avoid, minimize or mitigate potential pollution from thermal impacts.

(xiv) The E&S Plan shall be planned, designed and implemented to be consistent with the PCSM Plan under § 102.8 (relating to PCSM requirements). Unless otherwise approved by the Department, the E&S Plan must be separate from the PCSM Plan and labeled “E&S” or “Erosion and Sediment Control Plan” and be the final plan for construction.

(xv) Identification of existing and proposed riparian forest buffers.

(6) To satisfy the antidegradation implementation requirements in § 93.4c(b) (relating to implementation of antidegradation requirements), for an earth disturbance activity that requires a permit under this chapter and for which any receiving surface waters of this Commonwealth is classified as High Quality or Exceptional Value under Chapter 93, the person proposing the activity shall, in the permit application, do the following:

(i) Evaluate and include nondischarge alternatives in the E&S Plan, unless a person demonstrates that nondischarge alternatives do not exist for the project.

(ii) If the person makes the demonstration in subparagraph (i) that nondischarge alternatives do not exist for the project, the E&S Plan must include ABACT, except as provided in § 93.4c(b)(1)(iii).

(iii) For purposes of this chapter, nondischarge alternatives and ABACT and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.

(7) The Department may approve alternative BMPs which will maintain and protect existing water quality and existing and designated uses.

(8) The E&S Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district at the project site during all stages of the earth disturbance activity.

(9) Upon complaint or site inspection, the Department or conservation district may require that the E&S Plan be submitted for review and approval to ensure compliance with this chapter.

(c) The Department may require, or the conservation district after consultation with the Department may require, other information necessary to adequately review a plan, or may require alternative BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

(d) A person proposing or conducting an earth disturbance activity shall obtain the other necessary permits and authorizations from the Department or conservation district, related to the earth disturbance activity, before commencing the earth disturbance activity.

(e) Persons proposing an earth disturbance activity that requires permit coverage under § 102.5 (relating to permit requirements) shall have permit coverage prior to commencing the earth disturbance activity.

### **Authority**

The provisions of this § 102.4 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.4 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended February 3, 1978, effective February 20, 1978, 8 Pa.B. 288; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (336605) to (336608).

### **Notes of Decisions**

#### *Compliance Required*

Failure of the DER to notify operators of the requirements for erosion control plans until one and a half years after adoption of the regulations did not excuse an operator from compliance. *Department of Environmental Resources v. Federal Oil and Gas Company*, 73 Pa. D.&C.2d 148 (1975).

#### *Controlling Erosion*

The company was required to implement and maintain adequate erosion and sedimentation controls at the site so as to prevent accelerated erosion and sedimentation. *Harbison-Walker Refractories v. Department of Environmental Protection*, 1996 EHB 116.

Under this regulation, control measures and regulations are clearly required, even in development activities where permits are not necessary and safeguards are clearly available to protect against possible adverse secondary erosion and sedimentation effects in a watershed. *Community College of Delaware County v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

### *Limited Liability*

An independent drilling contractor who prepared the gas well drilling site for the lessee of an oil and gas lease was not a person engaged in earth moving activities and cannot be charged with failure to develop and implement an erosion control plan, but would be held jointly and severally liable for discharges of oil and drilling fines from the gas well operation site. *Department of Environmental Resources v. Federal Oil and Gas Company*, 73 Pa. D. & C.2d 148 (1975).

### *Stormwater*

Subdivision developer, while engaged in land development activities, had a duty to properly manage storm water runoff. This duty included compliance with a governmental district's request to provide a storm water management plan to enable the township to properly reconstruct a road. *Frisch v. Penn Township*, 662 A.2d 1166 (Pa. Cmwlth. 1995); appeal denied 684 A.2d 559 (Pa. 1996).

## **Cross References**

This section cited in 25 Pa. Code § 102.5 (relating to permit requirements); 25 Pa. Code § 102.6 (relating to permit applications and fees); 25 Pa. Code § 102.7 (relating to permit termination); 25 Pa. Code § 102.8 (relating to PCSM requirements); and 25 Pa. Code § 102.14 (relating to riparian buffer requirements).

### **§ 102.5. Permit requirements.**

(a) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under a general NPDES permit for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity. In addition to other applicable requirements, persons required to obtain an Individual NPDES Permit for Stormwater Discharges Associated With Construction Activities for projects proposed in special protection watersheds shall evaluate and use BMPs in accordance with antidegradation requirements in §§ 102.4(b)(6) and 102.8(h) (relating to erosion and sediment control requirements; and PCSM requirements) regardless of whether the discharge is new, additional or increased.

(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.

(c) A person proposing oil and gas activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(d) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing earth disturbance activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project that do not require a permit under subsections (a), (b), and (c), shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(e) For earth disturbance activities authorized by a permit under this chapter, a preconstruction meeting is required unless the permittee has been notified otherwise in writing by the Department or conservation district. The permittee shall invite the Department or conservation district to attend the preconstruction meeting and provide at least 7 days notice of the preconstruction meeting to all invited attendees. Permittees, co-permittees, operators, and licensed professionals or designees responsible for the earth disturbance activity, including implementation of E&S and PCSM Plans and critical stages of implementation of the approved PCSM Plan, shall attend a preconstruction meeting.

(f) A person proposing earth disturbance activities requiring a permit or permit coverage under this chapter shall be responsible to ensure implementation of the PCSM Plan.

(g) A person proposing or conducting an earth disturbance activity approved under a Department permit issued under a chapter other than Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) or this chapter, which includes requirements to comply with Chapter 92 and this chapter, need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated With Construction Activities.

(h) Operators who are not the permittee shall be co-permittees.

(i) A person proposing or conducting an earth disturbance activity associated with discharging dredged or fill material to waters of the United States which is required to obtain a permit or coverage under a permit under section 404 of the Federal Clean Water Act (33 U.S.C.A. § 1344) need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated With Construction Activities for the area of disturbance covered by the Clean Water Act section 404 permit.

(j) A person proposing or conducting agricultural plowing or tilling activities or animal heavy use areas is not required to obtain an E&S Permit, or an NPDES Permit for Stormwater Discharges Associated With Construction Activities, for these activities under this chapter.

(k) A person proposing or conducting an earth disturbance activity who is not required to obtain a permit under this chapter shall comply with the other provisions of this chapter.

(l) A person shall prepare and implement a PPC Plan when storing, using or transporting materials including: fuels, chemicals, solvents, pesticides, fertilizers, lime, petrochemicals, wastewater, wash water, core drilling wastewater, cement, sanitary wastes, solid wastes or hazardous materials onto, on or from the project site during earth disturbance activities. The PPC Plan shall be available upon request by the Department or conservation district.

(m) The Department may issue general permits for activities not subject to NPDES requirements.

(1) *Authorization.* The Department may issue a general permit on a regional or Statewide basis or limited to specific watersheds, particular categories of streams or designated geographic regions, for a category of activities not subject to the NPDES requirements, but regulated under this chapter, if the Department determines the following:

(i) The projects in the category are similar in nature.



(ii) The projects in the category can be adequately regulated utilizing standardized specifications and conditions, including reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the particular category of activities.

(iii) The projects which are in the category and meet the specifications and conditions will comply with this chapter.

(iv) The projects which are in the category in the opinion of the Department are more appropriately controlled under a general permit than under individual permits.

(v) The projects which are in the category individually and cumulatively do not have the potential to cause significant adverse environmental impact.

(2) *Contents of general permits.* Each general permit issued by the Department will include the following contents:

(i) A concise description of the category of activity covered by the general permit, including exceptions to that category.

(ii) A specification of the watersheds, streams or geographic areas where the general permit is effective.

(iii) A set of standardized specifications for the particular category of activity or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulates the particular category of activity.

(iv) A set of conditions governing the activities, operation, maintenance, inspection and monitoring of the projects covered by the general permit as are necessary to assure compliance with this chapter and with other laws administered by the Department.

(v) A specification of the process for obtaining coverage under and authorization to use the general permit.

(3) *Procedure for issuance.*

(i) At least 30 days prior to issuance of a general permit, the Department:

(A) Will publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit.

(B) Will provide an opportunity for interested members of the public, Federal and State agencies to provide written comments on a proposed general permit.

(C) May, at its discretion, hold a public hearing on a proposed general permit for the purposes of gathering information and comments.

(ii) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit.

(4) *Compliance with permit conditions, regulations and laws.* A person who conducts an activity under a general permit issued under this subsection shall comply with the terms and

conditions of the general permit, with this chapter and other applicable laws.

(5) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this chapter. Issuance of a general permit does not exempt a person from compliance with this title.

(6) *Denial of coverage.* The Department may deny, revoke, suspend or terminate coverage under a general permit for failure to comply with The Clean Streams Law (35 P. S. § § 691.1—691.1001), this chapter or the conditions of the general permit and the Department may require the person to apply for an individual permit.

### **Authority**

The provisions of this § 102.5 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.5 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (336608) and (272271).

### **Notes of Decisions**

If an erosion and sedimentation control plan, together with supplementary material submitted, includes numerous drawings detailing the topography of the area, results of test borings, and a soil description, then the plan contains sufficient information as to topographic features and soil characteristics. *Mignatti Construction Co., Inc. v. Environmental Hearing Board*, 411 A.2d 860 (Pa. Cmwlth. 1980).

### **Cross References**

This section cited in 25 Pa. Code § 102.4 (relating to erosion and sediment control requirements); 25 Pa. Code § 102.6 (relating to permit applications and fees); and 25 Pa. Code § 102.43 (relating to withholding permits).

## **§ 102.6. Permit applications and fees.**

(a) *Permit requirements.* A person proposing or conducting an earth disturbance activity which requires a permit under § 102.5 (relating to permit requirements) shall:

(1) Submit to the Department or a conservation district a complete application or NOI, an E&S Plan meeting the requirements of § 102.4 (relating to erosion and sediment control requirements), a PCSM Plan meeting the requirements of § 102.8 (relating to PCSM requirements), and other information the Department may require. Unless otherwise specified in this chapter, for NPDES permits, the application or NOI must also meet the requirements in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).

(2) Provide proof of consultation with the Pennsylvania Natural Heritage Program (PNHP) regarding the presence of a State or Federal threatened or endangered species on the project site. If the Department or conservation district determines, based upon PNHP data or other sources, that the proposed earth disturbance activity may adversely impact the species or critical habitat, the person proposing the earth disturbance activity shall consult with the Department or conservation district to avoid or prevent the impact. If the impact cannot be avoided or prevented, the person proposing the activity shall demonstrate how the impacts will be minimized in accordance with State and Federal laws pertaining to the protection of threatened or endangered flora and fauna and their habitat.

(b) *Permit fees.*

(1) A person submitting a permit application or NOI shall submit a fee as follows: a \$500 administrative filing fee for general permits and a \$1,500 administrative filing fee for individual permits. In addition, \$100 for each disturbed acre is required to be added to the base administrative filing fee for projects of 1 acre or greater of disturbance. The fees will be calculated based upon the following formula: base fee plus \$100 for each disturbed acre. For fractional acreage, the acreage shall be rounded to the closest whole number.

(2) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

(3) Conservation districts may charge additional fees in accordance with section 9(13) of the Conservation District Law (3 P. S. § 857(13)).

(4) A Federal or State agency or independent State commission that provides funding for program administration by the Department through terms and conditions of a mutual agreement may be exempt from the fees in this section.

(5) Fees collected by the Department or conservation district under this chapter will be deposited into a restricted revenue account known as the Clean Water Fund and utilized to offset the operating costs to administer the program.

(c) *Complete applications or NOI.*

(1) An application or NOI for a permit is not complete until the necessary information and requirements under The Clean Streams Law (35 P. S. § § 691.1—691.1001) and this chapter have been satisfied by the applicant.

(2) When the Department or conservation district determines that an application or NOI is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have 60 days to provide the information necessary to complete the application or NOI, or the Department or conservation district will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or NOI is considered withdrawn. When an application or NOI is considered withdrawn, the Department or conservation district will close the application file and take no action to review the file.

(3) If the application has been withdrawn in accordance with subsection (c)(2), the fees associated with filing the application will not be refunded.

### **Authority**

The provisions of this § 102.6 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.6 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (272271) to (272272).

## **§ 102.7. Permit termination.**

(a) Upon permanent stabilization of the earth disturbance activity under § 102.22(a)(2) (relating to permanent stabilization), and installation of BMPs in accordance with an approved plan prepared and implemented in accordance with § § 102.4 and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements), the permittee or co-permittee shall submit a notice of termination to the Department or conservation district.

(b) The notice of termination must include:

- (1) The facility name, address and location.
- (2) The operator name and address.
- (3) The permit number.
- (4) The reason for permit termination.

(5) Identification of the persons who have agreed to and will be responsible for long-term operation and maintenance of the PCSM BMPs in accordance with § 102.8(m) and proof of compliance with § 102.8(m)(2).

(c) Until the permittee or co-permittee has received written approval of a notice of termination, the permittee or co-permittee will remain responsible for compliance with the permit terms and conditions including long-term operation and maintenance of all PCSM BMPs on the project site and is responsible for violations occurring on the project site. The Department or conservation district will conduct a final inspection and approve or deny the notice of termination within 30 days.

### **Authority**

The provisions of this § 102.7 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

## Source

The provisions of this § 102.7 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (272272).

## Cross References

This section cited in 25 Pa. Code § 102.8 (relating to PCSM requirements).

### § 102.8. PCSM requirements.

(a) *PCSM applicability.* After November 19, 2010, a person proposing a new earth disturbance activity that requires permit coverage under this chapter or other new Department permit that requires compliance with this chapter shall be responsible to ensure that a written PCSM Plan is developed, implemented, operated and maintained in accordance with this section. 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. After January 1, 2013, the renewal of a permit issued before November 19, 2010, shall comply with this section.

(b) *General PCSM planning and design.* The management of post construction stormwater shall be planned and conducted to the extent practicable in accordance with the following:

(1) Preserve the integrity of stream channels and maintain and protect the physical, biological and chemical qualities of the receiving stream.

(2) Prevent an increase in the rate of stormwater runoff.

(3) Minimize any increase in stormwater runoff volume.

(4) Minimize impervious areas.

(5) Maximize the protection of existing drainage features and existing vegetation.

(6) Minimize land clearing and grading.

(7) Minimize soil compaction.

(8) Utilize other structural or nonstructural BMPs that prevent or minimize changes in stormwater runoff.

(c) *Consistency with E&S Plan.* The PCSM Plan shall be planned, designed and implemented to be consistent with the E&S Plan under § 102.4(b) (relating to erosion and sediment control requirements).

(d) *Separate plan.* Unless otherwise approved by the Department, the PCSM Plan must be separate from the E&S Plan and labeled “PCSM” or “Post Construction Stormwater Management Plan” and be the final plan for construction.

(e) *PCSM Plan preparer requirements.* The PCSM Plan shall be prepared by a person

trained and experienced in PCSM design methods and techniques applicable to the size and scope of the project being designed.

(f) *PCSM Plan contents.* The PCSM Plan must contain drawings and a narrative consistent with the requirements of this chapter. The PCSM Plan shall be designed to minimize the threat to human health, safety and the environment to the greatest extent practicable. PCSM Plans must contain at a minimum the following:

(1) The existing topographic features of the project site and the immediate surrounding area.

(2) The types, depth, slope, locations and limitations of the soils and geologic formations.

(3) The characteristics of the project site, including the past, present and proposed land uses and the proposed alteration to the project site.

(4) An identification of the net change in volume and rate of stormwater from preconstruction hydrology to post construction hydrology for the entire project site and each drainage area.

(5) An identification of the location of surface waters of this Commonwealth, which may receive runoff within or from the project site and their classification under Chapter 93 (relating to water quality standards).

(6) A written description of the location and type of PCSM BMPs including construction details for permanent stormwater BMPs including permanent stabilization specifications and locations.

(7) A sequence of PCSM BMP implementation or installation in relation to earth disturbance activities of the project site and a schedule of inspections for critical stages of PCSM BMP installation.

(8) Supporting calculations.

(9) Plan drawings.

(10) A long-term operation and maintenance schedule, which provides for inspection of PCSM BMPs, including the repair, replacement, or other routine maintenance of the PCSM BMPs to ensure proper function and operation. The program must provide for completion of a written report documenting each inspection and all BMP repair and maintenance activities and how access to the PCSM BMPs will be provided.

(11) Procedures which ensure that the proper measures for recycling or disposal of materials associated with or from the PCSM BMPs are in accordance with Department laws, regulations and requirements.

(12) An identification of naturally occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational and development of a management plan to avoid or minimize potential pollution and its impacts.

(13) An identification of potential thermal impacts from post construction stormwater to

surface waters of this Commonwealth including BMPs to avoid, minimize or mitigate potential pollution from thermal impacts.

(14) A riparian forest buffer management plan when required under § 102.14 (relating to riparian buffer requirements).

(15) Additional information requested by the Department.

(g) *PCSM Plan stormwater analysis*. Except for regulated activities that require site restoration or reclamation, and small earth disturbance activities identified in subsection (n), PCSM Plans for proposed activities requiring a permit under this chapter require the following additional information:

(1) Predevelopment site characterization and assessment of soil and geology including appropriate infiltration and geotechnical studies that identify location and depths of test sites and methods used.

(2) Analysis demonstrating that the PCSM BMPs will meet the volume reduction and water quality requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change for storms up to and including the 2-year/24-hour storm event when compared to preconstruction runoff volume and water quality. The analysis for the 2-year/24-hour storm event shall be conducted using the following minimum criteria:

(i) Existing predevelopment nonforested pervious areas must be considered meadow in good condition or its equivalent except for repair, reconstruction or restoration of roadways or rail lines, or construction, repair, reconstruction or restoration of utility infrastructure when the site will be returned to existing condition.

(ii) When the existing project site contains impervious area, 20% of the existing impervious area to be disturbed must be considered meadow in good condition or better, except for repair, reconstruction or restoration of roadways or rail lines, or construction, repair, reconstruction, or restoration of utility infrastructure when the site will be returned to existing condition.

(iii) When the existing site contains impervious area and the existing site conditions have public health, safety or environmental limitations, the applicant may demonstrate to the Department that it is not practicable to satisfy the requirement in subparagraph (ii), but the stormwater volume reduction and water quality treatment will be maximized to the extent practicable to maintain and protect existing water quality and existing and designated uses.

(iv) Approaches other than that required under paragraph (2) may be proposed by the applicant when the applicant demonstrates to the Department that the alternative will either be more protective than required under paragraph (2) or will maintain and protect existing water quality and existing and designated uses by maintaining the site hydrology, water quality, and erosive impacts of the conditions prior to initiation of any earth disturbance activities.

(3) Analysis demonstrating that the PCSM BMPs will meet the rate requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change in peak rate for the 2-, 10-, 50-, and 100-year/24-hour storm events in a manner not to exceed preconstruction rates.

(i) Hydrologic computations or a routing analysis are required to demonstrate that this requirement has been met.

(ii) Exempt from this requirement are Department- approved direct discharges to tidal areas or Department-approved no detention areas.

(iii) Approaches other than that required under paragraph (3) may be proposed by the applicant when the applicant demonstrates to the Department that the alternative will either be more protective than required under paragraph (3) or will maintain and protect existing water quality and existing and designated uses by maintaining the preconstruction site hydrologic impact.

(4) Identification of the methodologies for calculating the total runoff volume and peak rate of runoff and provide supporting documentation and calculations.

(5) Identification of construction techniques or special considerations to address soil and geologic limitations.

(6) The Department may require, or after consultation with the Department a conservation district may require additional information necessary to adequately review a PCSM Plan or may require additional BMPs, on a case-by-case basis, when necessary to ensure the restoration, maintenance and protection of water quality and existing and designated uses.

(h) *PCSM implementation for special protection waters.* To satisfy the antidegradation implementation requirements in § 93.4c(b) (relating to implementation of antidegradation requirements), an earth disturbance activity that requires a permit under this chapter and for which any receiving water that is classified as High Quality or Exceptional Value under Chapter 93, the person proposing the activity shall, in the permit application, do the following:

(1) Evaluate and include nondischarge alternatives in the PCSM Plan unless a person demonstrates that nondischarge alternatives do not exist for the project.

(2) If the person makes the demonstration in paragraph (1) that nondischarge alternatives do not exist for the project, the PCSM Plan must include ABACT, except as provided in § 93.4c(b)(1)(iii).

(3) For purposes of this chapter, nondischarge alternatives and ABACT and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual* Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(i) *Complaint or site inspection.* Upon complaint or site inspection, the Department or conservation district may require that the PCSM Plan be submitted for review and approval to ensure compliance with this chapter.

(j) *PCSM reporting and recordkeeping.* The PCSM Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district.

(k) *Licensed professional oversight of critical stages.* A licensed professional or a designee shall be present onsite and be responsible during critical stages of implementation of the



approved PCSM Plan. The critical stages may include the installation of underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department or the conservation district.

(l) *Final certification.* The permittee shall include with the notice of termination “Record Drawings” with a final certification statement from a licensed professional, which reads as follows:

“I (name) do hereby certify pursuant to the penalties of 18 Pa.C.S.A. § 4904 to the best of my knowledge, information and belief, that the accompanying record drawings accurately reflect the as-built conditions, are true and correct, and are in conformance with Chapter 102 of the rules and regulations of the Department of Environmental Protection and that the project site was constructed in accordance with the approved PCSM Plan, all approved plan changes and accepted construction practices.”

(1) The permittee shall retain a copy of the record drawings as a part of the approved PCSM Plan.

(2) The permittee shall provide a copy of the record drawings as a part of the approved PCSM Plan to the person identified in this section as being responsible for the long-term operation and maintenance of the PCSM BMPs.

(m) *PCSM long-term operation and maintenance requirements.*

(1) The permittee or co-permittee shall be responsible for long-term operation and maintenance of PCSM BMPs unless a different person is identified in the notice of termination and has agreed to long-term operation and maintenance of PCSM BMPs.

(2) For any property containing a PCSM BMP, the permittee or co-permittee shall record an instrument with the recorder of deeds which will assure disclosure of the PCSM BMP and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the PCSM BMP, provide for necessary access related to long-term operation and maintenance for PCSM BMPs and provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees, and provide proof of filing with the notice of termination under § 102.7(b)(5) (relating to permit termination).

(3) For Commonwealth owned property, a covenant that runs with the land is not required until the transfer of the land containing a PCSM BMP occurs. Upon transfer of the Commonwealth-owned property containing a PCSM BMP, the deed must comply with this subsection.

(4) The person responsible for performing long-term operation and maintenance may enter into an agreement with another person including a conservation district, nonprofit organization, municipality, authority, private corporation or other person, to transfer the responsibility for PCSM BMPs or to perform long-term operation and maintenance and provide notice thereof to the Department.

(5) A permittee or co-permittee that fails to transfer long-term operation and maintenance of the PCSM BMP or otherwise fails to comply with this requirement shall remain jointly and severally responsible with the landowner for long-term operation and maintenance of the

PCSM BMPs located on the property.

(n) *Regulated activities that require site restoration or reclamation, and small earth disturbance activities.* The portion of a site reclamation or restoration plan that identifies PCSM BMPs to manage stormwater from oil and gas activities or mining activities permitted in accordance with Chapters 78 and 86—90; timber harvesting activities; pipelines; other similar utility infrastructure; Department permitted activities involving less than 1 acre of earth disturbance; or abandoned mine land reclamation activities, that require compliance with this chapter, may be used to satisfy the requirements of this section if the PCSM, reclamation or restoration plan meets the requirements of subsections (b), (c), (e), (f), (h), (i) and (l) and, when applicable, subsection (m).

#### **Authority**

The provisions of this § 102.8 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

#### **Source**

The provisions of this § 102.8 adopted August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861.

#### **Cross References**

This section cited in 25 Pa. Code § 102.4 (relating to erosion and sediment control requirements); 25 Pa. Code § 102.6 (relating to permit applications and fees); 25 Pa. Code § 102.7 (relating to permit termination); and 25 Pa. Code § 102.14 (relating to riparian buffer requirements).

## **EROSION AND SEDIMENT CONTROL AND POST CONSTRUCTION STORMWATER MANAGEMENT BMPs**

### **§ 102.11. General requirements.**

(a) *BMP and design standards.* A person conducting or proposing to conduct an earth disturbance activity shall:

(1) Design, implement and maintain E&S BMPs to minimize the potential for accelerated erosion and sedimentation to protect, maintain, reclaim and restore water quality and existing and designated uses. Various E&S BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual (Manual)*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.

(2) If required to develop a PCSM Plan, design, implement and maintain PCSM BMPs to mimic preconstruction stormwater runoff conditions to protect, maintain, reclaim and restore

water quality and existing and designated uses. Various PCSM BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual* (Stormwater BMP Manual), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(3) If required to develop a riparian forest buffer, design, implement and maintain the buffer in accordance with § 102.14 (relating to riparian buffer requirements). Various design, construction and maintenance standards are listed in the *Riparian Forest Buffer Guidance, (Buffer Guidance)*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001 (2009), as amended and updated.

(4) If required to develop a PPC Plan, the person shall design, implement, and maintain the PPC Plan to protect waters of this Commonwealth from discharges of pollutants from accidental spills, releases or other activities and meet the requirements identified in Chapter 91 (relating to general provisions). Guidance for PPC Plans is included in the *Guidelines for the Development and Implementation of Environmental Emergency Response Plans*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001, as amended and updated.

(b) *Alternative BMP and design standards.* BMPs and design standards other than those listed in the manuals or *Buffer Guidance* may be used when a person conducting or proposing to conduct an earth disturbance activity demonstrates to the Department that the alternate BMP or design standard minimizes accelerated erosion and sedimentation or manages stormwater during and after the completion of earth disturbance activities to achieve the regulatory standards in subsection (a).

(c) *Incorporation of Federal effluent limitation guidelines and standards for the construction and development point source category, 40 CFR Part 450.* Activities requiring an NPDES permit under this chapter must also comply with 40 CFR Part 450 (relating to construction and development point source category), including all appendices thereto, which are incorporated by reference to the extent that these provisions are applicable and not contrary to Pennsylvania law. In the event of any conflict between Federal and Pennsylvania regulatory provisions, the provision expressly set out in this chapter shall be utilized unless the Federal provision is more stringent.

(d) *Effective date.* The amendments to this chapter adopted by the EQB on May 17, 2010, are effective November 19, 2010.

### **Authority**

The provisions of this § 102.11 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.11 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (266249).

## Cross References

This section cited in 25 Pa. Code § 102.8 (relating to PCSM requirements).

### § 102.12. [Reserved].

#### Source

The provisions of this § 102.12 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203741) to (203742).

### § 102.13. [Reserved].

#### Source

The provisions of this § 102.13 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203742) to (203743).

### § 102.14. Riparian buffer requirements.

(a) *General requirements for mandatory riparian buffers.*

(1) Except as in accordance with subsection (d), persons proposing or conducting earth disturbance activities when the activity requires a permit under this chapter may not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond or reservoir when the project site is located in an exceptional value or high quality watershed attaining its designated use as listed by the Department at the time of application and shall protect any existing riparian buffer in accordance with this section.

(2) Except as in accordance with subsection (d), persons proposing or conducting earth disturbance activities when the activity requires a permit under this chapter where the project site is located in an Exceptional Value or High Quality watershed where there are waters failing to attain one or more designated uses as listed in Category 4 or 5 on Pennsylvania's Integrated Water Quality Monitoring and Assessment report, as amended and updated, at the time of the application, and the project site contains, is along or within 150 feet of a perennial or intermittent river, stream, or creek, lake, pond or reservoir shall, in accordance with the requirements of this section do one of the following:

- (i) Protect an existing riparian forest buffer.
- (ii) Convert an existing riparian buffer to a riparian forest buffer.
- (iii) Establish a new riparian forest buffer.

(b) *Riparian forest buffer criteria.* To qualify as a riparian forest buffer under this chapter, an existing, converted or newly established riparian forest buffer, whether mandatory or voluntary, must meet the following requirements related to composition, width and management:

(1) *Composition.* A riparian forest buffer is a riparian buffer that consists predominantly of native trees, shrubs and forbs that provide at least 60% uniform canopy cover. An existing riparian forest buffer does not have to be altered to establish individual Zones 1 and 2 under subparagraph (iii). At a minimum, it must have a total aggregate width of the combined zones under paragraph (2).

(i) *Existing riparian buffer conversion to a riparian forest buffer.* Riparian buffers that consist predominantly of native woody vegetation that do not satisfy the composition of this paragraph or the width requirements in paragraph (2) shall be enhanced or widened, or both, by additional plantings in open spaces around existing native trees and shrubs that provide at least 60% uniform canopy cover. An existing riparian forest buffer does not have to be altered to establish individual Zones 1 and 2 under subparagraph (iii). At a minimum, it must be a total aggregate width of the combined zones under paragraph (2). Noxious weeds and invasive species shall be removed or controlled to the extent possible.

(ii) *Riparian forest buffer establishment.* On sites without native woody vegetation, a riparian forest buffer shall be established and be composed of zones in accordance with subparagraph (iii), and meet the width requirements in paragraph (2). Noxious weeds and invasive species shall be removed or controlled to the extent possible.

(iii) *Zones.*

(A) *Zone 1.* Undisturbed native trees must begin at the top of the streambank or normal pool elevation of a lake, pond or reservoir and occupy a strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond or reservoir. Predominant vegetation must be composed of a variety of native riparian tree species.

(B) *Zone 2.* Managed native trees and shrubs must begin at the landward edge of Zone 1 and occupy an additional strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond or reservoir. Predominant vegetation must be composed of a variety of native riparian tree and shrub species.

(2) *Average minimum widths.*

(i) *Waters other than special protection.* A total of 100 feet (30.5 meters), comprised of 50 feet (15.2 meters) in Zone 1 and 50 feet (15.2 meters) in Zone 2 for newly established riparian forest buffers established under subsection (e)(3) along all rivers, perennial or intermittent streams, lakes, ponds or reservoirs.

(ii) *Special protection waters.* A total of 150 feet (45.7 meters), comprised of 50 feet (15.2 meters) in Zone 1 and 100 feet (30.5 meters) in Zone 2 on newly established riparian forest buffers along all rivers, perennial or intermittent streams, lakes, ponds or reservoirs in special protection waters (high quality and exceptional value designations).

(iii) *Average riparian forest buffer width.* The average riparian forest buffer width shall be calculated based upon the entire length of streambank or shoreline that is located within

or along the boundaries of the project site. When calculating the buffer length the natural streambank or shoreline shall be followed.

(3) *Management requirements.* Existing, converted and newly established riparian forest buffers shall be managed in accordance with a riparian forest buffer management plan in paragraph (4) and will be protected in accordance with subsection (g).

(4) *Management plan.* The riparian forest buffer management plan shall be a part of the PCSM Plan and include, at a minimum, the following:

(i) A planting plan for converted or newly established riparian forest buffers that identifies the number, density and species of native trees and shrubs appropriate to geographic location that will achieve 60% uniform canopy cover.

(ii) A maintenance schedule and measures for converted or newly established riparian forest buffers to ensure survival and growth of plantings and protection from competing plants and animals including noxious weeds and invasive species over a 5-year establishment period including activities or practices used to maintain the riparian forest buffer including the disturbance of existing vegetation, tree removal, shrub removal, clearing, mowing, burning or spraying in accordance with long-term operation and maintenance.

(iii) An inspection schedule and measures to ensure long-term maintenance and proper functioning of riparian forest buffers meeting the requirements in paragraph (1), including measures to repair damage to the buffer from storm events greater than the 2-year/24-hour storm.

(c) *Mandatory requirements for all riparian buffers.*

(1) *Management of stormwater into the riparian buffer.* Stormwater and accelerated erosion and sedimentation shall be managed in accordance with § § 102.4(b)—(e) and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements) to ensure that stormwater enters the area upgrade 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.

(2) *Wetlands.* Wetlands located in the riparian buffer shall be protected and maintained consistent with Chapter 105 (relating to dam safety and waterway management).

(3) *Measurements.* Riparian buffers must be measured horizontally and perpendicularly to the bank with no more than a 10% variation below the minimum width from the normal pool elevation for lake, pond or reservoir and from top of streambank.

(d) *Exceptions.*

(1) Subsection (a) does not apply for earth disturbance activities associated with the following:

(i) A project site located greater than 150 feet (45.7 meters) from a river, stream, creek, lake, pond or reservoir.

(ii) Activities involving less than 1 acre (0.4 hectare) of earth disturbance.

- (iii) Activities when permit coverage is not required under this chapter.
  - (iv) Activities when a permit or authorization for the earth disturbance activity required under this chapter was obtained, or application submitted prior to November 19, 2010.
  - (v) Road maintenance activities so long as any existing riparian buffer is undisturbed to the extent practicable.
  - (vi) The repair and maintenance of existing pipelines and utilities so long as any existing riparian buffer is undisturbed to the extent practicable.
  - (vii) Oil and gas, timber harvesting, or mining activities for which site reclamation or restoration is part of the permit authorization in Chapters 78 and 86—90 and this chapter so long as any existing riparian buffer is undisturbed to the extent practicable.
  - (viii) A single family home that is not part of a larger common plan of development or sale and the parcel was acquired by the applicant prior to November 19, 2010.
  - (ix) Activities authorized by a Department permit under another chapter of this title which contains setback requirements, and the activity complies with those setback requirements.
- (2) For earth disturbance activities associated with the following, the Department, or the conservation district after consultation with the Department, may grant a waiver from any of the requirements of subsections (a) and (b) upon a demonstration by the applicant that there are reasonable alternatives for compliance with this section, so long as any existing riparian buffer is undisturbed to the extent practicable and that the activity will otherwise meet the requirements of this chapter:
- (i) The project is necessary to abate a substantial threat to the public health or safety.
  - (ii) Linear projects which may include pipelines, public roadways, rail lines or utility lines.
  - (iii) Abandoned mine reclamation activities that are conducted under Department authorization or permit.
  - (iv) Projects of a temporary nature where the site will be fully restored to its preexisting condition during the term of the permit under this chapter.
  - (v) Redevelopment projects which may include brownfields or use of other vacant land and property within a developed area for further construction or development.
  - (vi) Projects for which compliance with subsection (a) or (b) is not appropriate or feasible due to site characteristics, or existing structures at the project site.
- (3) The applicant shall submit a written request for a waiver to the Department or the conservation district as part of the application for a permit under this chapter.
- (4) An applicant requesting a waiver may propose and the Department may allow offsite protection, conversion or establishment of riparian forest buffers or provide compensation to fund riparian forest buffer protection, enhancement or establishment.

(5) Projects qualifying for an exception under this subsection are not relieved from compliance with other applicable requirements of this chapter or other laws administered by the Department.

(e) *Utilization of riparian forest buffers.*

(1) *Antidegradation presumption.* Except for riparian buffers protected under subsection (a)(1) or (d), a riparian forest buffer meeting the requirements of this section will prevent thermal impacts and is a nondischarge alternative. When included in an E&S Plan or PCSM Plan meeting the requirements of this chapter, the proposed earth disturbance activity will satisfy § § 102.4(b)(6) and 102.8(h), unless data or information provided or available to the Department during the permit application or authorization review process shows that the proposed earth disturbance activity will degrade water quality.

(2) *Trading or offsetting credits.* Except for riparian buffers protected under subsection (a)(1) or (d) when protection of existing, or conversion, or the establishment of a riparian forest buffer which meets the requirements of this section and is above baseline regulatory requirements, credits may be available for trading or offsets in accordance with any procedures established by the Department or any regulations related to trading or offsetting developed under this title.

(3) *Voluntary riparian forest buffer.* Persons that protect, convert or establish a new riparian forest buffer meeting the requirements of this section, may qualify for benefits under paragraph (1) or (2).

(f) *Activities within a riparian buffer.*

(1) The following practices and activities are prohibited within the riparian buffer:

(i) Soil disturbance by grading, stripping of topsoil, plowing, cultivating or other practices except as allowed in paragraph (3)(i).

(ii) Draining by ditching, underdrains or other drainage systems.

(iii) Housing, grazing or otherwise maintaining animals for agricultural or commercial purposes.

(iv) Storing or stockpiling materials.

(v) Off-road vehicular travel.

(2) The following practices and activities are allowable in the riparian buffer when authorized by the Department:

(i) Construction or placement of roads, bridges, trails, storm drainage, utilities or other structures.

(ii) Water obstructions or encroachments.

(iii) Restoration projects.

(3) The following practices and activities are allowed within the riparian buffer:



(i) Activities or practices used to maintain the riparian buffer including the disturbance of existing vegetation, and tree and shrub removal, as needed to allow for natural succession of native vegetation and protection of public health and safety.

(ii) Timber harvesting activities in accordance with the riparian forest buffer management plan as part of the PCSM Plan.

(iii) Passive or low impact recreational activities so long as the functioning of the riparian buffer is maintained.

(iv) Emergency response and other similar activities.

(v) Research and data collection activities, which may include water quality monitoring and stream gauging.

(g) *Permanent protection of riparian buffers.*

(1) Existing, converted and newly established riparian buffers including access easements must be protected in perpetuity through deed restriction, conservation easement, local ordinance, permit conditions or any other mechanisms that ensure the long-term functioning and integrity of the riparian buffer.

(2) For any existing or newly established riparian buffer, the boundary limits of the riparian buffer must be identified and clearly marked.

(h) *Reporting.* Persons who protect an existing riparian buffer or convert or establish a riparian buffer in accordance with this section shall complete data forms provided by the Department and submit the forms to the Department or conservation district within 1 year of establishment or protection.

### **Authority**

The provisions of this § 102.14 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.14 adopted August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861; corrected September 17, 2010, effective November 19, 2010, 40 Pa.B. 5294.

### **Cross References**

This section cited in 25 Pa. Code § 102.8 (relating to PCSM requirements); and 25 Pa. Code § 102.11 (relating to general requirements).

**§ 102.21. [Reserved].**

**Source**

The provisions of this § 102.21 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203743).

**§ 102.22. Site stabilization.**

(a) *Permanent stabilization.* Upon final completion of an earth disturbance activity or any stage or phase of an activity, the site shall immediately have topsoil restored, replaced, or amended, seeded, mulched or otherwise permanently stabilized and protected from accelerated erosion and sedimentation.

(1) E&S BMPs shall be implemented and maintained until the permanent stabilization is completed. Once permanent stabilization has been established, the temporary E&S BMPs shall be removed. Any areas disturbed in the act of removing temporary E&S BMPs shall be permanently stabilized upon completion of the temporary E&S BMP removal activity.

(2) For an earth disturbance activity or any stage or phase of an activity to be considered permanently stabilized, the disturbed areas shall be covered with one of the following:

(i) A minimum uniform 70% perennial vegetative cover, with a density capable of resisting accelerated erosion and sedimentation.

(ii) An acceptable BMP which permanently minimizes accelerated erosion and sedimentation.

(b) *Temporary stabilization.*

(1) Upon temporary cessation of an earth disturbance activity or any stage or phase of an activity where a cessation of earth disturbance activities will exceed 4 days, the site shall be immediately seeded, mulched, or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities.

(2) For an earth disturbance activity or any stage or phase of an activity to be considered temporarily stabilized, the disturbed areas shall be covered with one of the following:

(i) A minimum uniform coverage of mulch and seed, with a density capable of resisting accelerated erosion and sedimentation.

(ii) An acceptable BMP which temporarily minimizes accelerated erosion and sedimentation.

**Authority**

The provisions of this § 102.22 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

#### **Source**

The provisions of this § 102.22 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (266250).

#### **Cross References**

This section cited in 25 Pa. Code § 102.7 (relating to permit termination).

#### **§ 102.23. [Reserved].**

#### **Source**

The provisions of this § 102.23 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203743).

#### **§ 102.24. [Reserved].**

#### **Source**

The provisions of this § 102.24 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203744).

### **ENFORCEMENT**

#### **§ 102.31. Applicability.**

The Department or a conservation district may enforce this chapter under The Clean Streams Law (35 P. S. § § 691.1—691.1001).

#### **Authority**

The provisions of this § 102.31 amended under sections 5 and 402 of The Clean Streams

Law (35 P. S. § § 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### Source

The provisions of this § 102.31 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended February 3, 1978, effective February 20, 1978, 8 Pa.B. 288; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203744) to (203745).

### Notes of Decisions

The provision concerning a 25-acre requirement found in this section should be read so as to relate merely to permit requirements, not so as to remove parcels of land of less than 25 acres from the protection of erosion and sedimentation controls. *Delaware County Community College v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

The Department of Transportation does not come within the provisions of 25 Pa. Code § 102.31 (a)(4) with its plan to construct culverts for stream crossings for an expressway project to be carried out in sections of 17 acres at a time. *In re Precision Tube Company, Inc.*, 2 Pa. D. & C.3d 1 (1975).

The Department of Transportation need not obtain an erosion and sedimentation control permit before commencing earth moving activity for construction of an expressway if the plan is developed with and approved by the Soil Conservation Service. *In re Precision Tube Company, Inc.*, 2 Pa. D. & C.3d 1 (1975).

### § 102.32. Compliance and enforcement provisions.

(a) Compliance and enforcement actions under this chapter which may be pursued include the following. The actions listed are cumulative and the exercise of one action does not preclude the exercise of another. The failure to exercise an action will not be deemed to be a waiver of that action:

(1) Investigations and

inspections. (2) Response to

complaints.

(3) Orders (including orders to remediate or restore).

(4) Civil penalty proceedings, except as provided in subsection

- (b). (5) Summary proceedings.
- (6) The suspension, revocation, withholding or denial of permits or approvals. (7) Notices of violation.
- (8) Actions in a court of competent jurisdiction, including requests for injunctive relief. (9) Other administrative, civil, criminal or equitable action authorized by law.

(b) If the Department finds that pollution or a danger of pollution results from an act of God in the form of sediment from land for which a complete Conservation Plan has been developed by the conservation district and the Natural Resource Conservation Service, and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of The Clean Streams Law (35 P. S. § § 691.1—691.1001).

(c) A person aggrieved by an action of a conservation district under this chapter shall request an informal hearing with the Department within 30 days following the notice of the action. The Department will schedule the informal hearing and make a final determination within 30 days of the request. Any final determination by the Department under the informal hearing may be appealed to the EHB in accordance with established administrative and judicial procedures.

(d) For enforcement action taken under this subchapter, the Department or conservation district may collect or recover, from the responsible party, costs and expenses involved in taking enforcement action in accordance with this subchapter and initiating cost recovery actions under this subchapter. The Department or conservation district may collect the amount in the same manner as civil penalties are collected under section 605 of The Clean Streams Law (35 P. S. § 691.605).

#### **Authority**

The provisions of this § 102.32 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

#### **Source**

The provisions of this § 102.32 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (266251) to (266252).

## **RESPONSIBILITIES OF LOCAL GOVERNING BODIES**

### **§ 102.41. Administration by conservation districts.**

(a) The Department may delegate by written agreement the administration and enforcement of this chapter to conservation districts if they have adequate and qualified staff, and are, or will be, implementing the program identified in the delegation agreement.

(b) An acceptable program shall have the concurrence and approval of the governing body of the county in which the conservation district operates.

(c) The Department will retain program administration and enforcement over projects which cross the political boundaries of conservation districts unless otherwise authorized by the Department.

#### **Authority**

The provisions of this § 102.41 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

#### **Source**

The provisions of this § 102.41 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (266252).

### **§ 102.42. Notification of application for permits.**

A municipality or county which issues building or other permits shall notify the Department or conservation district within 5 days of receipt of an application for a permit involving an earth disturbance activity consisting of 1 acre (0.4 hectare) or more.

#### **Authority**

The provisions of this § 102.42 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.42 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial pages (266252) to (266253).

### **§ 102.43. Withholding permits.**

With the exception of local stormwater approvals or authorizations, a municipality or county may not issue a building or other permit or approval to those proposing or conducting earth disturbance activities requiring a Department permit until the Department or a conservation district has issued the E&S or individual NPDES Permit, or approved coverage under the general NPDES Permit for Stormwater Discharges Associated With Construction Activities under § 102.5 (relating to permit requirements).

### **Authority**

The provisions of this § 102.43 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402); sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. § § 510-17 and 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

### **Source**

The provisions of this § 102.43 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; corrected February 17, 1995, effective October 30, 1972, 25 Pa.B. 613; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111; amended August 20, 2010, effective November 19, 2010, 40 Pa.B. 4861. Immediately preceding text appears at serial page (266253).

### **§ 102.51. [Reserved].**

### **Source**

The provisions of this § 102.51 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203746) to (203747).

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