

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 102]

Erosion and Sediment Control

The Environmental Quality Board (Board) proposes to amend Chapter 102 (relating to erosion and sediment control). The proposed amendments eliminate obsolete terms, simplify technical requirements for best management practices (BMPs), update and clarify permit requirements, and integrate these regulations with current Federal National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with construction activities.

This proposal was adopted by the Board at its meeting of October 21, 1997.

A. *Effective Date*

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact Kenneth F. Murin, Acting Chief, Technical Services Section, Division of Waterways, Wetlands, and Erosion Control, P. O. Box 8775, Rachel Carson State Office Building, Harrisburg, PA 17105-8775, (717) 787-6827, or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11 of the Conservation District Law (3 P. S. § 859(2)), which provide the Board the authority to promulgate regulations, and the Department and delegated entities the authority to regulate erosion and sediment from earth disturbance activities to waters of this Commonwealth by requiring that accelerated erosion and its resulting sedimentation be minimized and controlled.

D. *Background and Purpose*

The purpose of this proposal is to revise existing regulations found in Chapter 102 as part of the Regulatory Basics Initiative (RBI) and Executive Order 1996-1 (Regulatory Review and Promulgation). These initiatives are multistep processes to evaluate regulations: considering several factors including whether requirements; are more stringent than Federal regulations unless justified by a compelling and articulable Pennsylvania interest or required by State law; impose economic costs disproportionate

to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance.

The revisions have been drafted to incorporate brief and specific language which sets forth requirements for erosion and sediment control and the protection of water resources. Under the proposal, persons proposing or conducting earth disturbance activities are required to develop, implement and maintain erosion and sediment control BMPs. BMPs are utilized to provide performance based limitations and restrictions on earth disturbance activities to minimize accelerated erosion and sedimentation. Technical parameters have been kept simple by establishing general requirements, and allowing for the consideration of alternative practices which assure the protection of water quality and the aquatic environment.

Earth disturbance activities are regulated under Chapter 102. The proposed revisions establish a minimal area of disturbance (5,000 square feet) as one of several triggers for the development of a written erosion and sediment control plan. Permit requirements have been revised to more clearly integrate with Federal NPDES stormwater permit requirements for stormwater discharges associated with construction activity. These activities which are 5 acres or more require an NPDES permit. Earth disturbance activities which do not require an NPDES permit, and are 25 acres or more, require an Erosion and Sediment Control Permit. There are several exceptions to this permitting requirement: agricultural plowing and tilling activities continue to be exempt from obtaining permits under this chapter; and earth disturbance activities conducted under Department permits which meet the requirements of Chapter 92 (relating to National Pollutant Discharge Elimination System) and Chapter 102, do not require an Erosion and Sediment Control Permit, or an NPDES Permit for a stormwater discharge associated with a construction activity.

These proposed amendments have been developed with substantial input from the public and the regulated community. Initial drafts of the proposed revisions have been placed on the Department's Web site and presented to and discussed with the Agricultural Advisory Board (AAB), the Water Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) and other representative groups. Additional comments have been provided by county conservation districts, State and Federal agencies and the regulated community, as part of the RBI public input process. Draft versions of the proposed amendments were presented to the AAB on December 18, 1996, February 26, 1997, April 23, 1997, and June 25, 1997, and to AWQTAC on December 10, 1996, February 20, 1997, and April 17, 1997. Both Committees raised comments and questions on a number of issues.

One issue the Committees raised was how the proposed amendments should identify when a sediment discharge is considered to be pollution. Initial drafts proposed a definition of "sediment pollution" and suggested that this pollution could be prevented through the implementation and maintenance of BMPs. After several meetings and discussions, including a joint ad hoc committee meeting comprised of members from the two Committees, the Department agreed that, although conceptually valid,

attempting to define "sediment pollution" caused more confusion than it resolved, and did not simplify or clarify the regulations. Instead of defining "sediment pollution," the Department is now proposing to clarify the definition of BMPs to read "activities, facilities, measures or procedures used to minimize accelerated erosion and sedimentation to protect, maintain and improve the quality of waters and the aquatic environment within this Commonwealth." Therefore, excess sedimentation of Commonwealth waters will be prevented through the proper development, implementation and maintenance of BMPs. This concept will result in a realistic, attainable and cost effective means of minimizing accelerated erosion and sedimentation while maintaining the Commonwealth's commitment to protect water quality and associated water resources.

In developing these proposed amendments, the Department has reviewed and considered other comments from the AWQTAC regarding permit exemptions for timber harvesting and road maintenance activities, water quality considerations in planning, and the administration of the erosion and sediment control program by local governing bodies. Specifically, the AWQTAC commented that the Department has a lack of regulatory control or knowledge of earth disturbance activities involving timber harvesting and road maintenance, and recommended that the Department should require persons proposing these activities to notify government agencies prior to commencement of the activities, and obtain permits to conduct these activities. The Department disagrees that the existing regulatory requirements do not provide sufficient environmental control for these activities. Persons conducting these activities are obligated under Chapter 102 to prepare and implement an erosion and sediment control plan, and take measures to prevent accelerated erosion. In addition, Chapter 105 (relating to dam safety and waterway management) requires Water Obstruction and Encroachments Permits, which include erosion and sediment control plans, and notification requirements for persons conducting activities which are in, along, across or project into a watercourse, floodway or body of water, or change, expand or diminish the course, current or cross section of these waters. These Chapter 105 provisions address most, if not all, activities and structures involving earth disturbance activities that are located in close proximity to water resources. The Department believes that Chapters 102 and 105 complement each other in assuring the protection of this Commonwealth's water resources from these activities.

In addition, the Department has been working with several groups of stakeholders in addressing the use of BMPs for timber harvesting and road maintenance activities. The Department supports the efforts of the Sustainable Forestry Initiative (SFI), and the Dirt and Gravel Road Task Force (DGRTF), in promoting, educating and training persons conducting these activities to use BMP techniques and standards to minimize accelerated erosion and thereby enhance the quality of this Commonwealth's waters. After considering the AWQTAC's comments, and the nonregulatory approaches of the SFI and DGRTF, the Department is proposing to continue the current regulatory framework that requires timber harvesting and road maintenance activities to complete an Erosion and Sediment Control Plan, and implement BMPs, but does not require them to obtain a permit under Chapter 102 if these activities disturb less than 25 acres. An Erosion and Sediment Control Permit continues to be required for timber harvesting and road maintenance activities that disturb 25 acres or more. The Department concludes that

timber harvesting and road maintenance activities conducted in accordance with appropriate BMPs, and under Chapter 105, if applicable, will receive the environmental review necessary to protect this Commonwealth's water resources.

In another comment, the members of the AWQTAC stated that the purpose of Chapter 102 is to protect water quality and aquatic resources, and recommended that the Department incorporate references to water quality protection in §§ 102.2, 102.4, 102.5 and 102.11. The Department has incorporated references into these sections to address the importance of protecting water quality and aquatic resources.

The AAB commented that the term "conservation plan" identified in existing Chapter 102, and in a draft regulatory package prepared by the Department, should be deleted because the term could cause confusion among the agricultural community, who understand the term to be the "conservation plans" prepared for the Natural Resources Conservation Service (NRCS). NRCS "conservation plans" differ from the meaning ascribed to the term in the Department's existing regulations. The Department has addressed the potential problems and confusion by deleting the term "conservation plan" from the regulations and the draft proposal. Instead of using the term "conservation plan," the proposed amendments address the special nature of agricultural plowing and tilling activities by providing for an agricultural-specific erosion and sediment control plan which includes land use, tillage systems, schedules and cost effective and technically practical conservation measures which minimize accelerated erosion to protect water quality and the aquatic environment.

One of the comments received during the RBI public input process addressed the establishment of a minimum disturbance threshold for earth disturbance activities required to prepare an erosion and sediment control plan. In response to the comment, the Department is proposing a 5,000 square foot threshold as one of several conditions which trigger the need for a written plan. These conditions include projects which have the potential to adversely impact water resources, projects which may discharge to High Quality or Exceptional Value Waters, and projects which require an erosion and sediment control plan as a condition of other Department regulations. The Department's revised plan for activities consisting of less than 5,000 square feet is intended to provide consistency with other State programs and municipal requirements, and reduces planning requirements for small projects which do not pose a significant environmental threat.

In sum, the Department believes that these proposed revisions meet the goals and objectives of the RBI and Executive Order 1996-1 and assure the protection of waters of this Commonwealth from accelerated erosion and sedimentation from earth disturbance activities.

E. Summary of Regulatory Requirements

Several changes are proposed in this regulatory package and are described as follows. The descriptions include a reference to the section or subsection proposed to be changed, the nature of the change and the effect of the change.

- *Section 102.1. Definitions.*

Changes to definitions have been incorporated to eliminate antiquated or redundant definitions and add or revise definitions to improve clarity and understanding.

a. New definitions are proposed for: "agricultural plowing or tilling," "BMP—best management practices," "col-

lector," "designee," "disturbed area," "erosion and sediment control permit," "minimum sediment storage elevation," "minimum storage elevation," "NPDES—National Pollutant Discharge Elimination System," "NPDES Permit for Stormwater Discharges Associated with Construction Activities," "notice of intent," "outlet structure," "project site," "road maintenance activities," "timber harvesting activities" and "waters of this Commonwealth."

b. Revised definitions are proposed for: "accelerated erosion," "diversion," "earth disturbance activity," "erosion," "municipality," "person," "sediment," "sedimentation" and "stabilization."

c. Definitions proposed to be deleted are: "conservation plan," "embankment or fill," "excavation," "interceptor channel," "land developer," "land development" and "subdivision."

• *Sections 102.2 and 102.3. Scope and Purpose.*

These sections are proposed to be revised to reflect the scope and purpose of the erosion and sediment control program and emphasize the program's focus on maintaining and improving water quality and the aquatic environment through the implementation of BMPs which minimize accelerated erosion from earth disturbance activities.

• *Section 102.4. General.*

a. The proposed revisions to subsection (a) incorporate new terms and set forth general requirements for erosion control from earth disturbance activities in this Commonwealth.

b. The proposed revisions to subsection (b) require a written erosion and sediment control plan for projects with one or more of the following characteristics:

- The project would disturb 5,000 square feet or more.
- The project is required to have an erosion and sediment control plan under Department regulations other than Chapter 102.
- The Department determines that the project may adversely impact waters of this Commonwealth.
- The project may discharge to High Quality or Exceptional Value waters.

c. Subsection (c) is proposed to clarify that erosion and sediment control plans shall be available for review and inspection during all stages of the earth disturbance activity at the project site. This section also clarifies the authority for the Department or its designee to request the submission of the plan for review if needed. These requirements were previously located in subsection (a).

d. For agricultural plowing or tilling activities, § 102.4(d) is proposed to specify that the landowner, and any lessee, renter, tenant or other land occupier are jointly and individually responsible for developing, implementing and maintaining the erosion and sediment control plan. This section will eliminate the confusion that has occurred between landowners and tenant farmers in implementing the existing subsection (b).

• *Section 102.5. Erosion and Sediment Pollution Control Plans.*

Subsection (a) is proposed to be revised to clarify that erosion and sediment control plans be in writing. Subsection (b) is proposed to be changed to more accurately reflect the long-standing definition of "erosion and sediment control plan" which requires the minimization of accelerated erosion. This section is also revised to clarify that topographic features, soil information, the character-

istics of the earth disturbance activity (including the current and proposed land use), staging of BMPs and the location and classification of all waters of this Commonwealth which will receive runoff from the project site, shall be considered in the design of the erosion and sediment control plan. In addition, where an earth disturbance activity may discharge to a High Quality or Exceptional Value water, the person proposing the activity shall consider utilizing special measures for the protection of these waters from degradation including: prolonged detention for sediment basins and traps, stream buffers, an accelerated stabilization schedule and other appropriate measures.

Subsection (c)(1) is proposed to be added to specify that erosion and sediment control plans shall provide a detailed description of BMPs and other necessary measures to minimize accelerated erosion, as well as the methods for stabilizing the project. Proposed new subsection (c)(2) is a revised version of a portion of existing subsection (b)(8) and provides that a plan shall include a maintenance program for the BMPs. New subsection (c)(3) is a revised version of a portion of existing subsection (b)(8) which provides that the plan shall include a plan for the recycling or disposal of materials from the project site.

Subsection (d) is proposed to be added to address the special nature of agricultural plowing and tilling operations. This section provides that a plan for these activities shall contain a detailed description of BMPs for these activities based upon land use, tillage systems, schedules and cost-effective and technically practical conservation measures.

Finally, a new subsection (e) is proposed to be added to provide that the Department or its designee may require other information necessary to adequately review a plan.

• *Section 102.11. General Requirements.*

This section is proposed to be amended to clarify the availability of alternative BMPs. The language in subsection (a) providing for the minimization of accelerated erosion is clarified to be consistent with the long-standing definition of "erosion and sediment control plan" and the newly added definition of "BMP." In addition, a new subsection (b) is proposed to be added to specify that persons conducting earth disturbance activities shall protect the existing and designated uses of the receiving waters specified in Chapter 93 (relating to water quality standards) by designing, implementing and maintaining BMPs which ensure the protection of the uses.

• *Section 102.12. BMPs.*

This section is proposed to be revised to clarify the BMPs necessary for erosion and sediment control. The specific criteria in the existing § 102.2 have been moved to § 102.13.

• *Section 102.13. Design Criteria for BMPs.*

This section provides general BMP design criteria contained in existing §§ 102.12 and 102.13. The Department is proposing revised technical requirements and combined specifications for channels and diversions, clarified requirements for sediment basins and outlet structures, added specific design requirements for sediment traps, and has included metric conversions for the design standards.

• *Sections 102.21—102.24. Permanent Stabilization.*

These sections are under the existing heading "Restoration" which is proposed to be revised to read "Permanent Stabilization" to more accurately reflect the nature of

these sections. Section 102.24 (relating to removal of BMPs) is proposed to be revised to include language allowing for flexibility in the design and conversion of BMPs to function in other capacities after earth disturbance activities are completed.

• *Section 102.31. Permit Requirements.*

Revisions are proposed to § 102.31 to clarify permit requirements and to provide consistency with Federal NPDES requirements for stormwater discharges associated with construction activity.

a. Subsection (a) is proposed to be revised to specify that a person who proposes an earth disturbance activity other than agricultural plowing or tilling, timber harvesting activities or road maintenance activities, which involves 5 or more acres, or is on any portion, part or stage of an earth disturbance activity of 5 acres or more, is required to obtain an NPDES individual permit, or coverage under the NPDES General Permit for Stormwater Discharges Associated with Construction Activity (PAG-2). This language integrates the NPDES permitting requirements of Chapter 92 with this chapter, and is consistent with the Federal requirement that stormwater discharges associated with construction activity, as defined in 40 CFR 122.26(b)(14)(x) (relating to storm water discharges applicable to State NPDES programs, see § 123.25), are required to obtain an NPDES permit. Additionally, subsection (a)(4) is removed to eliminate parceling because it is an inefficient approach to regulating earth disturbance activities in the course of larger land development projects and does not provide significant environmental benefit.

b. Existing subsection (b) is proposed to be moved to subsection (e). A new subsection (b) is proposed which continues the existing requirement that a person proposing timber harvesting or road maintenance activities consisting of 25 or more acres shall obtain an Erosion and Sediment Control Permit.

c. Existing subsection (c) is proposed to be moved to subsection (f). A new subsection (c) is proposed to be added which provides that no additional erosion and sediment control or NPDES permits are needed if an earth disturbance activity is subject to a Department permit that includes an erosion and sediment control plan which satisfies the requirements of § 102.5, and otherwise meets the requirements of this chapter and Chapter 92. This provision is intended to avoid duplication in permitting if activities are authorized under a Department permit which satisfies this chapter and Chapter 92.

d. A proposed new subsection (d) continues the permit exemption in existing subsection (a)(1) for agricultural plowing or tilling activities.

• *Section 102.32. Permit Applications and Fees.*

Changes are proposed to this section to clarify permit application and fee requirements. Proposed subsection (a) specifies that persons proposing earth disturbance activities which require Erosion and Sediment Control Permits shall submit an application prior to the commencement of the activity which contains an erosion and sediment control plan meeting the requirements of § 102.5, and an application fee of \$500. The proposed new subsection (b) provides that applications and Notices of Intent (NOIs) for activities requiring an NPDES permit for stormwater discharges associated with construction activity shall be accompanied by an erosion and sediment control plan meeting the requirements of § 102.5, and shall be submitted in accordance with the applicable substantive and procedural requirements of Chapter 92, including any

applicable fees. A proposed new subsection (c) provides that applications and NOIs for earth disturbance activities must be accompanied by a complete Pennsylvania Natural Diversity Inventory (PNDI) search form to determine impacts to Pennsylvania and Federal endangered species and their habitat; if these species or their habitat may be impacted by the proposed activity, the applicant shall ensure that the impact is prevented or eliminated.

• *Sections 102.41—102.43. Responsibilities of Local Governing Bodies.*

These sections are proposed to be revised to clarify the requirements for delegation of the erosion and sediment control program to a county conservation district, or other local governing body. Section 102.41(a) (relating to administration by local governing bodies) is proposed to be amended to provide that designees of the program must have adequate and qualified staff, and shall implement the program specified in the delegation agreement. Section 102.41(c) is proposed to be amended to provide that the Department retains administration of projects which cross political boundaries unless otherwise provided in the delegation agreement. Section 102.42 is proposed to be changed to specify that municipalities and counties who issue building or other permits shall notify the Department or its designee within 5 days of receipt of the application for a permit for an activity involving 5 or more acres of land. Under the existing regulation, these municipalities or counties must notify the Department or its designee immediately. Section 102.43 is proposed to be modified to provide that a municipality or county may not issue a building permit to those proposing to engage in earth disturbance activity until the Department or its designee has issued the Erosion and Sediment Control or Individual NPDES Permit, or approved coverage under the NPDES General Permit for Stormwater Discharges Associated with Construction Activity. These changes ensure comprehensive reporting by municipalities and counties and provide for coordination among State and local government in addressing proposals for earth disturbance activities.

• *Section 102.51. Implementation.*

This section is proposed to be deleted because it is outdated and unnecessary. This section is outdated and unnecessary because it contains transitional requirements which were necessary when the regulations were first developed in 1972 and later revised in 1977, but are no longer applicable.

Integration with Federal Requirements.

These proposed regulatory revisions continue a long-standing and effective program for erosion and sediment control in this Commonwealth. In 1992, under section 402(p) of the Federal Clean Water Act (CWA) (33 U.S.C.A. § 1342(p)), and regulations promulgated by the Environmental Protection Agency (EPA) which are in 40 CFR Part 122 (see 55 FR 47990 (November 16, 1990)), the Department began to implement Federal NPDES requirements for stormwater discharges associated with industrial activities. One category of stormwater discharges associated with industrial activities, stormwater discharges associated with construction activities (see 40 CFR 122.26(b)(14)(x)), was addressed by marrying that program with Chapter 92 and the current Chapter 102. The EPA recognized the Commonwealth's approach as a National model. A major component of this approach involved the development of a General NPDES permit (PAG-2) for many of these activities which was published

at 22 Pa.B. 5063 (October 10, 1992). These regulatory revisions are a more formal integration of these programs.

To the extent that these proposed amendments address stormwater discharges associated with construction activities, they are not more stringent than Federal regulations. There is no Federal counterpart to the Commonwealth's requirement for erosion and sediment control permits for earth disturbance activities which are 25 acres or more, and are not required to be permitted under the NPDES Program as a stormwater discharge associated with construction activity. Additionally, there is no Federal requirement for erosion and sediment control plans to be prepared for earth disturbance activities other than stormwater discharges associated with construction activities. Chapter 102 has been in place since 1972, and has been effective in protecting Commonwealth waters from accelerated erosion from earth disturbance activities.

The Department plans to continue involving interested parties such as county conservation districts, the regulated community and the public, in refining its approach to protecting Commonwealth waters from accelerated erosion from earth disturbance activities.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because protection to waters of this Commonwealth will continue to be provided from the effects of accelerated erosion and sedimentation. Special provisions for the protection of endangered species and High Quality and Exceptional Value waters are provided. The regulated community is expected to benefit from these regulatory revisions through the streamlining and clarification of certain permit application and plan review requirements, and clearer and more flexible performance based BMPs and other regulatory provisions. Also, these regulatory revisions are beneficial because they continue to support the delegation of the erosion and sediment control program to local county conservation districts; it has been estimated that the Commonwealth saves \$4.5 million annually in reduced costs of administration through the delegation of this program to the county conservation districts.

Compliance Costs

These regulatory revisions are not expected to result in any significant changes in compliance costs for those persons proposing or conducting earth disturbance activities. Compliance costs will be less for many projects less than 5,000 square feet which are proposed to be exempted from written planning requirements. Additional costs may be incurred in the form of: increased permit application fees for activities requiring erosion and sediment control permits; the consideration and prevention of endangered species impacts; and the consideration of special measures to address earth disturbance activities in High Quality and Exceptional Value waters. The Commonwealth and the regulated community will achieve cost savings through the implementation of streamlined regulatory provisions which provide greater flexibility than the existing regulations, and the elimination of outdated and unnecessary requirements.

Compliance Assistance Plan

The Department assists the regulated community in complying with these proposed amendments through

technical and educational assistance, largely provided in partnership with county conservation districts. These efforts have resulted in local community based initiatives which stimulate awareness and achieve regulatory compliance. Department staff have worked extensively with conservation districts to develop and enhance their professional abilities. The development of compliance strategies through training in negotiation, total quality management, mediation and professional development, has greatly enhanced the Department's ability to protect this Commonwealth's water resources. County conservation district staff provide an efficient and effective local source of assistance as well as an efficient mechanism for the protection of valuable resources. Evaluations of district performance have shown that district staff can provide a quick response to process, review and acknowledge permit applications.

By involving various advisory committees in the development of these proposed amendments, and pursuing initiatives with the regulated community and other stakeholders such as the SFI and the DGRTE, the Department's outreach efforts have allowed stakeholders to work together with regulators to achieve the goal of protecting water quality and the aquatic environment through erosion and sediment control efforts. Involvement of the public and the regulated community in the development of these proposed amendments, and cooperative erosion and control protection efforts, fosters subsequent compliance with standards and practices developed as a result of these efforts, and is an important form of compliance assistance.

The Department assists the regulated community with compliance by its development of standard checklists, worksheets and permit review letters to aid plan preparers in developing sound pollution prevention plans. The Department also assists compliance by assuring that Department and district reviews are timely, effective and consistent. Finally, the regulations incorporate a performance based approach which allows persons conducting earth disturbance broad latitude and flexibility in designing BMPs to achieve compliance. Compliance is assisted by the allowance of a variety of approaches to achieve compliance without specifying exactly how compliance is to be attained.

Paperwork Requirements

No additional paperwork is anticipated to comply with the requirements. A net reduction in paperwork is anticipated through the regulatory exemption of plan development for projects under 5,000 square feet.

G. Pollution Prevention

Pollution prevention approaches to environmental management often provide environmentally sound and longer-term solutions to environmental protection because pollution is prevented at the source. "Pollution prevention" is defined by the EPA as measures taken to avoid or reduce generation of all types of pollution—solid/hazardous waste, wastewater discharges and air emissions—at their points of origin; however, it does not include activities undertaken to treat, control or dispose of pollution once it is created. The Pollution Prevention Act of 1990 (PPA) (42 U.S.C.A. §§ 13101—13109) established a National policy and an environmental management hierarchy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The hierarchy is as follows:

- a. Pollution should be prevented or reduced at the source.

b. Pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible.

c. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible to render it less hazardous, toxic or harmful to the environment.

d. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The short and long-term health of this Commonwealth's economy depends on clean air, pure water and the preservation of the natural, scenic, historic and aesthetic values of the environment. To meet the Commonwealth's economic development and environmental protection goals successfully, the Commonwealth needs to adopt programs like pollution prevention that not only protect the environment but also significantly reduce costs and increase the competitiveness of the regulated community. When pollution is prevented up front, it can reduce a company's bottom-line costs and overall environmental liabilities often by getting the company out of the regulatory loop. It also can get the Department out of the business of regulating pollution that may not need to be generated in the first place.

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these proposed amendments have incorporated several provisions to meet that goal: First, §§ 102.2 and 102.3 generally provide a pollution prevention approach by requiring that BMPs for earth disturbance activities minimize accelerated erosion and sedimentation to protect, maintain and improve water quality and the aquatic environment, thereby preventing pollution. Second, more specifically, § 102.5(b)(6) requires that persons proposing an earth disturbance activity which may result in a discharge to a High Quality or Exceptional Value water shall consider measures such as prolonged sediment detention, stream buffers, an accelerated stabilization schedule and other appropriate measures to maintain and protect the water from degradation in developing an erosion and sediment control plan. The prevention of degradation is the prevention of pollution. Third, § 102.5(c)(3) is added which requires that erosion and sediment control plans shall contain a plan for the recycling or disposal of materials from the project site. The existing regulation in § 102.5(b)(8) only addresses disposal. Finally, § 102.11(b) provides that earth disturbance activities shall protect designated and existing uses in Chapter 93. Two of the uses in that chapter are High Quality Waters and Exceptional Value Waters, which shall be protected from degradation in accordance with Chapters 93 and 95, and the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania).

H. Sunset Review

These proposed amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the proposals effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 1998, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department was

provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed rulemaking, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before final publication of these amendments.

J. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 8, 1998 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 8, 1998 (within 60 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by April 8, 1998. A subject heading of the proposal and a return name and address shall be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on the proposal. They will be held at 3 p.m. on the following dates:

March 9, 1998	Berks County Agricultural Center Auditorium 1238 County Welfare Road Leesport, PA
March 11, 1998	Slippery Rock University of Pennsylvania Eisenberg Auditorium Slippery Rock, PA
March 18, 1998	The Atherton Hotel 125 S. Atherton Street State College, PA

Persons wishing to present testimony at a hearing are requested to contact Kate Coleman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the

hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Kate Coleman directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-332. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 102. EROSION AND SEDIMENT CONTROL

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:

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

Agricultural plowing or tilling—Earth disturbance activity for the production of agricultural crops.

BMPs—best management practices—Activities, facilities, measures or procedures used to minimize accelerated erosion and sedimentation to protect, maintain and improve the quality of waters and the aquatic environment within this Commonwealth.

Collector—A facility, including a channel, dike or other conveyance, constructed down slope of an earth disturbance activity for the purpose of collecting runoff from an existing or proposed disturbed area.

[*Conservation plan*—A plan that identifies conservation practices and, at the very least, includes an erosion and sedimentation control plan.

Department—The Department of Environmental Protection of the Commonwealth.]

Designee—A conservation district, or other local governing body, delegated the authority under a delegation agreement executed by the Department to administer and enforce all or a portion of the erosion and sediment control program in this Commonwealth.

Disturbed area—Land subject to an earth disturbance activity.

Diversion [terrace]—A facility, including a channel, terrace or dike constructed up slope of [a project] an earth disturbance activity for the purpose of diverting

[storm water] runoff away from [the unprotected slope] an existing or proposed disturbed area.

[*Earthmoving*] *Earth disturbance activity*—A construction or other human activity which disturbs the surface of the land, including, but not limited to, clearing, grubbing, grading, excavations, embankments, land development, [subdivision development,] agricultural plowing or tilling, timber harvesting activities, road maintenance activities, mineral extraction, and the moving, depositing, stockpiling or storing of soil, rock or earth materials.

[*Embankment or fill*—A deposit of soil, rock or other material placed by man.]

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

Erosion and sediment control permit—A permit required for earth disturbance activities, except activities that require an NPDES permit for stormwater discharges associated with construction activities.

Erosion and [Sedimentation] Sediment Control Plan—A site-specific plan [which is designed] identifying BMPs or other site-specific practices to minimize accelerated erosion and sedimentation.

[*Excavation*—A cavity formed by digging, quarrying, uncovering, displacing or relocating soil or rock.

Interceptor channel—A channel or dike constructed across a slope for the purpose of intercepting storm water, reducing the velocity of flow and diverting it to outlets where it may be disposed.

Land developer—A person who is engaged in land development as the principal rather than an agent or contractor.

Land development—The constructing, installing, placing, planting or building of surface structures, utility lines, shopping centers and malls, golf course, apartment complexes, schools, roads, highways and parking areas or other similar activity.]

Minimum sediment storage elevation—The elevation within a sediment basin allotted for the accumulation of sediment from the contributing project area.

Minimum storage elevation—The elevation within a sediment basin allotted for the storage of runoff and sediment from the contributing drainage area.

* * * * *

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.

NPDES permit for stormwater discharges associated with construction activities—A permit required for the discharge of stormwater from construction activities, including clearing, grubbing, grading and excavation activities involving 5 acres (2 hectares) or more 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 5 acres (2 hectares) or more of earth disturbance.

Notice of Intent (NOI)—A request, on a form provided by the Department or its designee, for coverage under a general NPDES permit for stormwater discharges associated with construction activities.

Outlet structure—A structure constructed to safely discharge water from a channel, diversion or other drainage structure to an existing natural or artificial watercourse.

Person—A natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government, including a municipality.

Project site—The entire area of activity, development or sale including the disturbed area, an area planned to be disturbed and other areas which are not disturbed.

Road maintenance activities—Earth disturbance activities such as repairing unpaved road surfaces, grading, cutting road banks, cleaning or clearing drainage ditches, and other similar activities.

Sediment—Soils or other [surficial] materials transported by surface water as a product of erosion.

Sedimentation—The action or process [by which sediment is deposited on stream bottoms] of forming or depositing sediment in waters of this Commonwealth.

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

[**Subdivision**—The division or redivision of a lot, tract or parcel of land by a means into two or more lots, tracts, parcels or other division of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development.]

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

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.

§ 102.2. Scope.

This chapter [imposes requirements on earthmoving activities which create accelerated erosion or a danger of accelerated erosion and which require planning and implementation of effective soil conservation measures] requires persons proposing or conducting earth disturbance activities to plan, implement and maintain BMPs to minimize accelerated erosion and sedimentation to protect, maintain and improve water quality and the aquatic environment.

§ 102.3. Purpose.

This chapter [controls] requires all persons proposing or conducting earth disturbance activities to minimize accelerated erosion and the resulting sedimentation of waters of this Commonwealth, thereby preventing the pollution of these waters from sediment and from fertilizers, pesticides and other polluting substances carried by sediment.

§ 102.4. General.

(a) [Earthmoving activities within this Commonwealth shall be conducted in such a way as to prevent accelerated erosion and the resulting sedimentation. To accomplish this, except as provided in subsection (b), a landowner,] A person [or municipality] engaged in [earthmoving] earth disturbance activities shall develop, implement and maintain erosion and [sedimentation] sediment control [measures] BMPs and other sound conservation and engineering practices which effectively minimize accelerated erosion and sedimentation. [These erosion and sedimentation measures shall be set forth in a plan as set forth in § 102.5 (relating to erosion and sedimentation control plan) and be available at all times at the site of the activity. The Department or its designee may, at its discretion, require this plan to be filed with the Department or its designee.]

(b) A person proposing earth disturbance activities shall develop an erosion and sediment control plan under § 102.5 (relating to erosion and sediment control plan) if one or more of the following applies:

(1) The activity will result in a total earth disturbance of 5,000 square feet (464 square meters) or more.

(2) The activity requires the development of an erosion and sediment control plan under other Department regulations.

(3) The Department determines that the activity may adversely impact waters of this Commonwealth.

(4) The activity may result in a discharge to a water of this Commonwealth classified as high quality or exceptional value in Chapter 93 (relating to water quality standards).

(c) The plan required by subsection (b) shall be available for review and inspection at the project site during all stages of the earth disturbance activity. The Department or its designee may request that the plan be submitted for review and approval.

[(b)] (d) In the case of agricultural plowing [and] or tilling, the landowner, and any lessee, renter, tenant or other land occupier, shall be jointly and individually responsible for developing [and], implementing and maintaining the erosion and [sedimentation] sediment control plan required under § 102.5(d). [The landowner may delegate his obligation to implement the plan or parts thereof, by written agreement, to a tenant or lessee. If an agreement exists, the tenant or lessee shall be responsible for implementing those provisions delegated under the agreement.]

§ 102.5. Erosion and [**sedimentation**] **sediment control plan.**

(a) The erosion and [**sedimentation**] **sediment control plan shall be prepared in writing** by a person trained and experienced in erosion and [**sedimentation**] **sediment control methods and techniques.**

(b) The erosion and [**sedimentation**] **sediment control plan shall be designed to [prevent] minimize** accelerated erosion and sedimentation. [**and**] **The plan shall consider all factors which contribute to erosion and sedimentation, including, but not limited to, the following:**

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

(2) The types, depth, slope [**and areal extent**], **locations and limitations** of the soils.

(3) The **characteristics of the earth disturbance activity, including the current and proposed land use and the proposed alteration to the area.**

* * * * *

(5) The staging of [**earthmoving**] **BMP installation and removal, prior to, during and after earth disturbance activities.**

(6) [**Temporary control measures and facilities for use during earth moving.**

(7) **Permanent control measures and facilities for long term protection.**

(8) **A maintenance program for the control facilities including disposal of materials removed from the control facilities or project area.]**

The location of all waters of this Commonwealth which may receive runoff from the project site and their classification under Chapter 93 (relating to water quality standards). Where an earth disturbance activity may result in a discharge to a water of this Commonwealth classified as high quality or exceptional value in Chapter 93, the person proposing the activity shall consider utilizing prolonged detention for sediment basins and sediment traps, stream buffers, an accelerated stabilization schedule and other appropriate measures to maintain and protect the water from degradation.

(c) The written plan, based upon the considerations in subsection (b), shall contain the following:

(1) **Plan drawings and a narrative description of the temporary and permanent BMPs and other necessary measures to minimize accelerated erosion and sedimentation, and the methods for stabilization of the project.**

(2) **A maintenance program which provides for regular inspection, repair and operation of the BMPs.**

(3) **A plan for the recycling or disposal of materials from the project site.**

(d) **For agricultural plowing or tilling activities, the written plan shall contain plan maps, soils maps and a description of BMPs including tillage systems, schedules and cost effective and technically practical conservation measures.**

(e) **The Department or its designee may require other information necessary to adequately review a plan.**

EROSION AND [**SEDIMENTATION**] **SEDIMENT CONTROL [MEASURES AND FACILITIES]; BMPs**

§ 102.11. **General requirements.**

(a) The erosion and [**sedimentation control facilities set forth**] **sediment BMP in §§ 102.12 and 102.13 (relating to [control measures; and control facilities] BMPs; and design criteria for BMPs shall be appropriately incorporated into [earthmoving] all earth disturbance activities unless the designer of the erosion and [sedimentation] sediment control plan shows that alteration of these [measures and facilities] BMPs or inclusion of other [measures and facilities] sound conservation and engineering practices shall [prevent] minimize** accelerated erosion and sedimentation.

(b) **Persons conducting earth disturbance activities shall protect the existing and designated uses of waters in Chapter 93 (relating to water quality standards) by designing, implementing and maintaining BMPs and other sound conservation and engineering practices to ensure protection of these uses.**

§ 102.12. [**Control measures**] **BMPs.**

BMPs include, but are not limited to, the following:

[(a)](1) *Limiting exposed areas.* [**Earthmoving**] **Earth disturbance activities shall be planned and conducted in such a manner as to minimize the [areal] extent and duration of disturbed land.**

[(b)](2) *Surface water diversion.* Surface water shall be diverted [**away from**] **around or through the project [area] site and disturbed areas.**

[(c)](3) *Velocity control.* [**Permanent facilities for the conveyance of water around, through or from the project area shall be designed or contain facilities to limit the velocity of flow in the facilities to less than 1.5 feet per second**] **Temporary and permanent structures shall be designed and constructed to withstand proposed velocities.**

[(d)](4) [*Stabilization*] **Permanent stabilization.** [**Slopes, channels, ditches or a**] **All disturbed [area] areas shall be immediately stabilized [as soon as possible] after the final grade [or final earth moving] has been completed for the project site or any portion of the project site.**

[(e)](5) [*Interim*] **Temporary stabilization.** If it is not possible to permanently stabilize a disturbed area immediately after the final [**earth moving**] **earth disturbance activity has been completed or [where] when the activity ceases for more than 20 days, [interim stabilization measures] temporary vegetation, mulch and other appropriate temporary cover shall be implemented [promptly] immediately.**

[(f)] *Collection of runoff.* **Runoff from a project area shall be collected and diverted to facilities for removal of sediment.**

(g) *Solids separation*] (f) *Sediment retention*. Run-off from a project area may not be discharged into the waters of this Commonwealth without means to prevent sedimentation. **Sediment basins, sediment traps and other appropriate structures or practices shall be installed to collect, manage and trap sediment on the project site.**

§ 102.13. [*Control facilities*] Design criteria for BMPs.

(a) *Diversion [terraces] collectors and channels*. [The following applies to diversion terraces:]

(1) [*Diversion terraces*] Temporary or permanent diversions shall be constructed [up-grade] up slope of a [project] disturbed area prior to initiation of other earth disturbance activities on the project site to convey runoff around the [project] disturbed area. [For temporary diversion, the channel shall have a capacity to convey 1.6 cubic feet per second per acre of land tributary to it. For permanent diversion, the channel shall have a capacity to convey 2.75 cubic feet per second per acre of land tributary to it.]

(2) [*Diversion terraces shall be grassed or lined with erosion resistant material to prevent accelerated erosion within the channel.*]

(3) Outlet structures shall be designed to maintain a discharge velocity of less than three feet per second and shall be stabilized before use.]

Diversions shall be installed and stabilized prior to initiation of other earth disturbance activities on the project site.

(3) Collectors shall be constructed down slope of a disturbed area to collect and convey the runoff from the disturbed area to facilities for sediment retention.

(4) Temporary BMPs including diversions, collectors and channels that divert or carry surface water shall be designed to have a minimum capacity to convey 1.6 cubic feet per second per acre (0.1 cubic meters per second per hectare) of tributary drainage, or the peak discharge from a 2-year/24-hour frequency storm.

(5) Permanent BMPs including diversions, collectors and channels that divert or carry surface water shall be designed to have a minimum capacity to convey 2.75 cubic feet per second per acre (0.2 cubic meters per second per hectare) of tributary drainage, or the peak discharge from a 10-year/24-hour frequency storm.

(6) If it is not feasible to divert up slope drainage around a project site, a channel or other conveyance structure may be used to transport water through a project site. The channels or conveyances shall be protected from sedimentation originating on the project site.

(7) Diversions, collectors or channels shall be provided with erosion resistant linings, unless the plan designer demonstrates that velocity for diversions, collectors or channels will be controlled to 2 feet per second (0.6 meters per second) or less.

(b) [*Interceptor channels*. The following applies to interceptor channels:

(1) Interceptor channels may be used within a project area to reduce the velocity of flow and thus prevent accelerated erosion.

(2) Water collected by interceptor channels shall be conveyed to sedimentation basins or to vegetated areas but not directly to streams.

(3) Outlets to vegetated areas shall be designed to maintain an outlet velocity of less than three feet per second.]

Outlet structures for facilities other than sediment basins.

(1) Outlet structures shall be stabilized before use.

(2) Suitable outlet protection shall be provided with an erosion resistant material when a velocity is equal to or greater than 3 feet per second (0.9 meters per second).

[(c) *Channels of conveyance*. Channels used to convey water through a project area shall be designed to have a velocity of less than 1 1/2 feet per second. If this is not possible, the channel shall be grassed or lined with erosion resistant material.

(d) *Sedimentation*] (c) *Sediment basins*. [The following applies to sedimentation basins:]

(1) A [*sedimentation*] sediment basin shall have [a capacity of 7,000] 5,000 cubic feet [for each acre of project area tributary to it and shall be provided with a 24-inch freeboard.] of storage for each acre (495 cubic meters for each hectare) tributary to the basin, plus an additional 2,000 cubic feet of sediment storage capacity for each disturbed acre (142.5 cubic meters for each hectare) tributary to the basin.

(2) The basin shall be [cleaned when the storage capacity of the basin is reduced to 5,000 cubic feet per acre of project area tributary to it] maintained to ensure efficient operation of the basin, including removal of sediment from the basin. Accumulated sediment may not exceed the sediment storage elevation within the basin.

(3) [*Outlet*] Sediment basin outlet structures shall be designed to pass a minimum flow of 2 cubic feet per second [for each acre of project area] per acre (0.14 cubic meters per second per hectare) of contributing drainage area tributary to the basin. Outlet structures shall be stabilized before use.

(i) The entire 2 cubic feet per second per acre (0.14 cubic meters per second per hectare) discharge capacity shall be provided above the minimum storage elevation.

(ii) A minimum of 24 inches (61 centimeters) of freeboard shall be provided above the elevation of the 2 cubic feet per second per acre (0.14 cubic meters per second per hectare) discharge capacity.

(iii) Every sediment basin shall be provided with an emergency spillway.

(4) The discharge from a [*sedimentation*] sediment basin shall be to a [*natural waterway*] water of this Commonwealth or other approved alternative, and shall be designed, operated and maintained without causing accelerated erosion or sedimentation.

(5) [**Sedimentation**] **Sediment** basins shall be structurally sound and protected from unauthorized acts of third parties.

(6) In addition to the requirements of this section, sediment basins requiring permits under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) are required to meet the design, construction, operation and maintenance, and other permit requirements of Chapter 105 (relating to dam safety and waterway management).

(d) *Sediment traps.*

(1) The maximum drainage area to a sediment trap is 5 acres (2 hectares).

(2) Sediment traps shall be designed to have a capacity of 2,000 cubic feet of storage for each acre (140 cubic meters per hectare) tributary to it.

(3) Outlets from sediment traps shall be structurally sound and stabilized before use.

(4) Sediment trap outlet structures shall be designed to pass a minimum flow of 1.5 cubic feet per second per acre (0.1 cubic meters per second per hectare) of contributing drainage area tributary to the trap.

(5) A minimum of 12 inches (30.5 centimeters) of freeboard shall be provided above the elevation of the 1.5 cubic feet per second per acre (0.1 cubic meters per second per hectare) discharge capacity.

(6) The discharge from a sediment trap shall be to a water of this Commonwealth or other approved alternative, and shall be designed, operated and maintained without causing accelerated erosion or sedimentation.

[**RESTORATION**] **PERMANENT STABILIZATION**

§ 102.21. [**Applicability**] (Reserved).

[Sections 102.21—102.24 apply to earthmoving activities which have not been stabilized.]

§ 102.22. [**Stabilization**] **Permanent stabilization.**

[Upon completion of the project,] In accordance with § 102.12(4) (relating to BMPs) all disturbed areas [disturbed by the project] shall be permanently stabilized so that accelerated erosion [shall be prevented.] and sedimentation shall be minimized to protect, maintain and improve water quality and the aquatic environment. For a project site to be considered permanently stabilized, disturbed areas shall be covered with one of the following:

(1) A minimum of 70% perennial vegetative cover of uniform coverage and density.

(2) An acceptable BMP which permanently minimizes accelerated erosion.

§ 102.23. [**Interim control measures**] **Temporary BMPs.**

[An erosion] Erosion and [sedimentation] sediment control [facility] BMPs required or necessary to protect areas and receiving waters from erosion [during the stabilization period] and sedimentation shall be maintained until the permanent stabilization is completed.

§ 102.24. [**Final measures**] **Removal of BMPs.**

Upon completion of permanent stabilization, [unnecessary or unusable control facilities] temporary BMPs shall be removed, and the areas shall be graded and [the soils shall be] stabilized, unless otherwise authorized by the Department or its designee.

PERMITS [AND PLANS]

§ 102.31. **Permit requirements.**

[(a) A person or municipality who engages in an earthmoving activity within this Commonwealth shall obtain a permit prior to commencement of the activity; except a permit may not be required under the following circumstances:

(1) If the earthmoving activity involves plowing or tilling for agricultural purposes.

(2) If an activity is required to obtain a permit under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.21), the Water Obstruction Act (32 P. S. §§ 681—691) or Chapters 91—95, 97 and 101.

(3) If an earthmoving activity disturbs less than 25 acres.

(4) If an activity involving more than 25 acres is subdivided into parcels of less than 25 acres and earthmoving is undertaken on noncontiguous parcels and the parcels are stabilized before contiguous parcels are disturbed.]

(a) A person who proposes an earth disturbance activity other than agricultural plowing or tilling, timber harvesting activities or road maintenance activities, shall obtain a general or individual NPDES permit for stormwater discharges associated with a construction activity under Chapter 92 (relating to National Pollutant Discharge Elimination System), when the activity involves an earth disturbance consisting of 5 acres (2 hectares) or more, or an earth disturbance on a portion, part, or during any stage of, a larger common plan of development or sale that involves 5 acres (two hectares) or more of earth disturbance.

(b) A person proposing a timber harvesting or road maintenance activity shall obtain an Erosion and Sediment Control Permit under this chapter when the earth disturbance activities consist of 25 acres (10 hectares) or more.

(c) A person proposing an earth disturbance activity approved under another Department permit that contains an erosion and sediment control plan meeting the requirements of § 102.5 (relating to erosion and sediment control plan), and otherwise satisfies all other provisions of this chapter and Chapter 92, is not required to obtain an erosion and sediment control permit or NPDES permit for stormwater discharges associated with a construction activity, under this chapter.

(d) A person proposing or conducting agricultural plowing or tilling activities is not required to obtain an Erosion and Sediment Control Permit, or an NPDES permit for stormwater discharges associated with a construction activity, under this chapter.

[(b)](e) The Department, after publication in the *Pennsylvania Bulletin*, may reduce the acreage limitation **[set forth]** in **[subsection (a)(3) or (4)]** §§ 102.1 and 102.31 (relating to definitions; and permit applications and fees) on the following basis:

* * * * *

[(c)](f) Even though an activity is not required to obtain a permit under the exceptions **[set forth]** in this section, the person **[or municipality]** undertaking the activity shall comply with the other provisions of this chapter.

§ 102.32. **[Application for permit] Permit applications and fees.**

(a) For an activity requiring an erosion and sediment control permit under § 102.31 (relating to permit requirements), the following apply:

[(a) Applications for permits shall be submitted by the] (1) A person **[or municipality undertaking the earthmoving activity. In the case of land development, the application shall be submitted by the land developer rather than the contractor or agent]** who proposes the activity shall apply for a permit prior to the commencement of the activity.

[(b)](2) Applications shall be accompanied by an erosion and **[sedimentation] sediment control plan [and other documents the Department may require]** meeting the requirements of § 102.5 (relating to erosion and sediment control plan).

[(c)](3) Applications shall be accompanied by **[a processing]** an application fee of **[\$200] \$500.**

(b) For an activity requiring an NPDES permit for stormwater discharges associated with a construction activity, the following apply:

(1) Permit applications and notices of intent shall be submitted in accordance with Chapter 92 (relating to National Pollutant Discharge Elimination System).

(2) Applications and notices of intent shall be accompanied by an erosion and sediment control plan meeting the requirements of § 102.5.

(3) Applications and notices of intent shall be accompanied by the fee required under Chapter 92.

(c) Erosion and Sediment Control Permit applications, individual NPDES permit applications for earth disturbance activities, and notices of intent for earth disturbance activities shall be accompanied by a complete Pennsylvania Natural Diversity Inventory (PNDI) search form to determine potential impacts to a Pennsylvania or Federal threatened or endangered species or its habitat. If the Department determines, based upon PNDI data and other sources, that the earth disturbance activity may adversely impact the species or their habitat, the person proposing the earth disturbance activity will prevent or eliminate the impact.

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

§ 102.41. Administration by local governing bodies.

(a) The Department may **[, at its discretion,]** delegate **by written agreement** the administration and

enforcement of this chapter to **[counties and other units of local government provided the county or other unit of local government has and implements an acceptable plan approved by the Department for administering such a program]** conservation districts or other local governing bodies if they have adequate and qualified staff, and are implementing the program identified in the delegation agreement.

(b) **[An acceptable plan shall include adequate and qualified staff for the review of erosion and sediment control plans and for the surveillance and enforcement of the provisions of this chapter.]** An acceptable **[plan]** program shall have the concurrence and approval of the **[Commissioners]** governing body of the county in which the local unit of government or conservation district operates.

(c) The Department will retain program administration over projects which cross the political boundaries of local governing bodies who have been delegated the administration of the provisions of this chapter **unless otherwise specified in the delegation agreement.**

§ 102.42. Notification of application for **[building]** permits.

A **[local governing body]** municipality or county which issues building or other permits shall notify the Department or its designee **[immediately upon]** within 5 days of receipt of an application for a **[building, the]** permit involving an **[earthmoving]** activity **[which affects]** consisting of 5 acres (2 hectares) or more of land.

§ 102.43. Withholding **[building]** permits.

A **[local governing body]** municipality or county may not issue a building or other permit to those **[engaged in earthmoving]** proposing or engaging in earth disturbance activities requiring a Department permit until the Department or its designee has issued the erosion and sediment control or individual NPDES permit **[under]** or approved coverage under the general NPDES permit for stormwater discharges associated with construction activities under §§ 102.31 and 102.32 (relating to permit requirements; and **[application for]** permit application and fees).

IMPLEMENTATION

§ 102.51. **[Effective dates]** (Reserved).

[(a)] This chapter became effective 30 days after its adoption by the EQB except §§ 102.31 and 102.32 (relating to permit requirements; and application for permit), which requires permits prior to the commencement of an activity, became effective on July 1, 1973, and § 102.4 (relating to general), which require preparation of erosion and sedimentation control plans, shall become effective according to the following schedule:

(1) Agricultural activities, plowing and tilling only—July 1, 1977. A person or municipality who has applied to a conservation district for an erosion and sedimentation control plan or a conservation plan before July 1, 1977, shall be considered in compliance with the deadline date.

(2) Existing earthmoving activities—January 1, 1974.

(3) New earthmoving activities started after adoption of this chapter but before July 1, 1973—July 1, 1973.

(4) New earthmoving activities started after July 1, 1973—prior to commencement of the activity.

(b) The Department, if it finds that it is in the best interest of the Commonwealth, may order the

development and implementation of erosion and sedimentation control plans or require permits sooner than the dates set forth in this section.]

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