



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waterways Engineering and Wetlands

Implementation of Act 162 of 2014

December 17, 2014

Agenda

1. Overview of Act 162
2. Impact of Act 162
3. Demonstrating buffer equivalence
4. Offsetting
5. Impact to permitting
6. Implementation tools

What is Act 162 of 2014?

- Introduced as HB 1565
- Amended Pennsylvania Clean Streams Law (CSL)
 - New Section 402(c)
 - NPDES stormwater construction permit applicants may choose either to implement riparian buffers or riparian forest buffers OR to implement equivalent best management practices (BMPs) in certain cases
 - Requires offsetting buffers in certain cases
- Does not eliminate use of riparian buffers as a BMP

Scope of Act 162

- NPDES permits located within 150 feet of certain High Quality or Exceptional Value waters
- Does not apply to, nor change process in 25 Pa. Code § 102.14, for non-NPDES permits
 - ESCGP permits for oil and gas activities or
 - ESC permits for road maintenance and timber harvesting
- Does not affect voluntary riparian buffer programs; example CREP

Impacts on NPDES Permitting

- New § 402(c)(1) of CSL provides an alternative to mandatory riparian buffers or riparian forest buffers
- New § 402(c)(2) of CSL provides that when a buffer is not used and if earth disturbance is conducted within 100 feet of a special protection water, offsetting is required

Equivalency Demonstration

- New § 402(c)(1)(ii)
- Applicants choosing not to implement the riparian buffer or riparian forest buffer, must make a demonstration that the BMPs that they will implement will be equivalent to the type of buffer required in 102.14(a)(1) and (2)
- Demonstration is both quantitative and qualitative in nature

Offsetting

- New § 402(c)(2) triggered when applicant proceeds under 402(c)(1)(ii)
- New § 402(c)(2) requires offsetting:
 - As close as feasible and be within the same drainage list of the project
 - 1:1 ratio for replacement riparian buffer is required
 - Include other BMPS to manage stormwater

➤ Impact on Permits – New Permits

	Prior to 12/21/2014	On or after 12/21/2014
Applications for new individual NPDES stormwater construction permits	Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver.	Must be consistent with Act 162. <ul style="list-style-type: none">• Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir• If not using a riparian buffer, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset.• Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.

Impact on Permits - Renewals

	Prior to 12/21/2014	On or after 12/21/2014
Applications for individual NPDES stormwater construction permit renewals with grandfathering related to 102.8	Grandfathering applies; the riparian buffer and riparian forest buffer requirements do not apply.	Grandfathering applies; the riparian buffer and riparian forest buffer requirements do not apply.
Applications for individual NPDES stormwater construction permit renewals without grandfathering related to 102.8	Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver.	<p>Must be consistent with Act 162.</p> <ul style="list-style-type: none"> • Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir • If a riparian buffer is not used, earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset. • Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.

Impact on Permits - Modifications

	Prior to 12/21/2014	On or after 12/21/2014
Minor modifications- Individual NPDES stormwater construction	There are no changes created by the act.	There are no changes created by the act.
Major modifications- Individual NPDES stormwater construction	Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver.	<p>Must be consistent with Act 162.</p> <ul style="list-style-type: none"> • Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir • If no riparian buffer and earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset. • Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.

Impact on Permits - Phased

	Prior to 12/21/2014	On or after 12/21/2014
<p>Phased permits- Individual NPDES stormwater construction permits</p>	<p>Must meet pre-Act 162 regulatory requirements related to riparian buffers; if within 150 feet of a special protection river, stream, creek, pond, lake or reservoir, must apply for a waiver.</p>	<p>Must be consistent with Act 162.</p> <ul style="list-style-type: none"> • Either implement a riparian buffer or a riparian forest buffer OR provide an equivalency demonstration if earth disturbance is within the zone. measuring 150 to 100 feet of a special protection river, stream, creek, pond, lake or reservoir • If no riparian buffer is used earth disturbance within 100 feet of a special protection river, stream, creek, pond, lake or reservoir, must be offset • Equivalency demonstration guidance and offsetting guidance will be tools to assist in these demonstrations.

Implementation Tools

- Interim Final Policy: Implementation Plan for Act 162 of 2014 (310-2135-001)
 - December 20, 2014 *Pennsylvania Bulletin*
 - Department’s website: www.dep.state.pa.us
- Choose:
 - “Public Participation Center” then;
 - “Public Comments” then;
 - “Technical Guidance”
- Frequently Asked Questions (FAQ)

Implementation Tools

- Equivalency Demonstration Interim Technical Guidance (310-2135-002)
- Offsetting Interim Technical Guidance (310-2135-003)
- Training
- Rulemaking



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Questions?

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