

Proposed Rulemaking

25. Pa. Code Chapter 102 Erosion and Sediment Control and Stormwater Management

Environmental Quality Board

June 16, 2009

**John Hines
Deputy Secretary
Water Management**

Background and Purpose

- Incorporate updated federal requirements
- Codify post construction stormwater management requirements
- Enhance requirements related to agriculture
- Clarify existing requirements for accelerated erosion and sediment control
- Update permit fees
- Add requirements related to riparian forest buffers
- Introduce a permit-by-rule option

Updated federal requirements incorporated

- Second phase (Phase II) of the federal requirements added.
 - Phase I requirement established a five acre or greater earth disturbance threshold.
 - Phase II requirement establishes a one acre or greater of earth disturbance threshold.

Post construction stormwater management (PCSM) requirements codified

- Post construction stormwater management already required by:
 - Federal NPDES stormwater construction and MS4 requirements
 - Environmental Hearing Board decisions
 - Act 167 Stormwater Planning
- Post construction stormwater management needed for:
 - Implement existing requirements
 - Water quality protection
 - Streambed and streambank protection
 - Flood control

Enhanced requirements related to agriculture

- Requirements related to plowing and tilling more clearly defined.
- Scope expanded to include “animal heavy use areas”.
 - Erosion and Sediment Control Plan development and implementation required.

Existing requirements for accelerated erosion and sediment control clarified

- Definitions
- Plan requirements
- Permitting requirements
- Site stabilization
- Chapter 93 antidegradation implementation requirements

Permit fees updated

- NPDES permit fees specific to the Stormwater Construction program
- Fees for other (non-NPDES) permits that may be required under this Chapter
- Majority of fees collected remain with Conservation Districts

Requirements related to riparian forest buffers added

- New general requirements for protecting existing and establishing new riparian forest buffers
 - Buffer conservation, construction and maintenance
- Riparian forest buffer mandatory when:
 - Activity requires a permit under this chapter and is located along or within 150 feet of an Exceptional Value (EV) river, perennial and intermittent stream, or lake, pond, or reservoir
 - Activity is authorized utilizing the permit-by-rule

Permit-by-rule option

- Eligibility criteria included to limit applicability to “low-risk” projects
- Conditions included requiring the use of
 - Riparian forest buffers
 - “Low impact design” techniques
 - Prescriptive plan and implementation requirements
 - Mandatory oversight by a professional engineer, geologist, or landscape architect
 - 30 day review timeframe

Outreach efforts

- Numerous outreach efforts on proposed 102 revisions, permit-by-rule and riparian forest buffers since 2007 including
- Professional Organizations
 - PA Builders Association
 - Professional Engineers, Geologists, Soil Scientists
 - Environmental Groups (PA Campaign for Clean Water, Chesapeake Bay Foundation, Delaware Riverkeeper, others)
 - Conservation Districts, PA Association of Conservation Districts
 - Agricultural organizations (Penn Ag, PA Farm Bureau)
- State Agencies:
 - State Conservation Commission (SCC)
 - Department of Conservation and Natural Resources (DCNR)
- Federal Agencies
 - USDA-Natural Resource Conservation Service (NRCS)
 - US Environmental Protection Agency
- Citizens Advisory Council (CAC)
- Water Resources Advisory Council (WRAC)
- Agricultural Advisory Board (AAB)

Compliance Costs

- Codification of existing requirements should not result in significant increased compliance costs
- Moderate increased costs possible due to:
 - Increased permit application fees for activities requiring permits
 - PCSM Plan licensed professional oversight and preparation of record drawings
- Cost savings to applicants, municipalities and others
 - permit-by-rule option
 - Low impact development approaches
 - Sustainable, green infrastructure

Benefits

- Improve water quality, mitigate flooding potential, benefits to navigation and water storage, improve drinking water quality
- Restructure and clarify planning and permit application requirements
- Codify existing PCSM requirements
- Integrate regulatory and planning obligations for stormwater management
- Support delegation to conservation districts

WRAC recommended request for comments

- Scope of the permit-by-rule
- Responsibility for long-term PCSM operation and maintenance (O&M)
- Mandatory Riparian Forest Buffers

Recommended action

- 60-day public comment period
- Hold 3 public hearings during the public comment period

Questions
