

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 1921

(1) Agency

Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-332

(3) Short Title

Erosion and Sediment Control

(4) PA Code Cite

25 Pa. Code
Chapter 102

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 717-783-1303

Secondary Contact: Kenneth F. Murin, 717-787-6827

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This revision of the regulations simplifies and clarifies erosion and sediment control requirements to protect the Commonwealth's water resources from the adverse impacts of accelerated erosion and resulting sedimentation. In addition, the amendments integrate the Department's long standing erosion and sediment control program with federal National Pollutant Discharge Elimination System (NPDES) requirements for stormwater discharges associated with construction activity.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendment is being made under the authority of Sections 5 and 402 of the Clean Streams Law (35 P.S. P.S. §§691.5 and 691.402); 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)).

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- (10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. Although not mandated by any state or federal law, one of the purposes of these amendments is to ensure consistency with federal National Pollutant Discharge Elimination System (NPDES) regulatory requirements for stormwater discharges associated with construction activities at §402(p) of the Federal Clean Water Act, 33 U.S.C. §1342(p), 40 CFR §122.26, and the Pennsylvania Clean Streams Law, 35 P.S. §691.1 et.seq.

- (11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Excess sedimentation affects the water quality and biological integrity of water resources. These amendments are needed to address these issues and to ensure consistency with the federal National Pollutant Discharge Elimination System's (NPDES) regulatory requirements for stormwater discharges associated with construction activities. The amendments also clarify and simplify existing requirements, and provide a performance based approach to erosion and sediment control which allows for flexibility and alternate methods of minimizing accelerated erosion from earth disturbance activities while protecting Pennsylvania's water quality.

- (12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Without the regulations, water quality would be degraded and would likely create conditions which are detrimental or injurious to public health, safety, or welfare, which would impact environmental conditions, public water supplies, recreational resources, and other uses.

- (13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The amendments will directly benefit all Pennsylvania citizens by ensuring pollution prevention, enhanced fisheries resources and associated recreational opportunities provided by water resources. Persons required to comply with this regulation will benefit from the performance based regulations due to the increased flexibility in the use of BMPs to meet the regulatory standard of minimizing accelerated erosion to assure protection of the Commonwealth's water resources.

Minimizing accelerated erosion and sedimentation is a key part of the Commonwealth's Nutrient Reduction Strategy necessary to reduce associated nutrients from entering the Chesapeake Bay, Delaware Estuary, Lake Erie, and other Commonwealth waters.

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- (14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The amendments are not expected to adversely affect persons proposing or conducting earth disturbance activities. The additional flexibility allowed in meeting performance based requirements, and the clarification and simplification of regulatory requirements, will benefit such persons.

- (15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any person or entity who conducts earth disturbance activities is required to comply with these regulations. Examples of activities which are regulated include agricultural plowing or tilling, residential and commercial development, and earth disturbances associated with highway construction and maintenance, utility installation, timber harvesting, and mineral resource development. Approximately 1,500 persons annually obtain a permit under the provisions of this Chapter.

- (16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Initial comments were solicited during the Regulatory Basics Initiative, through publication in the Pennsylvania Bulletin and through the Department's web site. The proposed revisions were presented to the Agricultural Advisory Board (AAB) and the Water Resources Advisory Committee (WRAC), formerly the Water Subcommittee of the Air and Water Quality Technical Advisory Committee. The AAB approved the proposed regulations at their June 25, 1997 meeting, and WRAC approved the proposed regulation at their April 17, 1997 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on February 7, 1998. The public comment period expired on April 8, 1998. Three public hearings were held by the Environmental Quality Board. Comments were received from thirty-six commentators: five at the public hearing, thirty from written comments, and one from the Independent Regulatory Review Commission (IRRC). The comments were provided by County Conservation Districts, homebuilders, utility companies, oil and gas producers, the mining industry, consultants, environmental organizations, state and federal agencies, and the general public. The final amendments were approved by WRAC and the AAB at their meetings on May 12, 1999, and June 16, 1999, respectively.

- (17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Current costs to implement existing regulations are \$60 million (from page 5).

The amendments are not expected to impose any additional costs on the regulated community. Approximately \$150,000 dollars will be saved annually by the regulated community through the reduction of written Erosion and Sediment Control Plan requirements.

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- (18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amendments will continue to require that local governments have a role in notifying the Department or County Conservation District of projects affecting five or more acres for permit coordination of land development activities. There are no new costs associated with these amendments. The existing costs to local government through the notification process are minimal.

- (19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

There will be no increased costs or savings associated with the implementation of these regulations for state government.

Current costs are \$4 million per year to implement these regulations (from page 5).

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community *	150,000	150,000	150,000	150,000	150,000	150,000
Local Government						
State Governments						
Total Savings	150,000	150,000	150,000	150,000	150,000	150,000
COSTS:						
Regulated Community **	60,000,000	60,000,000	60,000,000	60,000,000	60,000,000	60,000,000
Local Government						
State Governments •	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Total Cost	64,000,000	64,000,000	64,000,000	64,000,000	64,000,000	64,000,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Governments						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

- * Savings to the regulated community will be obtained for the elimination of written Erosion and Sediment Control Plan preparation for projects less than 5,000 ft. (300 plans @ \$500/plan = \$150,000).
- ** Average dollars spent to control erosion and sedimentation. Figures for 1995 show that approximately 1,100 projects were authorized under a permit and 2,000 projects were conducted according to a plan. Using average figures of \$50,000 as the cost per permitted project, and \$2,400 for projects conducted under a plan, approximately \$60 million dollars were spent in 1995 to control erosion and sediment in Pennsylvania. These estimated costs are based upon the Draft NPDES General Permits for Stormwater Discharges from Construction Sites (US EPA, August 16, 1991, (56 Fed. Reg. 40948)) and are reflected in 1988 dollars.
- Estimated program costs (includes DEP and County Conservation Districts).

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Erosion & Sediment Control	\$3.50 million	\$3.75 million	\$3.75 million	\$4 million

Includes Cost associated with expenditures for the Department and County Conservation Districts.

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

Annual instream damage from sediments costs between \$3.2 and \$13 billion nationwide (in 1980 dollars)[Clark, Haverkamp, and Chapmen, 1985][Waddell, 1986]*. In addition, offstream damages associated with the erosion of roads, drainage ditches and other structures, and the loss of viable, productive topsoil are difficult to quantify. Using these estimates for instream and offstream damages nationwide, it is estimated that between \$64 and \$260 million dollars (1980 dollars) in environmental damage occurs to Pennsylvania's land and water resources annually from sediment pollution. The benefits of protecting water quality and the environment from accelerated erosion and sedimentation far outweigh the cost of administering the program (\$4 million annually) and costs to the private sector for implementation (\$60 million).

*Edwin H. Clark II, Jennifer A. Haverkamp; and William Chapmen, Eroding Soils: The Off- Farm Impacts (Washington, DC: The Conservation Foundation, 1985), and Thomas Waddell, The Off-Site Costs of Soil Erosion (Proceedings of a symposium held in May 1985 (Washington, D.C: The Conservation Foundation, 1986)

(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

NPDES permitting for projects of five acres or more is a federal requirement and no nonregulatory alternatives were considered. The Department uses a performance based planning approach for most projects less than five acres as an alternative to formal permitting. This approach minimizes the permitting burden on individuals and businesses while providing effective protection for soil and water resources.

Market incentives are built into Pennsylvania's existing program. Promoting less costly techniques, minimizing extent of disturbance, and adding flexibility in plan preparation are currently used and will continue. The program has initiated several nonregulatory compliance alternatives through the distribution of information and training to the general public. Government agencies, industry, and Penn State University have cooperated to provide information, motivation, and recognition for erosion control planning during timber harvesting and road maintenance activities. Financial incentives are provided at both the federal and state levels to assist farmers in sharing costs of installing best management practices for agricultural plowing or tilling activities.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

The Department considered additional general permits and a permit by rule approach for certain earth disturbance activities. These approaches were determined to be unnecessary because the current program adequately controls accelerated erosion through erosion and sediment control planning requirements. The addition of general permits or a permit by rule did not add value to this process.

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- (24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

To the extent that these amendments address stormwater discharges associated with construction activities of five acres or more, they are not more stringent than federal regulations.

There is no federal counterpart to the Commonwealth's requirements for Erosion and Sediment Control Plans for earth disturbance activities, and Erosion and Sediment Control Permits for timber harvesting and road maintenance activities which disturb 25 acres or more. Chapter 102 has been in place since 1972 and has been effective in protecting Commonwealth waters from accelerated erosion from earth disturbance activities.

- (25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The amendments are similar to federal requirements and those of other states. The regulations will not affect Pennsylvania's competitive relationship with other states. See the attached chart (Figure 1) for a more detailed analysis.

- (26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The amendments are not expected to affect existing or proposed regulations of this or any other state agency.

- (27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No additional public hearings and informational meetings have been scheduled. The Department will provide training to County Conservation Districts and Department staff on the implementation of the regulations. Also, the Department will work with County Conservation Districts to ensure that outreach efforts, workshops, and training sessions will be provided for the regulated community.

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- (28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will require predominately minor changes to forms, fact sheets, and technical guidance. Paperwork will be reduced for earth disturbance activities which are less than 5,000 square feet, which are generally not required to develop an Erosion and Sediment Control Plan.

- (29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Provisions have been added to recognize special land use practices and best management practices associated with agricultural plowing or tilling.

The Department has also developed partnerships with cooperating agencies, industry, municipalities and the regulated community to develop simplified model erosion and sediment control procedures for timber harvesting, agricultural plowing or tilling, and road maintenance activities.

- (30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will go into effect upon publication of the final rulemaking in the *Pennsylvania Bulletin*. Earth disturbance activities are currently regulated. These regulations will not require persons who plan and conduct earth disturbance activities to obtain any new or additional permits, licenses or approvals.

- (31) Provide the schedule for continual review of the regulation.

The amendments will be revised in accordance with the sunset review schedule published by the Department.

Pennsylvania's Chapter 102 Erosion Control Regulations: Comparison with Federal and State Programs				
PA (final)	DE	NJ	MD	EPA
5000 ft. ² or more (Silviculture and agriculture included) Plan required pursuant to other Department regulations. Plans required for all projects which discharge to Special Protection Waters. Plan always available on site.	All activities require a plan. All plans require review & approval. Silviculture and agriculture exempt.	Required >5000 ft. ² disturbance. Silviculture and agriculture are exempt.	Required >5000 ft. ³ or 100 yd. ³ disturbance. Agriculture exempt. Plans and notification required for special areas.	Stormwater pollution prevention plan (5 acres of disturbance) agricultural & silvicultural activities are exempt (Phase I). No requirement for plan at project site.
Topographic features, soils, alteration of the area, runoff, staging, temporary and permanent BMP's maintenance of BMP's, and location of all receiving waters.	Same as PA	Same as PA	Same as PA	Project location, area, management practices, runoff coefficient, receiving waters, operator.
Best Management Practices for Erosion and Sediment Control listed in a state/federal manual.	Same as PA	Same as PA	Same as PA	Same as PA
Authorizes alternative BMP's if approved by the Department	N/A	Same as PA	Same as PA	Same as PA
Upon completion of the project, all disturbed areas shall be stabilized	Same as PA	Same as PA	Same as PA	N/A
All BMP's shall be removed, unless an alternative is approved	N/A	Same as PA	Same as PA	N/A
Permit is required if construction disturbance is 5 acres or more. No permit is required for agricultural plowing or tilling. Timber harvesting, or road maintenance requires permits if earth disturbance is 25 acres or more.	NPDES Permit > 5 acres. All activities require approval.	Same as PA except timber harvesting and agriculture are always exempt.	Permit is needed >5000 ft. ² or 100 yd. ³ of disturbance.	5 acres or more of disturbance (Phase I). Agriculture, road maintenance and timber harvesting activities exempt.
Application must be submitted by the person or the municipality undertaking the earth disturbance activity	N/A	Both owner and operator applies.	Anybody can be on permit - usually owner or project representative.	Operator responsible to obtain permit.
County conservation districts do administration and some enforcement	Same as PA	Same as PA	Same as PA	N/A
Local municipality cannot issue a permit until Department has issued a permit	Same as PA	Same as PA	Same as PA	N/A
Provides for both civil or criminal enforcement remedies	Same as PA	Same as PA	Same as PA	Same as PA

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
(AGENCY)

R. E. Grimaldi

(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 7-332

9/21/99

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: *J. M. Seif*

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable
Copy not approved. Objections
scheduled.

TITLE: JAMES M. SEIF, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Check if applicable. No Attorney General
approval or objection within 30
days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Erosion and Sediment Control

25 PA Code Chapter 102

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
25 Pa. Code, Chapter 102
Erosion and Sediment Control**

Preamble

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 102 (relating to Erosion and Sediment Control). The amendments are the result of a comprehensive regulatory review required under Governor Ridge's Executive Order 1996-1 and the Department of Environmental Protection's Regulatory Basics Initiative (RBI). The amendments eliminate obsolete terms, simplify technical requirements for best management practices, 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 September 21, 1999.

A. Effective Date

These amendments shall become effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Kenneth F. Murin, 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. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). These amendments are also available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The amendments are adopted under the authority of 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 of the Conservation District Law (3 P.S. § 859(2)), which provide the Environmental Quality Board the authority to promulgate regulations, and the authority for the Department and delegated entities to regulate accelerated erosion and sediment from earth disturbance activities to Waters of the Commonwealth.

D. Background and Purpose

The purpose of this final regulation is to amend regulations found at 25 Pa. Code, Chapter 102 as part of the Regulatory Basics Initiative (RBI) and Executive Order 1996-1 (Regulatory Review and Promulgation). These initiatives are multi-step processes to evaluate regulations considering several factors including whether requirements: are more stringent than federal regulations unless justified by a compelling 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.

Under the amendments, persons proposing or conducting earth disturbance activities are required to develop, implement, and maintain erosion and sediment control best management practices (BMPs). BMPs are utilized to provide a measurable performance-based requirement for earth disturbance activities to minimize accelerated erosion and the potential of sediment pollution. The regulations have been written to provide performance-based objectives rather than mandate specific practices for all activities. Flexibility in meeting the performance requirements is provided by allowing the use of a variety of BMPs provided in the Department's Erosion and Sediment Pollution Control Program Manual ("Manual"). The amended regulations also allow for the consideration of alternative BMPs not listed in the Manual which provide the same level or improved protection of water quality and existing and designated uses.

All earth disturbance activities are regulated under the provisions of Chapter 102. The amended revisions require the development of a written Erosion and Sediment Control Plan for all earth disturbances of 5,000 square feet or greater, earth disturbances in High Quality or Exceptional Value watersheds, or where required by another Department regulation. Permit requirements have been amended to more clearly integrate the existing federal National Pollutant Discharge Elimination System (NPDES) Stormwater Permit requirements for stormwater discharges associated with construction activities. Construction activities having earth disturbances of five or more acres of land require a NPDES Permit for Stormwater Discharges Associated with Construction Activities. Earth disturbance activities associated with agricultural plowing or tilling, timber harvesting and road maintenance do not require coverage under the NPDES Permit for Stormwater Discharges Associated with Construction Activities. Persons conducting timber harvesting or road maintenance activities which involve 25 acres or more of earth disturbance must apply for and obtain coverage for an Erosion and Sediment Control Permit required under this Chapter. Persons conducting agricultural plowing or tilling activities are required to develop plans and implement agricultural BMPs, but continue to be exempt from the permitting requirements in this Chapter. Earth disturbance activities conducted under other Department permits issued under regulations which require compliance with 25 Pa. Code, Chapters 92 and 102, will not require a separate authorization under an Erosion and Sediment Control Permit, or a NPDES Permit for Stormwater Discharges Associated with Construction Activities.

The amendments have been developed with valuable input from the general public, federal, county, municipal, industry, environmental, and consulting representatives, and from the Department's internal review of its regulations.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on February 7, 1998. A 60-day public comment period on the proposal expired on April 8, 1998. Three public hearings were held by the Environmental Quality Board (Board): March 9, 1998, Leesport; March 11, 1998, Slippery Rock; and March 18, 1998, State College. Approximately 300 comments were received from 36 commentators through public hearings and written comments. A summary of the comments and responses are provided in Section F of this Preamble.

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.

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 non-regulatory approach 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 persons proposing or conducting 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 the 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 final regulations were presented to the Water Resources Advisory Committee (WRAC) at the May 12, 1999 meeting and the Agricultural Advisory Board (AAB) at the June 16, 1999 meeting for discussion. WRAC approved the amended final regulations on May 12, 1999, and the AAB approved the final regulation on June 16, 1999.

At the WRAC meeting, the Department was asked to clarify that road maintenance activities apply to existing paved and unpaved roads. The Department explained that road maintenance typically includes shoulder cutting, road grading, ditch cleaning, and similar activities. Road construction and roadway reconstruction is not considered road maintenance.

WRAC suggested that the purpose of the regulation should be to prevent pollution from sediment. The Department stated that the regulations do prevent pollution by requiring the installation and use of BMPs to protect existing and designated uses of Waters of the Commonwealth.

Questions were raised about the inclusion of BMPs for High Quality and Exceptional Value Waters in the regulations while other BMPs are listed in the program manual. The Department included special

protection BMPs in the regulation at the suggestion of commentators and to emphasize special protection for these resources. To meet its RBI commitment, the regulation provides for a performance based standard which allows for alternate BMPs in special protection waters when such BMPs will maintain and protect existing water quality and existing and designated water uses.

In non-special protection waters, the Department's Manual lists a wide range of BMPs available to meet the regulatory standard of minimizing the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses, without being prescriptive. Alternate BMPs may be utilized where they meet the regulatory standard.

At the Agricultural Advisory Board (AAB) meeting, the AAB recommended that the Department include a definition for "conservation plan", include enforcement provisions applying to agricultural practices consistent with the Clean Streams Law, and clarify who was qualified to develop an Erosion and Sediment Control Plan. The AAB approved the amendments with the understanding that their recommendations would be included in the final rulemaking. The regulations have been revised as recommended by the AAB.

E. Summary of Regulatory Revisions in the Final Rulemaking

- **SECTION 102.1. DEFINITIONS:** Definitions in this Chapter include revisions, additions, and deletions, in response to comments received on the proposed rulemaking package.

The definition of "agricultural plowing or tilling activity" is clarified to specifically refer to the preparation and maintenance of soil for the production of agricultural crops.

The term "best management practices" is revised in response to comments relating to the use of the terms "improve" and "aquatic environment". "Improve" is replaced with the term "reclaim and restore" to more closely track the Clean Streams Law. "Aquatic environment" is replaced with "existing and designated uses" to be consistent with the water quality standards program.

A definition for "channel" has been added at the suggestion of a commentator.

The term "collector" is amended to require that collected water be conveyed to facilities for sediment retention or removal.

The term "conservation plan", which was proposed for deletion, is included in the final rulemaking at the request of the AAB to be consistent with the Clean Streams Law and to clarify erosion and sediment control requirements for agricultural plowing or tilling.

A definition for "County Conservation District" is added. The term is defined as County Conservation Districts which have the authority under a delegation agreement with the Department to administer and enforce the E&S Control Program. With this term added, the term "designee" is no longer required and is deleted.

The term “dewatering zone” is added to identify that portion of a sediment basin where stormwater runoff is held and released in a controlled manner.

The term “disturbed area” is revised to identify those land areas not stabilized where an earth disturbance activity is occurring or has occurred.

The term “earth disturbance” is clarified to ensure that clearing activities in and of themselves are not considered earth disturbance activities, whereas “clearing and grubbing” activities are considered earth disturbances.

“Erosion and Sediment Control Permit” is clarified to eliminate confusion with NPDES permits. Timber harvesting activities or road maintenance activities which involve 25 acres or more of earth disturbance are required to secure an Erosion and Sediment Control Permit.

The term “Erosion and Sediment Control Plan” is modified to require best management practices to be identified on the plan. Also, language is added which provides that, for agricultural plowing or tilling activities, the E&S Control Plan is that portion of a conservation plan identifying BMPs to minimize accelerated erosion and sedimentation.

The proposed terms “minimum sediment storage elevation” and “minimum storage elevation” are no longer used in the body of the regulations and are deleted.

The term “NPDES Permit for Stormwater Discharges Associated with Construction Activities” is amended to clarify that this permit is required for potential discharges into waters of the Commonwealth over the life of the project, and to specify that clearing alone does not require an NPDES permit.

A minor revision is made to the definition of the term “Notice of Intent” to incorporate the reference to County Conservation Districts.

The term “operator” is added to be consistent with the federal NPDES program and to clarify who is responsible for securing NPDES stormwater permits associated with construction activities. The term includes persons who have oversight responsibility of earth disturbance activity on a project site with the authority to modify site plans and persons who have day to day control over the earth disturbance activity on a project site or portion thereof.

The proposed term “outlet structure” is no longer used in the body of the regulation and is deleted.

The term “perimeter best management practices” is added to describe the specific types of BMPs developed and implemented on project perimeters to divert water around the project site or to capture water for treatment.

The term “person” is modified to include operators.

The term “permanent stabilization” has been added and is defined as long-term protection of soil and water resources from accelerated erosion.

The term “permanent pool” has been added and is defined as an area within a basin that is designed to be permanently inundated with water.

A definition for “principal spillway” is added to clarify that the function of the structure is to regulate the discharge of water from a basin.

The term “project site” is amended to be consistent with federal requirements and includes the entire project area disturbed or planned to be disturbed.

The term “road maintenance activities” is clarified to apply to maintenance activities on existing unpaved roads and other similar activities within the existing road cross-section.

The term “skim” is added to describe the removal of the upper most portion of water within a sediment basin.

- **SECTION 102.2. SCOPE AND PURPOSE:** Sections 102.2 and 102.3 “Scope and Purpose” are merged into Section 102.2 in response to comments received during the proposed rulemaking process. Commentators stated that these sections were redundant and could be clarified by combining the requirements into one section. The revisions maintain the emphasis and focus on protecting, maintaining, reclaiming, and restoring water quality through the implementation of best management practices that minimize accelerated erosion from earth disturbance activities.
- **SECTION 102.3. RESERVED:** This section, formerly titled “Purpose”, is deleted in its entirety as a result of combining Sections 102.2 and 102.3.
- **SECTION 102.4. EROSION AND SEDIMENT CONTROL PLANNING REQUIREMENTS:** Section 102.4 consolidates the proposed Section 102.4 “General” and §102.5 “Erosion and Sediment Control Plan” requirements into one comprehensive section. The Department has reformatted the regulation to distinguish erosion and sediment control requirements for agricultural plowing or tilling activities from other earth disturbance activities. The regulations specify the circumstances where written Erosion and Sediment Control Plans are required as those earth disturbance activities which:
 - (1) involve 5,000 square feet (464 square meters) or more of earth disturbance,
 - (2) are located in special protection waters,
 - (3) or require a plan under another Department regulation.

This section is also amended to include specific best management practices for maintaining and protecting water quality in High Quality and Exceptional Value Waters.

- **SECTION 102.5. PERMIT REQUIREMENTS:** Permit requirements are moved from Section 102.31 “Permit requirements” to Section 102.5. Minor revisions to the final form of the regulations are provided for clarity and readability.

- **SECTION 102.6. PERMIT APPLICATIONS AND FEES:** This section consolidates language from Section 102.31 “Permit requirements” and 102.32, “Permit application and fees” to clarify permit application and fee requirements for Erosion and Sediment Control Permits and NPDES Permits for Stormwater Discharges Associated with Construction Activities.
- **SECTION 102.7. PERMIT TERMINATION:** This section is added to the regulations to clarify the procedures for terminating coverage under either an Erosion and Sediment Control Permit or an NPDES Permit for Stormwater Discharges Associated with Construction Activities. Both permits can be terminated by the permittee or co-permittee prior to the expiration date of the permit provided permanent stabilization is achieved.
- **SECTION 102.11. GENERAL REQUIREMENTS:** This section establishes the general regulatory standard that persons conducting or proposing to conduct an earth disturbance activity shall design, implement, and maintain BMPs to minimize the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses. In response to the recommendation of commentators, BMPs to achieve the regulatory standard are listed in the Department’s Erosion and Sediment Pollution Control Program Manual (“Manual”). This provides the regulated community with a broad range of widely accepted and published performance-based BMPs to meet the substantive requirements of these regulations. The regulations also provide for the consideration of alternative best management practices, not currently in the Manual, provided the alternative best management practices meet the performance criteria of the regulations to maintain, protect, reclaim and restore water quality and existing and designated uses.
- **SECTIONS 102.12 AND 102.13. RESERVED:** Section 102.12 “Control measures” and Section 102.13 “Control facilities” are deleted in their entirety. Best management practices are listed in the Department’s Manual.
- **SECTION 102.21. RESERVED.** As a result of the reorganization and clarification of this Chapter, Section 102.21 “Applicability” is no longer required and is deleted.
- **SECTION 102.22. PERMANENT STABILIZATION:** The regulation is revised to specify the criteria for implementing and maintaining best management practices to achieve permanent stabilization.
- **SECTION 102.23. RESERVED:** Section 102.23 “Interim control measures” is merged into Section 102.22 “Permanent Stabilization.”
- **SECTION 102.24. RESERVED:** Section 102.24 “Final measures” is deleted.
- **SECTION 102.31 and 102.32. COMPLIANCE AND ENFORCEMENT:** Sections 102.31 “Permit requirements” and 102.32 “Application for permit” are revised in the final rulemaking. Permit requirements and application fees are now provided in Sections 102.5 and 102.6. Sections 102.31 and 102.32 now provide the compliance and enforcement provisions of this Chapter. Section 102.32(b) has been added to ensure conformity with Section 316 of the Clean Streams Law.

- **SECTION 102.41. ADMINISTRATION BY COUNTY CONSERVATION DISTRICTS:** The regulation is clarified by specifically referring to County Conservation Districts instead of "local governing bodies."
- **SECTION 102.42. NOTIFICATION OF APPLICATION FOR PERMITS:** The regulation is clarified by referring to County Conservation Districts instead of "designee."
- **SECTION 102.43. WITHHOLDING PERMITS:** For clarification, the Department uses the term municipality or county instead of "local governing body." The Department has also clarified that this section only applies to final municipal approvals.
- **SECTION 102.51. IMPLEMENTATION:** This section, written in 1972 when this regulation was originally implemented, is no longer necessary and is deleted.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was published in the *Pennsylvania Bulletin* on February 7, 1998. A 60-day public comment period on the proposal expired on April 8, 1998. Three public hearings were held by the Environmental Quality Board (Board): March 9, 1998, Leesport; March 11, 1998, Slippery Rock; and March 18, 1998, State College. Approximately 300 comments were received from 36 commentators through public hearings and written comments. A summary of the comments and responses follows:

Temporary and permanent best management practices - The Board received several comments that indicated that commentators were confused about temporary and permanent erosion and sediment control best management practices. To eliminate confusion, the Board has eliminated references to temporary and permanent best management practices. Erosion and sediment control best management practices include both temporary structural and temporary and permanent stabilization practices.

Structural practices, such as silt fence, ditches and sediment basins collect, divert, store, and treat stormwater runoff to protect against accelerated erosion and the discharge of sediment from disturbed areas, during and immediately after the earth disturbance activity. These temporary best management practices are designed and implemented during the earth disturbance activity, and until vegetation or other permanent cover is established. Permanent structural best management practices required for post construction stormwater management are developed and implemented pursuant to municipal planning requirements. The Department encourages plan developers to design compatible practices for both construction and post-construction characteristics.

Stabilization is the covering of disturbed areas with vegetative (grass, trees, shrubs, sod, etc.) and non-vegetative (pavement, rock mulch, geotextiles, etc.) practices. Establishing either temporary or permanent stabilization can be the single most important best management practice in reducing accelerated erosion and sedimentation. Temporary stabilization provides interim control of earth disturbance activities that have temporarily ceased and will resume at a later date, or is used until a permanent cover can be

established. Permanent stabilization is achieved when perennial vegetation of uniform coverage and density is established, or by covering the disturbed area with permanent non-vegetative cover.

“County Conservation Districts” should replace “designee” - A commentator stated that the reference to “other local governing body” is ambiguous and could conceivably lead to personal, political and territorial conflicts and that designee should be restricted to the County Conservation District (District). The references to “designee” are deleted and references to County Conservation Districts have been added.

“Minimize” vs. “prevent” - The Board received comments in support of, and opposed to, the requirement to “minimize” rather than “prevent” accelerated erosion and sedimentation.

The Board believes that the use of the term “minimize” is more appropriate than “prevent”. Erosion and sedimentation is a natural process that occurs even in the absence of human activity. The objective of this regulation is to minimize the accelerated erosion process from earth disturbance activities. Accelerated erosion, if unchecked, may adversely impact our waterways because of the increased sediment load beyond natural background levels. Best management practices are effective, practical and environmentally sound practices that minimize the threat of pollution, and protect and maintain water quality and existing and designated uses. Best management practices are designed to address site conditions such as slope, soil conditions, risk of erosion, and other factors, to operate effectively during reasonably expected storm and rainfall events of normal duration and intensity. BMPs prevent sediment pollution during such storm events. The reference to the protection and maintenance of water quality and existing and designated uses assures protection of receiving waters.

Water Quality Standards - The Board received comments suggesting that the Department adopt numeric water quality standards for sediment.

Before numeric water quality criteria can be established for sediment, gaps in existing knowledge and research need to be addressed including: the establishment of a meaningful standard which accounts for natural background variability; the establishment of standard storm event intervals and the production of sediment above the natural background; the ability to identify and address cumulative effects within a watershed; and the establishment of an acceptable risk through models which are precise and accurate. Because of these gaps, at this time the Board does not believe that numeric sediment water quality standards can be incorporated into the regulations.

5,000 square foot threshold - The Board received several comments on the establishment of a 5,000 square foot threshold for Erosion and Sediment Control Plan development. The commentators provided varied recommendations, mostly in support of establishing the 5,000 square foot requirement. Several commentators recommended increasing the requirement to a larger area (ranging from 10,000 square feet to one acre) or including exceptions for activities such as earth disturbances for single family lot development. One commentator recommended eliminating the threshold entirely and requiring written plans for all earth disturbance activities, regardless of the size of disturbance.

The 5,000 square foot threshold provides a reasonable risk based planning measure for minor earth disturbance activities which do not present a significant threat when typical best management practices are utilized. Earth disturbance activities less than 5,000 square feet are generally minor in scope and duration

and do not generally constitute a substantial risk to water quality. In order to assure water quality protection, the regulations specify several instances where Erosion and Sediment Control Plans are required for activities which disturb less than 5,000 square feet, such as an earth disturbance activity in special protection waters. This threshold for planning activities is also consistent with existing municipal requirements and established standards in the neighboring states of Delaware, Maryland, and New Jersey.

The Board agrees with the commentators that larger land disturbances of 5,000 square feet or greater can be conducted without significantly increasing the threat for accelerated erosion and sediment pollution provided best management practices are effectively designed, implemented, and maintained. Best management practices for projects greater than 5,000 square feet must be carefully selected and designed. A written plan is the most effective way to ensure that best management practices are effectively incorporated in an earth disturbance activity. The Board has clarified the final regulations by identifying specific planning criteria and elements to be included in an Erosion and Sediment Control Plan.

Timeframes for the review of Erosion and Sediment Control Plans/Permits - The Board received comments which suggested that specific timeframes consistent with the Money-Back Guarantee Program be included in the final regulation. The Board disagrees that the timeframe established under the Money-Back Guarantee Program must be specified in the regulations. The Department's Regional Offices and County Conservation Districts endeavor to complete the review of all Notices of Intent and Applications for Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities within the time specified under the Money-Back Guarantee Program (150 days for Individual Permits and 100 days for Notices of Intent). Also, under the Department's delegation agreements with Districts, Districts must "... Receive, review and process all Notices of Intent for Coverage Under the Pennsylvania General Permit for Discharges of Stormwater from Construction Activities and all Individual Permit Applications for Discharge of Stormwater from Construction Activities within 30 days of receipt."

Registration of all plans greater than 5,000 square feet - The Board received comments recommending that all Erosion and Sediment Control Plans should be registered with the Department or the District. The Board does not believe that this additional administrative process will provide any additional water quality protection. The Department or delegated District has the authority to request Erosion and Sediment Control Plans to be submitted for any project to ensure the plan is adequate and provides effective protection for soil and water resources. This allows the Department and Districts to exercise best professional judgment, and utilize considerations such as landscape position, proximity to watercourses, site conditions, and potential for water quality impairment, in prioritizing staff resources and efforts.

Professional Engineer Certification for Erosion and Sediment Control Plans - Several commentators suggested that the Board require that all Erosion and Sediment Control Plans be certified by a professional engineer. The regulations do not reserve the authority to develop Erosion and Sediment Control Plans to any specific profession, industry, or individual since there are many differing and varied contexts in which earth disturbance activities are conducted such as agriculture, timber harvesting, road maintenance, and residential and commercial construction.

Qualifications required for Districts - The Board received several comments regarding the qualifications of District Staff who review Erosion and Sediment Control Plans. District staff in Districts delegated the Chapter 102 and the NPDES Stormwater Construction Programs are trained by the Department to ensure

that they are qualified to review Erosion and Sediment Control Plans, and perform other functions required under the delegation agreements. District staff conducts reviews under the guidance, direction, and assistance provided by the Department.

Pennsylvania Soil and Water Technical Guidance for Agriculture - The Board received several comments recommending that the technical design criteria for agricultural plowing or tilling activities be consistent with the USDA-Natural Resource Conservation Service (NRCS) Pennsylvania Technical Guide. The Board agrees with the commentators that the Pennsylvania Technical Guide provides effective and acceptable best management practice for agricultural plowing or tilling activities. The definition of "conservation plan" was added at the request of the AAB and specifically references the Technical Guide.

Best Management Practices Manual - The Board received several comments recommending that the technical design criteria for best management practices in the final regulation should reference the Department's Manual. In response, the regulations have been amended to refer to the Manual as suggested. The Manual provides a broad range of performance based practices to meet the regulatory standard of minimizing accelerated erosion to protect, maintain, reclaim and restore water quality and existing and designated uses. In addition, the regulations allow for alternate BMPs to be used when they are as effective as the BMPs listed in the Manual.

As a parallel effort to the regulatory revisions, the Department has created an ad hoc working group of six Conservation Districts from around the state (Armstrong, Berks, Centre, Columbia, Indiana, and Monroe) to review and discuss revisions to the Manual to ensure that the latest BMP technology for erosion and sediment control is listed. When the recommendations from these six Conservation Districts are incorporated, the Department will make the draft revisions to the Manual available to Conservation Districts and advisory committees for review and comment, and establish a public comment period for the general public to review and comment on the proposed revisions.

Larger Plan of Common Development or Sale/ Operator - Several commentators recommended that the Board provide a clarification of what it considers "a larger common plan of development or sale that involves 5 acres or more of earth disturbance." The commentators recommend that the regulation include the criteria that will be used to reasonably determine if a project or activity will fall under a common plan of development and to include a definition of an "operator."

The final Chapter 102 regulations are written to be consistent with EPA construction stormwater program requirements. When EPA reissued its NPDES General Permits for Stormwater Discharges from Construction Activities (63 *Fed. Reg.* 7859-7860)(February 17, 1998)), it provided answers to general questions on the construction stormwater permitting program. EPA stated that: "The 'plan' in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit." The Board believes that Chapter 102 conveys the same intent.

The Board has clarified the final regulation by defining the term "operator" to be consistent with EPA's description of the term at 63 *Fed. Reg.* 7859 (February 17, 1998). The Board defines "operator" consistent with the federal description of the term as: "The person with (1) oversight responsibility of earth disturbance activity on a project site or a portion thereof who has the ability to make modifications to the Erosion and Sediment Control Plan or site specifications; or (2) day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the Erosion and Sediment Control Plan."

NPDES Permits for Construction Activities and Utilities - Several commentators recommended that the Board clarify the requirements for earth disturbances associated with utility line installation and associated requirements for an NPDES Permit for Stormwater Discharges Associated with Construction Activities.

In new subdivisions or developments, utility line installations would normally be conducted under the authority of the NPDES permit secured by the developer and/or general contractor. Where utility companies are extending lines or services, or conducting other earth disturbance activities outside the confines of a new development or subdivision, the utility company would be the project operator in control of the project and the utility company would be required to secure the NPDES permit.

NPDES Permit for Stormwater Discharges Associated with Construction Activities Requirements for Oil And Gas Activities - The Board received several comments that averred that the proposed regulations are more stringent than federal regulation for earth disturbance associated with oil and gas exploration and production activities. The provisions in the amended Chapter 102 regulations are no more stringent than federal requirements. The Board has determined that discharges of stormwater from construction activities associated with oil and gas exploration and production activities are regulated under the federal NPDES Stormwater Program and therefore cannot be exempt from state NPDES stormwater permit requirements. Since October 1992, the Department and County Conservation Districts have authorized discharges from construction activities in Pennsylvania pursuant to federal NPDES requirements, including those construction activities associated with oil and gas development and associated activities.

Under the federal program, oil and gas operations are addressed under the construction category and the mineral industry category. Under the construction category, EPA has established that erosion, sediment, and pollution control should be addressed in all pollution prevention plans for the oil and gas exploration and production activities, particularly where the industrial activity has the potential to disturb vegetation or natural runoff patterns and exacerbate erosion. Where the construction of the drilling site or any construction of facilities for the oil and gas exploration and production would disturb or is part of a plan to develop which would disturb five acres or more, then that construction activity is defined as having a storm water discharge associated with industrial activity which requires separate permitting. In this case, EPA requires a NPDES permit for the storm water discharge from the construction activity (60 *Fed. Reg.* 51166). This is also explained as co-located industrial activities.

Section 402(1)(2) of the Clean Water Act, 33 U.S.C §1342(1)(2), places a limitation on permit requirements from storm water runoff from oil and gas operations. Under this section, EPA cannot require a NPDES permit or require a state to require a NPDES permit for discharges of storm water runoff from oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances used for

collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, by-product, or waste products located on the site of such operation. As part of the mineral industry category, EPA includes this limitation at 40 CFR §122.26 (c)(1)(iii) and only requires the operation to submit an application for a discharge of storm water when the facility has been a discharger of storm water resulting in the discharge of a reportable quantity under 40 CFR §117.21, 40 CFR §110.6 or contributes to a violation of a water quality standard.

Permit requirements for earth disturbances of 5 acres or more – Several commentators believe that a permit requirement for 5 acres or more of earth disturbance activities will add paperwork, create significantly more applications, and create a bottleneck in the approval process.

The 5 acre permitting requirement is a federal requirement which has been in place since October 1992. The Board's amendments to Chapter 102 are intended to integrate the federal requirements into the final Chapter 102 regulation. Since the Department has implemented the federal NPDES permit for stormwater discharges associated with construction activities requirement since October 1992, the Board does not expect that applications or paperwork will be increased or that the approval process will become burdensome under the final Chapter 102 regulation.

Permit Requirements for timber harvesting and road maintenance activities - Several commentators recommended that the Board reduce the area of disturbance requirement for permitting of timber harvesting and road maintenance activities requiring Erosion and Sediment Control Permits. The Board has not proposed changes for these activities. The final regulations require that persons proposing or conducting earth disturbance activities associated with timber harvesting and road maintenance activities that involve 25 acres or more of earth disturbance obtain Erosion and Sediment Control Permits.

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 non-regulatory approaches 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.

Reduction of acreage requirements – One commentator recommended that the Board delete the provision allowing the Department to reduce permit acreage requirements by notice. The Board has deleted this procedure from the final regulations in response to the comment.

Permit fee increase for Erosion and Sediment Control Permits - Several commentators requested that the Board clarify, evaluate and provide a justification for the proposed increase in permit fees. The proposed fee increase for Erosion and Sediment Control Permits from \$200-\$500 only applies to earth disturbances of 25 acres or more associated with timber harvesting and road maintenance activities. The fee for NPDES permits, including NPDES Permit for Stormwater Discharges Associated with Construction Activities is established pursuant to §92.22. The fee for Erosion and Sediment Control Permits is intended to cover the administrative costs of the Department and Districts processing the permit applications, including administrative completeness review, data management, coordination and other related activities.

The fee of \$500 was calculated using an average time of 25 hours of effort per permit review at a rate of \$20 per hour.

Pennsylvania Natural Diversity Inventory (PNDI) provisions - Several commentators recommended that the Board clarify and explain why PNDI provisions were added and what criteria the Department and Districts will use in making PNDI determinations.

The Department cooperates with several natural resource agencies including the Department of Conservation and Natural Resources; the Pennsylvania Fish and Boat Commission; the Pennsylvania Game Commission; and the U.S. Fish and Wildlife Service, in determining impacts to threatened and endangered species. These resource agencies consider if a proposed activity adversely impacts known or documented occurrences of a Pennsylvania or federal threatened or endangered species, and consult with the applicant and the Department to recommend preventive measures that can be taken.

Projects which require permits, i.e. projects of five or more acres requiring an NPDES Permit for Stormwater Discharges Associated with Construction Activities, or 25 or more acres for an Erosion and Sediment Control Permit, require PNDI coordination. This requirement is consistent with the Department policy to consult the PNDI prior to issuing permits and with the EPA requirements for NPDES permits to protect listed species and critical habitat under the Federal Endangered Species Act.

County Conservation District Plan Review Fees - Several commentators questioned why an applicant must pay the permit application fee, along with an additional fee charged by Districts.

The permit application fee is intended to cover the administrative costs of the Department's and District's processing of NPDES permit applications. The Board, through Chapter 102 or other regulation, does not establish plan review fees for Districts. The State Conservation Commission authorizes Districts, under the authority of the Conservation District Law, to charge fees for the review of Erosion and Sediment Control Plans and other services.

Local permit coordination - Commentators requested clarification on municipal notification requirements and the potential burden it places on both municipalities and NPDES permitting authorities. The Board has revised the final regulation to require notifications for projects needing a Department permit under Chapter 102. The Department and Districts have an ongoing outreach program designed to educate and update municipal officials on a regular basis. The Department has also developed guidance on implementation of model ordinances and Memorandums of Understanding (MOU) with municipalities to assist in this requirement. It is anticipated that many municipalities will be covered under EPA's proposed Phase II NPDES Stormwater Permit program when such regulations are finalized. The Board anticipates that continuing this coordination process will help satisfy municipal obligations for erosion and sediment control ordinances under this EPA proposal.

Enforcement provisions - A commentator recommended that the final regulation should indicate the penalties or enforcement provisions that may be used to enforce Chapter 102, or include a statutory citation to the potential penalties or actions.

The Clean Streams Law sets forth a variety of enforcement mechanisms that may be used to enforce failures to develop, implement, or maintain an Erosion and Sediment Control Plan, or to obtain an NPDES or Erosion and Sediment Control Permit. The Board has revised the final regulation to include enforcement provisions in Sections 102.31 and 102.32. These Sections identify the statutory citation of the Clean Streams Law, 35 P.S. § 691.1, et.seq., and some of the compliance and enforcement mechanisms available to the Department or Districts. In addition, the language at §316 of the Clean Streams Law which applies to agricultural operations that fully implement and maintain a complete conservation plan developed by a Conservation District and the USDA, Natural Resource Conservation Service (NRCS) has been added at §102.32(b).

G. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final regulation.

Benefits

The citizens of the Commonwealth will benefit from this amendment. The Commonwealth's waters will be protected from the effects of accelerated erosion and the potential of sediment pollution. Special provisions provide enhanced protection for waters classified as High Quality and Exceptional Value pursuant to 25 Pa. Code, Chapter 93. The regulated community is expected to benefit from these regulatory revisions through the streamlining and clarification of permit requirements, plan preparation requirements, and more flexible performance based BMPs. A cost savings to the regulated community of approximately \$150,000 is expected as a result of the elimination of the requirement for Erosion and Sediment Control plans for earth disturbance activities less than 5,000 square feet. The regulations continue to support the delegation of the Erosion and Sediment Control Program to local Conservation Districts, where the majority of the program is implemented, which facilitates effective and timely authorizations to proceed with projects.

Compliance Costs

This final regulation is 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 exempted from planning requirements. Costs to the regulated community may be incurred in the form of: permit application fees; the consideration and prevention of endangered and threatened species impacts; and the consideration of special measures to address earth disturbance activities in High Quality and Exceptional Value Waters.

Compliance Assistance Plan

The Department assists the regulated community in complying with this regulation through technical and educational assistance, and through 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 and technical capabilities. 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 Conservation District performance have shown that District staff can provide a quick response to process, review, and acknowledge permit applications, and readily assist in obtaining performance-based compliance.

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. Erosion and sediment control is a central theme in the Sustainable Forestry Initiative (SFI) and the Dirt and Gravel Road Program. Involvement of the public and the regulated community in the development of these cooperative erosion and control protection efforts fosters subsequent compliance with regulatory standards and practices and is an important form of compliance assistance.

The Department will continue to assist the regulated community with compliance through the development of checklists, worksheets and permit review letters to aid in developing sound pollution prevention plans. Compliance can also be enhanced by assuring that Department and Conservation District reviews are timely, effective, and consistent. The regulations incorporate a performance-based approach which allows persons conducting earth disturbances broad latitude and flexibility in designing BMPs to achieve compliance.

Paperwork Requirements

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

H. 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 U.S. Environmental Protection Agency 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. It does not include activities undertaken to treat, control or dispose of pollution once it is created. The Federal Pollution Prevention Act of 1990 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 the Pennsylvania economy depends on clean air, pure water, and the preservation of the natural, scenic, historic, and aesthetic values of the environment. In order 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 DEP 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, this regulation has incorporated several provisions to meet that goal.

First, Section 102.2 provides a pollution prevention approach by requiring that BMPs for earth disturbance activities minimize accelerated erosion and sedimentation in order to protect, maintain, restore and reclaim water quality, and existing and designated uses of waters of the Commonwealth, thereby preventing pollution.

Second, Section 102.4 requires that persons proposing an earth disturbance activity in a High Quality or Exceptional Value watershed must include special best management practices such as special sediment basin requirements, non-erosive channel linings, increased conveyance capacities, accelerated stabilization schedules, or other approved alternative best management practices which protect high quality and exceptional value water from degradation. These measures work in conjunction with the Department's antidegradation program to ensure not only the prevention of pollution, but also the maintenance and protection of the existing quality of High Quality and Exceptional Value designated and existing uses.

Third, Section 102.4 requires that Erosion and Sediment Control Plans must contain requirements for the recycling or disposal of materials from the project site.

Fourth, Section 102.11 provides that BMPs for earth disturbance activities must protect designated and existing uses classified pursuant to 25 Pa. Code Chapter 93.

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of this proposed amendment on January 20, 1998 to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing this final-form regulation, the Department has considered the comments received from the IRRC, the Committees, and the public. These comments are addressed in the Comment and Response Document and summarized in Section F of this Preamble. The Senate and House Environmental Resource Energy Committees did not provide comments on the proposed rulemaking.

This final-form regulation was (deemed) approved by the House Environmental Resources and Energy Committee on _____ and was (deemed) approved by the Senate Environmental Resources and Energy Committee on _____. The Commission met on _____ and (deemed) approved the regulation in accordance with Section 5.1(e) of the Act.

K. Findings of the Board

The Board finds that:

1. Public notice of proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 *Pennsylvania Code* §§ 7.1 and 7.2.
2. A public comment period was provided as required by law, and all comments were considered.
3. These regulations do not enlarge the purpose of the proposal published at 28 *Pennsylvania Bulletin* 769 (February 7, 1998).
4. These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- a. The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code*, Chapter 102, are amended by amending Chapter 102 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- b. The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- c. The Chairman shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- d. The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- e. This order shall take effect immediately.

BY:

JAMES M. SEIF
Chairman
Environmental Quality Board

ANNEX A

TITLE 25. RULES AND REGULATIONS
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES

CHAPTER 102. EROSION AND SEDIMENT CONTROL

GENERAL PROVISIONS

Sec.

102.1. Definitions.

102.2. Scope AND PURPOSE.

102.3. [~~Purpose~~] RESERVED.

102.4. [~~General~~] EROSION AND SEDIMENT CONTROL REQUIREMENTS.

102.5. [~~EROSION AND SEDIMENTATION~~] SEDIMENT CONTROL PLAN PERMIT REQUIREMENTS.

102.6 PERMIT APPLICATIONS AND FEES.

102.7 PERMIT TERMINATION.

EROSION AND [~~SEDIMENTATION~~] SEDIMENT CONTROL [~~MEASURES AND FACILITIES,~~] BMPs

102.11. General requirements.

102.12. [~~Control measures~~] [~~BMPs~~] RESERVED.

102.13. [~~Control facilities~~] [~~DESIGN CRITERIA FOR BMPs~~] RESERVED.

[~~RESTORATION~~] [~~PERMANENT STABILIZATION~~]

102.21. [~~Applicability~~] RESERVED.

102.22. PERMANENT Stabilization.

102.23. [~~Interim control measures~~] [~~TEMPORARY BMPs~~] RESERVED.

102.24. [~~Final measures~~] [~~REMOVAL OF BMPs~~] RESERVED.

~~[PERMITS AND PLANS]~~ ENFORCEMENT

102.31. ~~[Permit requirements]~~ APPLICABILITY.

102.32. ~~[Application for permit]~~ PERMIT APPLICATIONS AND FEES COMPLIANCE AND ENFORCEMENT
PROVISIONS.

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

102.41. Administration by ~~[LOCAL GOVERNING BODIES]~~ COUNTY CONSERVATION DISTRICTS.

102.42. Notification of application for ~~[building]~~ permits.

102.43. Withholding ~~[building]~~ permits.

IMPLEMENTATION

102.51. ~~[Effective dates]~~ RESERVED.

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 ACTIVITY—EARTH DISTURBANCE ACTIVITY INVOLVING THE PREPARATION AND MAINTENANCE OF SOIL 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, RECLAIM, AND [IMPROVE] RESTORE THE QUALITY OF WATERS AND THE [AQUATIC ENVIRONMENT] EXISTING AND DESIGNATED USES OF WATERS WITHIN THIS COMMONWEALTH.

CHANNEL—A NATURAL OR MAN-MADE WATER CONVEYANCE.

COLLECTOR-~~[A FACILITY, INCLUDING]~~ A CHANNEL, DIKE, OR OTHER CONVEYANCE,
CONSTRUCTED DOWNSLOPE OF AN EARTH DISTURBANCE ACTIVITY FOR THE PURPOSE OF
COLLECTING RUNOFF FROM AN EXISTING OR PROPOSED DISTURBED AREA AND CONVEYING IT TO
FACILITIES FOR SEDIMENT RETENTION OR REMOVAL.

Conservation plan-A plan that identifies conservation practices and ~~[, at the very least, includes an erosion and sedimentation control plan.]~~ INCLUDES SITE SPECIFIC BMPS WHICH MINIMIZE THE POTENTIAL FOR
ACCELERATED EROSION AND SEDIMENT FROM AGRICULTURAL PLOWING OR TILLING
ACTIVITIES. BMPS FOR AGRICULTURAL PLOWING OR TILLING ACTIVITIES, INCLUDING SOIL
LOSS TOLERANCE VALUES ("T"), ARE IDENTIFIED IN THE PENNSYLVANIA SOIL AND WATER
CONSERVATION TECHNICAL GUIDE, UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL
RESOURCES CONSERVATION SERVICE, 1991. THE CONSERVATION PLAN SHALL INCLUDE A
SCHEDULE FOR THE IMPLEMENTATION OF THE BMPS.

COUNTY CONSERVATION DISTRICT - A CONSERVATION DISTRICT, AS DEFINED IN 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 AND
SEDIMENT CONTROL PROGRAM IN 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.]~~

DEWATERING ZONE - THE ZONE WITHIN A SEDIMENT BASIN WHERE STORMWATER RUNOFF IS
HELD AND RELEASED IN A CONTROLLED MANNER.

DISTURBED AREA-UNSTABILIZED LAND ~~[SUBJECT TO]~~ AREA WHERE AN EARTH DISTURBANCE
ACTIVITY IS OCCURRING OR HAS OCCURRED.

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[;] AND 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 OF 25 ACRES (10 HECTARES) OR MORE WHERE THE EARTH DISTURBANCE IS ASSOCIATED WITH TIMBER HARVESTING OR ROAD MAINTENANCE ACTIVITIES [EXCEPT ACTIVITIES THAT REQUIRE AN NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES].

Erosion and Sediment[ation] Control Plan-A SITE-SPECIFIC plan [~~which is designed~~] IDENTIFYING BMPs [OR OTHER SITE-SPECIFIC PRACTICES] to minimize accelerated erosion and sedimentation. FOR AGRICULTURAL PLOWING OR TILLING ACTIVITIES, THE EROSION AND SEDIMENT CONTROL PLAN IS THAT PORTION OF A CONSERVATION PLAN IDENTIFYING BMPs 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 stormwater, 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 courses, 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. § 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 OR POTENTIAL DISCHARGE OF STORMWATER INTO WATERS OF THE COMMONWEALTH FROM CONSTRUCTION ACTIVITIES, INCLUDING CLEARING[;] AND GRUBBING, GRADING, AND EXCAVATION ACTIVITIES INVOLVING FIVE 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 FIVE ACRES (2 HECTARES) OR MORE OF EARTH DISTURBANCE OVER THE LIFE OF THE PROJECT.

NOTICE OF INTENT (NOI)- A REQUEST, ON A FORM PROVIDED BY THE DEPARTMENT OR [ITS DESIGNEE] COUNTY CONSERVATION DISTRICT, FOR COVERAGE UNDER A GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

OPERATOR - THE PERSON WITH: (1) OVERSIGHT RESPONSIBILITY OF EARTH DISTURBANCE ACTIVITY ON A PROJECT SITE OR A PORTION THEREOF WHO HAS THE ABILITY TO MAKE MODIFICATIONS TO THE EROSION AND SEDIMENT CONTROL PLAN OR SITE SPECIFICATIONS; OR (2) DAY-TO-DAY OPERATIONAL CONTROL OVER EARTH DISTURBANCE ACTIVITY ON A PROJECT

SITE OR A PORTION THEREOF TO ENSURE COMPLIANCE WITH THE EROSION AND SEDIMENT CONTROL PLAN.

~~OUTLET STRUCTURE - A STRUCTURE CONSTRUCTED TO SAFELY DISCHARGE WATER FROM A CHANNEL, DIVERSION, OR OTHER DRAINAGE STRUCTURE TO AN EXISTING NATURAL OR ARTIFICIAL WATERCOURSE.~~

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.

Person-~~[A]~~ AN OPERATOR, natural person, partnership, association or corporation OR ANY AGENCY, INSTRUMENTALITY, OR ENTITY OF FEDERAL OR STATE GOVERNMENT, INCLUDING A MUNICIPALITY.

PERMANENT STABILIZATION - LONG-TERM PROTECTION OF SOIL AND WATER RESOURCES FROM ACCELERATED EROSION.

PERMANENT POOL - THE AREA WITHIN A SEDIMENT BASIN WHICH IS DESIGNED TO BE INUNDATED WITH WATER AT ALL TIMES.

PRINCIPAL SPILLWAY - THE STRUCTURE WITHIN A SEDIMENT BASIN WHICH CONTROLS THE DISCHARGE OF WATER FROM THE FACILITY.

PROJECT SITE- THE ENTIRE AREA OF ACTIVITY, DEVELOPMENT, OR SALE INCLUDING THE ~~[DISTURBED]~~ AREA OF AN EARTH DISTURBANCE ACTIVITY, ~~[AN]~~ AREA PLANNED ~~[TO BE DISTURBED]~~ FOR AN EARTH DISTURBANCE ACTIVITY, AND OTHER AREAS WHICH ARE NOT ~~[DISTURBED]~~ SUBJECT TO AN EARTH DISTURBANCE ACTIVITY.

ROAD MAINTENANCE ACTIVITIES- EARTH DISTURBANCE ACTIVITIES WITHIN THE EXISTING ROAD CROSS-SECTION, SUCH AS GRADING AND REPAIRING EXISTING 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 THE COMMONWEALTH.

SKIM - TO REMOVE THE UPPERMOST PORTION OF WATER WITHIN A SEDIMENT BASIN.

~~Stabilization~~—The proper placing, grading, ~~[COMPACTING.]~~ CONSTRUCTING, REINFORCING, LINING, [OR] and 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] THE 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 AND PURPOSE.

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] DEVELOP, IMPLEMENT, AND MAINTAIN BMPs TO MINIMIZE THE POTENTIAL FOR ACCELERATED EROSION AND SEDIMENTATION. THESE BMPs SHALL BE UNDERTAKEN TO PROTECT, MAINTAIN, RECLAIM, AND [IMPROVE] RESTORE WATER QUALITY AND THE [AQUATIC ENVIRONMENT] EXISTING AND DESIGNATED USES OF WATERS OF THE COMMONWEALTH.

§ 102.3. [~~Purpose.~~] RESERVED.

[~~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~~] EROSION AND SEDIMENT CONTROL REQUIREMENTS.

(a) FOR AGRICULTURAL PLOWING OR TILLING ACTIVITIES, THE FOLLOWING EROSION AND SEDIMENT CONTROL REQUIREMENTS SHALL APPLY:

(1) THE IMPLEMENTATION AND MAINTENANCE OF EROSION AND SEDIMENT CONTROL BMPs IS 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 EROSION AND SEDIMENT CONTROL PLANS ARE REQUIRED FOR AGRICULTURAL PLOWING OR TILLING ACTIVITIES THAT DISTURB 5,000 SQUARE FEET (464.5 SQUARE METERS) OR MORE OF LAND.

(3) THE LANDOWNER, AND ANY LESSEE, RENTER, TENANT OR OTHER LAND OCCUPIER, CONDUCTING OR PLANNING TO CONDUCT AGRICULTURAL PLOWING OR TILLING ACTIVITIES SHALL BE JOINTLY AND INDIVIDUALLY RESPONSIBLE FOR DEVELOPING A WRITTEN EROSION AND SEDIMENT CONTROL PLAN AND IMPLEMENTING AND MAINTAINING BMPs, INCLUDING THOSE IDENTIFIED IN THE EROSION AND SEDIMENT CONTROL PLAN.

(4) THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE DESIGNED TO MINIMIZE THE POTENTIAL FOR ACCELERATED EROSION AND SEDIMENTATION FROM AGRICULTURAL PLOWING OR TILLING ACTIVITIES.

(5) THE EROSION AND SEDIMENT CONTROL PLAN SHALL CONTAIN PLAN MAPS, SOILS MAPS, THE LOCATION OF WATERS OF THE COMMONWEALTH, DRAINAGE PATTERNS, AND A

DESCRIPTION OF BMPs INCLUDING TILLAGE SYSTEMS, SCHEDULES, AND COST EFFECTIVE AND TECHNICALLY PRACTICAL CONSERVATION MEASURES.

(6) THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE AVAILABLE FOR REVIEW AND INSPECTION AT THE PROJECT SITE DURING EACH STAGE OF THE AGRICULTURAL PLOWING OR TILLING ACTIVITY.

(b) FOR EARTH DISTURBANCE ACTIVITIES OTHER THAN AGRICULTURAL PLOWING OR TILLING, THE FOLLOWING EROSION AND SEDIMENT CONTROL REQUIREMENTS SHALL APPLY:

(1) THE IMPLEMENTATION AND MAINTENANCE OF EROSION AND SEDIMENT CONTROL BMPs IS 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) A PERSON PROPOSING EARTH DISTURBANCE ACTIVITIES MUST DEVELOP A WRITTEN EROSION AND SEDIMENT CONTROL PLAN PURSUANT TO 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 ACTIVITY IS REQUIRED TO DEVELOP AN EROSION AND SEDIMENT CONTROL PLAN PURSUANT TO THIS CHAPTER UNDER DEPARTMENT REGULATIONS OTHER THAN THOSE CONTAINED IN THIS CHAPTER.

(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 PURSUANT TO CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS).

(3) THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE PREPARED BY A PERSON TRAINED AND EXPERIENCED IN EROSION AND SEDIMENT CONTROL METHODS AND

TECHNIQUES, AND SHALL BE DESIGNED TO MINIMIZE THE POTENTIAL FOR ACCELERATED EROSION AND SEDIMENTATION.

(4) EARTH DISTURBANCE ACTIVITIES SHALL BE PLANNED AND CONDUCTED IN SUCH A MANNER AS TO MINIMIZE THE EXTENT AND DURATION OF THE DISTURBANCE.

(5) THE EROSION AND SEDIMENT CONTROL PLAN SHALL CONTAIN 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 AMOUNT OF RUNOFF FROM THE PROJECT AREA AND ITS UPSTREAM WATERSHED AREA.

(v) THE LOCATION OF WATERS OF THE COMMONWEALTH WHICH MAY RECEIVE RUNOFF WITHIN OR FROM THE PROJECT SITE AND THEIR CLASSIFICATION PURSUANT TO CHAPTER 93 OF THIS TITLE.

(vi) A WRITTEN DEPICTION OF THE LOCATION AND TYPE OF PERIMETER AND ON-SITE 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.

(viii) SUPPORTING CALCULATIONS.

(ix) PLAN DRAWINGS.

(x) A MAINTENANCE PROGRAM WHICH PROVIDES FOR INSPECTION OF BMPs ON A WEEKLY BASIS AND AFTER EACH MEASURABLE RAINFALL EVENT, INCLUDING THE REPAIR OF THE BMPs TO ENSURE EFFECTIVE AND EFFICIENT OPERATION.

(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 DEPARTMENT REGULATIONS.

(6) WHERE AN EARTH DISTURBANCE ACTIVITY MAY RESULT IN A DISCHARGE TO A WATER OF THE COMMONWEALTH CLASSIFIED AS HIGH QUALITY OR EXCEPTIONAL VALUE PURSUANT TO CHAPTER 93, THE PERSON PROPOSING THE ACTIVITY SHALL, AS APPLICABLE, USE THE FOLLOWING SPECIAL PROTECTION BMPs TO MAINTAIN AND PROTECT THE WATER FROM DEGRADATION.

(i) SPECIAL SEDIMENT BASIN REQUIREMENTS.

(A) PRINCIPAL SPILLWAYS SHALL BE DESIGNED TO SKIM WATER FROM THE TOP 6 INCHES (15 CENTIMETERS) OF THE DEWATERING ZONE, OR SHALL HAVE PERMANENT POOLS GREATER THAN OR EQUAL TO 18 INCHES (46 CENTIMETERS) DEEP.

(B) THE BASIN SHALL BE DESIGNED WITH A FLOW LENGTH TO BASIN WIDTH RATIO OF 4:1 OR GREATER.

(C) THE BASIN SHALL BE DESIGNED SUCH THAT IT DEWATERS IN NO LESS THAN 4 DAYS AND NO MORE THAN 7 DAYS WHEN AT FULL CAPACITY.

(ii) CHANNELS, COLLECTORS, AND DIVERSIONS SHALL BE LINED WITH PERMANENT VEGETATION, ROCK, GEOTEXTILE, OR OTHER NON-EROSIVE MATERIALS.

(iii) BMPs THAT DIVERT OR CARRY SURFACE WATER SHALL BE DESIGNED TO HAVE A MINIMUM CAPACITY TO CONVEY THE PEAK DISCHARGE FROM A 5-YEAR FREQUENCY STORM.

(iv) UPON COMPLETION OR TEMPORARY CESSATION OF THE EARTH DISTURBANCE ACTIVITY, OR ANY STAGE THEREOF, THE PROJECT SITE SHALL BE IMMEDIATELY STABILIZED.

(v) THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT MAY APPROVE ALTERNATIVE BMPs WHICH WILL MAINTAIN AND PROTECT EXISTING WATER QUALITY AND EXISTING AND DESIGNATED USES.

(7) THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE AVAILABLE FOR REVIEW AND INSPECTION BY THE DEPARTMENT OR THE COUNTY CONSERVATION DISTRICT AT THE PROJECT SITE DURING ALL STAGES OF THE EARTH DISTURBANCE ACTIVITY.

(8) UPON COMPLAINT OR SITE INSPECTION, THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT MAY REQUIRE THAT THE PLAN BE SUBMITTED FOR REVIEW AND APPROVAL TO ENSURE COMPLIANCE WITH THIS CHAPTER.

(c) THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT MAY REQUIRE OTHER INFORMATION NECESSARY TO ADEQUATELY REVIEW A PLAN, OR MAY REQUIRE ADDITIONAL BMPs, ON A CASE-BY-CASE BASIS, WHEN NECESSARY TO ENSURE THE MAINTENANCE AND PROTECTION OF WATER QUALITY AND EXISTING AND DESIGNATED USES.

~~[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 MUST DEVELOP AN EROSION AND SEDIMENT CONTROL PLAN PURSUANT TO § 102.5 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 THE COMMONWEALTH; OR~~

~~(4) THE ACTIVITY MAY RESULT IN A DISCHARGE TO A WATER OF THE COMMONWEALTH CLASSIFIED AS HIGH QUALITY OR EXCEPTIONAL VALUE IN CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS) OF THIS TITLE.~~

~~(c) THE PLAN REQUIRED BY § 102.4 (b) SHALL BE AVAILABLE FOR REVIEW AND INSPECTION AT THE PROJECT SITE DURING ALL STAGES OF THE EARTH DISTURBANCE ACTIVITY. THE DEPARTMENT OR A DELEGATED COUNTY CONSERVATION DISTRICT 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] PERMIT REQUIREMENTS:~~

~~(a) OTHER THAN AGRICULTURAL PLOWING OR TILLING, TIMBER HARVESTING ACTIVITIES, OR ROAD MAINTENANCE ACTIVITIES, A PERSON PROPOSING AN EARTH DISTURBANCE ACTIVITY THAT INVOLVES FIVE 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 FIVE ACRES (2 HECTARES) OR MORE OF EARTH DISTURBANCE OVER THE LIFE OF THE PROJECT, SHALL OBTAIN A GENERAL OR INDIVIDUAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES PRIOR TO COMMENCING THE EARTH DISTURBANCE ACTIVITY.

(b) A PERSON PROPOSING A TIMBER HARVESTING OR ROAD MAINTENANCE ACTIVITY INVOLVING TWENTY-FIVE ACRES (10 HECTARES) OR MORE OF EARTH DISTURBANCE SHALL OBTAIN AN EROSION AND SEDIMENT CONTROL PERMIT UNDER THIS CHAPTER PRIOR TO COMMENCING THE EARTH DISTURBANCE ACTIVITY.

(c) A PERSON PROPOSING OR CONDUCTING AN EARTH DISTURBANCE ACTIVITY APPROVED UNDER A DEPARTMENT PERMIT ISSUED UNDER A CHAPTER OTHER THAN CHAPTER 92 OR THIS CHAPTER, WHICH INCLUDES REQUIREMENTS TO COMPLY WITH CHAPTERS 92 AND 102, NEED NOT OBTAIN AN ADDITIONAL EROSION AND SEDIMENT CONTROL PERMIT OR NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH A CONSTRUCTION ACTIVITY.

(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, FOR SUCH ACTIVITIES UNDER THIS CHAPTER.

(e) 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.

~~[(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 of the area.~~

~~(4) The amount of runoff from the project area and the upstream watershed 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.]~~

~~(6) 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 THE 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 ABOVE CONSIDERATIONS, SHALL CONTAIN:~~

(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 METHOD(S) 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.

§ 102.6. PERMIT APPLICATIONS AND FEES.

(a) A PERSON PROPOSING OR CONDUCTING AN EARTH DISTURBANCE ACTIVITY WHICH REQUIRES AN EROSION AND SEDIMENT CONTROL PERMIT OR AN NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES PURSUANT TO

§ 102.5, SHALL:

(1) SUBMIT TO THE DEPARTMENT OR A COUNTY CONSERVATION DISTRICT A COMPLETE APPLICATION OR NOTICE OF INTENT, AN EROSION AND SEDIMENT CONTROL PLAN MEETING THE REQUIREMENTS OF § 102.4, AND OTHER INFORMATION THE DEPARTMENT MAY REQUIRE.

(2) PROVIDE PROOF OF CONSULTATION WITH THE PENNSYLVANIA NATURAL DIVERSITY INVENTORY (PNDI) REGARDING THE PRESENCE OF A STATE OR FEDERAL THREATENED OR ENDANGERED SPECIES ON THE PROJECT SITE. IF THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT DETERMINES, BASED UPON PNDI DATA OR OTHER SOURCES, THAT THE PROPOSED EARTH DISTURBANCE ACTIVITY MAY ADVERSELY IMPACT SUCH SPECIES OR

CRITICAL HABITAT, THE PERSON PROPOSING THE EARTH DISTURBANCE ACTIVITY MUST CONSULT WITH THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT TO AVOID OR PREVENT THE IMPACT. IF THE IMPACT CANNOT BE AVOIDED OR PREVENTED, THE PERSON PROPOSING THE ACTIVITY MUST DEMONSTRATE HOW SUCH IMPACTS WILL BE MINIMIZED IN ACCORDANCE WITH STATE AND FEDERAL LAWS PERTAINING TO THE PROTECTION OF THREATENED OR ENDANGERED FLORA AND FAUNA AND ITS HABITAT.

(b) PERMIT FEES:

(1) EROSION AND SEDIMENT CONTROL PERMIT APPLICATIONS FOR TIMBER HARVESTING AND ROAD MAINTENANCE ACTIVITIES SHALL BE ACCOMPANIED BY AN APPLICATION FEE OF \$500.

(2) APPLICATIONS AND NOTICES OF INTENT FOR AN NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES SHALL BE SUBMITTED AND ACCOMPANIED BY THE FEE ESTABLISHED PURSUANT TO CHAPTER 92 OF THIS TITLE.

§ 102.7 PERMIT TERMINATION.

(a) UPON PERMANENT STABILIZATION OF THE EARTH DISTURBANCE ACTIVITY IN ACCORDANCE WITH SECTION 102.22(c), THE PERSON WHO OBTAINS PERMIT COVERAGE UNDER THIS CHAPTER SHALL SUBMIT A NOTICE OF TERMINATION TO THE DEPARTMENT OR COUNTY CONSERVATION DISTRICT.

(b) THE NOTICE OF TERMINATION SHALL INCLUDE:

(1) THE FACILITY NAME, ADDRESS, AND LOCATION.

(2) THE OPERATOR NAME AND ADDRESS.

(3) THE PERMIT NUMBER.

(4) THE REASON FOR PERMIT TERMINATION.

NOTE: Sections 102.8 through 102.10 are not currently used.

EROSION AND SEDIMENT[ATION] CONTROL [MEASURES AND FACILITIES;]

BMPs

§ 102.11. General requirements.

(a) PERSONS CONDUCTING OR PROPOSING TO CONDUCT AN EARTH DISTURBANCE ACTIVITY SHALL DESIGN, IMPLEMENT, AND MAINTAIN BMPs TO MINIMIZE THE POTENTIAL FOR ACCELERATED EROSION AND SEDIMENTATION IN ORDER TO PROTECT, MAINTAIN, RECLAIM AND RESTORE WATER QUALITY AND EXISTING AND DESIGNATED USES. VARIOUS 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 (JANUARY 1996), AS AMENDED AND UPDATED.

(b) BMPs AND DESIGN STANDARDS OTHER THAN THOSE LISTED IN THE MANUAL MAY BE USED WHERE A PERSON CONDUCTING OR PROPOSING TO CONDUCT AN EARTH DISTURBANCE ACTIVITY DEMONSTRATES TO THE DEPARTMENT OR A COUNTY CONSERVATION DISTRICT THAT THE ALTERNATE BMP OR DESIGN STANDARD MINIMIZES ACCELERATED EROSION AND SEDIMENTATION TO ACHIEVE THE REGULATORY STANDARDS SET FORTH IN SUBSECTION (a).

~~[The erosion and [sedimentation] sediment control [facilities] BMPs set forth in §§ 102.12 AND 102.13 (relating to [control measures; and control facilities]) BMPs; AND DESIGN CRITERIA FOR BMs) shall be appropriately incorporated into ALL earth[moving] 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 MUST PROTECT THE EXISTING AND DESIGNATED USES OF WATERS SET FORTH IN CHAPTER 93 BY DESIGNING, IMPLEMENTING,

AND MAINTAINING BMPs, AND OTHER SOUND CONSERVATION AND ENGINEERING PRACTICES TO ENSURE PROTECTION OF THESE USES.

§ 102.12. ~~[Control measures.] [BMPs]~~ RESERVED.

[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 [area] 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) PERMANENT Stabilization. [Slopes, channels, ditches or a] ALL disturbed 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] DISTURBANCE ACTIVITY has been completed or where 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. Runoff 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]~~ RESERVED.

~~[(a) DiversionS [terraces], COLLECTORS AND CHANNELS. (The following applies to diversion terraces:)]~~

~~(1) [Diversion terraces] TEMPORARY OR PERMANENT diversion [terraces] 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 DOWNSLOPE 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. SUCH 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 2.0 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) ALL OUTLET STRUCTURES SHALL BE STABILIZED BEFORE USE.

(2) SUITABLE OUTLET PROTECTION MUST BE PROVIDED WITH AN EROSION RESISTANT MATERIAL WHEN A VELOCITY IS EQUAL TO OR GREATER THAN 3.0 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. AT NO TIME SHALL ACCUMULATED SEDIMENT 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 PER ACRE (0.14 CUBIC METERS PER SECOND PER HECTARE) ~~[for each acre of project area]~~ 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 MUST BE PROVIDED ABOVE THE MINIMUM STORAGE ELEVATION.

(ii) A MINIMUM OF 24 INCHES (61 CENTIMETERS) OF FREEBOARD MUST 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 THE 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 ENCROACHMENT ACT (32 P.S. §§ 693.1-693.27) ARE REQUIRED TO MEET THE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE, AND OTHER PERMIT REQUIREMENTS OF TITLE 25, CHAPTER 105 (RELATING TO DAM SAFETY AND WATERWAY MANAGEMENT).~~

~~(d) SEDIMENT TRAPS.~~

~~(1) THE MAXIMUM DRAINAGE AREA TO A SEDIMENT TRAP IS FIVE ACRES (TWO 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 MUST 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 THE COMMONWEALTH OR OTHER APPROVED ALTERNATIVE, AND SHALL BE DESIGNED, OPERATED AND MAINTAINED WITHOUT CAUSING ACCELERATED EROSION OR SEDIMENTATION.~~

NOTE: Sections 102.14 through 102.20 are not currently used.

~~[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.

(a) UPON COMPLETION OF AN EARTH DISTURBANCE ACTIVITY OR ANY STAGE OR PHASE OF AN ACTIVITY, THE SITE MUST BE IMMEDIATELY SEEDED, MULCHED, OR OTHERWISE PROTECTED FROM ACCELERATED EROSION AND SEDIMENTATION.

(b) EROSION AND SEDIMENT CONTROL BMPs SHALL BE IMPLEMENTED AND MAINTAINED UNTIL THE PERMANENT STABILIZATION IS COMPLETED.

(c) FOR AN EARTH DISTURBANCE ACTIVITY OR ANY STAGE OR PHASE OF AN ACTIVITY TO BE CONSIDERED PERMANENTLY STABILIZED, ALL DISTURBED AREAS MUST BE COVERED WITH ONE OF THE FOLLOWING:

(1) A MINIMUM UNIFORM 70% PERENNIAL VEGETATIVE COVER, WITH A DENSITY CAPABLE OF RESISTING ACCELERATED EROSION AND SEDIMENTATION.

(2) AN ACCEPTABLE BMP WHICH PERMANENTLY MINIMIZES ACCELERATED EROSION AND SEDIMENTATION.

~~[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 AND SEDIMENTATION SHALL BE MINIMIZED [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, ALL DISTURBED AREAS MUST BE COVERED WITH:~~

~~(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 (RESERVED).

[~~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 (RESERVED).

[~~Upon completion of PERMANENT stabilization, ALL~~ [~~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] ENFORCEMENT

§ 102.31. PERMIT REQUIREMENTS APPLICABILITY.

THE DEPARTMENT OR A COUNTY CONSERVATION DISTRICT MAY ENFORCE THE PROVISIONS OF THIS CHAPTER UNDER THE CLEAN STREAMS LAW, 35 P.S. § 691.1 ET. SEQ.

~~[(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, PURSUANT TO CHAPTER 92, WHEN THE ACTIVITY INVOLVES AN EARTH DISTURBANCE CONSISTING OF FIVE ACRES (TWO HECTARES) OR MORE, OR AN EARTH DISTURBANCE ON ANY PORTION, PART, OR DURING ANY STAGE OF, A LARGER COMMON PLAN OF DEVELOPMENT OR SALE THAT INVOLVES FIVE 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 § 102.1, AND OTHERWISE SATISFIES ALL OTHER PROVISIONS OF THIS CHAPTER AND CHAPTER 92 (RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM) OF THIS TITLE, 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)] (c) The Department, after publication in the *Pennsylvania Bulletin*, may reduce the acreage limitation [set forth] in [subsections 102.31 (a)(3) or (4)] SECTIONS 102.1 AND 102.31 (RELATING TO DEFINITIONS; AND PERMIT APPLICATIONS AND FEES) ON THE FOLLOWING BASIS:~~

- ~~(1) On a statewide basis at its discretion.~~
- ~~(2) For special areas where the Department deems it necessary.~~
- ~~(3) For a county or municipality within this Commonwealth.~~

~~{(e)} (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 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 ANY OTHER. THE FAILURE TO EXERCISE AN ACTION SHALL 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) ANY 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 COUNTY 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 ET SEQ.

~~[(a)] FOR AN ACTIVITY REQUIRING AN EROSION AND SEDIMENT CONTROL PERMIT PURSUANT TO § 102.31, THE FOLLOWING SHALL APPLY:~~

~~[(a)] Applications for permits shall be submitted by the~~ (1) A person [or municipality undertaking the earthmoving 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 SHALL APPLY:~~

~~(1) PERMIT APPLICATIONS AND NOTICES OF INTENT SHALL BE SUBMITTED IN ACCORDANCE WITH CHAPTER 92 OF THIS TITLE.~~

~~(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 PURSUANT TO 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 MUST 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 SUCH SPECIES OR THEIR HABITAT, THE PERSON PROPOSING THE EARTH DISTURBANCE ACTIVITY WILL PREVENT OR ELIMINATE SUCH IMPACT.]

NOTE: Sections 102.33 through 102.40 are not used.

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

§ 102.41. Administration by ~~[local governing bodies]~~ COUNTY CONSERVATION DISTRICTS.

(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.]~~ COUNTY CONSERVATION DISTRICTS [OR OTHER LOCAL GOVERNING BODIES] PROVIDED THAT THEY HAVE ADEQUATE AND QUALIFIED STAFF, AND ARE OR WILL BE 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]~~ COUNTY CONSERVATION DISTRICT operates.

(c) The Department will retain program administration AND ENFORCEMENT over projects which cross the political boundaries of ~~[local governing bodies]~~ COUNTY CONSERVATION DISTRICTS ~~[who have been delegated the administration of the provisions of this chapter.]~~ UNLESS OTHERWISE [SPECIFIED IN THE DELEGATION AGREEMENT] AUTHORIZED BY THE DEPARTMENT.

§ 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]~~ COUNTY CONSERVATION DISTRICT WITHIN 5 DAYS OF receipt of an application for a ~~[building, the]~~ permit involving an ~~[earthmoving]~~ EARTH DISTURBANCE 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 OR FINAL APPROVAL to those ~~[engaged in earthmoving]~~ PROPOSING OR [ENGAGING IN] CONDUCTING EARTH DISTURBANCE activities requiring a Department permit until the Department OR [ITS DESIGNEE] A COUNTY CONSERVATION DISTRICT has issued the EROSION AND SEDIMENT CONTROL OR INDIVIDUAL NPDES permit, OR APPROVED COVERAGE UNDER THE GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES PURSUANT TO ~~[under] [§§ 102.31 and 102.32]~~ §102.5 (relating to permit requirements; and ~~[applications 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.]~~

FEE REPORT FORM

Department of Environmental Protection
Agency

July 2, 1999

Kenneth F. Murin

Contact Person

717-787-6827

Phone Number

	<u>Prior Year</u>	<u>Current Year</u>	<u>First Future Year Projected</u>	<u>Second Future Year Projected</u>
FEE COLLECTIONS:	1998	1999	2000	2001
Current	\$200	\$200		
New			\$500	\$500

	<u>Earth Disturbance Permit</u>	<u>Erosion & Sediment Control Permit</u>
FEE TITLE AND RATE:		
Current	\$200	
New		\$500

FEE OBJECTIVE:

The fee is intended to cover all of the administrative costs of the Department and County Conservation Districts processing of the application.

FEE RELATED ACTIVITIES AND COSTS:

The fee is intended to recover costs of processing the permit application including review, data management, coordination, and other related activities by Department and County Conservation District staff.

ANALYSIS:

It is estimated that the fee of \$500 will cover anticipated costs for the processing of a permit application which is estimated at 25 hours at a rate of \$20 per hour.

RECOMMENDATION AND COMMENT:

This fee is consistent with similar Department permit fees. The vast majority of activities are permitted under the NPDES Stormwater Construction Permitting program. Fees for permits established under Chapter 92 are not accounted for in the above analysis.

25 PA CODE CHAPTER 102

EROSION AND SEDIMENT CONTROL

COMMENT AND RESPONSE DOCUMENT

LIST OF COMMENTATORS

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*This commentator requested a copy of the final rulemaking.

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*This commentator requested a copy of the final rulemaking.

COMMENTS AND RESPONSES

General Provisions

Section 102.1. Definitions.

1. Comment: "Agriculture plowing and tilling": The term production does not lead to a clear definition. The definition is broad based and should indicate any type of earth disturbance associated with crop production. (2, 18)

Response: The Department has revised the definition of agricultural plowing or tilling to include not only the earth disturbance for the preparation of soil for planting, but also other earth disturbance activities associated with crop production, i.e. incorporation of fertilizers or other soil amendments.

2. Comment: The new definition for "agricultural plowing and tilling" seems to carry the connotation that plowing or tilling are the only ways in which an agricultural operation can cause accelerated erosion or sedimentation and I beg to differ:

- A. Animals can be the cause of accelerated erosion and sedimentation. For example, an unvegetated feedlot for cattle.
- A. Most farm roads or lanes are often laid out for convenience only - sometimes directly in a former grass waterway, in hilly country.
- A. Some "no-till" systems use trash wheels in front of corn planter coulters and these can move aside up to 20% of the residue on a corn field. Plowing and tilling are too limiting in this agricultural definition and in Section 102.5(d). (27)

Response: The Department's Chapter 102 regulations only regulate accelerated erosion from human earth disturbance activities. Accelerated erosion and sediment caused by animals does not fall within the scope of these regulations. Construction of farm roads and tillage systems for an agricultural earth disturbance may cause erosion and sedimentation, and therefore are regulated activities under the scope of this amendment.

3. Comment: "BMP's": Recommend placing a period after the word sedimentation, then the following should be added.... "for the purpose of protecting, maintaining, and improving". (2,18)

Response: The Department believes that the proposed definition conveys the same meaning.

4. Comment: "BMP's": Recommend replacing "minimize" with "prevent". (20)

Response: The purpose of a best management practice (BMP) is to control accelerated erosion during an earth disturbance activity, minimizing its effect and preventing water quality degradation.

The Department believes the use of "minimize" is more appropriate than "prevent". Erosion and sedimentation is a natural process that occurs even in the

absence of human activity. The objective of this regulation is to minimize the acceleration of this process for earth disturbance activities which, if unchecked, may adversely impact our waterways because of the increased sediment load beyond natural background levels. BMP's are effective, practical and environmentally sound practices which minimize the threat of pollution and maintain water quality uses.

BMP's are designed in consideration of site conditions such as slope, soil erodibility, and other factors to operate effectively during reasonably expected storm and rainfall events of normal duration and intensity. BMP's prevent sediment pollution during such storm events. It is not practical from a scope, design and implementation perspective to require BMPs to operate effectively during the full range of potential storm events, i.e. floods. The requirement to "prevent" as suggested by the commentator is an unobtainable goal for the full range of possible events.

The Department believes the word "minimize", as used in this body of the regulation, with the requirement to implement BMP's for all earth disturbances, conveys a realistic and feasible goal for persons subject to these regulations.

5. Comment: The definition of BMPs refers to "the aquatic environment". It is not clear what this term means within the scope of the proposed rulemaking. The term should either be defined in detail or deleted from the definition. (21)

Comment: The definition of "best management practices" includes a reference to the quality of waters and the "aquatic environment" within the Commonwealth. The meaning of "aquatic environment" is unclear. We recommend that the EQB define this term in the final-form regulation. The definition of best management practices requires the individual to "protect, maintain, and improve the quality of waters...". We question what responsibility and role the individual has, using best management practices, to improve the existing water quality. We recommend that the EQB delete the requirement for improving the quality of waters from the definition of "best management practices". (36)

Response: The reference to the aquatic environment has been deleted. The Department has substituted the terms "existing and designated uses" to provide consistency with Chapter 93 (Water Quality Standards). This reference emphasizes the ecological value of water quality from both a chemical and a biological perspective.

Section 4(3) of the Clean Streams Law, 35 P.S. §691.4(3), states that "It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean unpolluted condition every stream in Pennsylvania that is presently polluted". The Department has replaced the word "improve" with the terms "reclaim and restore".

6. Comment: BMP's: Clarify the difference between temporary and permanent BMP's or include two separate definitions. (26)

Response: To eliminate confusion, the Department has eliminated references to temporary and permanent BMPs. Erosion and sediment BMPs include temporary structural practices, and temporary and permanent stabilization practices.

Structural practices, such as silt fence, ditches, sediment basins, etc. collect, divert, store, and treat stormwater runoff to protect against accelerated erosion and the discharge of sediment from disturbed areas, during and immediately after the earth disturbance activity. These temporary best management practices are designed and implemented during the earth disturbance activity, and until vegetation or other permanent cover is established. Permanent structural best management practices required for post construction stormwater management are developed and implemented pursuant to municipal planning requirements. The Department encourages plan developers to design compatible practices for both construction and post-construction characteristics.

Stabilization is the covering of disturbed areas with vegetative (grass, trees, shrubs, sod, etc.) and non-vegetative (pavement, rock mulch, geotextiles, etc.) practices. Establishing either temporary or permanent stabilization can be the single most important best management practice in reducing accelerated erosion and sedimentation. Temporary stabilization provides interim control of earth disturbance activities that have temporarily ceased and will resume at a later date, or is used until a permanent cover can be established. Permanent stabilization is achieved when perennial vegetation of uniform coverage and density is established, or when the disturbed area is covered with permanent non-vegetative cover.

7. Comment: Channel: This is one of three types of conveyances listed in subsection 102.13(a) and the only one that is not defined. In the context of subsection 102.13(a), a channel is a stable conveyance structure constructed to transport clean water through a project and discharge it to water of the Commonwealth. (24)

Response: The Department concurs, and has added a definition for "Channel" to the amended regulation.

8. Comment: Collector: The definition is incomplete. Please add the following - directing it to facilities for sediment retention. (2)

Comment: Collector: The definition needs to add that such a facility should also convey runoff to a proper sediment removal facility. (3)

Comment: Collector: The definition as is only describes a collector but not what to do with what it collects. (18)

Comment: Collector: Plan designers need to understand the distinction between channels that convey clean or sediment-laden water and appropriate discharge locations for each. A collector collects sediment-laden water and discharges it to a structure for sediment removal. We suggest that this definition be amended as follows: "...for the purpose of collecting and conveying sediment-laden runoff from an existing or proposed disturbed area to a BMP for sediment removal or retention...". (24)

- Comment: Collector: Specify that this facility is for the collection of sediment-laden runoff from a disturbed area and the conveyance of the disturbed runoff to a BMP for sediment removal. (26)
- Response: The Department concurs with the commentors. Additional language has been incorporated to clarify this definition as suggested.
9. Comment: Common plan of development or sale: The final regulations should also include a specific definition of the phrase "common plan of development or sale" which specifically lists concrete standards and criteria that the regulated community can rely on to determine whether the Department will determine that proposed project will be subject to the PAG-2 requirements. This definition should follow the EPA's "common sense" guidance that expects multiple small projects to consist of five or more acres of disturbance at one time. (10)
- Response: The Department is unaware of the EPA "common sense" guidance referenced by the commentator. The Department has included the phrase "common plan of development or sale" in the definition of an NPDES Permit for Stormwater Discharges Associated with Construction Activity, to implement the federal requirement in 40 CFR §122.26(b)(14)(x). The Department's use of this phrase is consistent with EPA's guidance, as set forth at 63 *Fed. Reg.* 7874-7875 (February, 17, 98).
10. Comment: The Department of Environmental Protection should be used in place of "the Department". (18)
- Response: The Department has deleted this definition. The term "Department" is defined in Title 25, Chapter 1.1.
11. Comment: Designee: The reference to "other local governing body" is ambiguous and could conceivably lead to personal, political and territorial conflicts. The designee should be restricted to the county conservation district. (19)
- Response: The Department agrees with the commentator and has made the change.
12. Comment: As written "disturbed area" only describes an undisturbed area that is proposed to be disturbed. The following definition would be more accurate: "land area where an earth disturbance activity is occurring or has occurred without having been stabilized". (24)
- Response: The Department concurs with the commentator and has made a change in response to the comment.
13. Comment: Diversion: The definition is redundant and only addresses runoff. As stated "an earth disturbance activity for the purpose of diverting runoff away from an existing or proposed disturbed area". Does the term "runoff" imply subsurface water emanating above the proposed disturbed area? (18)

- Response: The term "runoff" includes any up-slope water, whether its source is surface or subsurface water.
14. Comment: Earth Disturbance: The State by policy and directives never considered clearing as earthmoving prior to this revision. I believe a definition for clearing should be provided. Is mowing an overgrown field, is the application of herbicide, or the harvesting of crops now to be considered an earth disturbance? (2)
- Comment: Earth Disturbance: As defined will "clearing" include the removal of vegetative cover without earth disturbance? Is this what is really intended? (3)
- Response: The Department's intent was to include the term "clearing" in the definition to provide consistency with the requirements for National Pollutant Discharge Elimination System (NPDES) permits. The Department agrees with the commentators that the act of clearing or removal of vegetation itself may not be an earth disturbance activity. Therefore the Department has clarified the definition by using the term "clearing and grubbing" collectively in the definition of earth disturbance.
15. Comment: Erosion and Sediment Control Permit: Are these new permits that must be issued for earth disturbance activities not requiring an NPDES permit? Or are these approved erosion and sediment control plans? (3)
- Response: Erosion and Sediment Control (ESC) Permits are state permits required for timber harvesting or road maintenance activities which involve 25 acres or more of earth disturbance. Timber harvesting and road maintenance activities are not regulated under the federal NPDES program. Projects which require an Individual NPDES or ESC Permit require review approval of an erosion and sediment control plan. The Department has clarified the definition to avoid confusion.
16. Comment: Erosion and Sediment Control Permit: Since this is the name of a specific permit, we suggest that the words be capitalized in this definition and throughout the Chapter (i.e. Subsections 102.31(c), 102.32(a), 102.43). Within this definition, reference is made to another specific permit which should also be capitalized here, in its own definition and the definition of Notice of Intent and throughout the Chapter (102.31(a), (c), (d); 102.32(b); 102.43). (24)
- Response: The Department has revised this term in the final regulation. Capitalization of the term has been added in the final regulation as recommended by the commentator.
17. Comment: Erosion and Sediment Control Plan: The definition needs to include why a plan would be needed or required such as "during the duration of the earth disturbance activity." (2)
- Comment: Erosion and Sediment Control Permit is defined as "A permit required for earth disturbance activities except activities that require an NPDES permit for stormwater discharges associated with construction activities." The latter provision of this definition contains a substantive provision that is better placed in

the body of the regulations. Therefore, we recommend that the EQB define this term as a permit required for earth disturbance activities. (36)

Response: The Department has revised the definition for clarification.

18. Comment: Land developer, land development and subdivision “as proposed in the rulemaking must coincide, be consistent, or even identical with the definitions found in Pennsylvania Municipal Planning Codes to be enforceable.” These definitions have been defined through case law by Pennsylvania Commonwealth Court. Why should we create more appealable actions for our overburden court system? (1)

Response: The Department’s draft regulations proposed the deletion of these definitions from the current regulations rather than adding them. These terms are also deleted in the amended regulations.

19. Comment: Interceptor channel: The definition should emphasize clean water runoff. (18)

Response: The term “interceptor channel” has been deleted in the final regulations. The purpose of interceptor channel is explained in the Department’s Erosion and Sediment Pollution Control Program Manual.

20. Comment: Minimum Storage Elevation: This term has not been used in the regulations. The term minimum may suggest that a maximum elevation exists. (2)

Response: This term has been deleted in the final regulations.

21. Comment: Minimum Sediment Storage Elevation & Minimum Storage Elevation: What are the maximum elevations? Why use the word “minimum”? (3)

Comment: Minimum Sediment Storage Elevation & Minimum Storage Elevations: The word “minimum” is confusing in this context. We suggest that it be eliminated from the definition and in Subsection 102.13(c) at Paragraph (3)(i). Paragraph (2) already refers to “sediment storage elevation”. (24)

Response: The word “minimum” was used to signify the lowest elevation within the sediment basin that would provide the required volume for sediment storage or stormwater storage. This term has been deleted as a result of revisions to the amended regulations.

22. Comment: NPDES permit for stormwater discharges associated with construction activities: The first phrase of this definition is what makes it difficult to explain when a permit is required. By saying “construction activity that involves 5 acres or more of earth disturbance”, the regulated community is led to believe that (a) a permit is not required until 5 acres are disturbed, and (b) any disturbance less than 5 acres does not require a permit. The second part of the definition is then left to counter the initial impression. This is a difficult task that we believe would be aided by eliminating the first phrase and using the concept of “project site”. Our suggested definition: “A permit required for the discharge of stormwater from construction

activities...when 5 acres (2 hectares) or more of earth disturbance is proposed over the life of the project site.” (24)

Comment: NPDES permit for stormwater discharges associated with construction activities: Specify that a permit is required for construction activities where the proposed earth disturbance is five acres or more over the life of the project. (24, 26)

Response: As suggested, the Department has revised this definition in the amended regulation for clarity.

23. Comment: We propose that “oil and gas exploration and production activities” should be defined as follows: Oil and gas exploration and production activities - Earth disturbance activities associated with the siting, drilling, completing, producing and plugging of oil or gas wells, including but not limited to well site, access road, injection and gathering line, and tank location construction. (10)

Response: The Department does not believe that the recommended term needs to be defined. The term “oil and gas exploration and production activities” is not used in the body of the regulations.

24. Comment: Outlet Structure: Two commentators questioned the use of this term as to whether it referred to the riser which controls the outlet from sediment basins and sediment traps, or whether it referred to energy dissipating devices. The commentators requested clarification from the Department. (2, 3)

Comment: Outlet Structure: The outlet structure defined is not the accepted description in use at this time. The outlet structure is the device, which limits the flow of discharge from an impounding structure. The definition provided more accurately describes an energy dissipater. (18)

Comment: Outlet Structure: The term “structure” is confusing in the context of Subsection 102.12 (see comments below). We suggest that the term be changed to outlet protection with the following definition: “Nonerosive material placed at the outlet from a channel, diversion or other drainage structure to safely discharge water to an existing, adequately sized natural or artificial watercourse”. (24)

Comment: Outlet Structure: change to outlet protection for consistency with the *Erosion and Sediment Pollution Control Manual and Standard Worksheets, Details and Notes*. (26)

Response: The Department has removed this definition since it is not used in the amended regulation. Outlet structures, energy dissipaters, and outlet protection are adequately described in the Department’s Erosion and Sediment Pollution Control Program Manual.

25. Comment: Permanent BMP’s: An important and difficult concept to convey to the regulated community is the difference between temporary and permanent BMP’s. Therefore it is suggested that two separate definitions are needed. Permanent BMP: “are

implemented within a project site designed to minimize accelerated erosion and sedimentation after final grade is established.” (24)

Response: The Department has revised the regulation by removing references to temporary and permanent BMP’s. Effective BMP’s, whether listed as temporary or permanent, must be maintained until the site is permanently stabilized.

26. Comment: Both permanent and temporary stabilization needs to be defined to reduce confusion. Permanent stabilization can be defined as “the stabilization implemented after final grade is established or after which no additional earth disturbance activities will be conducted.” (24)

Comment: Stabilization - as with BMPs, both temporary and permanent stabilization should be clearly defined. (26)

Response: To eliminate confusion, the Department has eliminated references to temporary stabilization. Erosion and sediment BMPs include temporary structural practices, and temporary and permanent stabilization practices.

Structural practices, such as silt fence, ditches, sediment basins, etc. collect, divert, store, and treat stormwater runoff to protect against accelerated erosion and the discharge of sediment from disturbed areas, during and immediately after the earth disturbance activity. These temporary best management practices are designed and implemented during the earth disturbance activity, and until vegetation or other permanent cover is established. Permanent structural best management practices required for post construction stormwater management are developed and implemented pursuant to municipal planning requirements. The Department encourages plan developers to design compatible practices for both construction and post-construction characteristics.

Stabilization is the covering of disturbed areas with vegetative (grass, trees, shrubs, sod, etc.) and non-vegetative (pavement, rock mulch, geotextiles, etc.) practices. Establishing either temporary or permanent stabilization can be the single most important best management practice in reducing accelerated erosion and sedimentation. Temporary stabilization provides interim control of earth disturbance activities that have temporarily ceased and will resume at a later date, or is used until a permanent cover can be established. Permanent stabilization is achieved when perennial vegetation of uniform coverage and density is established, or by covering the disturbed area with permanent non-vegetative cover, for long-term erosion and sediment control.

27. Comment: Road Maintenance Activities: This definition should include the notion that this definition refers to existing roadways and road cross-sections. (2)

Comment: Road maintenance activities - specify earth disturbance activities involving existing or established roads. (26)

Response: The Department concurs with the commentators. The Department has added the phrase “within the existing road cross-section” to clarify the definition.

28. Comment: Sedimentation: The definition should include waters of the United States. (8)

Comment: Sedimentation: The definition should include waters of the U.S. The definition should address the action or process of forming or depositing sediment on adjacent properties and roadways. (18)

Response: The Clean Streams Law provides the authority for the amended regulation. The Clean Streams Law reference is to the "Waters of the Commonwealth".

The purpose of the regulations is to preserve and improve the purity of the waters of the Commonwealth under the authority of the Clean Streams Law. The Clean Streams Law does not regulate the deposition of sediment on adjacent property or roadways, unless it is a potential threat to the waters of the Commonwealth.

29. Comment: The definition of sedimentation would seem to include other materials than just soil, therefore, agricultural plans should also show how these plans address "other than soil" materials such as manure solid, residues, sludge solids, and other soil amendments which are applied on the surface. (27)

Response: The Department agrees with the commentator that sediment runoff could contain other materials which have the potential to cause pollution. Section 102.2, Scope and Purpose, addresses the potential for secondary impacts which result when sediment pollution occurs from earth disturbance activities. However, planning and management of materials other than sediment are primarily addressed through other Department requirements, such as nutrient management planning.

30. Comment: Stabilization: The definition includes the term compacting. I don't believe there is an instance in which compacting alone can be considered adequate stabilization. Compaction would increase the velocity of run-off, thus increase erosion. We would need to develop standards or guidance on this BMP before including it within the regulations. (2)

Comment: Stabilization: The definition includes the act of compacting the soil as a suitable stabilization. This method would increase the rate of runoff especially on steep slopes and on the downslope of recently constructed water impoundment structures. The downslope-receiving waterway will most likely not be able to handle the runoff causing additional erosion. (18)

Response: The Department concurs; the term "compacting" has been removed from the definition.

31. Comment: Stabilization: "Grading, compacting, and construction" alone are not proper stabilization techniques. These should include the lining or covering of soil, rock, or earth. (3)

Comment: Stabilization: While placement or grading of soil may reduce the potential for erosion, those activities do not constitute stabilization. We suggest deleting "proper placing, grading" and "constructing" to clarify this definition. (24)

Response: The Department agrees and has revised the definition by changing the “or” after lining to “and”.

32. Comment: Temporary BMP’s: Similar to permanent BMPs, the following definition is suggested. “BMP’s implemented within a project site designed to minimize accelerated erosion and sedimentation during an earth disturbance activity.” (24)

Response: This Department has revised the regulation by removing references to temporary and permanent BMP’s. Effective BMP’s, whether listed as temporary or permanent, must be maintained until the site is permanently stabilized.

33. Comment: Temporary stabilization: Similar to permanent stabilization the following term is suggested. “Stabilization implemented before final grade is established”. (24)

Response: To eliminate confusion, the Department has eliminated references to temporary stabilization. Erosion and sediment BMPs include temporary structural practices, and temporary and permanent stabilization practices.

Structural practices, such as silt fence, ditches, sediment basins, etc. collect, divert, store, and treat stormwater runoff to protect against accelerated erosion and the discharge of sediment from disturbed areas, during and immediately after the earth disturbance activity. These temporary best management practices are designed and implemented during the earth disturbance activity, and until vegetation or other permanent cover is established. Permanent structural best management practices required for post construction stormwater management are developed and implemented pursuant to municipal planning requirements. The Department encourages plan developers to design compatible practices for both construction and post-construction characteristics.

Stabilization is the covering of disturbed areas with vegetative (grass, trees, shrubs, sod, etc.) and non-vegetative (pavement, rock mulch, geotextiles, etc.) practices. Establishing either temporary or permanent stabilization can be the single most important best management practice in reducing accelerated erosion and sedimentation. Temporary stabilization provides interim control of earth disturbance activities that have temporarily ceased and will resume at a later date, or is used until a permanent cover can be established. Permanent stabilization is achieved when perennial vegetation of uniform coverage and density is established, or by covering the disturbed area with permanent non-vegetative cover.

34. Comment: Waters of this Commonwealth: To avoid continued confusion, we suggest that another phrase be added to this definition after “whether natural or artificial” : “whether flowing or not”. (24)

Comment: Waters of the Commonwealth: Indicate that flow may be perennial, intermittent, or ephemeral. (24, 26)

Comment: *Waters of the Commonwealth: Rivers, streams, creeks, rivulets... whether natural or artificial within or on the boundaries of this Commonwealth. We*

question the use of the word "artificial". Given the previous descriptions that include the waters of the Commonwealth, the inclusion of the word artificial without itself having a clear meaning could in some instances result in confusion as to what could be regulated. As broad a definition as "artificial" is, the potential exists for some misunderstandings as to what could be covered by the regulations. It is suggested that the sentence be revised to substitute the word artificial with "man-made conveyance, impoundment, etc." (30)

Response: The Department agrees with the commentators that waters of the Commonwealth include perennial, intermittent, or ephemeral flows; however, the Department believes no changes are required to clarify the definition, since the definition is consistent with the definition found within the Clean Streams Law.

Section 102.2. Scope.

1. Comment: PA Trout is concerned that the word minimize rather than prevent is applied to accelerated erosion. We believe that erosion and subsequent sedimentation should be prevented. PA Trout recommends that the word minimize be replaced with the word prevent throughout Chapter 102. (13)

Comment: Throughout Chapter 102, the language "minimize accelerated erosion" is used. CBF believes this language is weak. In the preamble DEP stated that the advisory group suggested alternative language, which was rejected by DEP. This alternative language was "minimize accelerated erosion and prevent sediment pollution". However, in the proposed regulations DEP completely removed the word "prevent", even from where it is used in the current regulations. The purpose of these regulations should be to prevent accelerated erosion, not just minimize it, and CBF suggest DEP change "minimize" to "prevent" throughout Chapter 102. (20)

Response: The Department believes the use of "minimize" is more appropriate than "prevent". Erosion and sedimentation is a natural process that occurs even in the absence of human activity. The objective of this regulation is to minimize the acceleration of this process for earth disturbance activities which, if unchecked, may adversely impact our waterways because of the increased sediment load beyond natural background levels. BMP's are effective, practical and environmentally sound practices which minimize the threat of pollution and maintain water quality uses.

BMP's are designed in consideration of site conditions such as slope, soil erodibility, and other factors to operate effectively during reasonably expected storm and rainfall events of normal duration and intensity. BMP's prevent sediment pollution during reasonably expected storm events. It is not practical from a scope, design and implementation perspective to require BMPs to operate effectively during the full range of potential storm events, i.e. floods. The requirement to "prevent" as suggested by the commentator is an unobtainable goal for the full range of possible events.

Therefore, the Department believes the word “minimize”, as used in this body of the regulation, with the requirement to implement BMP’s for all earth disturbances, conveys a realistic, feasible and measurable goal for persons subject to these regulations.

Moreover, the Department has added language requiring that accelerated erosion and sedimentation be minimized in order to assure protection of water quality and existing and designated uses. This language, in conjunction with the general water quality criteria in §93.6, ensures that the waters of the Commonwealth receive protection from accelerated erosion and sedimentation.

2. Comment: The replacement of the word, “prevent” with “minimize” throughout the proposed amendments, is a favorable change for all persons who will be complying with these regulations. (6)

Comment: PBA commends the Department for replacing the word prevent with minimize throughout the proposal. This change in the regulations will provide the regulated community with the realistic approach for compliance with these regulations. PBA strongly supports this regulatory change. (23)

Response: The Department acknowledges the support.

3. Comment: For consistency with Subsections 102.4(a) and (d) among other sections, the word “plan” should be changed to “develop”. “Plan” suggests that erosion control is a contingency which it is not. We also suggest adding the phrase “and potential for accelerated erosion and sedimentation” after “to minimize accelerated erosion and sedimentation”. This incorporates the concept of pollution potential from Section 402 of the Clean Streams Law which we frequently reference when reporting on a site that is not implementing BMPs. The regulated community would benefit by referring to “potential” here and in Section 102.3 and Subsections 102.4(a) and 102.5(b). (24)

Response: The Department concurs with the recommendation and has made revisions to the final regulation.

4. Comment: Section 102. 2 and Section 102.3 contain similar language describing the intent and purpose of Chapter 102. To avoid this duplication we recommend that the EQB consolidate this information in only one section. (36)

Response: The Department concurs and has made the recommended revision.

Section 102.3. Purpose. *This section has been combined with § 102.2 in the final regulation.*

1. Comment: All earth disturbance activities are to be conducted as to minimize erosion and sedimentation and thereby protect existing and designated uses. This is an important and laudable provision, but neither current practice nor the proposed regulatory changes implement it effectively. (8)

Response: The Department disagrees and believes that the implementation of BMP's will minimize the threat of sediment pollution from earth disturbance activities.

2. Comment: If the regulations governing erosion and sediment control plans are designed to minimize erosion and sedimentation, then the regulations should also address what the acceptable limits of sedimentation are. (18)

Comment: DEP needs to adopt a water quality standard for sediment. Anyone who has watched a creek turn brown after a rain can understand that sediment can be a problem for water quality. In fact, according to the Pennsylvania 1996 305(b) report, suspended solids (i.e. sediment) was the second leading cause of stream pollution in the state. One way for DEP to adequately address the problem is to adopt a water quality standard for sediment that would protect instream water quality and aquatic life. Pennsylvania should adopt a standard not only to protect water quality in the Commonwealth, but to protect the Chesapeake Bay as well. In 1997, the U.S. Geological Survey issued a report (Reed and Hoffman, 1997) which documented a problem with the great potential to wipe out areas of the upper Chesapeake Bay due to the increased discharge of sediment. In the next 10-20 years Conowingo Reservoir will reach equilibrium in regard to its sediment retention abilities, instead of a portion of the sediment being retained behind the dams as it is currently. After that point all the sediment coming down the Susquehanna River will enter the upper Chesapeake Bay. The addition of increased amounts of sediment has the potential to destroy grass beds in the upper Bay, and would wipe out the gains in the grasses we have seen in the last few years and would have devastating effects on the aquatic life that depend on these grasses for shelter. Pennsylvania needs to act proactively to prevent sediment from entering streams in the first place, and adopting a water quality standard for sediment would be a good first step. (20)

Comment: PA Trout is very concerned that there are no water quality standards incorporated into Chapter 102 on the amount of sediment load allowed to be discharged into a stream. Pennsylvania does have such standards for water bodies related to mining activities but no standards appear here. Allowable sediment loads should be given in term of ambient allowable mg/l and instantaneous mg/l. Commonwealth agencies already have a wealth of information to set such standards, based on the key underpinnings of enforcement provisions. (13)

Response: There is no existing numeric criterion for sediment. The Environmental Protection Agency is trying to develop such criteria. Before numeric sediment water quality criteria can be established as a performance standard, gaps in existing knowledge and research need to be addressed including: the establishment of a meaningful standard which accounts for natural background variability; the establishment of storm event intervals and the production of sediment above the natural background; the ability to identify and address cumulative effects within a watershed; and the establishment of an acceptable risk through models which are precise and accurate. In the absence of such criteria, there is no method to establish total maximum daily loads (TMDLs) for sediment. The sediment standard for mining operations is not a water quality standard but rather a technology based effluent limitation similar to the BMPs established by this

Chapter. The Department is unaware of any other state which has established such water quality standards for earth disturbance activities.

Section 102.4. General.

1. Comment: By limiting the amount of earth disturbance activity to 5,000 sq.ft. for the development of an E&S control plan is an excellent method of defining what is reasonable for the development of an E&S plan except when steep slopes are involved. A 15% slope requirement would seem reasonable to incorporate within the proposed regulations. Many municipalities have steep slope ordinances which would contradict this new provision. (1)

Response: The 5,000 sq.ft. threshold should capture most projects where a potential pollution threat exists. The Department investigated the idea of a slope limitation requirement for the final regulation, but determined that slope, by itself, without other specific geographic criteria is not appropriate. The Department believes that the other criteria established in the final Chapter 102 regulations sufficiently address planning concerns for particular earth disturbance activities and their potential to discharge to waters of the Commonwealth. In addition, if local conditions require, municipal ordinances can be more restrictive than the state requirement.

2. Comment: Does this section exclude projects in High Quality (HQ) and Exceptional Value (EV) Watersheds from the 5,000 square foot E&S plan exemption or must someone in DEP determine whether or not a discharge is possible? (2)

Response: All earth disturbance activities in projects in a High Quality or Exceptional Value watershed (regardless of size) are required to have an Erosion & Sediment Control plan developed and implemented.

3. Comment: Who will decide if a discharge to the Waters of the Commonwealth may be possible? Will this be DEP/District staff or the Landowner/earthmover? (3)

Response: The regulation has been amended from "discharge" to "potential for discharge". It is anticipated that most earth disturbance activities have a potential to discharge and will require an Erosion and Sediment Control Plan. Whether or not an earth disturbance activity will have the potential to discharge should be decided by the Plan preparer before the activity is commenced. Department or District staff may also, upon complaint or investigation, decide if a potential discharge is possible from the activity and require a Plan

4. Comment: Sub-section (b) states that projects with less than 5,000 square feet of disturbed soil would not need an E&S plan. This should be 10,000 square feet so a potential homebuilder would not need to go through all the red tape. This is especially important because of the way that some districts impose their own interpretation of the rules. (5)

Response: The Department disagrees with this comment. Most soil-disturbing activities, regardless of size, have a potential for erosion and sediment pollution. Many

small-scale projects can be planned easily and inexpensively. This requirement is for plan development and does not generally require a permit or approval from the Department or its designee.

5. Comment: Sub-section (d) agricultural plowing and tilling should be exempt from E&S requirements. (5)

Response: The Department disagrees with this comment. Erosion and sediment controls for agricultural plowing or tilling activities have been required and should continue to be required to ensure that waterways are protected from sediment pollution.

6. Comment: Agricultural plans should also show how the accelerated erosion of these "other than soils" materials, such as manure solids and residues, sludge solids and other soil amendments which are applied on the surface with no incorporation, is to be reduced. (27)

Response: A properly designed, implemented, and maintained erosion and sediment control plan for agricultural plowing or tilling activities prevents the pollution of waters from sediment and other associated polluting substances. The erosion and sediment control plan should contain effective BMP's which will prevent pollution of Commonwealth waters from sediment and polluting substances carried by sediment.

7. Comment: Subsection (b)(3) proposes to say that an E&S plan shall be prepared unless the DEP determines that the activity will not adversely impact water of the Commonwealth, this should be the reverse. (8)

Comment: Section 102.4(b)(3) requires development of an E&S control plan if "The Department determines that the activity may adversely impact waters of this Commonwealth". The Department of Environmental Protection (Department) may delegate the administration and enforcement of this regulation to a conservation district. Consequently, we recommend that this provision be clarified in the final-form regulation to read as follows: "The Department or its designee...".

This section of the regulation is also unclear because it does not include the criteria that the Department or its designee will use to determine if an earth disturbance activity will adversely impact the waters of the Commonwealth. We recognize that it may be difficult to list all possible criteria which will be considered in making this determination. However, the EQB could include a nonexhaustive list to give the regulated community guidance on how such a determination will be made. We suggest the EQB include language such as:

(3)... In making this determination, the Department or its designee will address factors including, but not limited to the following:

- (i)...
- (ii) (36)

Response: The Department has deleted the proposed §102.4(b)(3) in the final regulation. The Department believes the final proposed planning requirement, i.e. 5,000 square feet or greater, special protection waters, and activities which require the development of an Erosion and Sediment Control Plan, covers the full range of activities that have the potential to adversely impact Commonwealth waters.

8. Comment: A prepared, written E&S plan should be submitted and (at minimum) registered with PADEP (or its designee) for each proposed construction activity land disturbance in excess of 5,000 square feet. All E&S plans for construction activities disturbing 1 acre or more should be reviewed by PADEP or its designee and approved prior to the initiation of construction activities. (8)

Response: The Department disagrees that all E&S control plans for projects exceeding 5,000 square feet should be submitted and registered, and that all projects disturbing 1 acre or more require a review and approval. The Department does not believe that this additional administrative process will provide any additional water quality protection. The Department has revised the requirement for submittal of E&S plans for activities located in HQ/EV watersheds. In addition, the Department or its designee has the authority to request the plan to be submitted for review and approval under 102.4(c) for other projects. This allows the Department or designee to exercise best professional judgement, and utilize risk-based considerations, i.e. landscape position, proximity to watercourses, site conditions, and potential for water quality impairment, in prioritizing staff resources and efforts.

9. Comment: Chapter 102 and PAG-2 should be revisited to eliminate the requirement that persons seeking authorization for projects subject to PAG-2 must submit an E&S control plan to the local conservation district along with the Notice of Intent to use the general permit. Instead, the General Permit should simply track the provisions of proposed 102.4(d) which stipulates that the E&S control plan "shall be available for the reviewer and inspection at the project site during all stages of the activity." (10)

Response: The Department disagrees. The requirement for having an E&S plan submitted with the Notice of Intent will ensure plan development, adequacy of best management practices, and coverage under appropriate permit.

10. Comment: In commenting on the provisions of Proposed Section 102.4, PGA offers two suggestions. First, in order to be consistent with other regulations, the proposed 5,000 square foot threshold should be revised to a one-acre limit. Additionally, we note that the proposed regulations fail to take into account lineal projects such as the construction, repair and maintenance of utility lines. As explained earlier, this work is primarily performed in small segments for which utilities take great care (through revegetation and other measures) to control erosion and sedimentation. The paperwork burden and cost of applications for the review of these activities are unnecessary burdens which PGA believes the Department should consider in its revision of the Chapter 102 regulations. (11)

Response: The requirement for the 5,000 square feet is one of planning the activity and not one of permitting. Since a permit is not required, there is no paperwork or cost associated with these activities except for the plan preparation. The Department is not considering reducing the acreage for permits to 5,000 square feet.

11. Comment: Proposed Section 102.4(b)(2) would require the preparation of an E&S control plan for activities the Department determines may adversely impact waters of the Commonwealth. The PGA feels that further guidance as how the Department will make such a determination is appropriate. Establishing criteria in the regulations for activities falling under this section would better enable the regulated community to comply with this requirement. (11)

Response: The Department concurs, and has revised the final regulation to clarify such requirements.

12. Comment: According to the proposed rule, "a person proposing earth disturbance activities shall develop an erosion and sediment control plan under §102.5" for any activity resulting in a total earth disturbance of 5,000 sq. ft. or more. This is not consistent with proposed Federal Rules which stipulate regulation of earth disturbance activities involving 1 acre or more. To regulate activities disturbing 5,000 sq. ft. places an undue burden on the regulated community. In the pipeline industry minor maintenance projects can reach 5,000 sq. ft. and will require development of an unnecessary and excessive number of site specific formal erosion and sediment control plans. In lieu of formal plans, best management or other site specific practices should suffice to minimize accelerated erosion and sedimentation for sites less than 1 acre. (9)

Comment: This section restricts the requirement for an E&S plan to only those activities disturbing less than 5,000 sq.ft., but adds the requirement that each plan be site-specific would significantly add to the plan preparation burden for many other activities. Utility companies have traditionally utilized "general" E&S plans for routine daily work. These general plans provide consistent guidance and are the best basis for use in training construction and maintenance employees. The proposed regulations would add about 190 site-specific plans per year the number already being prepared.

PNG must replace leaking pipelines which are beyond repair. Many of these replacement projects are planned, but sometimes a segment of pipeline is replaced without advanced knowledge in cases when a planned leak repair cannot be made due to pipe conditions. Other times a much smaller replacement is planned, but pipe conditions in three fields dictate a larger replacement while construction is in progress. Delaying this work while a site-specific E&S plan is prepared could pose a public safety concern.

PNG also believes that the list of required plan contents in proposed Section 102.5 is overly prescriptive. Residential lot plans build out in phases sometimes over a period of many years, even after the mainline is installed short service, the utility company revisits the development many times over the years. It will be virtually impossible to have a site-specific E&S plan available for all of these numerous

activities. Will future activities in plans that were built prior to revision of the regulations require NPDES permits? The use of BMPs and a standard E&S plan, along with well-trained utility construction personnel and contractors is the best way to prevent erosion problems, the lead time and cost of NPDES permitting is overly burdensome and impractical. (14)

Comment: The proposed regulations reduce the threshold for requirement of an E&S plan to 5,000 square feet. This will greatly expand the number of applications to be reviewed and cause a serious bottleneck in the approval process. (16)

Comment: Section 102.4(b): The Department is to be commended for establishing a minimum disturbance which would not require development of a written erosion and sediment control plan. However, 5,000 square feet is too small to benefit our industry. We recommend the minimum earth disturbance activity be set at one acre, especially considering that "Best Management Practices" would still be required and 102.4(b) 2-4 would require plans in many instances. (19)

Comment: Many single-family home custom builders construct large homes on large lots that will disturb more than 5,000 sq. ft. The construction normally does not concentrate storm water runoff, the disturbed area is unprotected for very short periods of time and generally silt fence installation, tracking pads and other BMP's are utilized. I believe the cost to prepare specific erosion control plans for this type of construction is not justified. I therefore request an exemption to plan preparation to added for single-family residential sites when said lots are not a part of a concurrent multi-lot development. (22)

Comment: The proposed rulemaking is 5,000 sq.ft. earth disturbance exempt from a written E&S control plan. This should be increased to 3/4 to 1 acre with exemption of a single-family residential lot which is not part of a subdivision. Projects of this nature are generally quickly completed and do not pose a serious threat for sediment pollution. This exemption would not be applicable in HQ and EV watersheds. (23)

Comment: We believe additional criteria is needed for the minimum amount of disturbance which will require a written E&S plan or a tillage plan. The 5,000 sq. ft. translates into 0.11 acres or a plot approximately 70' x 70' square. Numerous instances of disturbance by private individuals for a family garden exceed these guidelines. A single-family dwelling on a single lot would require a written E&S plan. That in itself is not a bad idea, but the burden on the landowner to procure such a plan from a qualified individual would put an undue burden on the public. Exemptions need to be added for a written plan for *individuals engaged in single-family activities*. (30)

Comment: It is our opinion the need for a written plan when disturbing 5,000 sq. ft. of land area is too low. While this is an improvement over the current regulation, which requires a written plan for all earth disturbance activities, most of the homebuilders in our area will still be required to prepare written plans given the nature home construction and location land use regulation.

I am not, of course, suggesting that homebuilders be exempt from implementing and maintaining best management practices to minimize soil erosion and sedimentation. But the need for a written plan, prepared by a trained and experienced technician, is still excessive and costly. In our area of the Commonwealth, it is next to impossible to build a single-family home without disturbing more than 5,000 sq. ft. of earth. Therefore, the proposed change does very little in lifting a costly and unnecessary regulatory burden on the homebuilder and ultimately the homebuyer.

The reduction of soil erosion through the use of BMP's is often times included in the municipal and county land development regulations and should be required of all homebuilders. However, the need to incur the expense of hiring a professional technician to prepare a written land is both excessive and unnecessary. (32)

Comment: Section 102.4 - General: Section 102.4(b)(1) requires an Erosion and Sediment (E&S) control plan when an activity results in an earth disturbance of 5,000 sq. ft. or more. Several commentators questioned the appropriateness of the 5,000 sq. ft. standard. Specifically, several building associations observe that this standard is too small and will require the builder of a single-family home to continue to develop and E&S control plan. The builders believe this standard adds to the cost of home construction. The Pennsylvania Builders Association believes the standard for submitting a plan should be somewhere between $\frac{3}{4}$ of an acre to 1 acre. We request the EQB provide justification for why 5,000 sq. ft. is the appropriate standard for requiring an E&S control plan. (36)

Response: The selection of a 5,000 square foot standard for erosion and sediment control plan development was determined from existing municipal requirements, and from established standards with neighboring states of Delaware, Maryland, and New Jersey.

The Department believes that the selection of a 5,000 foot standard provides a planning exemption for minor earth disturbance activities which generally do not present a significant threat when typical best management practices are utilized without specific site planning.

The Department agrees with the commentators that larger land disturbances greater than 5,000 square feet can generally be conducted without significantly increasing the threat for accelerated erosion and sediment pollution provided BMPs are effectively implemented and maintained. The Department believes BMPs for projects greater than 5,000 square feet must be carefully selected and designed and that a written plan is the most effective way to ensure that BMPs are effectively incorporated in an earth disturbance activity. Therefore the Department has retained the 5,000 square foot standard in the final regulation. The Department has clarified the final regulations by identifying specific planning requirements needed for an erosion and sediment control plan. The regulations have been designed so that plan preparers can incorporate best management practices in a plan which will minimize erosion and sedimentation for any site regardless of size or the need for a permit.

13. Comment: The 5,000 sq.ft. threshold triggering the need to develop a written E&S plan is not a sound practice if improved water quality is the goal of these regulations. In a subdivision scenario where the lots are sold for individual development the 5,000 sq.ft. rule could facilitate many contiguous lots under construction at the same time with no E&S control plan. (18)

Response: The Department disagrees. In the case of the subdivision scenario which the commentator provided, the Department or its designee would require that a plan be prepared for all earth disturbances which are part of a common plan of development or sale, rather than on a lot by lot basis. The purpose of the plan is to anticipate all earth disturbance activities over the life of the project and the best management practices which need to be implemented.

14. Comment: 102.4(b)(4): This seems to indicate that a person proposing earth disturbance activities shall develop an erosion and sediment control plan if "The department determines that the activity may adversely impact water of this Commonwealth". This condition is interpreted to mean that the Department must examine every potential site of earth disturbance to verify the need for plan development or not. (18)

Comment: Given the stated purpose of this Chapter, "to minimize accelerated erosion and sedimentation of Waters of this Commonwealth", what is the significance of the 5,000 square foot threshold in Paragraph (b)(1) as it relates to special protection waters in Paragraph (b)(4)? (24)

Response: Special protection waters, including High Quality (HQ) and Exceptional Value (EV) watersheds, are waters which have excellent to outstanding quality. The Department believes that any earth disturbance activity regardless of the size of disturbance presents a threat for water quality degradation. Accordingly, the 5,000 square foot exemption does not apply and a plan is required.

15. Comment: Under earth related activities regulated under Chapter 102 (page 769), it is stated that the proposed revisions establish a minimum area of disturbance (5,000 sq. ft.) as one of the triggers for the development of a written erosion and sediment control plan. We believe that all proposed disturbance activities should require such a plan, with no minimum parcel size. This is based upon our recent work along upland Exceptional Value and High Quality streams, where, because of steep stream gradients and low vegetation buffers, severe stream erosion and sedimentation occur on very confined stream segments. Many of these would not receive adequate protection where a size threshold for protection established. But the "no minimum size" should apply to downstream sites as well; for, in spite of their lesser water quality, they are subjected to similar small scale, but severe, disturbances and therefore need protection via a permit. Also, the issue of the additive impacts of multiple sites in a watershed must be addressed. (13)

Comment: CBF objects to the 5,000 square foot exemption from a written erosion and sedimentation control plan requirement. Under some circumstances, such as along a small creek, an exemption from needing a plan for a one-tenth acre disturbance has the potential to harm aquatic life in a creek. Currently there is no de minimus

threshold, and we suggest that DEP drop this exemption from the proposal. However, if DEP should keep this exemption, conditions need to be placed on its use. These conditions should include; limiting its use based on the proximity to a stream, steepness and erodibility of the soil, prohibition of its use in a watershed designated high quality or exceptional value, and the cumulative effect of the use of the exemption by multiple people along a stream or creek. (20)

Response: This section has been revised to include limiting conditions. Earth disturbance activities within the stream or floodway will continue to require the development of an Erosion and Sediment Control Plan under Chapter 105. Activities in high quality and exceptional value watersheds are required to develop written plans regardless of the amount of disturbance. As to the cumulative effect, the Department requires that such impacts be planned as part of a larger common plan of development or sale. In addition, although written plans are not required for activities disturbing less than 5,000 square feet, erosion and sediment controls are still required for all earth disturbance activities.

16. **Comment:** I support the proposal to have a 5,000 sq.ft. threshold which triggers the need for a written erosion control plan. As the regulations are currently, there is no threshold and it is somewhat ambiguous as to whether a written plan is needed or not. (35)

Response: The Department acknowledges the support.

17. **Comment:** The public should have access to E&S Control Plans: Under the current regulations for those activities not needing an E&S Control Permit but needing plan, plans are only required to be kept on site and available to DEP personnel or a delegated authority for the program. Because the public does not have access to these plans, it becomes very frustrating for citizens who see erosion problems and want additional information. DEP should require E&S plans to be submitted to DEP or the delegated authority and be kept on file, allowing public access to the plans. (20)

Response: The Department believes that the activities which have the greatest potential to impact the waterways are submitted and are publicly available. The administrative burden of requiring the submission of all plans is excessive when weighed against the potential benefits. When citizens see erosion problems they should report them to the county conservation district or the Department's regional office.

18. **Comment:** Sub-section (c) authorizes the Department or its designee to "approve" E&S plans. The acting chief has represented that such approvals are intended to be limited to plans filed in connection with applications for permitted activities as specifically contemplated under subsection (b)(2) (G.P.'s and stream crossings). Therefore the language in sub-section (c) should be modified to expressly clarify the circumstance under which plans would be subject to "approvals" in this regard. (21)

- Response: The regulation has been amended to clarify this circumstance under which plans would be subject to review and approval. Plans submitted as part of an NPDES permit application, Erosion and Sediment Control Permit, other Department regulation, or local, state, or federal requirements, may require an approval.
19. Comment: In subsection (b) and paragraph (b)(2), reference to the E&S control plan should be capitalized since this is the name of a specific plan. This comment also applies to Section 102.5 and throughout the Chapter. (24, 26)
- Response: The Department has made the recommended changes.
20. Comment: Since conservation districts are administering Chapter 102 in most counties, it is suggested that paragraph (b)(3) be amended to "The Department or its designee". There is no mechanism for the Department to make this determination in delegated counties. (24)
- Comment: Expand this sentence to include "The Department or its designee" (i.e., Conservation Districts, who are generally responsible for Chapter 102 administration). (26)
- Response: The Department has revised this section to reflect the comment.
21. Comment: Subsection (c) allows the Department or its designee to request that E&S control plans be submitted for review and approval. We support and appreciate this clarification. (24)
- Response: The Department acknowledges the support.
22. Comment: I am in favor of the addition regarding joint and separate responsibilities for tenants and landowners. (27)
- Response: The Department acknowledges the comment of support.
23. Comment: 102.4 (d): PCA represents members which lease surface lands for agricultural use. This section of the Draft Rule proposes to delete the landowner's ability to delegate the responsibility for preparation of erosion and sediment ("E&S") control plans to a tenant or lessee. PCA objects to this change. Responsibility for plan submittal should rest with the party engaged in the earth disturbance activity. At a minimum, a landowner should be permitted to enter into an agreement delegating this responsibility to the tenant or lessee. (25)
- Response: After discussions with the Agricultural Advisory Board, the Department believes that this revision reflects the nature of most agricultural activities. During agricultural plowing or tilling activities, both the landowners and tenant farmers are responsible for various aspects of planning and implementation of the plan. This revision provides the most flexibility in allowing landowners and tenant farmers to develop and implement agricultural Erosion and Sediment Control Plans, especially as it relates to implementation of permanent BMPs and maintenance activities.

24. Comment: Subsection 102.4: Specify that the E&S control plan referenced here is a written plan. Language should be included to clearly state that persons proposing projects disturbing less than 5,000 sq.ft., while not required to have a written plan, must still implement E&S control BMP's to minimize accelerated erosion and sedimentation. (26, 35)

Response: The Department concurs. Section 102.4 has been revised to specify that the plan must be written and that BMPs are required even though a plan is not required.

25. Comment: Duquesne Light supports the revisions to §102.4 that require implementation of BMP's and other sound conservation and engineering practices as E&S controls. In addition, Duquesne Light strongly agrees with the proposed §102.4(b)(1) that establishes a 5,000 square foot minimum threshold for developing written E&S plans. It is our understanding that other regulations will be modified or amended to be consistent with any final changes in Chapter 102. For example, the general permit conditions in 25 PA Code Chapter 105 require the submittal of written E&S control plans to the county conservation district for review and approval. Duquesne Light urges the Department to revise Chapter 105 so that written E&S plans will not be required for small projects that disturb less than 5,000 square feet of earth. (28)

Response: The Department acknowledges the supportive comments. The Department's Chapter 105 regulations are being reviewed and revised under a separate RBI initiative.

26. Comment: Subsection (c) provides that the Department or its designee may request an E&S control plan be submitted for review and approval. This provision is unclear because it does not specify under what circumstances plan submission and approval will be required. The regulation also does not provide the timeline for review of plans. We recommend that the EQB revise the final-form regulation to specify under what conditions plan submission and approval will be required. We further recommend that the EQB specify the timeline for review of plans in the final-form regulation. (36)

Response: The Department concurs and has provided specific circumstances required for plan submission and approval. The Department has not provided a specific timeline for review of plans.

The Department's Regional Offices and conservation districts endeavor to complete the review of all Notices of Intent and Individual NPDES Stormwater permit applications within the time specified under the Money Back Guarantee Program (150 days for Individual Permits and 100 days for Notices of Intent). Under the Department's delegation agreement the County Conservation Districts must "... Receive, review and process all Notices of Intent for Coverage Under the Pennsylvania General Permit for Discharges of Stormwater from Construction activities and all Individual Permit Applications for Discharge of Stormwater from Construction Activities within 30 days of receipt".

27. Comment: I am in favor of the proposed maintenance plans for BMPs. (27)

Response: The Department acknowledges the support.

28. Comment: There is no proposed requirement that small projects should have written E&S plans when they drain toward Exceptional Value Wetlands. As stated at 25 Pa. Code 105.71(1), this narrowly defined class of wetlands requires special protection. The proposed regulations do not recognize Exceptional Value wetlands or provide them with special protection except insofar as they may be associated with Exceptional Value waterways. Exceptional value wetlands downslope should be listed as one of the features requiring preparation and submission of a written E&S plan for all construction activities large or small. Pennsylvania's Exceptional Value wetlands can be severely damaged by relatively small upslope land disturbances. (8)

Response: Exceptional Value wetlands are determined by the Chapter 105 regulations. Section 102.4 provides a mechanism to require written plans where the activity will adversely impact waters of the Commonwealth including Exceptional Value wetlands.

Section 102.5. Erosion and Sediment Control Plan.

1. Comment: Section 102.5(a): This section states that any preparer shall be trained and experienced in sedimentation control methods and techniques, but it does not say what constitutes qualified training and experience. Some District, as soon as you disagree with them, will question your qualifications, and not approve the plans until you agree with them. Also, it does not state what the qualifications should be for the District personnel reviewing the plans.

When the training course in Erosion and Sediment Pollution Control was given the instructor stated that Civil Engineers with a college degree, and a Professional Engineer's license, are automatically qualified to do E&S Plans, and did not need to take the training seminar. You cannot get better qualifications than a Civil Engineer's degree and a P.E. license.

At present, there are no qualification requirements for the reviewer. I feel that they should have the same required training level as the preparer, that is: an engineering degree, Surveyors license, or an Engineer's license. Non-college graduate should not be an acceptable level of training for a reviewer of plans prepared by a Professional Engineer who must put his Engineering seal on the plans, and sign a note as to the accuracy of the plans. (5)

Comment: The stamp of a professionally licensed civil engineer (or Professional Engineer) is recognized by federal, state, and local government, courts of law, business and commerce associations, insurance companies, the construction industry, community groups, and individuals as the hallmark of quality and public safety in all constructed projects. This is justly so due to the education and experience required for professional licensure. For this reason we urge the State of Pennsylvania to adopt a requirement into this regulation that the activities it covers

receive the approval of a Pennsylvania State licensed Professional Engineer prior to construction.

We feel this can best be accomplished by strengthening paragraph 102.5(a). It is currently proposed to state "The erosion and sediment control plan shall be prepared by a person trained and experienced in erosion and sediment control methods and techniques". We recommend Subsection 102.5(a) be restated to read "The erosion and sediment control plan shall be prepared and stamped by a Professional Engineer licensed in the State of Pennsylvania". We feel such a requirement is especially necessary at this point in time, as the state is undergoing tremendous land-use pressures because of development and the changing nature of the economy generally. A Professional Engineer's approval on erosion and sediment control plans required under Chapter 102 will provide great assistance and peace-of-mind to municipal planning officials, supervisors, inspectors, and concerned citizens. (17)

Comment: Section 102.5(a) requires a plan to be prepared by "a person trained and experienced in erosion and sediment control methods and techniques". The provision is unclear however, because it does not specify what is acceptable training and experience. We recommend that the EQB specify the acceptable training and experience in the final-form regulation. (36)

Response: The proposed regulation does not change existing requirements. The Department has not reserved the authority to develop E&S control plans to any specific profession, industry, or individuals. Most farmers (as well as other persons) who routinely conduct earth disturbance activities are able to develop erosion and sediment control plans because of their expertise and experience.

A County Conservation District that wishes to have responsibility for the Chapter 102 and the NPDES Stormwater Construction Programs must have staff that are trained by the Department and demonstrate that they are qualified to review the Erosion and Sediment Plan as a condition of the delegation agreement. Conservation districts conduct reviews with the guidance and assistance of the Department.

2. **Comment:** Under §102.5(b)(2), it is suggested adding the word "erodibility" –"The types, erodibility, depth, slope..." (7)

Response: The Department believes that erodibility is a consideration by requiring soil limitations to be included for the development of an Erosion and Sediment Control Plan. Soil limitations include risk to erosion, water, stoniness, and other soil limiting factors found in county Soil Survey Manuals. In addition, the Department has included information in the Department's Erosion and Sediment Pollution Control Manual on the erodibility potential for soils found in Pennsylvania.

3. **Comment:** Subsection (b)(5): In order to properly prepare and review an E&S plan, the plan must illustrate the sequence of construction and earth disturbance. Example: If the plan illustrates the site being contained by collectors channels and a sediment basin, but the first item of construction is a stormsewer system which does not

discharge to the Sediment Basin, the E&S plan will not be effective. The plan must be more than an outline for BMP installation. (2)

Response: The Department concurs with the commentator.

4. Comment: Subsection (c)(1): This section should be expanded to include the requirements that an E&S plan must illustrate current site conditions, along with the proposed land cover and facilities planned for the site. Simply illustrating BMP's will not produce an adequate E&S plan. (2, 18)

Response: The Department has incorporated this recommendation into the final regulation.

5. Comment: Subsection (c)(3) "recycling plan": This requirement, while maybe a wise-conservation type of idea, does not need to be made part of the E&S plan. The Erosion Control Planning process is already encumbered with the following: Preparedness, Prevention and Contingency plans (PPC); Pennsylvania Natural Diversity Inventory (PNDI); Cultural Determination Notices; National Pollutant Discharge Elimination System (NPDES). (2)

Comment: Subsection (c)(3): Clarify whether this section addresses off-site borrow and waste areas associated with a project. (26)

Response: The proposed section of the revised regulation has been moved to Section 102.4(b)(5)(xi).

Chapter 102 currently requires a maintenance program which includes the disposal of materials from the project area. The Department has refined and clarified the final regulation to ensure proper recycling and disposal of all materials in accordance with Department's pollution prevention requirements and other regulations. The final regulation parallels the federal NPDES stormwater regulations which require that individuals responsible for construction activities include measures to not only control erosion and sedimentation, but to ensure mechanisms are in place to control construction wastes. Such construction wastes include, but are not limited to, discarded building materials, concrete wash water and sanitary wastes which could adversely impact water quality.

This Section does not address borrow areas, but does include waste or spoil areas of excess fill material, as well as sediment removed from best management practices as part of routine maintenance activities. The Erosion and Sediment Control Plan must include a description of any borrow areas, off-site storage areas, support facilities, and disposal areas directly associated with the earth disturbance project, and the best management practices which will be implemented for those areas. For projects requiring a permit under this Chapter, these areas are considered part of the project or larger common plan of development and must be included in the Erosion and Sediment Control Plan for permit applications.

6. Comment: Subsection (d) suggest adding ... "The Pennsylvania Technical Guide may be used to develop the plan and design the BMP's. A Conservation Plan approved by

the Conservation District is deemed to meet these Erosion and Sediment Control requirements". (7)

Comment: The Butler County Conservation District has reviewed the rulemaking in the Pennsylvania Bulletin and acknowledges the change of a conservation plan as identified in existing Chapter 102 regulations to an agriculture specific erosion and sediment plan. However, the District feels under current Chapter 102 regulations the Department of Environmental Protection has not made enough effort to provide the necessary information needed to develop such a plan. Therefore, the District asks the Department to adopt the following as standard best management practices: (1) Natural Resource Conservation Service, National Plan Handbook; (2) Natural Resource Conservation Service, Field Office Technical Guide; (3) maximum allowable erosion rate be "T" of the Universal Soil Loss Equation. By doing this, the Pennsylvania agriculture community should be at ease knowing the United States Department of Agriculture and the Pennsylvania Department of Environmental Protection have uniform standards for compliance. (31)

Response: The Department concurs with the commentator and has made the appropriate changes in the final regulation.

7 Comment: PNG believes that the list of required plan contents in proposed Section 102.5 is overly prescriptive. Typical new pipe installation in residential lot plan or other development where all clearing, grading, road construction, and other earth disturbance work has been completed by the plans developer. Information on soils, land use, classification of receiving waters, etc. is not truly pertinent to natural gas pipe line activities but increase the pre-construction cost related to E&S control plan preparation. The regulations must incorporate flexibility to suit the project at hand into a list of requirements. (14)

Response: Section 102.5 establishes basic requirements to minimize accelerated erosion and sediment control for all earthmoving activities. In the scenario which was provided by the commentator, the utility would not need to develop their own separate E&S plan. The plan developed by the residential developer would address all earth disturbances including those for utilities as a part or any portion of a larger plan of development or sale.

8. Comment: Within subsection (b) the word "minimize" is completely open to interpretation by any individual. (18)

Response: The most prevalent sense or meaning of "to minimize" means reduce to the smallest possible amount extent, size, or degree. (The American Heritage Dictionary, Second College Edition, 1985). The Department does not believe that any further definition is required.

9. Comment: Subsection (c)(1): This section should be expanded to include the requirement that an E&S plan must illustrate current site conditions, and the proposed land cover and facilities planned for the site. Simply illustrating BMPs will not produce an adequate E&S plan. (2)

- Comment: Subsection (c)(1): For the requirement of the plan should also include existing features, and surrounding areas which impact the proposed disturbed area. (18)
- Response: The Department has addressed this concern in Section 102.4(b)(5) of the final regulations by expanding the requirements.
10. Comment: Subsection (c)(2): The maintenance program indicates "regular" inspection of the BMP's. Here again the use of the word regular is open to interpretation and does not provide specific intent. (18)
- Response: The Department concurs and has made revisions to the final regulation by including specific requirements on where to inspect BMPs.
11. Comment: Subsection (d): Many farms employ multiple planning strategies (e.g. nutrient mgt., integrated pest mgt. as well as erosion and sedimentation control plans) on the same fields. For the proper functioning of these plans it is necessary that each is designed so that all are consistent with one another. Language should be added to this section to be sure this conflict does not occur. Such as "other types of management plans should be taken into consideration during the planning process". (20)

CBF supports keeping the requirement for erosion and sedimentation plans for agricultural activities. Agriculture is a major source of excess sediment entering streams and rivers, and it is important that erosion on agricultural lands be minimized. However, this requirement is not clearly stated, and CBF suggests stating this requirement more clearly in the first part of the regulation. In addition, DEP should expand the requirement for an erosion and sediment control plan to cover agricultural activities beyond plowing and tilling. For example, barnyards are often located adjacent to streams. Because of the amount of concentrated animal activity in these areas, they can be quite prone to erosion. Any agricultural activity that is considered an earth disturbance activity and has the potential to contribute sediment to a stream should be covered under Chapter 102 requirements. (20)

Comment: Within subsection (d) the definition for agricultural plowing and tilling seem to carry the connotation that this is the only way which an agricultural operation can cause accelerated erosion and sedimentation. Plowing and tilling are too limited in this agricultural definition and within this section. (27)

Response: The Department concurs that erosion from all farming and agricultural activities should be effectively managed, controlled, and minimized. Comprehensive farm management assistance is available through a variety of federal, state, and local programs designed to address the commentators concerns. Chapter 102 only addresses one segment of this land use practice and is not intended to be a comprehensive land use or agricultural regulation.

The Department encourages farmers to develop multiple planning strategies such as nutrient management, integrated pest management, as well as erosion and

sediment control, into a comprehensive management plan. This regulation only establishes requirements for agricultural plowing or tilling activities.

12. Comment: Subsection (6)(e): Finally the word "require", but even it is diluted by adding the word "may". (2)

Comment: Subsection (e) authorizes the Department or its designee to require other information "necessary" to adequately review a plan. Other information requested should be directly related material to the adequacy of the plan, and clarifying words to this effect should be substituted for the word "necessary" in this subsection. (21)

Comment: This provision should be eliminated. It gives the Department or its designee arbitrary authority to continually request additional information concerning the proposed project. The proposed regulations are clear about what the plan must contain. If indeed additional information is necessary, the Department or its designee should be limited to one written request for additional information per application. This would limit the delays associated with continual additional requests for information, whether or not relevant. (23)

Response: The subsection as currently written limits the information that can be requested to that which is necessary to ensure the adequacy of the plan. Neither the Department nor its designee should be limited in its efforts to work with clients to achieve practical effective erosion and sediment control plans.

13. Comment: The DEP should also establish reasonable specific time frames for the review of erosion and sediment control plans and permit applications conducted by DEP or conservation district personnel. These time frames must be incorporated into the regulations. We recommend a maximum 10-day completeness review followed by a 30-day technical review. This will provide the regulated community with a day when they can expect a decision on their application. This will allow for the applicant to plan for their project accordingly. (23)

Response: The Department currently completes administrative reviews within 20 days and initial technical reviews within 30 days. These time periods have been established under the Department's Money-back Guarantee Program.

The Department's Regional Offices and conservation districts endeavor to complete the review of all Notices of Intent and Individual NPDES Stormwater permit applications within the time specified under the Money Back Guarantee Program (150 days for Individual Permits and 100 days for Notices of Intent). Under the Department's delegation agreement the County Conservation Districts must "... Receive, review and process all Notices of Intent for Coverage Under the Pennsylvania General Permit for Discharges of Stormwater from Construction activities and all Individual Permit Applications for Discharge of Stormwater from Construction Activities within 30 days of receipt".

14. Comment: Subsection (b): It is difficult to administer environmental regulations when they "say" one thing and "mean" something else. The regulated community often

points to specific words and phrases in the regulations and tells us, the administrators, what they mean. For instance, "the plan shall consider" does not say "the plan shall contain", but that's what it means.

Inaccuracies of this nature are pervasive in these proposed revisions to Chapter 102 and we are seriously concerned about the clarity and enforceability of the Chapter as proposed. As written, these regulations will significantly impact the Department's and delegated District's ability to assure the protection of waters of this Commonwealth from accelerated erosion and sedimentation from earth disturbance activities. As an agency that administers Chapter 102. We urge you to examine the proposed changes with the same level of detail as the final rulemaking will be read by the regulated community.

The items listed in Subsection 102.5(b) should be included in every E&S Plan and in fact are the foundation for the "complete plan checklist" that we currently use to determine if a plan is administratively complete. As written, Subsection 102.5(b) does not convey this requirement. We suggest that the wording be changed as follows: "The plan designer shall consider all factors which contribute to erosion and sedimentation and the Plan shall include, at a minimum, the following:" (This would require Subsection 102.5(c) to be incorporated into 102.5(b). We would be happy to work with the EQB in synthesizing these two subsections.) (24)

Comment: For clarity and to avoid redundancy it is recommended that combining sections (b) and (c) to correspond to the complete plan checklist and technical review checklist currently used by both E&S plan designers and plan reviewers. (26)

Comment: Section 102.5(b) requires that the erosion and sediment control plan "consider" all factors which contribute to erosion and sedimentation. The term "consider" is vague and could imply that not all factors must be addressed in the written plan. We recommend that the term "consider" be replaced with "address". (36)

Response: The Department has eliminated "consider" from the final regulations and specified what a plan must "contain".

15. Comment: Section 102.5(b)(1). Topographic Features. This Section states that a portion of a topo map can be used for a location map. Some Districts will not accept a topo map, and may even require two location maps. (5)

Response: U.S.G.S. Topographic maps or copies which depict the location of the project site, and its proximity to major highways, municipal boundaries, and receiving streams is acceptable. Topographic features of the project and immediate surrounding area must be shown on maps and as part of the Erosion and Sediment Control Plan drawings.

16. Comment: Section 102.5(b)(1) states that a scale of 1"=100', may be used, but some District personnel will not even consider 1"=100', insisting that 1"=50' be used or plans will not be accepted. (5)

Response: The scale of drawings for Erosion and Sediment Control Plans must be large enough to clearly depict the topographic features and contour intervals that will adequately

describe the site. The Department has not specified in the regulations any particular scale required, however the Department recommends at least a scale of 1 inch equal to 100 feet or less, depending on existing and proposed topographic and physical features.

17. Comment: Subsection (b)(3): The last word "area" should be replaced with "project site". (24)

Response: The Department concurs and has made the appropriate revisions.

18. Comment: Subsection (c)(1) should include "supporting calculations". (24)

Response: The Department agrees and has added supporting calculations to this section.

19. Comment: The paragraphs under (b) appear to be mis-numbered, missing subsection (4), within this section the inclusion of "the amount of runoff from the project area and the upstream watershed area", is an important component of any E&S plan. (26)

Response: Paragraph 4 was not proposed to be changed, therefore it was not included in the published revisions. The final regulations still require "the amount of runoff from the project area and the upstream watershed".

20. Comment: Paragraph (b)(6) may be confusing. Although "waters of the Commonwealth" are defined in Section 102.1, only streams are listed in Chapter 93. To be consistent with the E&S Program Manual, we suggest that the first sentence read, "The location of waters of this Commonwealth including lakes, ponds, wetlands and floodplains which may receive runoff within or from the project site..." (24)

Comment: Subsection (b)(6): The plan should show the location of all waters within the project site and which may receive runoff from the project site. (26)

Response: The proposed wording has been revised in response to the commentators' recommendation.

21. Comment: I am in favor of the addition of special considerations in High Quality and Exceptional Value Watersheds in 102.5(b). (27)

Response: The Department acknowledges the comment of support.

22. Comment: Subsection (6) "shall consider" is a term that is not regulatory. Shall consider is a thought process that may not include water quality considerations. What must an individual do as a minimum if they plan to conduct earth disturbance in a HQ or EV watershed? Is it required that an individual disturbing in a HQ or EV watershed provide BMPs that are better than the standard controls or minimum standards? (2)

Comment: Subsection (b)(6): This section contains the words "shall consider" which makes regulating such requirements very difficult. A more concrete wording should be used. For example, the person proposing the earth disturbance activity could consider but not implement these BMP's. (3)

Comment: 102.5(8): As indicated the “person proposing the activity shall consider utilizing prolonged detention or sediment basins and sediment traps, stream buffer, etc.”. This term has no follow through, all one has to do is CONSIDER something. (18)

Comment: There should be a requirement to maintain and protect high quality and exceptional value waters. The sentence should be changed to read: “ the person proposing the activity shall consider utilizing prolonged detention for sediment basins and sediment traps, stream buffers, and an accelerated stabilization schedule. In all cases, the person shall use whatever measures are necessary to maintain and protect the water from degradation”.

DEP needs to increase the requirements for high quality and exceptional value watersheds. In the proposal, the only extra requirement needed for these waters is that activities need a plan, and suggestions are made to what should be considered in the plan. This is not enough to protect the most pristine waters in our Commonwealth. CBF recommends that a 100-ft. buffer be required along the streams and rivers designated as exceptional value and high quality, and an approved erosion and sediment control plan should be required as well. If an exception to the 100-ft. buffer is warranted, then a combination of a 50-ft. buffer and best management practices that meet certain soil removal criteria should be used. (20)

Comment: Subsection (b)(6): The wording “shall consider utilizing” later in this paragraph should be strengthened to “shall utilize additional BMP’ such as...”. (26)

Comment: In Section 102.5(a) there is wording pertaining to special measures that would be needed for projects in high quality or exceptional value waters. And I feel that the wording needs to be made more clear in this section in the area where it states that these special measures shall consider, or rather one shall consider utilizing special measures. It is not clear if this is an actual requirement or just a consideration. (35)

Comment: Subsection (a) indicates that individual “shall consider” special measures in EV and HQ waters. The wording needs to be more clear as to what is actually required by these individuals or are they to just consider what could be performed. What action is expected of these individuals before, during, and after they completed their projects to insure water quality? (35)

Comment: Subsection (b)(6) also uses the term “consider” but in a different context. This provision addresses circumstances when an earth disturbance activity may result in a discharge to a body of water classified as high quality or exceptional value. It is our understanding that the intent of this section is to require that measures be taken to protect the water from degradation and to provide a nonexhaustive list of examples of measures which may be used. We recommend that this section be revised to more clearly reflect the Department’s intent. Specifically, we recommend the following language.

When 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, measures shall be taken to maintain and protect the water from degradation. Acceptable measures include the following:

- (i) utilization of prolonged detention for sediment basins and sediment traps.
- (ii) stream buffers
- (iii) an accelerated stabilization schedule
- (iv) other appropriate measures to maintain and protect the water from degradation. (36)

Response: The Department agrees that clarification is needed and has provided specific criteria to maintain and protect high quality and exceptional value water from degradation. Special sediment basin requirements, non-erosive channel linings, best management practices which divert or carry surface water must have a capacity to convey a peak discharge from a 5-year frequency storm, accelerated stabilization schedules, or other approved alternative best management practices, are required.

23. Comment: Does 102.5(c) apply to the plan that the farmer has to prepare? Subsection (d) implies that a farmer must have an E&S control plan, does this mean that the plan must be prepared by an expert as indicated in subsection (a), or can a farmer prepare the plan himself? (34)

Response: The Department has not reserved the authority to develop E&S control plans to any specific profession, industry, or individuals. Most farmers (as well as other persons) who routinely conduct earth disturbance activities are able to develop erosion and sediment control plans because of their expertise and experience.

Section 102.11. General Requirements.

1. Comment: Subsection (a): The alternative control or best management practices must minimize accelerated erosion and sedimentation in a manner equal to or better than the standard control. (2)

Comment: Section 102.11(a): These alternative controls or best management practices should be shown to be as effective or more effective than the standard controls or best management practices in minimizing accelerated erosion and sedimentation. (3)

Response: The Department has made revisions to the final regulation requiring that alternate best management practices be demonstrated as effectively minimizing erosion and sedimentation.

2. Comment: Subsection (b): This paragraph does not require anything different than implementing of Chapter 102 erosion control, thus it appears redundant and unnecessary. (2)

- Response: The Department concurs and has deleted this requirement from the final regulation. The Department believes that this requirement is redundant to the scope and purpose.
3. Comment: PNG strongly supports the use of BMP's for prevention of accelerated erosion and subsequent sediment pollution. A best management practice approach will allow regulated business to train construction personnel in practices that will remain fairly consistent from site to site, and that makes sense from a practical point of view. (14)
- Comment: I want to commend the Department and the EQB for recognizing that erosion and sedimentation control design standards should be implemented to minimize, rather than prevent accelerated erosion and sedimentation §102.11(a). This change recognizes the impossibility of "preventing" accelerated erosion and sedimentation, which had been the previous general requirement. The term minimize is an attainable standard and one our industry will always work to achieve. (32)
- Response: The Department acknowledges the support.
4. Comment: Subsection (a) is not clear who will decide what is an "approved alternative". (18)
- Comment: Subsection (a) should allow the plan reviewer the same professional judgment as the plan designer. The wording should be changed to ".....unless the designer and/or reviewer of the E&S control plan". If this change is not made, the subsection should end at the word "activities". (24)
- Comment: Subsection (a) should be improved as follows: "The E&S Control BMPs in 102.12 and 102.13, or other sound conservation and engineering practices approved by the Department or its designee shall be appropriately incorporated into all earth disturbance activities". (26)
- Response: The Department concurs and has revised the final regulation to clarify that alternatives can be approved.
5. Comment: CBF supports some of the changes proposed for Chapter 102. In particular, we support the language protecting existing and designated uses of the waters of the Commonwealth. These uses must be protected, and we applaud the Department of Environmental Protection (DEP) for adding this language to these regulations. Soil erosion and sedimentation cause streams and rivers to become degraded; therefore these regulations should be used to protect water quality. (20)
- Comment: I am in favor of the anti-degradation provisions in 102.11(b). (27)
- Response: The Department acknowledges the comments of support.
6. Comment: Subsection (a): Instead of "minimize" replace with "prevent accelerated erosion and sedimentation". (20)

Response: The Department believes the use of “minimize” is more appropriate than “prevent”. Erosion and sedimentation is a natural process that occurs even in the absence of human activity. The objective of this regulation is to minimize the acceleration of this process for earth disturbance activities which, if unchecked, may adversely impact our waterways because of the increased sediment load beyond natural background levels. BMP’s are effective, practical and environmentally sound practices which minimize the threat of pollution and maintain water quality uses.

BMP’s are designed in consideration of site conditions such as slope, soil erodibility, and other factors to operate effectively during reasonably expected storm and rainfall events of normal duration and intensity. BMP’s prevent sediment pollution during reasonably expected storm events. It is not practical from a scope, design and implementation perspective to require BMPs to operate effectively during the full range of potential storm events, i.e. floods. The requirement to “prevent” as suggested by the commentator is an unobtainable goal for the full range of possible events.

Therefore, the Department believes the word “minimize”, as used in this body of the regulation, with the requirement to implement BMP’s for all earth disturbances, conveys a realistic, feasible and measurable goal for persons subject to these regulations.

Moreover, the Department has added language requiring that accelerated erosion and sedimentation be minimized in order to assure protection of water quality and existing and designated uses. This language, in conjunction with the general water quality criteria in §93.6, ensures that the waters of the Commonwealth receive protection from accelerated erosion and sedimentation.

7. **Comment:** Subsection (b): The language should make it clear that people must do whatever is needed to protect water quality. The section should be changed to read; “.....and whatever other sound conservation and engineering practices are needed to ensure protection of such uses”. (20)

Response: The Department has substituted the terms “existing and designated uses” to provide consistency with Chapter 93 (Water Quality Standards). This reference emphasizes the ecological value of water quality from both a chemical and a biological perspective.

8. **Comment:** The Department is to be commended for recognizing that erosion and sedimentation control design standards should be implemented to minimize, rather than prevent accelerated erosion and sedimentation. The term minimize is an attainable standard and one our industry will always work to achieve. (32)

Response: The Department acknowledges the comments of support.

9. **Comment:** PBA recommends the Department finalize and implement the erosion and sediment control regulations in such a way as to allow for not only prescriptive, but also performance base standards and practices. For example, if a sedimentation basin

can be designed to a smaller scale than required and achieve the same results, it should not be prohibited. The final regulations should not be a barrier to the use of new technological advances in erosion and sedimentation pollution control.
(23)

Response: The Department concurs with the comment and has removed specific best management practices from the final regulation, except for activities in special protection waters. The Department lists erosion and sediment control best management practices in the Department's Erosion and Sediment Pollution Control Program Manual ("Manual"). The Manual provides a broad range of performance based practices, while allowing for new or improved technological advances in erosion and sediment control. In addition, the final regulations at 102.11(b) allow for appropriate alternate BMPs.

10. Comment: A factor to be considered in the Regulatory Basic Initiative is whether the regulations are prescriptive, rather than performance-based. The proposed Chapter 102 regulations list the design criteria for temporary and permanent channels, sedimentation basins, and sediment traps. PEA and GPU Energy suggest that the regulations also include the option of using performance-based standards instead of design criteria for all BMP's to minimize erosion and sedimentation to protect, maintain and improve water quality and the aquatic environment. (4, 6)

Response: The regulations include performance-based standards in the form of properly developed, implemented, and maintained BMP's which restrict the rates and quantities of sediment pollutants from being discharged into the waters of the Commonwealth. Section 102.11 allows for the inclusion of other BMPs, or alteration of design criteria as an option to ensure utilizing performance based BMPs.

Section 102.12. BMPs. *Note: The Department has deleted this section in the final regulation. Specifications previously found in this section have been incorporated into other sections or will be listed in the Department's Erosion and Sediment Pollution Control Program Manual (Manual).*

1. Comment: It is strongly suggested that the Erosion and Sediment Pollution Control Program Manual be incorporated, by reference, into this section concerning BMPs and (also) BMP Design Criteria. (24, 26)

Comment: The Department has developed an Erosion and Sediment Pollution Control Program Manual that it uses to provide guidance on the Chapter 102 regulations. We question whether the Department should include a reference to this manual in the regulation, where appropriate, to provide guidance to the regulated public.
(36)

Response: BMPs and their commensurate design standards are listed in the Erosion and Sediment Pollution Control Program Manual which is referenced in §102.11. The BMPs and design standards listed in the manual are ways of meeting the regulatory standard of minimizing accelerated erosion and sedimentation to assure

protection of water quality and existing and designated uses. The regulation allows for alternate BMPS to be used so long as they can attain the regulatory standard.

2. Comment: Subsection (5): Temporary stabilization (the 20 day rule) must incorporate the term anticipated, planned, or forecast non-disturbance for 20 days or more. The regulations as drafted still permits the earthmovers to wait 20 days before stabilization. (2)
- Comment: 102.12(e)(5) - Interim stabilization: As written still allows the earthmover to wait 20 days before applying stabilization measures. (18)
- Comment: The draft proposal requires "immediate" stabilization after earth disturbance activities have been completed, whereas the current regulations require stabilization as soon as possible after disturbance. No allowances are provided for temporary or short-term disturbance, especially during harsh weather conditions when stabilization efforts are thwarted. (16)
- Comment: Stabilization Time - A 14 day time period be indicated in order to set a standard which can be realistically complied with, rather than the proposed rulemaking of "immediately". (23)
- Comment: Subsection (5): For clarity should read "Temporary vegetation mulch and other appropriate temporary cover shall be implemented immediately in areas where earth disturbance activities will cease for more than 20 days". (26)
- Comment: The stabilization proposed modifications are too stringent and do not take into consideration reality regarding weather conditions and other unanticipated factors. (29)
- Comment: Section 102.12(4): This is a change from the existing, more practical, requirement of "as soon as possible". The proposal reflects the need to stabilize the disturbed areas without delay to minimize erosion but, without a clearer definition of "immediate", the term "as soon as possible" would be more practical. Bear in mind the erosion control measures are still in place at the time of stabilization. What concerns us is the impracticality of immediate stabilization when weather conditions may prevent this from occurring. Without some degree of common sense or understanding of external conditions, "immediate" would result in a violation for circumstances outside their control. (32)
- Comment: Subsection (4) provides that all disturbed areas shall be immediately stabilized after the final grade. However, subsection (5) provides that if it is not possible to permanently stabilize a disturbed area immediately after the final earth disturbance activity has been completed, temporary vegetation, mulch, and other appropriate temporary cover shall be applied immediately. Several commentators expressed confusion on the responsibility of the individual to immediately stabilize the area after final grade.

We have two suggestions to improve the clarity of the regulation. First, the regulation can be improved by indicating when temporary stabilization is permissible. Although it may not be possible to list all circumstances, inclusion of the general criteria will provide guidance to those conducting earth-disturbing activities.

Second, to avoid confusion about whether an area should be immediately stabilized, the regulation could indicate that temporary stabilization should be completed immediately, with permanent stabilization to follow as soon as possible. (36)

- Response: The Department has removed all references to interim stabilization from the final regulation. The Department has revised the final rule to require stabilization upon completion of any phase or stage of activity of a project. BMPs, including but not limited to seeding and mulching, must be implemented. Effective BMPs are listed in the Department's Erosion and Sediment Pollution Control Program Manual.
3. Comment: Section 102.12(2): This section could be made clearer by specifying the "surface water" as offsite surface water and stating the need to keep this runoff clean if diverting through the project site. (3)
- Comment: Subsection (2) should explain that surface water diversions direct "clean" water around or through the project site "in a non-erosive manner" and discharge to "waters of the Commonwealth" or drainage pattern. (18, 24)
- Comment: Subsection (2): Specify that surface water diversions convey clean water around or through a project site, diverting runoff away from disturbed areas. (26)
- Response: The Department has deleted these specifications from the regulations. Information on surface water diversion is now found in the Department's Erosion and Sediment Pollution Control Program Manual.
4. Comment: Subsection (4) describes the concept of permanent stabilization but does not list any examples which would help to clarify Section 102.22(2). This would not be necessary if the E&S Manual was incorporated in this section. (24)
- Response: The Department lists BMPs and commensurate design standards in the Erosion and Sediment Pollution Control Program Manual, and has referenced the Manual in Section 102.11 of the regulation.
5. Comment: Subsection (5) contradicts the previous paragraph by saying, "if it is not possible to permanently stabilize a disturbed area immediately after the final earth disturbance has been completed...". This phrase should be deleted, somewhere in this section it should be stated that other BMP's should remain in place during temporary stabilization. (24, 25)
- Response: The Department has deleted this requirement. Information on interim stabilization is now provided in the Department's Erosion and Sediment Pollution Control Program Manual.

6. Comment: Subsection (1): Include the maintenance of existing vegetation wherever possible as a means of limiting exposed areas. Maintenance of riparian buffers should also be listed as a BMP, this would be consistent with the statewide emphasis on riparian buffers. (26)

Response: The Department encourages the protection of existing vegetation, including riparian buffers as an effective BMP. The Department however, does not believe that this is necessarily a practical or effective BMP for all activities and therefore should not be a specific regulatory requirement.

7. Comment: The 20-day time frame should be reduced for those earth disturbance activities which may result in a discharge to an EV or HQ water. (26)

Response: The Department concurs and has made revisions to the final requirements.

Section 102.13. Design Criteria for BMPs. *The Department has deleted this section in the final regulation. Specifications previously found in this section are listed in the Erosion and Sediment Pollution Control Program Manual.*

1. Comment: Subsection (7): The 2 f. p. s. requirement should be based on the bare earth condition and not the final vegetated condition. (2, 3)

Response: The Department agrees with the commentators. The two feet per second design criterion is based on the bare earth condition, and is reflected in the Department's Erosion and Sediment Pollution Control Program Manual as a means of attaining the regulatory standard of minimizing accelerated erosion and sedimentation to assure protection of water quality and designated and existing uses.

2. Comment: Subsection (b)(2), 3 f.p.s. requirement should be based on the temporary condition - velocity for vegetated channels. (2)

Response: The Department agrees with the commentator. The three feet per second design criterion is based on the temporary condition and is reflected in the Department's Erosion and Sediment Pollution Control Program Manual. as a means of attaining the regulatory standard of minimizing accelerated erosion and sedimentation to assure protection of water quality and designated and existing uses.

3. Comment: Subsection (c)(2): Is the accumulated sediment in need of removal when it exceeds the sediment storage elevation at a given point, or must the entire storage area below the sediment storage area be filled to capacity? (2)

Response: Sediment storage and removal is typically a function of volume, therefore sediment must be removed when filled to capacity. However, if sediment accumulation exceeds sediment storage and affects the operation where sediment discharge results, the basin must be cleaned of accumulated sediment. Sediment basin maintenance specifications are listed in the Department's Erosion and Sediment Pollution Control Program Manual.

4. Comment: Subsection (c)(3): The idea of all energy dissipaters will pass 2 cfs. per acre is where the confusion over the dual use of the term Outlet Structure arises. The regulations need to address the passing of the 2 cfs. per acre through a combination of the Emergency Spillway and the Principal Spillway (Riser). (2)

Response: The Department agrees that this requirement was confusing and has deleted it. The Department's Erosion and Sediment Pollution Control Program Manual provides a comprehensive list of best management practices and designs.

5. Comment: Subsection (c)(3)(iii): A minimum capacity for the emergency spillway requirement should be added. This is important because in the majority of cases all or most of the required 2 cfs. per acre is discharged via the riser. (2)

Comment: Subsection (c)(3): Dewatering should occur in not less than 2 days or more than 7 days. (2)

Comment: Subsection (c)(3): The emergency spillway invert should be 0.5 feet above the minimum storage elevation. (2)

Comment: Subsection (c)(3): Two feet of freeboard should be provided above the 2 cfs per acre elevation and top of the berm. (2)

Response: The Department concurs that these are acceptable means of furthering the attainment of the regulatory standard of minimizing accelerated erosion and sedimentation to assure protection of water quality and designated and existing uses. The Department's Erosion and Sediment Pollution Control Program Manual lists these as widely accepted and recommended design methods and procedures for most erosion and sediment control plans.

6. Comment: Subsection (d)(4): Does this now mean that embankment type traps must provide 1.5 cfs calculations and also provide a foot of freeboard above this elevation? (2, 3)

Response: No. The Department acknowledges that this requirement was unclear and has deleted this requirement from the final regulation. The Department's Erosion and Sediment Pollution Control Program Manual lists design standards for sediment basins which further the attainment of the regulatory standard of minimizing accelerated erosion and sedimentation to assure protection of water quality and designated and existing uses.

7. Comment: Subsection (a): Why is the term collector use with diversions in this section? The new definitions already stated a collector is "constructed downslope of an earthmoving activity for the purpose of collecting runoff from an existing or proposed disturbed area". Isn't a diversion-constructed upslope of a proposed disturbed area? (3)

Comment: 102.13(a)(3): The second paragraph could be moved to 102.13(a)(1). (18)

Response: To avoid confusion, the Department has deleted this section from the regulations. Diversion and collector design specifications and practices are listed in the Department's Erosion and Sediment Pollution Control Program Manual as a means of furthering the attainment of the regulatory standard of minimizing accelerated erosion and sedimentation to assure protection of water quality and designated and existing uses.

8. Comment: Subsection (a)(2): What about the outlet locations and allowable velocities for these diversions? For example, will it now be possible to outlet a diversion channel with unlimited velocities any place the earthmover feels is acceptable? (3)

Response: The Department lists BMPs in the Erosion and Sediment Pollution Control Program Manual. The final regulation allows for the consideration of alternative best management practices and designs other than those found in the Department's Erosion and Sediment Pollution Control Program Manual that will protect, maintain, reclaim and restore water quality including the maintenance and protection of designated and existing uses.

9. Comment: (a) Diversion: The words "where practicable" need to be added. Some sites are located where no upslope drainage enters the disturbed areas. There have been instances where plans prepared by this author have had comments questioning why no upslope diversions were designed when in fact the site was on the top of a hill. Because this "requirement" was in the regulations or the policy manual, the reviewer insisted it be addressed in the narrative. Additionally, this is a very restrictive proposal. If a permanent diversion is designed for a grass lining with an allowed velocity of 3.0 fps, but the construction of the project is to begin in January when the lining cannot be effective until May or June, the project could be held up. Rather, the proposed regulation should read that the diversion should be put in place and measures taken to remove any sediments contained in the runoff prior to discharge. That would allow a diversion to be put into place and utilized prior to the final lining material being applied. The discharge from the ditch could pass through a hay bale, silt-fencing structure or small sediment trap. (30)

Comment: Section 102.13(a)(1): This section of the Draft Rule imposes an absolute requirement to construct temporary or permanent diversions up slope prior to engaging in earth disturbance activities on the project site. Exceptions should be specified for (1) situations in which the project site is at the highest elevation, for which up-slope diversions would be impossible; and (2) sites where natural or man-made diversions exist which would render unnecessary the construction of additional up slope diversions. Subsection (a)(6) language should be added: 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. Additionally, where the applicant demonstrates that the construction of permanent or temporary diversions is unnecessary because existing structures or features will serve the same purpose of this section and meet the criteria and requirements stated herein, the Department may approve exceptions to this requirement. (25)

Response: The Department has revised the final regulation by requiring necessary perimeter best management practices that include upslope diversions. The best management

practices listed in the Department's Erosion and Sediment Pollution Control Program Manual and other acceptable conservation practices can be proposed including temporary channel linings to protect against erosion until vegetative stabilization can be achieved. As to the matter of practicality and common sense, as provided in the commentator's examples, the Department does not or will not require upslope diversions in situations where the earth disturbance is at the highest elevation, or if natural or other diversions exist. To aid in the review of such plans, especially in situations that are not obvious, the plan preparer should note that such a situation exists.

10. Comment: Subsection (b) "Outlet Structures": Would this include the standpipe in sediment traps as well? Wouldn't the term "energy dissipater" be less confusing for this type of structure? (3)

Response: The Department concurs that the use of the term "outlet structure" in the draft regulations was confusing and has deleted this term in the final regulation.

11. Comment: Subsection (c)(4): What are the other approved alternatives for out-letting a sediment basin? Should this decision be made by the plan preparer or DEP/District staff? This vague description will make regulating sediment basin discharge locations very difficult. (3)

Comment: Subsection (d)(6): What are the other approved alternatives for out-letting a sediment trap? Should this decision be made by the plan preparer or DEP/District staff? This vague description will make regulating sediment trap discharge locations very difficult. (3)

Comment: Paragraphs (c)(4) and (d)(6) should not suggest that basins or traps can discharge to anything other than a water of this Commonwealth. The phrase "or other approved alternative" raises questions regarding who approves the alternative (the municipality?) and encourages designers to locate basins and traps inappropriately. We receive numerous stormwater complaints every year and certainly want to discourage any new ones. Section 102.11 already allows for "sound conservation and engineering practices" other than those listed in this Section. The phrase "or other approved alternative" should be deleted from both Paragraphs (c)(4) and (d)(6). (24)

Comment: All BMP's, including basin and traps diversions, collectors or channels, should discharge to waters of this Commonwealth only. We are concerned that any alternative, such as suggested in (c)(4) and (d)(6) will create or exacerbate offsite stormwater problems. (26)

Comment: Proposed regulations requiring sediment basins and traps to discharge into the water of the Commonwealth are unduly harsh and lack flexibility. There should be the ability to have a certified or licensed engineer be permitted to demonstrate to DEP downstream stability which could meet the ultimate objective of DEP. (29)

Comment: Subsection (c)(4) and (d)(6) use the phrase "other approved alternative" in relation to when a potential discharge from sediment basin or trap may occur. It is not clear who will approve the alternative method. Therefore, we recommend that the EQB amend the regulation to indicate who is responsible for making this determination. (36)

Response: The Department's Erosion and Sediment Pollution Control Program Manual lists acceptable alternatives including storm sewers and constructed channels. The decision regarding approval of alternatives lies with the Department or designee, not the plan preparer.

12. Comment: If the new "collector" channels are intended to replace the previous interceptor channels, it needs to be stated in that definition that these "collectors" must discharge to a proper sediment removal facility. (3)

Response: The Department concurs and has made the recommended revisions to the definition of collector as recommended by the commentator.

13. Comment: Subsection (d)(4) requires sediment basin and traps to discharge into waters of the Commonwealth. This new language appears unduly harsh and lacking flexibility, alternatives developed by a certified or licensed engineer which demonstrates downstream stability should be acceptable to DEP, such language would provide needed flexibility. (12)

Comment: The draft proposal requires sediment basins and traps to discharge to waters of the Commonwealth. This could result in more extensive off-site improvements in order to discharge to a waterway for certain projects, as well as potentially more environmental impact (wetlands disturbance, etc.). The regulations should be amended to allow acceptable alternatives developed by a licensed engineer which would demonstrate downstream stability. (16)

Response: The final regulations allow for alternative BMPs provided the alternative BMPs provide the desired level of protection.

14. Comment: It is my intention to strongly voice support for techniques which address water quality enhancing BMP's, but I do wish to voice very strong opposition to the ill-conceived suggestion that stone lined detention basin bottoms should be considered as a viable practice to encourage natural infiltration and therefore mitigate the impact of "first-flush" pollutants on the receiving stream.

It has been my experience, as a landscape architect in practice for 20 years, that stone infiltration beds and trenches work only when they are designed into small drainage areas in the upper reaches of a drainage basin, and only if the depth of the trench is such that it provides for additional absorptive surface for stormwater infiltration. The use of shallow rock lined infiltration beds effectively reduces the absorptive surface of the soil by more than 50 percent. The suggestion that the "void spaces" in the stone bed will provide a reservoir for small storm event runoff simply is not true in the field or any period of time.

Conventional stormwater basins are typically designed to accommodate significant contributing acreages of building and roadways. These basins typically provide "vertical" storage rather than storage in broad, shallow basins, and accordingly, the shallow stone beds will clog quickly with fine suspended particulates, and sand which is used for winter de-icing. Additionally, with the stone beds there is a greatly reduced soil surface area to establish vegetation in this type of basin.

Realen Homes has been promoting the use of wetland detention basins for approximately 10 years, and we have had enormous success with this approach in terms of water quality renovation, reasonable infiltration, and also public acceptance.

Unfortunately, conventional stormwater management treats runoff as a waste product which needs to be intercepted at a downspout, collected by an inlet and piped away as quickly as possible to a low flow channel in a basin. There are many low tech, natural and less expensive approaches which I believe would be far more effective in conveying and treating stormwater runoff, and I hope that the Department will encourage municipalities to revisit their stormwater ordinances to include these techniques. Vegetative BMP's are effective, attractive, relatively inexpensive, and very importantly, they are accepted by the public at large. (15)

Response: The Department agrees with the commentator that stone-lined detention basins should not be utilized as a sediment basin during the earth disturbance activity. The Department's Erosion and Sediment Pollution Control Program Manual does not contain any specifications for this type of best management practice. Typically, this type of practice is for post construction stormwater management, which is beyond the scope of this regulation.

15. Comment: Subsection (a)(6): "If it is not feasible to divert up slope drainage around a project site,.....". The "around the project site" should be changed to "around the disturbed area", as this contradicts the information in Subsection (1). (18)

Response: The Department agrees with the suggestion and has changed "project site" to "disturbed area".

16. Comment: Subsection (a)(7): Is this guidance based on a bare earth channel? (18)

Response: Yes, this regulatory requirement is based on the bare earth condition.

17. Comment: Subsection (b)(2): The discharge from interceptor channels should not be discharged onto vegetated areas without passing through a filtering device. Consideration by DEP should be given to steep slope areas and to areas which were previously less desirable for construction activity, i.e. urban areas. (18)

Response: Steep slopes are a consideration of an effective E&S plan. Adequate planning consistent with the Department's Erosion and Sediment Pollution Control Program Manual will address the commentator's concern.

18. Comment: Subsection (c)(3): The last sentence "Outlet structures shall be stabilized before use" should be removed. The outlet structure is the principal water discharge-regulating device (riser). The secondary water discharge-regulating device is the emergency spillway. The sentence should indicate the installation of the energy dissipater. (18)

Response: The Department has deleted the proposed term "Outlet Structure". The Department's Erosion and Sediment Pollution Control Program Manual uses the term "Outlet Protection" as including energy dissipaters

19. Comment: Subsection (c)(5): Should sediment basins and sediment traps still be protected against acts of third parties? (18)

Response: The Department has reconsidered the appropriateness of this section and has deleted the requirement from the proposed regulation.

20. Comment: Subsection (a)(7): This section requires linings to be used if the velocity is above a certain threshold. This section should also require inspections, and for measures to be taken if erosion is occurring with velocities less than the threshold.

Subsection (b)(2): This section requires erosion resistant material if velocity is above a certain threshold. This section should also require inspections, and for measures to be taken if erosion is occurring with velocities less than the threshold. (20)

Response: The final regulation requires that all best management practices (BMP) require routine inspection and maintenance to ensure that the BMP is functioning properly. If a BMP is not functioning as planned, corrective or additional measures must be implemented.

21. Comment: Diversion channel velocities: Remove from the regulations any specific value to the velocities. Contained in existing handbooks are appropriate ranges for different types of soil and cover characteristics which should be utilized by the design engineer for the appropriate control measure. (23)

Response: The Department agrees. Diversion channel velocities are addressed in the Department's Erosion and Sediment Pollution Control Program Manual.

22. Comment: Sediment basin sizing: Bring the state into more direct compliance with the EPA standard of 134 cubic yards per acre (3,618 cubic feet/acre) total drainage area be the standard for both sediment basins and traps. This would allow more uniformity in the standard and provide for consistency regardless of the drainage area. There should also be a correspondingly altered requirement for clean out elevations to one quarter the volume of the basin. Proposed regulations are 5,000 cubic feet/acre of total drainage area and an additional 2,000 cubic feet/acre disturbed area within the drainage area. (23)

Response: Penn State University has been doing research on the effectiveness of volume of sediment basins versus trap efficiency. Results indicate that smaller storage

requirements may be as effective as the current 7,000 cu.ft./acre. The Department has listed alternatives in the Department's Erosion and Sediment Pollution Control Program Manual to provide flexibility in the sizing of basins.

23. Comment: The existing Section 102.13 includes some design criteria (i.e., sediment basin capacity) but not enough to design an adequate E&S Plan. Also, including design criteria in the regulations usurps the plan designer's ability to develop an adequate E&S Plan and the reviewer's ability to have an adequate plan developed during the review process. It will also negatively impact administration, implementation and enforcement. This is a dangerous flaw in the existing regulations which we have the opportunity to correct now.

It appears that this section as proposed is now a menu for earth disturbance activities under 5,000 square feet. This would be an appropriate use of Section 102.13 but as written, it applies to all sites. On larger sites, the menu is inappropriate and only the Department's Erosion and Sediment Pollution Control Program Manual should be used to design the Plan.

We strongly suggest that this section be completely rewritten to allow for 102.13 to be applicable to sites with less than 5,000 square feet of earth disturbance only and we offer our assistance. The following comments are examples of where the design criteria fail to assist the plan preparer or contradict the Department's Erosion and Sediment Pollution Control Program Manual but they should not be interpreted as supporting this Section of the proposed regulations.

Subsection (a)(4) & (5) are limiting the use of the rational formula as a method to estimate peak flow by specifying a 24-hour frequency storm. Design criteria of this nature including minimum capacities for temporary and permanent BMP's should be left to the E&S Program Manual.

Subsection (a)(7) should specify when BMP's "shall be provided with erosion resistant linings". Also, why is the design criteria changed from 1.5 to 2.0 feet per second? This should be left in the E&S Manual. (24)

- Comment: We recommend referencing the Department's Erosion and Sediment Pollution Control Program Manual in sections concerning BMP's and BMP design criteria, rather than including limited design criteria in the Chapter 102 regulations. (26)

Response: The Department has deleted this section. Best management practices and design standards and techniques are listed in the Department's Erosion and Sediment Pollution Control Program Manual as suggested by the commentators.

24. Comment: Subsection (a)(1): Delete the first "project" in order to be consistent with the definition of diversion. Also a design component of the use of subdrainage areas should be incorporated and discharge location should be specified. Suggested paragraph shall read; Temporary or permanent diversions shall be constructed upslope of a project area prior to initiation of other earth disturbance activities within the same subdrainage area on the project site to convey clean runoff around the disturbed area and discharge to waters of the Commonwealth. (24)

Comment: Subsection (a)(2) should read "diversion shall be installed and stabilized prior to initiation of other earth disturbance activities within the same subdrainage area on the project site". (24)

Response: Where the potential for runoff from upslope areas can be shown to be minimal, such as in wooded areas, diversions may not be needed. As with all technical issues, the actual site characteristics will dictate the type and scope of BMPs necessary to meet the requirements of the regulations.

25. Comment: Subsection (a)(3) should read "Collectors shall be constructed and stabilized down slope of a disturbed area to collect and convey sediment-laden runoff....." (24)

Comment: Subsection (a)(6) regarding channels should be repositioned under Section (a) (3) to keep in sequence with the heading of this subsection. It also should specify that clean water is being transported and being discharged to waters of the Commonwealth. (24)

Response: These requirements for collectors and channels have been deleted in the final regulation. BMP designs are now listed in the Department's Erosion and Sediment Pollution Control Program Manual.

26. Comment: Subsection 102.13(b) be changed to "Outlet Protection" and that Paragraph (b)(1) be eliminated and that Paragraph (b)(2) be amended. As written, (b)(2) implies that outlet protection is not an erosion resistant material when in fact it is. It should read "Suitable outlet protection shall be an erosion resistant material...". If the subsection is not re-titled, then paragraph (b) (2) should read "Outlet structures shall be provided with an erosion resistant material.....". (24)

Response: These requirements have been deleted in the final regulation. Best management practice designs and techniques are listed in the Department's Erosion and Sediment Pollution Control Program Manual.

27. Comment: Subsection (c)(3) - Sediment basin outlet structures: This entire section is unclear as to the intent of the regulations. It is assumed that the 2 cubic feet per second per tributary acre includes the flows from the emergency spillway and the principal spillways. It would be better served if the section was revised to read that a COMBINED discharge rate between the principal and emergency spillway is to meet the 2 cfs/tributary acre.

Because of the difference in rainfall events across the Commonwealth, the more prudent design criteria might be based on a design storm rather than a set cubic feet per second discharge rate. To be consistent with diversion ditch structures, discharge rates could be determined by combined principal and emergency spillways around a specific storm event, (i.e. 25 year /24 hour for a pond of under 20 acres, and a 50 year storm for ponds exceeding 20 acre drainage.)

It is suggested that language incorporated into the regulations that allow for the individual routing of hydro-graphs through a sediment pond to provide for the

maximum sediment laden detention available within constraints of the volume of the pond and the spillway capacities. With the accessibility of computer programs which can model a storm through a pond, site specific data would provide better protection than the "cookbook 2 cfs/tributary acre " approach which tries to cover all the bases. (30)

Comment: Subsection (d)(4): Sediment traps shall be designed to pass a minimum flow of 1.5 cfs/ per tributary acre. This could also result in the trap not functioning effectively to contain the sediment load within the runoff. It could be an either/or situation where the 5-year storm event could be bypassed and/or the inflows routed to assure proper detention time. (30)

Response: While a more detailed engineering analysis may result in some changes to basin sizes, values of many of the parameters are not precise. The Department has listed general specifications for best management practices in the Department's Erosion and Sediment Pollution Control Program Manual. In response to the commentator's suggestions, the final regulations allow for the individual preparing the plan to utilize design standards other than those in the Department's Erosion and Sediment Pollution Control Program Manual provided the alternative design standards achieve the same or greater level of protection.

28. Comment: Under Section 102.12, the design criteria for BMPs, does the farmer have to comply with that criteria? (34)

Response: The Department has revised Section 102.4 to further clarify the erosion and sediment requirements for agricultural plowing or tilling activities by placing all planning requirements under subsection 102.4(a). The USDA-NRCS PA Technical Guide describes acceptable best management practices including, but not limited to, conservation cropping systems, cover crops, crop residue management, strip cropping, grassland planting, and other measures that would meet these requirements. The Department, in cooperation with the Agricultural Advisory Board, is exploring the adoption of an E&S manual specifically designed for agricultural activities.

29. Comment: Rock Construction Entrance. The Department should give details as provided in the Manual on the Rock Construction Entrance. These instructions refer to connecting to public roads. Some Districts apply this to all paved roads, however far from public roads, even when there is no mud around to get on the public roads. (5)

Response: The purpose of a rock construction entrance is to minimize the tracking or otherwise depositing sediment on public right-of-ways. Rock construction entrances apply to all points that construction vehicle traffic is entering or exiting the earth disturbance activity. The Department has listed rock construction entrances as a best management practice in the Erosion and Sediment Control Manual.

30. Comment: Section 102.13(c)(4) and (d)(6): The phrase Approved Alternative should further note that approval refers to the Department or its designee. (2)

Response: The Department concurs and has identified County Conservation Districts having the ability to approve alternatives.

Sections 102.21 - 102.22. Permanent Stabilization.

1. Comment: The use of "minimize" weakens the meaning of this section and should be changed to read: ".....so that accelerated erosion and sedimentation shall be prevented to protect, maintain and improve water quality and the aquatic environment." Subsection (2) the word "minimize" should be replaced with "prevent": "An acceptable BMP which permanently prevents accelerated erosion." (20)

Response: The Department believes the use of "minimize" is more appropriate than "prevent". Erosion and sedimentation is a natural process that occurs even in the absence of human activity. The objective of this regulation is to minimize the acceleration of this process for earth disturbance activities which, if unchecked, may adversely impact our waterways because of the increased sediment load beyond natural background levels. BMP's are effective, practical and environmentally sound practices which minimize the threat of pollution and maintain water quality uses.

BMP's are designed in consideration of site conditions such as slope, soil erodibility, and other factors to operate effectively during reasonably expected storm and rainfall events of normal duration and intensity. BMP's prevent sediment pollution during reasonably expected storm events. It is not practical from a scope, design and implementation perspective to require BMPs to operate effectively during the full range of potential storm events, i.e. floods. The requirement to "prevent" as suggested by the commentator is an unobtainable goal for the full range of possible events.

Therefore, the Department believes the word "minimize", as used in this body of the regulation, with the requirement to implement BMP's for all earth disturbances, conveys a realistic, feasible and measurable goal for persons subject to these regulations.

Moreover, the Department has added language requiring that accelerated erosion and sedimentation be minimized in order to assure protection of water quality and existing and designated uses. This language, in conjunction with the general water quality criteria in §93.6, ensures that the waters of the Commonwealth receive protection from accelerated erosion and sedimentation.

2. Comment: Paragraph (1) is another example of why technical standards should be eliminated from these regulations and reincorporated by reference to the E&S Manual. Permanent stabilization by vegetation is different than by asphalt or other stable material. Vegetation must be established (i.e., roots developed) in order to function as permanent stabilization. We have seen slopes turn 100% green in fall only to erode away during spring runoff because vegetation and root structure were not established. If temporary BMPs were not maintained (i.e., permanent stabilization assumed), sediment pollution or potential pollution would result. The

essence of vegetative stabilization is stated in the E&S Manual as follows:
“uniform erosion resistant perennial vegetation must be established to the point where the surface soil is cable of resisting erosion during runoff events”. If the 70% standard remains in Paragraph (1), we recommend adding this language.
(24)

Comment: Subsection (1): 70% vegetative cover does not in itself constitute permanent stabilization. Wording should be included which specifies a uniform erosion resistant perennial vegetative cover which is well established. (26)

Response: The Department concurs with the commentators and has made revisions to the final regulation to require a uniform erosion resistant perennial vegetative cover which is well established.

3. Comment: Subsection (2) is vague because the BMP listed in Section 102.12 under permanent stabilization is a requirement of WHEN to stabilize but does not give examples of HOW to accomplish stabilization. Specific examples in Section 102.12 should be cross-referenced in this section. (24)

Response: Permanent stabilization can be achieved through a multitude of BMPs. Rather than being prescriptive, the Department provides a variety of techniques to achieve permanent stabilization in the Department’s Erosion and Sediment Pollution Control Program Manual.

4. Comment: Permanent stabilization under 102.22, the temporary BMPs under Section 102.23, and the removal of BMPs under 102.24, what does a farmer, someone in the agricultural field, when using tilling activities, have to comply with? (34)

Response: Agricultural plowing or tilling activities must develop, implement, and maintain BMPs in order to protect, maintain, reclaim, and restore water quality and existing and designated uses of waters of the Commonwealth. The USDA-NRCS PA Technical Guide describes acceptable best management practices including, but not limited to, conservation cropping systems, cover crops, crop residue management, strip cropping, grassland planting, and other measures that would meet these requirements.

Section 102.24. Removal of BMPs. *This Section has been moved to Section 102.5 in the final regulation.*

1. Comment: In order to clarify this section, include the following changes; “.....and those areas shall be graded and permanently stabilized, unless.....”. (24)

Response: The Department has deleted this requirement. The requirements for permanent stabilization are found at §102.22. BMPs for permanent stabilization are listed in the Department’s Erosion and Sediment Pollution Control Program Manual.

Section 102.31. Permit Requirements. *This Section has been moved to Section 102.5 in the final regulation.*

- I. Comment: Proposed section 102.31(s) states, "A person...shall obtain a...permit for stormwater discharges associated with a construction activity...when the activity involves an earth disturbance...on a portion, part, or during any stage of development or sale that involves 5 acres...or more of earth disturbance".

It is a common work activity in our industry to install electrical service in industrial parks, residential developments, malls, or single industrial or commercial facilities in which the total construction project involves earth disturbance of five or more acres. Both PEA and GPU Energy position concurs with the EPA position, that utilities are not "operators" when installing utility lines, and therefore, do not require permits for discharge of stormwater from construction activities. Please refer to Federal Register, Vol. 63, No. 31, 2/17/98, p.7877, "Installation of Utility Lines" from the Fact Sheet, Section VIII of the Reissuance of NPDES General Permits for Stormwater Discharges from Construction Activities.

EPA explains in this Response to Comments on the Proposed Permit, that in order for a permit to be required, the permittee must meet one of the two criteria for the definition of an operator of the project. The criteria are: (1) a party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) a party with day-to-day operational control if those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (SWPP) for the site or other permit conditions (e.g., they are authorized to direct workers at the site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

An electric utility conforms to previously established standards for the installation of electrical service at a project site, but it does not have general overall control of the project's plans, specifications, or SWPP implementation and compliance. Therefore, in EPA's opinion, an electric utility's involvement in a construction project is to abide by the SWPP provisions provided by the operator of the project which its activities will impact. PEA and GPU energy believes that this same position should be maintained in the implementation of the permit requirements stated in the proposed section 102.31(4)(a). (4, 6)

- Comment: The proposed language in Section 102.31 would add a huge and unnecessary burden to all public utilities who serve new residential and commercial developments. It would even impact builders, electrical contractors and plumbers who install house service lines for those utilities. In contrast to the earthmoving activity performed by the developer (who is required to obtain an NPDES permit) - the activities to provide utility service have a negligible impact. In nearly all cases, gas lines are not installed until all grading is completed and roads have been paved. Since the gas line typically parallels the main road, construction equipment operates on paving and only the narrow ditch area is disturbed. Erosion control structures usually have already been installed by the developer, who often gives very short notice to utilities of needed service. (14)

Comment: As proposed, §102.31(a) states, "A person... shall obtain a... permit for stormwater discharges associated with a construction activity... when the activity involves an earth disturbance... on a portion, part, or during any stage of development or sale that involves 5 acres... or more of earth disturbance".

Duquesne Light routinely installs electrical service in industrial parks, shopping malls, residential development, etc. in which the total construction project involves earth disturbance of five or more acres in which the site developer would be subject to obtaining a stormwater permit. As written, §102.31(a) would require a separate NPDES permit for these activities no matter how limited they are in scope. In fact, depending on the number of subcontractors, a single project that disturbs more than 5 acres could be required to have multiple NPDES permits for the same site. Duquesne Light urges the Department to clarify this language such that all activities at a project are conducted in accordance with the NPDES permit issued for the entire construction site. (28)

Response: The Department's program is consistent with the Environmental Protection Agency (EPA) regulation and policy. In the Federal Register, (63 Fed. Reg. 7877) (February 17, 1998), EPA states, "EPA agrees that in many areas utility companies will not meet the definition of operator while installing utility service lines. As with any other party involved in a construction project, permit coverage will only be required for utility companies when they meet the definition of 'operator'". EPA further states "To determine if a utility company meets either criterion, a review of the work 'control' with regard to construction plans and specifications and day-to-day operations is needed".

Furthermore, EPA states, "To the extent that a utility needs to develop its own site-specific plans and specifications for a service installation at a project requiring stormwater permit coverage, the utility will be considered to meet the definition of 'operator' and must allow for appropriate stormwater control measures either by designing and implementing controls themselves, or by assuring that another project operator has designed and will implement stormwater controls for the area disturbed by the utility service installation".

The earth disturbance activity associated with the installation of gas and other utility service lines in new subdivisions or other land development activities which are part of a larger plan of activity (5 or more acres) are covered under the authority of the NPDES Permit for Stormwater Discharges Associated with Construction obtained by the developer. Generally, utility companies operating under this scenario would be subcontractors and therefore would not generally need separate NPDES permit coverage.

2. Comment: Subsection (a)(2) makes reference to securing other permits. It is our understanding that any other regulations impacted by the proposed changes will be modified or amended to be consistent with the final changes in Chapter 102. For example, Chapter 105 general permits require the submittal of an E&S control plan to the conservation district for review and approval. Can it be expected that for projects of 5,000 sq.ft. or less are exempt from preparing a plan, if this exemption is incorporated into other affected regulations? (4, 6)

Response: The final regulation addresses the situation regarding Erosion and Sediment Control or NPDES Stormwater Construction Permits where the earth disturbance activity is approved under another Department permit issued under a Chapter which requires compliance with Chapters 92 and 102. The need for Erosion and Sediment Control Plans for other actions regulated under companion Department regulations are not affected by this regulation. The commentators are advised to provide specific comments regarding Erosion and Sediment Control Plan requirements and Chapter 105 permitting issues when any proposed revision to the Chapter 105 regulations are open for public comment. The commentators may also wish to forward their comments on this issue to the Department's Wetland Protections Advisory Committee (WETPAC) for discussion.

3. **Comment:** The proposed regulations would allow clearing or other earth disturbance activities affecting up to 5 acres in any single common plan of land development without need for an NPDES permit for any associated stormwater discharges to surface or underground waters of the Commonwealth. While I applaud the proposed requirement for a permit for such activities, I suggest that the national 5-acre threshold for a stormwater NPDES permit is set too high for Pennsylvania conditions. Pennsylvania has many steep slopes where disturbances smaller than 4 acres can have substantial impacts on downslope waterways and wetlands. Public environmental costs disproportionate to the private economic benefits are virtually certain, unless Pennsylvania regulations are more stringent than the required federal minimum.

The proposed 5-acre exemption demonstrates that PADEP seeks to enhance administrative convenience by ignoring small projects. For this purpose I recommend a threshold no greater than 1 acre for exempting construction-related stormwater discharges from the NPDES permit program. Some of the proposed disturbances in the 1- to 5-acre range would be covered by other PADEP permits and thus will not require a separate NPDES permit. Most disturbances in the 1- to 5-acre range would be covered by the existing SGP-2 general NPDES permit for construction-related stormwater. Hence, only those 1- to 5-acre disturbances ineligible for the general permit because of their high risk of environmental damage would receive special PADEP scrutiny under the lower threshold that I recommend. Such scrutiny is fully warranted because of the high risk. (8)

Response: EPA is developing Phase II NPDES stormwater regulations that would require NPDES permits for projects of one acre or more. The final Chapter 102 regulations require written plans and best management practice implementation for all projects greater than 5,000 square feet. NPDES permits for construction activities are only required for activities having disturbances of five acres or more. When EPA's final regulations require permits for activities less than five acres, revisions to the Department's regulations will be made at that time.

4. **Comment:** PADEP requires an Erosion and Sediment Control Permit only for construction activity land disturbance activities exceeding 25 acres in total and when no other applicable Department permit already requires an E/S plan. It is reasonable and efficient not to require a separate E/S permit when E/S review is combined with

(and a separate permit would duplicate) another PADEP approval required for the construction activity. It also is reasonable to require that timber harvest and road maintenance activities expected to affect 25 acres or more must secure formal E/S permit approval prior to start of work. (8)

Response: The Department acknowledges the comments of support.

5. **Comment:** Proposed activities with earth disturbance affecting less than 25 acres but more than 5,000 square feet are proposed to be required to have a written E/S plan, but this plan typically will not need to be submitted to PADEP or its designee agency, even if a Notice of Intent to use the stormwater NPDES general permit is filed. This leaves a significant gap in Pennsylvania's waterway protection. (8)

Response: The Department does not agree with the commentator. The regulations require that applications and Notices of Intent shall be accompanied by an Erosion and Sediment Control Plan meeting the requirements of §102.4. Therefore, projects which require submission of a permit application, or a Notice of Intent, must include a submission of an Erosion and Sediment Control Plan. For earth disturbance activities, including activities that do not require a permit, plans are required to be available on site. Further, in the case of inspections and complaints, the Department or County Conservation District may require that the plan be submitted for review and approval.

6. **Comment:** I recommend insertion of "In the absence of construction activities" to clarify the beginning of the text of proposed 102.31(d). A person who is plowing or tilling reasonably can be exempted from the E/S and NPDES permit requirements for stormwater associated with construction, provided that there is no construction activity associated with that person's plowing. If the person who is plowing also undertakes construction activities, then those construction activities should be required to have a permit, just as they would if performed by anyone not plowing. (8)

Response: The Department has revised the final regulation by providing a specific permit exemption for agricultural plowing or tilling activities. The regulations continue to require an NPDES permit for Discharges Associated with Construction Activities when the agricultural activity involves earth disturbance activities other than plowing or tilling which require an NPDES permit.

7. **Comment:** PADEP should reverse the proposed language at 102.31(e) to state that the Department may, after notice, enlarge the acreage limitation, if the 1-acre threshold is found too burdensome statewide or in special areas, counties or municipalities. That is, the regulations should be made protective first, and then later relaxed if experience were to prove appropriate, rather than made lax initially with opportunity for PADEP to tighten them only after further severe resource damage has been sustained by the Commonwealth's waterways. (8)

Response: The Department disagrees with the commentator and has deleted this provision. The final regulations are appropriate at this time, by meeting the requirements of

the Regulatory Basics Initiative, while providing the necessary levels of water quality protection.

8. **Comment:** Subsection (a) be revised to: A person who proposes an earth disturbance activity other than agricultural plowing or tilling, timber harvesting activities, oil and gas exploration and production activities, or road maintenance activities, shall obtain a general or individual NPDES permit for stormwater discharges associated with a construction activity, pursuant to Chapter 92 when the activity involves an earth disturbance consisting of five acres or more, or an earth disturbance on any portion, part or during any stage of a larger common plan of development or sale that involves five acres or more of earth disturbance. (10)

Comment: Proposed regulations should be modified to incorporate the limited exemption from NPDES permitting for construction-related stormwater discharges associated with oil and gas activities that Congress established in the Clean Water Act and that EPA implemented in its NPDES regulations and multi-sector general permit. It is suggested also to retain the current requirement that oil and gas well operators satisfy E&S control plan requirements of 102.4 even though the federal exemption would not impose such a requirement and it is contrary to the basic tenets of the RBI and the Executive Order. (10)

Comment: In its proposed form, the revisions to Chapter 102 could extend the PAG-2 permit requirement to hundreds of oil and gas well development projects involving earth disturbances that heretofore have been exempt from it.

If the final rule imposes the PAG-2 requirement for review and approval of the E&S Control Plan as a condition for receiving authorization for a stormwater discharge to all projects that could arguably be construed to be part of a larger common plan of development, it will cause substantial permitting delays for the oil and gas industry because of the volume of new activities that will require formal Department or local conservation district action.

Such an impact is also contrary to the general goals of the RBI and the Executive Order. Since the regulation imposes no time frame within which the delegated agencies must complete their E&S plan reviews, the proposal will also subvert the Department's highly successful Money-Back Guarantee program. (10)

Comment: The PA Oil and Gas Association (POGA) believes the permitting requirements are more stringent than federal regulations. Specifically, POGA believes that the regulation does not recognize the exemption provided for in 40 CFR Section 122.26(a)(2).

Based on this provision of the federal regulations, it appears oil and gas exploration operations may be exempt from the NPDES permit requirement when the operation is composed entirely of flows which are conveyance or systems of conveyance used for collecting and conveying precipitation runoff which is not contaminated. We recommend the EQB explain how it would treat operations described in 40 CFR Section 122.26(a)(2). We also request that the EQB explain whether the provision is more stringent than federal regulations. (36)

Response: Discharges of stormwater from construction activities associated with oil and gas exploration and production activities are regulated under the federal NPDES Stormwater Program and therefore cannot be exempt from state NPDES stormwater permit requirements. Since October 1992, the Department and County Conservation Districts have authorized discharges from construction activities in Pennsylvania pursuant to federal NPDES requirements, including those construction activities associated with oil and gas development and associated activities. Under the federal program, oil and gas operations are addressed under the construction category and the mineral industry category.

Under the federal program oil and gas operations are addressed under the construction category and the mineral industry category. Under the construction category, EPA has established that erosion, sediment, and pollution control should be addressed in all pollution prevention plans for the oil and gas exploration and production activities, particularly where the industrial activity has the potential to disturb vegetation or natural runoff patterns and exacerbate erosion. Where the construction of the drilling site or any construction of facilities for the oil and gas exploration and production would disturb or is part of a plan to develop which would disturb five acres or more, then that construction activity is defined as having storm water discharge associated with industrial activity which requires separate permitting. In this case, EPA requires a NPDES permit for the storm water discharge from the construction activity (60 *Fed. Reg.* 51166). This is also explained as co-located industrial activities.

Section 402(l)(2) of the Clean Water Act, 33 U.S.C. §1342(l)(2), places a limitation on permit requirements from storm water runoff from oil and gas operations. Under this section, EPA cannot require a NPDES permit or require a state to require a NPDES permit for discharges of storm water runoff from oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, by-product, or waste products located on the site of such operation. As part of the mineral industry category, EPA includes this limitation at 40 CFR §122.26 (c)(1)(iii) and only requires the operation to submit an application for a discharge of storm water when the facility has been a discharge of storm water resulting in the discharge of a reportable quantity under 40 §CFR 117.21, 40 CFR §110.6, or contributes to a violation of a water quality standard.

9. Comment: Current regulations require that a plan be prepared for all new development regardless of size, this is reasonable to protect the environment. The requirement for permits for developments in excess of 25 acres is reasonable to assure good engineering practices. But the proposal to reduce the 25-acre threshold to 5 acres will greatly expand the number of application to be reviewed, additional

paperwork, and bottleneck the approval process. The economic harm will far outweigh the environmental benefits. (12)

Comment: Reducing the regulations from 25 acres to 5 acres for E&S plan will create significantly more applications, additional paperwork and ultimately bottleneck the approval process. (29)

Response: The reduction from the 25-acre threshold to the proposed 5 acres is a federal requirement from the Environmental Protection Agency (EPA). The Department's revisions to Chapter 102 are intended to integrate the federal requirements into the Chapter 102 regulation. The Department has implemented the federal NPDES stormwater permit requirement of five or more acres since October 1992, and does not expect that applications or paperwork will increase or that the approval process will become burdensome under the final regulation.

10. **Comment:** Subsection (b) give reference to timber harvesting. PA Trout defines the riparian area of a stream as that extending 100 ft. beyond the stream banks. It is recommended that regulations be promulgated to prevent the harvesting of timber within the riparian zone. When timber harvesting does occur within a stream's riparian area, special conditions must be met, such as:

- A. all non-commercial vegetation within the riparian zone must remain undisturbed.
 - B. entry to any riparian zone must be limited to specific location.
 - C. harvesting of timber in this zone must follow an approved E&S control plan.
- (13)

Response: Strictly cutting timber is beyond the scope of Chapter 102. Only those portions of a timber harvesting activity which involve an earth disturbance are regulated under the Chapter 102 regulations.

11. **Comment:** Subsection (c) needs a matter of clarification: To obtain a drilling permit from the Bureau of Oil and Gas Management when a waiver is requested (i.e. the activity is within 100 ft of a stream) requires submission and approval of an E&S control plan. Therefore, it would appear that the drilling permit under this scenario would satisfy all other provisions of this chapter and Chapter 92. The proposed earth disturbance activity would not require an E&S control permit or an NPDES permit. Please clarify this matter. (19)

Response: Where the oil and gas drilling permit would include an earth disturbance of five acres or more, an NPDES Stormwater Permit for Discharges Associated with Construction Activity is required. If the earth disturbance is less than five acres an NPDES stormwater construction permit is not required although written plans and the implementation and maintenance of BMPs are required. Disturbances less than 5,000 square feet, except for those identified in 102.4, do not require written plans but do require the implementation and maintenance of BMPs.

12. **Comment:** The proposed regulations include a new exemption from permitting for silvicultural and road maintenance activities under 25 acres. CBF believes this

threshold is too high. Clear cuts of 25 acres have a high potential to cause water quality problems, and a permit should be required. Other types of cuts over the same acreage may not have as much potential to cause water quality problems, depending on the type of cut. The threshold for permit exemptions should be overall reduced, or at a minimum, the type of cut should be a factor. (20)

Response: The Department has not proposed changes for these activities. The final regulations continue to require permits for earth disturbance activities of 25 or more acres. Furthermore, this Chapter does not require permits or plans for silviculture and road maintenance activities other than earth disturbances associated with such activities.

13. **Comment:** Subsection (a) has no definition for road maintenance activities which have a potential of affecting water quality particular around bridges. These activities need to be spelled out and specific requirements set for the activity. (20)

Response: Road maintenance activities other than earth disturbances are not regulated under Chapter 102. If the activity does involve earth disturbance, Section 102.4 would require the development and implementation of erosion and sediment control plans to protect the water quality.

14. **Comment:** Subsection (a), the definition for an NPDES permit, should match the suggested definition in Section 102.1. (24)

Response: The Department has revised the final regulation requirement to be consistent with the definition in Section 102.1.

15. **Comment:** Subsection (c) is confusing; Does this mean that if one acre of wetland fill on a five acre disturbance is covered by a Chapter 105 permit the site is not required to obtain an NPDES permit? Is the total disturbance area reduced by the portion of the site covered by another DEP permit? Clarification is needed. (24)

Comment: Subsection (c) is unclear, although it presents a potential permit loophole. An activity where the earth disturbance is 5 acres or more over the life of the project should meet the NPDES permit requirements regardless of whether other DEP permits (such as encroachment permits) are required. (26)

Response: The Department agrees that the draft language was confusing and has revised the final regulation to clarify the requirement. If a project involves five acres or more of earth disturbance, an NPDES permit is required. The purpose of this section is to eliminate duplication in permit requirements where another permit which authorizes activities pursuant to Chapter 102 and NPDES requirements is issued.

16. **Comment:** Subsection (e) should also reference Section 102.4 (general) where an acreage threshold is set for E&S plan development. (24)

Response: The Department has revised the final regulation to clarify that an erosion and sediment control plan meeting the requirements of §102.4 is part of a permit application.

17. Comment: Subsection (f) should refer to exceptions in Subsection (c) or (d) rather than "exceptions in this section" because the exceptions are not identified as they were in the previous regulations. (24)

Comment: Subsection (a): Specify that a permit is required for the construction activities where the proposed earth disturbance is 5 acres or more "over the life of the project". (26)

Response: The final regulation has been revised to address the concerns of the commentators and to clarify the intent.

18. Comment: The E&S Control Plan review provision creates substantial problems for the oil and gas producers, primarily because of another proposed amendment to Chapter 102 that eliminates the parceling provisions contained in §102.31. The proposed change replaces the permit exemption for parceling or staging of projects with a new provision requiring earth disturbance activities of any size to comply with the PAG-2 requirements if they are part of or a stage in "a larger common plan of development or sale" that involves five acres of earth disturbance. (10)

Comment: Subsection (a)(4) is removed to eliminate parceling because it does not provide significant environmental benefit.

Exception must be taken to the elimination of the "parceling" restrictions. While under "normal" practices, there is difficulty in the staging of the earth moving activities, and in the past some instances of circumnavigation of the intent of the act has been documented, there have been other instances where this practice has been effective and aided in keeping costs down on very large reclamation sites. Should an approved "parceled" site not be worked in accordance with the approved plan, punitive actions can be implemented under the Acts to levy fines, etc. But to blanket all parceling as ineffective does a dis-service to the individuals involved in large earth-moving projects. (30)

Response: The Department concurs that phasing, staging, and limiting earth disturbances are effective BMPs for environmental protection and provide significant economic benefits. The elimination of "parceling" only relates to permit requirements made obsolete by the federal NPDES stormwater permit requirements. The Department will continue to accept parceling, phasing, or other methods of limiting earth disturbance activities as an acceptable best management practice within the context of the permitting program.

19. Comment: I am in favor of the proposed change regarding the removal of parceling. (27)

Response: The Department acknowledges the comment of support.

20. Comment: Something (permits) has to cover the whole thing (plan of lots) not just the one acre because lots were sold, not to developers, but to individuals. (32)

Response: The Department's final regulations require planning and permitting for the entire plan of development or sale that involves five or more acres of earth disturbance. This requirement is consistent with the federal NPDES stormwater permit requirements found at 40 CFR §122.21(b)(14)(x).

21. **Comment:** Subsection (a) requires an NPDES permit when an individual proposes an activity involving five or more acres of earth disturbance 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 or more of earth disturbance". Numerous commentators have interpreted this provision to mean they would need to obtain a permit even if their activity resulted in less than five acres of earth disturbance.

It is our understanding that the EQB's intent is to require an NPDES permit when the activity results in total earth disturbance of five or more acres. Furthermore, it is our understanding that when a utility or other subcontractor installs service in a new commercial or residential development, it is the responsibility of the developer of the site to submit an NPDES permit application. We believe the EQB needs to make several revisions to this subsection to clearly describe who will be required to submit an NPDES permit.

The regulations should clearly indicate that when there is an earth disturbance of five or more acres, the individual responsible for the operation of the site must obtain the NPDES permit. As several commentators observed, the EPA has addressed the issue of who would be the individual responsible for the operation of the site. Specifically, the EPA considers the responsible person as the individual who has control of the construction project plans and specifications. This includes the ability to make modifications to those plans and specifications or to ensure compliance with the permit requirements. We recommend the EQB amend its regulation to be similar to the EPA's structure and to clearly indicate who, such as utility or a subcontractor, would fall under the provisions of the permit submitted by the operator of the site.

The EQB must better define what it considers "a larger common plan of development or sale that involves 5 acres or more of earth disturbance." We recommend the EQB define "Common Plan of Development". In addition, we recommend the regulation include the criteria that will be used to reasonably determine if a project or activity will fall under a common plan of development.
(36)

Response: The final regulations have been written to be consistent with EPA construction stormwater program requirements. When EPA reissued its NPDES General Permits for Stormwater Discharges from Construction Activities (63 *Fed. Reg.* 7860)(February 17, 1998), EPA provided answers to general questions on the construction stormwater permitting program. EPA stated that: "The 'plan' in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. You must still

meet the definition of operator in order to be required to get permit coverage, regardless of the acreage you personally disturb. As a subcontractor, it is unlikely you would need a permit”.

The Department has clarified the final regulation by defining the term “operator” as: “The person with (1) oversight responsibility of earth disturbance activity on a project site or a portion thereof who has the ability to make modifications to the Erosion and Sediment Control Plan or site specifications; or (2) day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the Erosion and Sediment Control Plan”. This definition is consistent with EPA’s requirements for an operator. EPA and the Department agree that an operator can be either an individual owner or contractor who maintains operational control of a construction activity, or that multiple parties may have responsibilities of performing tasks that are necessary to ensure compliance with the Erosion and Sediment Control Plan and permit conditions.

The Department believes that most earth disturbance activities are conducted where the owner or developer applies for the permit and develops the overall Erosion and Sediment Control Plan. Once the owner or developer selects a general contractor, the general contractor is added as a co-permittee. Under this scenario, the owner can retain control over changes to site plans, especially the Erosion and Sediment Control Plan, while the contractor is responsible for the day-to-day implementation and maintenance of the Erosion and Sediment Control Plan and other permit conditions regarding the earth disturbance activities. Subcontractors, including utilities, hired by and under the supervision of the owner or general contractor are generally not an operator.

22. Comment: Subsection (e) allows the Department to reduce the acreage requirements for permits by notice in the *Pennsylvania Bulletin*. This will allow the Department to amend a regulation simply by publishing a notice. Changes to provisions of a regulation must be accomplished by proposing another regulation. Therefore, we recommend the EQB delete the provision allowing the Department to change the permit requirements by notice. If there are circumstances when a permit is required for less acreage than specified in the rulemaking, the specific exemptions should be delineated in the regulations. (36)

Response: The Department has deleted this procedure from the final regulations at the suggestion of IRRC

Section 102. 32. Permit Application and Fees.

1. Comment: Subsection (b)(2) should be deleted which requires the NPDES permit application or Notice of Intent to be accompanied by an E&S Control Plan. (10)

Response: The Department disagrees. The requirement that the erosion and sediment control plan be submitted with the application or Notice of Intent ensures that the proposed project meets the conditions of the permit and coordinates with other Department permit requirements. Also, the plan submittal requirement ensures

that the plan has been designed to comprehensively incorporate the required elements for all operators at the earth disturbance site.

2. Comment: Subsection (c) requires that a PNDI form be completed which requires a determination if any special habitat area or species is involved. This sounds dangerously similar to the Federal Endangered Species Act which in my opinion has been abused in its application. In order to limit the amount of paper work and projects involved and in recognition of the fact that a certain mass of unusable land would be required to preserve protected habitat or species, I suggest all projects less than 250 acres be exempt from submitting a PNDI search form. (12)

Comment: The requirement for a completed PNDI to be included in E&S permit applications would add significant time delay and expense to particular projects, proving burdensome to many small builders. It is unreasonable to expect that small tracts of land (as small as 5,000 square feet) would provide suitable habitat for threatened or endangered species. The threshold should be 100 acres minimum. (16)

Comment: Subsection (c) refers to the PNDI inventory which mirrors the Federal Endangered Species Act, which in the past has been abused to stop development. We urge that this not be applied to any community or development that is less than 250 acres. (29)

Comment: We take exception to the statement that "no additional paperwork to comply with the requirements". The addition of the PNDI search alone creates additional paperwork (i.e. application, copy of USGS with work site outlined, etc.). Other changes proposed in the regulations will in fact increase the paperwork load of the plan preparer and/or applicant. While the initial application process may not be impacted substantially, individual reviewers who have jurisdiction over the submitted plan more often than not dictate the requirements of the plan, not the regulations or policies. (30)

Response: Only projects which require permit authorization, i.e. projects five or more acres requiring an NPDES permit or 25 or more acres for an Erosion and Sediment Control Permit will require PNDI coordination. This requirement is consistent with the current Department policy established to consult the PNDI prior to issuing permits which may potentially impact species or features contained in PNDI. Furthermore, EPA policy is that permit conditions to protect listed species and critical habitat are appropriate for NPDES permits under Sections 7(a)(1), 7(a)(2), and 9 of the Endangered Species Act.

3. Comment: I am in favor of the addition regarding PNDI provisions in 102.32(c). (27)

Response: The Department acknowledges the support.

4. Comment: The cost of processing general permit applications for these minimal activities in a development that already has developed comprehensive E&S and stormwater management plans does not warrant the \$250 fee charged for each application. In

1997, PNG installed gas distribution lines in approximately 130 new residential lot plans, and about 30 commercial plans/industrial parks.

Gas companies cannot invest capital funds to serve new consumers that exceed the future revenues that will be realized from the new load. Any difference between the estimated project cost and the allowed investment must be made up by the customer (resident or developer), who in turn must charge higher prices per lot to cover the extra cost - otherwise, gas service can't be made available to the development. Since homebuyers, and therefore, developers prefer gas availability to all-electric homes, ONH has placed great emphasis on reducing it's costs in order to make projects more feasible. This has necessitated workforce reductions, use of innovative strategies, and close partnerships with the developers - as sometimes the difference of a few hundred dollars may make the difference of a project's success or failure. Increased engineering labor (or consultant fees) for site-specific E&S plan and permit applications, plus the permit fees could have a significant detrimental impact on the feasibility of providing gas service to some developments, especially the smaller ones. (14)

Response: This comment does not apply to the proposed revisions to 102. The fee established for general NPDES permits is based upon requirements found in Chapter 92. Individual gas lines for new developments involving five or more acres of earth disturbance are included under the NPDES permit secured by the developer.

5. Comment: Subsection (c): The current language is vague, i.e. "If the Department determines..... the earth disturbance activity may adversely impact the species.... the person will prevent or eliminate the impact. What is the definition of "adversely"? and who determines what measure constitutes adequate "prevention"? In order to concentrate the program's efforts in the areas that will produce the greatest long-term results, and to minimize the waste of erroneous paperwork, it is suggested that a PNDI search be submitted only for projects involving 250 acres or more. (22)

Comment: Subsection (c): "...shall be accompanied by a complete PNDI search form". The language of this requirement should be revised to clarify the PNDI search or "other source" must document a known population of threatened or endangered species at the proposed site of earth disturbance. The presence of a habitat which could support a threatened or endangered species should be no criteria for denial of a permit. (30)

Comment: The EQB is adding a new subsection (c) which will require the completion of the PNDI form. The Department will use this form to determine if the earth disturbance activity may "adversely impact the species or their habitat". We recommend that the EQB explain what criteria the Department will use to make this determination. (36)

Response: The Department considers "adverse impact" as an earth disturbance activity that would impact the species of concern to the extent that the species or its critical habitat would be harmed or no longer exist at the site. The Department cooperates

with several natural resource agencies including the DCNR-Bureau of Forestry, the PA Fish and Boat Commission, the PA Game Commission, and the US Fish and Wildlife Service in determining impacts to threatened and endangered species. These resource agencies consider if the activity adversely impacts a species or habitat, and then will consult with the applicant and the Department to recommend what preventive measures can be taken.

6. **Comment:** 102.32(c): This provision must be clarified in that it only pertains to a known and documented population of threatened or endangered species at the proposed project site. Habitat that has the potential to support a threatened and endangered species should not be evaluation criteria or cause for denial of a permit application. (23)

Response: For purposes of compliance with this chapter, PNDI will be consulted for known and documented occurrences of Pennsylvania or federal threatened or endangered species, not for potential habitat.

7. **Comment:** An area of concern for the utility industry is the increase in fees associated with E&S control permits. The increase in the application fee from \$200 to \$500 when coupled with the expansion of project requiring written, site-specific plans, could have a significant financial impact on utility services. We request that DEP reexamine this requirement and consider whether the fee can be more closely aligned to the administrative cost processing and application involves. (11)

Comment: Subsection (a)(3): The proposed \$500.00 permit application fee should be reevaluated. PBA recommends the permit application fee range from the existing \$200.00 fee for small projects to a maximum of a \$500.00 fee for large projects. The \$500.00 application fee as proposed is extremely excessive for a five acre project. (23)

Comment: I would ask the Department to revisit the increase in fees charged for permit review. The 150% increase from \$200 to \$500 seems excessive, especially for smaller projects. We suggest that a graduated scale, based on the size of the project be considered as an alternative to the one-fee-fits-all approach. (32)

Comment: The EQB is increasing the application fee from \$200.00 to \$500.00. We understand that this fee has not increased for over 20 years. However, we request that the EQB provide a more detailed description of the cost incurred in reviewing an application and how these costs relate to the application fee. (36)

Response: The proposed fee increase for Erosion and Sediment Control Permits from \$200-\$500 only applies to earth disturbances of 25 acres or more associated with timber harvesting and road maintenance activities. The fee for NPDES permits is established under Chapter 92. The fee for individual NPDES permits under Chapter 92 is currently \$500. As part of its regulatory analysis, the Department has prepared a justification for the fee increase for Erosion and Sediment Control Permits. The fee is intended to cover the administrative costs of the Department and County Conservation Districts processing the permit applications, including administrative completeness review, data management, coordination and other

related activities. The fee of \$500 was determined to cover anticipated costs based on an average of 25 hours and a rate of \$20 per hour.

8. Comment: Subsection (c) refers to "individual NPDES applications for earth disturbance activities" and "Notices of Intent for earth disturbance activities" which is jargon familiar to all of us who administer the program but may not be understood by the regulated community. It would be clearer to say "applications for individual NPDES Permits for Stormwater Discharges Associated with Construction Activities" and "Notice of Intent" (defined in section 102.1) or "Notices of Intent for General NPDES Permits for Stormwater Discharges Associated with Construction Activities". (24)

Response: The Department has made the recommended changes to clarify the specific permit type.

9. Comment: Subsection (c): The official name of the PNDI Search Form is Supplement No. 1. Perhaps Subsection (c) should use the formal name and refer to the Search Form parenthetically. (24)

Response: The Department disagrees that the PNDI Supplement No. 1 Form should be specifically identified by name. In the future, other technology may be available that makes the PNDI Supplement No. 1 form obsolete. The substantive requirement is to have the activity screened for potential impacts, rather than mandate how that screening is accomplished.

10. Comment: Subsection (c) states that if a T&E species may be affected, the applicant will prevent the impact. Do the delegated conservation districts have to administer this component of the regulations? If so, how? (24)

Response: Conservation Districts who have delegated responsibilities for processing permits authorized under Chapter 102 will administer this requirement according to policy and procedures developed by the Department. Currently these policies and procedures require districts to conduct a PNDI screening. PNDI and other resource agencies will consult with the conservation district and Department's Regional Office to recommend what preventive measures that can be taken.

11. Comment: Subsection (a)(1): It is unclear whether the permit applicant should be the landowner or the earthmover (such as: excavating contractor, logger, etc.). (26)

Response: The Department has revised the final regulation by adding a definition of "operator" as it relates to consistency with federal requirements. A person(s) must apply for NPDES permit coverage if that person has the ability to make modifications to the Erosion and Sediment Control Plans, including the best management practice specifications; or if the person(s) are responsible for the day-to-day operation and maintenance of the best management practices or other activities to ensure compliance with the permit.

12. Comment: Subsection (3): "Applications shall be accompanied by an application fee of \$500.00". It is recognized that projects requiring an NPDES permit and/or E&S

permit are generally associated with larger entities. However, the costs associated with various earthmoving projects continues to escalate. Some county conservation districts are now charging for the review of an E&S control plan. These fees range from \$20.00 to \$50.00 for less than one acre of disturbance. The raising of the fees by doubling them serves only to increase costs to the end user of the project. This in no-way benefits the citizens of the Commonwealth. There is no justification as to the reason the fee structure has such a drastic increase. It is highly doubtful that the administrative costs associated with the changes in the regulations would increase proportionally to the fee structure. (30)

Comment: We question how the fee structure will be applied when the county conservation district reviews the application. It is our understanding that the county conservation districts charge a separate fee for this review. If the conservation districts charge an additional fee, we question why the applicant must also pay the \$500.00 state fee contained in this rulemaking. We recommend the EQB investigate what the county conservation districts charge for reviewing the permit application. We also recommend that the EQB provide justification for assessing the applicant a \$500.00 fee when the Department delegates the review to a county conservation district. (36)

Comment: Some districts place a time limit on the implementation of the plans after they have been approved, such as two years, even if there has been no changes in the plans or the regulations. There should be no need to resubmit, and pay an additional fee, if there have been no changes in the plans, or the regulation, regardless of the time period, be it two years or five or ten years. There is nothing in Chapter 102 that places a time limit on the implementation of the plan, but some districts place a time limit on the plans, forcing you to resubmit and pay an additional fee. (5)

Response: The Department, through Chapter 102 or other regulations, does not establish or regulate fees which conservation districts charge for the review of plans. Under the Conservation District Law, the State Conservation Commission has determined that County Conservation Districts are authorized to charge fees for services. Erosion and Sediment Control Plans approved under Department Permit are valid for the term of the permit; i.e. Erosion and Sediment Control permits have a two year term and NPDES permits for Stormwater Discharges Associated with Construction Activities have a five year term from the date of authorization. The fee is intended to cover the administrative costs of the Department and County Conservation Districts processing the permit applications, including administrative completeness review, data management, coordination and other related activities.

Section 102.41. Administration by Local Governing Bodies.

1. Comment: Subsection (a) should be amended specifically stipulating that the written agreement delegating administration and enforcement authority for the Chapter 102 program to local conservation districts shall require delegated agencies to conduct PAG-2 permit review and approvals subject to the time 100 day time frame established by DEP's Money-Back Permit Review Guarantee Program. (10)

Comment: The regulation does not include a time period within which the Department or its designee must complete the review of the permit application. We recommend that the EQB include a maximum time period for completion of the application review. (36)

Response: The Department's Regional Offices and conservation districts endeavor to complete the review of all Notices of Intent and Individual NPDES Stormwater permit applications within the time specified under the Money Back Guarantee Program (150 days for Individual Permits and 100 days for Notices of Intent). Under the Department's delegation agreement the County Conservation Districts must "... receive, review and process all Notices of Intent for Coverage Under the Pennsylvania General Permit for Discharges of Stormwater from Construction activities and all Individual Permit Applications for Discharge of Stormwater from Construction Activities within 30 days of receipt".

2. **Comment:** To avoid the sharp workload increase and PAG-2 permitting backlog that the proposed Chapter 102 revisions could create for many conservation districts and to prevent excessive and unnecessary delays in oil and gas well permitting, we suggest that the Department should revise its PAG-2 to bring it in line with the requirements of the newly revised general permit for stormwater discharges from construction activities adopted by EPA Region 3. (10)

Response: The Department does not anticipate any additional workload by either the Department or County Conservation Districts. The final regulations do not change existing procedures for oil and gas well construction activities as the commentator suggests. The Department does not believe that a large backlog of general NPDES permit applications will occur as a result of these changes. The Department's existing NPDES General Permit for Stormwater Discharges Associated with Construction Activities is consistent with EPA's requirements under their general NPDES Stormwater Permit for Construction Activities. The Department does require the submission of an Erosion and Sediment Control Plan for the purposes of ensuring that the project is eligible for coverage and that the plan demonstrates compliance with permit conditions.

3. **Comment:** Subsection (c): Currently for NPDES permitted projects which cross county lines, the conservation district with the greatest project land area administers the NPDES permit with E&S plan review and comments from all affected districts. (26)

Response: The Department concurs. This procedure has been authorized under the delegation agreement between the Department and conservation districts.

Section 102.42. Notification of Application for Permits.

1. **Comment:** The proposed rulemaking requires municipalities to notify the Department's designee (usually the conservation districts) when issuing building permits for projects over five acres. This is a good ruling but what kind of support can we expect from the designee? Model ordinances, seminars, etc. must be incorporated into the funding to teach municipalities the importance of this regulation. (1)

Comment: Local governing bodies are to be required to notify PADEP or its designee upon receipt of applications for activities affecting 5 acres or more. This threshold is too high. Local governments should notify PADEP of all land disturbance activities affecting 1 acre or more in all watersheds. PADEP should be notified of all land disturbance activities in Exceptional Value and High Quality watersheds, irrespective of the size of the proposed disturbance. (8)

Comment: This section as written would require municipalities to notify delegated district offices every time they receive a permit application for any activity regardless of size or whether earth disturbance is proposed (i.e. shed, building, addition) on a parcel 5 acres or larger. Although this covers all sites that would need an NPDES permit, it places an undue burden on both municipalities and NPDES permitting authorities. (24)

Response: The Department has clarified this requirement in the regulation. The final regulation only requires notifications for projects which require a Department permit under this Chapter. The Department and county conservation districts have an ongoing outreach program designed to educate and update municipal officials on a regular basis. The Department has also developed guidance on implementation of model ordinances and Memorandums of Understanding so that municipalities can comply with this requirement, and coordinate planning requirements with the Department or County Conservation Districts. In addition, many municipalities will be required to have NPDES provisions under EPA's proposed Phase II NPDES Stormwater Permit program. The Department anticipates that continuing this coordination process may satisfy municipality obligations for E&S ordinances under this EPA proposal.

2. Comment: Some Monroe County municipalities feel that the current notification provision does not apply to them because they are only issuing permits for structures, not for any associated earth disturbance. This has resulted in permit violations and strained relationships with those municipalities. The final wording of this Section should aim at preventing misinterpretations of this nature while not requiring all permits on 5 acre parcels to be brought to our attention as discussed above. We suggest: "...within 5 days of receipt of a submittal for a permit or approval on a project site where 5 acres or more of earth disturbance is proposed over the life of the project". Because some jurisdictions do not issue permits, we suggest adding approvals to this section as follows: "...which issues a building or other permit or approval...". (24)

Comment: This section (102.42) should refer to both permit and plan approvals. Specify required notification "within 5 days of receipt of an application for a permit or plan approval involving an earth disturbance of 5 acres or more over the life of the project". (26)

Response: The Department has revised the final regulation to clarify municipal responsibilities.

Section 102.43. Withholding Permits.

1. **Comment:** The use of the word “may” should be changed to “shall” if you are going to give your designee the authority to enforce this proposed ruling, otherwise some municipalities are going to do an about face when helping to enforce these regulations. (1)

Response: The phrase “may not” has the same prohibitory effect as “shall not”.

2. **Comment:** The individual NPDES permit should be named to avoid confusion as discussed in section 102.32(c). (24)

Response: The Department has made the revisions as recommended by identifying the permit as an “Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities”.

3. **Comment:** Within this section it is recommended referencing both permit and plan approvals to be consistent with language used by municipalities. (24, 26)

Response: The Department has revised the final regulation by incorporating references to both permits and plan approvals provided by municipalities.

General Comments:

1. **Comment:** These regulations should spell out what means are available to DEP to ensure adequate erosion and sediment control plans are developed, implemented and maintained. Specific measures should include a certification by the applicant that plans will be followed and requirements for inspections with particular focus on large sites. Citizens should be enabled to instigate stop work orders if erosion and sedimentation is causing damage to the citizen’s property or livelihood. The enforcement provisions should also include fines and possibly even performance bonds for larger projects. (20)

Response: The Department believes that the regulations provide the means for the Department and its designees to ensure adequate protection for the Commonwealth’s soil and water resources. The combination of planning and permitting enables the Department or designee to designate their resources for both planning and implementation requirements. The Department believes that existing remedies of law and equity are currently available for pursuing citizen actions, including Section 601(c) of the Clean Streams Law. The Department disagrees that performance bonds for larger projects or any activity are appropriate. The Department has been successful at utilizing readily available legal remedies to ensure compliance with these regulations under the authority of the Clean Streams Law. The Department has included, by reference, the enforcement provisions available under the Clean Streams Law.

2. **Comment:** As a homebuilder in the southeastern portion of PA, I am aware that there are proposed modifications to the state erosion and sedimentation control regulations.

As an employer of hundreds of jobs in the local area, I would request that DEP not make the proposed modifications to Chapter 102 or at least further review them with the PA Builder's Association. (29)

Response: The Department believes that it has responded adequately to the Builder's comments. The PA Builder's Association has provided comments on the purpose, intent, and applicability of the regulations.

3. Comment: A major component of the Surface Mine Permit application process is the design of erosion and sedimentation controls to be implemented during the life of the surface mine. Chapter's 77, 86 and 87 all reference the Chapter 102 regulations concerning the specific designs for erosion and sediment controls, these regulations will impact not only the mining industry but also the community at large. Many PMP (Pennsylvania Mining Professionals) members are also involved with the abandoned mine reclamation program at the federal, state and local levels. The proposed revisions will also impact these activities. (30)

Response: The Department does not believe that this regulation will significantly impact mining or mine reclamation activities. These regulations do not create new permit requirements. To the contrary, by removing certain technologically specific best management practices from the regulations the Department has provided greater flexibility for an individual to comply with the substantive requirement of protecting water quality.

4. Comment: Chapter 102 lacks any enforcement provisions to ensure its requirements are being followed. The general requirements are that erosion and sediment control measures be developed, implemented and maintained, but there is no mention of what happens when they are not. Enforcement provisions should be added to ensure waters of the Commonwealth are protected from excessive sediment. (20)

Comment: The regulation does not indicate what penalties or enforcement provisions will be taken, if any, for failure to submit or implement an E&S control plan or for not obtaining an NPDES permit. We recommend that the final-form regulation include an action or penalties that may be taken to enforce the rulemaking or include a statutory citation to the potential penalties or actions. (36)

Response: The Clean Streams Law sets forth a variety of enforcement mechanisms that may be commenced to enforce failures to develop, implement, or maintain an erosion and sediment control plan, or to obtain an NPDES or Erosion and Sediment Control Permit. The regulation has been revised to include enforcement sections at §§102.31 and 102.32 which provide a statutory citation of the Clean Streams Law, 35 P.S. §691.1, et.seq. and which identify the compliance and enforcement mechanisms available to the Department or County Conservation Districts.



NORTH WHITEHALL ZONING CODE

3256 Levans Road
Coplay, PA 18037

411
629

In response to your request for proposed rulemaking, please be advised:

Comments on the above mentioned zoning code are as follows:

1) As the Zoning and Code Enforcement Officer of North Whitehall and a member of the Lehigh Valley Regional Planning Commission for Lehigh County Conservation District, I have reviewed both sides of the so called "silt fence" which is being enforced at the local level. I rely on the definitions (as stated in the Pennsylvania Municipalities Planning Code) as being consistent or even be identical to the Pennsylvania Municipalities Planning Code. Why should we create more appealable regulations?

1) The Zoning and Code Enforcement Officer of North Whitehall and a member of the Lehigh Valley Regional Planning Commission for Lehigh County Conservation District, I have reviewed both sides of the so called "silt fence" which is being enforced at the local level. I rely on the definitions (as stated in the Pennsylvania Municipalities Planning Code) as being consistent or even be identical to the Pennsylvania Municipalities Planning Code. Why should we create more appealable regulations?

2) In Section 102.4, limiting the amount of earth disturbance to 5000 sq. ft for a development plan is an excellent method of controlling earth disturbance. The development of an E&S plan except for a 15% slope requirement would seem reasonable. Many municipalities contradict this new provision. Otherwise municipalities will spend time and money revising slope ordinances rendering their existing steep slope ordinances unenforceable. scientific fact that accelerated earth disturbance by man. This is well documented when steep slopes are

2) In Section 102.4, limiting the amount of earth disturbance to 5000 sq. ft for a development plan is an excellent method of controlling earth disturbance. The development of an E&S plan except for a 15% slope requirement would seem reasonable. Many municipalities contradict this new provision. Otherwise municipalities will spend time and money revising slope ordinances rendering their existing steep slope ordinances unenforceable. scientific fact that accelerated earth disturbance by man. This is well documented when steep slopes are

3) Section 102.42, the proposed ordinance requires municipalities to notify the Departments designees (Lehigh Valley Regional Planning Commission) when issuing building permits for projects over 1 acre. What kind of support can we expect from the Lehigh Valley Regional Planning Commission, seminars, etc. must be incorporated into the ordinance to emphasize the importance of this regulation.

3) Section 102.42, the proposed ordinance requires municipalities to notify the Departments designees (Lehigh Valley Regional Planning Commission) when issuing building permits for projects over 1 acre. What kind of support can we expect from the Lehigh Valley Regional Planning Commission, seminars, etc. must be incorporated into the ordinance to emphasize the importance of this regulation.

4) Lastly, 102.43, the use of "shall" if you are going to give municipalities the authority to enforce this proposed ruling otherwise some municipalities are going to have a hard time when helping to enforce these regulations.

4) Lastly, 102.43, the use of "may" if you are going to give municipalities the authority to enforce this proposed ruling otherwise some municipalities are going to have a hard time when helping to enforce these regulations.

Respectfully,

Michael Siegel

Michael Siegel
North Whitehall Township Zoning and Planning Commission

Commissioner

Section 102.102
The ability to
control the
discharge of
sediment
from a land
disturbance
activity to the

This section of the Proposed Rulemaking would delete the responsibility for preparation of erosion and sediment control plans from the lessee. PCA objects to this change. Responsibility for the preparation of such plans should remain with the party engaged in the earth disturbance activity. At no time should a permittee be permitted to enter into an agreement delegating this responsibility to another party.

Section 102.103
The requirement
that a permittee
install sediment
control structures
(1) shall be
designed to
prevent sediment
from entering
waterways. For
example, the
design of the
structures shall

This section of the Proposed Rulemaking imposes an unnecessary requirement that a permittee install sediment control structures on the project site. Exceptions should be made for (1) sites where the project site is at the highest elevation, for which such structures are not feasible; and (2) sites where natural or man-made features are unnecessary the construction of additional up slope sediment control structures. Sediment control structures located directly down-gradient from a railroad or road could reduce the capacity provided by those features.



Comments on Proposed Changes to Chapter 102
to the Environmental Quality Code
Submitted by the Chesapeake Bay Foundation
April 8, 1998

The Chesapeake Bay Foundation submits to the Environmental Quality Board the following summary of our comments on proposed changes to the Environmental Quality Code Chapter 102 - Erosions and Sediment Control:

- support the language protecting existing and desirable uses of the waters of the Commonwealth,
- support the requirement for erosion and sediment control for agricultural activities, and suggest stating this requirement in the first part of the regulation and covering any agricultural activities subject to erosion,
- suggest DEP change "minimize" to "prevent" throughout Chapter 102,
- object to the 5000 square foot exemption for new construction and sediment control plan, in particular along small streams and the cumulative use of this exemption,
- suggest adding enforcement provisions to the regulation,
- believe the exemption from permitting for silvicultural maintenance activities under 25 acres is too high,
- suggest DEP adopt a water quality standard for streams of exceptional value,
- suggest DEP increase the requirements for high quality watersheds by requiring an approved plan and approved best management practices around high quality and exceptional value watersheds where no earth disturbance activities would be allowed,
- suggest requiring erosion and sediment control plans to be submitted to DEP or the delegated authority and allow public access to the stream.

Please feel free to contact Barbara Kooser for a copy of the comments or if you have any questions.

Pennsylvania Office: Old Waterworks Building, 614 N. Front Street, Harrisburg, PA 17101

Headquarters Office: 162 Prince George Street, Annapolis, Maryland 21401

Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401

Virginia Office: 1001 E. Main Street, Suite 710, Richmond, Virginia 23219

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MARY OF DUQUESNE LIGHT COMMENTS

Duquesne Light Company appreciates the opportunity to provide comments in response to the proposed revisions to 25 PA Code Chapter 102: Erosion and Sediment (E&S) Control that were published in the Pennsylvania Bulletin on February 7, 1998. Duquesne Light is the principal electric utility generator and provider in the Pittsburgh area. Duquesne Light serves approximately 1.5 million customers in Allegheny and Beaver Counties in Western Pennsylvania.

General Permit Requirements

Duquesne Light supports the streamlining of regulatory requirements for earthmoving projects that pose minimal threats to the environment. Duquesne Light supports the revisions to §102.4 that require implementation of BMP's and other sound conservation and engineering practices as a condition of permit. In addition, Duquesne Light strongly agrees with the proposed §102.4(b)(1) which establishes a 5,000 square foot minimum threshold for developing written E&S control plans.

Duquesne Light understands that other regulations will be modified or amended to be consistent with the changes in Chapter 102. For example, the General Permit conditions in 25 PA Code §102.5 require the submittal of written E&S control plans to the county for review and approval. Duquesne Light urges the Department to revise Chapter 102 so that written E&S plans will not be required for small projects that disturb less than 5,000 square feet of earth.

Permit Requirements

As proposed, the Department states,

"A person shall not obtain a ... permit for stormwater discharges associated with a construction activity ... when the activity involves an earth disturbance ... on a portion of a site during any stage of development or sale that involves 5 acres ... or more of earth disturbance."

Duquesne Light Company installs electrical service in industrial parks, shopping malls, residential developments, etc. in which the total construction project involves earth disturbance of five or more acres. In these situations, the site developer would be subject to obtaining a stormwater permit. As stated in §102.5(a) would require a separate NPDES permit for these activities no matter how small they are in scope. In fact, depending on the number of subcontractors, a single project that disturbs more than 5 acres could be required to have multiple NPDES permits for the same project. Duquesne Light urges the Department to clarify this language such that all activities on a project are conducted in accordance with the NPDES permit issued for the entire construction project.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
October 5, 1999

The Secretary

7-14

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101

RE: Final Rulemaking – Erosion and Sediment Control (#7-332)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a final-form regulation for review by the Commission. This rulemaking was approved by the Environmental Quality Board (EQB) for final rulemaking on September 14, 1999.

These regulations revised Chapter 102 which contains requirements for erosion and sediment control from earth disturbance activities. Developed under the amendments allow persons conducting earth disturbance activities more flexibility in implementing Best Management Practices (BMPs); integrate the federal National Pollutant Discharge Elimination System (NPDES) permitting requirements with stormwater discharges associated with construction activities; clarify the planning and permitting requirements; and streamline the regulatory process for projects that pose a risk or threats to the environment.

The proposed regulations were published February 7, 1998, with a 60-day public comment period and three public hearings. There were 36 commentators on the proposal resulting in some 300 separate comments. The final rulemaking was reorganized for clarity and conciseness. The regulations now move logical performance-based requirements through planning and permitting requirements concluding with enforcement provisions. These provisions are currently scattered throughout Chapter 102 and interwoven with technical requirements. DEP believes that this revised format will be more readable than the existing format.

Both the Agricultural Advisory Board and the Water Resources Advisory Committee reviewed and supported a draft of the final rulemaking. Each of the advisory groups raised concerns that were addressed either in the regulations or at their respective meetings.



Mr. Robert E. Nyce

- 2 -

October 5, 1999

The Department will provide the Commission with any assistance required to facilitate a thorough review of the regulation. Section 5.1(e) of the Act provides that the Commission shall act within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,



James M. Seif
Secretary

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

NUMBER: 7-332
: Erosion and Sediment Control
: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

SIGNATURE	DESIGNATION
<u>H. May</u> <i>Hershey</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>10-5-99</u>	
<u>Carroll</u> <i>Carroll</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>10-5-99</u>	
<u>H. Selnett</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	ATTORNEY GENERAL
_____	LEGISLATIVE REFERENCE BUREAU