

Regulatory Analysis Form

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Bush

(1) Agency

Environmental Protection

93 JUN 26 PM 3: 27

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

7-332

IRRC Number: 1921

(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, 783-1303
Secondary Contact: Kenneth F. Murin, 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 proposed 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 revisions 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 proposed rulemaking is being made under the authority of Sections 5 and 402 of the Clean Streams Law (35 P.S. §§691.5 and 691.402); Section 5 of the Dam Safety and Encroachments Act (32 P.S. §693.5); Section 1920-A of the Administrative Code of 1929 (71 P.S. §§510-20); and Section 11 of the Conservation District Law (3 P.S. §859(2)).

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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.

Yes. The proposed revisions have been made to ensure consistency with federal National Pollutant Discharge Elimination System (NPDES) regulatory requirements for stormwater discharges associated with construction activities.

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

Accelerated erosion and the resulting sedimentation is the number one pollutant, by volume, of the Commonwealth's water resources. Excess sedimentation affects the water quality and biological integrity of such resources. These regulations are needed to address this concern. Additionally, the proposed revisions have been made to ensure consistency with federal National Pollutant Discharge Elimination System's (NPDES) regulatory requirements for stormwater discharges associated with construction activities. Finally, the revisions clarify and simplify existing requirements, and provide a performance based approach to erosion control which allows for flexibility and alternate methods of minimizing accelerated erosion from earth disturbance activities.

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

Without requirements to prevent accelerated erosion and sedimentation, water quality would be degraded and would impact environmental conditions, public water supplies and recreational resources.

- (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 proposed regulations will directly benefit Pennsylvania citizens with a reduction in costs associated with turbidity levels in drinking water supplies, enhanced fisheries resources and associated recreational opportunities, reduced costs associated with plan preparation and permit applications, and the use of best management practices that maximize flexibility in achieving pollution prevention rather than being prescriptive or technology specific.

Additionally, 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 proposed revisions 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 and tilling, residential and commercial development, highway construction and maintenance, utility construction, timber harvesting, and mineral resource development. During the past seven years approximately 10,000 activities per year have been conducted under the regulations.

- (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.

The revisions have been presented to the Agricultural Advisory Board, and the Water Subcommittee of the Air and Water Quality Technical Advisory Committee. Additional comments were provided from county conservation districts, the regulated community, state and federal agencies, and the public. Initial comments were solicited during the Regulatory Basics Initiative, through publication in the Pennsylvania Bulletin and through the Department's Web site.

- (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 revisions 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 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 revised regulations 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 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 costs are based upon U.S. Environmental Protection Agency, Draft NPDES General Permits for Stormwater Discharges from Construction Sites (Washington, DC: 56 Fed. Reg. 40948, (August 16, 1991), 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 & Sedimentation 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 off stream 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 outweighs 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.

A non-regulatory alternative considered was optional certification and training. Neighboring states of Maryland, Delaware and West Virginia (timber harvesters/loggers) have either optional or mandatory certification for construction equipment operators.

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 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 and tilling activities.

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

The Department considered the possibility of general permits, and a permit by rule approach, for earth disturbance activities not currently permitted under Chapter 102. These approaches were determined to be an unnecessary regulatory burden without commensurate environmental benefit, and were determined to be unnecessary because the current program adequately controls accelerated erosion through erosion and sediment control plan requirements.

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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 regulations address stormwater discharges associated with construction activities, 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 are 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. One of the strengths of Pennsylvania's Chapter 102 regulation is that for over 20 years erosion and sediment control planning and implementation has applied to all persons who conduct earth disturbance regardless of the type of activity. The basic requirement of erosion and sediment control planning establishes a consistent standard or benchmark which an industry can attain in lieu of more stringent or restrictive municipal ordinances or zoning requirements.

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

The requirements are similar to federal requirements and those of other states. Therefore, the proposed regulations should not effect 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 proposed regulations 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 public hearings and informational meetings have been scheduled.

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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 revisions 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.

The Department has 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?

A specific date cannot be predicted. The regulations will go into effect upon publication in the Pennsylvania Bulletin as final rulemaking. Earth disturbance activities are currently regulated. These regulations will not require any additional permits, licenses or approvals.

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

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

Figure 1 (Continued)
(Item No. 25)

Pennsylvania's Chapter 102 Erosion Control Regulations: Comparison with Federal and State Programs				
Chapter 102 Regulations	PA (proposed)	NJ	MD	EPA
Erosion and Sediment Control Plan (102.4)	5000 ft. ² or more (Silviculture and agriculture included) Plan required pursuant to other Department regulations. Plan required for projects which may impact waters. Plans required for all projects which discharge to Special Protection Waters. Plan always available on site.	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
E & S Plan Considerations (102.5)	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	Project location, area, management practices, runoff coefficient, receiving waters & operator
E & S Control Best Management Practices (BMP's) (102.12)	Minimize the amount of disturbed land	N/A	Save as much forest as possible and reforest when possible	BMPs to control pollutants, including description of applicable state and local requirements
limiting exposed areas				
surface water diversions	Surface water is to be diverted away from disturbed area.	Same as PA	Same as PA	BMPs to control pollutants, including description of applicable state and local requirements
velocity control	Velocity of flow in the facilities must be limited to 2.0 ft/sec	Design depends on type of soil and cover	<4ft/sec - seed and mulch < 6 ft/sec - matting or sod < 8 ft/sec - 4" - 7" stone	BMPs to control pollutants, including description of applicable state and local requirements
permanent stabilization	Stabilize upon completion of project	Same as PA	Slope > 3:1 stabilize after 7 days - 14 days for other areas	BMPs to control pollutants, including description of applicable state and local requirements
temporary stabilization	Stabilize if disturbed for more than 20 days	For areas disturbed for 2 - 12 months	Same as PA	BMPs to control pollutants, including description of applicable state and local requirements
sediment retention	All runoff from a project site must be collected and treated before discharging into the waters of the Commonwealth	Same as PA	Same as PA	BMPs to control pollutants, including description of applicable state and local requirements

FEE REPORT FORM

Department of Environmental Protection

Agency

August 19, 1997

Date

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:	1996	1997	1998	1999
Current	\$200	\$200		
Proposed			\$500	\$500
	<u>Earth Disturbance Permit</u>		<u>Erosion & Sediment Control Permit</u>	
FEE TITLE AND RATE:		\$200		
Current		\$200		
Proposed			\$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 proposed fee of \$500 will cover anticipated costs for the processing of a permit application which is estimated at 25 man hours at a rate of \$20 per hour.

RECOMMENDATION AND COMMENT:

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

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Cristina J. Caputo

(DEPUTY ATTORNEY GENERAL)

1/19/99
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-332

DATE OF ADOPTION: _____

BY: *James M. Seif*

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

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

R. E. Grimaldi

BY:

1/21/99
DATE OF APPROVAL

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

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

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

25 Pa. Code, Chapter 102

Erosion and Sediment Control

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code, Chapter 102
Erosion and Sediment Control

Preamble

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapter 102 (relating to Erosion and Sediment Control). 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 October 21, 1997.

A. Effective Date

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

B. Contact Persons

For further information contact Kenneth F. Murin, Acting Chief, Technical Services Section, Division of Waterways, Wetlands, and Erosion Control, P. O. Box 8775, Rachel Carson State Office Building, Harrisburg, PA 17105-8775, (717) 787-6827, or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

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

D. Background and Purpose

The purpose of this proposal is to revise existing regulations found at Title 25, 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 and articulable Pennsylvania interest or required by state law; impose economic costs disproportionate to the environmental benefit; are prescriptive rather than performance-based; inhibit green technology and pollution prevention strategies; are obsolete or redundant; lack clarity; or are written in a way that causes significant noncompliance.

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

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

This proposed regulation has been developed with substantial input from the public and the regulated community. Initial drafts of the proposed revisions have been placed on the DEP 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 regulations were presented to the AAB on December 18, 1996, February 26, 1997, April 23, 1997, and June 25, 1997, and to AWQTAC on December 10, 1996, February 20, 1997, and April 17, 1997. Both committees raised comments and questions on a number of issues.

One issue the committees raised was how the regulations should identify when a sediment discharge is considered to be "pollution". Initial drafts proposed a definition of "sediment pollution" and suggested that such pollution could be prevented through the implementation and maintenance of BMPs. After several meetings and discussions, including a joint ad hoc committee meeting comprised of members from the two committees, the Department agreed that, although conceptually valid, attempting to define "sediment pollution" caused more confusion than it resolved, and did not simplify or clarify the regulations. Instead of defining "sediment pollution", the Department is now proposing to clarify the definition of BMPs to read "activities, facilities, measures or procedures used to minimize accelerated erosion and sedimentation to protect, maintain, and improve the quality of waters and the aquatic environment within the Commonwealth." Therefore, excess sedimentation of Commonwealth waters will be prevented through the proper development, implementation, and maintenance of BMPs. This concept will result in a realistic, attainable, and cost effective means of minimizing accelerated erosion and sedimentation while maintaining the Commonwealth's commitment to protect water quality and associated water resources.

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

In addition, the Department has been working with several groups of stakeholders in addressing the use of BMPs for timber harvesting and road maintenance activities. The Department supports the efforts of the Sustainable Forestry Initiative (SFI), and the Dirt and Gravel Road Task Force (DGRTF), in promoting, educating, and training persons conducting such activities to use BMP techniques and standards to minimize accelerated erosion and thereby enhance the quality of the Commonwealth's waters. After considering AWQTAC's comments, and the non-regulatory approaches of the SFI and DGRTF, the Department is proposing to continue the current regulatory framework that requires timber harvesting and road maintenance activities to complete an Erosion and Sediment Control Plan, and implement BMPs, but does not require them to obtain

a permit under Chapter 102 if such activities disturb less than 25 acres. An Erosion and Sediment Control Permit continues to be required for timber harvesting and road maintenance activities that disturb 25 acres or more. The Department concludes that timber harvesting and road maintenance activities conducted in accordance with appropriate BMPs, and pursuant to the requirements of Chapter 105, where applicable, will receive the environmental review necessary to protect the Commonwealth's water resources.

In another comment, the members of AWQTAC stated that the purpose of the Chapter 102 regulations is to protect water quality and aquatic resources, and recommended that the Department incorporate references to water quality protection in Sections 102.2 - Scope; 102.4 - General Requirements; 102.5 - Erosion and Sediment Control Plan; and 102.11 - General Requirements. The Department has incorporated references into these sections to address the importance of protecting water quality and aquatic resources.

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

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

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

E. Summary of Regulatory Requirements

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

- **SECTION 102.1. DEFINITIONS:** Changes to definitions have been incorporated to eliminate antiquated or redundant definitions and add or revise definitions to improve clarity and understanding.
 - a. New definitions are proposed for: Agricultural Plowing or Tilling, Best Management Practices, Collector, Designee, Disturbed Area, Erosion and Sediment Control Permit, Minimum Sediment Storage Elevation, Minimum Storage Elevation, National Pollutant Discharge Elimination System (NPDES), NPDES Permit for Stormwater Discharges Associated with Construction Activities, Notice of Intent, Outlet Structure, Project Site, Road Maintenance Activities, Timber Harvesting Activities, and Waters of the Commonwealth.
 - b. Revised definitions are proposed for: Accelerated Erosion, Department, Diversion, Earth Disturbance Activity, Erosion, Municipality, Person, Sediment, Sedimentation, and Stabilization.
 - c. Definitions proposed to be deleted are: Conservation Plan, Embankment or Fill, Excavation, Interceptor Channel, Land Developer, Land Development, and Subdivision.
- **SECTIONS 102.2 AND 102.3. SCOPE AND PURPOSE:** These Sections are revised to reflect the scope and purpose of the erosion and sediment control program and emphasize the program's focus on maintaining and improving water quality and the aquatic environment through the implementation of BMPs which minimize accelerated erosion from earth disturbance activities.
- **SECTION 102.4. GENERAL:**
 - a. The revisions to 102.4(a) incorporate new terms and set forth general requirements for erosion control from earth disturbance activities in the Commonwealth.
 - b. The revisions to §102.4(b) require a written erosion and sediment control plan for projects with one or more of the following characteristics:
 - the project would disturb 5,000 square feet or more;
 - the project is required to have an erosion and sediment control plan under Department regulations other than Chapter 102;

- the Department determines that the project may adversely impact waters of the Commonwealth; or
 - the project may discharge to High Quality or Exceptional Value waters.
- c. Section 102.4(c) is proposed to clarify that erosion and sediment control plans shall be available for review and inspection during all stages of the earth disturbance activity at the project site. This Section also clarifies the authority for the Department or its designee to request the submission of the plan for review if needed. These requirements were previously located in Section 102.4(a).
- d. For agricultural plowing or tilling activities, Section 102.4(d) is proposed to specify that the landowner, and any lessee, renter, tenant, or other land occupier are jointly and individually responsible for developing, implementing, and maintaining the erosion and sediment control plan. This section will eliminate the confusion that has occurred between landowners and tenant farmers in implementing the existing Section 102.4(b).

• **SECTION 102.5. EROSION AND SEDIMENT POLLUTION CONTROL PLANS:** Section 102.5(a) is revised to clarify that erosion and sediment control plans be in writing. Section 102.5(b) is proposed to be changed to more accurately reflect the long-standing definition of "Erosion and Sediment Control Plan" which requires the minimization of accelerated erosion. This section is also revised to clarify that topographic features, soil information, the characteristics of the earth disturbance activity (including the current and proposed land use), staging of best management practices, and the location and classification of all waters of the Commonwealth which will receive runoff from the project site, shall be considered in the design of the erosion and sediment control plan. In addition, where an earth disturbance activity may discharge to a High Quality or Exceptional Value water, the person proposing the activity shall consider utilizing special measures for the protection of these waters from degradation including: prolonged detention for sediment basins and traps, stream buffers, an accelerated stabilization schedule, and other appropriate measures. Section 102.5(c)(1) is added to specify that erosion and sediment control plans shall provide a detailed description of BMPs and other necessary measures to minimize accelerated erosion, as well as the methods for stabilizing the project. New Section (c)(2) is a revised version of a portion of existing Section 102.5(b)(8) and provides that a plan shall include a maintenance program for the BMPs. New Section (c)(3) is a revised version of a portion of existing Section 102.5(b)(8) which provides that the plan shall include a plan for the recycling or disposal of materials from the project site. Section (d) is added to address the special nature of agricultural plowing and tilling operations. This Section provides that a plan for such activities shall contain a detailed description of BMPs for such activities based upon land use, tillage systems, schedules, and cost-effective and technically practical conservation measures. Finally, a new subsection (e) is added to provide that the Department or its designee may require other information necessary to adequately review a plan.

• **SECTION 102.11 GENERAL REQUIREMENTS:** This Section is proposed to be amended to clarify the availability of alternative BMPs. The language in Subsection (a) providing for the minimization of accelerated erosion is clarified to be consistent with the long-standing

definition of “Erosion and Sediment Control Plan” and the newly added definition of “Best Management Practice”. In addition, a new subsection (b) has been added to specify that persons conducting earth disturbance activities must protect the existing and designated uses of the receiving waters specified in Chapter 93 by designing, implementing, and maintaining BMPs which ensure the protection of such uses.

- **SECTION 102.12. BEST MANAGEMENT PRACTICES**: This section has been revised to clarify the best management practices necessary for erosion and sediment control. The specific criteria in the existing Section 102.2 have been moved to Section 102.13.
- **SECTION 102.13. DESIGN CRITERIA FOR BEST MANAGEMENT PRACTICES**: This section provides general best management practice design criteria contained in existing Sections 102.12 and 102.13. The Department has revised technical requirements and combined specifications for channels and diversions, clarified requirements for sediment basins and outlet structures, added specific design requirements for sediment traps, and has included metric conversions for the design standards.
- **SECTIONS 102.21 - 102.24 . PERMANENT STABILIZATION**: These sections are under the existing heading “RESTORATION” which is proposed to be revised to read “PERMANENT STABILIZATION” to more accurately reflect the nature of these sections. Section 102.24 is revised to include language allowing for flexibility in the design and conversion of best management practices to function in other capacities after earth disturbance activities are completed.
- **SECTION 102.31. PERMIT REQUIREMENTS** : Revisions have been made to this Section to clarify permit requirements and to provide consistency with federal NPDES requirements for stormwater discharges associated with construction activity.
 - a. Section 102.31(a) is proposed to be revised to specify that a person who proposes an earth disturbance activity other than agricultural plowing or tilling, timber harvesting activities, or road maintenance activities, which involves 5 or more acres, or is on any portion, part, or stage of an earth disturbance activity of 5 acres or more, is required to obtain an NPDES individual permit, or coverage under the NPDES General Permit for Stormwater Discharges Associated with Construction Activity (PAG-2). This language integrates the NPDES permitting requirements of Chapter 92 with this Chapter, and is consistent with the federal requirement that stormwater discharges associated with construction activity, as defined in 40 CFR Section 122.26(b)(14)(x), are required to obtain an NPDES permit. Additionally, Section (a)(4) is removed to eliminate parceling because it is an inefficient approach to regulating earth disturbance activities in the course of larger land development projects and does not provide significant environmental benefit.
 - b. Existing Section 102.31(b) is moved to (e). A new Section (b) is proposed which continues the existing requirement that a person proposing timber harvesting or road maintenance activities consisting of 25 or more acres must obtain an Erosion and Sediment Control Permit.

- c. Existing Section (c) is moved to (f). A new Section 102.31(c) is added which provides that no additional erosion and sediment control or NPDES permits are needed if an earth disturbance activity is subject to a Department permit that includes an erosion and sediment control plan which satisfies the requirements of Section 102.5, and otherwise meets the requirements of this Chapter and Chapter 92. This provision is intended to avoid duplication in permitting where activities are authorized under a Department permit which satisfies the provisions of this Chapter and Chapter 92.
- d. A new Section (d) continues the permit exemption in existing Section 102.31(a)(1) for agricultural plowing or tilling activities.

- **SECTION 102.32. PERMIT APPLICATIONS AND FEES:** Changes are proposed to this Section to clarify permit application and fee requirements. Proposed Section 102.32(a) specifies that persons proposing earth disturbance activities which require Erosion and Sediment Control Permits must submit an application prior to the commencement of the activity which contains an erosion and sediment control plan meeting the requirements of Section 102.5, and an application fee of \$500. The new Section 102.32(b) provides that applications and Notices of Intent (NOIs) for activities requiring an NPDES permit for stormwater discharges associated with construction activity must be accompanied by an erosion and sediment control plan meeting the requirements of Section 102.5, and must be submitted in accordance with the applicable substantive and procedural requirements of Chapter 92, including any applicable fees. A new Section 102.32(c) provides that applications and NOIs for earth disturbance activities must be accompanied by a complete Pennsylvania Natural Diversity Inventory (PNDI) search form to determine impacts to Pennsylvania and federal endangered species and their habitat; if such species or their habitat may be impacted by the proposed activity, the applicant must ensure that such impact is prevented or eliminated.

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

- **SECTION 102.51. IMPLEMENTATION:** This Section is proposed to be deleted because it is outdated and unnecessary. This Section is outdated and unnecessary because it contains transitional requirements which were necessary when the regulations were first developed in 1972 and later revised in 1977, but are no longer applicable.

INTEGRATION WITH FEDERAL REQUIREMENTS - These proposed regulatory revisions continue a long-standing and effective program for erosion and sediment control in the Commonwealth. In 1992, pursuant to Section 402(p) of the federal Clean Water Act (CWA), 33 U.S.C. Section 1342(p), and regulations promulgated by EPA which are set forth at 40 CFR Part 122 (see, e.g. 55 Fed. Reg. 47990 (November 16, 1990)), the Department began to implement federal NPDES requirements for stormwater discharges associated with industrial activities. One category of stormwater discharges associated with industrial activities, stormwater discharges associated with construction activities (see 40 CFR Section 122.26(b)(14)(x)), was addressed by marrying that program with Chapter 92 and the current Chapter 102. EPA recognized the Commonwealth's approach as a national model. A major component of this approach involved the development of a General NPDES permit (PAG-2) for many of these activities which was published in the *Pennsylvania Bulletin* on October 10, 1992 (22 Pa.B. 5063). These regulatory revisions are a more formal integration of these programs.

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

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

F. Benefits, Costs and Compliance

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

Benefits

Overall, the citizens of the Commonwealth will benefit from these recommended changes because protection to Waters of the Commonwealth will continue to be provided from the effects of accelerated erosion and sedimentation. Special provisions for the protection of endangered species and High Quality and Exceptional Value waters are provided. The regulated community is expected to benefit from these regulatory revisions through the streamlining and clarification of certain permit application and plan review requirements, and clearer and more flexible performance based BMPs and other regulatory provisions. Also,

these regulatory revisions are beneficial because they continue to support the delegation of the erosion and sediment control program to local county conservation districts; it has been estimated that the Commonwealth saves \$4.5 million annually in reduced costs of administration through the delegation of this program to the county conservation districts.

Compliance Costs

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

Compliance Assistance Plan

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

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

The Department assists the regulated community with compliance by its development of standard checklists, worksheets and permit review letters to aid plan preparers in developing sound pollution prevention plans. The Department also assists compliance by assuring that Department and district reviews are timely, effective, and consistent. Finally, the regulations incorporate a performance based approach which allows persons conducting earth disturbance

broad latitude and flexibility in designing BMPs to achieve compliance. Compliance is assisted by the allowance of a variety of approaches to achieve compliance without specifying exactly how compliance is to be attained.

Paperwork Requirements

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

G. Pollution Prevention

Pollution prevention approaches to environmental management often provide environmentally sound and longer-term solutions to environmental protection because pollution is prevented at the source. Pollution prevention is defined by the 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; however, 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, Sections 102.2 and 102.3 generally provide a pollution prevention approach by requiring

that BMPs for earth disturbance activities minimize accelerated erosion and sedimentation in order to protect, maintain, and improve water quality and the aquatic environment, thereby preventing pollution. Second, more specifically, Section 102.5(b)(6) requires that persons proposing an earth disturbance activity which may result in a discharge to a High Quality or Exceptional Value water must consider measures such as prolonged sediment detention, stream buffers, an accelerated stabilization schedule, and other appropriate measures to maintain and protect the water from degradation in developing an erosion and sediment control plan. The prevention of degradation is the prevention of pollution. Third, A new Section 102.5(c)(3) is added which requires that Erosion and Sediment Control Plans must contain a plan for the recycling or disposal of materials from the project site. The existing regulation at Section 102.5(b)(8) only addresses disposal. Finally, Section 102.11(b) provides that earth disturbance activities must protect designated and existing uses set forth in Chapter 93. Two of the uses in that Chapter are High Quality Waters and Exceptional Value Waters, which must be protected from degradation in accordance with Chapters 93 and 95, and the federal regulation at 40 CFR Section 131.32.

H. 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.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Department submitted a copy of the proposed rulemaking 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 addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request. If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

J. Public Comments

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

publication in the Pennsylvania Bulletin). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

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

K. Public Hearings

The Environmental Quality Board recommends holding 3 public hearings for the purpose of accepting comments on the proposal. They will be held at 3:00 p.m. on the following dates:

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

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

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Kate Coleman directly at 717-787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

BY:

JAMES M. SEIF
Chairman
Environmental Quality Board



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
January 20, 1998**

The Secretary

**Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101**

RE: Proposed Rulemaking: Chapter 102 - Erosion and Sediment Control (#7-332)

Dear Bob:

Enclosed is a copy of a proposed regulation for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act. Section 5(b)(3) of the Act provides that the Commission shall have 30 calendar days from the closing date of the public comment period to notify the Department of any objections.

The Department of Environmental Protection will provide the Commission with any assistance it may require to facilitate the review of this proposed regulation. If you have any questions regarding this proposal, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

**James M. Seif
Secretary**

Enclosure

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

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GENERAL PROVISIONS

§ 102.1. Definitions.

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

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

AGRICULTURAL PLOWING OR TILLING—EARTH DISTURBANCE ACTIVITY FOR THE PRODUCTION OF AGRICULTURAL CROPS.

BEST MANAGEMENT PRACTICES (BMPs)—ACTIVITIES, FACILITIES, MEASURES, OR PROCEDURES USED TO MINIMIZE ACCELERATED EROSION AND SEDIMENTATION TO PROTECT, MAINTAIN AND IMPROVE THE QUALITY OF WATERS AND THE AQUATIC ENVIRONMENT WITHIN THIS COMMONWEALTH.

COLLECTOR—A FACILITY, INCLUDING A CHANNEL, DIKE, OR OTHER CONVEYANCE, CONSTRUCTED DOWNSLOPE OF AN EARTH DISTURBANCE ACTIVITY FOR THE PURPOSE OF COLLECTING RUNOFF FROM AN EXISTING OR PROPOSED DISTURBED AREA.

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

Department—The Department of Environmental [Resources] PROTECTION of the Commonwealth.

DESIGNEE—A CONSERVATION DISTRICT, OR OTHER LOCAL GOVERNING BODY, DELEGATED THE AUTHORITY UNDER A DELEGATION AGREEMENT EXECUTED BY THE DEPARTMENT TO ADMINISTER AND ENFORCE ALL OR A PORTION OF THE EROSION AND SEDIMENT CONTROL PROGRAM IN THE COMMONWEALTH.

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.

DISTURBED AREA—LAND SUBJECT TO AN EARTH DISTURBANCE ACTIVITY.

Earth[moving] DISTURBANCE activity—A construction or other HUMAN activity which disturbs the surface of the land, including, but not limited to, CLEARING, GRUBBING, GRADING, excavations, embankments, land development, [subdivision development,] AGRICULTURAL PLOWING OR TILLING, TIMBER HARVESTING ACTIVITIES, ROAD MAINTENANCE ACTIVITIES, mineral extraction, and the moving, depositing, STOCKPILING, or storing of soil, rock or earth MATERIALS.

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

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

EROSION AND SEDIMENT CONTROL PERMIT—A PERMIT REQUIRED FOR EARTH DISTURBANCE ACTIVITIES, EXCEPT ACTIVITIES THAT REQUIRE AN NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

Erosion and Sediment[ation] Control Plan—A SITE-SPECIFIC plan [which is designed] IDENTIFYING BEST MANAGEMENT PRACTICES OR OTHER SITE-SPECIFIC PRACTICES to minimize accelerated erosion and sedimentation.

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

[Interceptor channel—A channel or dike constructed across a slope for the purpose of intercepting 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.

Municipality—INCLUDES ANY [A] county, city, borough, town, township, school district, institution or authority created by any one or more of the foregoing. For purposes of this definition, town shall include an incorporated town.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM ("NPDES")—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 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES—A PERMIT REQUIRED FOR THE DISCHARGE OF STORMWATER FROM CONSTRUCTION ACTIVITIES INCLUDING CLEARING, GRUBBING, GRADING, AND EXCAVATION ACTIVITIES INVOLVING 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.

NOTICE OF INTENT ("NOI")—A REQUEST, ON A FORM PROVIDED BY THE DEPARTMENT OR ITS DESIGNEE, FOR COVERAGE UNDER A GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES.

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

Person—INCLUDES ANY [A] natural person, partnership, association or corporation[.] OR ANY AGENCY, INSTRUMENTALITY, OR ENTITY OF FEDERAL OR STATE GOVERNMENT, INCLUDING A MUNICIPALITY.

PROJECT SITE—THE ENTIRE AREA OF ACTIVITY, DEVELOPMENT, OR SALE INCLUDING THE DISTURBED AREA, ANY AREA PLANNED TO BE DISTURBED, AND ANY OTHER AREAS WHICH ARE NOT DISTURBED.

ROAD MAINTENANCE ACTIVITIES—EARTH DISTURBANCE ACTIVITIES SUCH AS REPAIRING UNPAVED ROAD SURFACES, GRADING, CUTTING ROAD BANKS, CLEANING OR CLEARING DRAINAGE DITCHES, AND OTHER SIMILAR ACTIVITIES.

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

Sedimentation—The ACTION OR process [by which sediment is deposited on stream bottoms.] OF FORMING OR DEPOSITING SEDIMENT IN WATERS OF THE COMMONWEALTH.

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 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.

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 ALL PERSONS PROPOSING OR CONDUCTING EARTH DISTURBANCE ACTIVITIES TO PLAN, IMPLEMENT, AND MAINTAIN BEST MANAGEMENT PRACTICES TO MINIMIZE ACCELERATED EROSION AND SEDIMENTATION IN ORDER TO PROTECT, MAINTAIN, AND IMPROVE WATER QUALITY AND THE AQUATIC ENVIRONMENT.

§ 102.3. Purpose.

This chapter REQUIRES ALL PERSONS PROPOSING OR CONDUCTING EARTH DISTURBANCE ACTIVITIES TO [controls] MINIMIZE accelerated erosion and the resulting sedimentation of waters of [this] THE Commonwealth, thereby preventing the pollution of these waters from sediment and from fertilizers, pesticides and other polluting substances carried by sediment.

§ 102.4. General.

(a) [Earthmoving activities within this Commonwealth shall be conducted in such a way as to prevent accelerated erosion and the resulting sedimentation. To accomplish this, except as provided in subsection (b), a] A [landowner,] person [or municipality] engaged in earth[moving] DISTURBANCE activities shall develop, implement, and maintain erosion and sediment[ation] control [measures] BEST MANAGEMENT PRACTICES 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 ITS DESIGNEE MAY REQUEST THAT THE PLAN BE SUBMITTED FOR REVIEW AND APPROVAL.

[(b)] (d) In the case of agricultural plowing [and] OR tilling, the landowner, AND ANY LESSEE, RENTER, TENANT OR OTHER LAND OCCUPIER, shall be JOINTLY AND INDIVIDUALLY responsible for developing, [and] implementing, AND MAINTAINING the erosion and [sedimentation] SEDIMENT control plan REQUIRED UNDER § 102.5(d). [The landowner may delegate his obligation to implement the plan or parts thereof, by written agreement, to a tenant or lessee. If an agreement exists, the tenant or lessee shall be responsible for implementing those provisions delegated under the agreement.]

§ 102.5. Erosion and sediment[ation] control plan.

(a) The erosion and sediment[ation] control plan shall be prepared IN WRITING by a person trained and experienced in erosion and sediment[ation] control methods and techniques.

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

(1) The EXISTING topographic features of the project [area] SITE AND THE IMMEDIATE SURROUNDING AREA ;

- (2) The types, depth, slope, [and areal extent] LOCATIONS AND LIMITATIONS of the soils[.];
- (3) The CHARACTERISTICS OF THE EARTH DISTURBANCE ACTIVITY, INCLUDING THE CURRENT AND PROPOSED LAND USE AND THE proposed alteration to the area[.];
- (4) The amount of runoff from the project area and the upstream watershed area[.];
- (5) The staging of [earthmoving] BEST MANAGEMENT PRACTICE INSTALLATION AND REMOVAL, PRIOR TO, DURING, AND AFTER EARTH DISTURBANCE activities[.]; AND
 - [(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 THE COMMONWEALTH WHICH MAY RECEIVE RUNOFF FROM THE PROJECT SITE AND THEIR CLASSIFICATION PURSUANT TO CHAPTER 93 OF THIS TITLE. 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 BEST MANAGEMENT PRACTICES 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 BEST MANAGEMENT PRACTICES; AND
 - (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 BEST MANAGEMENT PRACTICES INCLUDING TILLAGE SYSTEMS, SCHEDULES, AND COST EFFECTIVE AND TECHNICALLY PRACTICAL CONSERVATION MEASURES.

(e) THE DEPARTMENT OR ITS DESIGNEE MAY REQUIRE OTHER INFORMATION NECESSARY TO ADEQUATELY REVIEW A PLAN.

EROSION AND SEDIMENT[ATION] CONTROL [MEASURES AND FACILITIES] BEST MANAGEMENT PRACTICES

§ 102.11. General requirements.

(a) The erosion and sediment[ation] control [facilities] BEST MANAGEMENT PRACTICES set forth in §§ 102.12 and 102.13 (relating to [control measures; and control facilities]) BEST MANAGEMENT PRACTICES AND DESIGN CRITERIA FOR BEST MANAGEMENT PRACTICES) shall be appropriately incorporated into ALL earth[moving] DISTURBANCE activities unless the designer of the erosion and sediment[ation] control plan shows that alteration of these [measures and facilities] BEST MANAGEMENT PRACTICES 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 BEST MANAGEMENT PRACTICES, AND OTHER SOUND CONSERVATION AND ENGINEERING PRACTICES TO ENSURE PROTECTION OF SUCH USES.

§ 102.12. [Control measures.] BEST MANAGEMENT PRACTICES.

BEST MANAGEMENT PRACTICES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(a) Limiting exposed areas. Earth[moving] DISTURBANCE activities shall be planned AND CONDUCTED in such a manner as to minimize the [areal] extent AND DURATION of disturbed land.

(b) Surface water diversion. Surface water shall be diverted [away from] AROUND OR THROUGH the project [area] SITE AND DISTURBED AREAS.

(c) 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) 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) [*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) *(f)* [*Solids separation*.] 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 BEST MANAGEMENT PRACTICES.

(a) *Diversion*[*terrace*]*s*, COLLECTORS AND CHANNELS. [The following applies to diversion terraces:]

(1) TEMPORARY OR PERMANENT Diversion [terraces] shall be constructed up[-grade]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) 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 BEST MANAGEMENT PRACTICES, 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 BEST MANAGEMENT PRACTICES 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.

[(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.

(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.

(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.]

(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) 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).

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

(1) A sediment[ation] basin shall have [a capacity of 7] 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) 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 sediment[ation] 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) Sediment[ation] 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 ET SEQ) 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.

[RESTORATION] PERMANENT STABILIZATION

§ 102.21. [Applicability] RESERVED.

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

§ 102.22. PERMANENT Stabilization.

[Upon completion of the project] IN ACCORDANCE WITH § 102.12 (d), ALL DISTURBED areas [disturbed by the project] shall be PERMANENTLY stabilized so that accelerated erosion AND SEDIMENTATION SHALL BE MINIMIZED [shall be prevented.] 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:

(a) A MINIMUM OF 70% PERENNIAL VEGETATIVE COVER OF UNIFORM COVERAGE AND DENSITY; OR

(b) AN ACCEPTABLE BEST MANAGEMENT PRACTICE WHICH PERMANENTLY MINIMIZES ACCELERATED EROSION.

§ 102.23. [Interim control measures] TEMPORARY BEST MANAGEMENT PRACTICES.

[An e] Erosion and sediment[ation] control [facility] BEST MANAGEMENT PRACTICES required or necessary to protect areas AND RECEIVING WATERS from erosion AND SEDIMENTATION [during the stabilization period] shall be maintained until THE PERMANENT stabilization is completed.

§ 102.24. [Final measures] REMOVAL OF BEST MANAGEMENT PRACTICES.

Upon completion of PERMANENT stabilization, ALL [unnecessary or unusable control facilities] TEMPORARY BEST MANAGEMENT PRACTICES shall be removed, AND the areas shall be graded and [the soils shall be] stabilized[.], UNLESS OTHERWISE AUTHORIZED BY THE DEPARTMENT OR ITS DESIGNEE.

PERMITS [AND PLANS]

§ 102.31. Permit requirements.

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

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

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

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

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

(a) A PERSON WHO PROPOSES AN EARTH DISTURBANCE ACTIVITY OTHER THAN AGRICULTURAL PLOWING OR TILLING, TIMBER HARVESTING ACTIVITIES, OR ROAD MAINTENANCE ACTIVITIES, SHALL OBTAIN A GENERAL OR INDIVIDUAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH A CONSTRUCTION ACTIVITY, 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 § 102.5, 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)] (e) The Department, after publication in the *Pennsylvania Bulletin*, may reduce the acreage limitation set forth in [sub]sectionS 102.1 AND 102.31 [(a)(3) or (4)] 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.

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

§ 102.32. [Application for p]Permit APPLICATIONS AND FEES.

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

[(a)] (1) [Applications for permits shall be submitted by the] A person [or municipality undertaking] WHO PROPOSES THE [the earthmoving] activity SHALL APPLY FOR A PERMIT PRIOR TO THE COMMENCEMENT OF THE ACTIVITY; [In the case of land development, the application shall be submitted by the land developer rather than the contractor or agent.]

[(b)] (2) Applications shall be accompanied by an erosion and sediment[ation] control plan MEETING THE REQUIREMENTS OF § 102.5; and [other documents the Department may require.]

[(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; AND

(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.

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

§ 102.41. Administration by local governing bodies.

(a) The Department may, at its discretion, delegate BY WRITTEN AGREEMENT the administration and enforcement of this chapter to [counties,] CONSERVATION DISTRICTS, [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.] OR OTHER LOCAL GOVERNING BODIES PROVIDED THAT THEY HAVE ADEQUATE AND QUALIFIED STAFF, AND ARE IMPLEMENTING THE PROGRAM IDENTIFIED IN THE DELEGATION AGREEMENT.

(b) [An acceptable plan shall include adequate and qualified staff for the review of erosion and sediment control plans and for the surveillance and enforcement of the provisions of this chapter.] An acceptable [plan] PROGRAM shall have the concurrence and approval of the [commissioners] GOVERNING BODY of the county in which the local unit of government OR CONSERVATION DISTRICT operates.

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

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

A [local governing body] MUNICIPALITY OR COUNTY which issues building OR OTHER permits shall notify the Department or its designee [immediately upon] WITHIN 5 DAYS OF receipt of an application for [a building, the] A permit involving an [earthmoving] activity [which affects] CONSISTING OF 5 acres (2 HECTARES) or more of land.

§ 102.43. Withholding [building] permits.

A [local governing body] MUNICIPALITY OR COUNTY may not issue a building OR OTHER permit to those [engaged in earthmoving] PROPOSING OR ENGAGING IN EARTH DISTURBANCE activities requiring a Department permit until the Department OR ITS DESIGNEE has issued the EROSION AND SEDIMENT CONTROL OR INDIVIDUAL NPDES permit, OR APPROVED COVERAGE UNDER THE GENERAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES PURSUANT TO [under] §§ 102.31 and 102.32 (relating to permit requirements; [and] PERMIT applicationS; [for permit] 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.]

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-332
 SUBJECT: Erosion and Sediment Control
 AGENCY: Environmental Resources

RECEIVED
 98 JAN 20 PM 3: 27
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

TYPE OF REGULATION

- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>1/20/98</u>	<u>Kou Comp</u>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>1/20/98</u>	<u>Shantya Mickle</u>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>1/20/98</u>	<u>Ken E Garner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
<u>1/29/98</u>	<u>Cynthia Lee</u>	LEGISLATIVE REFERENCE BUREAU

January 9, 1998