



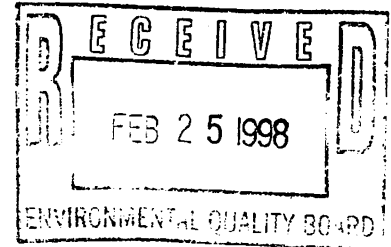
## NORTH WHITEHALL TOWNSHIP ZONING OFFICE

3256 Levans Road  
Coplay, PA 18037

(610) 799-3411  
FAX (610) 799-9629

96 MAR -9 PM 12:48

RECEIVED  
REVIEW COMMISSION



February 23, 1998

Environmental Quality Board  
P.O. Box 8447  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

RE: Summary of Comments for the Proposed Rulemaking- Erosion and Sediment Control

Dear Board Members:

In response to your request for public comment on the above mentioned proposed rulemaking, please be advised of the following comments:

1) As the Zoning and Code Enforcement Officer of North Whitehall and a previous erosion and sediment control technician for seven years for Lehigh County Conservation District, I have had the advantage of seeing both sides of the so called "silt fence" when it comes to erosion control regulations being enforced at the local level. My first comment is -- if you are going to rely on the definitions (as stated in Section 102.1) of "Land Developer, Land Development and Subdivision" as proposed in the rulemaking, they must coincide be consistent or even be identical with the definitions found in the Pennsylvania Municipalities Planning Code to be enforceable. These definitions have been defined through case law by the PA Commonwealth Court. Why should we create more appealable actions for our overburden court system?

2) In Section 102.4, limiting the amount of earth disturbance activity to 5000 sq. ft for a the development of an erosion and sediment (E&S) control plan is an excellent method of defining what is reasonable for the development of an E&S plan except when steep slopes are involved. A 15% slope requirement would seem reasonable to incorporate within this proposed regulation. Many municipalities have steep slope ordinances which would contradict this new provision. The board must consider slope restrictions otherwise municipalities will spend thousands of dollars wasting taxpayers time and money revising slope ordinances to reflect this proposed change and rendering their existing steep slope ordinances unenforceable. Also, it is a scientific fact that accelerated erosion will be worse when human activity disturbs steep slopes, regardless of the size of the proposed earth disturbance by man. This is why we must have an erosion control plan developed when steep slopes are involved.

3) Section 102.42, the proposed rulemaking requires municipalities to notify the Departments designee (usually the conservation districts) when issuing building permits for projects over five acres. This is a good ruling, but what kind of support can we expect from the designee? Model ordinances, seminars, etc. must be incorporated into the funding to teach municipalities

the importance of this regulation.

4) Lastly, 102.43, the use of the word "may" should be changed to "shall" if you are going to give your designee the authority to enforce this proposed ruling otherwise some municipalities are going to do an about face when helping to enforce these regulations.

Thank you for your time and consideration on these important issues.

Respectfully,

A handwritten signature in cursive script that reads "Michael Siegel".

Michael Siegel  
Zoning and Codes Enforcement Officer



## NORTH WHITEHALL TOWNSHIP ZONING OFFICE

3256 Levans Road  
Coplay, PA 18037

ORIGINAL: 1921

COPIES: Tyrrell

Wilmarth, Sandusky, Legal (2)

(610) 799-3411

FAX (610) 799-9629

11/12/08

In response to your request for public comment on the above mentioned proposed rulemaking, please be advised of the following comments:

1) As the Zoning and Code Enforcement Officer of North Whitehall and a previous erosion and sediment control technician for seven years for Lehigh County Conservation District, I have had the advantage of seeing both sides of the so called "silt fence" when it comes to erosion control regulations being enforced at the local level. My first comment is -- if you are going to rely on the definitions (as stated in Section 102.1) of "Land Developer, Land Development and Subdivision" as proposed in the rulemaking, they must be consistent or even be identical with the definitions found in the Pennsylvania Municipalities Planning Code to be enforceable. These definitions have been defined through case law by the PA Commonwealth Court. Why should we create more appealable actions for our overburden court system?

2) In Section 102.4, limiting the amount of earth disturbance activity to 5000 sq. ft for a the development of an erosion and sediment (E&S) control plan is an excellent method of defining what is reasonable for the development of an E&S plan except when steep slopes are involved. A 15% slope requirement would seem reasonable to incorporate within this proposed regulation. **Many municipalities have steep slope ordinances which would contradict this new provision. The board must consider slope restrictions otherwise municipalities will spend thousands of dollars wasting taxpayers time and money revising slope ordinances to reflect this proposed change and rendering their existing steep slope ordinances unenforceable. Also, it is a scientific fact that accelerated erosion will be worse when human activity disturbs steep slopes, regardless of the size of the proposed earth disturbance by man. This is why we must have an erosion control plan developed when steep slopes are involved.**

3) Section 102.42, the proposed rulemaking requires municipalities to notify the Departments designee (usually the conservation districts) when issuing building permits for projects over five acres. This is a good ruling, but what kind of support can we expect from the designee? Model ordinances, seminars, etc. must be incorporated into the funding to teach municipalities the importance of this regulation.

4) Lastly, 102.43, the use of the word "may" should be changed to "shall" if you are going to give your designee the authority to enforce this proposed ruling otherwise some municipalities are going to do an about face when helping to enforce these regulations.

Respectfully,

Michael Siegel  
North Whitehall Township Zoning and Codes Enforcement Officer

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

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

RECEIVED  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
HARRISBURG, PA  
JUN 11 1985

Brent Hilderbrand  
Butler County Conservation District  
122 McCune Drive  
Butler PA 16001-6501



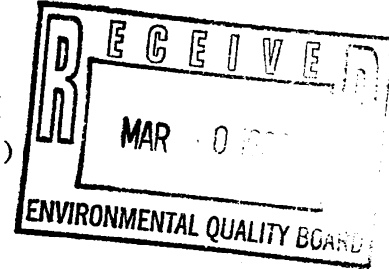
# Lehigh County Conservation District

Lehigh County Agricultural Center, Suite 102  
4184 Dorney Park Road, Allentown, PA 18104 - 5728  
Telephone (610) 391-9583  
FAX (610) 391-1131

March 25, 1998

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17101-2301

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



RE: Proposed Amendments to Chapter 102.

Dear Board Members:

The Lehigh County Conservation District appreciates the opportunity to comment on the proposed amendments to Chapter 102. Our comments are as follows:

## Definitions

**Collector:** the definition needs to add that such a facility should also convey runoff to a proper sediment removal facility.

**Earth Disturbance:** As defined will "clearing" include the removal of vegetative cover without earth disturbance? Is this what is really intended??

**Erosion and Sediment Control Permit:** Are these new permits that must be issued for earth disturbance activities not requiring an NPDES permit? Or are these approved Erosion and Sediment Control Plans?

**Minimum Sediment Storage Elevation & Minimum Storage Elevation:** What are the maximum elevations? Why use the word "minimum"?

**Outlet Structure:** Could this structure be renamed as to not confuse it with the riser pipe of a trap or basin? Possibly call it an energy dissipator.

**Stabilization:** "Grading, compacting, and constructing" alone are not proper stabilization techniques. These should include the lining or covering of soil, rock, or earth.

**102.4 General (b)(4):** Who will decide if a discharge to the waters of the Commonwealth may be possible? Will this be DEP/District staff or the landowner/earthmover?

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

102.11 (a) These alternative controls or BMP's shown to be as effective or more effective than the standard controls or BMP's in preventing accelerated erosion and sedimentation.

102.12(2) This section could be made clearer by defining "surface water" as offsite surface water and stating the need to keep this water from diverting through the project site.

102.13(a) Why is the term collectors used with respect to this section? The new definitions already stated a collector is "constructed as a part of an earthmoving activity for the purpose of collecting runoff from a proposed disturbed area". Isn't a diversion constructed upslope of a proposed area?

102.13(a)(2) What about the outlet locations and velocities for these diversions? For example, will it now be possible to divert water through a diversion channel with unlimited velocities any place the earthmover feeds?

102.13 (a)(7) This 2 feet per second or less requirement apply to "bare earth" channel conditions only.

102.13(b) "Outlet structures" – Would this include structures in sediment traps as well? Again, wouldn't the term "energy dissipating structure" be confusing for this type of structure?

102.13( c)(4) What are the other approved alternatives for outletting a sediment basin? Should this decision be made by the plan preparer or District staff? This vague description will make regulating sediment basin outletting very difficult.

102.13(d)(4)&(5) Does this apply to embankment outletting as well?

102.13(d)(6) Again, what are the other approved alternatives for outletting a sediment trap? Should this decision be made by the plan preparer or District staff? This vague description will make regulating sediment trap outletting locations very difficult.

In the current Chapter 102 Rules and Regulations, there are (3) types of surface water conveyance systems as we understand it. They are:

- a. diversion terraces/berms – these divert runoff around the project area.
- b. channels of conveyance – these convey runoff through or from a project area.
- c. Interceptors – these collect "dirty" runoff from disturbed areas within the project and convey it to a sediment retention structure.

Chapter 102 changes only includes two(2) types of water conveyance  
proposed changes no longer allows for or defines a channel for the  
veying "clean" runoff through and from a project area. If the new  
annels are intended to replace the previous interceptor channels, it needs to  
definition that these "collectors" must discharge to a proper sediment

If you have any questions regarding our comments, please contact us at the above phone  
number.

R  


D  
r  
c  
r, PA DEP



Environmental Quality Board

p.o. box 8477 · harrisburg, pa. 17105

(717) 787-4526

March 4, 1998

ORIGINAL  
COPY

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown #2  
333 Market Street  
Harrisburg, PA 17120

Re: Proposed Rulemaking - Chapter 102 - Erosion and Sediment Control (#)

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the proposed rulemaking from the following:

1. Mr. Michael Siegel, North Whitehall Township Zoning Office

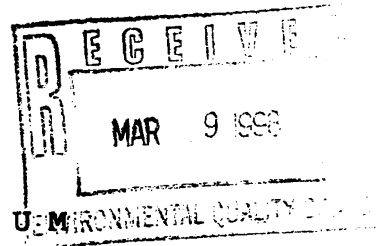
These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

Sharon K. Freeman  
Regulatory Coordinator

Enclosure





98 MAR 17 11:41 AM  
DELAWARE COUNTY  
REVIEW COMMISSION

INTER OFFICE MEMORANDUM ENVIRONMENTAL QUALITY BOARD

Date: 09-Mar-1998 09:18am EST  
From: Delaware Conservation District  
DELAWARE CONSERVATION  
Dept: Non-DER Users  
Tel No: (610) 892-9484

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

TO: 12 addressees

Subject: Chapter 102 Revision - Comments

Department of Environmental Protection  
EMMagargee@aol.com  
Environmental Quality Board  
District  
25 Pa. Code, Chapter 102  
Erosion and Sediment Control

E-Mail Address :  
Delaware County Conservation  
Rose Tree Park Hunt Club  
1521 N. Providence Road  
Media, PA 19063

REVIEW COMMENTS PREPARED BY EDWARD M. MAGARGEE OF THE DELAWARE COUNTY CONSERVATION

DEFINITIONS

Agricultural plowing or tilling : The term production does not lead to a clear definition. Substitute : Preparation of the soil for planting of Agricultural Crops.

BMP'S : I recommend placing a period after the word sedimentation. Then the following should be added:  
For the purpose of protecting, maintaining, and improving

Collector : The definition is incomplete. Please add the following : , and directing it to facilities for sediment retention.

Earth Disturbance : The State by policy and directives never considered clearing as earthmoving prior to this revision. I believe a definition for clearing should be provided. Is mowing an overgrown field, is the application of herbicide, or the harvesting of crops now to be considered an earth disturbance.

Erosion and Sediment Control Plan : The definition needs to include why a plan would be needed or required such as : . During the duration of the earth disturbance activity.

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

Outlet Structure : If we are going to refer to energy dissipaters as outlet

structures we need to revise or change what we currently refer to as an outlet structure; the riser which controls the outlet from the sediment basin. This created a great deal of confusion for me when attempting to follow the revised regulations.

Road Maintenance Activities : This definition should include the notion that this definition refers to existing roadways and existing road cross sections.

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

#### REGULATIONS

102.4 GENERAL (b) (4) - Does this section exclude projects in High Quality (HQ) and Exceptional Value (EV) Watersheds from the 5,000 sf E&S plan exemption, or must someone in DEP determine whether or not a discharge is possible.

102.5 (5) - In order to properly prepare and review an Erosion and Sediment Control Plan the plan must illustrate the sequence of construction and earth disturbance. Example : If the plan illustrates the site being contained by collectors channels and a sediment basin, but the first item of construction is a stormsewer system which does not discharge to the Sediment Basin. The E&S plan will not be effective. The plan must be more than an outline for BMP installation.

102.5 (6) - " SHALL CONSIDER" is a term that is not regulatory. Shall consider is a thought process that may not include water quality considerations. What must an individual do as a minimum if they plan to conduct earth disturbance in a HQ or EV watershed? Is it required that a individual disturbing earth in a HQ or EV Watershed provide B.M.P.'s that are better than the standard controls or minimum standards.

102.5 (6) (C) (3) - RECYCLING PLAN : This requirement while maybe a wise-conservation type idea just does not need to be made part of the Erosion and Sediment Control Plan. The Erosion and Sediment Control planning process is already encumbered with the following :

P.P.C. - Preparedness Prevention and Contingency Plan

P.N.D.I. - Pennsylvania Natural Diversity Inventory

Cultural Resources Determinations

N.P.D.E.S. - National Pollution Discharge Elimination System

102.5 (6) (C) (1) : This section should be expanded to include the requirement that an E&S plan must illustrate current site conditions, and the proposed land cover and facilities planned for the site. Simply illustrating BMP will not produce an adequate E&S plan.

102.5 (6) (e) : Finally the word require, but even it is diluted by adding the

word (may).

102.11 General Requirements (a) : Need to add that the alternative control must minimize accelerated erosion and sedimentation in a manner equal to or better than the standard control.

102.11 (b) : This paragraph does not require anything different than implementation of Chapter 102 - Erosion Control, thus it appears redundant and unnecessary.

102.12 (5) : Temporary stabilization ( the 20 day rule ) must incorporate the term anticipated, planned , or forecast non-disturbance for 20 days or more. The regulation as drafted still permits the earthmovers to wait 20 days before stabilization.

102.13 (a) : A comma is needed between Diversion and Collectors

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

102.13 (b)(2) : 3 f.p.s. Requirement should be based on the temporary condition - velocity for vegetated channels.

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

102.13 ( c ) (3) : All energy dissipators will pass 2 c.f.s. per acre. This is where the confusion over the dual use of the term Outlet Structure arises. The regulation needs to address the passing of the 2 c.f.s. per acre through a combination of the Emergency Spillway and the Principal Spillway (Riser).

102.13 ( c ) (3)(iii) : A minimum capacity for the Emergency Spillway requirement should be added. This is important, because in the majority of cases all or most of the required 2 c.f.s. per acre is discharged via the riser.

102.13 (c) (3) ( Other ) : The following additional requirements should be added.

1. Dewatering should occur in not less than 2 days or more than 7 days.
2. The Emergency Spillway invert should be 0.5 feet above the Minimum Storage Elevation.
3. 2 Feet of Freeboard should be provided above the 2 c.f.s. Per acre elevation, and the top of berm.
4. There are many others existing requirements that could also be added.

102.13 ( c ) (4) : The phrase "Approved Alternative" should further note that approval refers to the Department or its designee.

102.13 (d)(4) : Does this now mean that embankment type traps must provide 1.5 c.f.s. calculations, and also provide a foot of freeboard above this elevation.

102.13 (d) (6) : The phrase Approved Alternative should further note that approval refers to the Department or its designee.

Sincerely,

Edward M. Magargee,  
Conservation District Manager



Environmental Quality Board

p.o. box 8477 - harrisburg, pa. 17105-8477 (717) 787-4526

March 12, 1998

RECEIVED  
GENERAL  
MARCH 17 11:11  
INDEPENDENT REGULATORY REVIEW COMMISSION

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown #2  
333 Market Street  
Harrisburg, PA 17120

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

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

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from the following:

1. Mr. Edward M. Magargee, Delaware County Conservation District

These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Sharon K. Freeman".

Sharon K. Freeman  
Regulatory Coordinator

Enclosure



**Builders  
Association**  
of Metropolitan Pittsburgh

Home Builders Association of Westmoreland County  
Women's Council  
Remodelors Council

116 Federal Street  
Suite 310  
Pittsburgh, PA 15212  
412 231-8111  
Fax 412 231-8135

93  
WA

FD  
M: 35  
REGULATORY  
MISSION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

**ORAL TESTIMONEY  
BEFORE THE  
ENVIRONMENTAL QUALITY HEARING BOARD**

**CONCERNING PROPOSED REGULATIONS:  
TITLE 25. ENVIRONMENTAL PROTECTION  
CHAPTER 102. EROSION AND SEDIMENT CONTROL**

**PROVIDED BY:  
AL THOMSON, IV**

**CHAIRMAN, LAND DEVELOPERS COMMITTEE  
PENNSYLVANIA BUILDERS ASSOCIATION  
&  
BUILDERS ASSOCIATION  
METROPOLITAN PITTSBURGH**

**March 11, 1998  
SLIPPERY ROCK UNIVERSITY**

Good afternoon, my name is Al Thomson IV; I am Chairman of the Land Developer's Committees for the Pennsylvania Builders Association and the Builders Association of Metropolitan Pittsburgh. I'd like to thank you for this opportunity to come before you today and comment on the proposed amendments to Title 25, Chapter 102 of the Pennsylvania Code on Environmental Protection, regulating Erosion and Sedimentation Control. My comments are of a general nature with the understanding that our state association will be submitting alternative, technical recommendations before the end of the public comment period.

As you know Executive Order 1996-1 titled Regulatory Review and Streamlining initiated this regulatory review. As a member of the regulated community, we are pleased to be a part of the process and look forward to a continued and meaningful dialogue, as the regulations are revised to achieve a balance between the benefit of the regulation with the economic impact of compliance.

If I may, there are a few issues I would like to comment on as they relate to my business and the other 1400 small businesses and members of the Builders Association of Metropolitan Pittsburgh.

The first issue deals with the disturbance threshold for when a written plan must be prepared §102.4 (b) (1). It is our opinion the threshold for a written plan when disturbing 5,000 square feet of land area is too low. While this is an improvement over the current regulation, which requires a written plan for earth disturbance activities, most of the homebuilder in our area will still be required to prepare written plans for the nature home construction and local land use regulations.

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

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

Another issue contained in the proposed regulation is the requirement for "immediate" stabilization after the final grade has been completed for the project site or portion of the project site §102.12 (4). This is a change from the existing more practical, requirement of "as soon as possible". The proposal reflects the need to stabilize the disturbed area without delay to minimize erosion but, without a clear definition of "immediate", the term as soon as possible would be more practical. Bear in mind the erosion control measures are still in place at the time of stabilization. What concerns us is the impracticality of immediate stabilization when weather conditions may prevent this from occurring. Without some degree of common sense or understanding of external conditions, "immediate" would result in a violation for circumstances outside of their control.



On a positive note, I want to commend the Department and the EQB for recognizing that erosion and sedimentation control design standards should be implemented to minimize, rather than prevent, accelerated erosion and sedimentation §102.11 (a). This change recognizes the impossibility of "preventing accelerated erosion and sedimentation, which had been the previous general requirement. The term minimize is an attainable standard and one our industry will always work to achieve.

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

Again, I'd like to thank-you for the opportunity to come before you today and we look forward to working with you throughout the review process.

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Comments on Proposed Regulations  
Chapter 102

35

The Pennsylvania Mining Professionals are a group of engineers, geologists, geographers, surveyors and other scientific professionals involved in the preparation of various permits serving the mining industry. Organized in 1980 we have been working with various regulatory agencies to achieve a balance between the mining industry and protecting the environment of the Commonwealth. We have the following comments on the proposed regulation changes proposed for Chapter 102.

A major component of the Surface Mine Permit application process is the design of erosion and sedimentation controls to be implemented during the life of the surface mine. Regulations 's 77, 86 and 87 all reference the Chapter 102 regulations concerning the specific designs for erosion and sediment controls, and these regulations will impact not only the mining industry but also the community at large. Many PMP members are also involved with the abandoned mine reclamation program at the federal, state and local levels. The proposed revisions will also impact these activities.

102.1 Definitions:

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

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

102.4: (b) A person ..... if one or more of the following apply:

(1) The activity will result in a total earth disturbance of 5,000 square feet

We believe additional criteria is needed for the minimum amount of disturbance which will require a written Erosion and Sediment Control plan or a tillage plan. The 5,000 square feet becomes 0.11 acres or a plot approximately 70' x 70' square. Numerous instances of disturbance by individuals for a family garden exceed these guidelines. A single family dwelling on a single lot would require a written E & S plan. That in itself is not a bad idea, but the burden on the landowner to procure a plan from a qualified individual would put an undue burden on the public. Exemptions need to be provided for a written plan for individuals engaged in single family activities.

102.13

(a) Diversion:

(3) Diversions shall be installed and stabilized prior to the initiation of construction on the project site.

The words *Where Practicable* need to be added. Some sites are located on a slope where no upslope drainage enters the disturbed areas. There have been instances where plans prepared by the reviewer have had comments questioning why no upslope diversions were designed when in fact the site was on the top of a hill. Because this "requirement" was in the regulations or the policy manual, the reviewer must be addressed in the narrative. Additionally, this is a very restrictive proposal. If a permanent diversion is designed for a grass lined ditch with an allowed velocity of 3.5 fps, but the construction of the project is completed in January when the

lining cannot be effective  
should read that the diversion  
in the runoff prior to discharge  
final lining material being  
structure or small sediment

(C) Sediment Basin Outlet structures ..... This entire section is unclear as to the intent of the regulation. It is assumed by this author that the 2 cubic feet per second per tributary acre includes the flows from the emergency spillway and the principal spillways. Given the wording of this section a sediment pond for 50 acres could conceivably result in a pond which would discharge 100 cubic feet per second with no detention time for sediment settling prior to discharge. It would be better served if the section were revised to read that a combined discharge rate between the principal and emergency spillways is to be 2 cfs/tributary acre.

Because of the variability in rainfall events across the Commonwealth, the more prudent design criteria might be based on a 25 year storm rather than a set cubic feet per second discharge rate. A pond which discharges 2 cfs/tributary acre in the western portion of the state might not perform to the same standards as a pond in the central mountains where higher rainfall events occur over 24 hours. Perhaps it would be a better design principal to require discharges from the combined principal and emergency spillways around a specific storm event such as a 25 year/24 hour for a pond of under 20 acres; and a 50 year storm for ponds exceeding 20 acres. That would be more consistent with the design criteria for the diversion ditch structures.

It is also suggested that language incorporated into the regulations that allow for the individual routing of hydrographs through a pond to provide for the maximum sediment laden detention available within constraints of the pond and the spillway capacities. Numerous regulations incorporate Chapter 102 requirements and the physical space constraints in the field often require site specific analysis in order to provide the best protection to the environment. With the accessibility of computer programs which can model runoff through a pond, site specific data would provide better protection than the "cookbook 2 cfs/tributary acre" approach which tries to "cover all the bases".

(D) Sediment Traps shall be designed to pass a minimum flow of 1.5 cubic feet per contributory acre. As noted in the previous paragraph this could result in the trap not functioning effectively to contain the sediment load within the runoff. It could be an either/or situation where the 5 year storm event could be passed through the inflows routed to assure proper detention time.

**Section 102.31 Paragraph 102.31 Requirements:**

.....Additionally, paragraph (a) (4) is removed to eliminate parceling because it is .... does not provide significant environmental benefit.

Exception must be made to the elimination of the "parceling" restrictions. While under "normal" practices, there is difficulty in the staging of the earth moving activities, and in the past some instances of circumnavigation of the intent of the act has been documented, there have been other instances where this practice has been effectively implemented in keeping costs down on very large reclamation sites. Should an approved "parceled" site be worked in accordance with the approved plan, punitive actions can be implemented under the Act such as fines etc. But to blanket all parceling as ineffective does a dis-service to the individuals involved in earth-moving projects.

## Section 102.32 Permit Application and Fees

*(3) Applications shall be accompanied by an application fee of \$500.00.*

It is recognized that projects requiring a NPDES permit and/or E&S permit are generally associated with larger entities. However, the costs associated with various earth moving projects continues to escalate. Some County Conservation Districts are now charging for the review of an Erosion and Sedimentation Control plan. These fees range from \$20.00 to \$50.00 for less than one acre of disturbance. The raising of the fees by doubling them serves only to increase costs to the end user of the project. This in no-way benefits the citizens of the Commonwealth. There is no justification as to the reason the fee structure should have such a drastic increase. It is highly doubtful that the administrative costs associated with the changes in the regulations would increase proportionally to the fee structure.

*(c) .... shall be accompanied by a complete Pennsylvania Natural Diversity Inventory search for  
....*

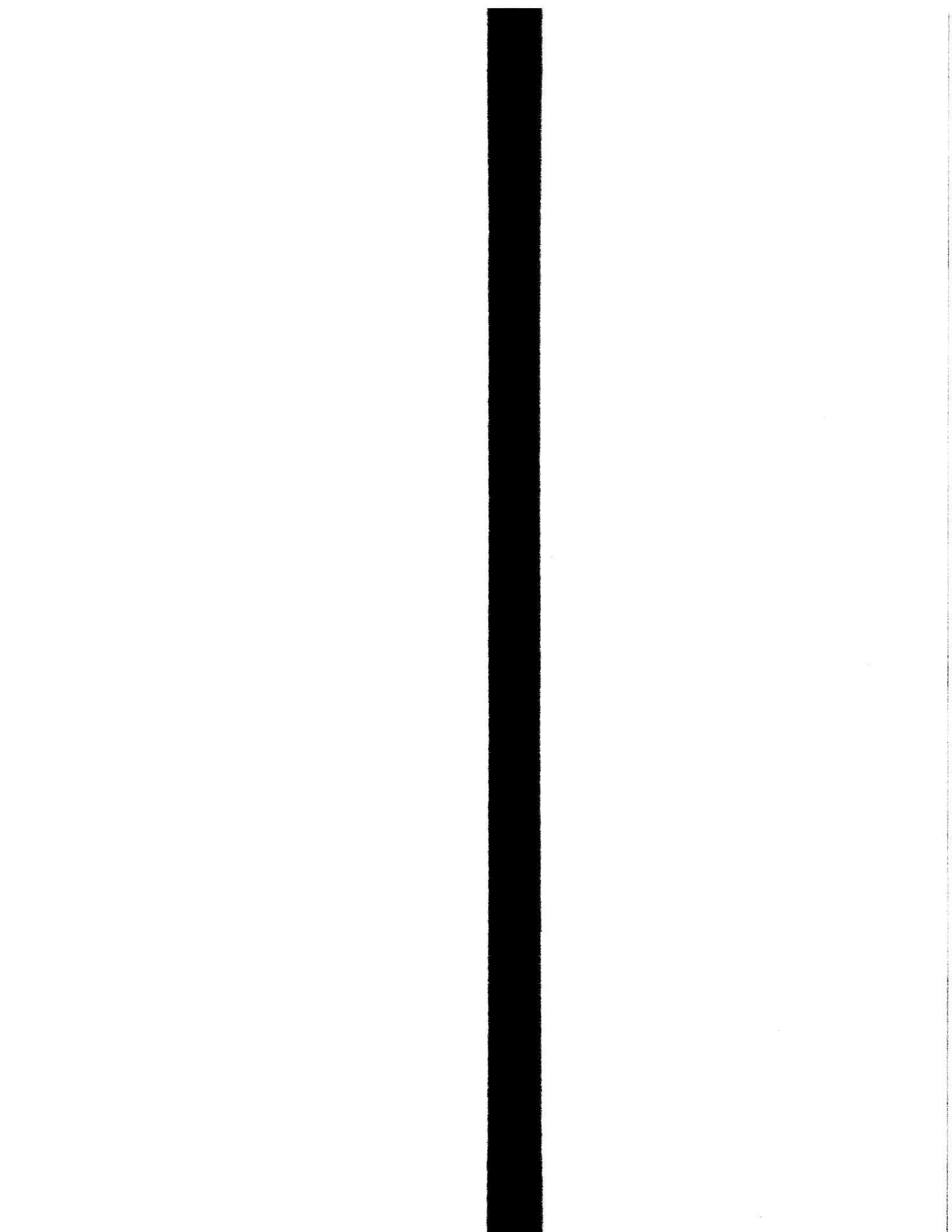
The language of this requirement should be revised to clarify the PNDI search or "other source" must document a known population of threatened or endangered species at the proposed site of earth disturbance. The presence of a habitat which could support a threatened or endangered species should be no criteria for denial of a permit.

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

We would like to take opportunity to thank the Board for the opportunity to present our views on these proposed regulations.

Respectfully Submitted,

Michal L. Jones  
Secretary  
Pennsylvania Mining Professionals  
% General Engineering  
Box 684  
Clarion, Pennsylvania 16214





RECEIVED  
APR 14 1998  
PA 17105-8477  
ENVIRONMENTAL QUALITY BOARD

RECEIVED  
APR - 6 1998  
ENVIRONMENTAL QUALITY BOARD  
200 Eastonville Pike  
Post Office Box 16001  
Reading, PA 19640-0001  
Tel 610-929-3601

March 31, 1998

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Dear Board Members:

The following comments on the proposed revisions to 25 PA Code Chapter 102: Erosion and Sediment Control (PA Bulletin, Vol.28, No.6, 2/7/98) are submitted by GPU Energy. GPU Energy is collectively and individually Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, and is the energy services and delivery subsidiary of GPU Inc. Within Pennsylvania, GPU Energy serves over 1,000,000 customers in an area, which encompasses approximately 47% of the Commonwealth of Pennsylvania. GPU Energy is committed to complying with all environmental laws and regulations and, has a corporate policy, to comment on proposed regulations, legislation, and policies that could affect our ongoing environmental compliance.

GPU Energy supports these revisions since they streamline the regulatory requirements for earthmoving projects that pose minimal risk or threats to the environment.

GPU Energy affirms the focus of the proposed regulations on the protection of the environment for small earth disturbances, rather than on the written formalization of an erosion and sediment control plan. The proposal of a regulatory exemption of plan development for projects under 5,000 square feet would release our company from this burden for 99% of the daily field activities of our industry. Historically, our construction crews have been using Best Management Practices (BMPs) in the daily earthmoving work required for installing single pole structures or underground wires for electric service, installing supporting pads for transformers in substations, or for other maintenance projects that involve minimal earth disturbance. Each of these activities typically disturbs less than 5% of the minimum earth disturbance proposed in these regulations for erosion and sediment control plan development. GPU Energy agrees that the contribution to environmental protection lies in the planning, implementation, and maintenance of the BMPs that are standard work practices for electric utilities as stated in proposed section 102.2.

GPU Energy understands that any other regulations that will be impacted by the proposed changes in Chapter 102, will be modified or amended to be consistent with any final changes in Chapter 102. For example, in 25 PA Code Chapter 105, General Permit conditions require the submittal of an erosion and sediment control plan to the county conservation district for review and approval. GPU Energy expects that if projects of 5,000 square feet or less are exempt from preparing a plan, then that exemption will be incorporated into other affected regulations.

In conformance with the Regulatory Basics Initiative, GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

Executive Order 1996-1, GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

For example, proposed section 102.31 (a) states,

“A person ...shall obtain a ...permit for storm water discharges associated with a construction activity ... when the activity involves earth disturbance ... on a portion, part, or during any stage of development or sale of land that involves 5 acres ...or more of earth disturbance.”

GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

It is a common work activity in our industry to install service in industrial parks, residential developments, malls, or single industrial or commercial facilities in which the total construction project involves earth disturbance of five acres. GPU Energy concurs with the EPA position, that utilities are not “operators” who do not require permits for the discharge of storm water during construction activities. Please refer to Federal Register, Vol. 63, No. 31, 2/17/98, p.7877, for the “Guidance on Utility Lines” from the Fact Sheet, Section VIII of the Reissuance of NPDES Permits for Storm Water Discharges from Construction Activities.

GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

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

GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

An electric utility conforms to previously established standards for the installation of electrical service at a project site, but it does not have general operational control of the project’s plans, specifications, or SWPP implementation and compliance. Therefore, in EPA’s opinion, an electric utility’s involvement in a construction project is not required by the SWPP provisions provided by the operator of the project which its activities have no impact. GPU Energy believes that this same position should be maintained in the implementation of the permit requirements stated in the proposed section 102.31 (4) (a).

GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

Another factor to be considered in the Regulatory Basics Initiative is whether the regulations are prescriptive, rather than performance-based. The proposed Chapter 102 regulations list the design criteria for temporary and permanent channels, sedimentation basins, and sediment traps. GPU Energy suggests that the regulations also include the use of performance-based standards instead of design criteria for all BMPs to minimize erosion and sedimentation to protect, maintain and improve water quality and the aquatic environment.

GPU Energy anticipates that the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will not result in regulations more stringent than the federal requirements.

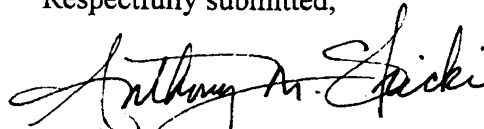
EQB  
March 3  
Page Th

The repl of the word, "prevent" with "minimize" throughout the proposed amendments,  
is a favor ge for all persons who will be complying with these regulations.

GPU En s you for this opportunity to express comments on these proposed  
amendm trusts that the Board will consider these comments during the formulation of  
the final s.

If you ha ther questions concerning these comments, please contact me at (610) 921-  
6275.

Respectfully submitted,



ANTHONY M. SKICKI  
Manager-Environmental Affairs

File: Gene ormination Pennsylvania

w:\wplknk\c ments2





98 APR 10 PM 1:52

RECEIVED  
REVIEW DIVISION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Penns  
Electri  
Associ

General C  
800 N. Th  
Harrisburg

Suite 301  
ania 17102

Address F  
William B. T  
GPU Genco,  
1001 Broad S  
Johnstown, P  
814-533-8583

March 26, 1998

**CERTIFIED MAIL**

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Board Members:

The Water Quality Subcommittee of the Pennsylvania Electric Association (PEA) appreciates the opportunity to provide comments in response to the proposed revisions to 25 PA Code Chapter 102: Erosion and Sediment Control (PA Bulletin, No. 6, 2/7/98).

The PEA is the formal trade association of the 11 investor-owned electric utilities in the Commonwealth. These utilities supply approximately 94% of the electric energy consumed in the Commonwealth. Together, PEA members' capital investments total \$2.5 billion, and member companies employ approximately 25,000 Pennsylvania residents.

The members of the Subcommittee support these revisions that streamline the regulatory requirements for earthmoving projects that pose minimal risk or impact to the environment.

PEA members affirm the focus of the proposed regulations on the protection of the environment for small earth disturbances, rather than on the written formulation of an erosion and sediment control plan. The proposal of a regulatory exemption from plan development for projects under 5,000 square feet would release the electric utilities from this burden for 99% of the daily field activities of our industry. Historically, PEA member utilities have been using Best Management Practices (BMPs) for daily earthmoving work required for installing single pole structures or underground electric service, installing supporting pads for transformers in substations, and other maintenance projects that involve minimal earth disturbance. Each of these activities typically disturbs less than 5% of the minimum earth disturbance proposed in these regulations for erosion and sediment control plan development. PEA members believe that the contribution to environmental protection lies in the planning, implementation, and maintenance of the BMPs that are standard work practices for electric utilities. The proposed section 102.2.

PEA members understand that any other regulations that will be impacted by the proposed changes in Chapter 102 will be modified or amended to be consistent with any final changes in Chapter 102. For example, in 25 PA Code Chapter 105, General Permit conditions require the submission of an erosion and sediment control plan to the county conservation district for review and approval. PEA members expect that if projects of 5,000 square feet or less are exempt from preparing a plan, then that exemption will be incorporated into other affected regulations.

In conformance with the Regulatory Basics Initiative and Executive Order 1996-1, PEA members anticipate the integration of the proposed Chapter 102 regulations with the NPDES permit requirements for storm water discharges associated with construction activity will result in regulations more stringent than the federal requirements.

For example, proposed section 102.1(a) states,

“A person ... shall obtain a permit for stormwater discharges associated with a construction activity ... when the activity involves an earth disturbance ... on a parcel, part, or during any stage of development or sale that involves 5 acres or more of earth disturbance.”

It is a common work activity in our industry to install electrical service in industrial parks, residential developments, malls, or single industrial or commercial facilities in which the total construction project involves earth disturbance of five or more acres. The PEA position concurs with the EPA position, that utilities are not “operators” when installing utility lines, and therefore, do not require permits for discharge of storm water from construction activities. Please refer to Federal Register, Vol. 63, No. 31, 2/17/98, p. 10,000, Installation of Utility Lines from the Fact Sheet, Section VIII of the Reissuance of NPDES General Permits for Storm Water Discharges from Construction Activities.

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

Environmental Quality Board  
March 26, 1998  
Page 3

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

Another factor to be considered in the Regulatory Basics Initiative is whether the regulations are prescriptive, rather than performance-based. The proposed Chapter 102 regulations list the design criteria for temporary and permanent channels, sedimentation basins, and sediment traps. PEA suggests that the regulations also include the option of using performance-based standards instead of design criteria for all BMPs to minimize erosion and sedimentation to protect, maintain and improve water quality and the aquatic environment.

The replacement of the word, "prevent" with "minimize" throughout the proposed amendments, is a favorable change for all persons who will be complying with these regulations.

The Subcommittee thanks you for this opportunity to express comments on these proposed amendments and trusts that the Board will consider these comments during the formulation of the final regulations.

If you have any further questions concerning these comments, please contact me at (814) 533-8583.

Respectfully submitted,



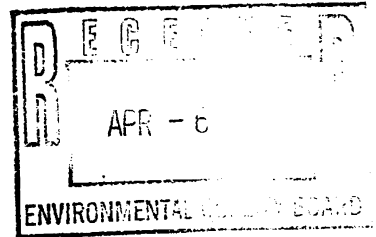
WILLIAM B. THOMAS  
Water Quality Subcommittee Chairman

cc: PEA WQS Members

wbt\chapter 102 commentspea

Walter E. Markey, J. D.

103 WYOMISSING HILLS E  
WEST LAWN, PA 19608  
(610) 678-6623  
FAX (610) 678-1457



FT 4400-00  
98 APR 10 PM 1:48  
RECEIVED  
PERMIT COLLECTION

March 30, 1998

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

AL: 1921  
ES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Gentlemen:

Below are listed my concerns about the proposed changes and the way the existing regulations are enforced.

Section 102.4.b. General. The proposed change states that projects with less than 5000 SF of disturbed soil should not need an E&S plan. I feel that should be 10,000 SF, so a potential home owner could build a home without going through the red tape to get permission to build his own home. This is especially important because of the way that some Districts impose their own interpretation of the rules.

Section 102.4(d). Agricultural plowing and tilling should be exempt from E&S requirements.

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

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

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

The way Chapter 102 is now written, it supports the reviewer in the position that he can question your qualification, and not approve your plan until you can show proof that you have the amount of training that they want you to have in order to be qualified.

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

This Section also states that a scale of 1"=100' may be used, but some District personnel will not even consider 1"=100', insisting that 1"=50' be used or plans will not be accepted.

Rock Construction Entrance. (See attachment)  
Pages 5.31 and 5.32 give details on the Rock Construction Entrance. These instructions refer to connecting to public roads. Some Districts apply this to all paved roads, however far from public roads, even when there is no mud around to get on the public roads.

Some Districts place a time limit on the implementation of the plans after they have been approved, such as two years, even if there has been no changes in the plans or the regulations. There should be a need to resubmit, and pay an additional fee, if there have been changes in the plans, or the regulations, regardless of the time period, be it two years or five or ten years.

There is nothing in Chapter 102 that places a time limit on the implementation of the plans, but some District personnel place a time limit on the plans, forcing you to resubmit and pay an additional fee.

*W. A. Markey, Jr.*

## Chapter 102 Rules and Regulations

In addition to the topographic map, a location map is required that shows the relationship of the project to municipal boundaries and major highways. The location map may be included on the topographic map as an insert or may be included as a separate sheet in the narrative report. A reprint or a copy of a portion of a 7½ minute USGS quadrangle map is recommended for this purpose. The name of the USGS quadrangle map must be included on the location map. For permit applications, a location map reprinted or copied from USGS quadrangle maps is required.

Figure 2.2 is provided as a sample location map.

Figure 2.2 SAMPLE LOCATION MAP

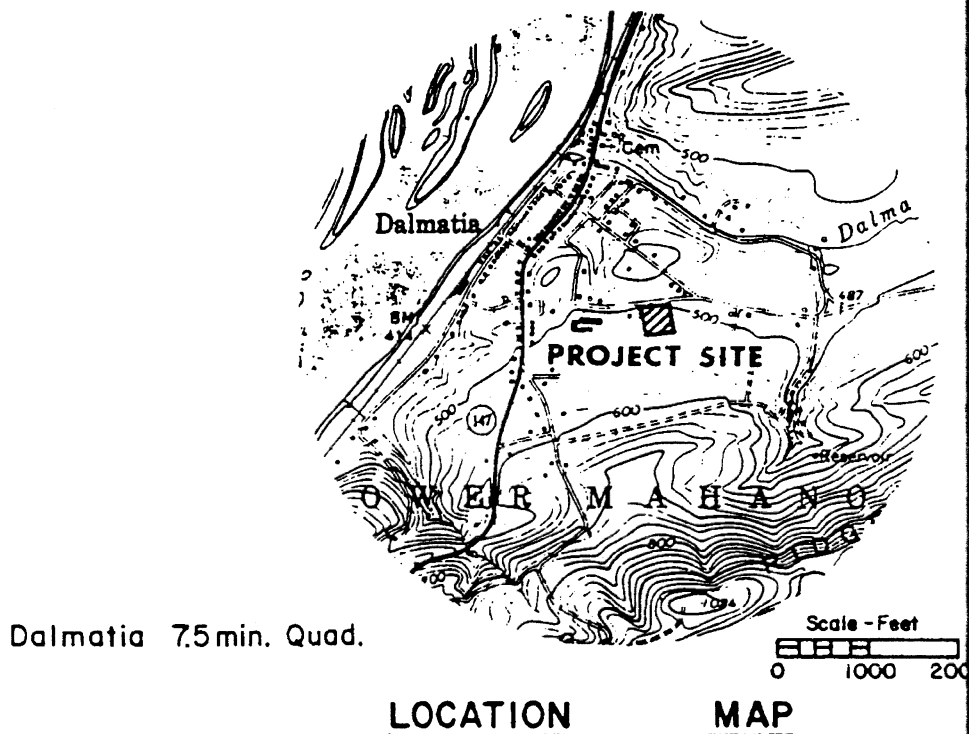


Figure 5.1 ( Chapter 5) illustrates standard map symbols.

9. Surface water diversion All surface water draining to the upslope boundary of a project area must be diverted around or through the project area. If the diversion is to be limited to the period of project construction (including the obtaintment of permanent stabilization), the diversion terrace (channels) must be sized to convey either 1.6 cfs per acre or the  $Q_2$  peak discharge. If the diversion will become part of the final surface water management plan for the project, then the diversion watercourse channels must be designed to convey either 2.75 cfs per acre or the  $Q_{10}$  peak discharge.

a. At no time during the course of project construction, extending up to the time when permanent site stabilization has been obtained, may a diversion terrace (channel) receive or otherwise transport sediment laden project runoff. Requests to allow diversion channels to receive and or transport combined upslope and project runoff will be reviewed by the Department on a case by case basis. Such requests will only be approved when it is clearly demonstrated that no other practical alternative exists to divert upslope surface runoff around or through the project area. Economic considerations are not a basis for consideration. When plans for combined runoff are approved, it will be with the understanding that the entire combined runoff must be conveyed to a control measure or facility for removal of sediments prior to the runoff leaving the project area.

#### 10. Rock construction entrances -

##### a. Design:

- (1) Rock construction entrances will be constructed to the minimum width, length and thickness dimensions shown in Figure 5.7.
- (2) Rock will be Type 1 as specified in Section 703.2 of the PennDOT Publication 703.2.
- (3) For installation on clayey or poorly drained soils, a geotextile fabric underlayment, of the type recommended for such applications by the manufacturer, shall be used.

b. Construction: Construction will be to the dimensions shown on the construction drawings.

c. Maintenance: The structure's thickness will be constantly maintained to the specified dimension by adding rock. A stockpile of rock material will be maintained on the site for this purpose. At the end of each construction day, all sediment deposited on public roadways, will be removed and returned to the construction site. Washing of the roadway with water is not permitted.



Environmental Quality Board

p.o. box 8477 • harrisburg, pa 17105-8477 • (717) 787-4526

RECORDED  
98 APR 10 PM 1:49

April 7, 1998

INDEPENDENT REGULATORY  
REVIEW COMMISSION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
4th Floor, Harristown #2  
33 Market Street  
Harrisburg, PA 17120

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

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from the following:

1. Mr. Walter E. Markey, Jr.

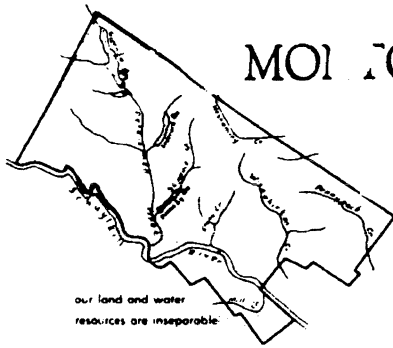
These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

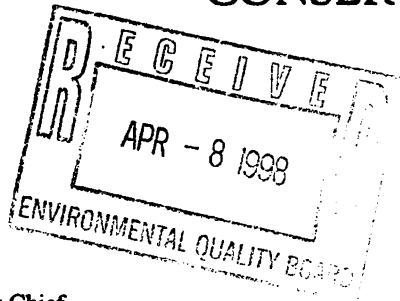
Sharon K. Freeman  
Regulatory Coordinator

Enclosure





# MONTGOMERY COUNTY CONSERVATION DISTRICT



1015 Bridge Road - Suite B  
Collegeville, PA 19426  
(610) 489-4506

March 31, 1998

Environmental Quality Board  
Mr. 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

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Subject: PROPOSED REVISIONS TO [25 PA CODE CHAPTER 102] - REVISIONS

Description - The 5,000 sq. ft threshold triggering the need to develop a written erosion and sediment control is not a sound practice if improved water quality is the goal of these regulations. In a subdivision scenario where the lots are sold for individual development the 5,000 sq. ft rule could facilitate many contiguous lots under construction at the same time with NO erosion control plan.

102.3 - If the regulations governing the erosion and sediment control plan are designed to minimize erosion and sedimentation, then the regulations should also address what the acceptable limits of sedimentation are.

#### Section 102.5

(b) States "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", etc. The word SHALL CONSIDER UTILIZING is a contradiction to 102.5 (b)(6) which states SHALL CONSIDER MEASURES, which seems to state that only consideration must be given.

#### DEFINITIONS

Agricultural plowing or tilling - The definition is broad based and should indicate any type of earth disturbance associated with crop production

BMP's - A period is needed after the word sedimentation.

Collector - The definition as is only describes a collector but not what to do with what it collects.

Designee - the Department of Environmental Protection should be used in place of "the Department".

Diversion - the definition is redundant and only addresses runoff. As stated "an earth disturbance activity for the purpose of diverting runoff away from an existing or proposed disturbed area". Does the term "runoff" imply subsurface water emanating above the proposed disturbed area?

Interceptor channel - the definition should emphasize clean water runoff.

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

Sedimentation – The definition should include Waters of the U.S. The definition should also address the action or process of forming or depositing sediment on adjacent properties and roadways.

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

March 31, 1998

PROPOSED Amendments to Chapter 102

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

102.5 (B) – The word “MINIMIZE” is completely open to interpretation by any individual.

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

102.5 (8) (C) (1) - The requirements of the plan should also include existing features, and surrounding areas which impact the proposed disturbed area.

102.5 (8) (C) (2) – The maintenance program indicates “REGULAR” inspection of the BMP’s. Here again the use of the word REGUALR is open to interpretation and does not provide specific intent.

102.12 (e) (5) – Interim stabilization. As written still allows the earthmover to wait 20 days before applying stabilization measures.

102.13 (a) (3) – The second paragraph could be moved to 102.13 (a) (1)

102.13 (a) (6) - “If it is not feasible to divert up slope drainage around a project site, etc.” Around a project site should be changed to Around the disturbed area, as this contradicts the information in section (1) above.

102.13 (a) (7) - Is this guidance based on a bare earth channel?

102.13 (b) (2) - The discharge from Interceptor Channels should not be discharged onto vegetated areas without passing through a filtering device. Consideration by the Department should be given to steep slope areas, and to areas which were previously less desirable for construction activity, i.e. urban areas.

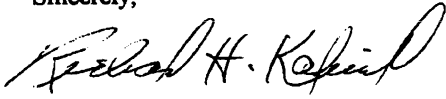
102.13 (d) (3) - (Outlet) Sediment basins outlet etc. The last sentence “Outlet structures shall be stabilized before use”. should be removed. The outlet structure is the principal water discharge-regulating device (riser). The secondary water discharge-regulating device is the emergency spillway. The sentence should indicate the installation of the energy dissipater.

It is suggested that all pertinent information for sediment basins and sediment trap design be added to the regulations as they are primary control devices involving public safety.

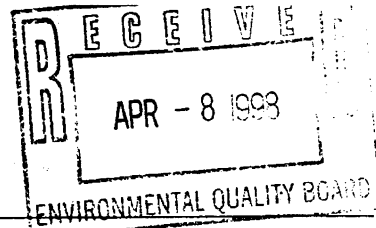
It is not clear who decides what is an APPROVED ALTERNATIVE.

Should sediment basins and sediment traps still be protected against acts of third parties?

Sincerely,

A handwritten signature in black ink, appearing to read "Richard H. Kadwill". The signature is fluid and cursive, with the first name being the most prominent.

Richard H. Kadwill  
District Manager



**Independent Oil & Gas Association of Pennsylvania**

April 7, 1998

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

**Re: Proposed Amendments to Pennsylvania's Erosion and Sediment Control Regulations, 25 PA Code Chapter 102**

On behalf of the Independent Oil and Gas Association of Pennsylvania (IOGA), I would like to convey our concerns and recommendations regarding the proposed amendments. IOGA is a nonprofit trade association that represents the state's independent natural gas and crude oil producers, marketers and service companies. IOGA member companies drill and operate a majority of Pennsylvania's approximate 45,000 natural gas wells and a significant number of its oil wells.

**SECTION 102.1 DEFINITIONS:**

**Designee.** The reference to "other local governing body" is ambiguous and could conceivably lead to personal, political and territorial conflicts. The designee should be restricted to the county conservation district.

**SECTION 102.4 GENERAL:**

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

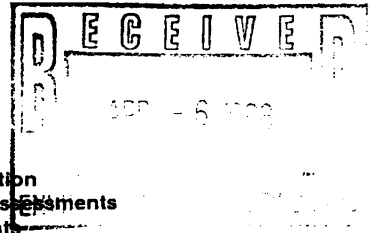
**SECTION 102.31 PERMIT REQUIREMENTS:**

(c) To obtain a drilling permit from the Bureau of Oil and Gas Management when a waiver is requested (i.e., the activity is within 100 feet of a stream) requires submission and approval of an erosion and sediment control plan. Therefore, it would appear that the drilling permit under this scenario would satisfy all other provisions of this chapter and Chapter 92, and the proposed earth disturbance activity would not require an erosion and sediment control permit or NPDES permit. We would like to have this matter clarified.

Very truly yours,  
IOGA of Pennsylvania

Krista L. Jones  
Assistant Executive Director

SCHMIL COMPANY INC., CONSULTING ECOLOGISTS  
1201 CEDAR GROVE ROAD, MEDIA, PENNSYLVANIA 19063-1044  
Telephone: (610) 356-1416 FAX: (610) 356-3629



Environmental Inventories  
Wetlands Mapping & Restoration  
Expert Testimony

Permit Coordination  
Environmental Assessments  
Impact Statements

1 April 1998

Environmental Quality Board  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building 15th Floor  
400 Market Street  
Harrisburg, Pennsylvania 17101-2301

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

In re: **Proposed Chapter 102 Regulations**

Gentlemen:

This letter is to comment on proposed changes to 25 *Pennsylvania Code* 102 Erosion and Sediment Control regulations as published in the *Pennsylvania Bulletin* on 7 February 1998. In general I strongly support the proposed changes.

The following recommendations are aimed at strengthening the proposed regulations to enable the Department better to achieve environmental protection effectively and efficiently.

### **1-Acre Maximum for NPDES Stormwater Permit Exemption**

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

The proposed 5-acre exemption demonstrates that PADEP seeks to enhance administrative convenience by ignoring small projects. For this purpose I recommend a threshold no greater than 1 acre for exempting construction-related stormwater discharges from the NPDES permit

**program.** Some of the proposed disturbances in the 1- to 5-acre range would be covered by other PADEP permits and thus will not require a separate NPDES permit. Most disturbances in the 1- to 5-acre range would be covered by the existing SGP-2 general NPDES permit for construction-related stormwater. Hence only those 1- to 5-acre disturbances ineligible for the general permit because of their high risk of environmental damage would receive special PADEP scrutiny under the lowered threshold that I recommend. Such scrutiny is fully warranted because of the high risk.

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

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

### **Lower Threshold for Requiring Soil Erosion/Sediment Control Plans**

All earth disturbance activities are to be conducted so as to minimize erosion and sedimentation and thereby protect existing and designated uses (102.3). This is an important and laudable provision, but neither current practice nor the proposed regulatory changes implement it effectively.

PADEP requires an Erosion and Sediment Control Permit only for construction activity land disturbance activities exceeding 25 acres in total and when no other applicable Department permit already requires an E/S plan. It is reasonable and efficient not to require a separate E/S permit when E/S review is combined with (and a separate permit would duplicate) another PADEP approval required for the construction

activity. It also is reasonable to require that timber harvest and road maintenance activities expected to affect 25 acres or more must secure formal E/S permit approval prior to start of work.

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

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

The mere registration of one additional copy of a written E/S plan (as currently required for Chapter 92 and Chapter 105 general permits) would impose a minimal burden on small-project applicants and on PADEP and its designees. Registration would, however, prevent applicants from overlooking the requirement for a written plan. Even more important, registration would provide an opportunity for the public to inspect such plans.

**Given the prevalence of steep slopes in Pennsylvania, and the resulting likelihood of soil erosion and sediment pollution, it is essential that the E/S plan for each construction activity disturbing 1 acre or more of land be not merely written or registered but also reviewed and approved by PADEP or its designees. Currently this is not the case, unless the project happens to require another PADEP approval.**

The Department apparently is reluctant to undertake review of E/S plans for numerous, relatively small land disturbances. A 1-acre threshold should not prove administratively burdensome to PADEP or its designees. In New Jersey *every* construction activity land disturbance greater than 5,000 square feet must be reviewed and must receive prior approval by the county conservation district. Pennsylvania waters in general are at greater risk of soil erosion than New Jersey waters, so a less stringent 1-acre threshold should not be a disproportionate burden to construction sponsors here. **PADEP should reverse the proposed language in 102.4(b)(3) to say that an E/S plan shall be prepared unless the Department determines that the activity will not adversely impact waters of the Commonwealth, rather than the reverse.**

The proposed regulations state [102.4(b)] that disturbance activities less than 5,000 square feet will require E/S plans to be developed only where they discharge to high quality or exceptional value waterways (unless the activities require another PADEP permit or the Department somehow determines that they may adversely affect the waters of the Commonwealth). It is appropriate that plans be developed, but the plans are not required to be written or to be submitted to anyone. **Written E/S plans for small (<5,000 sf) projects in such sensitive watersheds at minimum should be required to be submitted and (at minimum) registered with PADEP or its designee.**

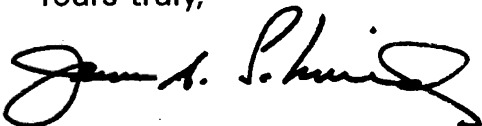
There also is no proposed requirement that small projects should have written E/S plans when they drain toward Exceptional Value Wetlands. As stated at 25 *Pa. Code* 105.17(1), this narrowly defined class of wetlands requires special protection. The proposed regulations do not recognize Exceptional Value Wetlands or provide them with special protection except insofar as they may be associated with Exceptional Value waterways. **Exceptional Value Wetlands downslope should be listed as one of the features requiring preparation and submission of a written E/S plan for all construction projects, large or small.** Pennsylvania's Exceptional Value wetlands can be severely damaged by relatively small upslope land disturbances.

#### **Lower Threshold for Notification by Local Governing Bodies**

Local governing bodies are to be required to notify PADEP or its designee upon receipt of applications for activities affecting 5 acres or more. This threshold is too high. **Local governments should notify PADEP of all land disturbance activities affecting 1 acre or more in all watersheds. PADEP should be notified of all land disturbance activities in Exceptional Value and High Quality watersheds, irrespective of the size of the proposed disturbance.**

Thank you for this opportunity to comment. I look forward to your strengthening and fully implementing the proposed changes to Chapter 102.

Yours truly,



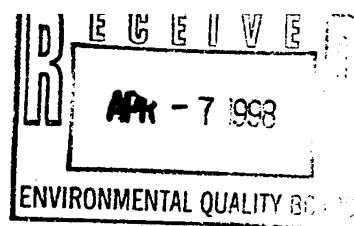
James A. Schmid, Ph. D.  
President





**Duquesne Light**

411 Seventh Avenue  
P.O. Box 1930  
Pittsburgh, PA 15230-1930



(412) 393-6000

APR 10 11 03 AM '98  
RECEIVED  
ENVIRONMENTAL QUALITY BOARD

April 6, 1998  
EAU(8):972-98

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

**Comments on Proposed E&S Rule  
25 PA Code Chapter 102  
PA Bulletin, Vol. 28, No. 6, 2/7/98**

Dear Board Members:

Duquesne Light Company appreciates the opportunity to provide comments in response to the proposed revisions to 25 PA Code Chapter 102: Erosion and Sediment (E&S) Control; that were published in the Pennsylvania Bulletin on February 7, 1998. Duquesne Light is the principal electrical power generator and provider in the Pittsburgh area. Duquesne Light serves approximately 565,000 customers in Allegheny and Beaver Counties in Western Pennsylvania. Duquesne Light supports the streamlining of regulatory requirements for earthmoving projects that pose minimal risks or threats to the environment.

General Planning Requirements

Duquesne Light supports the revisions to §102.4 that require implementation of BMP's and other sound conservation and engineering practices as E&S controls. In addition, Duquesne Light strongly agrees with the proposed §102.4(b)(1) that establishes a 5,000 square foot minimum threshold for developing written E&S control plans.



Duquesne Light also understands that other regulations will be modified or amended to be consistent with any final changes in Chapter 102. For example, the General Permit conditions in 25 PA Code Chapter 105 require the submittal of written E&S control plans to the county conservation district for review and approval. Duquesne Light urges the Department to revise Chapter 105 so that written E&S plans will not be required for small projects that disturb less than 5,000 square feet of earth.

Permit Requirements

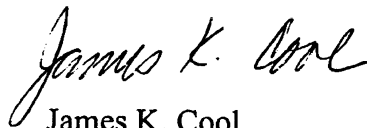
As proposed §102.31(a) states,

“A person ... shall obtain a ... permit for stormwater discharges associated with a construction activity ... when the activity involves an earth disturbance ... on a portion, part, or during any stage of development or sale that involves 5 acres ... or more of earth disturbance.”

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

Thank you in advance for considering these comments. If you have any questions, please call me at (412) 393-6097.

Very truly yours,



James K. Cool  
Manager, Environmental Affairs

**Comments on Proposed E&S Ru**  
**25 PA Code Chapter 102**  
**PA Bulletin, Vol. 28, No. 6, 2/7/98**

**SUMMARY OF DUQUESNE LIGHT COMMENTS**

Duquesne Light Company appreciates the opportunity to provide comments in response to the proposed revisions to 25 PA Code Chapter 102: Erosion and Sediment (E&S) Control that were published in the Pennsylvania Bulletin on February 7, 1998. Duquesne Light is the principal electrical power generator and provider in the Pittsburgh area. Duquesne Light serves approximately 565,000 customers in Allegheny and Beaver Counties in Western Pennsylvania.

**General Planning Requirements**

Duquesne Light supports the streamlining of regulatory requirements for earthmoving projects that pose minimal risks or threats to the environment. Duquesne Light supports the revisions to §102.4 that requires implementation of BMP's and other sound conservation and engineering practices as E&S controls. In addition, Duquesne Light strongly agrees with the proposed §102.4(b)(1) that establishes a 5,000 square foot minimum threshold for developing written E&S control plans.

Duquesne Light also understands that other regulations will be modified or amended to be consistent with any final changes in Chapter 102. For example, the General Permit conditions in 25 PA Code Chapter 105 require the submittal of written E&S control plans to the county conservation district for review and approval. Duquesne Light urges the Department to revise Chapter 105 so that written E&S plans will not be required for small projects that disturb less than 5,000 square feet of earth.

**Permit Requirements**

As proposed §102.31(a) states,

“A person ... shall obtain a ... permit for stormwater discharges associated with a construction activity ... when the activity involves an earth disturbance ... on a portion, part, or during any stage of development or sale that involves 5 acres ... or more of earth disturbance.”

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



THE  
**Elliott**  
 BUILDING GROUP, LTD.

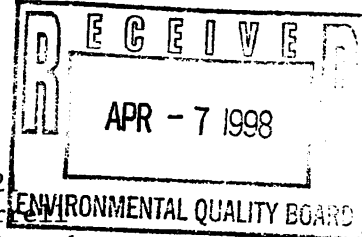
*A Tradition of Excellence*

406 Glen Eagles Drive • New Hope, PA 18938 • (215) 862-2755

April 3, 1998

Environmental Quality Board  
 P.O. Box 8477  
 Harrisburg, PA 17105-8477

ORIGINAL: 192  
 COPIES: Tyrone  
 Wilmarth  
 Sandusky  
 Legal (2)



To whom it may concern,

I have reviewed the Pennsylvania Department of Environmental Protection's proposed changes to Chapter 102, the Erosion and Sedimentation Control Regulations. I am greatly concerned and would ask that these proposed regulations be revised as discussed below.

Current regulations require that a plan be prepared for all new development regardless of size. That is reasonable to protect the environment. Current regulations require a permit for developments in excess of 25 acres. That is reasonable to assure good engineering practices are being followed when a significant amount of earth is to be disturbed. Leave the regulations as they are. To reduce the 25 acre threshold to 5 acres will greatly expand the number of applications to be reviewed and cause a bottleneck in the approval process. The economic harm from a delay in approvals far outweighs the environmental benefits.

On the other hand, the 5000 square foot exemption is an excellent idea. However, a modification should be made to exempt all single family residential sites when the site is not part of a concurrent multi-lot subdivision. An exemption for any sole single family residential site makes sense since the disturbance caused by a single home is relatively small and consistent regardless of the lot size.

The proposed regulations require immediate stabilization after earth disturbance activities have been completed. Current regulations call for stabilization as soon as possible. The existing language is far more reasonable since it allows inspectors to work with builders in the field and consider weather conditions and other unanticipated factors.

Under Section 102.32, a new provision is added requiring a "PA Natural Diversity Inventory (PNDI)" form to be completed which requires a determination if any special habitat area or species is involved. This sounds dangerously similar to the Federal Endangered Species Act which in my opinion has been much abused in its application. In order to limit the amount of paper work and projects involved and in recognition of the

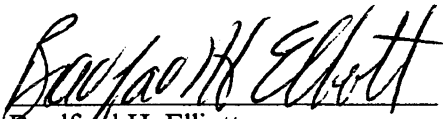
fact that a certain critical mass of useable land would be required to preserve protected habitats or species, I suggest all projects less than 250 acres be exempt from submitting a PNDI search form.

The proposed regulations require sedimentation basins and traps to discharge into waters of the Commonwealth. Again the new language appears unduly harsh and lacking flexibility. Alternatives developed by a certified or licensed engineer which demonstrate downstream stability should be acceptable to DEP. Such language would provide needed flexibility.

As a home builder and small business person, I am committed to maintaining environmental safeguards including erosion and sedimentation control measures. I believe maintaining the overall quality of the State's waterways is essential to quality of life for current and future generations. However, our regulatory process cannot be so onerous or inflexible as to become unreasonable and overly burdensome to small business people who are providing jobs and fueling our economy.

Thank you for considering these comments which I hope will be incorporated into the final rule making.

Very truly yours,



Bradford H. Elliott  
President

# REALEN HOMES

April 3, 1998

Pennsylvania Department of Environmental Protection  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

**RE: Chapter 102, BMP's  
Public Comment**

Dear Sir or Madame:

I would appreciate if you would enter this letter as a written public comment concerning the proposed DEP Best Management Practices for stormwater basins.

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

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

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

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

725 TALAMORE DRIVE P.O. BOX 2002 AMBLER, PA 19002 PHONE 215-628-3300 FAX 215-628-3030

**EXPECT MORE FROM REALEN**

*Pennsylvania Department of Environmental Protection  
Environmental Quality Board*

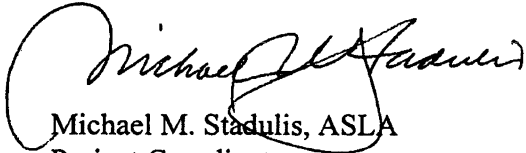
*April 3, 1998*

*Page 2*

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

Thank you for your consideration.

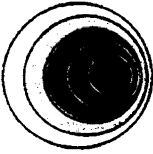
With kind regards,

A handwritten signature in cursive script, appearing to read "Michael M. Stadulis". The signature is written in black ink and is positioned above the typed name.

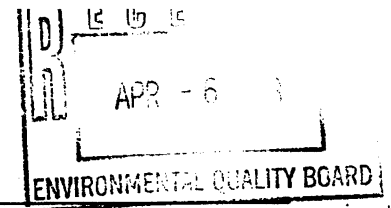
Michael M. Stadulis, ASLA  
Project Coordinator  
Land Development

MMS/eb3

cc: Robert J. Dwyer, Vice President



# BUCKEYE PIPE LINE COMPANY



06 APR 14 PM 1:38

PAID  
REVENUE COMMISSION

3900 Hamilton Boulevard  
Allentown, Pennsylvania 18103  
Tel (610) 770-4000  
Fax (610) 770-4541

April 3, 1998

Environmental Quality Board  
P. O. Box 8477  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

**RE: Erosion/Sediment Pollution Control Program:  
Chapter 102, Erosion Control**

To whom it may concern:

This letter is provided as comment to the proposed rulemaking regarding the Pennsylvania Erosion/Sediment Pollution Control Program: Chapter 102, Erosion Control.

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

Very truly yours,

Richard F. Boyer  
Supervisor, Environmental Affairs

RFB:ceb

h:\internal\allsites\staff\rich\tr\env. quality board 4-3-98.doc





United States  
Department of  
Agriculture

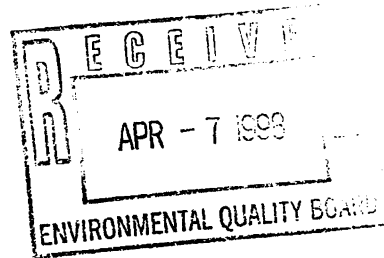
Soil  
Conservation  
Service

**Suite 540  
One Credit Union Place  
Harrisburg, PA 17110-2993**

**NOW THE NATURAL RESOURCES CONSERVATION SERVICE**

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

April 6, 1998



Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

To Whom It May Concern:

The following comments are offered on Title 25, Environmental Protection, Part I, Chapter 102, Erosion and Sediment Control 102.5(b)(2):

Suggest adding the word "erodibility" -- "The types, erodibility, depth, slope...."

102.5(d) -- Suggest adding -- "The Pennsylvania Technical Guide may be used to develop the plan and design the Best Management Practices. A Conservation Plan approved by the Conservation District is deemed to meet these Erosion and Sediment Control requirements."

Thank you for the opportunity to comment.

Sincerely,

**JANET L. OERTLY**  
State Conservationist



**The Natural Resources Conservation Service, formerly**  
The Soil Conservation Service  
is an agency of the  
Department of Agriculture

**An Equal Opportunity Employer**

# Monroe County Conservation District

Technical  
Section  
717-629-3060

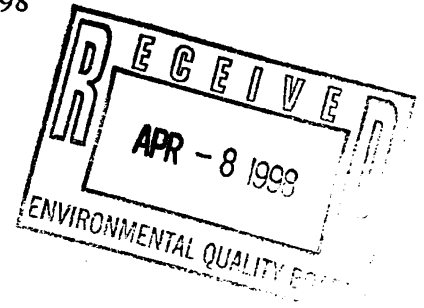
8050 RUNNING VALLEY ROAD  
STROUDSBURG, PA 18360

FAX 717-629-3063

Environmental  
Education  
717-629-3061

April 6, 1998

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



Environmental Quality Board  
c/o Mr. James M. Seif, Chairperson  
P.O. Box 8477  
Harrisburg, PA 17105-8477

RE: 25 PA Code Chapter 102 - Erosion and Sediment Control  
Proposed Rulemaking - Environmental Quality Board  
PA Bulletin, Vol. 28, No. 6, February 7, 1998

Dear Mr. Seif:

The Monroe County Conservation District Board of Directors appreciates the opportunity to provide comments on the proposed changes to Chapter 102. This proposed rulemaking is significantly different than the draft that we reviewed in December 1996. We attempted to review these changes through the eyes of both a newcomer to Chapter 102 and a Level 3 delegated District. In both instances, they are very confusing. Some terms are mentioned in several different sections but are never fully described (i.e., where is an appropriate discharge location for a channel?)

Although we support efforts to simplify and streamline regulations, we feel that it is more important to use our experience in administering this Chapter to highlight areas of confusion that must be avoided. We strongly suggest that the following comments be incorporated into the final rulemaking.

## 102.1 Definitions

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

- Channel - This is one of three types of conveyances listed in Subsection 102.13(a) and the only one that is not defined. (It is included in the definition of diversion but how is a reader to know where to find it?) In the context of Subsection 102.13(a), a channel is a stable conveyance structure constructed to transport clean water through a project and discharge it to waters of the Commonwealth.

- Disturbed area - This definition as written describes an undisturbed area that is proposed to be disturbed. The following definition would be more accurate: "Land area where an earth disturbance activity is occurring or has occurred without having been stabilized."

- Erosion and sediment control permit - Since this is the name of a specific permit, we suggest that the words be capitalized in this definition and throughout the Chapter. (i.e., Subsections 102.31(c), 102.32(a), 102.43). Within this definition, reference is made to another specific permit which should also be capitalized here, in its own definition and the definition of Notice of Intent and throughout the Chapter (102.31(a), (c) (d); 102.32(b); 102.43).

- Minimum sediment storage elevation, Minimum storage elevation - The word "minimum" is confusing in this context. We suggest that it be eliminated from the definition and in Subsection 102.13(c) at Paragraph (3) (i). Paragraph (2) already refers to "sediment storage elevation".

- NPDES permit for stormwater discharges associated with construction activities - The first phrase of this definition is what makes it difficult to explain when a permit is required. By saying "construction activity that involves 5 acres or more of earth disturbance," the regulated community is led to believe that a) a permit is not required until 5 acres are disturbed and b) any disturbance less than 5 acres does not require a permit. The second part of the definition is then left to counter the initial impression. This is a difficult task that we believe would be aided by eliminating the first phrase and using the concept of "project site". Our suggested definition:  
A permit required for the discharge of stormwater from construction activities ... when 5 acres (2 hectares) or more of earth disturbance is proposed over the life of the project site.

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

- Permanent BMPs - One of the most important and difficult concepts to convey to the regulated community and a key element of Erosion and Sediment Control Plan development is the difference between temporary and permanent BMPs. We therefore suggest two separate definitions. Permanent BMPs could be defined as follows: "BMPs implemented within a project site designed to minimize erosion and sedimentation after final grade is established."

- Permanent stabilization - We suggest that both permanent and temporary stabilization be defined to reduce confusion. Permanent stabilization is “stabilization implemented after final grade is established or after which no additional earth disturbance activities will be conducted.”

- Stabilization - While placement or grading of soil may reduce the potential for erosion, those activities do not constitute stabilization. We suggest deleting “proper placing, grading” and “constructing” to clarify this definition.

- Temporary BMPs - As discussed above under permanent BMPs, we suggest this definition: “BMPs implemented within a project site designed to minimize accelerated erosion and sedimentation during an earth disturbance activity.”

- Temporary stabilization - As discussed above under permanent stabilization, we suggest this definition: “stabilization implemented before final grade is established.”

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

## 102.2 Scope

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

## 102.4 General

- In Subsection (b) and Paragraph (b)(2), references to the erosion and sediment control plan should be capitalized since this is the name of a specific plan. This comment also applies to Section 102.5 and throughout the Chapter.

- Given the stated purpose of this Chapter (102.3), “to minimize accelerated erosion and sedimentation of waters of this Commonwealth,” what is the significance of the 5,000 square foot threshold in Paragraph (b)(1) as it relates to special protection waters in Paragraph (b)(4)?

- Since Conservation Districts are administering Chapter 102 in most Pennsylvania counties, we suggest that Paragraph (b)(3) be amended to “The Department or its designee...” There is no mechanism for the Department to make this determination in delegated counties.

- Subsection 102.4 (c) allows the Department or its designee to request that Erosion and Sediment Control Plans be submitted for review and approval. We support and appreciate this clarification.

#### 102.5 Erosion and Sediment Control Plan

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

- In Paragraph (b)(3), the last word “area” should be replaced by “project site.”

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

- Paragraph (c)(1) should include “supporting calculations.”

#### 102.11 General requirements

- Subsection (a) should allow the plan reviewer the same professional judgement as the plan designer. We suggest that the wording be changed to “...unless the designer and/or reviewer of the Erosion and Sediment Control Plan...” If this change is not made, the subsection should end at the word “activities.” Typo: BMP should be BMPs

#### 102.12 BMPs

- As in several other sections of these comments, we strongly suggest that the Erosion and Sediment Pollution Control Program Manual be incorporated into this section by reference.

- Paragraph (2) should explain that surface water diversions direct “clean” water around or through the project site “in a nonerosive manner” and discharge to “waters of the Commonwealth” or drainage pattern.

- Paragraph (4) describes the concept of permanent stabilization but does not list any examples which would help to clarify Paragraph 102.22(2). This would not be necessary if the E&S Manual was incorporated in this Section.

- Paragraph (5) contradicts the previous paragraph by saying, "If it is not possible to permanently stabilize a disturbed area immediately after the final earth disturbance has been completed..." This phrase should be deleted. Somewhere in the Chapter, it should be stated that other BMPs should remain in place during temporary stabilization - this may be the place.

- Paragraph (6) (Typo: (f) should be (6)) should be consistent with other references in the Chapter to minimize rather than prevent sedimentation.

#### 102.13 Design criteria for BMPs

- As in several other sections of these comments, we strongly suggest that the Erosion and Sediment Pollution Control Program Manual be incorporated into this section by reference.

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

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

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

- Subsection (a) Typo: Diversion should be Diversions,

- In Paragraph (a)(1), the first deletion of "project" should be eliminated in order to be consistent with the definition of diversion. Also, a key plan design component of the use of subdrainage areas should be incorporated and a discharge location should be specified. The resulting paragraph that we suggest follows:

Temporary or permanent diversions shall be constructed upslope of a project area prior to initiation of other earth disturbance activities within the same subdrainage area on the project site to convey clean runoff around the disturbed area and discharge to waters of the Commonwealth.

- Likewise, Paragraph (a)(2) should read, "Diversion shall be installed and stabilized prior to initiation of other earth disturbance activities within the same subdrainage area on the project site."

- Paragraph (a)(3) should read, Collectors shall be constructed and stabilized down slope of a disturbed area to collect and convey sediment-laden runoff....

- Paragraph (a)(6) regarding channels should be repositioned under (a)(3) to keep in sequence with the heading of this subsection, "Diversion, collectors and channels." and to precede general references to all three BMPs. It should also specify that clean water is being transported and being discharged to waters of the Commonwealth.

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

- Paragraph (a)(7) should specify when BMPs "shall be provided with erosion resistant linings". We also question why the design criteria (which should be left to the E&S Manual) has been changed from 1.5 to 2 feet per second.

- We recommend that the title of Subsection 102.13(b) be changed to "Outlet protection", that Paragraph (b)(1) be eliminated and that Paragraph (b)(2) be amended. As written, Paragraph (b)(2) implies that outlet protection is not an erosion resistant material when, in fact, it is. It should read "Suitable outlet protection shall be an erosion resistant material..." If the Subsection is not retitled, then Paragraph (b)(2) should read, "Outlet structures shall be provided with an erosion resistant material..."

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

#### 102.22 Permanent Stabilization

- Paragraph (1) is another example of why technical standards should be eliminated from these regulations and reincorporated by reference to the E&S Manual. Permanent stabilization by vegetation is different than by asphalt or other stable material. Vegetation must be established (i.e., roots developed) in order to function as permanent stabilization. We have seen slopes turn 100% green in fall only to erode away during spring runoff because vegetation and root structure were not established. If temporary BMPs were not maintained (i.e., permanent stabilization assumed), sediment pollution or potential pollution would result. The essence of vegetative stabilization is stated in the E&S Manual as follows: "uniform erosion resistant perennial vegetation must be established to the point where the surface soil is capable of resisting erosion during runoff events." If the 70% standard remains in Paragraph (1), we recommend adding this language.

- Paragraph (2) is vague because the BMP listed in Section 102.12 under permanent stabilization is a requirement of when to stabilize but does not give examples of how to accomplish stabilization. Specific examples in Section 102.12 should be cross-referenced in this paragraph.

#### 102.24 Removal of BMPs

In order to clarify this Section, we suggest the following changes, "... and those areas shall be graded and permanently stabilized, unless..."

#### 102.31 Permit requirements

- Subsection (a) should match the definition of NPDES Permit that we suggested in Section 102.1.

- Subsection (c) is confusing. Does this mean that if one acre of wetland fill on a 5 acre disturbance is covered by a Water Obstruction and Encroachment Permit, the site is not required to obtain an NPDES permit? Is the total disturbed area reduced by the portion of the site covered by another Department permit? Please clarify.

- Subsection (e) should also reference Section 102.4 (general) where an acreage threshold is set for E&S Plan development. TYPO: basis should be bases.

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

#### 102.32 Permit applications and fees

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

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

- Finally, Subsection (c) states that if threatened or endangered species may be affected, the applicant will prevent the impact. Do the delegated Conservation Districts have to administer this component of the regulations? If so, how?



#### 102.42 Notification of application for permits

- As written, this Section would require municipalities to notify our office every time they receive a permit application for any activity regardless of size or whether earth disturbance is proposed (i.e., shed, building addition) on a parcel 5 acres or larger. Although this covers all sites that would need an NPDES permit, it places an undue burden on both municipalities and NPDES permitting authorities.

- Some Monroe County municipalities feel that the current notification provision does not apply to them because they are only issuing permits for structures, not for any associated earth disturbance. This has resulted in permit violations and strained relationships with those municipalities. The final wording of this Section should aim at preventing misinterpretations of this nature while not requiring all permits on 5 acre parcels to be brought to our attention as discussed above. We suggest: "...within 5 days of receipt of a submittal for a permit or approval on a project site where 5 acres or more of earth disturbance is proposed over the life of the project." Because some jurisdictions do not issue permits, we suggest adding approvals to this section as follows: "...which issues a building or other permit or approval..."

#### 102.43 Withholding permits

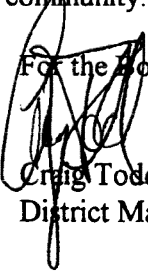
- As in 102.42, we suggest the section be amended as follows "...may not issue a building or other permit or approval ..."


- The individual NPDES permit should be named to avoid confusion as discussed in comments on Subsection 102.32(c).

It is difficult to administer environmental regulations when they "say" one thing and "mean" something else. The regulated community often points to specific words and phrases in the regulations and tells us, the administrators, what they mean. For instance, "the plan shall consider" does not say "the plan shall contain" but that's what it means (Ref. Subsection 102.5(a)).

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

For the Board of Directors,

  
Craig Todd  
District Manager

  
Orianna Roth Richards  
Head Resource Conservationist

CT/dm

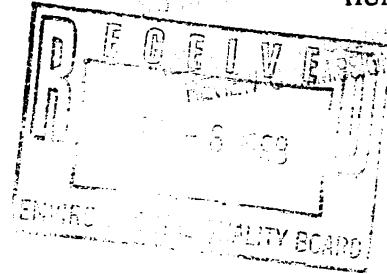
cc: Ken Reisinger, DEP Bureau of Water Quality Protection  
Ken Murin, DEP Bureau of Water Quality Protection  
PACD  
Steve Hanczar, DEP Water Management  
Monroe County Planning Commission  
File (4)

# **EASTERN STATES ENGINEERING, Inc.**

Civil Engineering, Land Surveying and Land Planning Services

P.O. BOX 38  
HUNTINGDON VALLEY, PA 19006  
215/914-2050  
FAX 215/914-2033

April 7, 1998



ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Environmental Quality Board  
Rachel Carson State Office Building  
15th Floor, 400 Market St.  
Harrisburg, PA 17101-2301

RE: Proposed Revisions to Erosion & Sedimentation Control Regulations

Dear Sir/Madam:

The following comments and opinions are offered to you regarding the above referenced proposed regulation changes:

1. The draft proposal requires "immediate" stabilization after earth disturbance activities have been completed, whereas the current regulations require stabilization as soon as possible after disturbance. No allowances are provided for temporary or short-term disturbance, especially during harsh weather conditions when stabilization efforts are thwarted.
2. The requirement for a completed PNDI to be included in E&S permit applications would add significant time delay and expense to particular projects, proving burdensome to many small builders. It is unreasonable to expect that small tracts of land (as small as 5,000 square feet) would provide suitable habitat for threatened or endangered species. The threshold should be 100 acres minimum.
3. The draft proposal requires sediment basins and traps to discharge to waters of the Commonwealth. This could result in more extensive off-site improvements in order to discharge to a waterway for certain projects, as well as potentially more environmental impact (wetlands disturbance, etc.). The regulations should be amended to allow acceptable alternatives developed by a licensed engineer which would demonstrate downstream stability.
4. The proposed regulations reduce the threshold for requirement of an E&S plan to 5,000 square feet. This will greatly expand the number of applications to be reviewed and cause a serious bottleneck in the approval process.

---

#### **Regional Offices**

ESE Brandywine Valley, PA  
610/647-1162

ESE New York Metro  
908/638-5270

ESI Washington, DC  
703/242-0830

Environmental Quality Board

April 7, 1998

Page 2

As an associate member of the Pennsylvania Builders Association, this firm urges that you consider the negative ramifications of many of the proposed regulations to the homebuilding industry of this State.

Thank you for your consideration of the above comments.

Very truly yours,

A handwritten signature in cursive script that reads "James Matticola".

James Matticola, P.E.

c: Zvi Barzilay  
Joe Palka

Z:\matticola\paes



# CHESAPEAKE BAY FOUNDATION

Resource Protection  
Environmental Education

## OFFICERS

Wayne A. Mills  
Chairman

T. Gaylon Layfield, III  
Vice Chairman

Burks Lapham  
Secretary

Lenneal J. Henderson  
Treasurer

William C. Baker  
President

Michael F. Hirshfield, Ph.D.  
Vice President

## EX OFFICIO TRUSTEES

Governor Thomas J. Ridge

Governor Parris N. Glendening

Governor James S. Gilmore, III

Mayor Marion Barry

Hal C. B. Clagett - Clagett Trustee

Joanne S. Berkley - Bay Care Chapter

Marilyn W. Layer - York Chapter

## TRUSTEES

Myrtha L. Allen

Donald F. Boesch

George W. Brown, Ph.D.

Louisa C. Duemling

Caren E. Giotfelty

Alan R. Griffith

Jack S. Griswold

Susan Taylor Hansen

Edward M. Holland

Peter A. Jay

G. R. Klinefelter

H. F. (Gerry) Lenfest

M. Lee Marston

Katherine Turner Mears

Philip Merrill

G. Steele Phillips

George G. Phillips, Jr.

Robert M. Pinkard

Marie W. Ridder

Willcox Ruffin, Jr., M.D.

Truman T. Semans

Edmund A. Stanley, Jr.

Henry F. Stern

Aileen Bowdoin Train

Michael Watson

James C. Wheat, III

L. Donelson Wright, Ph.D.

## HONORARY TRUSTEES

L. Eugene Cronin

T. Marshall Duer, Jr.

C. A. Porter Hopkins

Charles McC. Mathias

Sumner Pingree

Blaine T. Phillips

Godfrey A. Rockefeller

Russell C. Scott

C. Trowbridge Strong

William W. Warner

Pennsylvania Executive Director

Jolene E. Chinchilli

APR 13 11 09 AM '98  
RECEIVED

April 8, 1998

Environmental Quality Board  
Rachel Carson State Office Building  
15<sup>th</sup> Floor  
400 Market Street  
Harrisburg, Pennsylvania 17101-2301

Re: Notice of Proposed Rulemaking  
25 Pennsylvania Code Chapter 102  
Erosion and Sediment Control

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Dear Members of the Board:

On behalf of the Chesapeake Bay Foundation, I want to thank the Board for this opportunity to submit comments on the above referenced proposed rulemaking. Our comments are attached, along with a one page summary.

Please feel free to contact me if you have any questions regarding these comments.

Sincerely,

Barbara L. Kooser  
Environmental Scientist

cc: Evelyn MacKnight, EPA

Pennsylvania Office: Old Waterworks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234-5550, fax 717.234-9632

Headquarters Office: 162 Prince George Street, Annapolis, Maryland 21401, 410.268.8816, fax 410.268.6687

Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401, 410.268.8833, fax 410.280.3513

Virginia Office: 1001 E. Main Street, Suite 710, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011

[www.savethebay.cbf.org](http://www.savethebay.cbf.org)

Non-Chlorine Bleached Recycled Paper



**Comments on Proposed Changes to 25 PA Code Chapter 102  
to the Environmental Quality Board  
Submitted by the Chesapeake Bay Foundation  
April 8, 1998**

The Chesapeake Bay Foundation submits to the Environmental Quality Board the following summary of our comments on proposed changes to 25 PA Code Chapter 102 - Erosions and Sediment Control:

- support the language protecting existing and designated uses of the waters of the Commonwealth,
- support the requirement for erosion and sedimentation plans for agricultural activities, and suggest stating this requirement more clearly in the first part of the regulation and covering any agricultural activities that contribute to erosion,
- suggest DEP change "minimize" to "prevent" throughout Chapter 102,
- object to the 5000 square foot exemption for needing an erosion and sediment control plan, in particular along small streams and with no process in place to track the cumulative use of this exemption,
- suggest adding enforcement provisions to the regulations,
- believe the exemption from permitting for silvicultural and road maintenance activities under 25 acres is too high,
- suggest DEP adopt a water quality standard for sediment,
- suggest DEP increase the requirements for high quality and exceptional value watersheds by requiring an approved plan and a buffer and/or best management practices around high quality and exceptional value streams, where no earth disturbance activities would be allowed,
- suggest requiring erosion and sediment control plans to be submitted to DEP or the delegated authority and allow public access to these plans.

Please feel free to contact Barbara Kooser for a complete copy of the comments or if you have any questions.

**Pennsylvania Office: Old Waterworks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234-5550, fax 717.234-9632**

**Headquarters Office: 162 Prince George Street, Annapolis, Maryland 21401, 410.268.8816, fax 410.268.6687**

**Maryland Office: 111 Annapolis Street, Annapolis, Maryland 21401, 410.268.8833, fax 410.280.3513**

**Virginia Office: 1001 E. Main Street, Suite 710, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011**

**[www.savethebay.cbf.com](http://www.savethebay.cbf.com)**

Non-Chlorine Bleached Recycled Paper

**Comments on Proposed Changes to 25 PA Code Chapter 102  
to the Environmental Quality Board  
Submitted by the Chesapeake Bay Foundation  
April 8, 1998**

The Chesapeake Bay Foundation (CBF) thanks the Environmental Quality Board for this opportunity to comment on proposed changes to 25 PA Code Chapter 102, Erosion and Sediment Control regulations. CBF is the largest nonprofit citizens group whose purpose is to save the Chesapeake Bay and its watershed. Approximately one-half of Pennsylvania drains into the Susquehanna River, which contributes one-half of the fresh water to the Chesapeake Bay. Since one of the major pollutants affecting the Bay is sediment, changes to the erosion and sediment control regulations in Pennsylvania can have a considerable effect on the Chesapeake Bay as well as Pennsylvania's streams and rivers.

**General Comments**

CBF supports some of the changes proposed for Chapter 102. In particular, we support the language protecting existing and designated uses of the waters of the Commonwealth. These uses must be protected, and we applaud the Department of Environmental Protection (DEP) for adding this language to these regulations. Soil erosion and sedimentation cause streams and rivers to become degraded; therefore these regulations should be used to protect water quality.

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

Throughout Chapter 102, the language "minimize accelerated erosion" is used. CBF believes this language is weak. In the preamble DEP stated that the advisory group suggested alternative language, which was rejected by DEP. This alternative language was "minimize accelerated erosion and prevent sediment pollution." However, in the proposed regulations DEP completely

Environmental Quality Board  
April 8, 1998  
p. 2

removed the word "prevent," even from where it is used in the current regulations. The purpose of these regulations should be to prevent accelerated erosion, not just minimize it, and CBF suggest DEP change "minimize" to "prevent" throughout Chapter 102.

CBF objects to the 5000 square foot exemption from the erosion and sediment control plan requirement. Under some circumstances, such as along a small creek, an exemption from needing a plan for a one-tenth acre disturbance has the potential to harm aquatic life in a creek. Currently, there is no de minimus threshold, and we suggest DEP drop this exemption from the proposal. However, if DEP should keep this exemption, conditions need to be placed on its use. These conditions should include: limiting its use based on the proximity to a stream, steepness and erodability of the soil, prohibition of its use in a watershed designated as high quality or exceptional value, and the cumulative effect of the use of the exemption by multiple people along a stream or creek.

Chapter 102 lacks any enforcement provisions to ensure its requirements are being followed. The general requirements are that erosion and sediment control measures be developed, implemented and maintained, but there is no mention of what happens when they are not. Enforcement provisions should be added to ensure waters of the Commonwealth are protected from excessive sediment.

The proposed regulations include a new exemption from permitting for silvicultural and road maintenance activities under 25 acres. CBF believes this threshold is too high. Clear cuts of 25 acres have a high potential to cause water quality problems, and a permit should be required. Other types of cuts over the same acreage may not have as much potential to cause water quality problems, depending on the type of cut. The threshold for permit exemptions should be overall reduced, or at a minimum, the type of cut should be a factor. In addition, there is no definition of road maintenance activities. These activities, in particular around bridges, have a potential for affecting water quality. These activities need to be spelled out, and specific requirements set for the activities.

### **Suggested Additions to Chapter 102**

DEP needs to adopt a water quality standard for sediment. Anyone who has watched a creek turn brown after a rain can understand that sediment can be a problem for water quality. In fact, according to the Pennsylvania 1996 305(b) report, suspended solids (i.e. sediment) was the second leading cause of stream pollution in the state. One way for DEP to adequately address the problem is to adopt a water quality standard for sediment that would protect instream water



Environmental Quality Board

April 8, 1998

p. 3

quality and aquatic life. Pennsylvania should adopt a standard not only to protect water quality in the Commonwealth, but to protect the Chesapeake Bay as well. In 1997 the U.S. Geological Survey issued a report (Reed and Hoffman, 1997) which documented a problem with the great potential to wipe out areas of the upper Chesapeake Bay due to the increased discharge of sediment. In the next 10-20 years Conowingo Reservoir will reach equilibrium in regards to its sediment retention abilities, instead of a portion of the sediment being retained behind the dams as it is currently. After that point all the sediment coming down the Susquehanna River will enter the upper Chesapeake Bay. The addition of increased amounts of sediment has the potential to destroy grass beds in the upper Bay, and would wipe out the gains in the grasses we have seen in the last few years and would have devastating effects on the aquatic life that depend on these grasses for shelter. Pennsylvania needs to act proactively to prevent sediment from entering streams in the first place, and adopting a water quality standard for sediment would be a good first step.

DEP needs to add enforcement provisions to the proposed regulations. These regulations should spell out what means are available to DEP to ensure adequate erosion and sediment control plans are developed, implemented and maintained. Specific measures should include a certification by the applicant that plans will be followed and requirements for inspections with particular focus on large sites. Citizens should be enabled to instigate stop work orders if erosion and sedimentation is causing damage to the citizen's property or livelihood. The enforcement provisions should also include fines and possibly even performance bonds for larger projects.

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

The public should have access to erosion and sediment control plans.. Under the current regulations, for those activities not needing an erosion and sediment control permit but needing plan, plans are only required to be kept on site, available to DEP personnel or a delegated authority for the program. Because

the public does not have access to these plans, it becomes very frustrating for citizens who see erosion problems and want additional information. DEP should require erosion and sediment control plans to be submitted to DEP or the delegated authority and be kept on file, allowing public access to the plans.

### **Specific Comments**

#### **Section 102.1**

"BMPs - best management practices - Activities, facilities, measures or procedures used to" and replace "minimize" with "prevent..."

#### **Section 102.5**

(b) instead of "minimize", replace with "...prevent accelerated erosion and sedimentation."

(b)(6) There should be a requirement to maintain and protect high quality and exceptional value waters. The sentence should be changed to read: "...the person proposing the activity shall consider utilizing prolonged detention for sediment basins and sediment traps, stream buffers, and an accelerated stabilization schedule. In all cases, the person shall use whatever measures are necessary to maintain and protect the water from degradation.

(d) Many farms employ multiple planning strategies (e.g. nutrient management plans, integrated pest management plans, as well as erosion and sediment control plans) on the same fields. For the proper functioning of these plans, it is necessary that each is designed so that all are consistent with one another. Language should be added to this section to ensure this conflict does not occur. "Other types of management plans should be taken into consideration during the planning process."

#### **Section 102.11**

(a) instead of "minimize", replace with "...prevent accelerated erosion and sedimentation."

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

Section 102.13

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

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

Section 102.22

The use of "minimize" weakens the meaning of this section, and should be changed to read: "...so that accelerated erosion and sedimentation shall be prevented to protect, maintain and improve water quality and the aquatic environment."

(2) The word "minimize" should be replaced with "prevent": "An acceptable BMP which permanently prevents accelerated erosion."

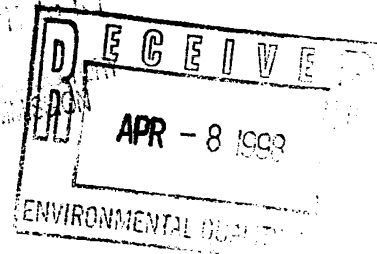
**References**

Reed, L. A. and S. A. Hoffman. 1997 Sediment Deposition in Lake Clarke, Lake Aldred, and Conowingo Reservoir, Pennsylvania and Maryland, 1910-93. U.S. Geological Survey Water-Resources Investigations Report 96-4048. Lemoyne, Pennsylvania.

Frey, R., Editor. 1996. Commonwealth of Pennsylvania 1996 Water Quality Assessment (Section 305(b), Federal Clean Water Act). Division of Assessment and Standards, Bureau of Water Quality Management, Pennsylvania Department of Environmental Protection, Harrisburg, PA.

**Freeman, Sharon**

**From:** TERRY MORROW[SMTP:torrow@MAIL.CLARION.EDU]  
**Sent:** Tuesday, April 07, 1998 11:50 AM  
**To:** RegComments  
**Subject:** Comments on proposed chapter 102 rulemaking



Memo  
Pennsylvania Trout  
Environmental Committee

Date: April 7, 1998

From: Pennsylvania Trout Environmental Committee c/o Jack Williams,  
#2 , Box 500, Summerville, PA 15864, email address:  
torrow@mail.clarion.edu

RR

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

To: Environmental Quality Board

Re: Comments on proposed changes to Pennsylvania Code Chapter 102

Pennsylvania Trout, Inc., a Council of Trout Unlimited (PATrout) thanks the Environmental Quality Board of this opportunity to provide comments on the proposed changes to 25 PA Code Chapter 102, Erosion and Sediment control Regulations. As a key player in the work of the Dirt and Gravel Roads Task Force and other efforts to prevent erosion into the Commonwealth's waterways, PA Trout offers the following comments for your review.

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

2. In its Policy Statement on Forestry Practices (approved January 3, 1997), PA Trout defines the riparian area of a stream as that extending 100 feet beyond the stream banks. PA Trout recommends that regulations be promulgated to prevent the harvesting of timber within the riparian zone. However, until such time that regulations are developed we recommend that when timber harvesting does occur within a stream's riparian area, special conditions must be met, They are:

A. all non-commercial vegetation within the riparian zone must

remain undisturbed;

**B. to minimize damage, entry to any riparian zone must be limited to specific locations;**

**C. harvesting of timber in a riparian area must follow an erosion and sedimentation control plan, approved by the County Conservation District.**

We recommend that language similar to the above be incorporated into the proposed rulemaking.

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

4. What provisions does PADEP have to assure compliance with the proposed regulations? What are proposed as compliance incentives or non-compliance penalties?

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

Thank you for the opportunity to comment on this matter. Please keep us informed as to the status of the proposal.

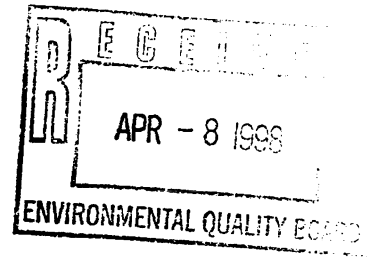
Sincerely,

Jack Williams  
Terry Morrow  
Co-chairs PA Trout Environmental Committee

APR 10 11 08

RECEIVED  
REVIEW COMMISSION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



April 7, 1998

Environmental Quality Board  
Rachel Carson State Office Building  
15th Floor, 400 Market Street  
Harrisburg, PA 17101-2301

Re: State Erosion and Sedimentation Control Regulations (Chapter 102)

Dear Environmental Quality Board:

As a home builder in the Southeastern portion of PA, I am aware that there are proposed modifications to the state erosion and sedimentation control regulations. As an employer of hundreds of jobs in the local area, I would request that DEP not make the proposed modifications to Chapter 102.

Governor Ridge's plan when elected to office, was to reduce permitting processes for unnecessary tasks. The proposed modifications go directly against that purpose and increase what is already a difficult process. I note the following items specifically:

1. Reducing the regulations from 25 acres to 5 acres for E&S plan will create significantly more applications, additional paperwork and ultimately bottleneck the approval process.
2. The stabilization proposed modifications are too stringent and do not take into consideration reality regarding weather conditions and other unanticipated factors.
3. Proposed regulations requiring sedimentation basins and traps to discharge into the water of the Commonwealth are unduly harsh and lack flexibility. There should be the ability to have a certified or licensed engineer be permitted to demonstrate to DEP downstream stability which could meet the ultimate objective of DEP.

April 7, 1998  
Environmental Quality Board  
Page 2

4. The PA Natural Diversity Inventory form mirrors the "Federal Endangered Species Act" which in the past has been abused to stop development. We would urge that this not be applied to any community or development that is less than 250 acres.

As a home builder and a regional employer, we recognize that maintaining safeguards for the environment are necessary to promote the well being of all citizens of the Commonwealth. However, any additional regulatory process that is inflexible and onerous can cause more problems, delay approval processes and ultimately reduce jobs in the Commonwealth of PA.

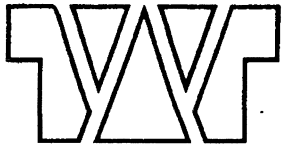
We urge you to **not** adopt these modifications or at least to further review them with the PA Builders Association.

Sincerely,

John A. Westrum  
President

Westrum Development Corp.  
370 Commerce Drive  
Fort Washington, PA 19034

cc: Duane Searles  
Lou Biacchi

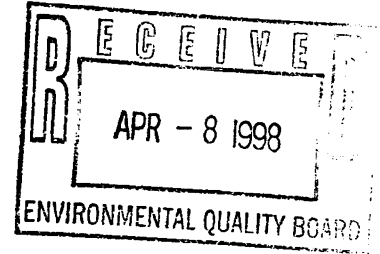


TAYLOR WISEMAN & TAYLOR  
ENGINEERING • SURVEYING • PLANNING • LANDSCAPE ARCHITECTURE

Regional Office: 252 W. Swamp Road • Suite 11 • Doylestown, Pennsylvania 18901  
215•230•7499 FAX 215•230•9626

APR 15 1998  
REVIEW COMMISSION April 7, 1998

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



Angelo J. Caracciolo, LS, Pres.  
William R. Ommundsen, Jr., PE  
James M. Stevens, PE  
John T. Butler, LS  
Thomas M. Howell, PE  
Anthony F. DiMauro, LS  
Gary L. Johnson, PE  
Richard W. McGuire, PE  
Linda A. Dickman, Corp. Sec.  
Thomas W. Wirth, Treas.

Environmental Quality Board  
Rachel Carson State Office Building  
15th Floor  
Market Street  
Harrisburg, PA 17101-2301

Regional Manager  
Mark S. Mayhew, PE

RE: 25 PA. Code CH. 102  
Erosion and Sediment Control  
Comments

Robert Anastasia, PE  
Edward A. Barnes, LS  
Edward P. Brady, PE  
Michael F. Burns, LS  
Jeffrey J. Carr, PE  
Thomas A. Costello, PE  
Robert R. Heggan, Jr., LS  
Robert T. McAnally, Jr., PE  
Colleen M. Richwall, PE  
Robert A. Ryan, LS  
Bernard T. Tetreault, PE

Dear Board Members:

As a licensed engineer in the State of Pennsylvania I take seriously my responsibility to provide professional engineering services to my clients that balance the need to develop resources for the growth of our economy and at the same time protect our environment. I believe this balance can be best achieved by educating the public, having governing bodies set general guidelines and by the use of best management practices, not by overly onerous and inflexible regulatory processes. In this spirit I offer the following two comments to the draft regulations:

Khalil A. Amrikani, PE  
Robert M. Ballard, LS  
Jeffrey L. Bateman, LS  
Clarence Beach, PE  
Duane R. Burkholder, CLA  
Neal J. Camens, PE  
Harold R. Conover, LS  
Timothy R. Corcoran, LS  
John R. DePalma, LS  
Daniel J. DePasquale, PE  
Bertram A. Doone, LS  
Bruce K. Easterly, PE  
George H. Gusrang, LS  
Byron D. Howell, LS  
Dennis R. Leap, PE  
George C. Leykum, LS  
Donald L. MacKay, LS  
Donald F. Miano, PP  
Nicholas A. Mozzachio, LS  
Kevin J. Murphy, LS  
John F. Muschko, LS  
Richard A. Rodia, PE  
Wayne M. Ruble, LS  
Michael H. Saperstein, LS  
Jerry W. Scott, LS  
Charles M. Settlecowski, LS  
Michael S. Sherman, LS  
Ralph Thomas, Jr., LS  
Gary V. Vecchio, PE  
Hollis F. Veley, III, PE  
Mark A. Webster, LS  
Thomas A. Wingate, Jr., NICET III  
David S. Zane, LS

Section 102.4

Many single family home custom builders construct large homes on large lots that will disturb more than 5,000 sf. The construction normally does not concentrate storm water runoff, the disturbed area is unprotected for very short periods of time and generally silt fence installation, tracking pads and other BMP's are utilized. I believe the cost to prepare specific erosion control plans for this type of construction is not justified.

I therefore request an exemption to plan preparation be added for single family residential sites when said lots are not a part of a concurrent multi-lot development.

Consultants  
Earl J. Applegate, PP  
Harry O. Bateman, LS  
Eugene W. Noll, PE  
David L. Taylor, PE  
William H. Taylor, PE  
Joseph F. Wiseman, PE

Section 102.32 (c)

I am very concerned with the current vague language utilized i.e., "If the Department determines... the earth disturbance activity may adversely impact the species...the person...will prevent or eliminate the impact. "What is the definition of "adversely"

Corporate Office  
124 Gaither Drive  
Suite 150  
Mt. Laurel, NJ 08054  
609•235•7200  
Fax 609•722•9250





and who determines what measures constitute adequate "prevention"? I have been involved in projects where the governing body could not decide if we had to leave a 50', 150' or 250' non-disturbance area around a ruin within a National Historical Landmark property. Will the same indecision be encountered when identifying preventative measures for threatened species?

I believe to ensure the long term survival of an endangered species or habitat a certain sustainable critical mass of protected land is required. If small pockets of habitats are attempted to be preserved, the habitat and or species within said habitat is going to be affected, especially if the site is surrounded by development.

Therefore, in order to concentrate the program's efforts in the areas that will produce the greatest long term results, and to minimize the waste of onerous paperwork, I suggest a PNDI search form be submitted only for projects involving 250 acres or more.

Thank you for considering the above comments.

Very Truly Yours,

Mark S. Mayhew, PE  
Regional Manager

cc: Tom Druce, 144th District  
Stewart Greenleaf, 12th District  
Chuck McIlhinney, 143rd District  
Joe Conti, 10th District

# PENNSYLVANIA OIL & GAS ASSOCIATION

106 Locust Grove Road, P. O. Box 349, Bainbridge, PA 17502

Tel: 717-426-0067

Fax: 717-426-3010

April 8, 1998

Environmental Quality Board  
P. O. Box 8477  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

## **Comments on Proposed Rulemaking:**

### **EROSION AND SEDIMENT CONTROL 25 Pennsylvania Code Chapter 102 (No. 7-332) Regulatory Basics Initiative**

The Department of Environmental Protection's (DEP) erosion and sediment control (E&S) regulations at *Chapter 102* protect and enhance the waters of the Commonwealth by regulating the planning and implementation of measures to minimize accelerated erosion and sedimentation.

The Department developed the proposed amendments to simplify and clarify *Chapter 102* pursuant to the its Regulatory Basics Initiative (RBI) and Executive Order 1996-1. The initiatives require the Department to evaluate and revise its regulations to ensure that they:

- ◆ are no more stringent than federal regulations unless justified by a compelling and articulable Pennsylvania interest or required by state law;
- ◆ do not impose economic costs disproportionate to the environmental benefit;
- ◆ provide performance-based compliance options as opposed to prescriptive standards; and
- ◆ do not inhibit green technology and pollution prevention strategies.

The initiatives also require the Department to revise its regulations to improve clarity and eliminate redundancies and to make sure that they do not cause significant noncompliance.

**Focus and impact.** Most of the major changes in the rulemaking concern the integration and coordination of *Chapter 102* E&S permitting requirements with the Department's *Chapter 92* National Pollutant Discharge Elimination System (NPDES) general permitting requirements for discharges of stormwater from construction activities.

In its executive summary of the proposed rulemaking, the Department expresses its belief that its ability to delegate the E&S program to county conservation districts will allow the Department

“to continue to deliver the necessary technical and compliance assistance to provide timely, efficient planning and permit application reviews while maintaining effective protection for the Commonwealth's water resources.”

The Pennsylvania Oil and Gas Association respectfully disagrees that the proposed regulation will have the hoped-for effect on erosion and sediment control planning and permit review efficiency. In fact, we expect the opposite. Certain aspects of the regulation, when coupled with the requirements of the Department's recently revised NPDES general permit for discharges of stormwater associated with construction activities (PAG-2), will greatly expand the volume of activity that local conservation districts will be expected to handle. The result, we believe, will be a substantial delay in oil and gas well permitting, particularly in those counties where most of the well permitting and drilling activity occurs.

## **Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102**

(No. 7-332)

---

**RBI inconsistencies.** The proposed revisions are also contrary to the RBI and Executive Order mandate because the Department included two provisions that are more stringent than comparable federal law and regulations without a clear articulation of a compelling Pennsylvania interest or a demonstration that they are required by state law.

First, the proposed regulation incorporates the Department's recently revised NPDES general permit for construction-related stormwater discharges into the *Chapter 102* program without modification. The latest form of PAG-2 imposes permit requirements on Pennsylvania permittees that are more stringent than comparable US Environmental Protection Agency (EPA) NPDES requirements contained in a recently reissued general permit for construction-related stormwater discharges that is applicable elsewhere in EPA Region 3.

Second, the proposed revisions to *Chapter 102* regulations fail to incorporate the unique regulatory treatment of stormwater discharges from oil and gas exploration and development activities created by the federal *Clean Water Act* and EPA NPDES stormwater permitting regulations. The federal law and related EPA NPDES regulations create a non-regulatory pollution prevention opportunity that the department could employ to provide regulatory relief to the oil and gas extraction industry

### ***The written E&S Control Plan review requirement is unnecessarily more stringent than federal regulations***

The proposed rule violates the RBI and Executive Order initiatives by imposing requirements contained in the Department's general permit for stormwater discharges from construction activities that are more stringent than comparable federal requirements.

The Department's NPDES general permit for construction-related stormwater discharges was formally revised through a notice in the *Pennsylvania Bulletin* on October 4, 1997.<sup>1</sup> The updated PAG-2 contains a provision that requires the review and approval of the E&S Control Plan as a condition for receiving a stormwater discharge authorization.

The E&S Control Plan review requirement is more stringent than comparable US Environmental Protection Agency (EPA) general permit requirements. EPA has never required the formal review of written Stormwater Pollution Prevention Plans (SWPPP) – the federal counterpart of the Department's E&S Control Plan – as a condition for authorizing the use of its general permit for stormwater discharges from construction activities.

EPA reiterated its position on the matter on February 18, 1998 when the administrator of EPA Region 3 and six other regional administrators published a notice in the *Federal Register* of the reissuance of their general permit for stormwater discharges from construction activities.<sup>2</sup> In the reissued general permit, the EPA regions retained provisions that only require the development and implementation of the SWPPP to obtain general permit authorization as long as the plan is made available upon request to federal, state and local agencies with authority to approve them.

The written E&S Control Plan review and approval requirement in the proposed regulation is clearly more stringent than the requirements of the federal program, and the Department offers no justification for it pursuant to RBI or Executive Order criteria.

The E&S Control Plan review provision creates substantial problems for the oil and gas producers, primarily because of another proposed amendment to *Chapter 102* that eliminates the parceling provisions contained in §102.31. The proposed change replaces the permit exemption for parceling or staging of projects with a new provision requiring earth disturbance activities of any size to comply with the PAG-2

---

<sup>1</sup> 27 PaB 5143

<sup>2</sup> 63 FR 7857

**Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102**  
(No. 7-332)

requirements if they are part of or a stage in “a larger common plan of development” that involves five acres of earth disturbance.

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

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

Such an impact is also contrary to the general goals of the RBI and the Executive Order. Since the regulation imposes no time frame within which the delegated agencies must complete E&S plan reviews, the proposal will also subvert the Department’s highly successful Moneysurance program.

**Impact of the parceling revision and plan review requirements**

The Pennsylvania Oil and Gas Association believes that the proposed provisions for a formal review and approval of E&S Control Plans pursuant to the requirements of the Department’s new PAG-2 for small projects that can be construed to be part of a larger common plan of development will impose costly and excessive delays in the permitting of oil and gas wells under *Chapter 78*. We believe that local conservation districts which may be delegated responsibility for E&S Control Plans under *Chapter 102* will be overwhelmed with new work and be unable to complete plan reviews in a timely manner. This is especially true in rural counties with budgetary constraints and inadequate staff.

**Current E&S control requirements**

Under the current *Chapter 102* regulation, no permits are required under §102.31

- ◆ for earthmoving activities that disturb less than 25 acres; or
- ◆ when an activity that involves more than 25 acres is subdivided into parcels less than 25 acres and earthmoving is undertaken on noncontiguous parcels that are stabilized or the contiguous parcels are disturbed.

Current *Chapter 102* requires persons conducting earth disturbance activities that exceed the permit thresholds to prepare and implement a written E&S Control Plan. The plan must be submitted for review and inspection during all phases of the construction activity, and the Department has the right to formally review the plan if needed.

**Current regulation of the oil and gas industry**

Most oil and gas well development projects fall outside the scope of the permit requirements of current *Chapter 102* because they involve less than 25 acres of earth disturbance. Most oil and gas well development projects also fall below the PAG-2 five-acre threshold. As a result, most oil and gas well development projects are only required to prepare and implement E&S Control Plans and to maintain the plan on site for inspection during all phases of the construction activity.

**Oil well development.** In typical oil well development projects in Pennsylvania, wells are laid out on five-acre spacing, and each well site is connected by a lease road that also serves as a right-of-way for gathering lines moving oil from the well site to a central collection tank. The construction of well locations for oil wells usually involves less than 0.10 acre of earth disturbance, and associated road construction involves no more than 0.16 acre of earth disturbance.

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

The typical oil well will involve about  $\frac{1}{4}$  acre of earth disturbance on a project site consisting of five acres of drainage area. Thus, only three percent of the total project area is actually disturbed.

In order for an oil well development project in Pennsylvania to breach the five-acre earth disturbance permitting threshold, it would have to involve the development of 20 wells or more in a contiguous 100-acre drainage area.

**Gas well development.** Gas well development projects typically involve larger earth disturbances, but they are distributed over a much larger area. Gas wells are usually laid out on 20-acre spacing. Because of the distance between gas wells, each well usually has its own access road and a pipeline to move gas from the wellhead to the point of sale. The drilling pad for a gas well covers approximately  $\frac{3}{4}$  acre, and the project will involve separate earth disturbances of approximately  $\frac{1}{3}$  acre each for the access road and gathering line.

The total earth disturbance area that is typically involved in the development of a gas well equals approximately 1.5 acres on a 20-acre drainage area. Thus, only seven percent of the earth in the total drainage area of the project is actually disturbed during the development of a gas well.

In order for a gas well development project in Pennsylvania to breach the five-acre earth disturbance permitting threshold, it would have to involve the development of four wells or more in a contiguous 80-acre drainage area.

**Compliance history.** The oil and gas industry's record of compliance with the current *Chapter 102* erosion and sediment control requirements – while not perfect – is exceptional.

During the 12-month period ending September 30, 1997, the Department issued 1,925 new well permits, and the industry drilled 1,323 wells. In the same 12-month period, the Department conducted 9,199 well site inspections and cited 180 *Chapter 102* violations. Forty-four of the violations were due to the failure of the well operator to have an E&S plan while 136 of the violations resulted from the operator's failure to implement the E&S plan properly. The Department's records also show that the 180 *Chapter 102* violations only resulted in nine unpermitted discharges to streams.<sup>3</sup>

### NPDES PAG-2 integration

In the preamble to the proposed regulation, the Department incorrectly states that its proposed rule is consistent with federal requirement for stormwater discharges associated with construction activity.<sup>4</sup>

The proposed regulation integrates the NPDES permitting requirements of *Chapter 92* into *Chapter 102* by amending §102.31 to specify that persons who propose an earth disturbance activity that involves five or more acres must obtain either an individual NPDES permit or coverage under the NPDES PAG-2.

The proposed changes also eliminate the current parceling or staging exemption because, DEP says, "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."

In place of the current staging, the proposed regulation would require persons proposing earth disturbance activities of any size – regardless of how small – to comply with the PAG-2 requirements if the earth

---

<sup>3</sup> Statistical information provided by the Bureau of Oil and Gas Management

<sup>4</sup> As we have demonstrated above, the Department's assertion is incorrect. The *Chapter 102* revisions only appear to be consistent with federal NPDES stormwater control requirements because they are linked to the Department's NPDES stormwater management program. In fact, the Department's underlying NPDES general permit for stormwater discharges from construction activities is more stringent than the federal program. As a result, the *Chapter 102* revisions cannot be consistent with the relevant federal requirements.

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

disturbance is part of or a stage in “a larger common plan of development or sale that involves five acres ... of earth disturbance.”<sup>5</sup>

### Common plan of development or sale

The *Chapter 102* proposal to require permits for any earth disturbance that is part of “a larger common plan of development or sale” is taken almost verbatim from the EPA regulations that define the scope of the federal NPDES program for controlling stormwater discharges from construction activities.<sup>6</sup>

The provision is fraught with uncertainty because of its generality, however, and EPA noted in its recently revised general permit for construction-related stormwater discharges in Region 3 that “the volume and nature of the comments [on the provision] showed that the regulated community and the public needed additional guidance on the issue.”<sup>7</sup>

In the many pages of discussion on the issue in the notice, EPA made it plain that it intends a broad interpretation of the concept. EPA’s discussion, however, focused on the types of residential and commercial land development activities that can be readily identified as a “common plan of development or sale” and on activities that commonly result in five contiguous acres of earth disturbance at one time.

In its discussion, EPA defined the “plan” in a common plan of development or sale as

“any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur *on a specific plot*.”<sup>8</sup> [Emphasis added.]

EPA also noted that in many cases, a common plan of development or sale consists of many small construction projects that collectively add up to five or more acres of total disturbed land, and again it used the typical residential subdivision as an example, pointing to the layout the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development.

The more complicated case that needs clarification, EPA observed, is when the common plan consists of several smaller construction projects that cumulatively will disturb five or more acres, but may or may not be under construction at the same time.

Such a scenario is typical in oil and gas well development projects in two instances:

- ◆ when a well operator intends to develop a lease where the geology of the oil and gas is well understood.  
  
In this instance, the well operator may obtain multiple well permits for an “in-fill” drilling program that consists of the sequential drilling and completion of a number of wells over the course of five to ten years.
- ◆ when the operator seeks to develop a lease where the subsurface geology has not been fully explored and the extent of oil or gas bearing formations is unknown.

<sup>5</sup> 28 PaB 772

<sup>6</sup> 40 CFR §122.26(b)(14)(x) requires NPDES permits for “Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale”.

<sup>7</sup> 63 FR 7874

<sup>8</sup> 63 FR 7859

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

In this instance, the well operator will permit and drill individual or multiple wells over the course of a number of years as he identifies the extent of the hydrocarbon deposits underlying his leasehold acreage.

As discussed above, the earthmoving activities associated with the development, drilling and completion of each well will disturb only a small fraction of the total area in the vicinity of each well. In such cases, the area in the vicinity of each well for each well may be contiguous, but the areas of earth disturbance will not be related, and in some cases may even be located in different watersheds.

To determine whether a permit is needed for storm water discharges associated with construction activity on sites disturbing less than five acres, EPA poses two questions:

1. Is there a “common plan of development or sale” tying individual sites together? (e.g., Are the lots part of a subdivision plat filed with the local land use planning authority?) and
2. Will the total area disturbed by all of the individual sites add up to five or more acres? (e.g., If you added up all of the acreage that will need to be disturbed to completely build out the subdivision as planned, would there be five or more acres disturbed?)<sup>9</sup>

Generally, if the answer to both questions is no, a storm water discharge permit is not needed. EPA goes on to note, however, that

“The Larger Common Plan concept does have to be applied with some common sense and should not be taken to extremes. ... A common plan of development must at least be theoretically capable of *having five or more acres of land disturbed at one time* in order to trigger the need for a permit.”<sup>10</sup> [Emphasis added.]

### Impact of aggregating wells into common plans of development

Because typical well development projects involve the sequential development of multiple wells and related access roads and gathering line rights-of-way over the course of a number of years, it is difficult for us to imagine how such small earth disturbance activities could be construed to be capable of “having five or more acres of land disturbed at one time” – even theoretically.

Wells are routinely developed in sequence on project sites that are stabilized before contiguous areas are disturbed for the next well. While occasionally there may be some earthmoving activities going on simultaneously on contiguous well project sites (the completion of a gathering line at one site and the construction of an access road at another, for example), in the aggregate, the actual acreage of disturbed earth at any given moment in the development project’s life is typically less than two acres.

Nevertheless, EPA’s liberal guidance on what constitutes a “plan” could easily lead the Department to determine that the act of simultaneously submitting permit applications for three gas wells or for 20 oil wells on contiguous mineral leases where the subsurface geology is well understood is sufficient grounds to qualify the individual sites as part of a common plan of development that is subject to the PAG-2 permit requirements.

The Department could also decide in retrospect, after a well operator has developed three gas wells or 20 oil wells on an unexplored lease where he is slowly identifying the extent of the geological formations that contain paying quantities of hydrocarbons, that he should have obtained PAG-2 permit authorization at the outset of the drilling program.

Such interpretations could have serious impacts on the oil and gas industry in the Commonwealth.

---

<sup>9</sup> 63 FR 7874

<sup>10</sup> 63 FR 7874 – 7875

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

Because each common plan of development would require the entire multiple well project to be planned as if it would be developed as a single “project site,” the well permit applicant would be forced to complete individual E&S plans for each unrelated well site, access road and gathering line right-of way months- even years – before they are needed, package the discrete plans into one written document, and have the package reviewed and approved to obtain authorization for a general permit before the Department could consider issuing the well permits under *Chapter 78*.

Such a plan would be unnecessary in the case of “in-fill” development programs because of the sequential well site development process typically employed in the industry. Such a plan would be impossible to create in the case of programs designed to identify and produce hydrocarbon deposits in unknown geological formations.

Under the Department’s Money-Back Guarantee policy, work on oil and gas well permits must be completed within 30 days of a determination that the application is complete. Since the policy took effect, the Department has successfully met its goal.

The proposed revisions to *Chapter 102*, however, would render the Money-Back Guarantee for oil and gas well permitting moot because of the delays that can be expected from the need to obtain local conservation district approval of the E&S Plan for each well site in the “common plan of development.”

Under current E&S and NPDES permit requirements, local conservation districts are rarely involved in E&S Control Plan reviews for oil and gas well development. In the few instances when they are involved, the local conservation districts commonly take six months or more to complete their reviews of E&S Control Plans.

If the Department begins to aggregate multiple well permits submitted by individual oil and gas operators into projects that it determines to be common plans of development for PAG-2 purposes, it is very likely that the volume of work that would be imposed on the local conservation districts in the counties where the majority of oil and gas wells are permitted would increase exponentially and reduce substantially the efficiency of their reviews.

Each individual well location would have to be considered as a separate E&S Control Plan, regardless of the regulatory fiction that the wells constitute a common plan of development.

If the conservation districts continue to function with the same degree of diligence they exercise in their review of the occasional oil and gas well E&S Control Plan, it is easy to see how the work load would overwhelm their staff, especially those in the top ten oil and gas well permitting counties, and how the Department’s current efficiency in reviewing and issuing oil and gas well permits could be undermined.

Similar impacts should also be expected on conservation districts in counties with active oil and gas well development activities that also have other projects that would be newly regulated under the expanded coverage of PAG-2 envisioned by the proposed *Chapter 102* revisions.

### Wells Permitted

10-96 through 09-97

<u>County</u>	<u>Wells Permitted</u>
Warren	250
Indiana	240
McKean	225
Clearfield	199
Forest	157
Westmoreland	121
Mercer	119
Clarion	116
Jefferson	103
Armstrong	96
Fayette	61
Crawford	57
Venango	42
Elk	38
Green	21
Allegheny	19
Clinton	19
Lawrence	14
Cambria	7
Tioga	6
Butler	5
Somerset	4
Erie	3
Bradford	1
Centre	1
Potter	1

Total Wells: 1,925

Source: DEP Bureau of Oil & Gas Management



## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

### Recommended revisions

To avoid the sharp workload increase and PAG-2 permitting backlog that the proposed *Chapter 102* revisions could create for many conservation districts and to prevent excessive and unnecessary delays in oil and gas well permitting, we suggest that the Department should revise its PAG-2 to bring it in line with the requirements of the newly revised general permit for stormwater discharges from construction activities adopted by EPA Region 3.

**Eliminate mandatory E&S Control Plan submission and review.** Specifically, *Chapter 102* and PAG-2 should be revised to eliminate the requirement that persons seeking authorization for projects subject to PAG-2 must submit an E&S Control Plan to the local county conservation district along with the Notice of Intent to use the general permit. Instead, the general permit should simply track the provisions of proposed §102.4(d) which stipulates that the E&S Control Plan “shall be available for review and inspection at the project site during all stages of the earth disturbance activity” and that “the Department or its designee may request that the plan be submitted for review and approval.”

In addition, the proposed regulation should also be amended at §102.32 (Applications and Fees) by deleting paragraph (2) in subsection (b). Paragraph (2) requires the NPDES permit application or Notice of Intent to be accompanied by an E&S Control Plan.

**Require delegated agencies to satisfy the Money-Back Guarantee.** Also, we recommend that the final rule should include an amendment to §102.41 (administration by local governing bodies) specifically stipulating that the written agreement delegating administration and enforcement authority for the *Chapter 102* program to local conservation districts shall require delegated agencies to conduct PAG-2 permit review and approvals subject to the time 100-day time frame established by the Department’s Money-Back Permit Review Guarantee Program.<sup>11</sup>

<b>Fact Sheet</b>					
<b>DEP MONEY-BACK GUARANTEE PERMIT REVIEW PROGRAM</b>					
<b>Authorization</b>	<b>Adm. Rev.</b>	<b>1 Tech Rev.</b>	<b>2 Tech Rev.</b>	<b>Dec. Rev.</b>	<b>Total Time</b>
General NPDES/Stormwater- Construction (PAG-2) New, Renewal, Amendment	20	30	30	20	100

County conservation districts and local agencies that are unable to conduct E&S Control Plan reviews in the manner envisioned by the Money-Back Guarantee permit review program should not be eligible for program delegation.

**Define “common plan of development or sale”.** The final regulation should also include a specific definition of the phrase “common plan of development or sale” which specifically lists concrete standards and criteria that the regulated community can rely on to determine whether the Department will determine that a proposed project will be subject to the PAG-2 requirements. The definition of the phrase should follow EPA’s “common sense” guidance that expects multiple small projects to consist of five or more acres of disturbance at one time.

<sup>11</sup> [http://www.dep.state.pa.us/dep/SUBJECT/HOTOPICS/moneybck\\_070896.htm](http://www.dep.state.pa.us/dep/SUBJECT/HOTOPICS/moneybck_070896.htm)

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

### **The Department's erosion and sediment control and NPDES regulations should incorporate the unique regulatory treatment of stormwater runoff from oil and gas activities provided by the federal Clean Water Act**

Statutory authority for the *Chapter 102* E&S program and the *Chapter 92* NPDES program are derived from the federal *Water Pollution Control Act* (commonly known as the *Clean Water Act*) and the state's *Clean Streams Law*. EPA promulgated regulations establishing its NPDES program<sup>12</sup> to implement the provisions of the federal law. The permitting requirements in *Chapter 92* that are incorporated by this rulemaking into *Chapter 102* are derived from the federal regulations on the basis of EPA's delegation of primacy over the NPDES program to Pennsylvania.

When the US Congress enacted the *Clean Water Act*, it identified specific classes of industrial activities that are subject to the federal requirements for the management of stormwater runoff. One of the classes of industrial activities that Congress expressly addressed in the context of its stormwater runoff mandate is the class of activities associated with the oil and gas extraction industry.

### **Federal limits on NPDES stormwater permits for oil and gas activities**

Congress included explicit provisions in the *Clean Water Act* at §1342(1)(2)<sup>13</sup> that categorically prohibit the EPA from requiring a permit for uncontaminated stormwater discharges from all facets of oil and gas exploration, production, processing, or treatment operations or transmission facilities. They also forbid the EPA Administrator from "directly or indirectly" requiring any state to require a permit for such stormwater discharges.

When EPA promulgated its NPDES regulations governing stormwater permitting, it incorporated the *Clean Water Act* permitting limitation almost verbatim. The EPA NPDES rules state:

The Director may not require a permit for discharges of storm water runoff from ... oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.<sup>14</sup>

In another section of its regulation, EPA lists the 11 categories of facilities it considers to be engaging in industrial activities subject to its regulations governing stormwater runoff.<sup>15</sup> One of the "categories of facilities" subject to such regulation is the topic of this discussion: stormwater runoff associated with construction activities.<sup>16</sup>

---

<sup>12</sup> 40 CFR Part 122

<sup>13</sup> §1342(1)(2) of the federal *Clean Water Act* states:

(2) Stormwater runoff from oil, gas, and mining operations. The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

<sup>14</sup> 40 CFR §122.26(a)(2)

<sup>15</sup> 40 CFR §122.26(b)(14)

<sup>16</sup> 40 CFR §122.26(b)(14)(x)

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

EPA regulations also list “contaminated” stormwater runoff from oil and gas activities as a separate and distinct category of facility in another subparagraph. The provision requires NPDES permits for

“oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations”.<sup>17</sup>

### **Federal implementation of the NPDES permit provision for “contaminated” stormwater runoff from oil and gas activities**

On September 29, 1995, EPA published notice of a final NPDES general permit governing stormwater runoff from a number of categories of industrial facilities.<sup>18</sup> One part of the new general permit established the permitting requirements for “oil and gas exploration, production, processing, or treatment operations, or transmission facilities” pursuant to the limitations established by the *Clean Water Act*.

EPA’s 1995 “multi-sector” general stormwater permit states that the only oil and gas operations covered by the permit requirements are those that discharge contaminated stormwater runoff, and it established specific criteria for determining when stormwater runoff from oil and gas operations is “contaminated”.

The EPA general permit also defines “oil and gas facilities” to include all construction activities associated with the development of oil and gas wells.

#### **Permits are required only for contaminated stormwater runoff from oil and gas operations.**

As discussed above, EPA NPDES regulations at 40 CFR 122.26(b)(14)(iii) only require those oil and gas facilities that discharge “contaminated” stormwater to submit permit applications under the NPDES stormwater rule and the multi-sector general permit.

EPA considers stormwater runoff to be contaminated if it violates a state’s water quality standards or if the facility has had a release of a Reportable Quantity (RQ) of oil or certain hazardous substances.

The water quality standards criterion requires oil and gas operations to obtain general permit coverage when stormwater runoff from facility operations or from the types of construction activities the Department currently regulates under *Chapter 102* and PAG-2 contributes to a violation of water quality standards.

EPA’s multi-sector stormwater general permit –like the Department’s NPDES general permits for stormwater – does not establish specific numeric effluent limits as the vehicle for permittees to demonstrate compliance with water quality standards. Instead, the federal agency relies on Best Management Practices (BMP) designed to manage stormwater runoff to be incorporated into a site-specific SWPPP.

“The Agency does not believe it is necessary to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from oil and gas facilities .... Rather than setting limits, this section establishes requirements for the development and implementation of a site-specific storm water pollution prevention plan consisting of a set of BMPs that are sufficiently flexible to address different sources of pollutants at different sites.”<sup>19</sup>

EPA also includes a table of suggested BMPs it believes are effective in reducing pollutants in storm water discharges from oil and gas facilities. The list of BMPs in the table is not meant to be comprehensive, but EPA makes it clear that the multi-sector general permit is meant to provide coverage for stormwater discharges associated with construction activities at oil and gas project sites by specifically including a general suggestion that oil and gas facilities regulated under the multi-sector permit could

---

<sup>17</sup> 40 CFR §122.26(b)(14)(iii)

<sup>18</sup> 60 FR 50804

<sup>19</sup> 60 FR 50915

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

“limit the amount of land disturbed during construction of access roads and facilities.”<sup>20</sup>

The RQ contamination standard applies the permitting requirement to stormwater discharges from facilities that have had an RQ release. While relevant to construction-related stormwater runoff, the RQ criterion is more of an operations standard that relates to facilities where precipitation and stormwater runoff come into contact with significant materials including, but not limited to, drilling and production equipment and other machinery, raw materials, waste products, by-products, finished products, stored materials, and fuels. It also applies to stormwater discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility.

EPA states in general permit that

“For oil and gas facilities, contamination means that there has been a release of a Reportable Quantity (RQ) of oil or hazardous substances in storm water since November 16, 1987 (hereinafter referred to as ‘an RQ release’). Only those facilities that have had an RQ release are required to submit a storm water permit application.”<sup>21</sup>

RQs were established for oil and hazardous substances under both the *Clean Water Act* and the federal *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*. EPA defines the RQ for oil as

“the amount of oil that violates applicable water quality standards or causes a film or sheen upon or a discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”<sup>22</sup>

The RQs for other substances are listed in 40 CFR 117.3 and 302.4 in terms of pounds released over any 24-hour period.

**Permit coverage extends to stormwater runoff from construction activities.** The oil and gas section of EPA’s 1995 multi-sector general permit covers contaminated stormwater discharges associated with oil and gas exploration, production, processing, or treatment operations, or transmission activities. EPA explicitly states:

“Oil and gas exploration and production includes all activities related to the search for, and extraction of, liquid and gas petroleum from beneath the earth’s surface.”<sup>23</sup>

“Oil and gas facilities” eligible to seek coverage under the section include the following types of operations:

- ◆ crude petroleum and natural gas (SIC Code 1311)
- ◆ natural gas liquids (SIC Code 1321)
- ◆ oil and gas field exploration services (SIC Code 1382)
- ◆ oil and gas field services, not elsewhere classified (SIC Code 1389) and
- ◆ drilling oil and gas wells (SIC Code 1381).

For purposes of our discussion of the proposed *Chapter 102* revisions, it is critical to note that exploration activities associated with the drilling of oil and gas wells are explicitly granted coverage by the general permit.

EPA defines the scope of drilling activities covered by the multi-sector permit as follows:

“Drilling operations require construction of access roads, drill pads, mud pits, and possibly work camps or temporary trailers.”<sup>24</sup>

<sup>20</sup> 60 FR 50916

<sup>21</sup> 60 FR 50913

<sup>22</sup> 40 CFR §110.3

<sup>23</sup> 60 FR 50914

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

In its discussion of the scope of the general permit as it applies to oil and gas activities, EPA also lists the types of stormwater pollutants and sources typically associated with oil and gas facilities. The table below, which is extracted from the multi-sector permit<sup>25</sup>, is not meant to be comprehensive. It does address the major pollutants and sources of concern, and it specifically includes a discussion of construction-related activities that are being regulated under the proposed *Chapter 102* regulation and the Department's PAG-2.

TABLE I-1. – ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS		
Activity	Pollutant Source	Pollutant
Construction of: - Access Roads - Drill Pads - Reserve Pits - Personnel Quarters - Surface Impoundments	Soil/dirt, leaking equipment and vehicles	TSS, TDS, oil and grease
Well Drilling	Drilling fluid, lubricants, mud, cuttings, produced water	TSS, TDS, oil and grease, COD, chlorides, barium, naphthalene, phenanthrene, benzene, lead, arsenic, fluoride
Well Completion/Stimulation	Fluids (used to control pressure in well), cement, residual oil, acids, surfactants, solvents, produced water, sand	TSS, TDS, oil and grease, COD, pH, acetone, toluene, ethanol, xylenes
Production	Produced water, oil, waste sludge, tank bottoms, acids, oily debris, emulsions	Chlorides, TDS, oil and grease, TSS, pH, benzene, phenanthrene, barium, arsenic, lead, antimony
Equipment Cleaning and Repairing	Cleaning solvents, lubricants, chemical additives	TSS, TDS, oil and grease, pH
Site Closures	Residual muds, oily debris	TSS, TDS, oil and grease

Following the foregoing review, EPA states:

“Based on the similarities of the facilities included in this sector in terms of industrial activities and significant materials, EPA believes it is appropriate to discuss the potential pollutants at oil and gas extraction facilities as a whole and not subdivide this sector.”<sup>26</sup> [Emphasis added.]

EPA then includes a second table<sup>27</sup> that lists data for selected parameters from facilities in the oil and gas extraction sector that include the eight pollutants that all facilities must monitor. Included in the table are total suspended solids and oil and grease – two of the three principal pollutants associated with oil and gas-related construction activities.

**General permit requirements.** The multi-sector general permit governing stormwater discharges for regulated industrial facilities contains a number of common permit conditions such as:

- ◆ notification requirements relating to the content of Notices of Intent, deadlines, municipal separate storm sewer system operator notification provisions, and provisions for Notice of Termination;

<sup>24</sup> *ibid.*

<sup>25</sup> 60 FR 50915

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

- ◆ special conditions relating to the general prohibition of non-stormwater discharges, releases of Reportable Quantities of hazardous substances and oil, and regulation of co-located industrial facilities; and
- ◆ common pollution prevention plan requirements, including provisions for pollution prevention team, a description of potential pollution sources, measures and controls, and comprehensive site compliance evaluations.

**No E&S Control Plan review required.** Like other EPA NPDES general permits governing discharges of stormwater, the multi-sector general permit discussed here does not require the submission and review of the SWPPP as a condition for obtaining a stormwater discharge authorization.

**SWPP requirements.** The multi-sector permit also contains special SWPPP provisions that relate directly to oil and gas activities. The permit element specifically included for oil and gas activities establish SWPPP requirements that are idiosyncratic to the operational and construction-related activities associated with oil and gas well projects.

The plan explicitly asks for a detailed site map of the project's drainage area which must include locations that may be exposed to precipitation, including construction and drilling areas.

The SWPP for oil and gas facilities also must include detailed sediment and erosion control information. Specifically, the multi-sector general permit states that "the plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion."<sup>28</sup>

**Alternative permitting.** The EPA multi-sector permit also states:

*"Unless covered by the General Permit for Construction Activity (57 FR 41209), the additional erosion control requirement for well drillings oil, sand, and shale mining areas are as follows:*

*"(i) Site Description—Each plan shall provide a description of the following: (1) A description of the nature of the exploration activity; (2) estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity; (3) an estimate of the runoff coefficient of the site; (4) a site map indicating drainage patterns and approximate slopes, the location of major control structures identified in the plan, and surface waters; and (5) the name of the receiving water(s) and the ultimate receiving water(s) of the runoff.*

*"(ii) Controls—The pollution prevention plan shall include a description of controls appropriate for the activity and implement such controls. The description of controls shall address the following minimum components:*

*"(a) A description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, protection of trees, or other equivalent measures. The operator shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.*

*"(b) A description of structural practices that, to the degree attainable, divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, pipe slope drain, level spreaders storm drain inlet protection, rock outlet protection, sediment traps, temporary sediment basins, or other equivalent measures.*

*"(iii) Offsite vehicle tracking of sediments shall be minimized.*

---

<sup>28</sup> 60 FR 51168

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

“(iv) Procedures in a plan shall provide that all erosion controls on the site are inspected at least once every 7 calendar days. Weekly inspections are necessary to ensure erosion controls continue to effectively reduce the amount of sediment carried offsite. A silt fence or silt trap is no longer effective when filled with silt.”<sup>29</sup>

Clearly, the multi-sector general permit anticipates the possibility that construction-related activities associated with oil and gas exploration and production facilities may be regulated under its general permit for construction activities, but given the substantial discussion of construction-related stormwater runoff concerns in the multi-sector general stormwater permit, it is obvious that the agency does not envision such regulatory treatment as being a routine occurrence.

If EPA intended to regulate construction-related stormwater runoff from oil and gas activities as a routine matter under its general permits for stormwater discharges from construction activities, EPA would be required to incorporate the statutory requirement in the *Clean Water Act* that limits the coverage of the construction general permit to oil and gas facilities that discharge contaminated stormwater runoff.

### **The proposed Chapter 102 rule incorporates federal permit limitations applicable to timber harvesting activities but ignores the broader limitations available to oil and gas activities**

The proposed rulemaking includes a broad permit exemption for stormwater discharges from timber harvesting activities that is based on a federal NPDES permit exemption that is narrower in scope than the federal NPDES permit limitations available to the oil and gas extraction industry.

This inconsistency not only violates the RBI and Executive Order mandate to ensure that Pennsylvania regulations are no more stringent than federal regulations without a compelling reason, it also is contrary to common sense, given the small percentage of the acreage on oil and gas extraction project sites that undergo earth disturbance.

**Scope of the silviculture exemption.** The proposed *Chapter 102* rulemaking defines “timber harvesting activities” as earth disturbance activities including the construction of skid trails, logging roads, landing areas, and other similar logging or silvicultural practices.”<sup>30</sup>

The proposed rule at §102.31(a) exempts timber harvesting activities from the requirement to obtain an NPDES permit for stormwater discharges associated with a construction activity. Section 102.31(b), however, requires persons proposing timber harvesting activity to obtain an erosion and sediment control permit when the earth disturbance activity consists of 25 acres or more.

The section also requires anyone proposing an exempt timber harvesting activity to comply with the other provisions of *Chapter 102*, principally the requirement to prepare and implement an E&S Control Plan that must be available for review on site during all phases of the earthmoving activities.

**Rationale for the silviculture exemption.** The timber harvesting permit exemption in *Chapter 102* is based on provisions governing the permitting of silvicultural activities in EPA NPDES regulations.<sup>31</sup> EPA regulations require NPDES permits for all point source stormwater discharges from timber harvesting activities. The federal regulation defines silvicultural point sources to exclude nonpoint source stormwater discharges so long as the stormwater is in a natural state. EPA regulations provide the limited nonpoint source permit exemption by defining silviculture point sources in the following manner:

“Silvicultural point source means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the

---

<sup>29</sup> 60 FR 51168 – 51169

<sup>30</sup> 28 PaB 776

<sup>31</sup> 40 CFR §122.27

## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

---

United States. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and part 233).”<sup>32</sup>

The foregoing federal NPDES permit exemption for nonpoint source stormwater runoff from silvicultural activities is roughly equivalent to the nonpoint source permit provisions applicable to the oil and gas extraction industry in that the silvicultural permit limitation is tied to “natural” runoff while the oil and gas exemption is tied to “uncontaminated” runoff.

**Silviculture exemption is narrower than the oil and gas exemption.** EPA’s silvicultural exemption is much narrower than the permit exemption available to oil and gas operations because the federal regulations impose the NPDES permit requirements on stormwater discharges from silvicultural point sources regardless of the nature or quality of the stormwater. The federal regulations stipulate that oil and gas point source stormwater discharges only require a permit when the stormwater is contaminated.

**Oil and gas activities result in small earth disturbances than silviculture activities.** On March 26, 1997, the Department discussed the draft *Chapter 102* rulemaking proposal with the water subcommittee of the Department’s Air and Water Quality Technical Advisory Committee (AWQTAC). AWQTAC expressed some concern with the extent of the timber harvesting permit provisions, and the Department justified the scope of the permit exemption by noting, in the committee’s words, that

“as a rule of thumb, only 10 percent of the area in a harvest is disturbed.”<sup>33</sup>

When the Department modified the rulemaking package to address AWQTAC’s concerns, it retained the broad exemption for silvicultural activities but tied it to the earth disturbance acreage rather than to the project site acreage.

As discussed above (pages 3 and 4), oil and gas extraction activities typically involve substantially less earth disturbance than what the Department expects from routine timber harvesting activities.

The silviculture permit exemption is based on an assumption that the 25 acres of earth disturbance will be reached only if the total timber harvesting project site is 250 acres or larger. In order to reach the 25-acre E&S permit requirement established by the proposed regulation for silviculture activities, the typical oil well development project would have to consist of 100 new wells on a contiguous 500 acre area. The typical gas well development project would have to consist of 17 new wells on an area consisting of 333 contiguous acres.

### Pollution prevention incentive

The provisions of the *Clean Water Act* and EPA’s multi-sector general permit which require a permit for stormwater discharges associated with oil and gas extraction and production operations – including access road and facility construction activities – only when the runoff is contaminated functions as a substantial pollution prevention incentive for the industry.

In effect, the federal stormwater general permit requirements – including the requirement to prepare and implement the SWPPP or E&S control Plan – do not apply to oil and gas operations unless the stormwater discharge contributes to a violation of water quality standards or the facility has a RQ release of oil or a hazardous substance.

---

<sup>32</sup> 40 CFR §122.27(b)(1)

<sup>33</sup> Whitaker, James B., chair, Water Subcommittee of AWQTAC. Letter to Dr. Hugh Archer, DEP Deputy Secretary for Water Management. April 23, 1997. (Proposed Rulemaking, Chapter 102 – Erosion and Sediment Control. Environmental Quality Board, October 21, 1997)



## Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102

(No. 7-332)

Common sense dictates that the only way a practical well operator has to ensure that stormwater runoff from his well site construction and development activities will not violate water quality standards is to prepare and implement a site-specific E&S Control Plan that will satisfy the Department's proposed requirements in the *Chapter 102* revisions.

In essence, if the well operator wishes to avoid the burden of complying with the NPDES stormwater permit requirements, he can take steps to ensure that the stormwater runoff from construction activities on his well locations and project sites will meet applicable water quality standards by preparing and implementing a site-specific E&S Control Plan.

### Recommended revisions

The Pennsylvania Oil and Gas Association recommends that the final *Chapter 102* regulation should be modified to incorporate the limited exemption from NPDES permitting for construction-related stormwater discharges associated with oil and gas activities that Congress established in the *Clean Water Act* and that EPA implemented in its NPDES regulations and multi-sector general permit. We also suggest retaining the current requirement that oil and gas well operators satisfy the E&S Control Plan requirements of §102.4 even though the federal exemption would not impose such a requirement and it is contrary to the basic tenets of the RBI and the Executive Order.

Adoption of the foregoing recommendations in the final *Chapter 102* regulations would:

- ◆ satisfy the mandates in the RBI and Executive Order 1996-1 that state regulations should be no more stringent than federal regulations;
- ◆ provide comparable regulatory treatment in the *Chapter 102* program for timber harvesting and oil and gas activities;
- ◆ recognize the limited scope of earth disturbances associated with oil and gas well development projects;
- ◆ reward the oil and gas industry for its excellent history of compliance with current *Chapter 102* regulations; and
- ◆ provide a non-regulatory pollution prevention incentive for the oil and gas industry that is provided for in federal law and regulation.

To incorporate the limited federal NPDES permitting requirement, we recommend the inclusion of a new definition for "oil and gas exploration and production activities" in §102.1 and an amendment to the permit requirements in §102.31.

**Definition.** We propose that "oil and gas exploration and production activities" should be defined as follows:

**OIL AND GAS EXPLORATION AND PRODUCTION ACTIVITIES – EARTH DISTURBANCE ACTIVITIES ASSOCIATED WITH THE SITING, DRILLING, COMPLETING, PRODUCING AND PLUGGING OF OIL OR GAS WELLS, INCLUDING BUT NOT LIMITED TO WELL SITE, ACCESS ROAD, INJECTION AND GATHERING LINE, AND TANK LOCATION CONSTRUCTION.**

**Permit exemption.** We also recommend that §102.31 should be amended as follows to include the federal permit exemption along with the requirement to prepare and implement an E&S Control Plan:

§ 102.31. Permit requirements.

**(a) A PERSON WHO PROPOSES AN EARTH DISTURBANCE ACTIVITY OTHER THAN AGRICULTURAL PLOWING OR TILLING, TIMBER HARVESTING ACTIVITIES, OIL AND GAS EXPLORATION AND PRODUCTION ACTIVITIES, OR ROAD MAINTENANCE ACTIVITIES, SHALL OBTAIN A GENERAL OR INDIVIDUAL NPDES PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH A CONSTRUCTION ACTIVITY, PURSUANT TO CHAPTER**

**Erosion and Sediment Control – 25 Pennsylvania Code Chapter 102**

*(No. 7-332)*

---

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.

\* \* \* \* \*

[(c)] (g) 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.

***For the Pennsylvania Oil and Gas Association***



Stephen W. Rhoads  
President



p.o. box 8477 • harrisburg, pa. 17105-8477 • (717) 787-4526

April 9, 1998

APR 14 1998  
RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harrisstown #2  
333 Market Street  
Harrisburg, PA 17120

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

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

Dear Mr. Nyce:

The Environmental Quality Board has received comments regarding the above referenced proposed rulemaking from the following:

1. Mr. Anthony M. Skicki, GPU Energy
2. Ms. Janet L. Oertly, Soil Conservation Service
3. Dr. James A. Schmid, Schmid & Company Inc.
4. Mr. Richard F. Boyer, Buckeye Pipe Line Company

These comments are enclosed for your review. Copies have also been forwarded to the Senate and House Environmental Resources and Energy Committees. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Sharon K. Freeman'.

Sharon K. Freeman  
Regulatory Coordinator

Enclosure

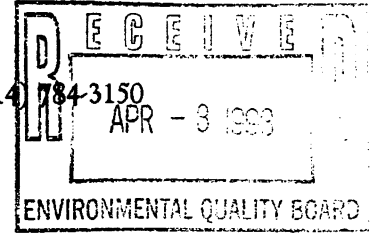


WILLIAM I. PLANK

RD 2, Box 178-A • Clearville, Pennsylvania 15535 • (814) 784-3150  
ORIGINAL: 1921

COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

April 8, 1998



Dear Sir:

These are my comments on proposed changes in Chapter 102:

The new definition for "Agricultural plowing or tilling" seems to carry the connotation that plowing or tilling are the only way in which an agricultural operation can cause accelerated erosion or sedimentation and I beg to differ - (1) Animals can be the cause of accelerated erosion & sedimentation for example, an unvegetated loafing lot for cattle. (2) Most farms have roads and lanes, often laid out for convenience only - sometimes directly in a former grassed water way, in hilly country - (3) Some "No-till" systems use trash wheels in front of corn planter coulters and these can move aside up to 20% of the residue on a corn field. Plowing and tilling are too limiting in this agricultural definition and in section 102.5d.

The definition of sediment would seem to include other materials than just soil. Therefore, agricultural plans should also show how the accelerated erosion of these "other than soils" materials, such as manure solids & residues, sludge solids and other soil amendments which are applied on the surface with no incorporation is to be reduced.

I am in favor of many of the other proposed changes and additions that I see, such as: (1) Antidegradation provisions in 102.11k (2) Special considerations in High Quality and Exceptional Value watersheds in 102.5b, (3) PNDI provisions in 102.32c, (4) Addition of the joint and separate responsibility for tenants and landowners, (5) Maintenance plans for BMPs, and also (6) the removal of parceling.

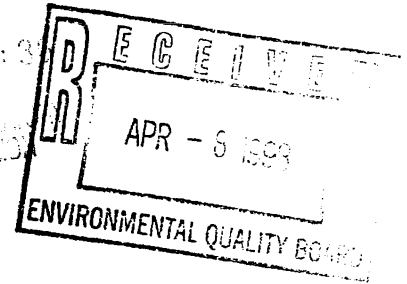
Thank you for the opportunity to comment.

Sincerely

William Plank     Predator Conservation District Director

**Freeman, Sharon**

**From:** Tom Buzby[SMTP:104471.2600@compuserve.com]  
**Sent:** Wednesday, April 08, 1998 2:20 PM  
**To:** Env. Quality Board  
**Subject:** Proposed Rulemaking: (25 PA. Code CH.102)



The Hardwood Lumber Manufacturers Association of Pennsylvania offers the following comments on the subject proposed regulations:

**1. Section 102.1. Definitions.**

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

**2. Section 102.4. General.**

Subsection (c) authorizes the Department or its designee to "approve" erosion and sediment control plans. The Acting Chief, Technical Services Section, Division of Waterways, Wetlands and Erosion Control, has represented that such approvals are intended to be limited to plans filed in connection with applications for permitted activities (e.g. GP-7 or GP-8 Stream Crossing Permits), as specifically contemplated under Subsection (b)(2). Therefore, the language in Subsection (c) should be modified to expressly clarify the circumstances under which plans would be subject to "approvals" in this regard.

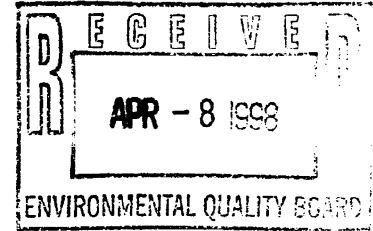
**3. Section 102.5. Erosion and Sediment Control Plan.**

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

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Thomas S. Buzby  
Vice-Chair  
HLMA  
Board of Directors  
c/o Weaver, Inc.  
R.D. 4, Box 1255  
Lebanon, PA 17042  
717-867-2212

Pike County Conservation District  
HC 6, Box 6770  
Hawley, PA 18428  
(717) 226-8220



April 8, 1998

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Environmental Quality Board  
James M. Seif, Chairperson  
PO Box 8477  
Harrisburg, PA 17105-8477

RE: 25 PA Code Chapter 102 - Erosion and Sediment Control  
Proposed Rulemaking - PA Bulletin, Vol. 28, No. 6, February 7, 1998

Dear Mr. Seif:

Thank you for the opportunity to comment on the proposed revisions to Chapter 102. Technical staff involved in administering the Chapter 102 program reviewed the proposed rulemaking, which is considerably different from the draft revisions on which we commented in December, 1996. While, in some ways, the proposal streamlines the regulations, some seemingly minor changes may complicate the administration of this program for delegated Conservation Districts. Please consider incorporation of the following comments into the final rulemaking.

**102.1. Definitions.**

BMPs - clarify the difference between temporary and permanent BMP's or include two separate definitions.

Collector - specify that this facility is for the collection of sediment-laden runoff from a disturbed area and the conveyance of the disturbed runoff to a BMP for sediment removal.

NPDES permit for stormwater discharges associated with construction activities - specify that a permit is required for construction activities where the proposed earth disturbance is 5 acres or more over the life of the project.

Outlet structure - change to outlet protection for consistency with the *Erosion and Sediment Pollution Control Program Manual and Standard Worksheets, Details and Notes*.

Road maintenance activities - specify earth disturbance activities involving existing or established roads.

Stabilization - as with BMP's, both temporary and permanent stabilization should be clearly defined.

Waters of this Commonwealth - include wording to clarify that flow may be perennial,

intermittent or ephemeral.

#### 102.4. General.

(b) Specify that the erosion and sediment control plan referenced here is a written plan. Language should be included to clearly state that persons proposing projects disturbing less than 5000 square feet, while not required to have a written plan, must still implement erosion and sediment control BMP's to minimize accelerated erosion and sedimentation.

(b)(3) - Expand this sentence to include "The Department or it's designee" (ie: Conservation Districts, who are generally responsible for Chapter 102 administration).

#### 102.5 Erosion and sediment control plan.

For greater clarity and to avoid redundancy, we recommend combining sections (b) and (c) to correspond to the *complete plan checklist* and *technical review checklist* currently used by both E&S plan designers and plan reviewers.

(b) The paragraphs under (b) appear to be misnumbered, missing subsection (4). Include here the amount of runoff from the project area and the upstream watershed area, an important component of any E&S plan.

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

(b)(6) The wording "shall consider utilizing" later in this paragraph should be strengthened to shall utilize additional BMP's such as ...

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

#### 102.11. General Requirements

(a) This section should be improved as follows: "The erosion and sediment control BMP's in 102.12 and 102.13, or other sound conservation and engineering practices approved by the Department or its designee, shall be appropriately incorporated into all earth disturbance activities.

#### 102.12 BMP's.

This section should reference the Department's *Erosion and Sediment Pollution Control Manual*, a widely used technical guide.

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

(2) Specify that surface water diversions convey clean water around or through a project site, diverting runoff away from disturbed areas.

(5) For clarity, this paragraph should read "Temporary vegetation, mulch and other appropriate temporary cover shall be implemented immediately in areas where earth

disturbance activity will cease for more than 20 days". The 20-day time frame should be reduced for those earth disturbance activities which may result in a discharge to a high quality or exceptional value water.

(f) Sediment retention - This section appears to be misnumbered - should be (6).

#### **102.13. Design criteria for BMP's.**

As mentioned previously, we recommend referencing the Department's *Erosion and Sediment Pollution Control Manual* in sections concerning BMP's and BMP design criteria, rather than including limited design criteria in the Chapter 102 regulations.

As a general comment, all BMP's, including sediment basins, sediment traps, diversions, collectors or channels, should discharge to waters of this Commonwealth only. We are concerned that any alternative (such as that suggested in (c)(4) and d(6)) will create or exacerbate offsite stormwater problems.

#### **102.22. Permanent stabilization.**

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

#### **102.31. Permit requirements.**

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

(c) The intent of this section is unclear, although it presents a potential permit loophole. An activity where the earth disturbance is 5 acres or more over the life of the project should meet the NPDES permit requirement regardless of whether other Department permits (such as encroachment permits) are required.

#### **102.32. Permit applications and fees.**

(a)(1) It is unclear here whether the permit applicant should be the landowner or the earthmover (ie: excavating contractor, logger).

#### **102.41. Administration by local governing bodies.**

(c) Currently, for NPDES-permitted projects which cross county lines, the Conservation District with the greatest project land area administers the NPDES permit with E&S plan review and comments from all affected districts.

#### **102.42. Notification of application for building permits.**

This section should refer to both permits and plan approvals. Specify required notification "within 5 days of receipt of an application for a permit or plan approval involving an earth disturbance of 5 acres or more over the life of the project".

#### **102.43. Withholding permits.**

Again, we recommend referencing both permits and plan approvals to be consistent with language used by municipalities.

Conservation Districts have successfully administered this and other DEP programs for many years. The Department estimates in its cost/benefit analysis that the



Commonwealth saves \$4.5 million annually in reduced costs of administration through the delegation of the Chapter 102 program to county Conservation Districts. We trust that comments of delegated Conservation Districts will be carefully considered in the final rulemaking.

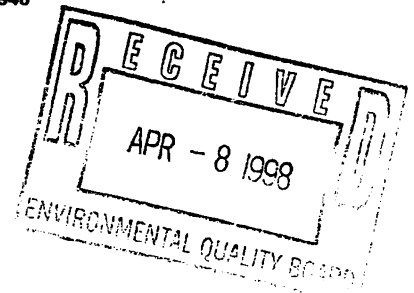
Sincerely,  
Susan Beecher, District Manager



# Pennsylvania Gas Association

800 NORTH THIRD STREET, HARRISBURG, PA 17102-2025 (717) 233-5814 FAX (717) 233-7946

COPIES TO: PH 10:41  
APR 14 1998  
RENEW COMMISSION



April 8, 1998

Via Hand Delivery

Environmental Quality Board  
15th Floor  
Rachel Carson State Office Building  
P.O. Box 8477  
Harrisburg, PA 17105-8477

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Re: Proposed Amendments to 25 Pa. Code, Chapter 102: Erosion and Sediment Control

Dear Environmental Quality Board members:

The Pennsylvania Gas Association, on behalf of its members, submits these comments on the above referenced rulemaking proposed by the Department of Environmental Protection (the "Department") and published at 28 Pa. Bulletin 769 (Feb. 7, 1998).

The rulemaking proposes to amend the Department's regulations relating to the planning and implementation of erosion and sediment control measures. The Department's specific intent is to eliminate obsolete terms, simplify technical requirements for best management practices, update and clarify permit requirements, and integrate Pennsylvania's regulations with existing NPDES permit requirements for stormwater discharges associated with construction activities.

PGA wishes to commend the Department for its proposal requiring projects which are less than 5,000 square feet to implement Best Management Practices (BMPs) but exempting them from the written planning requirements. We strongly support the use of BMPs for the prevention of accelerated erosion from earthmoving activities and for the prevention of subsequent sediment pollution. Allowing performance-based criteria in these instances will enable businesses to fashion site-specific protections and should provide an overall cost savings while better protecting the environment.

While these changes provide for greater flexibility in certain areas and avoid many of the administrative burdens of existing regulations, PGA is concerned with aspects of this rulemaking which may have the effect of increasing the regulatory burden in other areas. For this reason, we request that the Department either reconsider or provide further clarification on proposed changes relating to the requirement of written, site-specific erosion and sediment ("E & S") plans; activities affecting waters of the Commonwealth; and application fees. Our specific concerns with respect to these provisions are set forth below.

Erosion and Sediment Control Plan Requirements

A. Written, Site-Specific Plans

Proposed Section 102.4 would require a site-specific E & S plan for every earth disturbance activity not exempted by the 5,000 square foot threshold, significantly adding to the plan preparation burden for Pennsylvania utilities. In the daily course of business, utilities routinely perform earth disturbance activities which are similar in nature and have traditionally been addressed by general company practices, rather than site-specific E & S control plans. For natural gas utilities and transmission companies, this most frequently involves work on a pipeline segment or segments. Site-specific plans for these projects are unnecessary. When properly utilized, existing company policies have assured- and will assure- that work of this nature is performed consistently at each location. Natural gas utilities also have an incentive beyond that of any regulatory requirement to minimize or prevent erosion from earth disturbance activities; the ground cover that appropriate soil erosion controls provide is an important protection for natural gas lines.

PGA concedes that larger projects with special erosion and sediment control issues and projects requiring stream crossing, encroachment or other permits necessarily involve site-specific planning. However the cost, preparation burden and delay these plans involve are not appropriate for projects, which may be considered to exceed 5,000 square feet, but for which the disturbance is minimal.

In commenting on the provisions of Proposed Section 102.4, PGA offers two suggestions. First, in order to be consistent with other regulations, the proposed 5,000 square foot threshold should be revised to a one acre limit.<sup>1</sup> Additionally, we note that the proposed regulations fail to take into account lineal projects such as the construction, repair and maintenance of utility lines. As explained earlier, this work is primarily performed in small segments for which utilities take great care (through revegetation and other measures) to control erosion and sedimentation. The paperwork burden and cost of applications for the review of these activities are unnecessary burdens which PGA believes the Department should consider in its revision of the Chapter 102 regulations.<sup>2</sup>

B. Activities Adversely Impacting the Waters of the Commonwealth

Proposed Section 102.4 (b)(2) would require the preparation of an E & S control plan for activities the Department determines may adversely impact waters of the Commonwealth. PGA feels that further guidance as to how the Department will make such a determination is appropriate. Establishing criteria in

---

<sup>1</sup> In making this recommendation, we point to the one acre de minimis standard for general permits which is being considered by the Department in its revision of the 25 Pa. Code Chapter 105 regulations.

<sup>2</sup> The Department could address this area by providing for a general, rather than site-specific, plan for projects which are less than 5 acres but which exceed the de minimis limit. Every project within that size range could be covered by a standard plan which would incorporate Best Management Practices.

Environmental Quality Board

Page 3

April 8, 1998

the regulations for activities falling under this section would better enable the regulated community to comply with this requirement.

Fees

An additional area of concern for the utility industry is the increase in fees associated with E & S control permits. The increase in the application fee from \$200 to \$500, when coupled with the expansion of projects requiring written, site-specific plans, could have a significant financial impact on natural gas utilities which perform hundreds of earth disturbances each year. We respectfully request that the Department reexamine this requirement and consider whether the fee can be more closely aligned to the administrative cost processing an application involves.

We appreciate the opportunity to provide comments on this proposal. Please do not hesitate to call if you have any questions regarding our position in this matter.

Very truly yours,



David Sumner

Assistant General Counsel



# Pennsylvania Coal Association

212 North Third Street • Suite 102 • Harrisburg, PA 17101

(717) 233-7909  
(717) 236-5901  
(800) COAL NOW (PA Only)

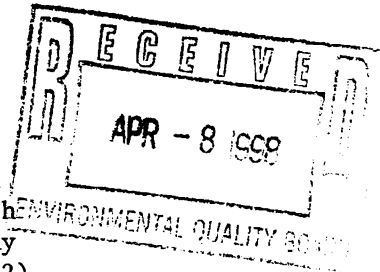
GEORGE ELLIS  
President

MICHAEL G. YOUNG  
Director of Regulatory Affairs

APR 10 1998

APR 8 1998  
REVIEW COMMISSION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



Environmental Quality Board  
P.O. Box 8477  
Rachel Carson State Office Building  
Harrisburg, PA 17105-8477

**Re: Notice of Proposed Rulemaking: Erosion and Sediment Control Regulations, 25 Pa. Code Chapter 102, Pennsylvania Bulletin Feb. 14, 1998**

Members of the Board:

Thank you for giving the Pennsylvania Coal Association (PCA) an opportunity to submit written comments on above-referenced Notice of Proposed Rulemaking (the "Draft Rules"). PCA represents 36 bituminous coal producers and a number of associate members, including power generators, blasters and other entities which may be subject to the Department of Environmental Protection's regulations regarding erosion and sediment control. PCA submits the following written comments in response to the above-referenced Notice of Proposed Rulemaking.

### Specific Comments

**Section 102.4[(b)](d).** PCA represents members which lease surface lands for agricultural use. This section of the Draft Rule proposes to delete the landowner's ability to delegate the responsibility for preparation of erosion and sediment ("E&S") control plans to a tenant or lessee. PCA objects to this change. Responsibility for plan submittal should rest with the party engaged in the earth disturbance activity. At a minimum, a landowner should be permitted to enter into an agreement delegating this responsibility to the tenant or lessee.

**Section 102.13 (a)(1):** This section of the Draft Rule imposes an absolute requirement to construct temporary or permanent diversions up slope prior to engaging in earth disturbance activities on the project site. Exceptions should be specified for (1) situations in which the project site is at the highest elevation, for which up-slope diversions would be impossible; and (2) sites where natural or man-made diversions exist which would render unnecessary the construction of additional up slope diversions. For example, a project directly down-gradient from a railroad or road could benefit from the

existing drainage capacity provided by those features. Recommends adding language to subsection 102.13(a)(6) as follows:

**(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. Additionally, where the applicant demonstrates that the construction of permanent or temporary diversions is unnecessary because existing structures or features will serve the purposes of this section, and meet the criteria and requirements stated herein, the Department may approve exceptions to this requirement.**

Thank you for permitting PCA to submit comments to these regulations. As always, our comments are offered without prejudice to our right or the right of our members to appeal or challenge the final regulations or any action thereunder.

Sincerely,



Michael G. Young  
Director of Regulatory Affairs

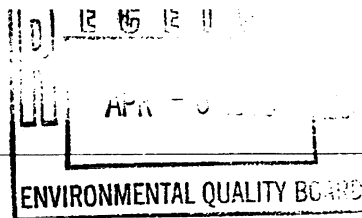
**One-Page Summary of Comments by Pennsylvania Coal Association  
To Proposed Rulemaking, 25 Pa. Code Chapter 102**

**Section 102.4(b)(d)** This section of the Proposed Rulemaking would delete the landowner's ability to delegate the responsibility for preparation of erosion and sediment ("E&S") control plans to a tenant or lessee. PCA objects to this change. Responsibility for plan submittal should rest with the party engaged in the earth disturbance activity. At a minimum, a landowner should be permitted to enter into an agreement delegating this responsibility to the tenant or lessee.

**Section 102.13 (a)(1):** This section of the Proposed Rulemaking imposes an absolute requirement to construct temporary or permanent diversions up slope prior to engaging in earth disturbance activities on the project site. Exceptions should be specified for (1) situations in which the project site is at the highest elevation, for which up-slope diversions would be impossible; and (2) sites where natural or man-made diversions exist which would render unnecessary the construction of additional up slope diversions. For example, a project directly down-gradient from a railroad or road could benefit from the existing drainage capacity provided by those features.



625 Liberty Avenue  
Pittsburgh, PA 15222-3197  
(412) 471-5100



A CNG COMPANY

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmart  
Sandusky  
Legal (2)

COMMENTS OF THE PEOPLES NATURAL GAS COMPANY  
NOTICE OF PROPOSED RULEMAKING  
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

25 PA. CODE CHAPTER 102  
EROSION AND SEDIMENTATION CONTROL

On February 7, 1998, notice was given in the Pennsylvania Bulletin (PaB. Vol. 28, No. 6) of the Department of Environmental Protection's (PADEP) intention to amend Chapter 102 regulations. Comments, suggestions or objections regarding these proposed amendments must be submitted by April 8, 1998. The following comments and suggestions are submitted by The Peoples Natural Gas Company.

The Peoples Natural Gas Company (PNG) is a natural gas distribution company and a subsidiary of the Consolidated Natural Gas Company, with headquarters located in Pittsburgh, Pennsylvania. PNG operates and maintains over 7,600 miles of natural gas pipeline and serves more than 345,000 residential, commercial and industrial customers throughout western Pennsylvania. In the course of operating its pipeline system in a safe and reliable manner and providing gas service to new customers, PNG conducts earthmoving and construction activities that are impacted by the existing Chapter 102 rules, and even more so by the proposed changes to those regulations.

GENERAL COMMENTS

The stated purpose of this proposal is to revise the existing regulations as part of Pennsylvania's Regulatory Basics Initiative and Executive Order 1996-1, which intend to provide for regulations no more stringent than Federal rules, and eliminate those that impose economic costs disproportionate to the environmental benefit, are overly prescriptive, lack clarity, and inhibit pollution prevention strategies. The specific intent of the proposed changes to Chapter 102 are to eliminate obsolete terms, simplify technical requirements for best management practices, update and clarify permit requirements, and integrate these regulations with current NPDES permit requirements for stormwater discharges associated with construction activities.

PNG strongly supports promotion of the use of Best Management Practices (BMP's) for prevention of accelerated erosion form earthmoving activities and prevention of subsequent sedimentation pollution. Erosion and sediment control practices are effective only when properly installed, adjusted, and maintained in the field by construction personnel. A Best Management Practices approach will allow regulated businesses to train construction personnel in practices that will remain fairly consistent from site to site, and that make sense from a practical point of view.



As a result, actual compliance in the field (and therefore protection of the environment) should be enhanced.

As a public utility performing earthmoving activities many times each day, PNG has serious concerns with the implications of the proposed revision to the definition of "Erosion and Sediment Control Plan", that would require written E&S plans to be **site-specific**. The second area of disagreement with the proposal is the requirement for obtaining general or individual NPDES permits for stormwater discharges associated with construction activity for any earth disturbance (regardless of size or scope) on a portion or during any stage of a larger common plan of development. We believe that each of these proposed changes will serve to increase the administrative burden associated with these regulations, while doing nothing to result in increased environmental benefit. This will increase the cost of compliance - not reduce it as stated. Federal rules have no equivalent to either of these requirements, therefore PNG believes that the proposal exceeds federal requirements without justification of Pennsylvania-specific need or added benefit. More specific information is provided below.

### **E & S Plan Requirements**

PADEP proposes in Section 102.4 to restrict the requirement for an E&S plan to only those activities disturbing less than 5,000 square feet. While this is an improvement over current requirements requiring a plan for all earth disturbances (activities with very small impacts have been eliminated from plan requirements) - the added requirement that each plan be site-specific would significantly add to the plan preparation burden for many other activities. Companies such as PNG and other utilities who perform many very similar earth disturbance activities on a continuous basis have traditionally utilized "general" erosion and sedimentation control plans for routine, daily work. Site specific plans are typically prepared only for large projects, those with special E&S issues/requirements, or projects requiring other environmental permits (such as stream crossings). These "general" plans provide consistent guidance and are the best basis for use in training construction and maintenance employees. The proposed regulations would add about 190 site-specific plans per year to the number already being prepared by PNG. Employee training and proper implementation of a general E&S plan onsite are a better use of limited resources than site-specific plan preparation.

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

PNG also believes that the list of required plan contents in proposed Section 102.5 is overly prescriptive. Typical new pipe installation occurs in residential lot plans or other developments where all clearing, grading, road construction, and other earth disturbance work has already been completed by the plan's developer. Information on soils, land use, classification of receiving waters, etc. is not truly pertinent to this type of activity, but greatly increases the pre-construction

engineering cost related to E&S plan preparation. The regulation must incorporate flexibility to suit the project at hand into the list of required items. Additionally, disposal of waste materials from the construction activity is regulated under various solid waste laws and regulations and should not be included as a requirement for an E&S plan.

### **NPDES Permits for Stormwater Discharges Associated with Construction Activity**

Currently, federal and state rules require a general or individual NPDES permit for stormwater discharges associated with any construction activity involving an earth disturbance greater than 5 acres. This proposal would require an NPDES permit for an earth disturbance of any amount on a portion, part or during any stage of a larger common plan of development involving more than 5 acres. This appears to be an arbitrary, added requirement, which is definitely beyond any federal or previous Pennsylvania requirement.

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

PNG has invested much effort in recent years to better serve its customers by reducing the time required to schedule construction in residential developments, once given notice of the need or readiness of the developer. Even a general NPDES permit requires a minimum 30-day notification and diversity screening to municipalities prior to proceeding. This lead time is not available in many cases. Building contractors and plumbers often have even shorter time windows for performing their work, and would find it nearly impossible to comply with this requirement. The cost of processing general permit applications for these minimal activities in a development that already has developed comprehensive E&S and stormwater management plans does not warrant the \$250 fee charged for each application. In 1997, PNG installed gas distribution lines in approximately 130 new residential lot plans, and about 30 commercial plans/industrial parks.

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

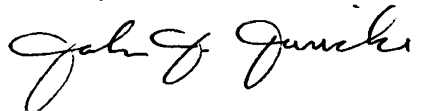
could have a significant detrimental impact on the feasibility of providing gas service to some developments, especially the smaller ones.

Residential lot plans build out in phases, sometimes over a period of many years. Even after installation of gas mainline is complete, the gas company may revisit the development many times over the next several years to install short service line segments (main to curb) as each house is constructed. Only a few day's notice is provided when such installations are needed and the customer is ready for gas. It will be virtually impossible to have a site-specific E&S plan available for all of these numerous activities. Will future activities in plans that were built prior to revision of the regulations require NPDES permits? We believe that this requirement presents many more difficulties than is warranted. Use of best management practices and a standard E&S plan, along with well-trained utility construction personnel and contractors is the best way to prevent erosion problems in developments. The lead time and cost of NPDES permitting (even general permits) is overly burdensome and impractical.

### Conclusion

PNG hopes that the above comments are carefully considered, as the proposed changes discussed do not appear to be consistent with the stated goals of the regulatory revision. The Peoples Natural Gas Company appreciates this opportunity to provide input on this proposed revision the Chapter 102 regulations.

Sincerely,



John J. Janicki  
Manager, Safety, Environmental & Compliance



Environmental Quality Board

p.o. box 8477 • harrisburg, pa. 17105-8477 • (717)787-4526

April 10, 1998

RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown #2  
333 Market Street  
Harrisburg, PA 17120

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

Dear Mr. Nyce:

Enclosed are copies of the official verbatim transcripts for the public hearings the Environmental Quality Board recently held on the above rulemaking. Written statements from the witnesses were previously submitted to you.

If you have any questions, please call me.

Sincerely,

  
Sharon K. Freeman  
Regulatory Coordinator

Enclosures

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

BEFORE THE DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

**ORIGINAL**

IN RE: PROPOSED AMENDMENTS TO  
PENNSYLVANIA'S EROSION AND  
SEDIMENT CONTROL REGULATIONS

BEFORE: STUART GANSELL, CHAIRMAN  
KENNETH REISINGER, MEMBER  
KENNETH MURIN, MEMBER  
WILLIAM GERLACH, MEMBER  
SHARON FREEMAN, MEMBER

LOCATION: Berks County Agricultural  
Center  
1238 County Welfare Road  
Leesport, PA

HEARING: March 9, 1998  
3:00 p.m.

Reporter: Carol Harriman

Any reproduction of this transcript is  
prohibited without authorization by the  
certifying agency.

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

ENVIRONMENTAL QUALITY BOARD  
PUBLIC HEARING

11 11 1998  
RECEIVED

IN RE: PROPOSED AMENDMENT TO  
PENNSYLVANIA'S EROSION AND SEDIMENT  
CONTROL REGULATIONS

**ORIGINAL**

BEFORE: KENNETH R. REISINGER, CHIEF  
KENNETH F. MURIN, ACTING CHIEF  
JAMES D. ROZAKIS, ASSISTANT  
REGIONAL DIRECTOR

LOCATION: Slippery Rock University of  
Pennsylvania  
Eisenberg Auditorium  
Slippery Rock, PA 16057

HEARING: Wednesday, March 11, 1998  
3:00 p.m.

WITNESSES: Brent Hilderbrand  
Michal Jones  
Al Thomson, IV  
Paul L. Miller  
Leo Stepanian

Reporter: Sandra Bernardini

Any reproduction of this transcript is  
prohibited without authorization by the  
certifying agency.

Sargent's Court Reporting Service, Inc.

(814) 536-8908

1  
SEARCHED BY JAC  
RECEIVED

BEFORE THE  
ENVIRONMENTAL QUALITY BOARD

\* \* \* \* \*

1  
ORIGINAL: 1921  
COPIES: Tyrrell 2  
Wilmarth  
Sandusky 3  
Legal (2)

4 IN RE: EROSION AND SEDIMENT  
5 CONTROL REGULATIONS

**ORIGINAL**

7 BEFORE: David Strong, Chairman  
8 Kenneth Reisinger, DEP Staff  
9 Kenneth Murin, DEP Staff  
10 William Gerlach, Esquire,  
11 DEP Staff  
12 Steve Taglang, DEP Staff

14 LOCATION: Atherton Hotel  
15 South Atherton Street  
16 State College, PA 16801

18 HEARING: Wednesday, March 18, 1998  
19 3:00 p.m.

20 WITNESSES: James Coslo

\* \* \* \* \*

22 REPORTER: LAHANA JUDY

\* \* \* \* \*

24 Any reproduction of this transcript is  
25 prohibited without authorization by the  
certifying agency



AMERICAN GEOTECHNICAL, INC.

Civil/Geotechnical/Environmental/Hydrogeological/Structural Engineering

Geophysical & Materials Testing

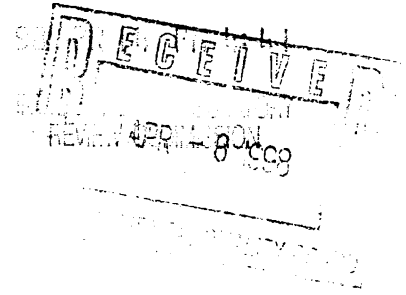
1801 Penn Avenue, Wyomissing Hills, PA 19609/Tel: 610-670-9055/Fax: 610-678-2719

209 Main Street, Woodbridge, NJ 07095

/Tel: 732-750-1668

E-mail: AGImail89@aol.com

ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)



Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Sir/Madam:

American Geotech, Inc. (AGI) cordially submits the following comments on the Proposed Rulemaking for Chapter 102 (Erosion and Sediment Control), Title 25 of the Pennsylvania Code, which appeared in the Pennsylvania Bulletin, Vol. 28, No. 6., pp. 769-781.

As concerned civil engineers and active members of the American Society of Civil Engineers (ASCE), America's and the world's premier professional society for civil engineers, we take great interest in topics affecting the profession, the construction of the man-made world, and the quality of life and the environment overall. Land development and the development and protection of water resources are two of the primary fields of endeavor for civil engineers. Civil engineers in government and private practice have been for the last 150 years and continue today to be the most proficient, educated practitioners in these endeavors.

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

We feel this can best be accomplished by strengthening paragraph 102.5(a). It is currently proposed to state "The erosion and sediment control plan shall be prepared by a person trained and experienced in erosion and sediment control methods and techniques".

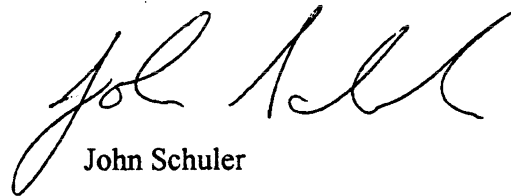
We recommend it be restated to read "The erosion and sediment control plan shall be prepared and stamped by a Professional Engineer licensed in the State of Pennsylvania."



We feel such a requirement is especially necessary at this point in time, as the state is undergoing tremendous land-use pressures because of development and the changing nature of the economy generally. A Professional Engineer's approval on erosion and sediment control plans required under Chapter 102 will provide great assistance and peace-of-mind to municipal planning officials, supervisors, inspectors, and concerned citizens.

We thank you for your time in considering our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Schuler', written in a cursive style.

John Schuler

cc: The Honorable Sheila Miller  
Pennsylvania State House of Representatives  
2419 Penn Avenue  
West Lawn, PA 19609

Pennsylvania Society of Professional Engineers, Reading Chapter  
2800 Pottsville Pike  
Reading, PA 19640  
Attn: Ernest T. Comisac



ORIGINAL: 1921  
COPIES: Tyrrell  
Wilmarth  
Sandusky  
Legal (2)

90 MAY -7 PM 4:07

REVIEW COMMISSION

## FACSIMILE COVER PAGE

Date: 5/7/98  
Time: 15:17:00  
Page: 1

To: Charles Tryrrell  
Company: I.R.R.C.  
Fax #: 783-2664

From: David J. Sumner  
Title: Legislative Director  
Company: PA Gas Association  
Address: 800 North 3rd Street  
Harrisburg, PA 17102  
USA

Fax #: 717-233-7946  
Voice #: 717-233-5814

Message:

Re: EQB # 7-332, Proposed Erosion & Sediment Control Regulations

Chuck-

I believe tomorrow is the deadline for I.R.R.C.'s comments on the above set of regulations. I would appreciate receiving a copy of the comments once they are available.

Please let me know if you have any questions. Thank you.

- David Sumner

**PENNSYLVANIA OIL & GAS ASSOCIATION**

106 Locust Grove Road, Bainbridge, PA 17502

Tel: 717-4426-0067

Fax: 717-426-3010

90 MAY -4 1998 12

RENEWAL

May 4, 1998

Charles Tyrrell & Fiona Wiltmarth  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor Harrisstown II  
333 Market Street  
Harrisburg, PA 17101

ORIGINAL: 1921  
COPIES: Tyrrell  
Wiltmarth  
Sandusky  
Legal (2)

Re: Proposed *Chapter 102* Regulations

I write to reiterate the major concerns we expressed to the Department of Environmental Protection on its proposed revisions to the erosion and sediment control regulations at *25 PA Code Chapter 102*.

**RBI inconsistencies**

The proposed revisions are contrary to the RBI and Executive Order mandate because the Department included two provisions that are more stringent than comparable federal law and regulations.

First, the proposed regulation fails to incorporate the limited exemption from the NPDES permitting requirement for stormwater discharges from oil and gas exploration and development activities created by the federal *Clean Water Act* and EPA NPDES stormwater permitting regulations.

Second, the proposed revisions to *Chapter 102* regulations incorporate the Department's recently revised NPDES general permit for construction-related stormwater discharges into the *Chapter 102* program without modification. The latest form of PAG-2 imposes permit requirements on Pennsylvania permittees that are more stringent than comparable US Environmental Protection Agency (EPA) NPDES requirements contained in a recently reissued general permit for construction-related stormwater discharges that is applicable elsewhere in EPA Region 3.

In both the foregoing cases, the Department includes the more stringent requirements without articulating a clear and compelling Pennsylvania interest or demonstrating that state law requires the more stringent provisions.

**Recommendations**

**Federal permit exemption.** The Pennsylvania Oil and Gas Association recommends modifications to the final *Chapter 102* regulation to incorporate the limited exemption from NPDES permitting for construction-related stormwater discharges associated with oil and gas activities that Congress established in the *Clean Water Act* and that EPA implemented in its NPDES regulations and multi-sector general permit.

We also suggest retaining the current requirement that oil and gas well operators satisfy the E&S Control Plan requirements of §102.4 even though the federal exemption would not impose such a requirement and it is contrary to the basic tenets of the RBI and the Executive Order.

Adoption of the foregoing recommendations in the final *Chapter 102* regulations would:

- ◆ satisfy the mandates in the RBI and Executive Order 1996-1 that state regulations should be no more stringent than federal regulations;
- ◆ regulate the oil and gas extraction industry in a manner that is comparable with *Chapter 102*'s regulation of timber harvesting. Such regulatory treatment would recognize that earth disturbances associated with oil and gas well development projects are smaller in scope and less threatening to the environment than similar disturbances associated with silviculture activities; and

## Chapter 102

---

- ◆ acknowledge the oil and gas industry's excellent history of compliance with current *Chapter 102* regulations.

To incorporate the limited federal NPDES permitting requirement, we recommended the inclusion of a new definition for "oil and gas exploration and production activities" in §102.1 and an amendment to the permit requirements in §102.31.

**Inconsistencies with the federal NPDES Stormwater Permit.** To avoid the sharp workload increase and PAG-2 permitting backlog that the proposed *Chapter 102* revisions could create for many conservation districts and to prevent excessive and unnecessary delays in oil and gas well permitting, we suggest that the Department should revise its PAG-2 to bring it in line with the requirements of the newly revised general permit for stormwater discharges from construction activities adopted by EPA Region 3. Specifically, the Department should:

- ◆ **Eliminate mandatory E&S Control Plan submission and review.** *Chapter 102* and PAG-2 should be revised to eliminate the requirement that persons seeking authorization for projects subject to PAG-2 must submit an E&S Control Plan to the local county conservation district along with the Notice of Intent to use the general permit. Instead, the general permit should simply track the provisions of proposed §102.4(d) which stipulates that the E&S Control Plan "shall be available for review and inspection at the project site during all stages of the earth disturbance activity" and that "the Department or its designee may request that the plan be submitted for review and approval."

In addition, the proposed regulation should also be amended at §102.32 (Applications and Fees) by deleting paragraph (2) in subsection (b). Paragraph (2) requires the NPDES permit application or Notice of Intent to be accompanied by an E&S Control Plan.

- ◆ **Require delegated agencies to satisfy the Money-Back Guarantee.** Also, we recommend that the final rule should include an amendment to §102.41 (administration by local governing bodies) specifically stipulating that the written agreement delegating administration and enforcement authority for the *Chapter 102* program to local conservation districts shall require delegated agencies to conduct PAG-2 permit review and approvals subject to the time 100-day time frame established by the Department's Money-Back Permit Review Guarantee Program.

County conservation districts and local agencies that are unable to conduct E&S Control Plan reviews in the manner envisioned by the Money-Back Guarantee permit review program should not be eligible for program delegation.

- ◆ **Define "common plan of development or sale".** The final regulation should also include a specific definition of the phrase "common plan of development or sale" which specifically lists concrete standards and criteria that the regulated community can rely on to determine whether the Department will determine that a proposed project will be subject to the PAG-2 requirements. The definition of the phrase should follow EPA's "common sense" guidance that expects multiple small projects to consist of five or more acres of disturbance at one time.

Thank you for considering our concerns. If you have any further questions before you submit your formal comments to the Department, please feel free to contact me.

*For the Pennsylvania Oil and Gas Association*



Stephen W. Rhoads  
President

**PENNSYLVANIA OIL & GAS ASSOCIATION**

106 Locust Grove Road, P. O. Box 349, Bainbridge, PA 17502  
Tel: 717-426-0067  
Fax: 717-426-3010

SO MAY -4 11:12

RECEIVED  
PENNSYLVANIA OIL & GAS ASSOCIATION

May 4, 1998

**Fax**

**To:** Chuck Tyrel & Fiona Wilmarth **From:** Steve Rhoads

---

**Fax:** **Pages:** 3

---

**Phone:** **Date:** May 4, 1998

---

**Re:** Chapter 102 Regulations **CC:**

---

Urgent     For Review     Please Comment     Please Reply

---

● **Comments:**