UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2783

November 30, 2009

Mr. Kenneth Murin
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Re: Draft Title 25 Pa. Code Chapter 102, Erosion and Sediment Control and Stormwater Management General Provisions

Dear Mr. Murin:

The U.S. Environmental Protection Agency (EPA) would like to thank you for the opportunity to review the above-referenced Draft Erosion and Sediment Control and Stormwater Management General Provisions (Draft Provisions) that were public noticed on August 29, 2009. Based on the Agency's review to date, we are submitting the following general comments and recommendations for the Draft Provisions, all of which require further clarification and refinement. Please see the enclosed markup for specific substantive comments. Areas of concern include, but are not limited to:

- Throughout the Draft Provisions, it is stated that stormwater discharges associated with construction activities with earth disturbance greater than one acre and less than five acres with a "point source" are required to obtain NPDES permit coverage. Please note that small construction sites that discharge into waters of the United States are themselves point sources. The EPA Construction General Permit explicitly defines a facility or activity covered by such permit as a point source, and several court decisions (See North Carolina Shellfish Growers Ass'n v. Holly Ridge Assoc., 278 F. Supp. 2d 654, 680-81 (E.D. N.C. 2003) and Calif. Sportfishing Protection Alliance v. Diablo Grande, Inc, 209 F. Supp. 2d 1059 (E.D. Ca. 2002) have also stated that the construction activity itself is the "point source". EPA requests that reference language specifying that only "point source" discharges must apply for a permit be removed and that the Draft Provisions specify that all earth disturbing activities of equal to or greater than one acre and less than five acres be required to obtain permit coverage.

- The Draft Provisions do not provide a rationale for not regulating construction activities

in animal heavy use areas. If construction activities are occurring in an animal heavy use area, they must include erosion and sediment controls to minimize/reduce nutrient and sediment runoff.

- The definition of Point Source in the Draft Provisions states in part iii that "the term does not include sheet flow associated with stormwater." In reference to the first comment above, EPA requests that the sentence be clarified by adding, "except at construction sites" or it be deleted in its entirety. The definition for point source is found in both the Pennsylvania Code (25 PA Code §92.1) and the Code of Federal Regulations (40 CFR §122.2) and does not exclude sheet flow. Likewise, the definition of stormwater as found at 40 CFR 122.26(b)(13) includes "storm water runoff, snow melt runoff, and surface runoff and drainage." It is not the discretion of PADEP to alter a regulatory definition to exclude an entire category of discharges.

- The concept of using a "permit-by-rule" approach does not satisfy the Clean Water Act unless the rules meet all the substantive and procedural requirements of NPDES permits found in 40 CFR 122.41 (e.g., duty to comply; right of inspection; public notice and comment, etc.). In addition, Pennsylvania must consider the appropriateness of incorporating a permit within its regulations when permits are limited to a five year term in comparison to regulations which are generally not modified within that timeframe. A "permit-by-rule" can not allow the filing of NOIs for a period longer than the five year term of the permit.

- EPA does support Pennsylvania's efforts to encourage increased use of riparian buffers and a streamlined permitting process. However, the process needs clarification in order to insure that the requirements of the NPDES program are met.

An electronic version of the Draft Provisions is enclosed with a number of additional marked changes as well. Please note that these comments are substantive and identical to the comments that were mailed on August 7, 2009 prior to the current public comment period. The changes incorporate matters which vary from those specified above in the cover letter and will also require refinement and/or clarification.

EPA looks forward to coordinating with PADEP to work through these comments and any others that may arise during the review process. If you have any further questions, please contact me or Liz Ottinger at (215) 814-5783.

Sincerely,

Evelyn S. MacKnight, Chief
NPDES Permits Branch

Water Protection Division

Enclosure

Annex A

CHAPTER 102. EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

GENERAL PROVISIONS

Sec.

EROSION AND SEDIMENT CONTROL AND POST CONSTRUCTION STORMWATER MANAGEMENT BMPs [The term Stormwater Control Measure (SCM) was introduced as a replacement for the term "BMP" at the National Stormwater Conference, held in Philadelphia, PA on 8-12 June. Consider the use of SCM instead of BMP.]

ENFORCEMENT

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

GENERAL PROVISIONS

§ 102.1. Definitions.

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

***ABACT—Antidegradation best available combination of technologies*—Treatment, land disposal, pollution prevention, and stormwater reuse BMPs that will individually or collectively prevent a net change from preexisting stormwater volume, rate, and quality for storm events up to and including the 2-year/24-hour storm that is not fully managed by nondischarge alternative BMPs and that will maintain and protect the existing quality of the receiving surface water.**

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

***Act 167* – The Pennsylvania Storm Water Management Act, act of October 4, 1978 (P.L. 864, No. 167), known as the Storm Water Management Act or Act 167.**

***Agricultural operation*—The management and use of farming resources for the production of crops, livestock, or poultry, or for equine activity.**

Agricultural plowing or tilling activity—Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops. **The term includes no-till cropping methods.**

***Along*—Touching or contiguous; to be in contact with; to abut upon.**

***Animal heavy use area*—Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where because of the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.**

BMPs—Best management practices—Activities, facilities, measures, **planning,** or procedures used to minimize accelerated erosion and sedimentation **and manage stormwater** to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth **before, during, and after earth disturbance activities.**

Channel—A natural or manmade water conveyance.

Collector—A channel, dike or other conveyance, constructed downslope of an earth disturbance activity for the purpose of collecting **stormwater** runoff from **[an existing or proposed disturbed]** **that** area and conveying it to facilities for sediment retention or removal.

[*County]Conservation district*—A conservation district, as defined in section 3(c) of the Conservation District Law (3 P. S. § 851(c)), **as amended,** which has the authority under a delegation agreement executed with the Department to administer and enforce all or a portion of the erosion, **[and]** sediment, **and stormwater management** **[control]** program in this Commonwealth.

Conservation Plan—A plan that identifies conservation practices and includes site specific BMPs **[which minimize the potential for accelerated erosion and sediment from]** **for** agricultural plowing or tilling activities **and animal heavy use areas**.

[(i) BMPs for agricultural plowing or tilling activities, including soil loss tolerance values (T), are identified in the *Pennsylvania Soil and Water Conservation Technical Guide*, United States Department of Agriculture, Natural Resources Conservation Service, 1991.

(ii) The Conservation Plan shall include a schedule for the implementation of the BMPs.

Insert definition for Department

***Dewatering zone*—The zone within a sediment basin where stormwater runoff is held and released in a controlled manner.]**

Disturbed area—Unstabilized land area where an earth disturbance activity is occurring or has occurred.

Diversion—A facility, including a channel, **[terrace or dike]** **or a conveyance** constructed up-slope of **[an earth disturbance activity for the purpose of diverting]** **the disturbed area to divert clean offsite** runoff away from **[an existing or proposed disturbed area]** **the earth disturbance activity.**

Earth disturbance activity—A construction or other human activity which disturbs the surface of the land, including **[but not limited to,]** **land** clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, **operation of animal heavy use areas,** timber harvesting activities, road maintenance activities, **oil and gas activities, well drilling,** mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

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

***E&S Permit*—*Erosion and Sediment Control Permit*—**A permit required for earth disturbance activities **[of 25 acres (10 hectares) or more]** where the earth disturbance is associated with timber harvesting, **[or]** road maintenance activities, **or oil and gas activities.** Should the size requirement remain in the definition?

E&S Plan—Erosion and Sediment Control Plan—A site-specific plan **consisting of both drawings and a narrative that** identif**[ying]lies** BMPs to minimize accelerated erosion and sedimentation **before, during, and after earth disturbance activities. [For agricultural plowing or tilling activities, the Erosion and Sediment Control Plan is that portion of a conservation plan identifying BMPs to minimize accelerated erosion and sedimentation.]** Note: An E&S Plan will not be approved without an approved Post-Construction Stormwater Management Plan.

Forest Stewardship Plan **–A written plan that provides an overview of a woodland property in the context of a landowner's needs and objectives and serves as a means of communicating technical information in a concise form that is useful to the landowner.**

***Intermittent stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.**

***K factor*—The soil erosion factor used for determining the level of potential erosion based upon soil characteristics.**

***Licensed professional*—Professional engineers, landscape architects, geologists, and land surveyors licensed to practice in Pennsylvania.**

Municipality—**[(i)]** A county, city, borough, town, township, school district, institution or authority **[created by any one or more of the foregoing.] or another public body created by or pursuant to state law. [(ii)]** For purposes of this definition, town includes an incorporated town.

NOI—Notice of Intent—A request, on a form provided by the Department **[or county conservation district]**, for coverage under a General NPDES Permit for Stormwater Discharges Associated With Construction Activities.

***Nondischarge alternative*—Environmentally sound and cost-effective BMPs that individually or collectively eliminate the net change from preexisting stormwater volume, rate, and quality for storm events up to and including the 2-year/24-hour storm.**

***Normal pool elevation*—**

(i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.

(ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control, or dam crest which maintains the body of water at a specified height.

(iii) This term does not apply to wetlands.

***NOT—Notice of Termination*—A request, on a form provided by the Department, to terminate coverage under a permit-by-rule, General or Individual NPDES Permit for**

Stormwater Discharges Associated With Construction Activities or other permits under this chapter.

NPDES—National Pollutant Discharge Elimination System—The National system for the issuance of permits under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342) including a state or interstate program which has been approved in whole or in part by the EPA[.], **including the regulations codified at 25 Pa. Code Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), as amended and updated, and as specified herein.**

NPDES Permit for Stormwater Discharges Associated With Construction Activities—A permit required for the discharge or potential discharge of stormwater **[into waters of this Commonwealth]** from construction activities, including clearing and grubbing, grading and excavation activities involving:

(i) Equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a discharge to surface waters of this Commonwealth, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre to less than 5 acres (0.4 to 2 hectares) of earth disturbance with a discharge to surface waters of this Commonwealth over the life of the project.

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(ii) 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project.

***Oil and gas activities*—Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.**

Operator—A person who has one or more of the following:

(i) Oversight responsibility of earth disturbance activity on a project site or a portion thereof **[which]** **who** has the ability to make modifications to the **E&S** **[Erosion and Sediment Control]** Plan, **PCSM Plan,** or site specifications.

(ii) Day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the **[Erosion and Sediment Control]** **E&S** Plan **or PCSM Plan**.

***Perennial stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system. [What does the definition of a perennial stream intend to exclude?]**

Perimeter BMPs—BMPs placed or constructed along the perimeter of an earth disturbance area to prevent runoff from entering the disturbed area, or to capture and treat sediment runoff prior to leaving a disturbed area.

Person—Any operator (Remove "operator" from the definition of person.), **[natural person, partnership, association or corporation or an agency, instrumentality or entity of Federal or State government, including a municipality]** **individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; Department, agency or instrumentality of state, federal or local government, or an agent or employee thereof; or any other legal entity**.

Permanent stabilization—Long-term protection of soil and water resources from accelerated erosion.

[Permanent *pool*—The area within a sediment basin which is designed to be inundated with water at all times.

***Principal spillway*—The structure within a sediment basin which controls the discharge of water from the facility.]**

Point source—

(i) Any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

(ii) This term includes concentrated or channelized flow associated with stormwater.

(iii) This term does not include sheet flow associated with stormwater. Sheet flow is construction-related runoff resulting in a point source discharge. Sheet flow should not be excluded from the definition of point source. Revise the definition in order to be consistent with the definition of a point source in 40 CFR Part 122 or 025 Pa. Code Part 92.1.

***Pollutant*—Any contaminant or other alteration of the physical, chemical, biological, or radiological integrity of surface water which causes or has the potential to cause pollution as defined in section 1 of the Clean Streams Law (of 35 P.S. § 691.1).**

***Post Construction Stormwater*—Stormwater associated with a project site after earth disturbance activity has been completed and the project site is permanently stabilized.**

***PCSM*—Post construction stormwater management.**

***PCSM Plan*—A site-specific plan identifying BMPs to manage changes in stormwater runoff volume, rate, and water quality after earth disturbance activities have ended and**

the project site is permanently stabilized. Is this plan required for all earth disturbing activities or just those over 1 acre which require a permit?

***PPC Plan—Preparedness, Prevention and Contingency Plan*—A written plan** [required for fueling, vehicle maintenance, concrete curing and storage of curing compounds, form release activities and storage of form release oils, in addition to storage and/or use of any other materials on site that can contribute contaminants to stormwater runoff if spilled or left exposed to the elements] **that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of this Commonwealth.**

Project site—The entire area of activity, development**, lease,** or sale including:

(i) The area of an earth disturbance activity.

(ii) The area planned for an earth disturbance activity.

(iii) Other areas which are not subject to an earth disturbance activity.

Define Registrant.

***Riparian forest buffer*—A BMP that is an area of permanent vegetation** (Will the BMP be incorporated anywhere or just along the stream? How will this be practically defined?) **consisting of predominantly native trees, shrubs and forbs along surface waters that is maintained in a natural state or sustainably managed to protect and enhance water quality, stabilize stream channels and banks, and buffer land use activities from surface waters.**

Road maintenance activities—Earth disturbance activities within the existing road cross-section, such as grading and repairing existing unpaved road surfaces, cutting road banks, cleaning or clearing drainage ditches and other similar activities.

Sediment—Soils or other **erodible** materials transported by surface water as a product of erosion.

Sedimentation—The action or process of forming or depositing sediment in waters of this Commonwealth.

[Skim—To remove the uppermost portion of water within a sediment basin.]

***Soil loss tolerance (T)*—The maximum amount of soil loss, in tons/acre/year, that a given soil type can tolerate and still permit a high level of crop production to be sustained economically and indefinitely. Values for T for various soil types may be obtained from the *Pennsylvania Soil and Water Conservation Technical Guide*, USDA NRCS, 1991 (as amended and updated).**

Stabilization—The proper placing, grading, constructing, reinforcing, lining, and covering of soil, rock or earth to [i]ensure their resistance to erosion, sliding or other movement.

***Stormwater*—Runoff from precipitation, snowmelt, and surface runoff and drainage.**

***Surface waters*—Perennial and intermittent streams, creeks, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds, and constructed wetlands used as part of a wastewater treatment process.**

Timber harvesting activities—Earth disturbance activities including the construction of skid trails, logging roads, landing areas and other similar logging or silvicultural practices.

***Top of streambank*—First substantial break in slope between the edge of the bed of the stream and the surrounding terrain. The top of streambank can either be a natural or constructed (i.e., road or railroad grade) feature, lying generally parallel to the watercourse.**

Waters of this Commonwealth—Rivers, perennial and intermittent streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth. [Other than groundwater, is there any reason why the definition of "Waters of the Commonwealth" and "Surface Waters" are not the same?]

§ 102.2. Scope and purpose.

(a) This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation prior to the commencement of earth disturbing activity **and to manage post construction stormwater**.

(b) The BMPs shall be undertaken to protect, maintain, reclaim and restore water quality and the existing and designated uses of waters of this Commonwealth.

§ 102.3. [Reserved].

§ 102.4. Erosion and sediment control requirements.

(a) For agricultural plowing or tilling activities **or for animal heavy use areas**, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of erosion and sediment control BMPs (Are there specific ag BMPs? If so, where can they be found?) are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) Written **[Erosion and Sediment Control]** **E&S** Plans are required for agricultural plowing or tilling activities **or for animal heavy use areas** that disturb 5,000 square feet (464.5 square meters) or more of land.

(3) The landowner, and any lessee, renter, tenant or other land occupier, conducting or planning to conduct agricultural plowing or tilling activities**, or operating an animal heavy use area,** (of what size? 1 and 2 above have a specific area of disturbance defined while this paragraph does not.) are jointly and individually responsible for developing a written **[Erosion and Sediment Control]** **E&S** Plan and implementing and maintaining BMPs, including those identified in the **[Erosion and Sediment Control]** **E&S** Plan.

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(4) The **[Erosion and Sediment Control]** **E&S** Plan shall **[be]** **include cost-effective and reasonable BMPs** (BMPs should also meet WQS, not just be reasonable and cost effective) designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing or tilling activities **and animal heavy use areas.**

(i) For agricultural plowing or tilling activities, the E&S Plan shall, at a minimum, limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation.

(ii) For agricultural plowing and tilling activities that will occur on fields with less than 25% cover and within 100 feet of a river, or perennial or intermittent stream, additional BMPs shall be implemented to minimize accelerated erosion and sedimentation.

(iii) For animal heavy use areas, the E&S Plan shall identify BMPs to minimize accelerated erosion and sedimentation. BMPs and their design standards are listed in the current amended and updated version of the appropriate NRCS conservation practice standards such as Heavy Use Area Protection, Critical Area Planting, Fencing, Wastewater Treatment Strip, Constructed Wetland, Use Exclusion, Animal Trails and Walkways, Diversions, and Roof Runoff Structure.

(5) The **[Erosion and Sediment Control]** **E&S** Plan shall contain drawings and a narrative which describe the following: plan maps**[, soils maps,]** **that show** the location of **features including surface** waters **[of this Commonwealth,]** **and** drainage patterns**, pipes and collection systems, field and property boundaries, buildings and farm structures, animal heavy use areas, roads and crossroads, and BMPs; soils maps;** and a description of BMPs including **animal heavy use area practices and procedures,** tillage systems, schedules**, and crop rotations[, and cost effective and technically practical conservation measures]. The plan must be consistent with the current conditions and activities on the agricultural operation.**

(6) The E&S Plan must contain an implementation schedule. The plan must be implemented according to the schedule, and the BMPs shall be operated,maintained and inspected as long as there are agricultural plowing or tilling activities or animal heavy use areas, on the agricultural operation. (The E&S Plan should also require maintaining documentation of all O&M activities and who is responsible for maintaining the BMPs.)

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(7) The portion of a conservation plan that identifies BMPs to minimize accelerated erosion and sedimentation from agricultural plowing or tilling activities, or from operation

of animal heavy use areas, may be used to satisfy the E&S Plan requirements of this subsection if it meets the requirements of subsections (4)–(6).

[6](8) The **[Erosion and Sediment Control]** **E&S** Plan shall be available for review and inspection at the **[project site during each stage of the agricultural plowing or tilling activity]** **agricultural operation**.

(9) Nothing in this section negates the requirements under other provisions of this chapter, such as those applicable to construction activities.

(b) For earth disturbance activities other than agricultural plowing or tilling **or animal heavy use areas**, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance (by whom?) of **[erosion and sediment control]** **E&S** BMPs are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) A person proposing earth disturbance activities shall develop **and implement** a written **[Erosion and Sediment Control]** **E&S** Plan under this chapter if one or more of the following criteria apply:

(i) The earth disturbance activity will result in a total earth disturbance of 5,000 square feet (464.5 square meters) or more.

(ii) The person proposing the earth disturbance activities is required to develop an **[Erosion and Sediment Control]** **E&S** Plan pursuant to this chapter under Department regulations other than those contained in this chapter. (what does this mean?)

(iii) The earth disturbance activity, because of its proximity to existing drainage features or patterns, has the potential to discharge to a water classified as a High Quality or Exceptional Value water pursuant to Chapter 93 (relating to water quality standards).

(3) The **[Erosion and Sediment Control]** **E&S** Plan shall be prepared by a person trained and experienced in **[erosion and sediment]** **E&S** control methods and techniques **[, and shall be designed to minimize the potential for accelerated erosion and sedimentation]**. (licensed professional? Engineer/Landscape architect/certified E&S designer?)

(4) **[Earth disturbance activities shall be planned and conducted to minimize the extent and duration of the disturbance.]** **Unless otherwise authorized by the Department or conservation district after consultation with the Department, all earth disturbance activities shall be planned and implemented to the extent practicable (need to meet defined WQS, not just to the extent practicable) in accordance with the following:**

(i) Minimize the extent and duration of the earth disturbance.

(ii) Maximize protection of existing drainage features and vegetation.

(iii) Minimize soil compaction.

(iv) Utilize other measures or controls (please provide examples) that prevent or minimize the generation of increased stormwater runoff.

(v) Protect, maintain, reclaim, and restore the quality of water and the existing and designated uses of waters within this Commonwealth.

(5) The **[Erosion and Sediment Control]** **E&S** Plan shall contain **drawings and narrative which describe** the following:

(i) The existing topographic features of the project site and the immediate surrounding area. Also include drainage patterns, storm pipes and collection systems.

(ii) The types, depth, slope, locations and limitations of the soils.

(iii) The characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site.

(iv) The **[amount]** **volume and rate** of runoff from the project **[area]** **site** and its upstream watershed area. (comparison of pre vs. post development?)

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(v) The location of **all surface** waters **[of this Commonwealth]** which may receive runoff within or from the project site and their classification pursuant to Chapter 93 **(relating to water quality standards)**.

(vi) A **[written depiction]** **narrative description** of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity. What about structural details for BMPs?

(vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities **that ensure the proper functioning of all BMPs. The sequence shall require effective treatment of all stormwater runoff (within the appropriate design storm criteria) until all active construction is completed and prevent the elimination of active construction controls until post-construction controls are functioning.**

(viii) Supporting calculations **and measurements**. Including any compaction/infiltration tests/studies, etc.

(ix) Plan drawings.

(x) A maintenance program which provides for **the operation and maintenance of BMPs and the** inspection of BMPs on a weekly basis and after each **[measurable rainfall]** **stormwater** event, including the repair of the BMPs to ensure effective and efficient operation. **The program shall provide for completion of a written report documenting each inspection and all BMP repair and maintenance activities.**

(xi) Procedures which ensure that the proper measures for the recycling or disposal of materials associated with or from the project site will be undertaken in accordance with this title.

(xii) Identify naturally occurring geologic formations or soil conditions that may have the potential to cause pollution during earth disturbance activities and include BMPs to avoid or minimize potential pollution and its impacts from such formations.

(xiii) Evaluate the potential for thermal impacts to surface waters from the earth disturbance activity and include BMPs to avoid, minimize, or mitigate potential pollution from thermal impacts. (Also, evaluate the potential to add new loading to impaired/TMDL waters should the pollutant of concern be discharged.)

(xiv) The E&S Plan shall be planned, designed, and implemented to be consistent with the PCSM Plan pursuant to § 102.8 (relating to PCSM requirements). Unless otherwise approved by the Department, the E&S Plan must be separate from the PCSM Plan and labeled "E&S" or "Erosion and Sediment Control Plan" and be the final plan for construction.

(xv) Identify existing and proposed forest riparian buffers. (Does this protect existing vegetation other than along the stream?)

(6) Where an earth disturbance activity may result in a discharge to a water of this Commonwealth classified as High Quality or Exceptional Value pursuant to Chapter 93 **(relating water quality standards)**, the person proposing the activity shall, as applicable, use **[the following Special Protection] nondischarge alternatives and ABACT** BMPs to maintain and protect the water from degradation**[:]. Nondischarge alternatives and ABACT BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.**

[(i) Special sediment basin requirements. (Please describe what the technical criteria, listed below, relates to.)

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(A) Principal spillways shall be designed to skim water from the top 6 inches (15 centimeters) of the dewatering zone, or shall have permanent pools greater than or equal to 18 inches (46 centimeters) deep.

(B) The basin shall be designed with a flow length to basin width ratio of 4:1 or greater.

(C) The basin shall be designed so that it dewaters in at least 4 days and no more than 7 days when at full capacity.

(ii) Channels, collectors and diversions shall be lined with permanent vegetation, rock, geotextile or other nonerosive materials.

(iii) BMPs that divert or carry surface water shall be designed to have a minimum capacity to convey the peak discharge from a 5-year frequency storm. (does this apply during construction only? 5 year storm seems low for a permanent design criteria)

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(iv) Upon completion or temporary cessation of the earth disturbance activity, or any stage thereof, the project site shall be immediately stabilized.]

(v) The Department **[or county conservation district]** Why is this removed? may approve alternative BMPs which will maintain and protect existing water quality and existing and designated uses.

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(7) The signed, stamped**[Erosion and Sediment Control]** **E&S** Plan**, inspection reports, and monitoring records** shall be available for review and inspection by the Department or the **[county]** conservation district at the project site during all stages of the earth disturbance activity.

(8) Upon complaint or site inspection, the Department or **[county]** conservation district may require that the **E&S** Plan be submitted for review (is this a second review? Is the plan not reviewed unless a complaint is filed?) and Re-approval to ensure compliance with this chapter.

(c) The Department **may require,** or **[county]** conservation district **[may require] after consultation with the Department (Why does the district need to consult with the Department to request more information?)** may require, other information necessary to adequately review a plan, or may require additional BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

(d) A person proposing or conducting an earth disturbance activity shall obtain all other necessary permits and authorizations from the Department or conservation district, related to the earth disturbance activity, before commencing with the earth disturbance activity. (provide examples)

(e) Persons proposing an earth disturbance activity that requires permit coverage under § 102.5 (relating to activities requiring a permit, and relating to types of permit coverage) must have permit coverage prior to commencing the earth disturbance activity.

§ 102.5. Permit requirements.

(a) NPDES Permit Stormwater Discharges Associated with Construction Activities.

(1) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, (Why is this use excluded? If construction activities are occurring in an animal heavy use area, the construction activities must be regulated. E&S controls are important in animal heavy use areas to minimize/reduce nutrient and sediment runoff) a person proposing an earth disturbance activity that involves equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a discharge to surface waters, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development sale that

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involves equal to or greater than 1 acre and less than 5 acres (0.4 to 2 hectares) of earth disturbance with a discharge (what about sheet flow from the construction site? Sheet flow is not included in the definition of a point source) to surface waters over the life of the project, shall obtain an individual NPDES Permit or coverage under a general NPDES permit or NPDES permit–by-rule for Stormwater Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.

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[(a)](2) Other than agricultural plowing or tilling **activities, animal heavy use areas (Why is this use excluded? If construction activities are occurring in an animal heavy use area, the construction activities must be regulated. E&S controls are important in animal heavy use areas to minimize/reduce nutrient and sediment runoff),** timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves 5 acres (2 hectares) or more of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves 5 acres (2 hectares) or more of earth disturbance over the life of the project, shall obtain a**n [general or]** individual NPDES Permit for Stormwater Discharges Associated With Construction Activities **or coverage under a general NPDES permit or NPDES permit–by-rule for Stormwater Discharges Associated with Construction Activities** prior to commencing the earth disturbance activity.

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(3) In addition to other applicable requirements, persons required to obtain an Individual NPDES Permit for Stormwater Discharges Associated with Construction Activities for projects proposed in special protection watersheds shall evaluate and use BMPs in accordance with the antidegradation requirements of Chapter 93 (relating to water quality standards) regardless of whether the discharge is new, additional, or increased.

(b) A person proposing a timber harvesting or road maintenance activity involving 25 acres (10 hectares) or more of earth disturbance shall obtain an **[Erosion and Sediment Control Permit] E&S** Permit under this chapter prior to commencing the earth disturbance activity. Is an E&S Plan also required with the E&S permit? If so, it should be stated here.

(c) A person proposing oil and gas activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project shall obtain an E&S Permit (What is the distinction between an E&S permit, a NPDES permit and an E&S plan?) under this chapter prior to commencing the earth disturbance activity. [This provision does not comply with 40 C.F.R. Part 122.26(c)(1)(iii). Discharges from small construction activity at oil and gas sites that include reportable quantities or contribute to WQS violations should be required to have permits.]

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(d) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing earth disturbance activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project that do not require a permit under subsections 102.5(a), (b), (c), (g), and (i) shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(e) For earth disturbance activities authorized by a permit under this chapter, a preconstruction meeting is required unless the permittee has been notified otherwise in writing by the Department or conservation district. The permittee must contact the

Department or conservation district at least 7 days but not more than 30 days prior to the commencement of construction. Permittee(s), co-permittee(s), operator(s), and licensed professional or designee responsible for critical stages of construction must attend a preconstruction meeting along with the Department or conservation district.

(f) A person proposing earth disturbance activities requiring a permit or permit coverage under this chapter shall be responsible to ensure development, implementation and long-term operation and maintenance of the PCSM Plan.

[(c)](g) A person proposing or conducting an earth disturbance activity approved under a Department permit issued under a chapter other than Chapter 92 (relating to **[National Pollutant Discharge Elimination System]** **NPDES** permitting, monitoring and compliance) or this chapter, which includes requirements to comply with Chapter 92 and this chapter, need not obtain an additional **[Erosion and Sediment Control]** **E&S** Permit or NPDES Permit for Stormwater Discharges Associated With Construction Activities. [You cannot use another State permit which is not part of the State approved program to avoid an NPDES permit requirement.]

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(h) Operators who are not the permittee shall be co-permittees. (Will co-permittees be responsible for implementing the E&S plan?)

(i) A person proposing or conducting an earth disturbance activity associated with discharging dredged or fill material to waters of the United States which is required to obtain a permit or coverage under a permit pursuant to § 404 of the Clean Water Act (33 U.S.C.A. § 1344) need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated with Construction Activities for the area of disturbance covered by the Clean Water Act § 404 permit. [A 404 permit is not a 402 permit. A 404 permit can only authorize discharges of dredged or fill materials; a person conducting an earth disturbance activity requires a 402 permit for discharges of stormwater.]

[(d)](j)A person proposing or conducting agricultural plowing or tilling activities **or animal heavy use areas** is not required to obtain an **[Erosion and Sediment Control]** **E&S** Permit, or an NPDES Permit for Stormwater Discharges Associated With Construction Activities, for these activities under this chapter. (WHY?)

[(e)](k) A person proposing or conducting an earth disturbance activity who is not required to obtain a Permit under this chapter shall comply with the other provisions of this chapter. (What does this mean?)

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§ 102.6. Permit applications and fees.

(a) *Permit requirements.* A person proposing or conducting an earth disturbance activity which requires **[Erosion and Sediment Control Permit or an NPDES Permit for Stormwater Discharges Associated with Construction Activities]** **a permit** under § 102.5 (relating to permit requirements), shall:

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(1) Submit to the Department or a **[county]** conservation district a complete application, **[or]** notice of intent, **or Registration of Coverage (ROC) (include definition in section 102.1)**, an **[Erosion and Sediment Control]** **E&S** Plan meeting the requirements of § 102.4 (relating to

erosion and sediment control requirements), **a PCSM Plan meeting the requirements of § 102.8 (relating to PCSM requirements),** and other information the Department may require.

(2) Provide proof of consultation with the Pennsylvania Natural **Heritage Program [Diversity Inventory (PNDI)] (PNHP)** regarding the presence of a State or Federal threatened or endangered species on the project site. If the Department or **[county]** conservation district determines, based upon **[PNDI] PNHP** data or other sources, that the proposed earth disturbance activity may adversely impact the species or critical habitat, the person proposing the earth disturbance activity shall consult with the Department or **[county]** conservation district to avoid or prevent the impact. If the impact cannot be avoided or prevented, the person proposing the activity shall demonstrate how the impacts will be minimized in accordance with State and Federal laws pertaining to the protection of threatened or endangered flora and fauna and its habitat.

(3) Prepare and implement a PPC Plan when storing, using, or transporting materials including: fuels, chemicals, solvents, pesticides, fertilizers, lime, petrochemicals, wastewater, wash water, core drilling wastewater, cement, sanitary wastes, solid wastes, or hazardous materials onto, on, or from the project site during earth disturbance activities. The PPC Plan must be available upon request by the Department or conservation district.

(b) *Permit fees.*

[(1) Erosion and Sediment Control Permit applications for timber harvesting and road maintenance activities shall be accompanied by an application fee of $500. (This application fee should be comparable to the fees for obtaining a Permit.)

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(2) Applications and Notices of Intent for an NPDES Permit for Stormwater Discharges Associated with Construction Activities shall be submitted (how long before earth disturbance activity is set to begin should the application and fees be submitted?) **and accompanied by the fee established pursuant to Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).]**

(1) A person submitting a permit application, NOI, or ROC shall submit a fee as follows:

(i) NPDES permit-by-rule $2500.

(ii) General NPDES Permit $2500.

(iii) Individual NPDES Permit $5000.

(iv) General E&S Permit $2500.

(v) Individual E&S Permit $5000

(2) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the Environmental Quality Board. The report must identify any disparity between the amount of program income generated

by the fees and the costs to administer these programs, and it must contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

(3) Conservation districts may charge additional fees in accordance with the Conservation District Law (3 P.S. § 857(13)) as amended and updated.

(c) *Complete applications or Notices of Intent.*

(1) An application or NOI for a permit is not complete until the necessary information and requirements under the Clean Streams Law (35 P.S. § 691.1 *et seq.*) and this chapter have been satisfied by the applicant. Is there a timeframe for automatic approval if notification of incompletion is NOT received? If the applicant intends on discharging into impaired water, the NOI should require the applicant include this in the application.

(2) When the Department determines that an application or NOI is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing within how many days of submittal?. The applicant shall then have 60 days to complete the application or NOI, or the Department will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or NOI is considered withdrawn. When an application or NOI is considered withdrawn, the Department will close the application file and take no further action to review the file.

(3) If the incomplete or deficient application is returned or withdrawn, the fees associated with filing the application will not be refunded.

§ 102.7. Permit termination.

(a) Upon permanent stabilization of the earth disturbance activity under § 102.22[(c)] (a) (2) (relating to permanent stabilization), the person who obtains permit coverage under this chapter shall submit a notice of termination to the Department or **[county]** conservation district. (How much time do permittees have to submit the NOT from the time construction is completed?)

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(b) The notice of termination shall include:

(1) The facility name, address and location.

(2) The operator name and address.

(3) The permit number.

(4) The reason for permit termination.

(5) Identify the person(s) who will be responsible for operation and maintenance of the PCSM BMPs in accordance with the approved PCSM Plan.

(c) Until such time as the permittee has received written acknowledgement of a notice of termination, the permittee will remain responsible for compliance with all permit terms and conditions including operation and maintenance of all PCSM BMPs on the project site and is responsible for violations occurring on the project site.

§ 102.8. PCSM requirements.

(a) A person proposing an earth disturbance activity that requires NPDES permit coverage under this chapter or other Department permit that requires compliance with this chapter shall be responsible to ensure that a written PCSM Plan is developed, implemented, operated, and maintained.

(b) All management of post construction stormwater shall be planned and conducted to the extent practicable in accordance with the following:

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(1) Preserve the integrity of stream channels and protect the physical, biological, and chemical qualities of the receiving stream.

(2) Prevent an increase in the rate of stormwater runoff.

(3) Minimize any increase in stormwater runoff volume. (Section 102.11(a)(2) states "....PCSM BMPs to mimic preconstruction stormwater runoff conditions..." These two sections should have consistent language.)

(4) Minimize impervious areas.

(5) Maximize the protection of existing drainage features and existing vegetation.

(6) Minimize land clearing and grading.

(7) Minimize soil compaction.

(8) Utilize other measures or controls (such as?)that prevent or minimize the generation of increased stormwater runoff and pollutants.

(9) Protect, maintain, reclaim, and restore the quality of water and the existing and designated uses of waters within this Commonwealth.
How are the requirements in 1-9 to be measured? Are they to be reported on to the Dept? Is it explicitly stated in the plan how these goals will be accomplished?

(c) The PCSM Plan must be planned, designed, and implemented to be consistent with the E&S Plan pursuant to § 102.4(b) (relating to E&S requirements for earth disturbance activities other than agricultural plowing or tilling activities or animal heavy use areas).

(d) Unless otherwise approved by the Department, the PCSM Plan must be separate from the E&S Plan and labeled "PCSM" or "Post Construction Stormwater Management Plan" and be the final plan for construction.

(e) The PCSM Plan must be prepared by a person trained and experienced in PCSM design methods and techniques. (Must be more specific-see previous comment regarding E&S plan preparation)

(f) The PCSM Plan must contain drawings and narrative requirements as described within this chapter and other supporting documentation. The PCSM Plan must be designed to minimize the threat to human health, safety, and the environment to the greatest extent practicable. All PCSM Plans must contain at a minimum the following:

(1) The existing topographic features of the project site and the immediate surrounding area.

(2) The types, depth, slope, locations, and limitations of the soils and geologic formations.

(3) The characteristics of the project site, including the past, present, and proposed land uses and the proposed alteration to the project site. (What is the level of detail required?)

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(4) Identify the net change in volume and rate of stormwater from preconstruction hydrology to post construction hydrology for the entire project site and each drainage area. (This should also include a demonstration that impaired/TMDL waters would receive adequate protection)

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(5) Identify the location of surface waters, which may receive runoff within or from the project site and their classification pursuant to Chapter 93 (relating to water quality standards). Also include drainage patterns, storm pipes and collection systems.

(6) A written description of the location and type of PCSM BMPs including construction details for permanent stormwater BMPs including permanent stabilization specifications and locations.

(7) A sequence of PCSM BMP implementation or installation in relation to earth disturbance activities of the project site and a schedule of inspections for critical stages of PCSM BMP installation.

(8) Supporting calculations. Please elaborate on what the supporting calculations will be demonstrating.

(9) Plan drawings.

(10) A long-term operation and maintenance schedule, which provides for inspection (How often will the inspections occur?) **of PCSM BMPs, including the repair, replacement, or other routine maintenance of the PCSM BMPs to ensure effective and efficient operation. The program shall provide for completion of a written report documenting each**

inspection and all BMP repair and maintenance activities and how access to the PCSM BMPs will be provided.

(11) Identification of the person(s) responsible for long-term operation and maintenance and inspection of the PCSM BMPS.

(12) Procedures, which ensure that the proper measures for the recycling or disposal of materials associated with or from the PCSM BMPs, are in accordance with Department laws, regulations, and requirements.

(13) Identify natural occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational, and develop a management plan to avoid or minimize potential pollution and its impacts.

(14) An evaluation of potential thermal impacts from post construction stormwater to surface waters and include BMPs to avoid, minimize, or mitigate potential pollution from thermal impacts.

(15) Riparian Forest Buffer Management Plan when required under § 102.14 (relating to buffer requirements).

(16) Additional information requested by the Department.

(g) PCSM Plans for proposed activities requiring a permit under this chapter require the following additional information:

(1) Analytical testing and assessment of soil, geology, and other predevelopment site characteristics including infiltration and geotechnical studies that identify location and depths of test sites and method(s) used.

(2) Analysis demonstrating that the PCSM BMPs will: meet the volume reduction and water quality requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage on-site the net change for storms up to and including the 2-year/24-hour storm event (How is the 2-year/24-hour storm event measured/defined?) when compared to preconstruction runoff volume and water quality. The analysis for the 2-year/24-hour storm event must be conducted using the following minimum criteria:

(i) Existing predevelopment nonforested pervious areas must be considered meadow in good condition or its equivalent.

(ii) When the existing project site contains impervious area, 20% of the existing impervious area to be disturbed must be considered meadow in good condition or better, except for repair, reconstruction, or restoration of roadways or utility infrastructure when the site will be returned to existing condition. (How is predevelopment for agricultural usage areas evaluated?)

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(3) Analysis demonstrating that the PCSM BMPs will: meet the rate requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change in peak rate for the 2-, 5-, 10-, 25-, 50-, and 100-year/24-hour storm events in a manner not to exceed preconstruction rates. *(How will regulation address off-site mitigation if the net change cannot be managed for all storms and peak rates?) See WV MS4 permit for example language*

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(i) Hydrologic routing analysis is required to demonstrate this requirement is met.

(ii) Exempt from this requirement are Department approved direct discharges to tidal areas or Department approved no detention areas.

(4) Identify the methodologies for calculating the total runoff volume and peak rate of runoff and provide supporting documentation and calculations.

(5) Construction techniques or special considerations to address soil and geologic limitations.

(6) The Department may require, or after consultation with the Department a conservation district may require, additional information necessary to adequately review a PCSM Plan or may require additional BMPs, on a case-by-case basis, when necessary to ensure the restoration, maintenance and protection of water quality and existing and designated uses.

(h) Where a PCSM Plan is being developed for an activity that may result in a discharge to a water of this Commonwealth classified as High Quality or Exceptional Value pursuant to Chapter 93 (relating to water quality standards), the person proposing the activity shall use nondischarge and ABACT BMPs to maintain and protect the water from degradation. Specifically, the person proposing the activity shall use PCSM BMPs that collectively achieve no net change when compared to preconstruction discharges, in stormwater runoff volume, rate and water quality during storm events up to and including the 2-year/24-hour storm event. Nondischarge alternatives and ABACT BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual* Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(i) Upon complaint or site inspection, the Department or conservation district may require that the PCSM Plan be submitted for review and approval to ensure compliance with this chapter.

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(j) The PCSM Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district. The PCSM Plan, inspection reports and monitoring records should also be available upon request to EPA or the MS4.

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(k) A licensed professional or their designee shall be present on site and be responsible during critical stages of implementation of the approved PCSM Plan including

underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department.

(l) The permittee shall include with their notice of termination "Record Drawings" with a final certification statement from a licensed professional, which shall read as follows:

"I (name) do hereby certify pursuant to the penalties of 18 Pa. C.S.A. § 4904 to the best of my knowledge, information and belief, that the accompanying record drawings accurately reflect the redline drawings, are true and correct, and are in conformance with Chapter 102 of the rules and regulations of the Department of Environment Protection and that the project site was constructed in accordance with the approved PCSM Plan and accepted construction practices."

(1) The permittee shall retain a copy of the record drawings as a part of the approved PCSM Plan. (Identify who will approve the PCSM plan?)

(2) The permittee shall provide a copy of the record drawings as a part of the approved PCSM Plan to the person identified in this section as being responsible for the operation and maintenance and inspection of the PCSM BMPs.

(m) ***Operation and maintenance requirements.*** **Unless a different person is approved in writing by the Department, operation and maintenance of PCSM BMPs shall be the responsibility of the landowner of the property where the PCSM BMP is located. The deed for any property containing a PCSM BMP shall identify the PCSM BMP and provide notice that the responsibility for operation and maintenance of the PCSM BMP is a covenant that runs with the land and that is enforceable by subsequent grantees. Any grantor that fails to comply with this requirement shall remain jointly responsible with the landowner for operation and maintenance of the PCSM BMPs located on the property.**

(n) The portion of a site reclamation or restoration plan that identifies PCSM BMPs to manage stormwater from oil and gas activities or mining activities permitted in accordance with 25 Pa. Code Chapters 77 and 86-90, or a plan for abandoned mine land reclamation activities may be used to satisfy the PCSM Plan requirements of this section if the reclamation plan meets the requirements of subsections (b),(c), (e), (f), (h), (i), and (m).

EROSION AND SEDIMENT CONTROL AND POST CONSTRUCTION STORMWATER MANAGEMENT BMPs

§ 102.11. General requirements.

(a) A person conducting or proposing to conduct an earth disturbance activity shall:

(1) Design, implement and maintain **E&S** BMPs to minimize the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses. Various **E&S** BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (Manual), Commonwealth of

Pennsylvania, Department of Environmental Protection, No. 363-2134-008 **[(January 1996)]** **(April 2000)**, as amended and updated.

(2) If required to develop a PCSM Plan, design, implement, and maintain PCSM BMPs to mimic preconstruction stormwater runoff conditions in order to protect, maintain, reclaim, and restore water quality and existing and designated uses. Various PCSM BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual* (Stormwater BMP Manual), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(3) If required to develop a riparian forest buffer, design, implement, and maintain the buffer in accordance with § 102.14 (relating to riparian forest buffer requirements). Various design, construction, and maintenance standards are listed in the *Riparian Forest Buffer Guidance*, (Buffer Guidance), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001 (2009), as amended and updated. (Is this guidance available? Did we review it?)

(b) BMPs and design standards other than those listed in the Manuals **or Buffer Guidance** may be used when a person conducting or proposing to conduct an earth disturbance activity demonstrates to the Department **[or a county conservation district]** that the alternate BMP or design standard minimizes accelerated erosion and sedimentation **or manages stormwater during and after the completion of earth disturbance activities** to achieve the regulatory standards in subsection (a).

§ 102.12. [Reserved].

§ 102.13. [Reserved].

§ 102.14 Riparian forest buffer requirements.

(a) *General requirements.*

(1) Persons proposing or conducting earth disturbance activities shall incorporate a riparian forest buffer within the boundaries of the project site in accordance with this section if:

(i) The activity requires a permit under this chapter, is located within an Exceptional Value watershed, and the project site contains, is along or within 150 feet of a river, stream, creek, lake, pond, or reservoir;

(ii) The activity is authorized utilizing the permit-by-rule under this chapter; or (another option to be added?)

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(2) A riparian forest buffer may be required to be incorporated within the boundaries of a project site in accordance with this section by other rules, regulations, order, permit, or other approval of the Department.

(3) Concentrated flow and accelerated erosion and sedimentation shall be managed in the area upgrade and along the riparian forest buffer in accordance with subsections 102.4(b)–(e) and § 102.8 (relating to PCSM requirements).

(4) An existing riparian forest buffer must: meet the width requirements of § 102.14(d) (relating to average minimum widths); consist predominantly of native trees and shrubs that provide at least 60% uniform canopy cover; noxious weeds and invasive species must be removed or controlled to the (maximum?) extent possible.

(5) Existing sites that consist of predominantly native woody vegetation that do not meet all of the criteria in § 102.14(a)(3) must be enhanced and/or widened by additional plantings in open spaces around existing native trees and shrubs to establish a riparian forest buffer. Noxious weeds and invasive species must be removed or controlled to the (maximum?)extent possible.

(6) On sites with no native woody vegetation, a riparian forest buffer must be established in accordance with this chapter.

(7) Wetlands located in the riparian forest buffer must be protected and maintained consistent with the requirements in Chapter 105 (relating to dam safety and waterway management).

(8) Applicant shall prepare and submit a plan for riparian forest buffer management to the Department or conservation district as part of the PCSM Plan. The riparian forest buffer management plan must describe how the management requirements of this section will be met.

(b) *Composition.*

(1) At a minimum, newly established riparian forest buffers must be composed of two distinct zones, Zones 1 and 2 (§ 102.14(b)(2) relating to zones). Concentrated flow and accelerated erosion and sedimentation shall be managed in the area upgrade and along the riparian forest buffer in accordance with subsections 102.4(b) - (e) and § 102.8 (relating to PCSM requirements).

(2) *Zones.*

(i) *Zone 1.* Undisturbed forest (trees) must begin at the top of the streambank or normal pool elevation of a lake, pond, or reservoir and occupy a strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond, or reservoir. Predominant vegetation must be composed of a variety of native riparian tree species.

(ii) *Zone 2.* Managed forest (trees and shrubs) must begin at the landward edge of Zone 1 and occupy an additional strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond, or

reservoir. Predominant vegetation must be composed of a variety of native riparian tree and shrub species.

(c) *Measurements.* Riparian forest buffers must be measured horizontally with no more than a 10% variation below the minimum width from the normal pool elevation for lake, pond, or reservoir and from top of streambank or top of slope for streams.

(d) *Average minimum widths.*

(1) *All waters.* 100 feet (50 feet Zone 1 and 50 feet Zone 2 for newly established riparian forest buffers) along all rivers, perennial or intermittent streams (both sides), lakes, ponds or reservoirs. Concentrated flow and accelerated erosion and sedimentation shall be managed in the area upgrade and along the riparian forest buffer in accordance with subsections 102.4(b)–(e) and § 102.8 (relating to PCSM requirements).

(2) *Impaired waters.* 150 feet (75 feet Zone 1 and 75 feet Zone 2 on newly established riparian forest buffers) along all rivers, perennial or intermittent streams (both sides), lakes, ponds, or reservoirs. Concentrated flow and accelerated erosion and sedimentation shall be managed in the area upgrade and along the riparian forest buffer in accordance with subsections 102.4(b)–(e) and § 102.8 (relating to PCSM requirements). (An offset should be included if discharging to impaired waters.)

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(3) *Special protection waters.* 150 feet (75 feet Zone 1 and 75 feet Zone 2 on newly established riparian forest buffers) in special protection waters (High Quality and Exceptional Value designations) on all rivers, perennial or intermittent streams (both sides), and the shoreline of lakes and ponds. Concentrated flow and accelerated erosion and sedimentation shall be managed in the area upgrade and along the riparian forest buffer in accordance with subsections 102.4(b)–(e) and § 102.8 (relating to PCSM requirements).

(4) Existing riparian forest buffers must meet minimum aggregate widths of this chapter.

(5) The average riparian forest buffer width must be calculated based upon the entire lengths of stream bank or shoreline that is located within the boundaries of the project site when calculating the buffer length the natural streambank or shoreline shall be followed.

(e) *Management requirements.*

(1) Both existing and newly established riparian forest buffers, including wetlands and floodplains, must be managed and maintained to enhance and maximize the unique value of these resources. (Are there maintenance agreements that are required and/or enforceable for both existing and newly established riparian forest buffers?)

(2) Newly established riparian forest buffers and sites with existing woody vegetation must be managed in accordance with the riparian forest buffer management plan and until established vegetation consists of predominantly native trees and shrubs that provide at least 60% uniform canopy cover and noxious weeds and invasive species have been removed or controlled to the extent possible for a period of not less than five years.

(3) The following practices and activities are prohibited within the riparian forest buffer:

(i) Soil disturbance by grading, stripping of topsoil, plowing, cultivating, or other practices.

(ii) Draining by ditching, underdrains, or other drainage systems.

(iii) Housing, grazing, or otherwise maintaining animals.

(iv) Storing or stockpiling materials.

(v) Off road vehicular travel.

(4) The following practices and activities are acceptable in the riparian forest buffer when permitted by the Department: (if construction or land disturbance may be allowed, how can it be considered a buffer?)

(i) Construction or placement of roads, bridges, trails, storm drainage, utilities, or other structures.

(ii) Water obstructions or encroachments.

(5) The following practices and activities are allowable within the riparian forest buffer:

(i) Activities or practices used to maintain the riparian forest buffer including the disturbance of existing vegetation, tree removal, shrub removal, clearing, mowing, burning, or spraying in accordance with the long-term operation and maintenance plan.

(ii) Restoration projects, facilities, emergency response, and other activities approved by the Department.

(iii) Scientific studies approved by the Department, including water quality monitoring and stream gauging.

(iv) Timber harvesting operations only in Zone 2, as described in this section, that maintain at least 60% uniform canopy cover of predominantly native trees and shrubs and are identified in a Forest Stewardship Plan approved by the Department of Conservation and Natural Resources.

(v) Passive recreational activities. (definition/examples?)

(f) *Permanent protection of riparian forest buffers.*

(1) Existing and newly established riparian forest buffers including access easements must be protected in perpetuity through deed restriction, conservation easement, local ordinance, or permit conditions.

(2) For any existing or newly established riparian forest buffer, the boundary limits of the riparian forest buffer must be identified and clearly marked.

(g) *Reporting.*

Permittees shall complete data form(s) provided by the Department for newly established and existing riparian forest buffers and submit it to the Department or conservation district as part of the PCSM Plan.

§ 102.15. Permit-by-rule for low impact projects with riparian forest buffers. (need to add/clarify the term of this permit)

(a) Persons proposing or conducting an earth disturbance activity requiring a permit authorization under this chapter shall qualify for permit coverage under this rule if they meet the requirements of this Section, which supersede any requirements of Chapter 92 (relating to NPDES permitting, monitoring and compliance) (does this include the 5 year permit requirement?), as amended and updated. An earth disturbance activity that requires a permit authorization under this chapter that is not consistent with this Section shall obtain coverage under a general or individual NPDES Permit for Discharges Associated with Construction Activities or other E&S control permit under this chapter prior to commencing the earth disturbance activity.

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(b) *Permit-by-rule exclusions.* The following sites or the activities associated with the project are not eligible for coverage under the permit-by-rule: (any size restriction to be eligible for the permit by rule?)

(1) Projects located in or with the potential to discharge to waters that have a designated or existing use of Exceptional Value pursuant to Chapter 93 (relating to water quality standards);

(2) Earth disturbance activities conducted in or on the following sensitive areas:

(i) Highly erodible conditions (soils in combination with percent slope) as follows:

(A) 3% to 8% slope with soil K factor greater than 0.37;

(B) 8% to 15% slope with soil K factor greater than 0.28; or

(C) 15% slope with soil K factor greater than 0.18.

(ii) Geological formations that present a risk to public health, safety and the environment including:

(A) Sinkhole development;

(B) Land sliding; or

(C) With the significant potential to cause or contribute to pollution when disturbed including acid, radioactive, and arsenic bearing formations.

(iii) Wetlands or floodplains, unless earth disturbance in these areas is required for access and utilities and is authorized under Chapters 105 or 106 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance; and floodplain management);

(3) Lands that are currently contaminated from a spill or release of a hazardous material, or hazardous, toxic, or other regulated substance, as these terms are defined in Pa. Code 25 of the Pennsylvania Code, that pose a risk or threat to public health, safety, or the environment;

(4) The earth disturbance is being proposed or conducted by a person who has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, and schedule of compliance or order issued by DEP; or

(5) The earth disturbance activities or potential discharges will adversely affect a Pennsylvania or federal endangered or threatened species.

(c) *Permit Conditions.* Persons conducting earth disturbance activities under this permit shall meet all of the following: (Include a general prohibition against any activity which would violate water quality standards – similar to the prohibition included in regular general permits.)

(1) All persons seeking coverage under permit-by-rule must first schedule a presubmission meeting with the Department or the conservation district prior to submitting a ROC. The meeting shall also be attended by, the professional engineer, geologist or landscape architect registered in the commonwealth of Pennsylvania that will be responsible for project design and the operator when known. At the presubmission meeting, the registrant must provide:

(i) A site location map (usgs or equivalent) including:

(A) All waters of this Commonwealth and water quality classifications pursuant to Chapter 93 (relating to water quality standards);

(B) Existing site conditions;

(C) Limits of earth disturbance activities;

(D) Preliminary site design;

(E) Total project acres and boundaries;

(ii) Presubmission meeting checklist using form provided by the Department.

(2) When the project site contains, is along, or within 100 feet of a river, stream, creek, lake, pond, or reservoir, the registrant shall:

(i) Establish new or preserve existing riparian forest buffers at least 100 feet in width between the top of streambank or normal pool elevation of a lake, pond, or reservoir and areas of earth disturbance. (What if project is within 100 feet-i.e. 50 feet-how can you maintain a 100 foot buffer?)

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(ii) Establish new or preserve existing riparian forest buffers at least 150 feet in width between the top of streambank or normal pool elevation of a lake, pond, or reservoir and disturbed areas for projects located in high quality or impaired watersheds. (What about special protection waters?)

(iii) Design and/or maintain a riparian forest buffer in accordance with *Riparian Forest Buffer Guidance*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001 (2009), as amended and updated.

(3) The earth disturbance shall not exceed 15 acres at a time. (15 acres seems like a high number-would a percentage of the total site be more appropriate?) If the total disturbed area will exceed 15 acres over the life of the project, earth disturbance shall be sequenced in a manner that provides for stabilization prior to disturbance of subsequent phases.

(4) All earth disturbance activities on any portion, part, or during any stage of, a larger common plan of development or sale over the life of the project shall meet the requirements and be covered under a single ROC.

(i) Any significant new or increased changes to the earth disturbance activities that are not included in the original ROC must be submitted to the Department or conservation district (and approved?) through an amended ROC in accordance with this section.

(ii) The new or increased earth disturbance activities shall not commence until receipt of written verification of coverage.

(5) Analysis demonstrating that the PCSM BMPs will: meet the volume reduction and water quality requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage onsite the net change for storms up to and including the 2-year/24-hour storm event when compared to preconstruction runoff volume and water quality. The analysis for the 2-year/24-hour storm event must be conducted using the following minimum criteria:

(i) Existing predevelopment nonforested pervious areas must be considered meadow in good condition or its equivalent.

(ii) When the existing project site contains impervious area, 20% of the existing impervious area to be disturbed must be considered meadow in good condition or better, except for repair, reconstruction, or restoration of roadways or utility infrastructure when the site will be returned to existing condition.

(6) Analysis demonstrating that the PCSM BMPs will: meet the rate requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change in peak rate for the 2-, 5-, 10-, 25-, 50-, and 100-year/24-hour storm events in a manner not to exceed preconstruction rates.

(i) Hydrologic routing analysis is required to demonstrate this requirement is met.

(ii) Exempt from this requirement are Department approved direct discharges to tidal areas or Department approved no detention areas.

(7) Retain the services of a professional engineer, geologist, or landscape architect registered in the Commonwealth of Pennsylvania who shall:

(i) Prepare and seal E&S and PCSM Plans to be submitted with the ROC which shall contain the following certification:

"I (name) do hereby certify, pursuant to the penalties of 18 Pa. C.S.A. § 4904, to the best of my knowledge, information and belief that the ROC, E&S and PCSM Plans are true and correct, and are in conformance with Chapter 102 of the rules and regulations of the Department of Environmental Protection."

(ii) Identify in the E&S and PCSM Plans a schedule of inspections for critical stages of E&S and PCSM BMP installation and provide oversight responsibility during construction of those critical stages.

(iii) Oversee and seal any necessary modifications to E&S and PCSM Plans; and submit copies of modified plans to the Department or conservation district; and

(iv) Prepare and seal record drawings and provide certification that the E&S and PCSM BMPs were installed consistent with E&S and PCSM Plans submitted with the ROC.

(8) *Preconstruction notification.* Upon receipt of the Verification of Coverage, the registrant shall notify the Department or conservation district at least 7 business days before commencing construction.

(9) The registrant or co-registrant shall have the E&S Plan, PPC Plan, PCSM Plan, and other documents required by this permit-by-rule available at the site for review by the Department, conservation district, or other authorized local, state, or federal government official.

(10) The registrant or co-registrant must implement the plans developed and verified in accordance with this section.

(11) The registrant or co-registrant or their agent shall notify the Department or conservation district no less than 3 days prior to critical stages of E&S and PCSM BMP installation.

(d) *Projects located in High Quality watersheds or watersheds impaired for sediment or stormwater.* (An offset should be included if discharging to an impaired water.)

(1) Permit-by-rule registrants proposing projects that are located in watersheds that have a designated or existing use of high quality, or nonspecial protection waters impaired for sediment or stormwater must demonstrate that all construction and post construction discharges will not degrade the physical, chemical or biological characteristics of the surface waters and may not utilize the social or economic justification process established pursuant to § 93.4c(b)(iii) (relating to social or economic justification (SEJ) in High Quality waters). In addition to the 150-foot riparian forest buffer, registrants or co-registrants shall utilize solely nondischarge alternative BMPs in their E&S and PCSM Plans. (Should this section include meeting volume reduction and rate requirements?)

(2) *Public notice.*

(i) The registrant shall provide a public notice once a week for 3 consecutive weeks in at least 1 newspaper of general circulation within the geographical area of the project site prior to submission for the ROC. The contents of every public notice must include the following:

(A) The name, address, and phone number of the registrant.

(B) The notice must include a 30-day period following publication of the notice during which written comments may be submitted by interested persons to the applicant.

(C) A brief description of each registrant's activities and project location which result in the discharge proposed for the permit-by-rule.

(D) The name of the receiving water and watershed to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether the discharge is a new or an existing discharge.

The identification of any 303(d) impairments and/or applicable TMDLs.

(E) The location of the nearest downstream potable water supply, or a finding that no potable water supply will be affected by the proposed discharge.

(F) The means by which interested persons may comment upon the proposed project.

(G) Contact information including the name, address, and phone number where interested persons may obtain further information regarding the project.

(H) The existing or designated use of the receiving surface water pursuant to Chapter 93 (relating to water quality standards).

(ii) Registrant shall provide proof that public notice has been published in a newspaper of general circulation covering the locality or localities in which the activity is or will be

located. The proof of public notice, along with any comments and responses, shall be submitted with the ROC.

(e) *Municipal notification.* At least 30 days prior to submission of the ROC, the registrant shall provide written notification to every municipality in which the proposed earth disturbance activity will be located pursuant to Act 14 of 1984, 71 P.S. § 510-5, (Administrative Code § 1905-A). Proof of this notification shall be submitted with the complete ROC.

(f) *Written E&S Plan, PCSM Plan, and PPC Plan.* The registrant shall develop an E&S Plan, PCSM Plan, and PPC Plan in accordance with the requirements of this chapter and the following:

(1) The E&S BMPs required by this section shall be designed and implemented to meet the standards and specifications identified in the Department's *Erosion and Sediment Pollution Control Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.

(2) PCSM BMPs shall be designed and implemented to meet the standards and specifications identified in the *Pennsylvania Stormwater Best Management Practices Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(3) Both the E&S Plan and the PCSM Plan shall include a riparian forest buffer designed in accordance with § 102.14 (relating to riparian forest buffer requirements) and this section.

(4) Both the E&S Plan and PCSM Plan shall minimize the accelerated erosion and sedimentation and shall use PCSM BMPs that collectively achieve no net change when compared to preconstruction discharges in stormwater runoff volume, rate, and water quality. This shall be accomplished first through the use of site design and nonstructural BMP approaches, and if necessary, structural filtration, infiltration, and runoff control BMPs in accordance with *Erosion and Sediment Pollution Control Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), and *Stormwater Best Management Practices Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(5) Both the E&S Plan and PCSM Plan shall be prepared and sealed by a professional engineer, geologist, or landscape architect registered in the Commonwealth of Pennsylvania.

(6) Prepare a PPC Plan in accordance with *Guidelines for the Development and Implementation of Environmental Emergency Response Plans*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001 (April 2001).

(g) *E&S Plan for the permit-by-rule.* The E&S Plan submitted under this section shall meet the requirements of § 102.4 (relating to erosion and sediment control requirements)

and must also include the following categories of E&S BMPs to be installed and maintained. The installation of practices shall be conducted in the following sequence:

(1) *Site preparation, sensitive area and buffer protection.* Prior to commencement of any earth disturbance activity including clearing and grubbing, the registrant shall clearly delineate sensitive areas, riparian forest buffer boundaries, areas proposed for infiltration practices, the limits of clearing, and trees that are to be conserved within the project site and shall install appropriate barriers where equipment may not be parked, staged, operated, or located for any purpose.

(2) *Site access.* This is the first land-disturbance activity to take place at the site and the registrant should provide BMPs to minimize accelerated erosion and sedimentation from the following areas: entrance to the site, construction routes, and areas designated for equipment or other use at the site including parking areas and soil stockpiles. (If discharging to an impaired water, erosion and sedimentation should be prohibited.)

(3) *Sediment barriers.* Install perimeter BMPs after the construction site is accessed, keeping associated clearing and grubbing limited to only that amount required for installing perimeter BMPs.

(4) *Diversion.* Including outlet protection are constructed to divert upslope clean water runoff around the disturbed area (when necessary).

(5) *Sediment basins and traps.* Including outlet protection that shall be constructed prior to the remaining clearing/grubbing and other earth disturbance activities.

(6) *Sediment laden water channels or other conveyance.* Used to divert stormwater runoff water to the appropriate BMPs such as traps and ponds should be installed prior to the remaining clearing/grubbing and other earth disturbance activities.

(7) *Land clearing and grading.* Implement clearing and grading only after all downslope E&S BMPs have been constructed and stabilized.

(8) *Surface stabilization.* Apply temporary or permanent stabilization measures immediately to any disturbed areas where work has reached final grade, has been delayed or otherwise has been temporarily suspended.

(9) *Construction of buildings, utilities, and paving.* During construction, install and maintain any additional E&S BMPs that may be required and implement structural PCSM BMPs.

(10) *Landscaping and final stabilization, topsoiling, trees, and shrubs.* After construction is completed, install stabilization BMPs including: permanent seeding, mulching, sodding and riprap, and complete implementation of PCSM BMPs in this last construction phase. Stabilize all open areas, including borrow and spoil areas, and remove all temporary BMPs and stabilize any disturbances associated with the removal of the BMP. (How are these maintained once the contractor leaves? When will the transfer of obligations occur, and who is financially liable if the BMPs fail?)

(h) *PCSM Plan for the permit-by-rule.* The PCSM Plan submitted under this section shall meet the requirements of § 102.8 (relating to PCSM requirements), and shall also include the following categories of BMPs to be installed and maintained: (The BMPs below should be expanded and more specific to include the percent of runoff required to infiltrate and the percent of runoff expected to evaporate, etc.)

(1) *Nonstructural BMPs.* Which promote the treatment, infiltration, evaporation, and transpiration of stormwater runoff shall be used.

(2) *Low impact, conservation, and green infrastructure designs.* Shall be used to minimize the generation of runoff by preserving open space, preserving natural areas, reducing the amount of impervious surface, and other green infrastructure design principles that utilize or mimic infiltration or evapotranspiration.

(3) *Volume reduction and infiltration practices.* Shall include either engineered structures or landscape features designed to capture, reuse, recycle and manage, or infiltrate runoff that mimic preconstruction conditions.

(4) *Runoff practices.* Shall be designed and constructed to convey runoff, increase evaporation, and manage rate. Such practices are to also promote infiltration, filtration, and biological uptake of pollutants.

(5) *Filtration practices.* Shall be used to treat runoff through filter media that are designed to capture pollutants through the processes of physical filtration of solids or cation exchange of dissolved pollutants.

For 1 through 5 above – to what level will these be maintained?

(i) *ROC under the permit-by-rule.* Registrants seeking coverage under this permit-by-rule shall prepare and submit a complete ROC to the Department or conservation district. The ROC shall demonstrate eligibility under and compliance with the requirements of this section and shall include:

(1) ROC checklist. (Where can the ROC checklist be obtained?)

(2) E&S Plan prepared by a professional engineer, geologist, or landscape architect registered in the Commonwealth of Pennsylvania.

(3) PCSM Plan prepared by a professional engineer, geologist, or landscape architect registered in the Commonwealth of Pennsylvania.

(4) Proof of municipal notice.

(5) For projects in High Quality watersheds or watersheds impaired for sediment or stormwater, provide proof of public notice along with all comments and responses.

(6) Provide proof of consultation with the PNHP regarding the presence of a state or federal threatened or endangered species on the project site.

(7) All applicable fees.

(j) *Eligibility verification.* Upon submission of the ROC, the Department or the conservation district will review the ROC for consistency with the eligibility criteria, conditions and other requirements of this section, and make a determination of coverage within 30 days. Upon determination of eligibility, the Department or the conservation district will provide written verification of coverage for a period of 5 years. (Is there a requirement to reapply after 5 years?) The registrant may apply for other permit coverage as referenced in this section if coverage under this permit-by-rule is denied.

(k) *Bulletin notice.* The Department will provide notice in the *Pennsylvania Bulletin* of every approval of coverage under this permit-by-rule.

(l) *Requiring coverage under an individual permit or general permit.*

(1) The Department may deny coverage under this permit-by-rule, or may amend, revoke, suspend or terminate previously issued coverage under this permit-by-rule and require the registrant to apply for and obtain either a general or an individual NPDES permit for failure to meet the requirements of this section. An interested person may petition the Department to take action under this subsection. If a permittee is notified by the Department that previously authorized coverage under this permit is revoked, terminated, or suspended and that a general or individual NPDES permit is required, the registrant shall submit a complete NPDES NOI or application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid general or individual NPDES permit. Failure to submit the NOI or application within 90 days shall result in automatic termination of coverage under the permit-by-rule. If the project site is in compliance with this chapter, a timely submission of a complete NOI or application shall result in continuation of coverage under the permit-by-rule until the Department takes final action on the pending NOI or permit application.

(2) An action of the Department or the conservation district denying coverage under this permit-by-rule, or requiring a general or an individual NPDES permit, is not a final action of the Department until the registrant submits and the Department takes final action on an individual permit application.

(m) *ROC.* Persons requesting a renewal of coverage under this permit-by-rule shall submit to the Department or Conservation District an administratively complete and acceptable ROC at least 30 days prior to the expiration date of the coverage. In the event that a timely, administratively complete, and acceptable application for renewal of coverage has been submitted and the Department or conservation district is unable, through no fault of the permittee, to reissue the approval for coverage before the expiration date of the approved coverage, the terms and conditions of the approved coverage will be automatically continued and will remain fully effective and enforceable pending the issuance or denial of the renewal of coverage, provided the permittee is, and has been, operating in compliance with the terms and conditions of the permit-by-rule.

(n) Nothing in this permit-by-rule relieves the registrant of the obligation to obtain any other applicable permits, or of complying with all federal, state, or local laws, regulations or standards for the construction, operation, and maintenance of the project.

(o) *Termination of coverage.* Permit-by-rule registrant covered under this section shall comply with § 102.7 (relating to permit termination) to terminate permit coverage.

(p) *Program audit.*

(1) The Department shall audit the permit-by-rule to verify the effectiveness and the level of environmental protection that the permit provides. The audit shall include:

(i) Evaluation of whether the objectives of riparian forest buffers, conservation design, and permittee compliance are being met;

(ii) Whether the professional engineer, geologist, or landscape architect registered in the Commonwealth of Pennsylvania plan certifications are accurate and effective; (what happens if they are not?)

(iii) The adequacy of permittee plan development and BMP implementation and maintenance; and

(iv) The effectiveness of achieving the desired environmental results.

(v) Evaluation of O&M of BMPs/buffers after construction

(2) This audit process shall not only report noncompliance and corrective actions, but also highlight areas of good practices and favorable results. Such information will be used to develop policy or amend regulations for enhanced and continual improvement. Audit results should also form the basis for denial of future coverage.

§ 102.21. [Reserved].

§ 102.22. [Permanent] Site stabilization.

(a) ***Permanent stabilization.*** Upon **final** completion of an earth disturbance activity or any stage or phase of an activity, the site shall **[be]** immediately (define immediately – within 7 days upon final completion of an earth disturbing activity?) **have topsoil restored, replaced, or amended,** seeded, mulched or otherwise **permanently stabilized and** protected from accelerated erosion and sedimentation.

(1)[(b)] [Erosion and sediment control] E&S BMPs shall be implemented and maintained until the permanent stabilization is completed. **Once permanent stabilization has been established, all temporary E&S BMPs must be removed. Any areas disturbed in the act of removing temporary E&S BMPs must be permanently stabilized upon completion of the temporary E&S BMP removal activity.**

(2)[(c)] For an earth disturbance activity or any stage or phase of an activity to be considered permanently stabilized, the disturbed areas shall be covered with one of the following:

(i)[(1)] A minimum uniform 70% (describe how this value was determined) perennial vegetative cover, with a density capable of resisting accelerated erosion and sedimentation.

(ii)[(2)] An acceptable (Define what is meant by acceptable. Should the BMP be approved?) BMP which permanently minimizes accelerated erosion and sedimentation.

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(b) *Temporary stabilization.* Upon temporary cessation of an earth disturbance activity or any stage or phase of an activity where a cessation of earth disturbance activities will exceed 3 days, the site shall be immediately seeded, mulched, or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities.

(1) For an earth disturbance activity or any stage or phase of an activity to be considered temporarily stabilized, the disturbed areas shall be covered with one of the following:

(i) A minimum uniform coverage of mulch and seed, with a density capable of resisting accelerated erosion and sedimentation.

(ii) An acceptable BMP (Define what is meant by acceptable. Should the BMP be approved?) **which temporarily minimizes accelerated erosion and sedimentation.**

§ 102.23. [Reserved].

§ 102.24. [Reserved].

ENFORCEMENT

§ 102.31. Applicability.

The Department or a **[county]** conservation district may enforce this chapter under The Clean Streams Law (35 P. S. § § 691.1—691.1001).

§ 102.32. Compliance and enforcement provisions.

(a) Compliance and enforcement actions under this chapter which may be pursued include the following. The actions listed are cumulative and the exercise of one action does not preclude the exercise of another. The failure to exercise an action will not be deemed to be a waiver of that action:

(1) Investigations and inspections.

(2) Response to complaints.

(3) Orders (including orders to remediate or restore).

(4) Civil penalty proceedings, except as provided in subsection (b).

(5) Summary proceedings.

(6) The suspension, revocation, withholding or denial of permits or approvals.

(7) Notices of violation.

(8) Actions in a court of competent jurisdiction, including requests for injunctive relief.

(9) Other administrative, civil, criminal or equitable action authorized by law.

(b) If the Department finds that pollution or a danger of pollution results from an act of God in the form of sediment from land for which a complete Conservation Plan has been developed by the **[county]** conservation district and the Natural Resource Conservation Service, and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of the **[act]** **Clean Streams Law (35 P.S. § 691.1 *et seq.*)**

(c) Any person aggrieved by an action of a conservation district under this chapter may request an informal hearing with the Department within 30 days following the notice of the action. Any final determination by the Department pursuant to the informal hearing may be appealed to the Environmental Hearing Board in accordance with established administrative and judicial procedures.

(d) For enforcement action taken under this subchapter, the Department or conservation district may collect or recover, from the responsible party, costs and expenses involved in taking enforcement action in accordance with this subchapter and initiating cost recovery actions under this subchapter. The Department or conservation district may collect the amount in the same manner as civil penalties are collected under Section 605 of the Clean Streams Law (35 P. S. 691.1 *et seq.*).

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

§ 102.41. Administration by [county] conservation districts.

(a) The Department may delegate by written agreement the administration and enforcement of this chapter to **[county]** conservation districts if they have adequate and qualified staff, and are or will be implementing the program identified in the delegation agreement.

(b) An acceptable program shall have the concurrence and approval of the governing body of the county in which the **[county]** conservation district operates.

(c) The Department will retain program administration and enforcement over projects which cross the political boundaries of **[county]** conservation districts unless otherwise authorized by the Department.

§ 102.42. Notification of application for permits.

A municipality or county which issues building or other permits shall notify the Department or **[county]** conservation district within 5 days of receipt of an application for a permit involving an earth disturbance activity consisting of **[5]** **1** acre**[s]** (**[2]** **0.4** hectares) or more.

§ 102.43. Withholding permits.

With the exception of local stormwater approvals or authorizations, **[A]** **a** municipality or county may not issue a building or other permit or final approval to those proposing or conducting earth disturbance activities requiring a Department permit until the Department or a **[county]** conservation district has issued the **[Erosion and Sediment Control]** **E&S** or individual NPDES Permit, or approved coverage under the general NPDES Permit for Stormwater Discharges Associated With Construction Activities under § 102.5 (relating to permit requirements).

§ 102.51. [Reserved].

Chambers, Laura M.

From: MacKnight.Evelyn@epamail.epa.gov
Sent: Monday, November 30, 2009 4:50 PM
To: EP, RegComments
Cc: Murin, Kenneth; Murphy, Margaret O; Ottinger.Elizabeth@epamail.epa.gov; Rivera.Nina@epamail.epa.gov
Subject: EPA Comments on Proposed Revisions to Chapter 102 are attached

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