

CHAPTER 102. EROSION AND SEDIMENT CONTROL**GENERAL PROVISIONS**

- Sec.
102.1. Definitions.
102.2. Scope and purpose.
102.3. [Reserved].
102.4. Erosion and sediment control requirements.
102.5. Permit requirements.
102.6. Permit applications and fees.
102.7. Permit termination.

EROSION AND SEDIMENT CONTROL BMPs

- 102.11. General requirements.
102.12. [Reserved].
102.13. [Reserved].
102.21. [Reserved].
102.22. Permanent stabilization.
102.23. [Reserved].
102.24. [Reserved].

ENFORCEMENT

- 102.31. Applicability.
102.32. Compliance and enforcement provisions.

RESPONSIBILITIES OF LOCAL GOVERNING BODIES

- 102.41. Administration by county conservation districts.
102.42. Notification of application for permits.
102.43. Withholding permits.
102.51. [Reserved].

Authority

The provisions of this Chapter 102 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402), unless otherwise noted.

Source

The provisions of this Chapter 102 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796, unless otherwise noted.

Notes of Decisions*Scope of Regulations*

The Department of Environmental Resources regulations contained in 25 Pa. Code Chapter 102 (relating to erosion control) provide protection against secondary polluting effects should they become imminent. *Delaware County Community College v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

Cross References

This chapter cited in 7 Pa. Code § 130e.11 (relating to determination of competence); 7 Pa. Code § 130e.31 (relating to determination of competence); 7 Pa. Code § 130e.41 (relating to determination of competence); 25 Pa. Code § 71.21 (relating to content of official plans); 25 Pa. Code § 77.108 (relating to permit for small noncoal operations); 25 Pa. Code § 77.109 (relating to noncoal exploration activities); 25 Pa. Code § 77.111 (relating to permit waiver—solid waste sites); 25 Pa. Code § 77.458 (relating to erosion and sedimentation control plan); 25 Pa. Code § 77.525 (relating to sediment control measures); 25 Pa. Code § 77.527 (relating to sedimentation controls); 25 Pa. Code § 78.18 (relating to disposal and enhanced recovery well permits); 25 Pa. Code § 78.53 (relating to erosion and sedimentation control); 25 Pa. Code § 78.60 (relating to discharge requirements); 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 85.37 (relating to contents of ordinance and regulations submitted by municipality); 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects); 25 Pa. Code § 87.70 (relating to erosion and sedimentation control plan); 25 Pa. Code § 87.102 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 87.106 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 87.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.50 (relating to erosion and sedimentation control plan); 25 Pa. Code § 88.92 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.96 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.98 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.187 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.191 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.194 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.292 (relating to hydrologic balance: effluent standards); 25 Pa. Code § 88.296 (relating to hydrologic balance: sediment control measures); 25 Pa. Code § 88.298 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 89.11 (relating to general requirements); 25 Pa. Code § 89.21 (relating to erosion and sedimentation control); 25 Pa. Code § 89.52 (relating to water quality standards, effluent limitations and best management practices); 25 Pa. Code § 89.56 (relating to stream channel diversions); 25 Pa. Code § 90.37 (relating to erosion and sedimentation control); 25 Pa. Code § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices); 25 Pa. Code § 90.106 (relating to hydrologic balance: erosion and sedimentation control); 25 Pa. Code § 90.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 92.5a (relating to CAFOs); 25 Pa. Code § 105.12 (relating to waiver of permit requirements); 25 Pa. Code § 105.13 (relating to permit applications—information and fees); 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.46 (relating to implementation of erosion and sedimentation control plans); 25 Pa. Code Chapter 105, Appendix A (relating to fish enhancement structures; general permit BDWW-GP-1); 25 Pa. Code Chapter 105, Appendix D (relating to Bureau of Dams and Waterway Management; general permit BDWM-GP-4 (Intake and Outfall Structures)); 25 Pa. Code Chapter 105 Appendix E (relating to utility line stream crossings; general permit BDWM-GP-5); 25 Pa. Code Chapter 105, Appendix F (relating to agricultural crossings and ramps; general permit BDWM-GP-6); 25 Pa. Code Chapter 105, Appendix G (relating to minor road crossings; general permit BDWM-GP-7); 25 Pa. Code Chapter 105 Appendix H (relating to temporary road crossings; general permit BDWM-GP-8); 25 Pa. Code Chapter 105 Appendix I (relating to agricultural activities; general permit BDWM-GP-9); 25 Pa. Code Chapter 105 Appendix J (relating to abandoned mine reclamation; general permit BDWW-GP-10); 25 Pa. Code Chapter 105 Appendix O (relating to private residential construction in wetlands; general permit BDQP-GP-15); 25 Pa. Code § 106.12 (relating to permit applications—information and fees); 25 Pa. Code § 109.503 (relating to public water system construction permits); 25 Pa. Code § 109.1005 (relating to permit requirements); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.309 (relating to MSCs for surface water); 25 Pa. Code § 250.406 (relating to relationship to surface waterquality requirements); 25 Pa. Code § 273.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code

§ 273.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 273.243 (relating to sedimentation ponds); 25 Pa. Code § 275.205 (relating to erosion control); 25 Pa. Code § 277.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 277.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 277.243 (relating to sedimentation ponds); 25 Pa. Code § 279.105 (relating to soil plan); 25 Pa. Code § 279.213 (relating to access roads); 25 Pa. Code § 279.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.132 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 281.212 (relating to access roads); 25 Pa. Code § 281.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.253 (relating to sedimentation ponds); 25 Pa. Code § 283.106 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 283.213 (relating to access roads); 25 Pa. Code § 283.218 (relating to air resources protection); 25 Pa. Code § 283.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 287.662 (relating to use of coal ash as a soil substitute or soil additive); 25 Pa. Code § 288.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 288.235 (relating to noncontiguous borrow areas); 25 Pa. Code § 288.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 288.243 (relating to sedimentation ponds); 25 Pa. Code § 289.151 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 289.243 (relating to noncontiguous borrow areas); 25 Pa. Code § 289.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 289.253 (relating to sedimentation ponds); 25 Pa. Code § 291.106 (relating to surface water information); 25 Pa. Code § 291.205 (relating to erosion control); 25 Pa. Code § 293.105 (relating to soil plan); 25 Pa. Code § 293.213 (relating to access roads); 25 Pa. Code § 293.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.132 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 295.212 (relating to access roads); 25 Pa. Code § 295.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.253 (relating to sedimentation ponds); 25 Pa. Code § 297.106 (relating to soil erosion and sedimentation control plan); 25 Pa. Code § 297.213 (relating to access roads); 25 Pa. Code § 297.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 299.141 (relating to scope); and 25 Pa. Code § 299.153 (relating to storage and containment of coal ash).

GENERAL PROVISIONS

§ 102.1. Definitions.

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

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

Agricultural plowing or tilling activity—Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops.

BMPs—Best management practices—Activities, facilities, measures, or procedures used to minimize accelerated erosion and sedimentation to protect, maintain, reclaim and restore the quality of waters and the existing and designated uses of waters within this Commonwealth.

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 runoff from an existing or proposed disturbed area and conveying it to facilities for sediment retention or removal.

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

(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.

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

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

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

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

Earth disturbance activity—A construction or other human activity which disturbs the surface of the land, including, but not limited to, clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, timber harvesting activities, road maintenance activities, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

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

Erosion and Sediment Control Permit—A permit required for earth disturbance activities of 25 acres (10 hectares) or more where the earth disturbance is associated with timber harvesting or road maintenance activities.

Erosion and Sediment Control Plan—A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation. For agricultural plowing or tilling activities, the Erosion and Sediment Control Plan is that portion of a conservation plan identifying BMPs to minimize accelerated erosion and sedimentation.

Municipality—

(i) A county, city, borough, town, township, school district, institution or authority created by any one or more of the foregoing.

(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.

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.

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 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.

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 has the ability to make modifications to the Erosion and Sediment Control 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 Plan.

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—An operator, natural person, partnership, association or corporation or an agency, instrumentality or entity of Federal or State government, including a municipality.

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

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

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

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

(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.

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 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.

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

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

Waters of this Commonwealth—Rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Authority

The provisions of this § 102.1 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.1 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (254783) to (254784) and (234603).

§ 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.

(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.

Authority

The provisions of this § 102.2 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.2 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (234603).

Notes of Decisions*Duty*

Chapter 102 places the burden upon the contractor or other person involved with each disturbance, not the Department, to develop, implement and maintain controls to minimize the potential for accelerated erosion and sedimentation. *Leeward Construction Co. v. Department of Environmental Protection*, 821 A.2d 145 (Pa. Cmwlth. 2003); appeal denied 827 A.2d 431 (Pa. 2003).

§ 102.3. [Reserved].**Source**

The provisions of this § 102.3 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (234603).

§ 102.4. Erosion and sediment control requirements.

(a) For agricultural plowing or tilling activities, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of erosion and sediment control 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) Written Erosion and Sediment Control Plans are required for agricultural plowing or tilling activities that disturb 5,000 square feet (464.5 square meters) or more of land.

(3) The landowner, and any lessee, renter, tenant or other land occupier, conducting or planning to conduct agricultural plowing or tilling activities are jointly and individually responsible for developing a written Erosion and Sediment Control Plan and implementing and maintaining BMPs, including those identified in the Erosion and Sediment Control Plan.

(4) The Erosion and Sediment Control Plan shall be designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing or tilling activities.

(5) The Erosion and Sediment Control Plan shall contain plan maps, soils maps, the location of waters of this Commonwealth, drainage patterns and a description of BMPs including tillage systems, schedules, and cost effective and technically practical conservation measures.

(6) The Erosion and Sediment Control Plan shall be available for review and inspection at the project site during each stage of the agricultural plowing or tilling activity.

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

(1) The implementation and maintenance of erosion and sediment control 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 a written Erosion and Sediment Control 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 Plan pursuant to this chapter under Department regulations other than those contained in this chapter.

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

(3) The Erosion and Sediment Control Plan shall be prepared by a person trained and experienced in erosion and sediment control methods and techniques, and shall be designed to minimize the potential for accelerated erosion and sedimentation.

(4) Earth disturbance activities shall be planned and conducted to minimize the extent and duration of the disturbance.

(5) The Erosion and Sediment Control Plan shall contain the following:

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

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

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

(iv) The amount of runoff from the project area and its upstream watershed area.

(v) The location of waters of this Commonwealth which may receive runoff within or from the project site and their classification pursuant to Chapter 93.

(vi) A written depiction of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity.

(vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities.

(viii) Supporting calculations.

(ix) Plan drawings.

(x) A maintenance program which provides for inspection of BMPs on a weekly basis and after each measurable rainfall event, including the repair of the BMPs to ensure effective and efficient operation.

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

(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, the person proposing the activity shall, as applicable, use the following Special Protection BMPs to maintain and protect the water from degradation:

(i) Special sediment basin requirements.

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

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

(C) The basin shall be designed so that it dewateres 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.

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

(v) The Department or county conservation district may approve alternative BMPs which will maintain and protect existing water quality and existing and designated uses.

(7) The Erosion and Sediment Control Plan shall be available for review and inspection by the Department or the county conservation district at the project site during all stages of the earth disturbance activity.

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

(c) The Department or county conservation district may require other information necessary to adequately review a plan, or may require additional BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

Authority

The provisions of this § 102.4 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.4 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended February 3, 1978, effective February 20, 1978, 8 Pa.B. 288; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (234603) to (234604).

Notes of Decisions*Compliance Required*

Failure of the DER to notify operators of the requirements for erosion control plans until one and a half years after adoption of the regulations did not excuse an operator from compliance. *Department of Environmental Resources v. Federal Oil and Gas Company*, 73 Pa. D.&C.2d 148 (1975).

Controlling Erosion

The company was required to implement and maintain adequate erosion and sedimentation controls at the site so as to prevent accelerated erosion and sedimentation. *Harbison-Walker Refractories v. Department of Environmental Protection*, 1996 EHB 116.

Under this regulation, control measures and regulations are clearly required, even in development activities where permits are not necessary and safeguards are clearly available to protect against possible adverse secondary erosion and sedimentation effects in a watershed. *Community College of Delaware County v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

Limited Liability

An independent drilling contractor who prepared the gas well drilling site for the lessee of an oil and gas lease was not a person engaged in earth moving activities and cannot be charged with failure to develop and implement an erosion control plan, but would be held jointly and severally liable for discharges of oil and drilling fines from the gas well operation site. *Department of Environmental Resources v. Federal Oil and Gas Company*, 73 Pa. D. & C.2d 148 (1975).

Stormwater

Subdivision developer, while engaged in land development activities, had a duty to properly manage storm water runoff. This duty included compliance with a governmental district's request to provide a storm water management plan to enable the township to properly reconstruct a road. *Frisch v. Penn Township*, 662 A.2d 1166 (Pa. Cmwlth. 1995); appeal denied 684 A.2d 559 (Pa. 1996).

Cross References

This section cited in 25 Pa. Code § 92.21a (relating to additional application requirements for classes of dischargers); and 25 Pa. Code § 102.6 (relating to permit applications and fees).

§ 102.5. Permit requirements.

(a) Other than agricultural plowing or tilling, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves 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 general or individual NPDES Permit for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity.

(b) A person proposing a timber harvesting or road maintenance activity involving 25 acres (10 hectares) or more of earth disturbance shall obtain an Erosion and Sediment Control Permit under this chapter prior to commencing the earth disturbance activity.

(c) A person proposing or conducting an earth disturbance activity approved under a Department permit issued under a chapter other than Chapter 92 (relating to National Pollutant Discharge Elimination System 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 Permit or NPDES Permit for Stormwater Discharges Associated with Construction Activities.

(d) A person proposing or conducting agricultural plowing or tilling activities is not required to obtain an Erosion and Sediment Control Permit, or an NPDES Permit for Stormwater Discharges Associated with Construction Activities, for these activities under this chapter.

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

Authority

The provisions of this § 102.5 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.5 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (234604) and (203741).

Notes of Decisions

If an erosion and sedimentation control plan, together with supplementary material submitted, includes numerous drawings detailing the topography of the area, results of test borings, and a soil description, then the plan contains sufficient information as to topographic features and soil characteristics. *Mignatti Construction Co., Inc. v. Environmental Hearing Board*, 411 A.2d 860 (Pa. Cmwlth. 1980).

Cross References

This section cited in 25 Pa. Code § 102.6 (relating to permit applications and fees).

§ 102.6. Permit applications and fees.

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

(1) Submit to the Department or a county conservation district a complete application or notice of intent, an Erosion and Sediment Control Plan meeting the requirements of § 102.4 (relating to erosion and sediment control requirements), and other information the Department may require.

(2) Provide proof of consultation with the Pennsylvania Natural Diversity Inventory (PNDI) regarding the presence of a State or Federal threatened or endangered species on the project site. If the Department or county conservation district determines, based upon PNDI data or other sources, that the proposed earth disturbance activity may adversely impact 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.

(b) *Permit fees.*

(1) Erosion and Sediment Control Permit applications for timber harvesting and road maintenance activities shall be accompanied by an application fee of \$500.

(2) Applications and Notices of Intent for an NPDES Permit for Stormwater Discharges Associated with Construction Activities shall be submitted and accompanied by the fee established pursuant to Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).

Authority

The provisions of this § 102.6 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.6 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 111.

§ 102.7. Permit termination.

(a) Upon permanent stabilization of the earth disturbance activity under § 102.22(c) (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.

(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.

Authority

The provisions of this § 102.7 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.7 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 111.

EROSION AND SEDIMENT CONTROL BMPs**§ 102.11. General requirements.**

(a) A person conducting or proposing to conduct an earth disturbance activity shall design, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation in order to protect, maintain, reclaim and restore water quality and existing and designated uses. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (Manual), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (January 1996), as amended and updated.

(b) BMPs and design standards other than those listed in the Manual may be used 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 to achieve the regulatory standards in subsection (a).

Authority

The provisions of this § 102.11 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.11 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203741).

§ 102.12. [Reserved].**Source**

The provisions of this § 102.12 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203741) to (203742).

§ 102.13. [Reserved].**Source**

The provisions of this § 102.13 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203742) to (203743).

§ 102.21. [Reserved].**Source**

The provisions of this § 102.21 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203743).

§ 102.22. Permanent stabilization.

(a) Upon completion of an earth disturbance activity or any stage or phase of an activity, the site shall be immediately seeded, mulched or otherwise protected from accelerated erosion and sedimentation.

(b) Erosion and sediment control BMPs shall be implemented and maintained until the permanent stabilization is completed.

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

(1) A minimum uniform 70% perennial vegetative cover, with a density capable of resisting accelerated erosion and sedimentation.

(2) An acceptable BMP which permanently minimizes accelerated erosion and sedimentation.

Authority

The provisions of this § 102.22 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.22 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203743).

Cross References

This section cited in 25 Pa. Code § 102.7 (relating to permit termination).

§ 102.23. [Reserved].**Source**

The provisions of this § 102.23 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203743).

§ 102.24. [Reserved].**Source**

The provisions of this § 102.24 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203744).

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).

Authority

The provisions of this § 102.31 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.31 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended February 3, 1978, effective February 20, 1978, 8 Pa.B. 288; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203744) to (203745).

Notes of Decisions

The provision concerning a 25-acre requirement found in this section should be read so as to relate merely to permit requirements, not so as to remove parcels of land of less than 25 acres from the protection of erosion and sedimentation controls. *Delaware County Community College v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975).

The Department of Transportation does not come within the provisions of 25 Pa. Code § 102.31 (a)(4) with its plan to construct culverts for stream crossings for an expressway project to be carried out in sections of 17 acres at a time. *In re Precision Tube Company, Inc.*, 2 Pa. D. & C.3d 1 (1975).

The Department of Transportation need not obtain an erosion and sedimentation control permit before commencing earth moving activity for construction of an expressway if the plan is developed with and approved by the Soil Conservation Service. *In re Precision Tube Company, Inc.*, 2 Pa. D. & C.3d 1 (1975).

§ 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.

Authority

The provisions of this § 102.32 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.32 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203745).

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.

Authority

The provisions of this § 102.41 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.41 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203745) to (203746).

§ 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 acres (2 hectares) or more.

Authority

The provisions of this § 102.41 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.42 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203746).

§ 102.43. Withholding permits.

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 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).

Authority

The provisions of this § 102.43 amended under sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402); section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 11(2) of the Conservation District Law (3 P. S. § 859(2)).

Source

The provisions of this § 102.43 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; corrected February 17, 1995, effective October 30, 1972, 25 Pa.B. 613; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial page (203746).

§ 102.51. [Reserved].**Source**

The provisions of this § 102.51 adopted September 29, 1972, effective October 30, 1972, 2 Pa.B. 1796; amended June 3, 1977, effective June 20, 1977, 7 Pa.B. 1478; reserved December 30, 1999, effective January 1, 2000, 30 Pa.B. 111. Immediately preceding text appears at serial pages (203746) to (203747).

[Next page is 103-1.]

102-18

(266254) No. 308 Jul. 00

Copyright © 2000 Commonwealth of Pennsylvania