

## Chapter 102 – Update Summary

Regulations last amended in 2000

- Major changes
  - incorporate Phase II stormwater NPDES changes
  - codify PCSM requirements
  - include antidegradation implementation provisions
  - update agricultural planning and implementation requirements
  - update E&S control requirements
  - establish riparian buffer and riparian forest buffer provisions
- Section-by-section changes and highlights

### 102.4 Erosion and sediment control requirements

- Subsection (a) – Agricultural activities
  - requires written E&S plans for areas over 5000 square feet for agricultural plowing, tilling, or animal heavy use areas
  - must minimize loss to T over the rotation
  - additional BMPs are required when within 100 feet of waterbody and have less than 25% plant cover or crop residue
- Subsection (b) – Non-agricultural
  - E&S plan and PCSM plan must be consistent
  - existing and proposed riparian forest buffers must be identified
  - antidegradation implementation provisions included
  - E&S plans must be present onsite

### 102.5 Permit requirements

- changed from between 1 and 5 acres with a point source discharge to 1 acre or greater needing an NPDES Permit for Stormwater Discharges Associated with Construction
- preconstruction meetings will be required (unless DEP or CD notifies applicant in writing); certain people, including PCSM licensed professional, must attend
- no NPDES needed when a 404 certification exists
- authorizes the Department to create general permits

### 102.6 Permit application and fees

- changed PNDI to PNHP
- GPs changed to \$500 plus \$100 disturbed acre fee
- IPs changed to \$1500 plus \$100 disturbed acre fee
- fee adequacy must be reviewed every 3 years and a report made to the EQB
- conservation districts may charge their own fees in addition

- applications may be considered withdrawn if no action made within 60 days; no refund of fees made

### **102.7 Permit termination**

- person responsible for long-term operation and maintenance of PCSM BMPs must be identified; otherwise, it remains the permittee
- DEP or CD must conduct a final inspection and approve or deny NOT within 30 days of its receipt

### **102.8 PCSM requirements**

- requirements have been implemented since 2002
- facilitates compliance with federal NPDES Municipal Separate Storm Sewer System (MS4) requirements
- grandfathering provision was inserted for long-term O&M deeding and mandatory PCSM buffers
  - new application must be administratively complete before 11/19 to qualify
  - renewal application must be administratively complete before 1/1/2013 to qualify
- E&S plan and PCSM plan should be complementary but separate plans
- PCSM plan contents and stormwater analysis detailed
- Nondischarge alternatives should be analyzed and ABACT used if necessary
  - Licensed professional must have oversight of critical stages of PCSM implementation and final certification
- An instrument must be recorded with recorder of deeds that creates a covenant that runs with the land for the O&M of the PCSM BMPs in perpetuity
- Activities that include a reclamation or restoration plan can serve in lieu of a PCSM plan

### **102.11 General requirements**

- lays out design standards for E&S controls and PCSM BMP, riparian buffers, and PPC plans

### **102.14 Riparian buffer requirements**

- 150 foot riparian buffers must be established for waters classified as EV or HQ
- lays out criteria of how buffers must be composed, zoning requirements, and width requirements
- allows for voluntary riparian buffers to be created
- allows for a trading and offsetting program to be created
- requires 5 year management plan for the buffer as part of the PCSM plan
- stormwater should enter the buffer as sheet flow or shallow concentrated flow
- wetlands within the buffer should be protected
- some activities are exempt from the buffering requirements
  - project site greater than 150 feet from waterbody
  - activities less than 1 acre of earth disturbance

- activities when 102 permit is not required
- activities when permit or authorization obtained prior to November 19, 2010
- road maintenance (must preserve existing buffer)
- repair & maintenance of pipelines and utilities (must preserve existing buffer)
- oil & gas, timber harvesting, mining activities with restoration/reclamation plans
- single family home acquired by applicant previous to 11/19/2010
- other permitted activities that require a setback
- some activities can apply for a waiver from the Department but must protect existing buffers to greatest extent possible
  - project necessary to protect public health and safety
  - linear projects (pipelines, public roadways, rail lines, utility lines)
  - abandoned mine reclamation projects done under DEP permit
  - temporary projects that will be fully restored during the term of the permit
  - redevelopment projects
  - projects for which compliance is not appropriate or infeasible due to site characteristics or existing structures at the site
- using a riparian forest buffer as a BMP meets the thermal impact requirements and is a nondischarge alternative
- outlines activities permitted and prohibited within the buffer area
- riparian buffers are to be protected in perpetuity by recording an instrument with the recorder of deeds
- persons who establish riparian buffers shall report this activity to the DEP within one year

#### **102.22 Site stabilization**

- defines the requirements for both temporary and permanent stabilization

#### **103.31 Applicability**

- DEP and the CDs can both enforce Chapter 102 under the Clean Streams Law

#### **103.32 Compliance and enforcement provisions**

- lays out the compliance actions that can be taken
- DEP and the CDs may recover money spent pursuing actions
- persons aggrieved by the CD can appeal to DEP, who will take action within 30 days

#### **102.41 Administration by conservation districts**

- DEP can delegate the program to the CDs
- DEP retains program administration and enforcement over all projects that cross political boundaries of conservation districts

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

- municipality or county must notify DEP or CD within 5 days of receipt of application for a permit involving 1 acre or more

**102.43 Withholding permits**

- municipality or county may not issue permits or approvals to those proposing to conduct earth disturbance until the DEP or CD has issued the NPDES permit for that activity