



MIFFLIN COUNTY

CONSERVATION DISTRICT

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date

To: name, address

From: Mifflin County Conservation District

Concerning: CHAPTER 102 (EROSION AND SEDIMENTATION), CHAPTER 105 (WATERWAYS AND WETLANDS REGULATIONS), AND NPDES (CONSTRUCTION PERMITS)

Dear Mr./ Mrs. :

The following information is a very brief summary, developed by the Mifflin County Conservation District, of the present regulations that should be of interest to anyone connected in any way to development, excavating, land-use planning, construction, contracting, utility line installation, and any other work related to earth-moving, digging, filling, or “clearing”. The Department of Environmental Protection’s (DEP) regulations (known as Chapter 102, Chapter 105, and the NPDES program) affect the following: earth-moving activities of any kind and size; and activities in, through or near a stream, wetland, “wet area”, or watercourse (i.e. ditch) over 100 acres in drainage. Please feel free to make as many copies as you need for your use. Please be sure to share this new information with all relevant people, businesses, and groups associated with you (as we cannot be certain each individual within a group will receive a copy). All future reviews, approvals, and guidance from our office will be subject to these standards.

Also something of interest to all involved in this field; DEP has set up a link to the DEP homepage (www.dep.state.pa.us) entitled “Efacts”. It should appear as a heading on the DEP homepage. Efacts is a way of tracking all different types of permitting, compliance history, violations, etc. The most significant impact this will have on construction and permitting is this; for all permits submitted to the Department or the Conservation District, we are now required to check the applicant and the named operator for compliance history with DEP regulations. If a significantly negative compliance history is found, or if outstanding violations are present at the time, the Department can decide NOT to issue the permit until outstanding violations are resolved or until more stringent measures are imposed on the applicant (i.e. secondary E&S measures, approved E&S plans, etc.). If the operator is not initially named on the application, the Department will conduct a compliance check when the operator is named. Under the criteria summarized above, the Department may revoke or suspend the permit until violations are resolved, until more strict criteria are established, etc.

This is not a new policy or decision by DEP; they have had this authority prior to now. The difference is that Districts must now check the compliance history of applicants for permits issued from our office, and the information is now available on the DEP website. Those involved in this and related fields that choose not to remain in compliance with DEP environmental regulations may find increased difficulty in obtaining permits or working for projects that require permits.

CHAPTER 102 Summary (erosion and sedimentation pollution control)

The Chapter 102 regulations (also known as erosion and sediment control regulations, or E&S regulations for short) are regulations aimed at preventing “muddy water” from entering wells, sinkholes, streams, waterways, and any other “clean” water found in the state. It is against these regulations to conduct earth-moving activities of any kind that cause erosion of soils that leads to sediment-laden water (“muddy water”) leaving the site and traveling onto someone else’s property, or into streams, ditches, waterways, wetlands, sinkholes, or private/ public wells. As a general way of thinking, *if you are involved in activities that cause muddy water to leave your site, you may be in violation of the Chapter 102 regulations*. E&S regulations require that any sediment-laden water (“dirty” water) be treated to remove sediment prior to this water leaving your site. Treating usually occurs by filtering water through a number of measures that allows sediment to “settle out”. Silt fence, straw bale barriers, rock filters, and settling ponds are common examples of how sediment is removed.

This point needs to be made: ***the easiest, cheapest, and most environmentally sound way to deal with erosion is to prevent it from happening (or limiting the potential for erosion)***. This can be done in any number of ways, such as: clear the site in stages, only clearing the areas where work will be done immediately; re-seeding and mulching all disturbed areas immediately after grading is complete; retain as much vegetation (grass and tree cover) on site as possible. The District can provide you with an Erosion and Sedimentation Guide for smaller projects if you or someone you know would be interested.

As written under Chapter 102, if you are planning any size construction activity in PA, Chapter 102 and the PA Clean Streams Law require that steps be taken to prevent erosion and/ or treat sediment-laden water in the construction areas prior to the start of construction. Sites adjacent to a watercourse or wetlands, or associated with steep slopes, are particularly sensitive. If erosion occurs on site and dirty water enters another property, a waterway of any size, or a wetland, the Department or the Conservation District may request to see a written E&S plan, or may require that a plan and/ or specific measures be installed. An E&S plan is a written depiction of what steps are to be taken to prevent erosion and treat any “dirty” water before discharging this water off-site.

*If you are planning to disturb more than 5000 square feet (approx. 1/10 ac.) during earth-moving or if your site is located in a special protection (SP) watershed, Chapter 102 requires an E&S plan be developed and implemented on site prior to starting earthmoving activities. Watershed listings can be found at: <http://www.pacode.com/secure/data/025/chapter93/chap93toc.html>. In such situations you are not required to submit an E&S plan to the District, although we encourage everyone to work closely with the District. We offer free technical assistance/ guidance to any interested party (you *are* still required to take steps to prevent “muddy water” from leaving your site).*

Generally speaking, there are three ways that you would be REQUIRED to submit a written E&S plan for review and approval by the Conservation District prior to starting earthmoving activities. One: you are going to disturb one or more acres over the life of the project *and* are required to submit for an NPDES permit (see below). Two: a local, state, or federal entity with which you need approval/ permits requires that you provide an approved E&S plan before they will approve/ permit your project/ activity. Three: your activities are determined by either the Department or the Conservation District to have the potential to discharge sediment-laden (dirty) water into a stream, watercourse, wetland, etc.

REMEMBER: under the Clean Streams Law and the Chapter 102 regulations both the landowner *and* the contractors may be held responsible when sediment-laden water is running or discharged from a construction site.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES program for short)

The NPDES program is a federally mandated regulation governing earthmoving activities (except agricultural tillage and timber harvest) that disturb 1.0 or more acres of ground *over the entire life of the project* (see definitions for “life of project”), including individual lot development and known future expansions. If a construction site will disturb one or more acres (disturbed acres is not necessarily the same as total project acres), you would be required to submit for an NPDES construction permit. Part of the permitting process requires submission of an E&S plan. If you require specific details regarding construction permits, please contact the Conservation District for direct assistance.

CHAPTER 105 Summary (waterways and wetlands management regulations)

The Chapter 105 rules and regulations govern all watercourses, ditches, and streams that drain a minimum of 100 acres *or* have a defined bed and bank (i.e. there is a channel bottom and banks on each side, with *no minimum drainage requirement*). Chapter 105 also governs wetlands, dams, and water obstructions (i.e. rip-rap, bank stabilization, culverts, etc.). Chapter 105 permits can be obtained from DEP. In general, the Conservation Districts no longer issues, supplies, or works with these permits. These permits are needed to obtain the necessary approval for conducted a specific activity near a stream/ wetland. Other projects, such as filling a wetland, installing a “large” bridge, and placing fill within the floodway (see definitions), also require a permit from DEP and should be applied for as far in advance as possible.

Any work within, through, or beside the channel bottom, banks, and/ or within the determined floodway almost always requires a Chapter 105 permit. Depending on the size of the stream, the “floodway” may be defined as an area within 50 feet of the top of the streambank (50 feet on both sides), or it may be a larger setback on each side of the stream, depending on the elevations around the stream, the size of the stream, etc. The only way to be certain of the width of the floodway for a given watercourse or stream is to check the FEMA flood maps. The easiest way to do this: call the District and we would gladly determine the floodway for you. *Work involving wetlands in any way or manner always requires a Chapter 105 permit.*

The Chapter 105 program requires authorization from DEP in various circumstances, always associated in some way with streams, floodways, or wetlands. The simplest way to remember the Chapter 105 permitting program is as follows: if you are in any way going to do anything near a stream (near meaning any closer than 50 feet away from the banks), watercourse, or wet area (which may be wetlands), assume you need a permit to stay in compliance with DEP regulations. Then give the District a quick call and we would be glad to assist you in determining the floodway for the given stream, determine the presence or absence of wetlands, and determine what, if any, permits are necessary for your project.

All issues pertaining to dams require direct involvement with DEP. The Conservation District is only authorized to provide technical guidance and site investigation, but is not involved in the permitting and regulations associated with dams.

Non-Legal DEFINITIONS

Defined Bed and Bank	The term used to denote any watercourse where there is a bottom in which water flows at some time during the year, and banks on each side of the bottom of the channel, with no minimums for either the amount or time of flowing water, and no minimum depth or width of the channel.
Disturbed Acres	The acres of a project or site that includes all lands for the life of the project that are intended to be disturbed in any way according to the definition of Earth-moving activities below.
Earth-moving activities	Earth disturbance which disturbs the surface of the land, including, but not limited to, clearing and grubbing, grading, excavations, embankments, land development, timber harvest activities, or moving or depositing soils.
Floodway	The channel/ watercourse and portions of the adjoining land, which is expected to be inundated with water during a 100-year storm/ flood. Unless specified by FEMA studies on specific streams/ rivers/ watercourses, 50 feet from the top of each streambank is to be considered the floodway.
Life of the Project	The entire known plans for a given property or a given project, including, but not limited to, the initial earth-moving and any additional earth-moving associated in any way with the initial intentions of the project (which could include future expansions, house constructions, etc.).
Stream/ watercourse	Any point of a drainage or valley that drains 100 or more acres, OR any drainage channel or "ditch" that has a defined bed and bank, even if dry during several months of the year.
Total Project Acres	The entire acreage of the project, site, or property, including all disturbed acres, but also including all acres left undisturbed.
Wetland	An area sufficiently inundated by water where the environment is conducive to plants adapted to growing in saturated environments.