

Agricultural Advisory Board (AAB) Comments on Proposed Chapter 102 Regulation Revisions

The following comments on the proposed Chapter 102 (Erosion and Sediment Control and Stormwater Management) regulation revisions were recorded at the AAB meeting on April 15, 2009. These comments respond to the proposed version that was dated April 8, 2009.

Comment 1:

The time frame for review and comments to the Environmental Quality Board (EQB) on the Chapter 102 proposed regulatory revisions was inadequate.

The Chapter 102 regulations revisions (agriculture section language), proposed concepts, were first presented to the AAB on December 19, 2007. At this meeting it was presented that DEP was developing the agriculture portion separate from the remainder of Chapter 102, but that all sections would come together once completed.

At the February 18, 2009 AAB meeting it was reported that the agricultural section of Chapter 102 had not changed conceptually since the ideas were brought before the AAB in December 2007.

The proposed regulation revisions were presented at the April 15, 2009 meeting and had changed from what was presented in December 2007. The time frame provided was not sufficient for a thorough review of the proposed rulemaking.

Comment 2:

All references to farm lanes should be removed. Farm lanes are not a significant source of sediment, nor an earth disturbance activity, and should be excluded from the rulemaking. Consideration of farm roads, for the purposed of Chapter 102, should only be done in the context of the erosion and sedimentation measures that are generally done for the farm as a whole.

Comment 3:

Section 102.1 (Definitions) – The “Animal Heavy Use Area” definition should be more clearly defined that this chapter is only concerned with erosion and sediment control and not for control of discharges other than sedimentation. The definition should be clarified to limit the definitions scope to areas where animals are permanently kept in concentration or kept in concentration for extended periods of time. The definition should not include entrances and pathways, used by animals, to access a keeping area.

Comment 4:

Section 102.1 (Definitions) – “Point Source” definition should be changed to match the definition that is included in the Federal National Pollutant Discharge Elimination System (NPDES) regulations.

Any reference to “aquatic animal production facility” and “concentrated animal feeding operations” should be removed. Neither of these activities themselves are activities that are regulated under Chapter 102. Inclusion of these activities only serves to confuse the issue and erroneously imply that “aquatic animal production facility” and “concentrated animal feeding operations” are themselves regulated activities under Chapter 102, independent of any plowing and tilling activity or heavy animal use performed on the farm..

Comment 5:

Section 102.1 (Definitions) – “Soil loss tolerance (T)” definition should be more clearly defined as what it is and where it comes from. The definition should refer to the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Technical Guide, so as not to cause confusion.

It should also be noted that T covers all soils under all uses (cropland, pasture, homestead, etc.), not just under agricultural plowing and tilling activities.

The definition should also recognize that the area to be applied in determination of whether soil loss from plowing and tilling activities exceeds T is the entire field area of the farm. That entire field area includes the area where the plowing and tilling activity occurs, not just the specific area of the plowing and tilling activities.

Comment 6:

Section 102.2 (scope and purpose) – Consistent with the comments to definitions made above, additional language should be added to this section to recognize the scope of regulation of agricultural operations under Chapter 102 only applies with respect to practices for accelerated soil erosion and sedimentation control and stormwater management, and does not include measures for management of manure or control of discharges regulated under Chapters 91 and 93.

Comment 7:

Section 102.4 (Erosion and sediment control requirements) – 102.4 (a)(4) “cost effective and reasonable BMP” language should be changed to include the same qualifying language as prescribed in Chapter 83 (Nutrient Management) definitions. The language should read “effective and practicable (given technological, economic and institutional considerations). Paragraph (4) would read:

“The E&S plan shall include effective and practicable (given technological, economic and institutional considerations) BMPs designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing and tilling activities and animal heavy use areas.”

Comment 8:

Section 102.4 (Erosion and sediment control requirements) – 102.4(a)(4)(i) The second sentence requiring additional BMPs 100ft within a stream, and the term "prevent sediment loss" negate the standard of T established in the first sentence. DEP should establish one standard. Where an E&S Plan demonstrates that plowing and tilling activities performed on a field will be at or below T over the planned crop rotation cycle, no further measures for controlling soil loss near streams should be required.

Comment 9:

Section 102.4 (Erosion and sediment control requirements) - 102.4 (a)(4)(ii) Codifying the NRCS standards for animal heavy use areas is more strict than necessary. DEP should establish a stabilization standard and allow the NRCS documents as a means to achieve that standard. As drafted, 102.4 (a)(4)(ii) would impose blanket requirements for agricultural erosion and sedimentation plans in animal heavy use areas to meet cross-referenced NRCS Conservation Standards and NRCS Practice Standards without any reasonable guidance of when, where or how many standards should be implemented. The regulations should more clearly identify the type and extent of soil erosion and sedimentation control measures that a farmer must design and implement in an Erosion and Sedimentation Plan, and only those erosion and sedimentation control measures that are practicable to the farm operation (given technological, economic and institutional considerations) should be required in animal heavy use areas.

Comment 10:

Section 102.4 (Erosion and sediment control requirements) - 102.4 (a)(5) Manure application setbacks are not appropriate considerations for determining adequacy of an E&S Plan and should be removed. Manure application setbacks are covered under Chapter 83 (Nutrient Management). Additionally, the last sentence of this paragraph should replace the word 'describe' with the phrase "be consistent with". The sentence would read:

"The plan must be consistent with current conditions and activities on the agricultural operation."

Comment 11:

Section 102.4 (Erosion and sediment control requirements) – 102.4(a)(6) The second sentence should be amended by adding the word "heavy" between "animal" and "use areas".

Comment 12:

Section 102.4 (Erosion and sediment control requirements) - 102.4 (b): The proposed reference to "agricultural operations" should be deleted.

Comment 13:

Section 102.5 (Permit requirements) – 102.5(a)(i) The first sentence should be amended to delete the term “agricultural operations” and replace the term “agricultural cultivation” with “agricultural plowing and tilling activity.”

Comment 14:

Section 102.5 (Permit requirements) - 102.5(a)(ii) The first sentence should be amended to delete the term “agricultural operations” and replace the term “agricultural cultivation” with “agricultural plowing and tilling activity.”

Comment 15:

Section 102.5 (Permit requirements) - 102.5(b) The word permit needs included after E&S.

Comment 16:

Section 102.5 (Permit requirements) - 102.5(g) The first sentence should be amended to delete the term “agricultural operations” and replace the term “agricultural cultivation” with “agricultural plowing and tilling activity.”

Comment 17:

Section 102.15 (Permit-by-rule for low impact projects with riparian forest buffer)
This section should require a pre-application meeting between the persons proposing or conducting the earth disturbance activity and the Department or delegated Conservation District

Comment 18:

Section 102.15 (Permit-by-rule for low impact projects with riparian forest buffer) – 102.15(k) The time for review and determination of coverage by the conservation district should be extended from 15 calendar days to 30 working days.