

Chapter 102 Regulation Revision

Address Changes Made from AAB Letter to EQB

Agricultural Advisory Board

June 17, 2009

Comment 1

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

- Proposed regulations will have additional comment period.
- Plan to provide additional opportunities for AAB to comment.

Comment 2

All references to farm lanes should be removed.

- Farm Lane language was removed.

Comment 3

Section 102.1 (Definitions) – The “Animal Heavy Use Area” definition should be more clearly defined.

- No change in definition.
- Regulation/definition addresses sedimentation.
- Technical Guidance will be developed that will indicate how entrances, pathways, etc. are addressed.

“Animal Heavy Use Area” Definition

“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.”

Comment 4

Section 102.1 (Definitions) – “Point Source” definition should be changed to match the definition 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.

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- Definition was changed to removed “aquatic animal production facility.”
 - Concentrated animal feeding operations (CAFO’s) was retained in the definition, because CAFO’s is in the point source definition in the federal regulations.

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.

- Reference to United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Technical Guide is made.

“Soil loss tolerance (T)” definition

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).

Comment 6

Section 102.2 (scope and purpose) – 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.

- No changes made to Section 102.2

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).

- No changes made to Section 102.4(a)(4)

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.

- No change made except for numbering. Second sentence was changed to 102.4(a)(4)(ii)
- Please raise this again in AAB Comments.

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.

- Changed to Section 102.4(a)(4)(iii)
- Wording changed to “identify” rather than “implement.”
- References practice standards (amended and updated version) for several BMP’s but does not suggest that Heavy Use Area Protection BMP’s must be installed.

Section 102.4(a)(4)(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.

Comment 10

Section 102.4 (Erosion and sediment control requirements) - 102.4 (a)(5) Manure application setbacks are not appropriate for E&S Plans and should be removed. Additionally, The last sentence of this paragraph should replace the word ‘describe’ with the phrase “be consistent with.”

- Manure application setbacks and buffers language removed.
- Last sentence changed.

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”.

- Correction made.

Comment 12

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

- Correction made.

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.”*

- Section 102.5(a)(1) was changed to replace “agricultural operations” and “agricultural cultivation” to “agricultural plowing and tilling”

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.”

- Section 102.5(a)(2) was changed to replace “agricultural operations” and “agricultural cultivation” to “agricultural plowing and tilling”

Comment 15

*Section 102.5 (Permit requirements) - 102.5(b)
The word “permit” needs to be included after
E&S.*

- “Permit” was added 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.”

- Section 102.5 (j) was changed to replace “agricultural operations” and “agricultural cultivation” to “agricultural plowing and tilling”

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.

- Section 102.15 (c)(1) requires a pre-submission meeting prior to submitting a Registration of Coverage.

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.*

- Section 102.15 (j) allows 30 days to make a determination of coverage and eligibility.
- 30 days are considered calendar days.

102 Reg Revisions

Approved by EQB on June 16th

- 90-day Public Comment Period.
- 3 Public Hearings.

Ag Advisory Board Comments

- Create workgroup/Subcommittee(?)
- Discuss/Complete at August Meeting(?)