
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 420 Session of
2019

INTRODUCED BY BENNINGHOFF, BARRAR, BERNSTINE, FEE, GREGORY,
JAMES, KAUFFMAN, KEEFER, LEWIS, METCALFE, MILLARD, B. MILLER,
OBERLANDER, OWLETT, PYLE, SAYLOR, STAATS, STRUZZI, TOPPER,
WARNER, ZIMMERMAN, JONES AND MENTZER, FEBRUARY 11, 2019

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 11, 2019

AN ACT

1 Providing for erosion and sediment control requirements.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Erosion and
6 Sediment Control Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Administratively complete." Contains the necessary
12 information, maps, fees and other documents requested as part of
13 a permit application process, regardless of whether the
14 information, maps and other documents would be sufficient to
15 justify issuance of the permit.

16 "Agricultural plowing or tilling activity." Earth

1 disturbance activity involving the preparation and maintenance
2 of soil for the production of agricultural crops. The term
3 includes no-till cropping methods.

4 "Animal heavy use area." Barnyard, feedlot, loafing area,
5 exercise lot or other similar area on an agricultural operation
6 where due to the concentration of animals it is not possible to
7 establish and maintain vegetative cover of a density capable of
8 minimizing accelerated erosion and sedimentation by usual
9 planting methods. The term does not include an entrance, pathway
10 or walkway between areas where animals are housed or kept in
11 concentration.

12 "Conservation district." A conservation district, as defined
13 in section 3(c) of the act of May 15, 1945 (P.L.547, No.217),
14 known as the Conservation District Law, that has a delegation
15 agreement executed with the department to administer and enforce
16 all or a portion of the requirements under 25 Pa. Code Ch. 102
17 (relating to erosion and sediment control).

18 "Department." The Department of Environmental Protection of
19 the Commonwealth.

20 "Earth disturbance." A construction activity or other human
21 activity that disturbs the surface of the land.

22 "Expedited application." An application for a permit that is
23 signed and sealed by a licensed professional.

24 "Licensed professional." A professional engineer, landscape
25 architect, geologist or land surveyor licensed to practice in
26 this Commonwealth.

27 "No-till cropping methods." The practice of planting crops
28 with minimal mechanical tillage.

29 "Oil and gas activities." Activities associated with oil and
30 gas exploration, production, gathering, processing, treatment

1 operations or transmission facilities.

2 "Permit." An erosion and sediment control permit required
3 under this act.

4 Section 3. Erosion and sediment control permits.

5 (a) Permit requirement.--A person proposing the following
6 activities must obtain an erosion and sediment control permit
7 from the department or a conservation district before commencing
8 the activity:

9 (1) Oil and gas activities that involve at least five
10 acres of earth disturbance at any one time.

11 (2) Timber harvesting or road maintenance activities
12 involving at least 25 acres of earth disturbance at any one
13 time.

14 (3) Activity that does not require a National Pollutant
15 Discharge Elimination System permit under 25 Pa. Code § 102.5
16 (relating to permit requirements) and which involves at least
17 five acres of earth disturbance at any one time, provided
18 that no permit shall be required for agricultural plowing or
19 tilling activities or animal heavy use areas.

20 (b) Review and issuance of permit.--

21 (1) The department or conservation district shall
22 complete a review of a permit application within five
23 business days of receipt to determine whether the application
24 is administratively complete and shall enter receipt of the
25 application into the department's publicly accessible online
26 permit tracking system. If a permit application is determined
27 to be incomplete, the applicant shall be notified in writing
28 within five business days. The notification shall specify the
29 deficiency of the permit application.

30 (2) If a permit application complies with 25 Pa. Code

1 Ch. 102 (relating to erosion and sediment control) and is
2 complete as determined by the department or a conservation
3 district, the department or conservation district shall issue
4 a permit to the applicant within 43 business days of
5 determining that the application is administratively complete
6 or, in the case of an expedited application, within 14
7 business days of determining that the application is
8 administratively complete.

9 (3) (i) If the department determines that the permit
10 application is technically deficient for failure to
11 comply with 25 Pa. Code Ch. 102, the department shall
12 notify the applicant. The notification shall specify the
13 provision or provisions with which the application does
14 not comply.

15 (ii) Nothing in this subsection shall be construed
16 to extend the permit review time periods contained in
17 paragraph (2).

18 (4) The department shall create and implement an
19 expedited permit process for applications that are signed and
20 sealed by licensed professionals. Expedited permits may be
21 utilized for all projects except the following:

22 (i) Projects in a watershed designated as high
23 quality or exceptional value under 25 Pa. Code Ch. 93
24 (relating to water quality standards).

25 (ii) Projects located entirely in or on a
26 floodplain.

27 (iii) Projects on lands that are known to be
28 currently contaminated by the release of regulated
29 substances as defined in section 103 of the act of May
30 19, 1995 (P.L.4, No.2), known as the Land Recycling and

1 Environmental Remediation Standards Act.

2 (iv) Oil, natural gas or natural gas liquids
3 transmission projects.

4 (5) If a permit application is denied, the department or
5 conservation district shall notify the applicant in writing
6 within five business days of denying the permit application.
7 The notification shall specify the justification for denying
8 the permit application and cite the relevant law or
9 regulation of this Commonwealth that is not sufficiently
10 addressed in the permit.

11 (6) Failure by the department or a conservation district
12 to issue a final determination on a permit within the time
13 period specified in paragraph (2) shall result in the permit
14 application being deemed approved. The permittee shall be
15 subject and adhere to all relevant statutes and regulations
16 applicable to the permit.

17 (7) (i) Failure by the department or a conservation
18 district to issue a final determination on a permit
19 within the time period specified in paragraph (2) shall
20 entitle the permit applicant to reimbursement by the
21 department for economic harm caused by the delay in
22 making the final determination.

23 (ii) The amount of economic harm for which a permit
24 applicant is eligible for reimbursement must be
25 reasonably related to the impact that failure to issue a
26 permit has had on the permit applicant's ability to
27 commence construction operations and may include the
28 permit fee, costs incurred in preparing and submitting
29 the permit application, project financing costs and
30 equipment rental charges.

1 (iii) Reimbursement costs shall be payable from the
2 Clean Water Fund established under section 8 of the act
3 of June 22, 1937 (P.L.1987, No.394), known as The Clean
4 Streams Law.

5 (iv) The department or conservation district shall
6 have the burden to prove that the reimbursement charges
7 are not reasonably related to the impact of the
8 department or conservation district's failure to issue a
9 permit.

10 Section 4. Compliance with laws of this Commonwealth.

11 The department or a conservation district shall utilize a
12 general permit to implement this act. The general permit shall
13 impose only those terms that are strictly necessary to ensure
14 compliance with the laws of this Commonwealth as administered by
15 the department.

16 Section 5. Fees.

17 (a) General rule.--A permit application shall be accompanied
18 by a \$500 administrative filing fee, plus an additional \$100 fee
19 for each disturbed acre. Fees shall be paid to the primary
20 reviewing entity in the event that both the department and a
21 conservation district complete the review.

22 (b) Increase to fees.--No earlier than three years after the
23 effective date of this section, the Environmental Quality Board
24 may, by regulation, increase the fees to cover the
25 administrative costs of processing the permit applications.

26 Section 6. Quarterly reports.

27 (a) Contents.--The department shall submit a quarterly
28 report to the Environmental Resources and Energy Committee of
29 the Senate and the Environmental Resources and Energy Committee
30 of the House of Representatives detailing the department's

1 implementation of this act. The report shall contain the
2 following:

3 (1) The number of permit applications received in the
4 prior 12 months.

5 (2) The number of applications approved.

6 (3) The average time frame from date of submission for
7 review of permit applications organized by the regional
8 office of the department.

9 (4) The average time frame from the date of submission
10 for technical review of applications organized by the
11 regional office of the department.

12 (5) The number of permit application reviewers on staff
13 in the department, organized by the regional office of the
14 department.

15 (6) The average workload of each permit application
16 reviewer, which average shall be organized by the regional
17 office of the department.

18 (7) Primary reasons for administrative or technical
19 deficiencies or permit application denials, including the
20 citations to the relevant law or regulation of this
21 Commonwealth that are not sufficiently addressed in the
22 report, which reasons shall be organized by the regional
23 office of the department.

24 (8) The number of licensed professionals sanctioned by
25 the department due to the submission of routinely deficient
26 expedited permit applications and the primary reasons for the
27 sanctions.

28 (9) Details, including dates and locations, of
29 professional trainings administered or sponsored by the
30 department related to the permit requirements imposed under

1 this act.

2 (10) Other relevant information as determined by the
3 department.

4 (b) Submission.--The initial quarterly report shall be
5 submitted within 60 days of the effective date of this
6 subsection. Subsequent quarterly reports shall be submitted no
7 later than 30 days after the last day of the preceding quarter.
8 Section 7. Annual evaluation.

9 On an annual basis, the department shall commission an
10 evaluation of the erosion and sediment control permit review
11 process. The evaluation shall be conducted by a qualified,
12 third-party entity knowledgeable in the department's permitting
13 application process. The evaluation shall, at a minimum, examine
14 and include the following:

15 (1) Consistency in application review time frames and
16 criteria among the department's regional offices and
17 conservation districts.

18 (2) Adherence by department and conservation district
19 permit review staff to established permit review protocols.

20 (3) Sufficiency of available professional trainings for
21 department and conservation district permit review staff and
22 the regulated community.

23 (4) Recommendations on increasing the effectiveness,
24 consistency and predictability of the permit review process.

25 Section 8. Construction.

26 Nothing in this act shall be construed to exempt a person:

27 (1) seeking to commence a project involving oil and gas
28 activities that will cause less than five acres of earth
29 disturbance; and

30 (2) that is not required to obtain a permit

1 from complying with other applicable provisions of 25 Pa.
2 Code Ch. 102 (relating to erosion and sediment control).
3 Section 9. Effective date.
4 This act shall take effect in 30 days.