

# Regulations affecting forest management

## Environmental regulations

Several laws and regulations address earth-moving activities that have the potential to degrade the quality of waters of the Commonwealth of Pennsylvania. Since timber harvesting involves earth moving, individuals involved in harvesting forest products should be familiar with these laws and regulations. The following list includes current federal, state, and local laws and regulations that normally affect timber harvesting operations. While the road bonding regulations included in this discussion do not directly relate to water quality, they are provided in order to assist logging operators in developing a harvesting plan.

## FEDERAL

### Federal Water Pollution Control Act Amendments of 1972, Section 404.

*Brief description:* This legislation established a permit program to be administered by the U.S. Army Corps of Engineers to regulate discharges of dredged or fill material into the "waters of the United States." Discharge of fill material includes road fills at stream crossings. A major emphasis of Section 404 is the protection of wetlands.

*Application:* Most logging road stream crossings are exempt from permitting under Section 404 because they are classified as "minor road crossing fills." To gain this exemption, the following four conditions must be met:

1. Fill actually placed into a stream channel cannot exceed 200 cubic yards.
2. The stream must be properly bridged (must pass expected high flows).
3. Wetlands must not be affected.
4. All other best management practices must be followed.

The Corps of Engineers and the Pennsylvania DEP, Bureau of Dams and Waterways Management have a joint permit application process. One application is submitted for both federal and state permits. Since the responsibilities of these two agencies overlap to a great degree, their compliance activities complement each other.

Establishing contact with the Pennsylvania DEP, Bureau of Dams and Waterways Management, will ensure that the timber harvester is advised on the applicability of Section 404 to a particular stream crossing situation.

## STATE

**Chapter 102, Erosion Control Rules and Regulations**—issued under Act of June 22, 1937, P.L. 1987 (Clean Streams Law).

*Brief description:* Chapter 102 requires that an erosion control plan be developed, implemented, and maintained for every earth disturbing activity within the Commonwealth. The plan must consider the control of erosion and sediment during the activity, as well as proper restoration after the activity. The plan should consider the control of all factors that relate to the causes of erosion and sediment.

*Application:* Timber harvesting operations that involve earth disturbance of more than 25 acres require a permit from DEP. Additional information and applications concerning earth disturbance permits can be obtained by county conservation districts. Most timber harvests disturb less than 10 percent of the harvested area.

**Chapter 105, Dam Safety and Waterway Management Rules and Regulations**—issued under Act of 1978, P.L. 1375, No. 325 (Dam Safety and Encroachments Act).

*Brief description:* Chapter 105 requires proper planning, design, construction, maintenance, and monitoring of all dams, reservoirs, water obstructions, and encroachments. Conservation of water and protection of the water quality, natural regime, and carrying capacity of water courses are the primary thrusts of Chapter 105.

*Application:* All persons planning to construct, operate, maintain, modify, enlarge, or abandon any dam, water obstruction, or encroachment must apply for a permit from DEP, Bureau of Dams and Waterways Management. This requirement applies to all water courses. (A water course is defined as "any channel of conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.") Chapter 105 regulates any encroachment construction within the defined boundary of the 100-year frequency floodway (provided by the Federal Emergency Management Agency—FEMA) or, in the absence of such mapping or contrary evidence, within 50 feet from the top of the streambank. DEP regulations may waive permit requirements for water obstructions on streams with drainage areas of less than 100 acres.

All permit applications, pursuant to Chapter 105, must be accompanied by an erosion and sediment control plan meeting the requirements of Chapter 102. Conservation districts review and determine the adequacy of erosion and sediment control plans, and their statement as to the plan's adequacy must accompany the encroachment permit application. For temporary road crossings permitted under General Permit No. 8 (GP-8), applicants need not acquire approval of their proposed erosion and sediment control plan before applying for an encroachment permit. However, the applicant must acquire approval of the erosion and sediment control plan from the appropriate conservation district prior to construction. To use GP-8, applicants must notify the Bureau or the local conservation district of their intent to use the General Permit.

Applicants may *not* begin work until they have notified and received from the Bureau an acknowledgment letter of their notification to perform work. Section 5 of the General Permit requires the applicant to notify the Bureau of Dams and Waterways Management of their planned work, including the required information. The Bureau's acknowledgment letter does not approve any drawings, details, or specifications of the proposed work, but acknowledges the applicant's intent to perform the work described. The applicant is responsible for ensuring that the work is done in accordance with the sample drawings and conditions of the General Permit and any conditions noted in the acknowledgment letter. The Fish and Boat Commission and the township and county in which the project is located must also be notified. (See Municipal Notification of DEP Permit Application Submittal, page 38.)

### **Fish and Boat Code—Act 175**

*Brief description:* The Fish and Boat Code states "No person shall alter or disturb any stream, stream bed, fish habitat, water, or watershed in any manner that might cause damage to or loss of such without necessary permits." "Necessary permits" include any permits required pursuant to Chapter 102 and Chapter 105. The Fish and Boat Code further states that no person, regardless of intent, shall allow any substances deleterious (to fish life) to run, flow, wash, or be emptied into the waters of the Commonwealth of Pennsylvania.

### **Chapter 441, Access to and Occupancy of Highways by Driveways and Local Roads—issued under Act of June 1, 1945, (P.L. 1242, No. 428 (36 P.S. Sec. 670-420).**

*Brief description:* Chapter 441 requires a permit for all driveways, local roads, and drainage facilities or structures constructed or altered within state highway rights-of-way. Permit applications must be submitted, in the name of the *owner* of property, to either the district or county PennDOT office having jurisdiction where the work will be performed. The permit application must be submitted before construction.

*Application:* Any harvest operation that will involve accessing a state highway by constructing a new or modifying an existing access point will require PennDOT approval. The local PennDOT office should be contacted about the specifics of a particular situation. PennDOT personnel will then help prepare the required permit application. Logging roads usually qualify for a "Minimum Use Driveway" permit.

### **Chapter 189, Road Bonding Regulations: Hauling in Excess of Posted Weight Limit on Highways—officially decreed under authority of Title 75, Sections 4902 and 6103 of the Vehicle Code.**

*Brief description:* This chapter regulates the use of highways posted with weight restrictions for vehicles and combinations having a gross weight in excess of the posted weight limit, and applies to both state highways and highways under the jurisdiction of local authorities. Local traffic may exceed posted weight limits if the posting authority determines that vehicles over

the posted weight are not likely to damage the highway. For vehicles determined likely to damage a posted highway, a permit must be obtained from the posting authority. The permit to exceed a posted weight limit is issued on condition that the permittee agrees to accept financial responsibility for excess maintenance of the posted highway or portion thereof to be used by the permittee.

*Application:* Persons proposing to haul over posted roads or bridges should contact the authority responsible for maintenance of the particular roads or bridges. This may be the county, the township, or PennDOT.

### **Municipal Notification of DEP Permit Application Submittal—**

Act 14 (H.B. 682)

*Brief description:* DEP must require all applicants for a permit or permit revision to provide written notice to each municipality in which activities are located (usually township *and* county).

*Application:* DEP may not issue or deny any permit or permit revision until 30 days after the municipalities have *received* the required written notices. (In the case of solid and hazardous waste permits, a 60-day waiting period is imposed.) The act does not apply to any permits relating to coal-mining activities.

This act has a direct impact on timber harvest operations that will require any type of DEP permit, specifically stream encroachment permits (including GP-8) and earth disturbance permits.

If a municipality does not request the right to review and comment on a permit application within 30 days of receiving *notification from the applicant*, the municipality forfeits its opportunity to comment. This 30-day period can be reduced if the applicant approaches the municipalities and obtains written statements relinquishing their rights to review.

*Notification is the responsibility of the applicant.*

## **LOCAL**

Local municipal regulations concerning earth moving, timber harvesting, and other activities associated with forest management vary considerably. Therefore, it is advisable for earth movers, landowners, resource professionals, and timber harvesters to become familiar early in the planning stages with codes and ordinances currently enforced by the municipality in which work is anticipated.

### **Zoning and Land Use**

As of early 1995, timber harvesting ordinances were known to exist in at least 135 Pennsylvania townships. It is advisable to check with the appropriate township(s) before any timber harvesting activities are planned or executed (see page 42). For more information, read the publication *Timber Harvesting in Pennsylvania: Information for Citizens and Local Government Officials*, available from the Penn State Cooperative Extension office in your county.

## **Compliance**

Certified Conservation District personnel, DEP compliance specialists and engineers, and Waterways Conservation officers have the legal power to enter private property for the purpose of administering applicable laws and regulations. Conservation district staff are often the first regulatory personnel to contact anyone involved in an earth moving activity. Situations involving compliance questions are resolved most easily when the district inspectors and timber harvesters work in a cooperative, positive manner.

Individuals or companies who persist in violating any of the laws or regulations intended to protect Pennsylvania streams are subject to substantial fines and penalties. Willful or negligent violations carry even heavier penalties.

Individuals from as many as five different agencies are responsible for ensuring compliance with applicable laws and regulations. Their areas of responsibility are indicated in the chart on the following two pages.

**Responsibilities of agencies for erosion and sedimentation control**

AGENCY	RESPONSIBLE PERSON	RESPONSIBILITY
<b>Conservation District</b>	<b>Conservation district manager</b>	<b>Review of E &amp; S plans in accordance with Chapter 102</b>
	<b>and/or</b>	<b>Processing of earth disturbance permits in accordance with Chapter 102<sup>a</sup></b>
	<b>Conservation district E &amp; S technician</b>	<b>Compliance inspections of earth moving activities in accordance with Chapter 102<sup>a</sup></b>
<b>DEP Regional Office, Soils and Waterways Section</b>	<b>Regional engineer</b>	<b>Compliance inspections, compliance actions, and enforcement of Chapter 102</b>
	<b>and/or Compliance specialist</b>	<b>Field support to conservation district administration of Chapter 102</b>
<b>DEP Regional Office, Soils and Waterways Section</b>	<b>Hydraulic engineer</b>	<b>Issuance of water obstruction permits in accordance with Chapter 105<sup>b</sup></b>
		<b>Compliance inspections, compliance actions, and enforcement of Chapter 105</b>
<b>Pennsylvania Fish and Boat Commission</b>	<b>Waterways Conservation officer</b>	<b>Compliance inspections, compliance actions, and enforcement of the Fish and Boat Code</b>
<b>Pennsylvania Department of Transportation</b>	<b>PennDOT representative(s)</b>	<b>Issuance of driveway permits in accordance with Chapter 441</b>
		<b>Compliance inspections, compliance actions, and enforcement of Chapter 441</b>

(continued on next page)

		<p><b>Issuance of excess maintenance permits (road bonding) for state highways in accordance with Chapter 189</b></p> <p><b>Compliance inspections, compliance actions, and enforcement of Chapter 189, as it pertains to state highways</b></p>
<b>US Army Corps of Engineers</b>	<b>Army Corps representative(s)</b>	<p><b>Issuance of "dredge and fill" permits in accordance with Section 404 of the Federal Clean Water Act of 1977</b></p> <p><b>Administer federal regulations pertaining to wetlands</b></p> <p><b>Compliance inspections, compliance actions, and enforcement of Section 404 of the Federal Clean Water Act of 1977</b></p> <p><b>(Note: Army Corps activities are closely coordinated with management efforts of the DEP Bureau of Dams and Waterways Management.)</b></p>
<b>Local municipality</b>	<b>Supervisors or township representative(s)</b>	<b>Enforcement of local codes and ordinances (including township highway bonding, in accordance with Chapter 189)</b>

<sup>a</sup> Chapter 102 responsibilities of conservation districts vary with the level of involvement endorsed by the district directors. Most districts (63 of 66) have accepted inspection and compliance responsibilities.

<sup>b</sup> The DEP Bureau of Dams, Waterways, and Wetlands has initiated a program in which some inspection duties, general permit review and issuance, and permit exemption determinations, pursuant to Chapter 105, have been delegated to certain conservation districts.

## **Occupational Safety and Health Administration (OSHA) regulations**

The Occupational Safety and Health Administration logging standards that went into effect in February 1995 replace the OSHA pulpwood logging safety standards and are designated in the OSHA safety standards package as Sec. 1910.266 Logging Operations. All logging operations, regardless of the product produced, are covered. The new standards do not cover the construction or use of cable yarding systems, which are detailed in state logging safety standards in most Western states.

Detailed information is available in the following publications:

- *The Logger's Guide to the New OSHA Logging Safety Standards*. Oct. 1994. American Pulpwood Association Inc., Washington, D.C.
- *The Federal Register, Part II: Logging Operations: Final Rule*. U.S. Department of Labor, Occupational Safety and Health Administration. 29 CFR Parts 1910 and 1928.

## **Other regulations**

### **The Pennsylvania Municipalities Code (Act 67 and 68) and the Right to Practice Forestry Act—53 P.S. §10603(f)**

*Brief description:* The Municipalities Code (MPC) and the Right to Practice Forestry Act both state that zoning ordinances may not unreasonably restrict forestry activities. The MPC goes further by saying that "...to encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this Commonwealth, forestry activities, including, but not limited to, timber harvesting, shall be permitted use by right in all zoning districts in every municipality."

*Application:* The intent of these statutes is to make it easier to carry out forestry activities by limiting the scope of zoning. Given this broad legislative mandate, municipalities that regulate forestry activities will have to craft ordinance provisions that are based on sound forestry principles and practices. The statute does not define "unreasonable," and no appellate court decisions have yet interpreted it. If a zoning ordinance prohibits timber harvesting in zoning districts with significant forests or makes timbering a special exception or conditional use subject to many burdensome and time-consuming requirements, the ordinance is subject to challenge by landowners and loggers alike.

### **Timber Trespass Law—Act 10 of 1994, P.S. §8311**

*Brief description:* The Timber Trespass Law allows landowners to bring a civil lawsuit to recover three times the value of the timber cut or removed in cases of intentional trespass or two times that value for negligent trespass. Landowners also can recover the costs of establishing the value of the timber cut or removed and of complying with state erosion and sedimentation control rules. The specific wording of the law is as follows:

**§831I. Damages in actions for conversion of timber.**

- (a) General rule.—In lieu of all other damages or civil remedies provided by law, a person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount of damages equal to:
- (1) the usual and customary costs of establishing the value of the timber cut or removed and of complying with the erosion and sedimentation control regulations contained in 25 Pa. Code Ch. 102 (relating to erosion control); and
  - (2) one of the following:
    - (i) three times the market value of the timber cut or removed if the act is determined to have been deliberate;
    - (ii) two times the market value of the timber cut or removed if the act is determined to have been negligent; or
    - (iii) the market value of the timber cut or removed if the defendant is determined to have had a reasonable basis for believing that the land on which the act was committed was his or that of the person in whose service or by whose direction the act was done.
- (b) Restitution.—Any damages awarded under this section shall be reduced by any restitution which is made under 18 Pa. C.S. §1107 (relating to restitution for theft of timber).
- (c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

*Timber.* Standing trees, logs, or parts of trees that are commonly merchandised as wood products.

*Market value.* The value of the standing timber at local market prices for the species and quality of timber cut or removed at the time it was cut or removed.

