

FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT TRAIL DEVELOPMENT AND PERMITTING FOR PA CODE, TITLE 25, CHAPTER 102 - EROSION AND SEDIMENT CONTROL, AND CHAPTER 105 - DAM SAFETY AND WATERWAY MANAGEMENT

**Department of Conservation and Natural Resources (DCNR)  
Bureau of Recreation and Conservation (Bureau)  
Department of Environmental Protection (DEP)**

Below are frequently asked questions trail builders and design consultants may experience when managing a trail development project that requires coordination, review and approval with DEP and County Conservation Districts for Chapter 102 and/or 105 permitting. The Bureau and DEP have provided corresponding answers to each of these questions.

**Frequently Asked Questions:**

- 1. When debris creates obstructions that clog up culverts, pipes, etc. and cause erosion along trails, can municipal labor and/or volunteers clear this out and repair, or do they need to consult with DEP and the County Conservation District and obtain a permit first?**

Chapter 102 - If an E&S plan was created during trail development, a maintenance program for the repair or replacement of BMPs should guide post stormwater event repair or replacement and maintenance activities. The type of maintenance, such as cleanout, repair, replacement, regrading, re-stabilizing, etc. for each of the BMPs should be included in the plan drawings.

Chapter 105 - If you are removing litter and construction debris, winching or “plucking” woody debris from the stream bank or bridge with heavy equipment, or removing woody debris with hand-held equipment while in the stream, you do not need a permit and do not need to coordinate with DEP. DEP should be contacted first if you are rebuilding a trail or bridge across a stream and/or are removing gravel bars with heavy equipment. A permit is needed if you are dredging, damming, or redirecting the flow of a stream.

For more information on maintaining streams in your community, reference DEP “Guidelines for Maintaining Streams in Your community” booklet at:  
[http://files.dep.state.pa.us/Water/FactSheets/StreamMaintenance/StreamMaintenanceBooklet\\_forWeb.pdf](http://files.dep.state.pa.us/Water/FactSheets/StreamMaintenance/StreamMaintenanceBooklet_forWeb.pdf)

- 2. If I am replacing or repairing/moving existing culverts or pipes under a trail do I need to go through the permit review process?**

If the existing culverts or pipes used for watercourses under the trail that are replaced, moved or repaired were never issued a previous permit, DEP should be contacted first as a new permit may be needed. If the culverts or pipes under the trail are replaced, moved or repaired with same specification materials and in the same location, and have received a previous permit, then no further coordination or permits are needed.

**3. How long does it take to get a NPDES submission reviewed and approved for a trail development project?**

Applicants should plan for a minimum of 3 months for a General Permit and a minimum of 6 months for an Individual Permit. Additional time should be allotted to any projects which stray from the norm, push the threshold of permitting requirements; or require significant response time to technical deficiencies.

**4. What is a joint permit, and why is it needed?**

A Joint Permit is a waterways obstruction or encroachment permit that satisfies both state and federal permit requirements.

Water obstruction and encroachment projects that do not qualify for a waiver, an EXX-999x permit, or a General Permit can be authorized using a Standard Joint Water Obstruction and Encroachment permit application (Standard JPA). This application type requires the most documentation, but is also the most flexible and can be used for a variety of project types.

**5. When do GP-11 permits (maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments) work and when do they not?**

A GP-11 permit may work for trail projects that: are not high risk; do not permanently change the stream alignment; have very minimal impacts to wetlands; do not involve/require use of motorized vehicles or equipment in a watercourse, stream or body of water; and have structures that are being replaced with a similar-sized proposed waterway opening.

**6. What are the permittee's stormwater BMP maintenance requirements and responsibilities?**

Permittees are responsible for the repair or replacement of BMPs as identified in the maintenance program that was established as part of the NPDES permit. The type of maintenance, such as cleanout, repair, replacement, regrading, re-stabilizing, etc. for each of the BMPs should be have also been included in the plan drawings. Any damage that occurs shall be immediately repaired by the permittee in a permanent manner satisfactory to the municipality, local conservation district, and the owner of the damaged property.

**7. For trail projects, what is the definition of a "site"?**

Project Site - The entire area of activity, development, lease, or sale including:

- (i) The area of an earth disturbance activity.
- (ii) The area planned for an earth disturbance activity.
- (iii) Other areas that are not subject to an earth disturbance activity.

Total Project Area - The entire project site, including areas that are or will be subject to earth disturbance activity as well as those that will not. For permitting purposes, it is measured to the nearest tenth of an acre.

**8. What is the State Historic Preservation Office (SHPO)? What is a PNDI? How can onsite cultural and natural resources impact construction and location of trail development?**

The Pennsylvania Historical and Museum Commission (PHMC) oversees protection of cultural resources in the state. Cultural resources include historically significant structures or sites, as well as archaeologically significant sites. The State Historic Preservation Office (SHPO) is also responsible for cultural resources and gets involved when a federal permit is required for a project. In Pennsylvania, the SHPO is a bureau within the PHMC. The consultant working with the trail builder should confirm that the project will not adversely affect archaeological/cultural/historic resources and obtain a Section 106 clearance, if necessary, before laying out the final design and starting construction.

A Pennsylvania Natural Diversity Index (PDNI) receipt is required for both the NPDES permit and nearly all waterway permit applications as part of the environmental review permitting process for construction and other activities. The PNDI review looks for threatened and endangered species and other sensitive environmental areas within the project area. A single PNDI receipt can be used for both the waterway and NPDES permit applications. If potential impacts are indicated on the receipt, coordination must be conducted with the appropriate agency(ies) and clearance must be obtained before a permit would be approved. A list of required documents that should be sent to the applicable agency(ies) will be on the PNDI receipt. If avoidance measures are listed, the applicant must agree to those measures. PNDI receipts and agency clearances are valid for two years from the date of issuance. Make sure this clearance window is appropriate for the project timeframe. If a project involves significant wetland impacts requiring mitigation, a pre-application meeting with the reviewing agencies may be required.

**9. Does trail development fall into a “road maintenance activity”?**

Trail development projects may fall into a Road Maintenance Activity (RMA) if these activities meet the following RMA criteria.

Road Maintenance Activities (RMA) - Earth disturbance activities within the existing road cross-section or railroad right-of-way including: shaping or re-stabilizing unpaved roads; shoulder grading; slope stabilization; cutting of existing cut slopes; inlet and endwall cleaning; reshaping and cleaning drainage ditches and swales; pipe cleaning; pipe replacement; support activities incidental to resurfacing activities such as minor vertical adjustment to meet grade of resurfaced area; ballast cleaning; laying additional ballast; replacing ballast, ties and rails; and other similar activities. The existing road cross-section consists of the original graded area between the existing toes of fill slopes and tops of cut slopes on either side of the road and any associated drainage features.

If your trail project is classified as an RMA, PA CODE, TITLE 25 exempts road maintenance activities from NPDES permit requirements; however, an Erosion and Sediment Control Permit is required

for a project proposing 25 acres (10 hectares) or more of road maintenance activities. A project, or portions of a project, that meet the criteria for roadway maintenance are not counted towards the one-acre threshold for an NPDES permit. In addition, disturbances within the 100-year floodplain do not count towards the one-acre threshold when a Chapter 105 permit is required.

**10. Would non-contiguous sections of trail development (greater than .25 miles apart) all be added together towards a cumulative earth disturbance total, or would each section be treated separately?**

If your trail project has areas of disturbance that are greater than .25 miles apart these will not be calculated together towards a cumulative earth disturbance total, but would be treated separately as individual project disturbance areas.

**11. Are municipalities exempt from Chapter 102 and 105 applications and permitting review fees?**

For Chapter 102, municipalities are not exempt from application and permitting review fees.

For Chapter 105, Federal, State, county or municipal agencies or municipal authorities are exempt from application and permitting review fees.

**12. What are the review and permitting requirements for developing trails in a floodplain?**

Per Chapter 105, a permit is required to “construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment” that is, “located in, along or across, or projecting into a watercourse, floodway or body of water, whether temporary or permanent.” Therefore, a Chapter 105 permit is not needed for projects in a floodplain outside of the floodway; however, “public” officials described below will need a permit under Chapter 106.

Chapter 106 defines the permitting requirements for the Commonwealth, political subdivisions, and public utilities for activities proposed in floodplains. Per 25 Pa. Code Chapter 106, a permit is required to “construct, modify, remove, destroy or abandon a...obstruction in a floodplain.” Chapter 106 authorizations are typically obtained in conjunction with the Chapter 105 permits listed above; projects that require a Chapter 105 authorization do not need an additional application for a Chapter 106 permit. Projects that are located entirely outside of watercourses, floodways, and bodies of water, but are located within a floodplain may need a separate Chapter 106 authorization.

NPDES Disturbed Area = Total Area of Earth Disturbance - RMA Areas Outside of 100-Year Floodplain – Earth Disturbance Activity Areas within the 100-Year Floodplain covered by a Chapter 105/106 Permit.

Floodplain Management Analysis and Consistency Letter: If the proposed water obstruction or encroachment is located within a floodway delineated on a FEMA map, an analysis of the project’s impact on the floodway delineation and water surface profiles may be required. For most

transportation projects, this requirement is fulfilled by sending a request for floodplain management consistency concurrence to the municipality.

**13. When should I apply for a phased project?**

An applicant has the option of applying for a phased NPDES permit should they encounter a situation where it is warranted. A few examples are: (1) A large plan of development whose design and construction will be divided into separate plans of development over time; (2) a project where appropriate plans have been completed for demolition activities and are approvable prior to the other phase(s) of construction. Applicants are advised to follow the appropriate checklist items for submitting information for subsequent phases (for permitted projects).

**14. Once an NPDES permit is issued, how long is it valid?**

NPDES Permits are typically only valid for a period of 5 years from the date of issuance. A permittee may apply for a renewal within 180 days of permit expiration by completing the necessary forms and submitting the appropriate documentation and fees to the county conservation district.