



PENNSYLVANIA
BUILDERS
ASSOCIATION

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October 29, 1999

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street – 14th Floor
Harrisburg, PA 17101
Attn: Mr. James M. Smith

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

Dear Mr. Nyce:

Based upon our conversation of October 26, 1999, I am forwarding written comments restating the points I made at our meeting. I am also forwarding supporting data as per the request of the Commission.

My substantive comments regarding the proposed regulations follow. Regulatory citations refer to the proposed regulations or federal regulation of the Nationwide Pollution Discharge Elimination System upon which the Department of Environmental Protection's (DEP) Program is based. Comment references refer to the comment and response document provided by DEP as part of the regulatory package submitted for the approval of the Environmental Quality Board on September 21, 1999.

Issue #1

The Pennsylvania Builders Association believes DEP has inadequately responded to the comments of the Independent Regulatory Review Commission (IRRC) and others regarding the establishment of a 5000 square feet threshold for requiring a written E&S plan. This requirement is more stringent than existing (40 CFR 122-123 and 63 FR 7858-7906, February 17, 1999) or proposed (63 FR 1536-1584, January 9, 1998) federal regulations. In fact, in its commentary on the regulations, the United States Environmental Protection Agency voiced its reluctance to regulate earth disturbances less than one acre due to a lack of evidence of significant impacts to the environment. The Governor's Regulatory Basics Initiative requires that any state agency promulgating regulations that are more stringent than their federal counterparts must provide justification of the increased regulatory burden is necessary in Pennsylvania.

IRRC requested that DEP establish criteria for determining adverse impacts (Section 102.4 - Comment # 7, p. 15). The Department’s response was that any project over five thousand square feet (5,000 ft²) was likely to cause such an impact. Later the Commission requested that DEP provide substantiation for the 5,000 ft² threshold (Section 102.4 - Comment #12, p. 19). Although the Department cited other jurisdictions that use this threshold, DEP provided no objective rationale justifying the appropriateness of its use Commonwealth-wide.

At our meeting, IRRC requested examples of small site erosion and sedimentation control plans, as well as an estimate of the costs of preparing such plans. Although I have been unable to obtain an example of such a plan in the two days since our meeting, I have coordinated with several engineering firms to establish a reasonable cost estimate. This estimate is based upon a cost plus net fee method of payment for a 5000 square foot impact, assuming land survey data is already available and the discharge is not to special protection waters.

Associate Engineer - site visit and plan design	12 hours @ 18.75/hour	\$225.00
Drafter – prepare plan	4 hours @ 12.50/hour	\$ 50.00
Engineer – review and seal plan	2 hours @ 28.50/hour	\$ 56.00
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Total Labor		\$331.00
Overhead (Total Labor x 1.25)		\$413.75
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Total Cost to engineering firm		\$744.75
Net Fee/Profit (Total Cost x 10%)		\$ 74.48
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Total Billing to Client		\$819.23

Issue #2

Based on public comments, DEP has added language at 102.32(b) indemnifying landowners who, with approved erosion and sedimentation (E&S) control plans and good faith efforts, are subjects to Acts of God which may overwhelm their E&S provisions. We believe the intent of both the original comment and the Department is to indemnify both the landowner and the operator. We request that the regulation be modified to correct this oversight.

Issue #3

We believe that DEP has inadequately responded to IRRC and others' comments regarding the establishment of a \$500 fee when Conservation District offices review many permits and charge separate fees for their services (Section 102.32 Comment #12, p.66).

At our meeting, IRRC requested information on the range of costs associated with County Conservation District review of erosion and sedimentation control plans beyond permit fees. My review of data, submitted to DEP by delegated Conservation Districts, indicates that review fees range from free (16 counties) to \$953.86 per plan review (Luzerne Co.). The average cost for a plan review is \$188.14.

Thank you for your attention to these issues. If you have any questions or concerns regarding our comments, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Mark Maurer" with a long, sweeping horizontal line extending to the right.

Mark Maurer
Regulatory Specialist

cc: Senator Mary Jo White, Chair,
Senate Environmental Resources and Energy Committee
Representative Arthur D. Hershey, Chairman,
Environmental Resources and Energy Committee,
Pennsylvania House of Representatives
Mr. Kenneth Murin, Technical Support Chief,
DEP, Waterways, Wetlands and Erosion Control