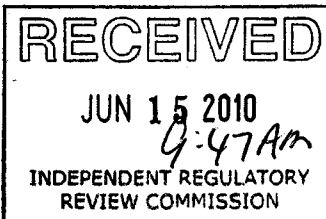




ENGINEERING / ENVIRONMENTAL / SURVEYING

June 15, 2010



2783

Mr. Arthur Coccodrilli, Chairman
 Independent Regulation Review Commission
 333 Market Street, 14th Floor
 Harrisburg, PA 17101

Re: Final Rule-Making – Erosion and Sediment Control (7-440)

Dear Chairman Coccodrilli:

I am writing to urge the Commission not to take final action on the above Rule-Making at its June 17, 2010 meeting for the following reasons:

1. The economic impacts of buffers have not been fully addressed, as the value of the otherwise developable land has not been considered, nor has the potential loss of tax revenue to the state, county and municipal governments been quantified. Statewide, the proposed buffers along 26,215 miles of stream will result in over 953,000 acres within buffers. This does not include buffers along lakes, ponds and reservoirs which will likely then cumulatively place buffers on over 1 million acres state wide. The DEP notes that this represents only 30% of streams within Pennsylvania; however, within certain counties such as those in northeastern Pennsylvania, 80% to 90% of the streams are classified as special protection and would require buffers. In Monroe County alone, in excess of 58,000 acres of buffer may be required. Counties with high percentages of special protection waters will be forced to bear a disproportionate amount of the cost of this regulation without compensation from the remaining portion of the state.
2. Mandatory riparian buffers are a "one size fits all" approach that fails to account for individual site characteristics that may not warrant a buffer or could otherwise provide water quality controls. Based upon experience as a consulting engineer for both municipal and private clients in counties with high percentages of special protection waters, I believe the majority of projects within certain counties (Pike, Wayne, Monroe) will have to seek a waiver request to some degree. In northeastern Pennsylvania, where a preponderance of the waters are within special protections, waivers and modifications within the DEP regulatory process will be an unfair burden, causing extensive time delays, cost, and unsure outcomes. This will also further burden already inundated DEP personnel. We believe that riparian buffers are an effective method for maintaining water quality and should be considered a valuable tool in insuring water quality; however, they should not be mandated.
3. The current draft of the regulations has many unclear and ambiguous passages. Perhaps the most unclear is Section 102.14b.1.iii(B).2.i (section designations do not appear to have been completely reformatted since revisions and are, therefore, unclear). This section specifies required buffer zone widths for WATERS OTHER THAN SPECIAL PROTECTION. It is unclear if this requires buffers along ALL streams, lakes, ponds and reservoirs in the state. This could result in over 1.5 million acres of additional buffers statewide.
4. It should be noted that the extent of the buffer requirement has expanded through the review process, after the close of public comment. The last revision in May 2010 extended the buffers to lakes, ponds and reservoirs, when previously it was limited to streams. The affect of this regulation on existing lake communities, state and local parks, farmers, golf courses, fish hatcheries and other water-dependent facilities does not appear to have been quantified or evaluated.

In light of the above, I believe that the proposed regulation should be further evaluated and request that you not take action or disapprove the regulation in its current form.

Sincerely,

REILLY ASSOCIATES

A handwritten signature in black ink, appearing to read "C. McDermott".

Christopher P. McDermott, P.E.
 Branch Manager

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