

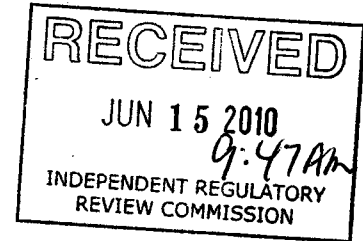


ENGINEERING / ENVIRONMENTAL / SURVEYING

2783

June 15, 2010

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:

We are very concerned with the pending adoption of the revisions to Title 25, Chapter 102.

The goal of the Chapter 102 regulations is to prevent degradation of surface water quality due to stormwater runoff from construction sites and completed construction projects. The current chapter 102 regulations and DEP stormwater guidelines require meeting stormwater quality requirements using Best Management Practices. Riparian buffers are recognized as suitable best management practices for protecting the quality of the stormwater runoff along with other treatment practices such as bioretention.

The main issue with the proposed regulation is that it imposes the same buffer width on all special protection waters without regard to EV or HQ designation, the size of the watercourse or pond, the area of the watershed, the steepness of the banks, the erodibility of the soils along the banks, the extent of flood plain, the presence or absence of wetlands or the extent of other water quality treatment measures proposed. Intermittent natural drainage courses or ponds with small drainage areas in an abandoned pasture would require the same 150 ft. setback as a rare kettle bog or a 100 ft. wide trout stream.

I agree that riparian buffers along streams are extremely valuable for maintaining stream water quality and wildlife habitat but their extent should vary with the particular characteristics of the site and waters and be combined with other treatment practices to achieve water quality protection.

In a number of counties, special protection watersheds predominate. Many prime development sites along existing highways and near busy interchanges and centers of development would be rendered undevelopable. The negative economic impact to both taxing bodies and land owners is staggering. Even in more rural locations many development sites which have small natural drainage channels would require buffers on each side with a total width of 300 ft. thus reducing the potential development and the value of the land drastically. The DEP response to the IRRR comments does not adequately address the profound negative economic consequences. The counties with the highest percentage of special protection waters would bear the highest economic burden.



Mr. Arthur Coccorilli
Page 2 of 2
June 15, 2010

The proposed waiver provision for urban sites and unfeasible sites creates a very unpredictable review process that will likely result in a substantial added permit review burden. It is a waiver process with the power vested in DEP for addressing complex situations where stream and site characteristics and existing land uses interact that would be better regulated at the local planning level. Over a million acres of Pennsylvania land would be put under DEP permit jurisdiction.

The current draft of the regulations has significant unclear or ambiguous sections with the most significant example: Section 102.14(b)2. WATERS OTHER THAN SPECIAL PROTECTION. This section appears to require 100 ft. buffers on all non special protection watersheds in the state which expands what appears to be the intent of the regulation by many times.

The draft of this regulation that was published in the 2009, proposed buffers on only Exceptional Value watersheds which are a very small fraction of the streams in the state. The current draft adds all high quality watershed and ponds multiplying the application of the buffers by one-hundred fold. The section titled WATERS OTHER THAN SPECIAL PROTECTION which lists a 100 ft. buffer would then multiply the application by one-thousand times compared to that originally proposed. While the earlier draft was of some concern relative to economic impact, this current draft is arguably the largest statewide land use restriction ever enacted and deserves much more in depth study of its impacts.

Very truly yours,
REILLY ASSOCIATES

Thomas J. Reilly, Jr., P.E.
President