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INDEPENDENT REGULATORY  
REVIEW COMMISSION

House of Representatives

COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

SCOTT E. HUTCHINSON, MEMBER  
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DEC - 9 2009

ENVIRONMENTAL QUALITY BOARD

December 9, 2009

John Hanger, Chairman  
Environmental Quality Board  
16<sup>th</sup> Floor Rachel Carson Building  
Harrisburg, PA 17105

**Re: Proposed Rulemaking – Erosion & Sediment Control (#7-440)**

Dear Chairman Hanger:

We are writing to offer comments for the Environmental Quality Board's (EQB) consideration regarding the above-referenced proposed rulemaking.

In general, we believe, and are very concerned, that the proposed regulation will hinder development and increase the costs to design and implement projects. You are well aware that Pennsylvania and the rest of the country are enduring a significant economic downturn. Individuals and businesses are working diligently to maintain their business and keeping within constrained budgets. We are concerned that these regulations as proposed will have the effect of negatively impacting business at time when they are not able to address this added burden. Additionally, we are concerned that these regulations could create uncertainty around a project's ability to secure or maintain financing. The result could very well force projects into default. Given these concerns we recommend that the department withdraw this regulation in its entirety.

Nevertheless, if the department contends that this rule-making proceed we would offer the following specific comments.

We have a concern over the proposed riparian buffer requirements, specifically the requirement of including a mandatory 150-foot (300-foot total) buffer for any project that happens to be located within an Exceptional Value waterway. Such a requirement is arbitrary, and may impact other persons with potential interests in the waterway. We encourage the department to withdraw this requirement, or at a minimum allow the buffer setback as a best management option for applicants, or to be applied on a case-by-case basis. We would also oppose any mandatory statewide buffer requirement. We believe this would be a major shift of state policy, which would in effect, amount to a taking of property without legislative oversight or approval.

The regulation as currently constructed, would provide for a permit-by-rule approach but would prohibit its use within Exceptional Value watersheds. While we applaud the department's effort to create and implement a permit by rule – which can expedite a permit review timeframe without relieving a permit applicant of any of their environmental or conservation obligations – we urge the department to rethink its opposition to the use of a permit-by-rule within Exceptional Value waterways.

If the department is confident in the environmental safeguards included in its permit-by-rule initiative, then it should be immaterial whether a specific project is located within an Exceptional Value, High Quality or other watershed. This is of particular concern given the penchant for some groups to submit stream redesignation petitions to the department for the purpose of hindering development.

It appears from the manner in which the proposed regulation is currently drafted, that renewals of existing National Pollutant Discharge Elimination System (NPDES) permits would need to meet the requirements of this regulation. It seems that this would be a difficult and costly challenge for existing permit holders, many of whom have installed utilities, and other infrastructure based on their current permits. We suggest that the proposed regulation be amended to ensure this outcome does not result.

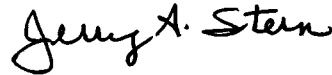
We also understand that fees collected under Chapter 102 are expected to increase substantially, from approximately \$650,000 to nearly \$7.3 million. We believe this proposal is excessive and unwarranted, and should be eliminated from the regulation. However, if the significant majority of these fees are to be retained to allow conservation districts to underwrite their expenses, then we recommend that the fee structure be based upon the size of the proposed project, either by number of units or acres disturbed. We also recommend that the fee schedule be reasonably proportional to the actual cost of performing these services. We would like to know if the department has developed data which demonstrates the actual time and expertise needed to review a permit application. If so, we would appreciate you providing that information to Chairman Scott Hutchinson.

We appreciate your consideration of these comments.

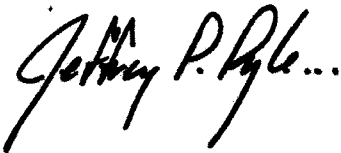
Sincerely,



Scott E. Hutchinson  
PA State Representative  
64<sup>th</sup> District – Venango & Butler Counties



Jerry Stern  
PA State Representative  
80<sup>th</sup> Legislative District



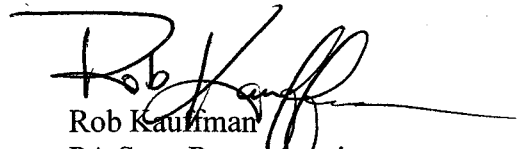
Jeffery Pyle  
PA State Representative  
60<sup>th</sup> Legislative District



Donna Oberlander  
PA State Representative  
63<sup>rd</sup> Legislative District



Richard Stevenson  
PA State Representative  
8<sup>th</sup> Legislative District



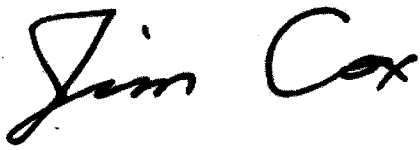
Rob Kaufman  
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Brad Roae  
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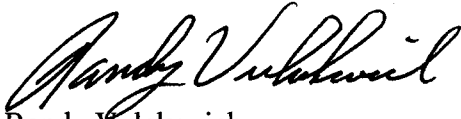
Martin Causer  
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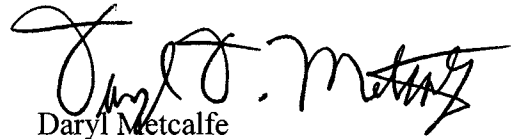
Jim Cox  
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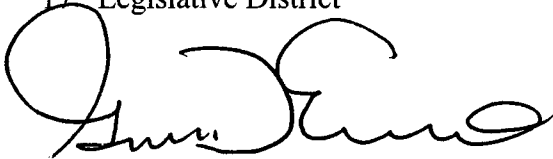
Daryl Metcalfe  
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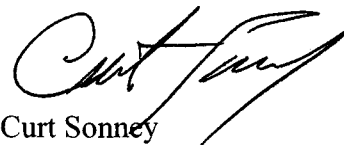
Garth Everett  
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