

2783

RECEIVED

2009 DEC 21 PM 3:30



INDEPENDENT REGULATORY
REVIEW COMMISSION

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

RECEIVED

DEC - 9 2009

ENVIRONMENTAL QUALITY BOARD

December 9, 2009

SCOTT E. HUTCHINSON, MEMBER
152 MAIN CAPITOL BUILDING, PO BOX 202064
HARRISBURG, PA 17120-2064
PHONE: (717) 783-8188
FAX: (717) 705-1945

John Hanger, Chairman
Environmental Quality Board
16th 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.

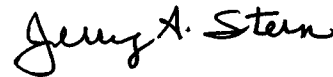
We also understand that fees collected under Chapter 102 are expected to increase substantially, from approximately \$650,000 to nearly \$7.3 million. We believe this proposal is excessive and unwarranted, and should be eliminated from the regulation. However, if the significant majority of these fees 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.

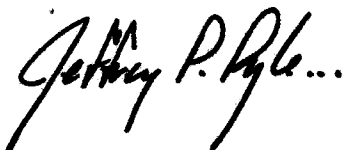
Sincerely,



Scott E. Hutchinson
PA State Representative
64th District – Venango & Butler Counties




Jerry Stern
PA State Representative
80th Legislative District



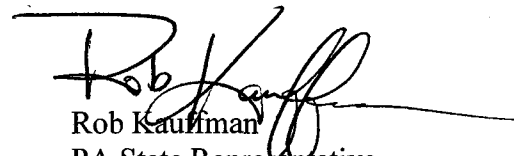
Jeffery Pyle
PA State Representative
60th Legislative District



Donna Oberlander
PA State Representative
63rd Legislative District



Richard Stevenson
PA State Representative
8th Legislative District




Rob Kaufman
PA State Representative
89th Legislative District



Brad Roae
PA State Representative
6th Legislative District



Martin Causer
PA State Representative
67th Legislative District



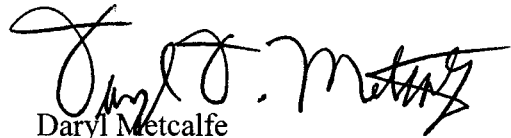
Jim Cox
PA State Representative
129th Legislative District



Rosemarie Swanger
PA State Representative
102nd Legislative District



Randy Vulakovich
PA State Representative
30th Legislative District



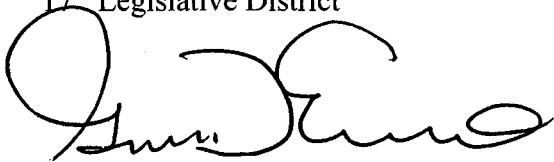
Daryl Metcalfe
PA State Representative
12th Legislative District



Michele Brooks
PA State Representative
17th Legislative District



Todd Rock
PA State Representative
90th Legislative District



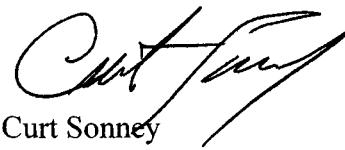
Garth Everett
PA State Representative
84th Legislative District



Matt Gabler
PA State Representative
75th Legislative District



Sue Helm
PA State Representative
104th Legislative District



Curt Sonney
PA State Representative
4th Legislative District