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**Comments on the Proposed Riparian Buffer Guidance
In Association with Changes to Chapter 102**

ENVIRONMENTAL QUALITY BOARD

INDEPENDENT REGULATORY
NEW YORK

Applicability: I would like to see a clearer emphasis on the definitions of “perennial” and “intermittent” streams and examples of each stream type clearly represented. I would also advise including the language that “ephemeral” streams or watercourses are exempt from these buffer proposals. This needs to be clearly detailed, as there already exists considerable conflict between individual county conservation districts and DEP regional offices in regard to these definitions.

Class 1, 2, 3 Buffers: The 100-foot buffer minimum (or 150-foot for EV and HQ streams) is not always necessary to protect the stream, wetland, lake, pond, or groundwater recharge area. There have been plenty of instances in my career where a 10 or 20 foot buffer would have made a great positive benefit to a small stream or wetland (and upheld the functions and benefits that are detailed in “Appendix A”). In particular, agricultural sites that plow or graze up to stream banks or wetland edges can often see a great benefit with a much smaller buffer area. Many older agricultural sites have no buffers what so ever. It would be wise to require these sites to have some minimum buffer.

There needs to be flexibility to the 100-foot buffer requirement. The functions & values and individual site conditions may allow for a lesser buffer to achieve relatively the same results. Some small wetlands and stream channels would have buffer areas that greatly exceed the actual wetlands. For example, a linear wetland feature (assume a ‘bed & banks’ wetland along a small watercourse – a common occurrence) of 200 feet in length by 21.75 feet in width is approx. 1/10th of an acre in size. With a 50-foot buffer around this wetland/stream, the protected area is now approx. .77-acre in size (about 33,500 ft²). With a 100-foot buffer the protected area is now approx. 1.78-acres (about 77,870 ft²). This is over 17 times larger than the actual wetland area! Of course the more protected area, the better in terms of “Appendix A” and functions and values, but there needs to be a reasonable accommodation made for farmers and landowners based on actual field and biological conditions. Landowners are often shocked when they learn that they cannot use wetland and stream areas located on their property for development or agricultural purposes. When they find out that buffers greatly increase these areas many will become angry and fight the system. The 100-foot buffer is a very aggressive amount that should not apply across the board. This is more than most surrounding states (or the federal government) are requiring.

Noxious Weeds and Invasives: In regard to the 3 classes and the amount or percentage of noxious weeds and invasive species permitted, there may need to be some changes. To be realistic, most of Pennsylvania is surrounded by areas with noxious weeds, whether they be agricultural areas, roadsides, railroad ROW’s, pipelines, residential areas, or natural vegetation breaks. The seeds blow in from these areas onto the protected areas and are ever-present. “0%” of noxious weeds in Class 1 and Class 2 riparian forest buffer areas is actually not pragmatic. Plants like Canadian Thistle (*Cirsium arvense*) and Bull Thistle (*Cirsium vulgare*) can sprout from disturbed ground in a blow-down or other area. There seeds remain viable for many years in the soil. Multiflora Rose (*Rosa multiflora*)

is spread by birds across the entire southern tier of Pennsylvania and now thrives in or around open wetlands. This was spread by the PA Game Commission to farmers in the 1960's and trumped as a 'living fence'. You cannot be completely rid of the seed bank and to claim 0% is not being honest on any site. As for the invasive species percentages, I think that you are being a bit generous in allowing less than 25% in Class 1 areas. If we are to be serious in eliminating and controlling some of these plants we need to start here by perhaps persuading the landowner or applicant to remove these plants beforehand. I believe that less than 10-15% invasives should be the amount in a Class 1 area.

Permanent Easements for Buffer Protection: Clarity needs to be made here as to what is actually required in the way of permanent protection for riparian forest buffers. I believe that requiring legal protection for a riparian buffer on a small landowner may place undue hardship on them. Larger landowners and developers however would need to provide legal protection or the buffers would likely be ignored. The USACE has required legal protection in the way of permanent easements for wetlands on sites being developed. They also provide examples of legal easements to follow.

Riparian Buffer Classification & Training: I think that it is important for the DEP to provide or direct Biologists, Foresters, and the like to the appropriate training for the classification of and restoration of riparian buffers. The 'Appendix B' provides preliminary guidance, however I believe that we need some type of certification to eliminate or decrease the questions from conservation districts, DEP, and other agencies.

Chapter 102 – Fees: The new NPDES fees should be structured for the size of the planned disturbance, similar to what the county conservation districts now charge fees for E & S plans. The \$2500 General NPDES fee (\$5000 Individual) should not be imposed on a small site where an individual is constructing a home and discharges a portion of the stormwater into a roadside swale or storm sewer ("waters of the commonwealth"). This is burdensome on an individual to go through and pay for and should be a very simple review time by the agency. Larger sites require longer review times and should be charged more for the permit. Most people that I have worked with felt that the \$250 fee was low for the existing NPDES permit, however the new fee should not be 10 times greater! Please structure your fees accordingly to the planned disturbance area!

Permit by-Rule: The new NPDES fee for permit-by-rule (\$500.00) is very reasonable except that the requirements to meet this permit will entail much greater costs than the associated savings would bring. Requiring a Professional Engineer or Geologist to prepare and seal the plans will greatly increase the costs of small projects, and may make this permit relatively un-used. The riparian buffer studies and requirements substantially add to this cost. I am convinced that 95% of the E & S and NPDES plans (applications) could be prepared by a high school grad with common sense and the ability to do 'general math' equations. Aside from the detailed stormwater reports that are now required for the PCSM plans, some stormwater basin calculations, and large pipe-flow sizing, there is not a great need for engineering in these plans. After all, the culprit here is 'sediment' and the ability to keep it out of the streams, wetlands, and waterways. It is a simple thing that needs to be addressed on-the-ground and cannot be completely solved through design

plans and new regulations. Enforcing the existing regulations and providing field follow-up is the key. There is also again, no emphasis on bringing into the equation the vast agricultural sites with limited or non-existent BMP's. They have produced, by the state's own studies, over 50% of the sediment pollution to our waterways.

Sincerely,

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