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From: Robert Fetter [RFetter@Yorkccd.org]
Sent: Wednesday, November 04, 2009 4:28 PM
To: EP, RegComments
Cc: Mark Kimmel; Eric Jordan; Gary Peacock; Mark Flaharty; Murin, Kenneth; Auchenbach, Dean; Beshore, Barbara
Subject: YCCD Chapter 102 Reg revision comments - 9-25-09 (2).doc

INDEPENDENT REGULATORY
REVIEW COMMISSION

Environmental Quality Board,

Attached is York County Conservation District's comments for your consideration on the PROPOSED RULEMAKING ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CH. 102] Erosion and Sediment Control and Stormwater Management [39 Pa.B. 5131] [Saturday, August 29, 2009]

Thanks

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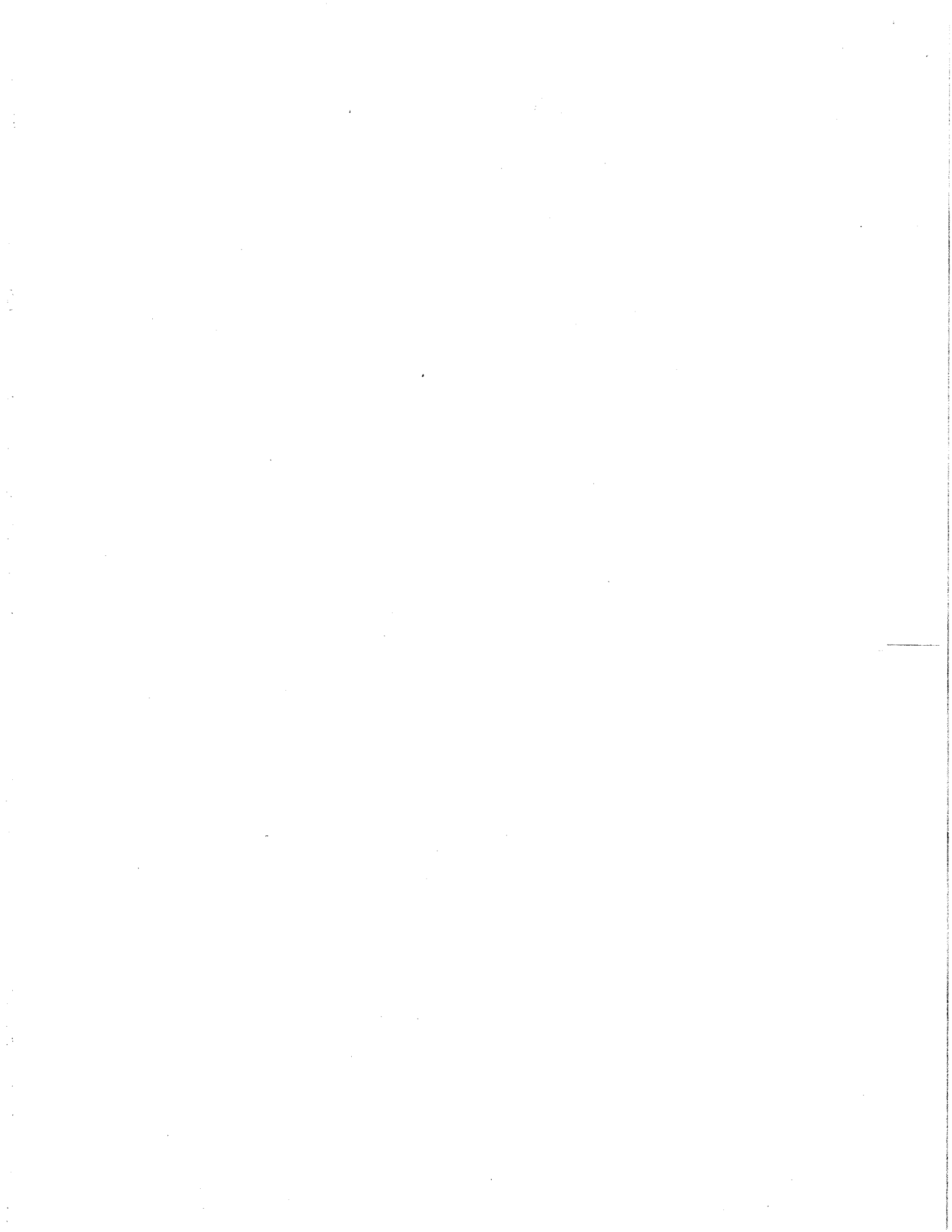
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York County Conservation District (YCCD) Comments

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 102]
Erosion and Sediment Control and Stormwater Management
[39 Pa.B. 5131]
[Saturday, August 29, 2009]**

- 1) 102.1 Definitions. The term "point source" should also exclude diversions used for the purpose of diverting clean water originating from undisturbed areas. Do level Spreaders and compost soxx traps constitute a point source discharge?
- 2) Is a buffer required for wetlands? Riparian Forest Buffer definition in section 102.1 states A BMP...along surface waters... The surface water definition includes wetlands.
- 3) YCCD welcomes the addition of erosion and sediment control requirements for animal heavy use areas.
- 4) District ag staff support proposed regulations for agricultural erosion and conservation plans
- 5) Is earth disturbance from ATV activities considered earth disturbance and regulated under chapter 102 regulations?
- 6) 102.4(c) has been changed to now require conservation districts to consult with the Department before requiring "other information necessary to adequately review a plan, or require additional BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality..." Conservation Districts conduct inspections on a nearly daily basis where imperfect plans may necessitate additional BMPs to protect water quality prior to the next storm event. Where site conditions necessitate immediate interim BMPs to protect water quality, installation of these BMPs (discussed with and agreed upon by the responsible parties) should not require consultation with the understaffed Department as this will only delay installation of BMPs. In most cases Region DEP staff will defer to and rely on conservation district E&S staff who are on the ground.
- 7) 102.5(3)(d) conflicts with 102.5(3)(i). Section i states that an E&S permit is not required for Section 404 permitted activities however section d states that an E&S permit is required.
- 8) 102.5(3)(e) - YCCD welcomes the requirement for a preconstruction meeting for permitted activities. YCCD would further strongly recommend that a pre-application or pre-submission meeting be required for all permitted activities not just for the NPDES permit-by-rule. *On-site* pre-application meetings are

preferred and ensure both the conservation district and the plan preparer visits the site and see it first hand. Pre-application meetings are a proactive approach that allows potential issues to be anticipated and resolved before the client incurs significant costs addressing deficiencies found during the plan review process.

- 9) 102.6(b)(2) – The NPDES permit fees have increased 10 fold – from \$250 for General NPDES permit to \$2,500. A concern is that the fee does not take into account the size of the project and may not be equitable, though easy to understand. The proposed NPDES fee of \$2,500 or \$5,000 is charged regardless of whether the site is a 2 acre site or a 200 acre site. The fee is unlikely to cover the costs for larger sites and on the other hand be particularly burdensome for smaller sites (that could even include single family residential lots requiring an NPDES permit). A suggestion could be to implement a tiered system where a single family lot would be charged \$250 and others \$2,500. Currently, YCCD charges an additional \$250 administrative fee for each administratively incomplete submission as specifically recommended by the Department. Is the Department now recommending that a \$2500 or \$5,000 fee be charged for each administratively incomplete re-submission?
- 10) The proposed regulations should address the hot-button issue of off-site discharges to non-surface waters.
- 11) 102.8 - there is no mention about coordination of PCSM stormwater requirements. This is an issue that should be addressed. Currently we have had instances where there were conflicts between Municipal and PSCM requirements. Coordination and consistency should be addressed during design phase.
- 12) 102.14(a)(3) – This section appears to encourage the use of level spreaders which have a proven track record of being ineffective at protecting downslope areas (in this case the critical riparian buffer) from gully erosion. Concentrating stormwater flows should be discouraged on-site prior to reaching level spreaders and sheet flow should be encouraged or required.
- 13) 102.15(b) – Do projects that are greater than 100 feet from a stream qualify for the permit-by-rule given they can not by the nature of their location provide for a riparian forest buffer?
- 14) 102.15(c)(1) - YCCD welcomes the requirement for a pre-submission meeting with the Department or the conservation district for the permit-by-rule option. YCCD strongly recommends requiring this for all NPDES-permitted sites.
- 15) The permit-by-rule option does not define/specify what constitutes a “low impact project.” Who will make the determination that a project design has a sufficient quantity and quality of BMPS to be considered a “low impact project?”
- 16) Under PBR, there is no requirement for a technical review of the E&S plan which will have district staff dealing with deficient plans in the field. If projects are shut down after construction has started due to violations and having to review E&S plans, the costs of construction would be significantly higher than when dealing with issues during the planning phase.

- 17) The proposed regulations do not require the seal of a licensed professional for E&S plans involving structural BMPs however the most current NPDES Permit Summary Sheet (3930-PM-WM0035 Rev. 5/2007) requires the seal of a licensed professional. Please clarify.
- 18) 102.22(a) - YCCD welcomes the requirement for restoring & replacing topsoil.
- 19) 102.22(b)(1) – Requiring temporary stabilization of disturbed areas sitting for more than 3 days appears to be too restrictive (assuming effective perimeter BMPs are properly installed and maintained). For example, a graded parking lot that becomes saturated by a rain event may not be stoned for several days until soil conditions allow and it is unlikely a contractor will be willing to spread temporary mulch such as straw only to remove it a few days later. Temporary mulch will also prevent the soil from drying out and further delay permanent stabilization. Previous Chapter 102 regulations required 20 days and the current Chapter 102 regulations require “immediate” stabilization. 7 or 14 days may be more reasonable.
- 20) 102.32(d) - YCCD welcomes this section allowing the District to recover costs in taking enforcement actions.

