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South Middleton Township

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November 6, 2009

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Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

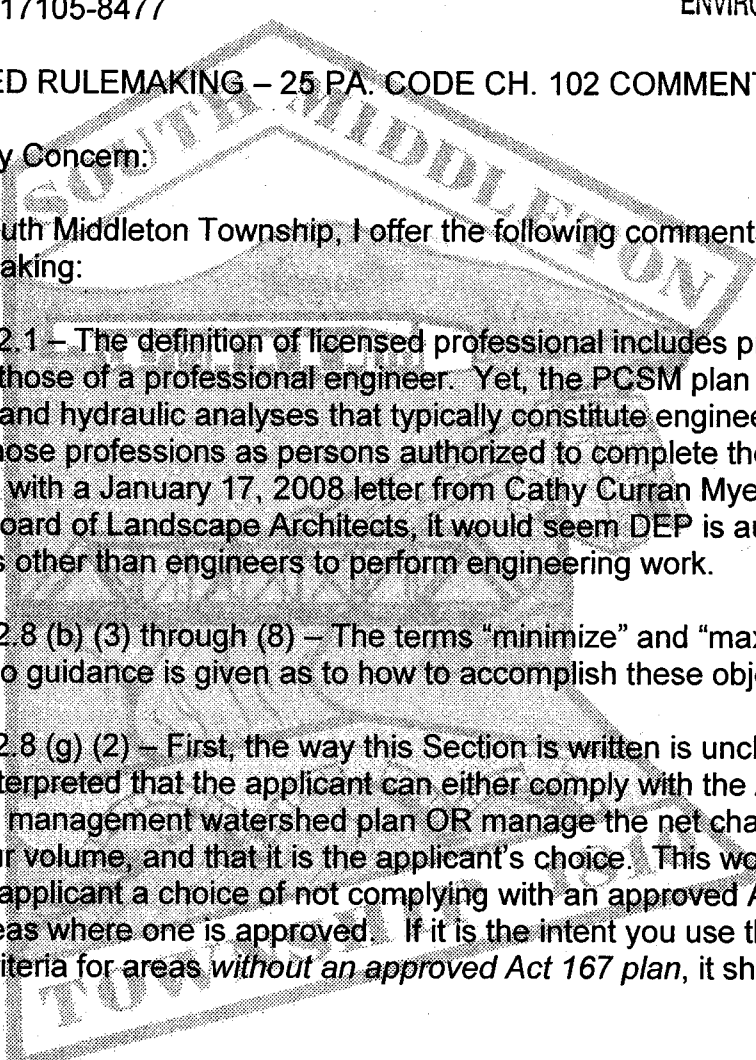
ENVIRONMENTAL QUALITY BOARD

Re: PROPOSED RULEMAKING – 25 PA. CODE CH. 102 COMMENTS

To Whom It May Concern:

On behalf of South Middleton Township, I offer the following comments to the proposed rulemaking:

1. Section 102.1 – The definition of licensed professional includes professions other than those of a professional engineer. Yet, the PCSM plan requires hydrologic and hydraulic analyses that typically constitute engineering. By including those professions as persons authorized to complete the PCSM plan, along with a January 17, 2008 letter from Cathy Curran Myers to the PA State Board of Landscape Architects, it would seem DEP is authorizing professions other than engineers to perform engineering work.
2. Section 102.8 (b) (3) through (8) – The terms “minimize” and “maximize” are used, but no guidance is given as to how to accomplish these objectives.
3. Section 102.8 (g) (2) – First, the way this Section is written is unclear. It could be interpreted that the applicant can either comply with the Act 167 stormwater management watershed plan OR manage the net change in the 2-yr/24-hour volume, and that it is the applicant’s choice. This would seem to give the applicant a choice of not complying with an approved Act 167 plans in areas where one is approved. If it is the intent you use the alternate criteria for areas *without an approved Act 167 plan*, it should be clarified so.
4. Section 102.8 (g) (2) (i) – Mandating that the existing non-forested areas be considered meadow in good condition may allow greater flows in the post-construction condition than existing. In areas of karst topography, where there are significantly lower runoff rates, this will allow higher post-construction rates than existing runoff rates.
5. Section 102.8 (g) (3) – First, the way this Section is written is unclear. It could be interpreted that the applicant can either comply with the Act 167



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stormwater management watershed plan OR manage the net change in the peak rate for the given storms, and that it is the applicant's choice. This would seem to give the applicant a choice of not complying with an approved Act 167 plans in areas where one is approved. If it is the intent you use the alternate criteria for areas *without an approved Act 167 plan*, it should be clarified so.

Second, the Stormwater Management Act requires counties to enact a stormwater management watershed plan for each watershed in their county. Thus, the option to manage the net change in peak rates for the 2-year through 100-year storms seems un-necessary. By law, there should be an approved Act 167 plan in each watershed.

6. Chapter 102.8 (k) – What is the licensed professional responsible for? What if a contractor, who works for the owner, will not comply with the professional's direction? Who is then responsible? Does this section authorize a "licensed professional", other than an engineer, to be responsible for structurally engineered BMP's?
7. General – Requiring post construction stormwater management as part of the E & S and NPDES review will increase the workload of both DEP and Conservation District staff. Conservation Districts are not staffed with licensed professionals capable of reviewing the work of other professionals. Consideration should be given to implementing a consultant reviewer program for expedited review, as well as support for the conservation districts.
8. General – Consideration should be given to requiring that the owner/contractor hire an inspection agency to inspect the construction of PCSWM BMPs to reduce the increased workload on DEP and Conservation District staff.
9. General – It would seem by this legislation that the responsibility for regulation of stormwater management facilities is being assumed by the Commonwealth. Traditionally, local municipalities have assumed that responsibility as authorized under the Municipality Planning Code. There does not seem to be a mechanism for resolving conflicts with a municipality's ordinance and the new regulations. For instance, where a municipality prohibits infiltration in a wellhead protection area based upon DEP's model ordinance, which guideline governs?

It would seem that the municipality has more capacity and control to resolve resident complaints associated with stormwater management. First, the municipality has the authority to approve land development and subdivision plans and issue permits. Second, there is a reimbursement for engineer

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consultant's time under the MPC. Is there funding available to hire more staff to deal with the increased workload associated with the County/DEP assuming this responsibility? Are counties going to hire qualified professionals to review the work?

Should you have any questions, or need further clarification on any comment, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian P. O'Neill".

Brian P. O'Neill, P.E., S.E.O.
Township Engineer

Cc: correspondence

