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Northampton County Conservation District

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November 13, 2009

RECEIVED

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

NOV 17 2009

ENVIRONMENTAL QUALITY BOARD

Re: Written Comments
Proposed Rulemaking
25 Pa.Code Chapter 102
Erosion and Sediment Control and Stormwater Management

Attached find comments and questions regarding the proposed revisions to Chapter 102. The concerns were developed by the Northampton County Conservation District staff and reviewed by the Board of Directors. The consideration of the EQB, to these issues, is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Pysher".

Bruce Pysher
District Manager
For the District Directors

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 NOV 23 PM 1:43

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Chapter 102 Revision Comments and Questions:

Comments (*in italics*):

§ 102.1. Definitions.

Diversion--A facility, including a channel, [terrace or dike] or a conveyance constructed up-slope of [an earth disturbance activity for the purpose of diverting] the disturbed area to divert clean offsite runoff away from [an existing or proposed disturbed area] the earth disturbance activity *ADD: to an appropriate discharge area (i.e. existing or constructed stabilized swales, waters of the Commonwealth, or approved alternatives).*

Surface waters--Perennial and intermittent streams, rivers, [*creeks*], lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds, and constructed wetlands used as part of a wastewater treatment process. (*Existing natural/artificial channels/swales are not considered surface waters (they are not considered intermittent streams due to the fact that it is not flowing in a bed composed primarily of substrates associated with flowing water (i.e. grass lined channel)?) Will these now be considered off-site discharge to non-surface waters; storm sewers would also fall into this category; NPDES permits are required for point source discharges to 'surface waters' according to 102.5, so for an example, a permit will not be required for a basin discharge to an existing grass-lined drainage swale or direct connection to storm sewer?*)

§ 102.6. Permit applications and fees.

(b)(1)(i) *Since the PBR fee is less than an Individual NPDES permit fee, an applicant will choose PBR over NPDES everytime to avoid District and DEP review in Special Protection Watersheds. In other words, the fee schedule gives the applicant the incentive to go for the PBR when there will be no buffer required and NPDES when a buffer will be required per the set standards. The PBR fee should at least be equal to the Individual NPDES permit fee if not more; although District and DEP technical reviews are not performed these projects will call for additional inspections and most definitely complaint responses.*

(c)(2) When the Department [*or delegated conservation district?*] determines that an application or NOI is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have 60 days to complete the application or NOI, or the Department [*or delegated conservation district?*] will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or NOI is considered withdrawn. When an application or NOI is considered withdrawn, the Department [*or delegated conservation district?*] will close the application file and take no further action to review the file.

[Does this apply for ROC administrative review as well?]

§ 102.8 PCSM requirements

(i) *Can a non-PCSM delegated conservation district require a PCSM plan be submitted to PA DEP for review for General NPDES permitted sites?*

§ 102.14 Riparian forest buffer requirements.

Will work to develop or enhance buffer zones require 105 permits?

(a)(1)(i) *There are terms used here that are not defined in Chapter 102, this could result in confusion or arguments, i.e. river, creek, lake, pond, & reservoir are not defined in Chapter 102. Natural lakes/ponds/reservoirs only? These terms should be defined or the term 'surface waters' could be used with exclusions of wetlands, seeps, springs, estuaries, etc.*

(a)(3) *Does this statement then require a level spreader upslope of the buffer from any sediment or detention basin?*

§ 102.15. Permit-by-rule for low impact projects with riparian forest buffers.

(b)(2)(i) *Highly erodible conditions: [What if the soil (i.e. Urban soils) is not rated by NRCS websoil survey – soil testing required?]*

(b)(2)(ii) *Should clarify minimum supporting information required, i.e. geo-technical study, site specific testing, etc.*

(b)(5) *If there is a PNDI hit, PBR is excluded?*

(c)(1)(i)(D) *Preliminary site design: E&S and PCSM concept plan should be required for pre-submission meeting, preliminary site design will not be helpful for District to make comment.*

(c)(1) *The registrant should also be required to provide supporting information to show that the project qualifies for PBR; how this project does not include any of the exclusions covered in 102.15(b). Critical stages should be identified at the time of the presubmittal meeting as well. (Will this be part of the Presubmittal Meeting checklist?)*

(c)(2) *There are terms used here that are not defined in Chapter 102, this could result in confusion or arguments, i.e. river, creek, lake, pond, & reservoir are not defined in Chapter 102. Natural lakes/ponds/reservoirs only? These terms should be defined or the term 'surface waters' could be used with exclusions of wetlands, seeps, springs, estuaries, etc.*

(c)(4)(i) *The statement “significant new or increased changes” should be clarified/defined.*

(d)(1) *Does the requirement for use of nondischarge alternative BMPs solely for E&S design now prohibit use of sediment basins and traps for PBR projects? These alternatives may not be adequate.*

(d)(2)(i) *A minimum circulation should be indicated; the term 'general circulation' is too general.*

(d)(2)(i)(B) *A 30-day period following publication of the notice during which written comments may be submitted by interested persons to the applicant. [Is it possible to require that these comments be submitted to District/DEP/Municipality]*

(l)(1) *The Department [or the conservation district] may deny coverage under this permit-by-rule...*

§ 102.43 Withholding permits.

Does this apply to PBR as well?

§ 102.6 Permit application and fees.

(c) *Complete applications or NOI. [Does this include a ROC? If so, ROC should be specified and consistently referenced throughout 102.6 (c) (1), (2), and (3).]*

Questions:

- For PBR coverage, how will sinkhole potential or land sliding potential be identified? (e.g. published soil survey; Web soil survey; site specific testing; etc.)
- For PBR coverage, how will it be determined if earth disturbance activities are being conducted in or on sensitive areas? For Example:
 - o What type of testing and analysis will be required or considered sufficient in making this determination (e.g. site specific testing, case studies, etc.)?
- For coverage under PBR or where buffers are required because of EV waters, how are buffers handled if project is within the allotted distance from a watercourse, but the watercourse is not on the subject property?
- For projects working under coverage of PBR, what authority does the Conservation District have to request changes in the field upon finding inadequacies/failures during site inspections? Since the plans must be sealed by a professional, do non-engineering District staff have a right to question the design or request changes?
- Although PBR does not require an E&S review by the Conservation District prior to the start of construction, many municipalities do require District review per municipal ordinances, per municipal SALDO, to meet MS4 requirements, etc. If E&S plan is not adequate prior to acknowledgement of PBR, can project begin? Once again, PBR requires that the plans be sealed by a professional; do non-engineering District staff have a right to question the design or request changes during review?
- For projects working under coverage of PBR that also require Chapter 105 permits (other than small projects permits), what portion of the project is the District required to review? Although PBR does not require District review, Chapter 105 permits (other than small projects permits) do require District review.
- Are Chapter 105 permits required for establishment or improvement of buffers within floodways? For project working under PBR coverage, what portion of the project is the District required to review? Although PBR does not require District review, Chapter 105 permits (other than small projects permits) do require District review.
- PBR coverage is not available to a person who has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit and schedule of compliance or order issued by the Department. What determines a failure to comply (e.g. previous or ongoing enforcement?; violations noted on an inspection report?; etc.)
- Under PBR coverage in HQ watersheds, only non-discharge alternative BMPs are allowed; does this disallow use of sediment traps and sediment basins in HQ watersheds? Is this a good idea? In addition, the definition provided for nondischarge alternative only addresses PCSM; it does not address E&S BMPs as are required by PBR coverage.
- In EV watersheds and under PBR coverage, buffers will be required along rivers, streams, creeks, lakes, ponds or reservoirs. Since several of these terms (i.e. lake, creek, pond) are not defined, how will it be determined if the watercourse/waterbody requires a buffer?

- For riparian forest buffer management requirements, who is required to manage and maintain these riparian forest buffer areas during and after earth disturbance activities?
- Is it possible proposed new or increased changes to the earth disturbance activities on projects under PBR coverage may kick it into requiring NPDES permit coverage? For example, the new or increased earth disturbance activities no longer meet eligibility for PBR coverage for which the original ROC was provided written verification of coverage (e.g. proposed earth disturbance area exceeds the maximum 15 acre limit of disturbance, is within or on sensitive areas, encroaches on required riparian forested buffer area, etc.)
- Will a permit fee be required if a project covered under PBR proposes a modification to the project or an amended ROC? If so, Chapter 102 should specify that a permit fee is required with submissions of modifications to PBR projects or amended ROC's requesting written verification of coverage under PBR.
- Is Public Notice, as outlined in Chapter 102, required prior to the submission of a ROC amendment for projects covered under PBR? Prior to the submission of an original ROC Public Notice is required. If new or increased earth disturbance activities not included in the original ROC are later proposed an amended ROC is required to be submitted to the Department or Conservation District so verification of coverage may be determined. Since these proposed changes were not previously included in the original ROC, Public Notice should be required prior to submission of an amended ROC.
- Is a pre-submission meeting with the Department or Conservation District required prior to submission of an amended ROC?

