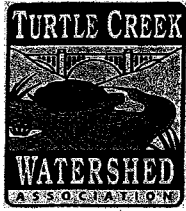


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# Turtle Creek Watershed Association

Center for Environmental Research & Education  
331 Fisher Hall 600 Forbes Avenue  
Duquesne University  
Pittsburgh, PA 15282  
412/396-1550  
good.fish@live.com

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ENVIRONMENTAL QUALITY BOARD

October 6, 2009

Honorable John Hanger, Chair  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Re: PA Bulletin 09-1610  
Revisions 25 Pa Code: §102

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Mr. Hanger and Board Members:

Please accept our comments related to proposed changes to Erosion and Sedimentation Control and Stormwater Management rules. Our recommendations are based upon over 40 years of organizational experience (and many decades more of collective board member experience) with erosion and sedimentation control, stormwater management planning, stream restoration, mine drainage remediation, and community education.

Our 147 square mile watershed and 315 major stream miles feature a multitude of land uses from industrial to forest, urban to agricultural, commercial to residential in thirty-three communities and two counties. We suffer the usual water quality and quantity problems associated with each use, and others not so typical.

One of the most important lessons we have learned is that traditional methods of erosion and sedimentation control and of stormwater management do not function nearly as well in the field as they do on paper in the planning stages. The collective consequences of these functional gaps have resulted in more frequent flooding episodes of growing severity - increasingly occurring in areas that rarely or never flooded before.

Financial, physical, and emotional burdens for these flooding episodes are borne again and again by homeowners, businesses, utility companies, and municipalities - in many cases already overwhelmed by the recent economic downturn. Flood insurance is either inadequate or unavailable to cover their costs. State and federal restoration funds are in short supply. These victims are also often completely innocent and removed from any influence in creating the flooding conditions or in resolving them.

More effective and more responsible land development practices are their only hope. We, and they, look to the members of the Environmental Quality Board to effect these changes. However, we note that the proposed rule changes do not always appear to be designed to achieve more effective and responsible practices.

### ***General Provisions - Definitions***

We support the inclusion of more accurate definitions for the terms listed - including ones for terms slated for deletion.

### ***E&S Control: Enhanced Requirements for Agricultural Activities***

Standard agricultural activities such as tilling and heavy animal use generate substantial amounts of eroded sediments, which in turn clog stream channels, thus reducing their ability to carry high water events and increasing flooding potential. These eroded sediments are also increasing Pennsylvania's contributions to significant economic and environmental problems in the Delaware Bay, the Chesapeake Bay, and the Gulf of Mexico as well as transportation and environmental problems in the streams and rivers leading to each.

We support enhancement of these provisions to significantly reduce the amounts of sediments eroded during agricultural activities. We also support enhanced inspection and enforcement of these provisions and enhanced compliance assistance to small farmers.

### ***E&S Control: Enhanced Requirements for Non-agricultural Activities***

Conventional land development practices under-estimate the value of natural infrastructure for erosion and sedimentation control and for stormwater management. Incorporating these features into development planning from the outset can save money, bring better results, reduce post-construction flood potential, and reduce development costs.

We support enhancement of these provisions to significantly reduce the amounts of sediments eroded during land development activities and the volumes of initial stormwater runoff during and after construction.

We particularly support enhanced inspection and enforcement of these five provisions for earth disturbances:

- (i) Minimize the extent and duration of the earth disturbance.
- (ii) Maximize protection of existing drainage features and vegetation.
- (iii) Minimize soil compaction.
- (iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.
- (v) Protect, maintain, reclaim and restore the quality of water and the existing and designated uses of waters within this Commonwealth.

We also particularly support inclusion of these five provisions for earth disturbance E&S control plans required to be prepared by a competent professional:

- (iv) The [amount] volume and rate of runoff from the project [area] site and its upstream watershed area.
- (v) The location of all surface waters [of this Commonwealth] which may receive runoff within or from the project site and their classification under to Chapter 93.
- (vi) A [written depiction] narrative description of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity.
- (vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities that ensure the proper functioning of all BMPs.
- (viii) Supporting calculations and measurements.

### ***Permit Requirements***

Earth disturbance disrupts normal water cycle functions which maximize rainfall infiltration and reduce stormwater runoff volumes. The outcome is less safe infiltration, more runoff, more erosion, and greater sedimentation - four results our laws and regulations should be discouraging.

We support adding the following language to permitting requirements:

- NPDES Phase II requirements for 1-5 acres of disturbance;
- Chapter 93 anti-degradation provisions;
- oil and gas disturbances of 5 or more acres (although, requiring plans and permits for 1-5 acres would reduce substantial erosion, sedimentation, and unchecked stormwater runoff problems our watershed has experienced from oil and gas drilling sites);
- earth disturbance of 5 or more acres not covered elsewhere (although, again our experience shows that 1-5 would prevent many more of the problems this scale of disturbance results in);
- required pre-construction meetings; and
- defined long-term operation and maintenance of post-construction stormwater management measures by the permittee or co-permittee.

### ***Permit Applications and Fees***

Current fee structures do not support the amounts of resources required to review, approve, inspect, and enforce the erosion and sedimentation control or stormwater management permitting process at the state or county levels. The resulting lack of personnel and equipment lengthens review and approval times, reduces the quality and number of inspections, and reduces enforcement potential.

This situation has led to a climate of routine violations without significant risk of regulatory consequences, but with substantial increases in high water damages and their associated risks and costs for innocent parties.

We support fair fee increases to cover permitting program expenses. (We also note that excessive fees would encourage efforts to avoid permitting completely.) We support requiring PCSM and PPC plans to be submitted with applications.

### ***Permit Termination***

As we know from experience, site specific selection and proper maintenance of erosion and sedimentation control or stormwater management practices both during and after construction is presently often inadequate or completely lacking. The consequences for these lapses translate into risk, damage, and expense for adjacent or downstream parties.

Therefore, we support identifying responsible persons to operate and maintain these practices in accordance with permit terms and conditions and holding them accountable for violations until permits are officially terminated while permittees are in full compliance.

### ***PSCM Requirements***

Regulations of any sort are often seen as unreasonable impositions upon developers and contractors. If the development process never resulted in harm or damage to others, this viewpoint would have validity. However, standard, conventional development practices have

collectively resulted in substantial erosion, sedimentation, water pollution, and flooding problems.

That being true, we support the inclusion of well-crafted, site-specific PSCM plans for all NPDES permits or other DEP 102-related permits that meet the nine stated criteria:

- (1) Preserve the integrity of stream channels and protect the physical, biological and chemical qualities of the receiving stream.
- (2) Prevent an increase in the rate of stormwater runoff.
- (3) Minimize any increase in stormwater runoff volume.
- (4) Minimize impervious areas.
- (5) Maximize the protection of existing drainage features and existing vegetation.
- (6) Minimize land clearing and grading.
- (7) Minimize soil compaction.
- (8) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff and pollutants.
- (9) Protect, maintain, reclaim and restore the quality of water and the existing and designated uses of waters within this Commonwealth.

We strongly support the engagement of licensed professionals throughout the design and implementation stages of development. Too often, engineers and other professionals are retained only until state and local permits are received. Once construction starts, there is no one on the job to insure the project will be built as designed. Shortcuts compromise erosion and sedimentation controls and stormwater management measures to reduce project costs.

#### ***Erosion and Sedimentation Control and Post-construction Stormwater Management BMPs - General Requirements***

Use of a Best Management Practice Manual helps establish consistent design and performance standards for all. We support the use of the *Pennsylvania Stormwater Best Practices Manual* and *Riparian Forest Buffer Guidance*. We also support regular updates of these manuals to include newer methods and to insure Pennsylvania standards and protections are not below those of other states.

Approval processes for alternatives are too often used to subvert good systems and standards. Yet genuine flexibility is necessary in many situations. We support site-specific use of alternative methods when they can be proven to be more effective than any other option.

#### ***Riparian Forest Buffer Requirements***

As part of our natural infrastructure, undisturbed riparian buffers with at least 60% forest cover (and responsible invasive species management) provide significant water quality and quantity benefits that are too often ignored in the land development process. To insure these benefits remain for all citizens of the Commonwealth, whose state and local taxes, utility bills, and insurance premiums now pay the consequences of lost buffers, ***we support preservation of all undisturbed riparian buffers in all watersheds - especially for all exceptional value watersheds.***

We support the proposed EV buffer dimensions. However, recognizing the need for preserving riparian buffers with *every* stream, actual buffer dimensions for all streams should be determined on a site-specific basis, and determined by the variety of long-term functions the

riparian areas must perform, and determined by certified terrestrial/aquatic professionals rather than by conventional engineering practices.

Reconstructed buffers may suffice when natural buffers were disturbed or eliminated well before any current land development activities. These are not able to function to the same degree as natural buffers. Therefore, they provide reduced benefits to all citizens, and they should not be substituted.

Opponents will decry these riparian buffer measures as a "taking." Yet normal zoning measures also restrict what can be built where as a way to protect overall community standards and economic values. Riparian buffers deserve the same considerations for the same reasons.

#### ***Permit-by-Rule for Low Impact Projects with Riparian Buffers***

As previously noted, the appearance of flexibility is too often used to mask efforts to subvert good regulations. Innocent parties, sometimes miles away, are damaged as a result. Examples given at the public hearing in Cranberry indicated the potential for such subversions with this regulatory provision.

Especially with recent legislative cuts to DEP operations and staff, and most county conservation district staffs unable to fill the gaps, the subversion potential is heightened.

#### ***Permanent Site Stabilization***

Having adequate erosion and sedimentation control measures constantly in effect is vital to preventing sediment build-up in our streams, which is one direct cause of increasing flood potential. We support requirements to keep temporary measures in place until permanent measures are completed - and to immediately restore any damage done while removing temporary measures.

#### ***Enforcement - Compliance and Enforcement Provisions / Responsibilities of Local Governing Bodies***

As we have experienced repeatedly over the four decades, violations of E&S control permits or stormwater management permits, as well as grading or timbering permits, toxic spills, or other serious water quality and quantity insults result in little enforcement action on the state, county, or local levels. When this action includes penalties, the amounts of fines rarely exceed 10% of the maximum possible.

This situation has created a climate of violation at will among unscrupulous developers and contractors. Violators feel justifiably confident no consequences will be imposed, and if any are, they will most likely be of the nuisance variety. Fines, which may be far less of an expense than implementing E&S control or stormwater management measures as they were designed and permitted, are viewed as a reasonable cost of doing business.

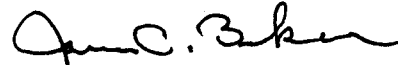
This enforcement approach may be due to the common perception that all development is inherently good, and any attempts to regulate it are inherently bad. However, experience has shown us, our municipal partners, as well as municipalities and school districts across the state, that development comes at a price. Demands for services often outstrip increased local tax revenues - especially when flood-related issues are involved. Associated damages to innocent property owners can also outstrip their ability to repair them.

We encourage the EQB to promote adequate resources for both DEP and county conservation districts, so that working in concert they may:

- review and approve permit applications by working with permittees to create the best plans possible,
- inspect permitted sites regularly so problems are identified and corrected while they are small,
- uniformly enforce violations to insure full corrections are made, and
- assess penalties commensurate with the consequences of the violation.

Thank you for reviewing our concerns and comments and presenting them to the rest of the Environmental Quality Board. If you need more information, please contact our executive director, Diane Selvaggio, at 412/396-1550.

On behalf of the TCWA Board of Directors,



James C. Brucker  
President