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**Chambers, Laura M.**

**From:** Denny Howell [dhowell@dhowell.com]  
**Sent:** Monday, November 16, 2009 3:30 PM  
**To:** EP, RegComments  
**Subject:** Proposed Chapter 102 Regulations

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

To Whom it may concern,

The following are my comments/suggestions on the Proposed Chapter 102 Rules and Regulations

1. Fee Schedule. I feel that the proposal to raise fees for NPDES permits by 1,000% is excessive. It is our understanding that these new fees would underwrite conservation district expenses, even though the districts have the power to set their own fee schedule in addition to the proposed fee schedule. This is not to imply that the conservation districts should not be sufficiently compensated for their time and energy reviewing submitted plans and inspecting their implementation in the field. Regulatory requirements and complexities have increased over the past several years necessitating higher costs on both sides of the submission. However, I do feel that fees should be reasonably proportional to the actual cost of performing the services. A \$5,000 fee for an Individual NPDES permit on a small site does not seem proportional – again, particularly in light of the fact the conservation districts will add several more thousands of dollars on top. In many cases, the fee will exceed the cost to engineer such a small project.

I would like to suggest that the proposed rules adopt the approach taken by most conservation districts. That is to say, the fee schedule should be based upon the size of a proposed project – either by number of units or acres disturbed. I am in favor would of a tiered fee schedule that ranges up to \$2,500/\$5,000 for the NPDES permits based upon project size, versus a flat rate for all projects. A three acre site should not be charged the same as thirty acre site.

#### Riparian Buffers

1. Economic Impact. The economic and financial impact of mandating riparian buffers will be significant to the regulated community. Incorporating the requirement for a 150 foot buffer on each side of EV waters will result in many unbuildable projects. This becomes particularly concerning for those projects that have initiated the process but have not yet received E&S approvals. Over the last two years, many projects that have begun the approvals process under one set of regulations – and one type of economy – have been postponed until the market returns. If these buffers are in place at that time, the lot layout and configuration for residential projects will as a matter-of-course need to be changed resulting in unexpected costs, lost densities, and potentially unviable projects. This could also prove particularly problematic on compact redevelopment projects that may now be impossible to build.

The question was posed as to whether the buffers should be expanded to other streams. If the mandated buffers are expanded to HQ and non-special protection waterways – essentially all of Pennsylvania's 83,000 miles of streams – the burden would be profound. Taken to its full realization, a 100 foot buffer on each side of these streams would result in a regulatory taking of over 3,000 square miles.

Furthermore, there seems to be no acknowledgement that local topography and modern storm water management requirements limit the amount of actual runoff reaching the buffer.

Incorporate Flexibility. Assuming the Commonwealth will adopt some form of riparian buffers, we would like to offer some suggestions on ways to add flexibility. Primarily, the regulations should include the ability to buffer average. Many model ordinances include such provisions. Buffer averaging will allow the applicant to propose various buffer widths at various points, but they must average to the mandated minimum width. This flexibility allows the applicant to address unique site conditions and to better configure the lots within the site plan. Properly designed, there is no additional risk to the environment.

Thank you for your time and consideration

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