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From: Judy Muller [Secretary@chesterv.com]
Sent: Monday, November 23, 2009 11:25 AM
To: EP, RegComments
Cc: Robert H. Plucienik
Subject: Proposed PA DEP Chapter 102 Regulations Comments

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INDEPENDENT REGULATORY
REVIEW COMMISSION

To Whom It May Concern:

Attached is a letter from Robert H. Plucienik, President, Chester Valley Engineers, providing his comments on the above noted regulations.

<<Environmental Quality Board Ltr - RHP - 11-23-09.pdf>>

Judy Muller

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November 23, 2009

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

Re: **Proposed 25 Pa. Code Chapter 102 Rulemaking Comments**
Sent via e-mail (Regcomments@state.pa.us)

Dear Environmental Quality Board:

On behalf of my clients (residential, commercial, educational, healthcare, retail and industrial clients), I wish to present the following comments to your proposed Chapter 102 regulations:

NPDES Applications

1. **Fee Schedule.** Our organizations 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, we 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.

We 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. We would recommend 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.

2. **Incomplete NOI.** Regarding incomplete applications and NOIs, we feel that the limitation of 60 days to complete or revise the application is too rigid. Applications have increased in complexity and may take more than 60 days to address deficiencies. We would recommend increasing the time to make revisions to 120 days.

We would recommend that language is added stating that reasonable requests for extension by the applicant will be approved. A slow or depressed housing market may dictate waiting on a permit,

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and, an applicant shouldn't be punished by having to re-pay the application fees if they are pro-actively staying in contact with the review agency by filing extensions.

Lastly, we recommend that if the Department incorporates a "deemed withdrawn" timeframe, then it also create a deadline before which the Department must respond to the application (we suggest 30 days) or else it is "deemed administratively complete".

Specific Comments

102.6 Permit applications and fees. Sub-section (b) Permit fees. A 1,000% increase in fees is unreasonable, particularly in light of the fact that conservation districts have in the past, and will continue, to add additional review fees to compensate for District financial shortfalls. The Department should consider a graduated fee scale up to \$2,500/\$5,000 based upon project size. Additionally, the Department should establish a more strict process than currently exists for the approval of conservation district fee schedules for E&S reviews. Often, District fee schedules do not appropriately reflect the proportional cost to provide the application review and inspection services.

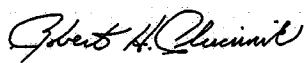
102.6 (c)(2) The Department should increase the proposed time an applicant has to complete a deficient NOI and/or request an extension from 60 days to 120 days. Additionally, if the proposed rulemaking finds it fair to deem an application "withdrawn" if an applicant fails to contact the Department within an established timeframe, it is equally fair to expect that an application is deemed "administratively complete" if the Department does not communicate with the applicant in writing within 30 days.

102.8 (g)(2) The requirements to use a 2-year/24-hour storm, a predevelopment condition of "meadow," and an assumption that 20% of existing impervious area be considered meadow are unreasonable. Actual pre-development site conditions should be utilized. In particular, the pre-existing impervious requirements have a significant adverse impact to re-development projects.

102.14 Riparian forest buffer requirements. The HBAs oppose the rigid requirement of a uniform 150 foot riparian buffer. Greater flexibility should be offered to the applicant to account for site conditions and/or inclusion of stormwater treatment trains which reduce sediment pollution before being received by the stream.

Thank you for the opportunity to present some of my concerns with the Chapter 102 proposed rulemaking, as well as offer some suggested improvements.

Very truly yours,
Chester Valley Engineers, Inc.



Robert H. Plucienik, P.E., P.L.S.
President

RHP/jjm