

2783

Chambers, Laura M.

From: Brenda Shambaugh [brenda-shambaugh@pacd.org]
Sent: Tuesday, November 24, 2009 9:36 AM
To: EP, RegComments
Subject: PACD Comments on Chapter 102 proposed regulations

RECEIVED

NOV 30 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

Environmental Quality Board
 P. O. Box 8477
 Harrisburg, PA 17105-8477

RE: Proposed Rulemaking – 25 Pa. Code Ch. 102
 39 PA Bulletin 5131, August 29, 2009

Dear Environmental Quality Board members,

The Pennsylvania Association of Conservation Districts (PACD) is pleased to offer comments on the proposed rulemaking to amend 25 Pa. Code Chapter 102 updating erosion and sediment (E & S) control requirements incorporated in the Federal Clean Water Act "Phase II" NPDES permit requirements for stormwater discharges associated with construction activities. These regulations include post construction stormwater management (PCSM) requirements, the establishment of riparian forest buffer provisions, and a permit-by-rule option. PACD recognizes the effort the Department of Environmental Protection put forth to produce these proposed regulations. While we have a number of suggested changes to the draft, we appreciate the work that went into updating and revising these regulations.

An overall comment is that a mandatory review meeting with the conservation district must occur before any and all erosion and sediment applications are submitted to outline environmental expectations and requirements. Detailed work should not be necessary at the pre-application meeting, but supporting documentation should be available for review. Additionally an engineering review should be delegated to conservation district who has an engineer on staff.

Section 102.1 Definitions

As with all new regulations, we urge the EQB to require all definitions listed in this proposed regulation be consistent with other related regulations such as the nutrient management regulations and federal NRCS regulations. Specific changes supported by PACD are as follows:

1. Animal Heavy Use Area - definition needs to be more specific, focusing on where the animals are permanently kept in concentration for extended periods of time. The definition should not include entrances and pathways used by animals to access a keeping area.
2. Conservation Plan – Should specifically say: A plan is "written" and identifies conservation practices that include site specific BMP's for agricultural plowing or tilling activities and animal heavy use areas.
3. Licensed Professional – Should not include licensed professionals who are not experts in erosion and sedimentation control.
4. There should there be a definition of "permit holder" to include long term operation of storm water maintenance.

Section 102.4 Erosion and Sediment Control Requirements

12/1/2009

102.4 (4) (ii) - Requires additional BMP's to be implemented to minimize accelerated erosion and sedimentation. We question who determines what BMP's will become necessary and implemented to minimize accelerated erosion and sedimentation. Additionally, who determines the definition of "minimize accelerated" to reestablish a 25% cover.

102.4 (b) (4) – Requires conservation districts to consult with DEP before each disturbance activity is planned and implemented. We question why conservation districts would consult with DEP if they have a delegated agreement with the Department.

102.6 Permit Application and Fees

We support the proposed fees, but suggest provisions be made for a reduced fee for smaller individual NPDES permit sites.

102 (c)(2) – This section should include conservation districts as follows: "When the Department or conservation district determines that an application or NOI is incomplete... The applicant shall have 60 days to complete the application or NOI, or the Department or conservation district will consider the application to be withdrawn... When an application or NOI is considered withdrawn, the Department or conservation district will close the application file and take no further action to review the file.

102.7 Permit Termination

PACD questions what incentive is there to submit a permit termination? Without some incentive permits may never be terminated.

102.8 PCSM Requirements

(m) – This section should require written approval by the Department or the conservation district. Additionally in this section, we question why the emphasis is on landowner responsibility for BMP O & M when stormwater may be collecting from multiple lots or areas. The landowner has little control over the contributing drainage area to the BMP.

102.15 Permit-by-Rule for Low Impact Projects with Riparian Forest Buffers

The permit-by-rule section of these proposed regulations have been a source of much discussion since the idea was first presented by the PA Department of Environmental Protection. Conservation Districts are still concerned about the possible negative environmental ramifications of not having a complete technical review of the permit before it is issued. The proposed language does address some of the concerns initially raised by limiting the scope of circumstances in which a permit-by-rule can be obtained. Conservation districts, however, still believe there is a greater potential of environmental degradation without a more complete and strenuous review. PACD recommends that conservation districts inspect the proposed plan before PBR approval is granted.

Questions that PACD believes still need to be addressed in the proposed PBR regulations are as follows:

1. Is the administrative review for PBR the same as NOI review?
2. What is included in the administrative review?
3. Do conservation districts review the technical elements of the PBR application?
4. If the ROC is incomplete in the PBR, does the potential permittee have 60 days to re-submit, or is the permit automatically denied?
5. If a PBR application is denied, can the applicant reapply?

102.32 Compliance and Enforcement Provisions

Conservation districts should be included in any DEP informal hearing resulting from a request by an aggrieved person because of an action by the conservation district.

Thank you again for allowing PACD to submit comments pertaining to Erosion and Sediment Control and Stormwater Management proposed regulations.

Sincerely,

Brenda Shambaugh

Brenda J. Shambaugh
Government Relations/Policy Specialist
PA Association of Conservation Districts
25 North Front Street
Harrisburg, PA 17101

(717) 238-7223 - office phone
(717) 238-7201 - office fax
Brenda-Shambaugh@pacd.org

I [GoodSearch](#) & [GoodShop](#) for the Pennsylvania Association of Conservation Districts, Inc. (PACD). Raise funds for PACD just by searching the Internet with [GoodSearch.com](#) (powered by Yahoo), or shopping online with [GoodShop.com](#).