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PennAg Industries Association

Northwood Office Center
2215 Forest Hills Drive, Suite 39
Harrisburg, PA 17112-1099

Ph: 717.651.5920
Fx: 717.651.5926
Email: pennag@pennag.com

Electronic Submittal via RegComments@state.pa.us

November 23, 2009

Environmental Quality Board
Rachel Carson State Office Building
P.O. Box 8477
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

RECEIVED

NOV 30 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: 25 Pa. Code Chapter 102 Proposed Revisions

On behalf of PennAg Industries Association and the more than 500 Pennsylvania agribusinesses we represent, we offer the following comments for your consideration, review and action on the proposed revisions to 25 Pa. Code Chapter 102 – Erosion and Sediment Control and Stormwater Management.

1. Throughout the comments that follow, you will notice a reference to the creation of a Technical Document by the Department of Environmental Protection (DEP). We strongly urge the Environmental Quality Board (EQB) to request that DEP creates the technical document prior to the Chapter 102 revisions being implemented. The intent of the Technical Document is to provide DEP Field Staff as well as County Conservation Districts with the necessary understanding of how to enforce the rules set forth in the revised Chapter 102. Without this in place, the enforcement of this Chapter will be open to interpretation by each field staff and county conservation district personnel. This often leads to frustration within the regulated community. If the Environmental Quality Board (EQB) feels this is not necessary, then we strongly recommend that DEP creates a technical document within 60 days of the Chapter 102 revisions being effective.
2. Section 102.1 (ii) –Definitions. The reference is made to “no-till cropping methods” however no definition is offered. The definition of no-till needs to be clearly delineated. Suggested language to include would be “No-Till Cropping Methods = propagating/planting of seed with minimum tillage”. If not listed in the regulations. This definition needs to be included within the Technical Document.
3. Section 102.1 – Definitions. The “Animal Heavy Use Area” definition should be more clearly defined as to reference that the intent of the regulation is to address Animal Heavy Use Areas that are within close proximity to a stream, river, lake, or other navigable body of water. The technical document should be clear to limit the definitions scope to areas where animals are permanently kept in concentration or kept in concentration for extended periods of time. The definition should not include entrances and pathways, used by animals, to access a keeping area unless said areas have the potential to discharge sediment and/or nutrients to jurisdictional waters of the Commonwealth.


4. Section 102.1 - Definitions. The "Point Source" definition needs clarification that this chapter only deals with soil erosion control and sedimentation. Since Concentrated Animal Feeding Operations (CAFO's) are in this definition, additional language is needed to clarify that this chapter only regulates soil erosion and sedimentation and not nutrients or other suspended solids, which are covered under Chapters 91 and 93. The technical document should be clear that the point source definition is solely for construction activities.
5. Section 102.1 - Definitions – The "Soil loss tolerance (T)" definition needs additional clarification. The language within the proposed rulemaking should change to note that if an operation met the "T" standard at the time of E&S plan development and as long as the E&S plan is being implemented and followed, that the E&S plan should not have to be updated, if a change in the "T" standard was made. The technical document should clarify this point.
6. Section 102.2 - Scope and Purpose. A clarifying statement should be added to recognize Chapter 102 only applies to practices for accelerated soil erosion and sedimentation control and stormwater management, and does not include measures for management of manure or control of discharges regulated under Chapters 91 and 93."
7. Section 102.4 -Erosion and sediment control requirements – 102.4 (a)(4) "cost effective and reasonable BMP" language should be modified to include the same qualifying language as prescribed in Chapter 83 (Nutrient Management) definitions. The language should read "effective and practicable (given technological, economic and institutional considerations). Suggested language for paragraph (4) would be as follows:
"The E&S plan shall include effective and practicable (given technological, economic and institutional considerations) BMP's designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing and tilling activities and animal heavy use areas."
8. Section 102.4 - Erosion and sediment control requirements - 102.4 (a)(4)(iii) - The second sentence should be deleted. The technical document should include a listing of Best Management Practices (BMP's).
9. Section 102.6 (b) (2) – Permit Fees – As noted in Section 102.6 (b) (2) (2) – the Department has the ability to request alternations to permit fees every 3 years. With this inflation factor being built into the regulations, why must the jump in permit fees be so dramatic this first year? Why not allow for a gradual-phase in of permit fee increases?
10. Section 102.14 -Riparian Forest Buffer Requirements - The proposed widths for riparian forest buffers in the rulemaking are appropriate and any additional widths would be excessive and may have a direct and negative affect on agriculture.
11. Section 102.14 (e) (3) – If housing, grazing or otherwise maintaining animals within the riparian forest buffer is prohibited as well as the other listed items, the question that comes into play is "Who owns this land"? If the landowner is not permitted to use the land, does this then become a permanent easement to the Commonwealth? Does the landowner no longer pay taxes on the acreage?

12. Section 102.4(a)(4)(ii) requiring additional BMP's for fields within a 100ft of a stream when there is less than 25% cover negates the standard of T established in 102.4(a)(4)(i). There should be one standard for determining soil loss. Where an E&S Plan demonstrates that a plowing and tilling activity being performed on a field and those activities will meet the T standard over the planned crop rotation, no additional measures for controlling soil loss in the near streams portions of the field should be required

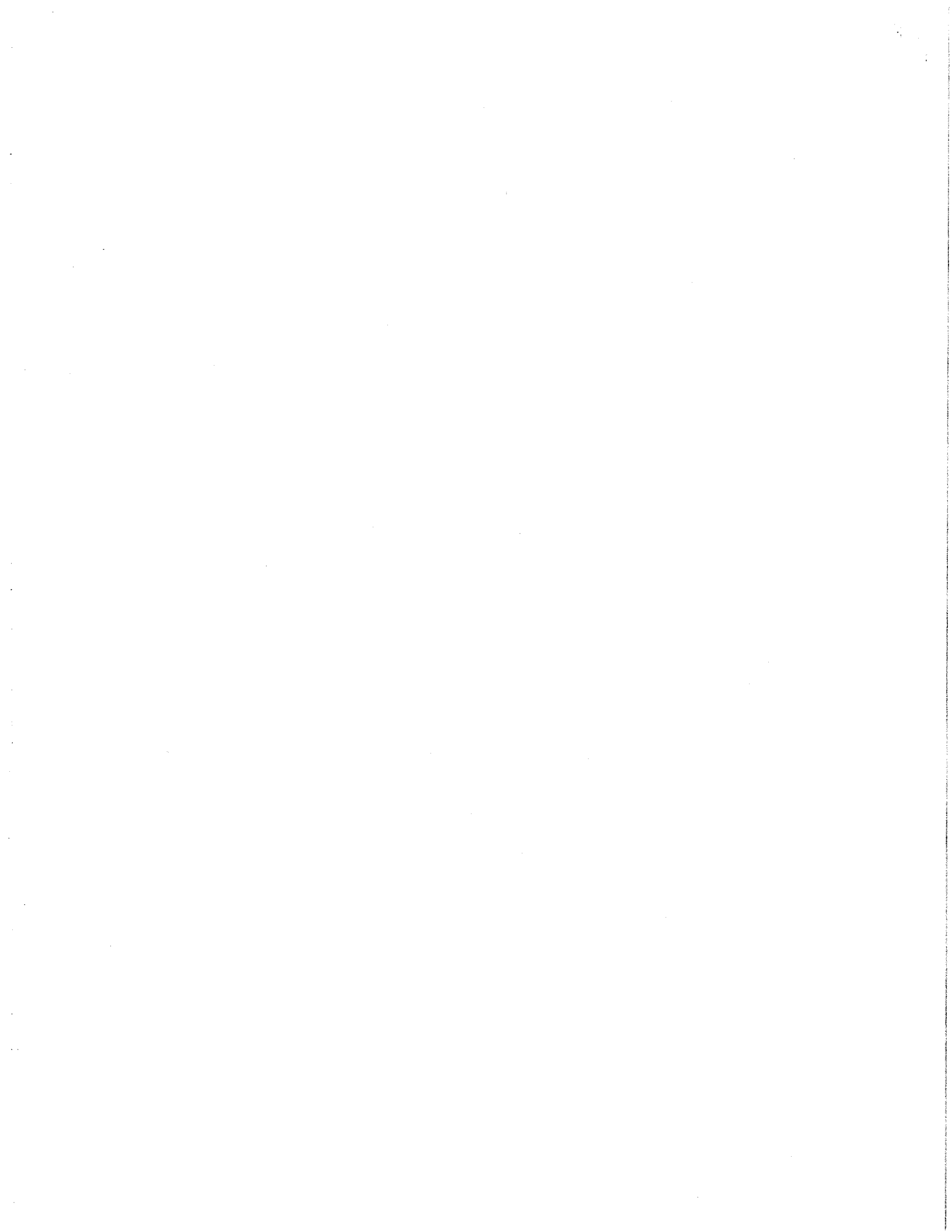
13. Section 102.15 (a) – Qualifying for coverage – The reference is made that an applicant qualifies for a permit by rule as long as they meet the requirements within this section that supersede Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). It would be beneficial for all too specifically identify what sections of Chapter 92 are superseded. This could be stipulated within the regulation or within a Technical Document.

We understand the position of the Environmental Quality Board and the tasks that have been set before the Board. We hope that you find our comments to be constructive and helpful in finalizing a regulation document that is of value to the Commonwealth, protects our natural resources and maintains agriculture as a vital component of our landscape.

Sincerely,



Jennifer Reed-Harry
PennAg Industries Association



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RECEIVED

Chambers, Laura M.

From: Jennifer Reed-Harry [jrharry@pennag.com]
Sent: Tuesday, November 24, 2009 2:33 PM
To: EP, RegComments
Subject: Comments on Chapter 102 from PennAg Industries Association

NOV 30 REC'D
INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached please find comments from PennAg Industries regarding Chapter 102.

Deadline for comments is Nov. 30, 2009.

Thank you.
Jennifer

Jennifer Reed-Harry
PennAg Industries Association
Northwood Office Center
2215 Forest Hills Drive, Suite 39
Harrisburg, PA 17112-1099
jrharry@pennag.com
(717) 651-5920

