



KELLY & CLOSE
CONSULTING ENGINEERS & SURVEYORS

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 1701-2301

RECEIVED

NOV 20 2009

ENVIRONMENTAL QUALITY BOARD

November 16, 2009

Re: Proposed 25 Pa. Code Chapter 102
Rulemaking Changes

RECEIVED

NOV 16 2009 11:59

ENVIRONMENTAL QUALITY BOARD

To Whom it May Concern:

Kelly & Close Engineers is a Site/Civil Engineering Company who represents both Private and Municipal Clients in primarily the Delaware and Chester County Region. In our profession, we oftentimes use the Chapter 102 Regulations in the preparation of our Land Development Projects as well as reviewing other consultant's projects for Municipal Reviews.

We are also members of the Home Builders Association (HBA) and are involved with the HBA Legislative Action Committee. We have had the opportunity to provide feedback to the HBA on the Chapter 102 changes, and our comments mirror many of the comments provided by the HBA under a separate memorandum.

We appreciate the opportunity to provide our feedback on the proposed rule making changes.

We offer the following comments:

Operation & Maintenance of PCSM BMPs

1. In order for the post construction stormwater management BMPs to work as designed someone must take responsibility for their long-term operation and maintenance. Some entities are better suited for those purposes than others, and depending upon the locale, some entities are more resistant to accepting that responsibility than others. Therefore, we believe it is important that the process include as much flexibility to allow the landowner to assign that responsibility. In some cases it may be a Home Owner Association; where a HOA doesn't exist, it may be the municipality; when the municipality resists the responsibility, it might be the individual homeowner. Each site and each situation is different and should be treated as such.

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.

Kelly & Close Engineers
1786 Wilmington Pike
Glen Mills, Pennsylvania 19342
610.358.9363 fax 610.358.9376

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. Or, a land mass larger than the combined size of Bucks, Montgomery, Chester, Delaware, Lehigh, Northampton & Philadelphia Counties.

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

It is for these reasons we feel the more local, hands-on approach of Pennsylvania's municipalities are better suited for adopting riparian buffers than a rigid, statewide mandate.

2. 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.

On those sites that simply can't incorporate buffers, the Department may wish to consider establishing an appropriate fee that an applicant would pay into a fund that addresses water quality improvement issues upstream. Or, allow the applicant to propose a treatment train that meets the stated goals of the riparian buffer. Buffers are just one of many different BMPs. If

the applicant can create a treatment train of BMPs that reach the identical environmental objective of protecting the water quality of the receiving stream, the opportunity to make such a proposal should be available.

3. Buffering Requirements. There has been some confusion within our organizations as to what streams and in what situations the buffers would be required. For example, the proposed rulemaking requires riparian buffers if earth disturbance activity is within an EV watershed. Must the entire activity fall within EV waters to trigger the buffer requirements? What if only a small portion is in an EV watershed? Must the entire project, even the non-EV portion, then incorporate the buffer requirements? The proposed rules should make clear that only EV rivers, streams, etc. should be buffered.

How is the applicant expected to address required buffers that may need to be installed on another land owner's property? If the stream runs within 150 feet of a property line, it seems the expectation is that the applicant would need permission from the adjacent property owner. In many cases, gaining this approval would seem unlikely and would place the entire project in jeopardy. In general, this provision seems to be ripe with potential problems. The Department should incorporate more flexibility to the buffer widths and/or add a waiver process in certain instances.

If you have any questions or need additional information, please feel free to contact me.

A.M.D.G.,



Maurice P. (P.J.) Close, P.E.
Principal

