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Tate, Michele

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**From:** Viscuso, Michael (Phila) [ViscusoM@ballardspahr.com]  
**Sent:** Monday, November 30, 2009 8:44 PM  
**To:** EP, RegComments  
**Cc:** Bill Rouse; Buckley, Ellen; Scott Salvatore; Makoulian, Tina (Phila); Weiss, Harry (Phila)  
**Subject:** Comments on Proposed Rulemaking by the Environmental Quality Board to amend 95 Pa. Code Ch. 102, as Published at 35 Pa.B. 5131, August 29, 2009



DOC083.pdf (175 KB)

Environmental Quality Board:

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REVIEW COMMISSION

In accordance with your invitation for comments on the above-referenced Proposed Rulemaking, please accept the comments attached to this e-mail.

We have reviewed in detail the proposed revisions to Chapter 102, and we commend both the Environmental Quality Board and the Department of Environmental Protection on their intensive efforts to enact fair and adequate regulations in this difficult substantive area. In turn, we would appreciate your thoughtful review of our comments to those proposed regulations.

Please do not hesitate to contact us with any questions you might have.

Best Regards,

Michael

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REVIEW COMMISSION**

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November 30, 2009

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

**Re: Comments of The Rouse Group to Proposed Chapter 102 Regulations**

Dear Environmental Quality Board:

We write on behalf of The Rouse Group ("Rouse"), and are pleased to submit the following comments on the draft rulemaking in Title 25, Chapter 102 (Erosion and Sediment Control and Post-Construction Stormwater Management).

Rouse is a privately held company operating principally in the western suburbs of Philadelphia. It has offices in Bryn Mawr and Havertown, Pennsylvania.

Rouse chose to comment on the proposed regulations as a responsible developer that has always viewed compliance with Chapter 102 regulations as essential to any successful project. Concepts that include preventing degradation to high quality and exceptional value waters of the Commonwealth are important. Accordingly, Rouse has worked with the Department to assure that its proposed construction meets these goals both pre and post construction while also preserving Rouse's economic expectations.

Rouse appreciates the hard work that the Department put into these draft regulations, and the willingness of the Department to bring into the process the views of diverse stakeholders including members of the housing development business. Nevertheless, as our comments will illustrate, we do believe that in several areas, the Department should consider revisions to enable the regulated community to comply in a meaningful manner.

Ultimately, some of the proposed regulations seem unfair because they appear to eliminate regulatory flexibility with respect to the means to achieve the goals. Thus we urge the Department to consider the value of reincorporating more regulatory flexibility into the proposed regulations.

1. While we understand the need to satisfy all stakeholders, new elements such as the 150-foot riparian buffer requirements represent an arbitrary, unfair and possibly unnecessary burden for those landowners who can otherwise demonstrate that proposed design elements will meet or exceed already existing requirements for Exceptional

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8. Also working against the establishment of a "forest" are forces of nature such as floods or predation by animals and other plants. In many areas of the Commonwealth, establishing a forest is a constant, and often losing, battle against a large and voracious deer population and a rapidly spreading invasive plant population of honeysuckle, common reed, etc. Establishing, let alone maintaining, a small forest under these conditions could be an extremely difficult proposition.

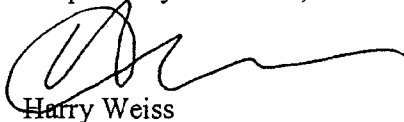
9. The regulations introduce to Chapter 102 terms such as "low impact development" and "low-impact project." We see the Department acting here in the role of land use regulator, perhaps interfering with local control over land use decisions. While perhaps not intentional, favoring certain types of development over another, even if both meet anti-degradation goals, seems impermissible.

10. There are various attempts by the proposed regulations to impose long-term maintenance, inspection and other implementation requirements on various permittees (i.e., builders, licensed professionals, developers, etc). The proposed regulations should instead clearly identify who is responsible and when, so that compliance responsibility can be redistributed as a development is completed and/or transferred to parties in a better position to ensure that long-term compliance goals are met.

11. Rouse understands the limited usefulness of presumptive general permitting solutions. For some projects, in some areas, it is very possible that the fact that the Department has blessed one approach that it has demonstrated works everywhere would go a long way to avoiding costly and time consuming permit appeal litigation, streamline worthwhile development projects and foster cooperative relations among all stakeholders. On the other hand, a one size fits all permitting approach should not dominate as we believe it would tend to discourage creative stormwater anti-degradation solutions that could be used elsewhere, not to mention otherwise appropriate economic development opportunities. Also, the existence of this option should not prejudice an applicant's wish to proceed under a regular permit, causing that application to sit at the bottom of some large pile of applications.

On behalf of Rouse, we thank you for the opportunity to provide comments to the proposed regulations, and appreciate your time and consideration.

Respectfully submitted,



Harry Weiss

HW/mpg

