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**From:** chris wood [on-lotsewage@hotmail.com]  
**Sent:** Monday, November 30, 2009 3:59 PM  
**To:** EP, RegComments  
**Subject:** Proposed Rulemaking 25 Pa. Code Ch. 102

INDEPENDENT REGULATORY  
 REVIEW COMMISSION

I hereby submit the following comments concerning the proposed Chapter 102 revisions as advertised in the August 29, 2009 edition of the *Pennsylvania Bulletin*:

Subsection 102.14 proposes to create a requirement of 150 feet from the top-of-bank of any Exceptional Value stream. I have serious concerns about the requirement.

1. The purpose of Chapter 102 is Soil Erosion and Sediment Control and Stormwater Management. Act 167 governs stormwater management. Act 167 does not grant DEP the right to enact stormwater regulations. DEP does not have the right to enact regulations unless the power has been granted to them by law. To use a soil erosion law to circumvent the legislature is improper and a misuse of power.
2. The proposal is very specific toward the need for a closed canopy. A closed canopy usually requires fairly mature trees. Mature trees do virtually nothing to hold back particulate matter that is suspended in stormwater runoff. If stormwater runoff is a concern, mature grasses or brushy material would hold back more particulates.
3. While I accept that the roots of the trees may help stabilize the land near a stream, they do so at the peril of downstream users. Within the past few years, Sullivan County, New York lost 5 bridges due to stream bank collapsing. The large trees washed downstream to bridges and created a very effective dam. That is, until the bridges broke. Smaller, sapling to pole sized trees might have proved a better solution. Smaller trees provide soil stabilization with less above ground mass.
4. Closed canopy trees along a stream is usually promoted as a means of preventing solar heating of the stream water. If this is the true reason for the subsection, then once again, it is inappropriate as Chapter 102 was intended to govern erosion and sedimentation control not thermal pollution. Furthermore, 150 feet is greater than necessary to achieve the goal.
5. The narrative notes that the 150 foot buffer would be applicable to intermittent streams. In our area that is construed to mean any ditch, depression, etc. that conveys water after a rain. A 150 foot buffer on either side of a ditch (300 feet plus width of ditch) could effectively result in a great loss of potentially developable land with virtually no environmental gain. Somewhere down the line a "takings" issue will result.
6. If DEP feels that this 150 foot buffer is necessary, it should produce for public scrutiny the studies that have determined such. My own personal observations lead me to believe that such studies may be junk science not worthy for such use.

Finally, I live and work in EV watersheds. I hunt there. I fish there. I take routinely collect water samples for laboratory analysis and study the macroinvertebrates in EV streams and their watersheds. I have no doubt that I spend more time in contact with EV streams than anyone involved in writing this regulation. I see no way that a 150 foot closed canopy forest is any more

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beneficial to reducing waterborne sediment than a grass lands or shrubby areas. If the regulation is to reduce thermal pollution, then be honest about it and put the idea forth for debate.

I also wish to protest the location of the public hearings. A majority of the EV streams are located North of Interstate 80. All of the hearings were scheduled for locations South of I-80. I saw no notices of the proposed regulation in local newspapers where the people most affected by this regulation reside. It would appear that DEP is trying to limit participation by the affected public.

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