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**Sent:** Wednesday, November 25, 2009 8:30 AM  
**To:** EP, RegComments  
**Cc:** Jeffrey W. McClintock  
**Subject:** Comments on Draft Chapter 102 Erosion and Sediment Control & Stormwater Management

INDEPENDENT REGULATORY  
REVIEW COMMISSION

My name is Jeffrey W. McClintock, and I am a licensed professional engineer in the Commonwealth of Pennsylvania. I have reviewed the Proposed Rulemaking entitled Erosion and Sediment Control and Stormwater Management as published in the PA Bulletin on Saturday, August 28, 2009. I offer the following comments:

1. Under the Public Participation and Outreach (Subsection E), it was noted that the "conservation districts, builders, agriculture, other industry groups, environmental groups, legislators, and advisor committees" were a part of the outreach effort. I did not see mention of any design professionals being included in this outreach group, yet the professional engineering community will have new requirements under the proposed regulations as currently published.
2. Act 367 of June 30, 1946 and as amended (hereinafter "Act"), is a valuable piece of legislation that plays relevant in the Proposed Rulemaking. The Act defines the "Practice of Engineering" and states "...the performance of the forgoing acts and services being prohibited to persons who are not licensed under this act as professional engineers unless exempt under other provisions of this act." The Act further states that the issue of practicing engineering, land surveying, or geology without licensure and registration is noted as being prohibited. In fact, the Act states "in order to safeguard life, health, or property and to promote the general welfare, it is unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of the Commonwealth as a professional engineer...". Under the current process established, a Professional Engineer (hired by the applicant) designs the Plan and a Professional Engineer (retained by the Municipality) reviews the Plan. At the same time, the Plan is submitted to the Conservation District, where typically, if not always, the review is conducted by someone that is not a Professional Engineer, and directives are given as to modifications required of the Plan. Why are the proposed regulations again silent on requiring a Professional Engineer to review these Plans on behalf of the Conservation District? Given that the design Professional Engineer is already responsible for the Plan, is there language that can be added to this proposed Rulemaking that can reiterate this fact of responsibility to the design Professional Engineer and also indemnify the Conservation District, while at the same time allows the assessment of substantial penalties should a pollution event occur?
3. In concert with Item 2, Sections 102.8 and 102.15 require "retention of services of Professional Engineer, geologist, or landscape architect registered in the Commonwealth to prepare and certify Erosion and Sediment Plans and PCMS plans. Further, Section 102.8 requires a licensed professional or a designee to be present onsite and be responsible during critical stages of implementation of the approved PCSM plan. Why are the regulations silent in requiring the conservation district to have a Professional Engineer on staff to be the professional in responsible charge for the Plan they, the Conservation District, ultimately approve?
4. A paragraph under Section 102.4 states "the Department of Conservation District may approve alternative BMP's which will maintain and protect...". Given that past experience in the interpretation of "may" predominantly results in denial of a design presented that is not exactly per the BMP Manual, why is the design Professional Engineer restricted in his design approach if the approach can be proven to achieve a desired result?
5. The paragraph under Section 102.4 states "The E&S Plan shall be/must include cost-effective and reasonable BMP's designed to minimize the potential for accelerated erosion...". Who will

determine the "cost-effective" and/or "reasonableness" of the Plan given these highly interpretative words?

Thank you for your consideration of these comments.

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*"A good plan executed today is far better than a perfect plan executed next week."--George Patton*  
*"Just keep in mind - you serve the people with the plans and you are to assist not deter their endeavors."--Kenneth W. McClintock, DDGM*  
*"Ask not what the resident can do for you, but rather ask what you can do for the resident."--Kenneth W. McClintock, DDGM*

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