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Chambers, Laura M.

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From: Kerchner, Karl - Lebanon, Pa [Karl.Kerchner@pa.nacdnet.net]
Sent: Wednesday, November 25, 2009 2:42 PM
To: EP, RegComments
Subject: comments on 25 PA Code Ch 102 proposed rulemaking
Sensitivity: Confidential

INDEPENDENT REGULATORY
REVIEW COMMISSION

Ladies and gentlemen,

Attached are comments from the Lebanon County Conservation District regarding the proposed rulemaking, EQB, 25 PA. CODE CH. 102, Erosion and Sediment Control and Stormwater Management, 39 Pa.B 5131 published Saturday, August 29, 2009.

Please acknowledge by email that you have received these comments.

If you find these comments unclear, or have questions related to these comments, please do not hesitate to contact me.

Thanks in advance for taking these comments into consideration.

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Comments regarding Chapter 102 proposed revisions as submitted by:

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102.1 Definitions

Animal heavy use area - Should be changed to read: Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods due to the concentration of animals.

Collector - Should read: A channel, dike or other conveyance, constructed downslope of an earth disturbance activity for the purpose of collecting stormwater runoff from an area and conveying it to BMP's for sediment retention and/or removal.

Diversion - Should read: A facility, such as, a channel or a conveyance, constructed up-slope of the disturbed area...

Throughout the next few paragraphs, keep consistency on:

For example, in one section, it states "Agricultural plowing or tilling activities, operation of animal heavy use areas" and in another section it states "Agriculture plowing, tilling activities, or animal heavy use areas"

NOI - Notice of Intent - Should read: A request, on a form provided by the Department, for coverage under a General NPDES or Individual NPDES Permit...

Perennial Stream - Describes a standard #30 sieve as having 28 meshes per inch, 0.595 mm openings. ASTM (E 11-04) Standard Specifications for Wire Cloth and Sieves for Testing Purposes, when describing a #30 screen, refer to it as a 600 micron...or 0.600 mm opening. I believe it is best defined using a nationally recognized standard. There also appears to be no benefit to describing the number of meshes per inch. Recommendation is to drop that in favor of the nominal dimensions and/or reference the ASTM standard when describing the #30 screen.

Person - Should add "owner"

Post construction stormwater and PCSM - and Postconstruction stormwater management -Should be consistent (capitalization, spacing, etc.)

PCSM Plan - "changes in" should be taken out. Sometimes there is no net change.

102.4 Keep "agricultural plowing, tilling activities, or animal heavy use areas" consistent throughout entire section.

102.4 (a) (4) Cost effective and reasonable bmp's is vague and open for interpretation. Perhaps be more specific. Do we want a bmp that works reasonably well....or one that works very well?

102.4 (a)(4) (ii) 25% cover is vague....does it mean 25% uniform coverage over the entire field.....or simply 25% of the field covered, or 100% coverage 25% of the time? Is the cover to be vegetated cover?.... Crop residue cover? Perhaps this should be more descriptive....after all....you have fairly detailed contractor guidelines for large riparian forested buffers....why not make the ag guidelines a bit more detailed?

102.4 (a) (4) (iii) "conservation" to be capitalized

102.4 (a) (6) Not very detailed. Perhaps the plan should contain an adequate implementation schedule to minimize the potential for accelerated erosion and sedimentation. If the plan is implemented and found not to have the desired results of minimizing the potential for accelerated erosion and sedimentation, the plan must be immediately improved.

102.4 (b) (1) take out the word "for" between "including" and "those"

102.4 (b) (2) (ii) keep "earth disturbance activities" and "an earth disturbance activity" consistent throughout entire section

Also under this same point, take out the word "to" between "under" and "this"

102.4 (b) (3) states that an e&s plan shall be prepared by a person trained and experienced in e&s control methods and techniques. Engineers rarely if ever are trained in e&s and it's a safe bet they do not go to school with expectations of becoming an e&s designer. Perhaps if you really want people trained in e&s....you should require a cpesc certification.

102.4 (c) This implies the county conservation districts must consult with the department before requiring additional information to adequately review an E&S Plan. Districts should be able to make the request for additional information without consulting with the department.

102.4 (b) (5) (x) Should read "The program shall require a written document of each inspection and all BMP maintenance and repair activities.

102.5 (a) (3) (f) and (g) Provide consistency between “earth disturbance activities” and “an earth disturbance activity” throughout section

102.6(b) Permit fees. Under (i) (ii) (iii) (iv) and (v) Increasing the general and individual permit application fees by ten times seems a bit unjustifiable....especially for smaller subdivisions. This information is inconsistent with the notice published in the PA Bulletin dated August 15, 2009 which indicates fees will be doubled. I favor a doubling or tripling of the npdes fees. \$250 to \$500 or maybe \$750 for general permits....\$500 to \$1,000 or \$1,500 for individuals.

102.6 (c) (2) First sentence states “it will notify the applicant in writing”. It should state “they will notify...”

102.6 (c) (2 & 3) references completion of the notice of intent. The notice of intent (and associated checklists) has become for all practical purposes so confusing, so ambiguous, and so cumbersome that it is impossible to adequately complete. The problem here does not lie with the design professionals....the problem lies with the form itself!! Make a simplified and comprehensible notice of intent if you expect anyone to get it right the first time.

102.7 (c) First sentence, add “of” between “acknowledgement” and “an”

102.8 (b) (3) states Minimize any increase in stormwater runoff volume. Definition not provided for minimize. Minimize volume increase from 2 yr storm....50 yr storm....100 yr storm????

102.8 (b) (4) This is a bit of a numbers game. I can say I originally wanted a 2 acre parking lot....however...I reduced it to 1.5 acres...thereby minimizing my impervious area....when all the time I wanted a 1.5 acre parking lot. Seems more a good guideline than a regulation...how is this enforceable as a regulation? Same question for 3, 5, 6, and 7 in this section.

102.8 (c) States “relating to erosion and sediment and control requirements” Should read “relating to erosion and sediment control requirements.

102.8 (g) (2) this section references managing volume for the 2 yr/24 hour storm. 102.8(a) (3) references minimizing any increase in stormwater runoff volume. Should there be consistency between the two?

102.8 (g) (6) This implies the county conservation districts must consult with the department before requiring additional information to adequately review a PCSM Plan. Districts should be able to make the request for additional information without consulting with the department.

102.14 (f) (2) Does flagging meet the definition of identifying and clearly marking? Or, must they be marked with something more substantial such as a physical barrier, (example: wood fence, boulder wall....???)

102.15 (c) (3) Allowing a 15 acre maximum disturbance at any given time is not minimizing earth disturbance. A warehouse could be 15 acres in size. Perhaps provide the percentage of maximum disturbed area. Provide percentages, not acreage.

102.15 (c) (5) (i) and (ii) Keep consistent "meadow in good condition or its equivalent" and "meadow in good condition or better" This information is providing two different scenarios. Suggest just leaving as "meadow in good condition"

102.15 (c) (6) (ii) States "Depart-ment-approved". Should read "Department-approved"

102.15 (d) (2) (H) (ii) and (e) Keep consistency "activity is or will be located" and "proposed earth disturbance activity will be located"

102.15 (f) (4) First sentence should read "Both the E&S Plan and PCSM Plan must minimize accelerated erosion"

102.42 I do not think this notification has ever been provided....and reducing the threshold to 1 acre will not improve the likelihood of notification. Is this enforceable? If so, how?