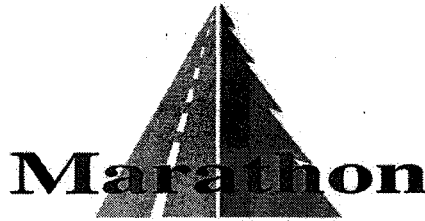


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ENGINEERING & ENVIRONMENTAL SERVICES, INC. INDEPENDENT REGULATORY
REVIEW COMMISSION

RECEIVED

DEC - 7 REC'D

November 30, 2009

Via electronic mail

Environmental Quality Board
P.O. Box 8477
Harrisburg, Pennsylvania 17105-8477

RE: Proposed Rule Changes
Title 25 Pennsylvania Code Chapter 102
Erosion and Sediment Control and Stormwater Management

Dear Sir or Madame:

Marathon Engineering & Environmental Services, Inc., ("Marathon") is a consulting civil engineering and environmental land use firm that assists clients in central and eastern portions of the Commonwealth. Enclosed for the Environmental Quality Board's consideration are Marathon's comments on the proposed rule changes for Title 25 Pennsylvania Code Chapter 102, Erosion and Sediment Control and Stormwater Management (dated August 29, 2009).

Updated Permit Fees and Application:

The rationale for increases in N.P.D.E.S. permit fees (increase of 1,000%) from \$250 to \$2,500 for a General Permit and \$500 to \$5,000 for an Individual Permit has not been adequately provided and is excessive compared to the current permit fees structure. The \$2,500 fee assessed for the Permit-By-Rule also appears excessive due to the limited review of the project (that qualified for this authorization) by the regulatory agencies. We bring to your attention that these application fees are in addition to the review fees (under Conservation District Law) assessed by the county conservation district for the review of the Erosion and Sediment Control Plan and Post Construction Stormwater Management Plan.

The application fee for a General, Permit-By-Rule or Individual Permit should be based on the overall size of the project (acres disturbed) rather than a flat fee. The rationale for the sliding review fees is that larger sites (commercial, residential subdivision, and industrial) has a more labor intensive and complex review process when compared to a single family home.

We request that the Department revise the timeframe for additional information when the Department determines the NOI is incomplete or contains insufficient information. Under the Permit-By-Rule proposed rule, the applicant has 60 days to complete the application. If the additional information is not provided within 60 days the application is administratively withdrawn by the Department and the application fee is retained by the Commonwealth. A new fee is required with requested information. Due to complex nature of the permit applications and the additional information timeline should be extended to least 90 days.

Riparian Forested Buffers

Under the riparian forested buffer requirements a 150' forested buffer would be require on all Exceptional Value ("EV") watercourses and 100' forested buffer would be require on all other watercourses. The existing buffers on the site must meet the requirements proposed by the Department (Zones 1 and 2) for native species and control of invasive species. If the existing buffer is non-existent or does not have the appropriate mix of native species the applicant will incur additional costs associated with developing a management plan, planting native species, controlling invasive species and post construction monitoring for at least five years. The rules are not clear on the agency (Department or Conservation District) responsible for determining compliance via the post construction riparian forested buffers monitoring reports?

The rules also do not address an issue of when the forested riparian buffer encroaches on to adjacent properties not owned or controlled by the applicant. When the buffer encroaches onto the adjacent properties, how will the Department handle the implementation and maintenance of forested riparian buffers on adjacent properties? The Department should also consider implementing a rule of having riparian forested buffer averaging that allows for the flexibility of site design while still protecting the environment. The riparian forested buffer averaging plan could allow for the reduction of the riparian forested buffer in certain areas for development purposes, but would require the same area of compensation within the site.

A 150' forested buffer is also proposed on impaired waters. A majority of the impaired waters are located within urban areas where a 150' forested buffer may not be feasible due to site redevelopment. In these cases an appropriate buffer should be agreed upon with the Department. The rules also do not address the removal of a water from the impaired waters list. Does the buffer reduce to 100'?

Wetlands that are located in the riparian buffer shall be protected and maintained consistent with Chapter 105 (Dam Safety and Waterway Management). Under Chapter 105 the wetlands impacted by the project are protected under a conservation easement. Are the Chapter 105 rules for General Permits and other permits going to be revised to be consistent with the Chapter 102 program? The forested riparian buffers section in the proposed regulations is more applicable with the Chapter 105 program and not the 102 program.

The rules are unclear on the necessity to obtain an approved Jurisdictional Determination that establishes the limits of the regulated wetland and watercourses. This Jurisdictional Determination is needed to establish the riparian forested buffer limit. Under your current programs, there is no mechanism for the Department to verify a wetland line without a Chapter 105 application. The United State Army Corps of Engineers ("USACOE") typically verifies wetland delineations in the Commonwealth without permit applications, but with budget cuts have been reluctant to issue approved Jurisdictional Determinations. An approved Jurisdiction Determination now takes at least six (6) months to over a year prior to issuance Is it the rules intent to have either the Department or conservation districts be responsible for reviewing the wetland delineation as part of the 102 program review?

Permit-By-Rule Option:

The Permit-By-Rule for low impact projects with riparian buffers use is limited to small percentages of sites within the Commonwealth due to the Departments exclusions (ex. steep slopes, geologic formations, and sinkhole development). The Department should also consider placing a acreage limit to on the Permit-By-Rule option; the larger the site the less likely the project can meet the low impact development requirement.

The Permit-By-Rule pre-application meeting must be attended by all parties that will be covered under the "registration of coverage" and makes every project team member accountable for the maintenance and operation of the Post Construction Stormwater Management Best Management Practices. (The Department has not defined "registration of coverage"). The Permit-By-Rule operation should incorporate a termination notice that must be approved by the Department before a responsible party can be removed from the permit.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,

Marathon Engineering & Environmental Services, Inc.



Christopher S. Andes
Senior Environmental Scientist



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Chambers, Laura M.

From: Chris Andes [Chris.Andes@marathonconsultants.com]
Sent: Monday, November 30, 2009 3:47 PM
To: EP, RegComments
Subject: Proposed Rulemaking 25 Pennsylvania Code Chapter 102 Comments

Dear Sir or Madame,

Enclosed are comments on the proposed rulemaking for 25 Pennsylvania Code Chapter 102.

Thank you for the opportunity to comment,

Christopher S. Andes, Senior Environmental Scientist
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12/4/2009

