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INDEPENDENT REGULATORY
REVIEW COMMISSION

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From: Lester, Michael

Sent: Monday, November 30, 2009 5:35 PM

To: EP, RegComments

Subject: Chapter 102 Comments-Erosion and Sediment Control and Stormwater Management

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12/4/2009

BOF Comments on 102 Regulations and Guidance

We appreciate the intent of the changes in the 102 regulations, which we believe support and reinforce the importance of riparian forest buffers. Riparian forest buffers play a critical role in filtering sediment and in the uptake of nitrogen and phosphorus. Riparian forests also provide stream bank stability and thermoregulation that is so important to many aquatic species. Furthermore, riparian forests provide essential nutrients for the aquatic food chain, and are vital to the health of aquatic ecosystems.

However, we do have some concerns. While we support what we believe is the intent of the regulatory changes, we are concerned with a lack of clarity as to when certain provisions apply to forest management practices. It is our belief that healthy working forests are an important incentive to forest land owners to keep their land in forests. We feel that DEP shares our belief in the importance of working forests and have appreciated their support. We look forward to continue working with DEP to provide feedback and professional expertise, once the language in the regulations is clarified.

- There is considerable confusion within our Bureau, as well as in the forestry community as to the interpretation of the 25-acre trigger for E&S permit requirements. Some people interpret the regulations to mean that because 10% of a timber harvest is considered "disturbed," that the trigger for the E&S permit would be a 250-acre harvesting operation. Others have interpreted the regulations to mean that harvests over 25-acres will trigger an E&S permit. If the first supposition is correct, then the \$500 fee for the permit is not prohibitive in most cases.
- If the second supposition is correct, the \$500 permit fee will likely put a heavy burden on the economic viability of the project, impacting both the professional foresters and the landowners. In this case, a \$50 permit fee was felt to be more reasonable. At any rate, seeing that there was a wide range of interpretation by our staff on this issue, it would be wise to clarify the language related to this subject so that there is no doubt when these regulations go to Conservation Districts and municipalities for use and interpretation.
- Several people in the Bureau and in the forestry community were confused as to whether the NPDES requirements applied to forestry activities. If the NPDES does apply to forestry activities, it could eliminate their economic viability, given the high fees quoted in the proposed regulations. This would provide a disincentive for landowners to either maintain a working forest or to leave their land in forest at all.
- Replace "Forest Stewardship Plan" with "Forest Management Plan" everywhere it occurs in the regulations and the guidance. This is to reduce confusion with the Federal Stewardship Program.

- Change the definition of “Forest Stewardship Plan,” now listed as “Forest Management Plan” as per the above comment to one of the following options:
 - a. “A plan written by a forestry professional with a four-year degree in forestry from an institution accredited by the Society of American Foresters (SAF) or a two-year degree in forestry from an institution recognized by the SAF that provides...”
 - b. “A plan written by a DCNR-trained Stewardship Plan Writer that provides...” As a point of information, Stewardship Plan Writers are natural resource professionals that have received training from the Bureau of Forestry and Penn State in the writing of Stewardship Plans. Training for Plan Writers is free and takes place yearly, so professionals who are interested in taking the training can sign up to get on the list.

- In 102.14(e)(5)(iv): We request that you remove “... approved by the Department of Conservation and Natural Resources.” We are concerned that in the event that many requests come in, we will not have the time or staffing resources to approve all the resulting plans. We recommend replacing it with one of the following options:
 - a. “written by a DCNR-trained Stewardship Plan Writer.”
 - b. “written by a forestry professional with a four-year degree in forestry from an institution accredited by the Society of American Foresters (SAF) or a two-year degree in forestry from an institution recognized by the SAF”

- We realize that the 60% canopy cover requirement is to be uniformly distributed across the buffer. However, there may be situations where it is ecologically best to “daylight” a small portion of the buffer for purposes such as wildlife habitat improvement. It would be helpful if there is some flexibility in the language that would allow for professional judgment, without adversely impacting the goal of reduced sedimentation.

- A “Riparian Forest Buffer Management Plan” is mentioned in 102.8(f)(15) and 102.14(e)(2). Is this the same item as what is currently called the “Forest Stewardship Plan?” A “Riparian Forest Buffer Management Plan” is not referenced in the definition section. Is the plan mentioned in 102.14(a)(8) the same plan? If so, the same terminology should be used.

- In 102.14(e)(5)(i), is the “long-term operation and maintenance plan” mentioned there the same as what is currently referred to as the “Forest Stewardship Plan?” This should be made clear.

- In general, we would like more clarity on when various plans would be required for forestry operations in the riparian situations covered under these regulations.

- Our understanding is that we only have to submit a PCSM plan if we require an NPDES permit. Is this correct? And under what circumstances would we require an NPDES permit? Is forestry exempt? In what circumstances, if any, would forestry need to submit a forest management plan?

- Appendix B of the Guidance states, "This evaluation should be performed by a Certified Forester or a professional trained in the use of this form and procedure." Pennsylvania does not currently license foresters. There is a Certified Forester designation, but that is a voluntary certification through the Society of American Foresters (SAF). Certified Foresters must meet requirements (education and experience) set by the SAF and complete 60 hours of educational training during a three-year period to remain certified. Though this is a good designation, it is voluntary and it may exclude many foresters who would otherwise be qualified to work on this form. We recommend one of the following options:
 - a. Removing "Certified Forester" and replacing it with: "forestry professional with a four-year degree in forestry from an institution accredited by the SAF or a two-year degree in forestry from an institution recognized by the SAF"

 - b. Removing "Certified Forester" and replacing it with: "DCNR-trained Stewardship Plan Writer." These are natural resource professionals that have received training from the Bureau of Forestry and Penn State in the writing of Stewardship plans. Training for Plan Writers is free and takes place yearly, so professionals who are interested in taking the training can sign up to get on the list.

Our final concern regards recreational trails. There are many public recreational trails that occur within 75 feet of an EV stream. Furthermore, we are striving to work with other stakeholders link trails together in order to provide a richer outdoor experience for Pennsylvanians. We hope that there is nothing in this regulatory change that would prevent the joining of these trails.

