

The Collins Companies

2783

Kane Hardwood

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INDEPENDENT REGULATORY
REVIEW COMMISSION

From: David Trimpey
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Date: November 29, 2009

RE: Comments on Proposed Rulemaking - Title 25, Chapter 102 (Erosion Control and Stormwater Management)

The Collins Pine Company is one of the largest and oldest private landowners in the Commonwealth. Our ownership lies across 7 counties in northwest Pennsylvania and our sawmill in Kane employs about 100 people including a forestry department of 9 professionals. We have been certified by the Forest Stewardship Council (FSC) since 1996; one of the first private companies to be certified by this organization. I wish to offer the following comments on the Department's draft rulemaking in Title 25, Chapter 102 (Erosion and Sediment Control and Post-Construction Stormwater Management).

GENERAL COMMENTS:

1. Forestry and timber harvesting are not a major cause of Pennsylvania's water quality problems. The Collins Pine Company (CPC) has owned timberland in northwest Pennsylvania for over 150 years. Many of these lands are the headwaters of HQ streams such as the scenic Tionesta Creek. The long history of timber harvesting in these watersheds is testimony to the fact that timber harvesting has minimal impact on stream quality especially when conducted under Best Management Practices (BMP's) currently being used.
2. The mandatory riparian area provisions in the proposed rulemaking are a significant taking of a private landowner's utilization of their land. While the proposed rulemaking limits riparian forested buffers to permitted activities in EV watersheds, the impact of this provision will none the less be significant on CPC. Collins Pine Company owns over 117,000 acres in PA.

These lands contain many, many miles of perennial and intermittent streams, some of which are designated EV and there is the potential for more to be designated as such in the future.

3. The proposed rulemaking should be revised to provide forestry with the same exemption from permitting, forested riparian buffers and PCSM Plan requirements, as are provided to agricultural activities. These provisions will have substantial economic costs on landowners and companies engaged in forestry and timber harvesting, without providing any significant improvement related to erosion control. DEP should be making every effort to ensure private forestland owners continue to keep their land under long-term forest management instead of imposing restrictions and fees which may lead some landowners to sell their forest land to developers due to economic loss resulting from the restrictions and fees.

CHAPTER/SECTION SPECIFIC COMMENTS:

1. Sec. 102.1 Definitions: The determination of intermittent streams and their banks are subjective, and the impact of requiring riparian forested buffers for intermittent streams will impact substantial acreage across our. The FSC uses USGS 7.5 Minute Series Quadrangle maps as a source to identify streams as perennial or intermittent – Solid blue line indicating perennial, broken/dashed blue line as intermittent. DEP should consider using such a simple, easily understood and accessible method.
2. Sec. 102.4 Erosion and sediment control requirements: Forestry's good record on water quality is due to implementation of voluntary BMP's by foresters and timber harvesters who have been trained through the efforts of the Sustainable Forestry Initiative (SFI). This training and the Timber Harvesters Action Packet – developed by DEP in collaboration with conservation districts, DCNR, industry and others - has provided these individuals with the knowledge to assemble E&S plans. DEP must ensure that the proposed additional information required in the E&S plan can still be provided by these same individuals through updates in the Action Packet and SFI training.
3. Sec. 102.5 Permit Requirements: Since forestry and timber harvesting involve limited and temporary earth disturbance and do not result in a change in land use, these activities should be exempt from the requirements for a PCSM plan, which involves long-term maintenance of constructed stormwater management facilities.
4. Sec. 102.6 Permit applications and Fees: The proposed fees would be paid to the Department on top of fees charged by county conservation districts that, in nearly all cases, are the exclusive reviewers of plans and permit applications according to formal delegations of that authority from the Department. If an increase can be justified, it should be either phased in over a period of time; limited to permit applications that are not subject to the review, approval and supervision of conservation districts; or offset dollar-for-dollar by fees charged by the Districts.
5. Sec. 102.14 Riparian forest buffer requirements: The proposed buffer mandates are more restrictive than those recommended by FSC. We fail to understand the reason why DEP is

recommending buffer sizes and restrictions greater than those recommended by this internationally recognized certification body.

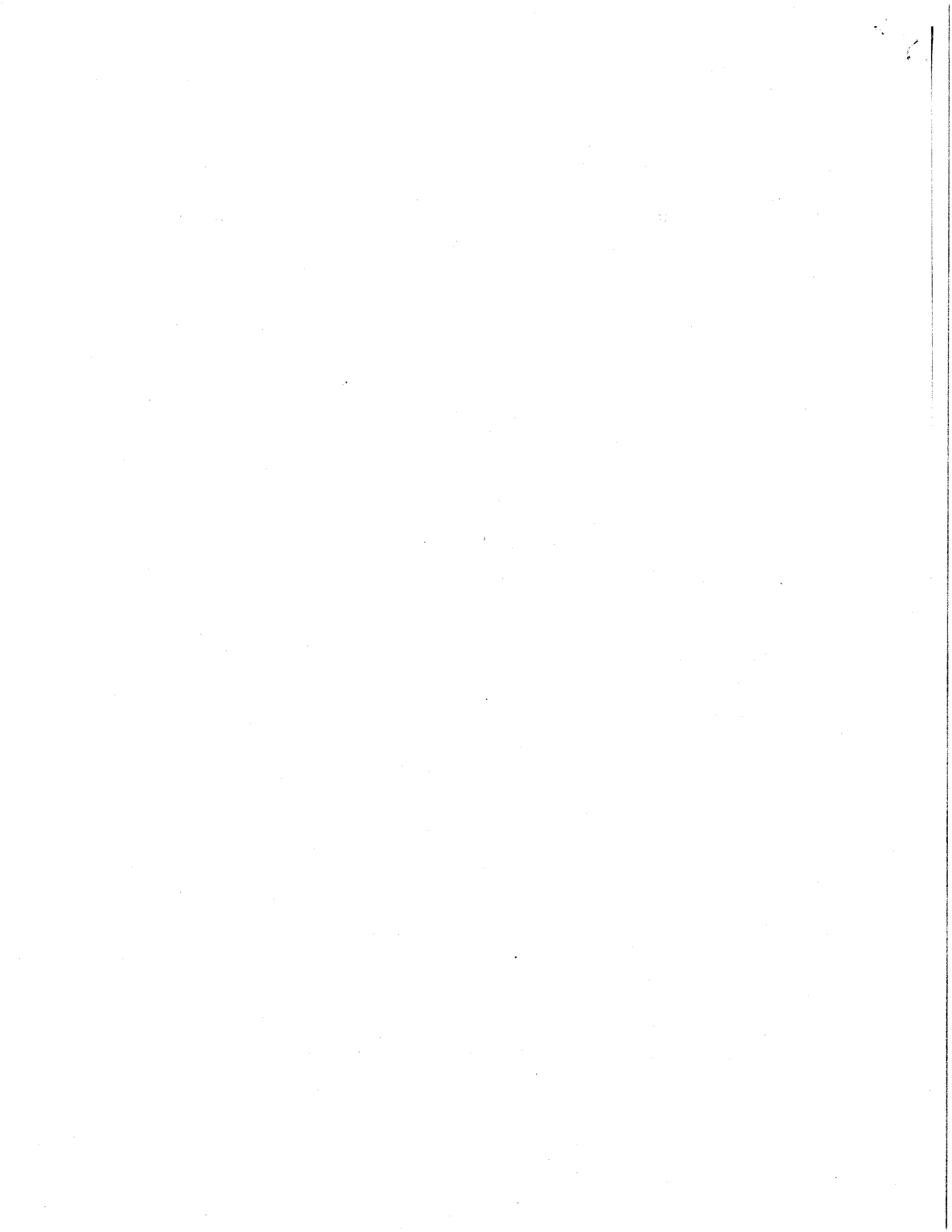
The requirement for permanent protection of the buffers is problematic. The language regarding this protection in the proposed rulemaking currently promotes the use of conservation easement or local ordinance as a protection. Such provisions, if implemented, should be accompanied by a significant reduction or even elimination of real estate taxes levied against those acres as the landowner will incur real, long-term reduction in the economic value of that land.

The system of permitting and E&S planning in the Chapter is sufficient to ensure protection of these buffers.

6. Subsurface ownership: CPC, like many other large landowners in the state, owns only a small percentage (less than 10% in our case) of the subsurface rights. Our lands lie in the oil and gas rich region of NW PA and we recognize the fact that those who own the subsurface have a legal right to access their ownership even if it is contrary to our wishes. When development of these subsurface rights require permits under Chapter 102, the mandates and costs, including the regulatory taking associated with the buffers, are imposed upon landowner. The proposal needs to address this situation and provide relief for landowners such as CPC caught in this situation.

RESPONSE TO THE COMMENTS OF OTHERS:

1. Lowering of 25 acre threshold for E&S permit: During the public hearing process, a number of individuals and environmental groups have suggested that timber harvest and road activities should be required to obtain an E&S permit upon the disturbance of five acres, rather than the current 25 acres of disturbance. The rationale for this recommendation has been simplistic – that other activities require a permit for 5 acre impacts, and so should timber harvesting. We disagree with this opinion and recommend that timber harvesting and road maintenance activities continue to be permitted upon disturbance of 25 acres. Unlike other activities, timber harvesting is a temporary disturbance, which does not change land use. Residual stumps from harvested trees continue to provide erosion control. The linear nature of logging road disturbance offers greater area interface with the existing remaining vegetation, compared to more permanent and concentrated development activities. The strongest argument for the status quo is the historic results, which show timber harvesting to be a negligible contributor toward water impairment in the state. Lowering the threshold would create a burden for both the timber industry and the Department without creating a substantial return
2. Expand buffer requirements to waters other than EV: Others have called for an expansion of the buffer requirements to all permitted activities that interact with any body of water. We oppose such as proposal, as it would magnify the problems and concerns we have outlined with the current buffer proposal.



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From: drtrimpey@netzero.com
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Comments on proposed rulemaking 25 PA Code Chapter 102:

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