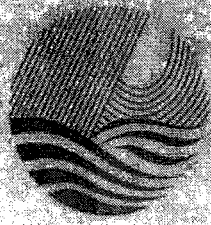


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ENVIRONMENTAL QUALITY BOARD

November 25, 2009

Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301

Re: Proposed 25 Pa. Code Chapter 102 Rulemaking Comments

To Whom It May Concern:

Please carefully consider the following comments on the proposed 25 PA Code Chapter 102 rulemaking.

For more than a decade soil scientist, geologist, and engineers have made great strides in protecting the quality of Pennsylvania's Streams by investing in the development of new skills needed to employ newly mandated methods of managing stormwater runoff both during and following the construction process. We have educated our clients, and albeit reluctantly in some instances, they have also come to realize that by applying common sense and sound best management practices, residential and commercial development can thrive. These BMP's not only protect our water resources, but in many instances, particularly when the development replaces poorly managed agricultural land, improves the quality of those resources.

However, these improvements haven't come without significant costs to all Pennsylvanian's. To my knowledge, while no large scale cost benefit analysis have been made, a simple review of my firms professional fees associated with stormwater investigation and permitting indicate that thousands of dollars are added to the cost of each and every new residential lot or commercial development. This incremental increase in cost pales in comparison to the loss of valuable land that must be set aside for the construction of stormwater management facilities; not to mention the additional costs in materials and labor needed to build the expanded infrastructure. While the market was hot, little attention was paid to these costs, as they were passed on to consumers and businesses in the form of higher home prices and building rents. Now fortunes have been reversed.

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and the market has come to realize that while the costs of development rose precipitously to cover these costs, the underlying value of the asset has not risen proportionally. This had led to the rapid devaluation of our citizens' largest investment, and economists are predicting an oncoming similar devaluation of commercial space.

Rewriting Chapter 102 now will only continue this trend by further expanding these costs. A review of the proposed modifications to Chapter 102 indicates that they are chock full of new mandates that will not only accelerate the costs of development, but they will push the goal of affordable housing further into realm of wishful fantasy. Further, unlike the common sense BMP's being implemented through the use of the "voluntary" BMP Manual, the proposed new rules contain regulatory obstacles and restrictions that aren't fully supported by underlying science.

A prime example is the proposed buffering requirements. A rigid mandatory 150 foot buffer on either side of an EV stream will significantly diminish the developable area of a property without adding a proportional environmental benefit. This will be particularly devastating to the efforts to revitalize Pennsylvania's small towns that were constructed along the Pennsylvania's waterways. Numerous studies have indicated that the benefit of buffers varies significantly based on site specific factors that are ignored by minimum mandatory requirements. Further, the vast majority of benefits associated with riparian buffers occur within the first 20 or so feet where the canopy of trees can provide shade to keep stream temperatures moderated. Stream bank protection is also provided by well established root systems located adjacent to the stream bank, not 150 feet away. Filtering of pollutants contained in unmanaged stormwater runoff likewise don't require 150 linear feet of buffer. Such filtration can be more readily achieved with BMP's constructed at the source of the runoff, not in remote locations distant from the source of pollution. One size does not fit all. Only those studies prepared by individuals with obvious anti-development sentiments would suggest the need for mandatory 150 wide riparian buffers in order to achieve the desired environmental benefit.

It is my opinion that Riparian buffers should be treated as any other best management practice. Using buffers should simply be one of many tools available to develop intelligent stormwater management designs that effectively protect our important resources. Mandatory minimums discount the value of sound science and design creativity. Rather, they appear to be the product of the belief that the only way to protect our water resources is through stringent government control without regard to the hidden "tax" absorbed by Pennsylvanian's.

The buffer requirements are only one example. A mandatory requirement to manage the excess runoff from a two-year storm event is likewise unsupported by clear thinking scientists. A careful and thoughtful review of these proposed rules identifies many other proposed rules with similar faults. In summary, the adoption of the proposed Chapter 102 regulations appears pre-mature, and should be postponed indefinitely while the



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RULEMAKING COMMENTS

environmental and regulated community more carefully assesses the long term value and functionality of those BMP's currently being designed and constructed. Writing new regulations to satisfy the activism of the minority without thoughtful consideration to the economic health of all of the citizens of the Commonwealth is short-sighted, misguided, and fiscally irresponsible. We need to get these rules right the first time. We need more time and sound research before greatly expanding the role and power of a regulatory body that is already struggling to effectively implement existing E&S regulations, guidelines, and policies.

Respectfully submitted,

Paul White PG
Managing Partner

cc: State Representative Barbara McIlvaine Smith
State Representative Chris Ross

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