



November 24, 2009

The Honorable John Hanger, Chairman  
 Environmental Quality Board  
 P.O. Box 8477  
 Harrisburg, PA 17105-8477

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Dear Mr. Hanger:

ENVIRONMENTAL QUALITY BOARD

Subject: Proposed Revisions to PA Code Chapter 102

Civil & Environmental Consultants, Inc. (CEC) welcomes this opportunity to provide you this feedback regarding the proposed Chapter 102 revisions. We assist clients who represent significant investments by private development and publicly funded projects which these changes will affect, so your consideration of these comments is sincerely appreciated. We desire to make the following comments based on the proposed revisions that were published in the Pennsylvania State Bulletin on August 29, 2009:

- Additional clarification needs to be added regarding the reports that must be written for each erosion and sedimentation control inspection, all Best Management Practices (BMP) repair and maintenance activities, and Post Construction Stormwater Management (PCSM) inspections. The DEP should quantify the frequency of reporting, when the reports should be made, what they should include, and how long they should be retained.
- The proposed permit fees are increasing by 1000%. It is our opinion that an increase in fees would be generally accepted by our clients, provided that the increase will result in more consistent and timely reviews and timeframes.
- Chapter 102, Section 8(k) proposes to make the licensed professional or their designee responsible during critical stages of the implementation of the PCSM Plan. While the design professional can observe and report the activities being performed, they cannot be **responsible** for the correct implementation of the PCSM Plan. The site work contractor is responsible for implementation of the plan. This should be clarified.
- The PCSM Plan certification statement requires additional clarification. The current certification states that "the accompanying record drawings accurately reflect the redline drawings." The record drawings should reflect the as-built site conditions instead of the red-line markups. We do not see red-line markups identified elsewhere in the document.
- Additional clarification is needed in the Riparian buffer section. It is not clear what classification of streams would require a buffer. This chapter does not state the method by which the 60% cover requirement should be calculated. It should also be stated if wetland mitigation can occur in the buffer areas and how this would affect the cover requirements.
- The riparian forest buffer section should also include a list of project types or project sizes that do not trigger the buffer requirement, such as pipeline replacements or utility stream crossings. Utility rights-of-way typically are maintained in meadow condition in order to help prevent damage to the utility and allow for maintenance and, as such, should be an exempt from the buffer requirement. Additionally, projects that have a small frontage along a waterbody would only result in a small piece of buffer that would not be able to greatly impact water quality.

## Civil &amp; Environmental Consultants, Inc.

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- Section 102.14(A)(2) states that riparian forest buffers could be required by other rules or regulations. This could allow or encourage the inclusion of riparian forest buffer requirements in Act 167 Plans or local ordinances, which would limit development. CEC believes that this statement is too broad and should be revised or eliminated.
- Riparian forest buffers should only be required when a project site is located adjacent to a waterbody. Developers of projects located within 150 feet of a waterbody may not have control of the land that is directly adjacent to the waterbody. Separate owners may control the land where the buffer would need to be placed. As currently written, the project could not proceed if the separate owner does not consent to having the buffer built on his land, which could potentially make some parcels undevelopable.
- The riparian forest buffer requirements should be consistent throughout the Chapter. Currently, EV watersheds require buffers in developments that occurs within 150 feet of a waterbody, while the permit-by-rule option requires buffers within 100 feet. The buffers should have a consistent width to avoid confusion.
- The permit-by-rule section includes a construction sequence that must be implemented. This section should be removed, because each site is unique and the provided sequence may not provide the most protection against erosion. The design professional should be responsible for determining the construction sequence that will provide the most protection. Additionally, more complex sites that require several phases of construction may not fit into the provided sequence.
- The Permit-By-Rule option allows up to 15 acres of land to be disturbed at any one time. This section should include the process required to relocate the limit of disturbance as phased work progresses.
- Temporary stabilization should not be required unless earth disturbance activities cease for at least five days, instead of the proposed three days. The site's erosion and sedimentation controls are intended to provide adequate protection against erosion. Extended weekends or periods of bad weather could necessitate temporary stabilization as it is currently proposed.

Thank you for your consideration of our concerns. Although we understand that the riparian buffer requirements would help protect the environment, it would also detrimentally affect development, and we would urge the Environmental Quality Board and the Pennsylvania Department of Environmental Protection to consider alternate methods. We would welcome the opportunity to provide future assistance to the Environmental Quality Board regarding these proposed changes. If you have any questions regarding these comments, please contact us at 412-429-2324.

Very truly yours,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read 'D. Kuhlman', is written over a horizontal line.

Dustin J. Kuhlman, P.E.  
Senior Project Manager

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