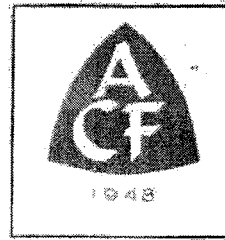


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November 23, 2009

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

DEC - 9 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSIONNOV 30 2009  
ENVIRONMENTAL QUALITY BOARD

Re: Proposed Rule Making Erosion and Sediment Control and Storm Water Management  
 [39 PA.B. 5131] Saturday, August 29, 2009

Members of the Environmental Quality Board:

What you have proposed in the above mentioned Proposed Rule Making (PRM) - represented as a minor change to Chapter 102 at the three public hearings - is in truth a major expansion of Chapter 102 that dwarfs the existing Chapter 102 regulations. Does this misleading representation made at the hearings frame the true intent of the PRM?

My response will have a strong relationship to forest management activities. I am a forester. But my comments will also be addressed toward all activities where forested buffers are proposed or required as a forester's expertise is the expertise that should be employed.

You have posed three questions concerning the PRM which I will address in reverse order:

**Question 3: Mandatory Riparian Forest Buffers:** Should the Proposed Rule Making include a provision for mandatory riparian forest buffers? No, they should not! Particularly as they would apply to forest management as follows:

- Management is essential to the health and sustainability of forested areas.
- Management requires expenditures (investment) on the part of the landowner.
- Investment by the landowner needs to return income - to the landowner that includes a profit from the investment.
- The Department of Environmental Protections intends to;
  - burden the landowner with the duty to control invasive and exotic species.
  - support the Chapter 102 program through egregious permit costs imposed on the landowner.
    - This is represented to not result in significant increased compliance costs for persons proposing or conducting earth disturbance activities. Really! The PRM states "This proposed rulemaking is the first effort by the Department to cover the Chapter 102 program costs through permit fees."
- Management in the forested buffers is needlessly restricted to the point that the forested buffer cannot be maintained in a healthy sustainable condition.

- The maintenance of a "60% uniform canopy cover" in the buffers is a financial and otherwise unnatural and unattainable requirement. It is simply not possible in the short term and certainly not in perpetuity.
- The buffer requirements defy the science and logic of management of the forest.
- Not one forester from the private sector was, and very few others were, included in the discussion and drafting of the PRM. Government foresters have little understanding of the economics of the management of small private ownerships and, along with others, tend to falsely believe that landowners have deep pockets.
- The cost of establishing and maintaining forested buffers is grossly underestimated.
- Forests do provide high quality water. However, buffers needlessly complicate the management of forested properties. When buffers are managed differently from the remainder of the similar forest the buffers will indeed be different and under the PRM less healthy and safe than the surrounding forest. Present best management practices provide sufficient protection for water quality particularly when the services of professional foresters are utilized in the management of the forest.
- Pennsylvania foresters need to be licensed to attain the best management of all of the forest!

**Question 2: Responsibility for long-term PCSM operation and maintenance (O & M):** How should the proposed rule making address responsibility for long-term maintenance of PCSM BMP's?

- It is perhaps easier to argue that costs of managing post construction storm water structures should be placed upon the owner(s) of the property when major earth disturbance is involved in development and construction activities. The PRM makes the professional and contractor (Operators) co-permitties along with the owner with the implication that all three should be responsible for maintenance in perpetuity. In most instances of large development the PCSW maintenance structures become in effect public ownership which should be the responsibility of the public owners. Professionals and contractors should not be burdened with perpetual maintenance responsibility.
- In the case of a timbersale within 150 feet of an Exceptional Value (EV) stream which requires a full blown permit process where:
  - a PCSW plan (Post Construction Storm Water),
  - a PPC Plan (Preparedness, Prevention and Contingency Plan),
  - a Buffer Management Plan, and
  - a DCNR approved Forest Stewardship Plan all apply
  - a \$5,000 permit fee is to be paid along with the additional ten to fifteen thousand dollars to satisfy permit development requirements
  - with Conservation District costs added;
  - it will simply be impossible to manage the buffer and the sale will have to stay 151 feet away from the stream, and
  - the buffer forest will have to be abandoned to the whims of nature with no one responsible for long term maintenance.

This is a total failure to address the best interests of the forest, water quality and landowner.

**Question 1: Scope of the permit-by-rule;** Should the proposed rulemaking limit or expand the availability of the proposed permit-by-rule?

This question should be considered only after the biases and the self interests of the parties that oppose the permit-by-rule are examined.

- On the one hand if those parties who espouse a buffer on every stream and a permit on every timbersale with additional statements accusing licensed professionals of less than diligent adherence to

professional standards are combined with threats of retaliation against licensed professionals then perhaps there should not be any permit requirement at all!

- On the other hand if it can be shown that the permit-by-rule is effective and can be implemented at reduced impact and cost to both the economy and landowner through licensed professionals then the permit-by-rule should be expanded to include EV streams. It can only be shown to be effective if it is first applied to all stream classifications.
- However, the permit-by-rule is the area where the largest impact from buffers is felt with all projects on all streams being subjected to the establishment and maintenance of riparian forested buffers with restrictions on use in perpetuity as well as egregious harm to private property rights.
  - Further the defined licensed professionals are not qualified to establish or manage forests and forested area. This is properly the domain of the forestry profession.
  - In those areas where forests do not exist and the land surface has been subject to other uses that have resulted in compacted soil conditions the buffer may need treatment that is prohibited in the PRM.

Unfortunately, the tone of the PRM fits well with the cancer of ever growing governmental disregard for individual and personal property rights. There is a better approach, at least to the health and proper management of the forest and the quality of water that the forest produces, and that is the utilization of licensed professional foresters to assist forest landowners in the management of their forests. Imposing unrealistic and indeed impossible standards to the management of a biological system will just not work. Professionalism is required to produce the results required. Licensing foresters will produce better results quicker.

I suggest that the PRM be returned to the Environmental Quality Board for further consideration with the panel containing significant representation by foresters from the private sector. The PRM should not be forwarded to the IRRC or endorsed by the IRRC unless and until returned to the Environmental Quality Board for further consideration as previously stated.

Sincerely,



Donald P. Oaks CF ACF  
Donald P. Oaks, Forestry Consultant

Attachment: One Page Summary