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November 24, 2009

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

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DEC - 9 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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NOV 30 2009

ENVIRONMENTAL QUALITY BOARD

Re: **Proposed 25 Pa. Code Chapter 102 Rulemaking Comments**

To Whom It May Concern:

Thank you for the opportunity to offer the following comments on the proposed 25 PA Code Chapter 102 rulemaking.

The proposed institution of a rigid, 150 foot buffer on each side of Exceptional Value Waters would have the unintended consequence of hindering good land planning. By limiting the layout options available to create environmentally sound and fiscally practical sites, designers and builders may be forced to search for green field sites well away from the existing utility and transportation infrastructures.

This could be an especially difficult problem for urban/Brownfield's redevelopment. Most of these communities are located along stream/river corridors. A buffer of this magnitude might render these sites non-viable for development.

The building community is continually identifying new technology to help improve the quality of stormwater runoff. These creative techniques are especially helpful in the urban areas where lawn and landscape areas are, for the most part, non-existent. Rather than eliminate the ability to redevelop these eyesores because of large, rigid buffers, allow developers/builders to use a combination of a variety of BMP's which achieve the common goal of improved water quality. This is truly smart, green development that creates a win-win solution.


The proposed requirement that 20% of existing impervious areas be considered meadow is particularly onerous to Brownfield's sites. Existing sites can't easily be retrofitted to handle stormwater management facilities, so costs are exponentially higher. As a result, these proposed regulations will not only scare away developers but also make it financially impossible for them to present "smart growth" in urban areas. This issue would be much better handled at a local level where applicants can work with municipal officials to find creative solutions to managing stormwater runoff and protecting the environment while preserving yield.

The dramatic increase in application fees by 1,000% seems unfair and unjustified. This excessiveness comes at a time when projects are under significant financial stress. We are all desperately trying to reduce costs by changing the way we arrive at solutions. This proposed

change might actually exceed the cost of the design for small projects. We would like to recommend a tiered fee schedule based on a project's size.

We appreciate your time. Please consider our suggestions because in the end we think we both want environmentally beneficial and economically attainable development.

Very truly yours,



Jim Reading  
Partner



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I thank you for the opportunity to offer the following comments on the proposed 25 Pa. Code Chapter 102 rulemaking.

While I have a number of concerns with respect to the proposed rulemaking, my comments will address the inflexibility of the riparian buffer proposal and its effects. Assuming the Commonwealth will adopt some form of riparian buffers, I would like to voice my request that the buffer requirements include the ability to create flexible designs by using other best management practices in conjunction with reduced buffer widths to achieve the results sought by the use of buffers alone.

There are a number of benefits that buffers can achieve. However, I believe that the proposed buffer width exceeds the widths supported by the various scientific studies on buffers. While I am concerned about regulations that exceed their scientific support, I am more concerned by regulations that are inflexible and can not be adapted to achieve the same or better results.

Land is not all the same. Each property and project has its own conditions. Properties have unique shapes especially in regard to the relationship of natural features to manmade features like property lines. In one instance a buffer zone may limit development just in that zone; while on another property it may limit development of a substantially larger area due to the location of other features or the depth of the remaining area.

Science and engineering design have advanced significantly over the recent decades and will continue to do in the future. A decade ago many of the BMP's now in use were not refined and certainly not used as a part of a unified engineering design. By requiring a rigid buffer width, the Department discourages innovation and integrated design. There is no doubt that many of the current BMP's can achieve the same results that buffers are intended to achieve. There will be more BMP's in the future that will also be able to do the same. Engineers should be free to apply BMP's together with reduced buffers if they can achieve the same goals as the required buffer would achieve on its own.

The only potential goal of a rigid buffer that cannot be achieved by a combination of buffer and BMP's is the inappropriate goal of removing otherwise developable land from being useable for

development. While that is clearly the goal of some, I trust that it is not the goal of the Department or the Commonwealth's government. To require rigid buffers would have significant adverse consequences. It would expand the area of development and create sprawl. It would devalue land, decreasing rates and tax revenues. It would increase the cost of development in Pennsylvania, placing us at a further disadvantage in competing with other states for growth and jobs. It would deprive some of our existing businesses of planned expansion space on land already paid for and approved for that purpose, and encourage them to look elsewhere, including out of state, when they need to expand. The result will be loss of jobs and opportunities for Pennsylvania.

In summary, I understand that buffers can serve a worthwhile function. But they should not be a rigid, mandated requirement. Where the advancements of science and the talent of engineers can achieve the same or better results by varying the buffer and supplementing it with other BMP's, the environment, the Commonwealth and its people are all winners. When a rigid buffer deprives us of an opportunity to reduce sprawl, to create or retain jobs and opportunities, and to increase tax revenue, the environment, the Commonwealth and its people are all losers. We need to let the engineering and scientific communities apply their skills and not tie their hands with supposedly well intended, but clearly impractical, rigid requirements.

Thank you for the opportunity to comment. I sincerely hope that my comments will be implemented.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jim Reading". The signature is stylized with a large loop and a long horizontal stroke.

Jim Reading  
Partner



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Thank you for the opportunity to offer the following comments on the proposed 25 PA Code Chapter 102 rulemaking.

As you are aware, businesses and industries within Pennsylvania are suffering through an unprecedented economic downturn in both magnitude and length. These tough times have stressed individuals, businesses and the state/municipal governments. Companies are working very hard to keep their businesses operational and their people employed. I believe these proposed regulations will have the unintended effect of hurting businesses at a time when they are least equipped to deal with this additional burden. Not only will developers and property owners suffer, but also lending institutions, realtors, attorneys, brokers, suppliers, etc.

Many commercial and residential projects approved or in construction have had minimal activity recently. Obviously, if the economy picks up anytime soon, the active status of these projects will allow people to get back to work immediately. Unfortunately, many of these approved projects will need to have their NPDES permits renewed to address these new policy revisions. It will require developers to modify their plans in mid-construction, adding costs and additional infrastructure that they simply cannot absorb. At the same time, the potential reduction in the number of units or total square footage from a project will eliminate a significant amount of asset value of the property.

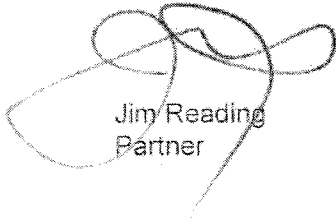
We have concerns about the proposed buffering requirements. A rigid 150 feet buffer on either side of a stream could significantly diminish the developable area of a property. This seems particularly onerous in areas where redevelopment projects would convert underperforming and blighted properties into valuable assets.

Banks are already struggling with loan performances. These proposed regulations will contribute additional burden and uncertainty to a project's ability to secure and/or maintain financing. If implemented, these changes could potentially push a number of projects into default.

These are certainly challenging times for all of us. While we support DEP's goal of protecting our environment, we certainly hope they will support the need for economic vitality. Permit

These are certainly challenging times for all of us. While we support DEP's goal of protecting our environment, we certainly hope they will support the need for economic vitality. Permit extension requirements which mandate the implementation of current regulations for projects already fully approved and under construction and rigid riparian buffers certainly make it difficult for businesses to be successful. These new requirements will have a serious ripple effect across every industry and will result in greater and continued stress on the citizens and governments of Pennsylvania. I hope that you would consider alternative methods to achieve a common goal for all.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long tail that extends downwards and to the right.

Jim Reading  
Partner