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November 25, 2009

ENVIRONMENTAL QUALITY BOARD

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

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DEC - 9 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

Re: Public Comments on Proposed Rulemaking
Title 25, Chapter 102
Erosion and Sediment Control and Stormwater Management

Ladies and Gentlemen:

In accordance with the provisions of Public Comments in paragraph J or the Proposed Rulemaking, we offer the following comments for your consideration:

A. § 102.1 Definitions

1. **ABACT:** The term "preexisting" should be replaced with "preconstruction" to be consistent with § 102.8(f)(4), etc. "Preexisting" is ambiguous and does not accurately describe the condition of a site at the time immediately prior to application for the permit.
2. **Nondischarge alternative:** Replace "preexisting" with "preconstruction".
3. Add a definition for "reclaim and restore" as used in § 102.4(b)(4)(v) and § 102.8(b)(4), etc.
4. Add definitions for "extent practicable" and "greatest extent practicable" as used in § 102.4(b)(4), § 102.8(b) and § 102.8(f).
5. Add a definition for "act of God" referred to in § 102.32(b). Does this refer to an event in excess of the design storm frequencies cited as the basis for E&S BMP design?

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B. § 102.4 Erosion and sediment control

1. § 102.4(b)(5)(v): The requirement to show the location of all surface waters which may receive runoff from the project sited on the E&S Plans often requires a significant amount of surveying if the waters are not located in close proximity to the project site. We believe showing the location of the waters on a USGS or similar map should be adequate to address this plan information requirement.
2. § 102.4(b)(6): "Erosion and Sediment Pollution Control Program Manual" and associated references should be revised to the proposed document, "Erosion and Sediment Control Best Management Practice (BMP) Manual", etc.

C. § 102.5 Permit requirements

1. § 102.5(a)(3) - This section should clarify that meeting the antidegradation requirements of Chapter 93 should only be required for existing discharges from an Individual NPDES Permit site if earthmoving activities are proposed within the drainage area of the existing point discharge. Permittees should not be required to construct permanent antidegradation BMPs in drainage areas where no earthmoving is proposed.

D. § 102.8 PCSM requirements

1. § 102.8(b) - Depending on the definition for "extent practicable", the expense to comply with § 102.8(b)(4) through § 102.8(b)(7) could be cost-prohibitive.
2. § 102.8(g)(2) - Please clarify whether or not the volume reduction and water quality PCSM BMPs must meet either the requirements of an applicable approved Act 167 stormwater management plan or manage the net volume difference for a 2-yr 24-hr storm event. It has come to our attention that some are interpreting the word "or" to mean "and."
3. § 102.8(g)(2)(ii) - "disturbed" should be replaced with "removed"



4. § 102.8(k) - The requirement to have a licensed professional onsite during the construction of the specified BMPs could be very expensive depending on the Department's expected frequency and duration of construction observation. The Department's expectations should be clarified to prevent different interpretations by various regional offices and/or conservation districts.

E. § 102.14 Riparian forest buffer requirements

1. § 102.14(a)(2) - This section is unclear with respect to whether or not it is up to the discretion of DEP or the delegated conservation district to decide if a buffer will be required for a particular project. Can a permittee be required to provide a buffer if no other approval or permit is required by the Department? Similarly, can the Department require a buffer for a Chapter 105 permit at its discretion?
2. § 102.14(a)(4) through (6) - It is unclear because of the location of these sections whether they are only applicable to sites meeting the requirements of §102.14(1).
3. § 102.14(b)(2)(i) and (ii) - Forested buffers should not be required on off-site properties when the waters are not located on the permittee's property. This should be clarified.
4. § 102.14(d)(1) and (2) - These sections seem to contradict the conditions requiring a buffer outlined in §102.14(1). These sections seem to indicate that buffers are required along all waters, not just in Exceptional Value watersheds.
5. § 102.14(g) - The frequency of submission of the required data forms should be noted.
6. In general, we believe the requirement to set aside 100' to 150' wide riparian forest buffers along surface waters is a taking of land. While some of this property may be subject to development due to wetlands, floodplains, etc., prohibiting development within this corridor must be coupled with compensation to the property owner for the land value lost by setting aside the buffer.



- F. § 102.15 Permit-by-rule for low impact projects with riparian forest buffers
1. § 102.15(g)(4) - The wording in this section is unclear and should be revised. Should "outlet protection" be replaced with "diversions"?
 2. § 102.15(g)(5) - The wording in this section is unclear and should be revised. Should "Outlet protection included" be replaced with "Sediment basins and traps"?
 3. § 102.15(h)(2) - The wording in this section seems to imply that the Department may require a permittee to construct green roofs (for example) on all of their proposed structures if the site is not conducive to infiltration and the proposed improvements do not provide significant amounts of open space, preserved natural areas or reduced impervious area. Is this an accurate interpretation of the Department's intent?

Another issue directly related to Chapter 102 regulations that has just come into play are the requirements of the proposed EPA "Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category," Docket ID No. EPA-HQ-OW-2008-0465, which were published on November 23, 2009. When will these effluent standards be addressed in Chapter 102?

Below is a list of typographical errors and omissions you may want to correct:

1. § 102.1 - Dewatering zone: remove "]" at the end of the line
2. § 102.1 - Nondischarge alternative: "sound and"
3. § 102.1 - Perennial stream: "macro-invertebrate"
4. § 102.1 - Pollutant: "Section"
5. § 102.1 - PCSM: "Post construction"
6. § 102.4(b)(6) - "under" and "nondischarge alternative"
7. § 102.5(a) - insert "for" after "permit"
8. § 102.7(c) - insert "of" after "acknowledgement"
9. § 102.8(c) - delete "and" after "sediment"
10. § 102.14(a)(5) - should the reference to paragraph (3) be revised to "(4)"?



11. § 102.14(a)(6) - "establishment"
12. § 102.14(d)(5) - add a period at the end of the first sentence
13. § 102.15(c)(6)(ii) - "Department"
14. § 102.15(f)(4) - delete "the" after "minimize" in the first sentence
15. § 102.15(g)(6) - replace "ponds" with "basins"
16. § 102.15(g)(10) - add "must" after "registrants" in the second sentence

Lastly, we recommend reformatting the regulations to provide indentation for all sections and subsections to make the document simplify determination of which subsection a particular item is located under.

Thank you for the opportunity to submit these comments for your review and consideration.

Sincerely,

Craig Momose, P.E.

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