

2783

**From:** Dennis\_Guthrie@URSCorp.com  
**Sent:** Thursday, December 10, 2009 12:36 PM  
**To:** RegComments@state.pa.us  
**Cc:** IRRC; Smith, James M.  
**Subject:** Comments on Proposed Rulemaking 25 PA. Code CH. 102 Erosion and Sediment Control and Stormwater Management  
**Attachments:** pic31478.gif; comments on proposed E&S regulations.doc

Dear Mr. Smith,

Thanks for pointing out the problem to me. The problem seems to be that the formatting came through the email as part of the text instead of formatting. I am attaching my comments as a Word file and also including them below in plain text.

*(See attached file: comments on proposed E&S regulations.doc)*

Comments on Proposed Rulemaking  
 25 PA. Code CH. 102  
 Erosion and Sediment Control and Stormwater Management  
 Deadline: November 30, 2009

RECEIVED  
 2009 DEC 10 PM 1:15  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

### 1.0 Solicited input

Section E of the Proposed Rulemaking states that the Water Resources Advisory Committee would like the Environmental Quality Board to solicit input during the public comment period on the following three issues:

1. Scope of the permit-by-rule: Should the proposed rulemaking limit or expand the availability of the proposed permit-by-rule?
2. How should the proposal rulemaking address responsibility for long-term operation and maintenance of PCSM BMPs?
3. Mandatory Riparian Forest Buffers: Should the proposed rulemaking include a provision for mandatory riparian forest buffers?

The comments in this section present my recommendations on these three issues.

#### 1.1 Scope of the permit-by-rule

The permit-by-rule should be available for all waters. By definition it applies to low risk projects with proposed riparian forest buffers. If a landowner is willing to relinquish such a significant part of his/her property to establish a riparian forest buffer, there should be some compensation, at least in the form of a streamlined permitting process, given that no other compensation for removing the property from development is proposed. The goal should be to encourage development that includes more riparian forest buffers.

#### 1.2 Responsibility for long-term PCSM operation and maintenance (O & M)

The O&M responsibility should be currently provided in the PCSM Plan submitted to the Department or Conservation District and subject to the review and approval. In some cases the landowner will have to be responsible. In others the person that operates or manages the newly constructed facility (shopping center, apartment complex, home owners association, etc.) makes more sense because they are directly involved in the day-to-day operation. The PCSM plan requires that the person responsible for O&M be specified just as maintenance of E&S controls is specified in the E&S Control Plan. The proposed regulations already recognize this. See 102.8(f)(11). There is no need to expand the regulations already in place.

#### 1.3 Mandatory Riparian Forest Buffers

Riparian buffers should be voluntary, and significant credit should be given in the PCSM calculations for their use based on total acreage of the buffer proposed. If riparian buffers are mandatory, development will be de facto excluded from many sites. Only large developers that can acquire significant tracts of land will be able to build anything at all. Providing credits as an incentive to establish riparian buffers benefits both developers, especially small developers, and the environment. The permit by rule process also gives incentive to include riparian buffers in a project. Permit by rule should be available for all low risk projects that include riparian buffers.

### 2.0 Other Comments

#### 1. The definition of intermittent stream is very confusing.

Intermittent stream--A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Tying the definition of an intermittent stream to the local water table may be in agreement with certain theories of groundwater surface water interaction but does nothing to clarify what has become a largely inconsistent and judgmental process for local regulators. It typically amounts to assuming the conclusion, that is, because a stream is observed to flow only at certain times of the year it is, therefore, below the water table.

2. Increasing the application review fees to reflect the actual cost of review is reasonable, but will place an undue burden on non-profit organizations that sponsor the construction of recreational facilities such as athletic fields. These organizations are already feeling economic pressures because of the economy. \$5,000 in permit fees (\$2,500 NPDES and \$2,500 E&S plan plus conservation district review) is excessive for non-profit organizations. Reduced fees should be available for non-profit organizations.

3. Retention of the entire application fee for a returned incomplete application is outrageous. It would not reflect the actual cost to determine that an application is incomplete and it gives the Department financial motivation for frivolous rejection of applications. Remember that the regulations provide that the applicant shall submit "other information that the Department may require." [102.6(a)(1), 102.8(f)(16) et. al.] This means that the Department could return applications for ANY reason. If the application is returned incomplete, the part of the fee that reflects the actual review time saved should be returned or applied to future reviews.

4. Because the application fees are so high, the department should be required to show a breakdown of hours, labor rates and expenses in support of the new fees. Without such a breakdown, the increases appear to be arbitrary.

5. Along with the higher fees, review turn around times should be shortened and guaranteed. The money-back guarantee should also be made automatic.

6. The requirement that E & S and PCSM Plans to be submitted with registration of coverage for the permit-by-rule be sealed by a registered professional is reasonable. However, such submittals should have reduced fees because they rely on the certification and should, therefore not require as much review by the Department.

7. The wording of the PCSM to "Minimize any increase in stormwater runoff volume" 102.8(b)(3) is practical in lieu of "preventing any increase of stormwater runoff volume" as the guidance is currently interpreted. However, specifics are lacking to define the meaning of "minimize." This could lead to a wide variety of requirements between projects. However, Section 102.8(h), referring to High Quality or Exceptional Value water, which requires that there be no increase in stormwater runoff volume, rate and water quality appears to contradict 102.8(b)(3).

8. Section 102.8(g)(2) proposes analytical testing and assessment of soil, geology, and other predevelopment site characteristics, but does not mention what tests, other than an infiltration test, need to be performed. The vagueness of this section leaves the chapter open to a multitude of interpretations that will serve only to create uncertainty, arbitrary interpretations and additional expense for developers. It will also introduce significant delays in the approval process while the Department demands more and more additional information. Testing criteria (frequency, parameters and methodology) should be set for different site categories to encourage buy-in by reviewers and applicants.

9. The requirement of 102.8(g)(2)(ii) relating to considering 20% of the pre-development impervious area as meadow in good condition is confusing and misrepresents many current conditions substituting an overly conservative pre-development analysis. This provision should be stricken.

10. Section 102.4(b)(6) states: "High Quality or Exceptional Value under Chapter 93, the person proposing the activity shall use nondischarge and ABACT (Antidegradation best available combination of technologies) BMPs to maintain and protect the water from degradation.

Nondischarge alternatives and ABACT BMPs and their design standards are listed in the Pennsylvania Stormwater Best Management Practices Manual Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated."

The cited reference does not provide specifics or design standards for ABACT or nondischarge alternatives.

11. Section 102.8(i) implies that the PCSM must be submitted "Upon complaint or site inspection." I do not see any other paragraph that requires that the PCSM be submitted for review by the Department or Conservation District. Is it true that the proposed revisions do not require PCSM submittal, review and approval before the start of the project? This appears to contradict other sections of the proposed rulemaking.

12. Section 102.8(l) requires that certified "Record Drawings" be presented with the notice of termination. This represents an undue burden on most developers where the contractors frequently do not provide such drawings, even when a partial payment is withheld if the record drawings are not provided. Furthermore there is no description for what the "Record Drawings" are required to contain. This section should be stricken.

13. Section 102.8(l)(1) refers to "the approved PCSM Plan," but Section 102.8(i) implies that the PCSM submittal and approval process is only required "Upon complaint or site inspection."

14. Section 102.8(m) creates an onerous requirement for the property owners to modify deeds during or after construction. This requirement should be dropped because the Department already has sufficient authority to enforce the PCSM.

15. Section 102.14(d)(1) implies that riparian buffers are to be required for "All waters." This appears to contradict 102.14(a)(1)(i) that states that riparian forest buffers are required only within an exceptional value watershed. Section 102.15(c)(2)(i) likewise states that riparian forested buffers are required for all waters. These requirements should be dropped. See my comment 1.3 above.

Dennis A. Guthrie, P.E.  
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"Smith, James M." <jsmith@irrc.state.pa.us>

"Smith, James M."  
<jsmith@irrc.state.pa.us>

To<Dennis\_Guthrie@URSCorp.com>

12/10/2009 07:18 AM

cc

SubjectComment on the Erosion and Sediment Control Reg

Mr. Guthrie –

I am the IRRC analyst assigned to this regulation proposed by the EQB. I noticed that your electronically submitted comment somehow got garbled. I have attached it so you can see how it came through the email. I wanted to give you the opportunity to resend the document so that your comment can be better considered. Even though the public comment period closed on November 30, I suggest sending it to the EQB again along with a "cc" to IRRC at the following email address: [IRRC@IRRC.STATE.PA.US](mailto:IRRC@IRRC.STATE.PA.US) . You can "cc" me also.

Thanks for your interest in this regulation and the time you took to review and comment on this regulation.

Jim

James M. Smith  
Regulatory Analyst  
717-783-5439  
jsmith@irrc.state.pa.us

Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101  
717-783-5417

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[attachment "2783 12-07-09 AGY DENNIS GUTHRIE.pdf" deleted by Dennis Guthrie/Pittsburgh/URSCorp]

## **Comments on Proposed Rulemaking**

### **25 PA. Code CH. 102**

#### **Erosion and Sediment Control and Stormwater Management**

**Deadline: November 30, 2009**

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