

PENNSYLVANIA CAMPAIGN FOR CLEAN WATER

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<https://www.ahs.dep.pa.gov/eComment/>

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

Re: CCWEV Comments on Proposed 25 Pa. Code Ch.105 Rulemaking

To Whom It May Concern:

On behalf of the Pennsylvania Campaign for Clean Water's Exceptional Value Workgroup (CCWEV), we are writing with general overarching comments in regard to DEP's proposed rulemaking pertaining to Chapter 105 regulations that were noticed in the December 5, 2020 Pennsylvania Bulletin (Volume 50 Number 49). Pennsylvania's dam safety and waterway management regulations are codified in Chapter 105. Under section 2 of the act (32 P.S. § 693.2), the Department regulates dams and other water obstructions and encroachments located in, along or across or projecting into aquatic resources to: protect the health, safety, welfare and property of the people; assure proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs; assure proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments; and to protect natural resources, environmental rights and values secured by the Pennsylvania Constitution and conserve and protect the water quality, natural regime and carrying capacity of watercourses.

CCWEV understands that the DEP has not opened up these regulations for 30 years (since 1991) and as such this is a unique opportunity to ensure the public is heard and considered, the rules are strengthened and the public trust and Pennsylvania's freshwater resources are better protected, especially from the threats of climate change, increased flooding, reduced riparian buffer habitats and still even today - continued developer threats that seek to operate and encroach on remaining sensitive floodplains, floodways, riparian buffers, streams and wetlands. CCWEV believes stricter Chapter 105 regulations are essential and required and would complement the Pennsylvania Environmental Rights amendment, Article I, Section 27 of the Pennsylvania Constitution which states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Our comments pertain largely to antidegradation requirements and protection of high quality (HQ) and exceptional value (EV) streams and wetlands, Class A and wild trout waters and their corresponding functional floodplains and riparian buffers since this is the focus of our work group. We echo the extensive joint comments put on the record by Clean Air Council, Delaware Riverkeeper Network, Mountain Watershed Association, Pennfuture, PennEnvironment and others and we hope you weigh the public comments and public interest groups comments just as heavily as the private industries that seek to operate here. Thank you in advance for the time and consideration of these comments which can be applied in various areas of the proposed rule-making.

- The public should have a thorough opportunity to learn more about these proposed changes through DEP presentations. At least one public information session followed by at least one public hearing in each region should be held to further solicit public comment and input in order to ensure this opportunity of freshwater protection is fully realized for the statewide Chapter 105 regulations.
- Ensure protection of HQ and EV aquatic resources by explicitly prohibiting waivers in these waterbodies; this should include HQ and EV streams, EV wetlands and Class A and Wild Trout streams as well. No general permits should be allowed and the regulations should explicitly list the need for individual permits in these waters so this is a clear requirement. Along these lines, existing use determinations are critical by the Department before any impact is permitted or denied to fully characterize conditions and aquatic functions on the ground. Impaired waters on the 303(d) list should also be excluded from waivers. It also appears that the intent to use waivers would not be disclosed to the public and therefore it is unclear how the community could challenge these waivers, until perhaps after the damage is already done. How would these waivers be tracked and recorded by DEP as well? Will a central list be provided and available online to the public for review?
- Regulations should ensure that no adverse impact on wetland functions and values result from mining or other projects. Adverse impacts on wetlands need not result only from direct disturbance. Indirect impacts have potential to alter wetland hydrology, cover type (forest, scrub shrub, herbaceous), species assemblage, wetland size, and extent of habitat fragmentation. DEP should require narrative descriptions of the functions and values of wetlands on - and offsite that will be affected by indirect impacts connected with a proposed project.
- Requiring thorough and transparent electronic mapping and field truthing and verification by the Department is essential to ensuring applicants' information submitted is correct and verified by agency personnel. Ensuring these electronic submissions and updated detailed mapping tools are made available to the public and volunteer monitoring community will also help find errors and deficient characterizations often observed in applicant's information. Independent JD's would assist in ensuring accurate characterization and delineation of wetlands, springs and other resources. Applicants should be required to share electronic data layers (GIS layers and Google earth layers) with the DEP to assist in its application review and these data layers should be made available to the public consistently for community review.
- Forested riparian buffers and forested wetlands should be protected and avoided whenever possible and if allowed to be impacted, should not be considered "temporary" harms. A 300 foot forested buffer would be best to achieve the greatest functions of a riparian buffer. The bigger the buffer the

better the services and functions it provides. Science shows thermal impacts, changes in benthic life, nutrient cycling and other cascading water quality impacts to waterbodies when riparian forests are lost lead to changes in the overall aquatic function of the waterbody. The Department and other sister agencies also wisely help fund riparian buffer projects which is important to aquatic function but at the same time permitting agencies should not allow their destruction.¹ These harms and encroachments to remaining riparian buffers should be avoided through the regulatory process to move these regulations to fit the current science and economic studies available.² Pennsylvania has lost the most buffer of the four Delaware River watershed states.

- Increasing application fees and fully funding the Department to field verify Pennsylvania’s public natural resources in the crosshairs of a project is an essential need that many members of the CCWEV have encountered on past pipeline projects and other applications where applicant information is incomplete or not accurate.
- Emphasize the need for applicants to support all claims in applications with clear evidence and transparency. If a project is deemed “temporary” like for example, an open trench pipeline cut through an EV wetland, ensure adequate pre- and post-monitoring and cross sections of the cut are fully documented and field truthed. Furthermore, if an applicant states avoidance of the sensitive habitat is “not feasible” a more complete analysis of that claim must be better scrutinized to avoid the often status quo and repeated harms seen time and time again on similar projects. Cumulative impacts must also be thoroughly examined.
- Section 105.17 – CCWEV supports proposed rules that include protection of wetlands and floodplains associated with Wild & Scenic Rivers and Exceptional Value streams. Exceptional Value wetlands should be added as well as High Quality streams. More should be done to ensure riparian areas, floodplains and floodways that are a functioning part that help determine the health of a stream or wetland be incorporated as protected into these freshwater regulations to avoid further encroachment in the remaining riparian forested buffers and intact functioning floodplains that remain. Science clearly documents this essential need its time the regulations caught up.
- Accounting for the effects and impacts of climate change on the Commonwealth’s public natural resources is essential; Flooding and keeping people and structures out of floodplains and floodways and buffers is a critical part to ensuring waterbody protection while keeping property and people out of harms way. 100-year flooding scenarios are antiquated and newer modeling and standards are needed. Filling floodplains for non-water dependent projects also harms communities downstream – more cumulative watershed analysis is warranted for DEP to deny such short sighted applications that will exacerbate flooding impacts downstream.

¹ Pennsylvania Department of Environmental Protection, Pennsylvania Riparian Buffer Initiative Implementation Plan, Report of the Technical Advisory Committees, Final Draft (2018).

² “Without more effective protection for riparian buffers, we estimate an annualized loss of approximately \$981 thousand to \$2.5 million in the value of monetized ecosystem services. Translated to a single acre, buffers provide over \$10,000 per acre per year in monetized benefits (Table ES2), with additional non-monetized benefits expected to increase this total. Considering these benefits over time, policies that protect riparian corridors represent one of the most efficient investment opportunities facing communities in the Basin.” ECONorthwest, The Economic Value of Riparian Buffers in the Delaware River Basin (2018), <https://www.delawareriverkeeper.org/sites/default/files/Riparian%20Benefits%20ECONW%200818.pdf> .

- Eliminate vague or confusing regulatory terms that can be interpreted in favor of damaging projects and result in harm to aquatic resources;
- Ensure no dams are allowed to be built even in smaller watersheds and headwater streams. In an era where conservation groups and agencies like DEP and DCNR are wisely removing historic and relic dams to restore and improve the natural stream flow of rivers, that practice should be the model DEP instills in this new era of regulations. Furthermore, the science is clear that even small dams cause thermal impacts, flooding of aquatic habitats, and other harms that are not acceptable especially for HQ, EV and impaired waters.
- Require thorough and detailed documentation by the Department to support a decision to issue or deny a permit or waiver.
- Springs should be added to private water supplies; and for Hydrology and hydraulics – “groundwater-surface water interaction” is important to evaluate.

The Pennsylvania Campaign for Clean Water is a coalition of over 180 environmental, conservation, sporting, and religious groups from all corners of the state that speaks in one voice in support of federal and state policies to protect and restore Pennsylvania’s water resources. The Exceptional Value workgroup focuses on protection of the Commonwealth’s highest quality streams and we regularly meet to discuss and support local watershed petitions, stream redesignations, science and other protective measures being undertaken across the state.

Thank you for your time and consideration of these comments and we look forward to engaging more in this dialogue to better update and protect Pennsylvania’s freshwater resources and special protection streams before these rules are finalized and adopted.

Sincerely,



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CCW Exceptional Value Co-Chair
Delaware Riverkeeper Network



Eric Harder
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