

1267

Chambers, Laura M.

From: Linda Ballew [LBallew@ENERGYPA.ORG]
Sent: Monday, November 30, 2009 4:43 PM
To: EP, RegComments
Cc: Michael Love; Donna Clark; Karen Markey; Kim Ringwood; Deb Kitner; Birgitte Chapman
Subject: Proposed Rulemaking to Amend Erosion and Sediment Control and Stormwater Management (25 Pa Code, Chapter 102)

Good afternoon.

Attached please find for filing Comments of the Energy Association of Pennsylvania and a one-page summary regarding the Proposed Rulemaking to Amend Erosion and Sediment Control and Stormwater Management (25 PA Code, Chapter 102).

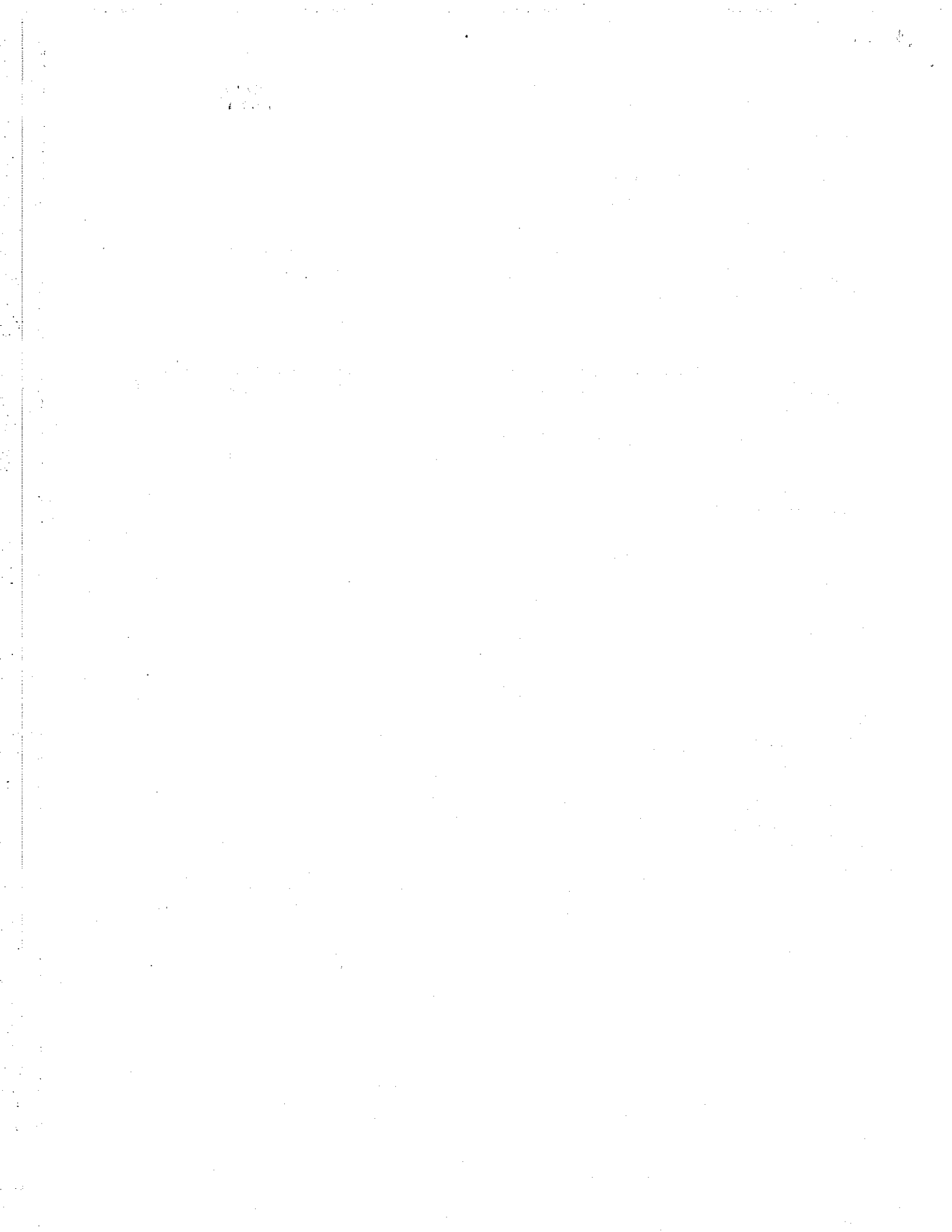
Should you have any questions, please feel free to contact:

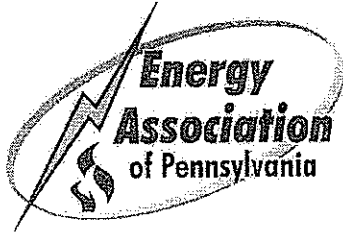
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Thank you.

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November 30, 2009

VIA ELECTRONIC MAIL

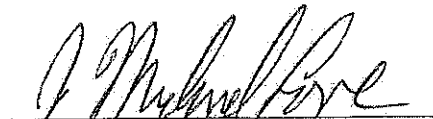
Honorable John Hanger, Chairperson
Secretary of Environmental Protection
16th Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101-2301

**RE: PROPOSED RULEMAKING TO AMEND EROSION AND SEDIMENT CONTROL
AND STORMWATER MANAGEMENT (25 PA. CODE, CHAPTER 102)**

Dear Secretary Hanger:

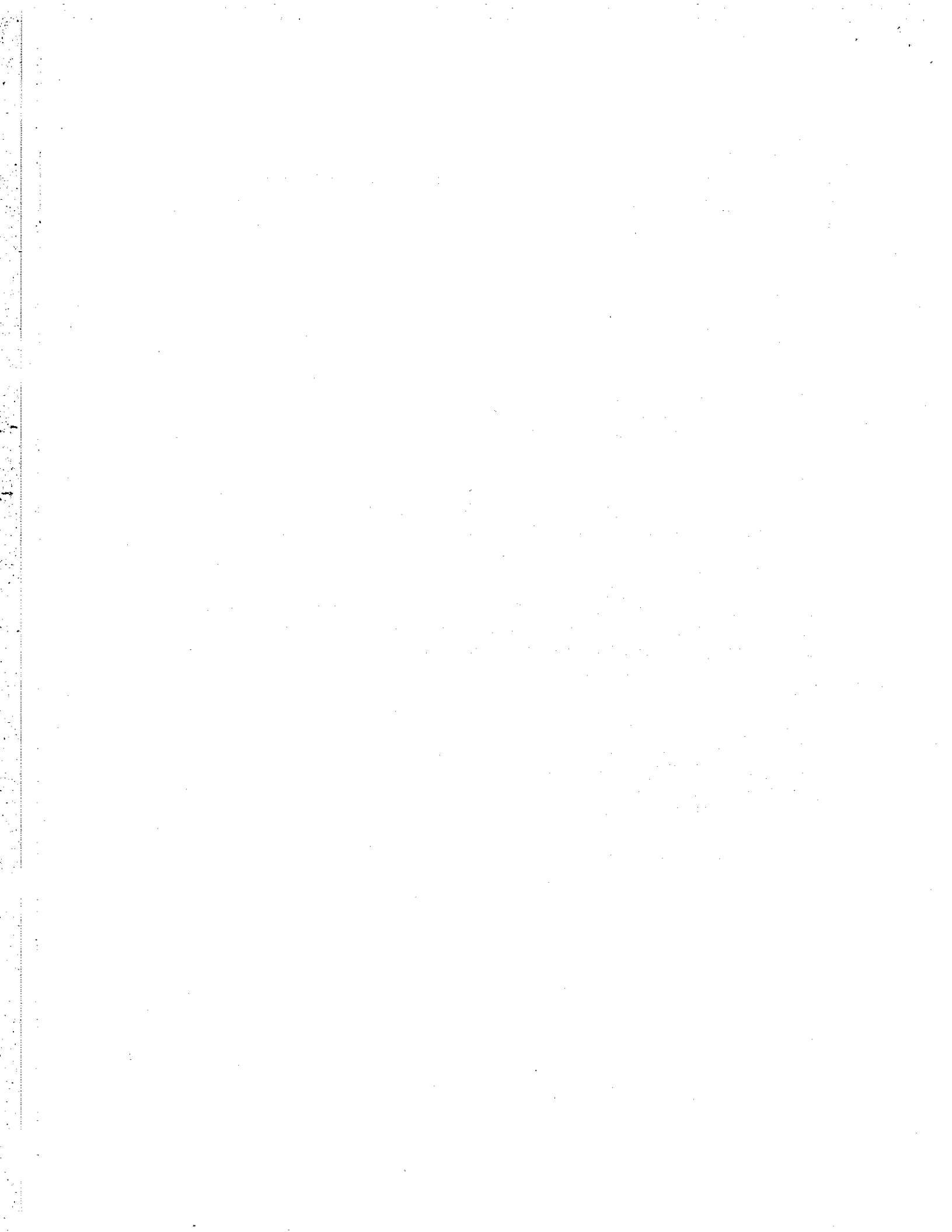
Enclosed for filing are the comments of the Energy Association of Pennsylvania in the above-referenced proceeding. A one-page summary of comments is also included for submission. Please do not hesitate to contact us if you have any questions.

Sincerely,



J. Michael Love
President and CEO

Cc: RegComments@state.pa.us



**BEFORE THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Proposed Rulemaking to Amend :
25 Pa. Code Chapter 102 :
(relating to erosion and sediment control :
and stormwater management) :

Comments of the Energy Association of Pennsylvania

I. Introduction

On June 16, 2009, the Environmental Quality Board (“Board”) issued a proposed rulemaking for publication in the Pennsylvania Bulletin and subsequent public comments, amending 25 Pa. Code Chapter 102 – Erosion and Sediment Control and Stormwater Management. The proposed rulemaking appeared in the Pennsylvania Bulletin on August 29, 2009 which established, inter alia, a public comment period ending on November 30, 2009. The Energy Association of Pennsylvania (“EAPA” or “Association”) respectfully submits its comments to this proposed rulemaking on behalf of its member natural gas and electric utility distribution company members.¹

The Association will provide responses from the perspective of utilities involved in multi-mile linear projects, primarily located in rights-of-way or on easements, to the three general issues identified by the Pennsylvania Department of Environmental Protection (“Department”) in cooperation with the Water Resources Advisory Committee: namely, (1) should the proposed rulemaking limit or expand the availability of the proposed permit-by-rule; (2) should the proposed rulemaking address responsibility for long-term operation and maintenance of Post Construction Stormwater Management (PCSM) Best Management Practices (BMPs); and (3) should the proposed rulemaking include a provision for mandatory riparian forest buffers. The Association will also provide specific comments to proposed amendments and will address the issue of increased

¹ EAPA is a non-profit trade association representing the interest of Pennsylvania natural gas and electric distribution utility companies in connection with regulatory and legislative policy issues. Its members include: Allegheny Power, Citizens’ Electric Company, Columbia Gas of PA, Dominion Peoples, Duquesne Light Co., Equitable Gas Company, MetEd, National Fuel Gas Distribution Corp., PECO Energy Co., Penelec, PennPower, Philadelphia Gas Works, Pike County Light & Power Co., PPL Electric Utilities, UGI Utilities, Inc, Valley Energy, Inc. and Wellsboro Electric.

compliance costs that will likely occur upon final adoption of the proposed rulemaking if changes are not made to address these comments.

II. Comments

Earth disturbance activities undertaken by regulated utilities in Pennsylvania consist primarily of multi-mile linear projects over real estate owned by others, i.e., non-utility third party owners. Utilities are most often engaged in projects to which they have rights-of-way or easements. In many situations, the utility is not the land-owner. The Association's comments in this proposed rulemaking focus on the unique situation of the utility industry² which must maintain, repair, upgrade and install miles of pipe and overhead lines on property owned by third parties.

A. Issues Raised by the Water Resources Advisory Committee

1. Scope of the Permit by Rule: Should the proposed rulemaking limit or expand the availability of the proposed permit-by-rule?

The Association commends the Department in its effort to develop a permit-by-rule and welcomes a streamlined, shortened process. However, as proposed for Chapter 102, the permit-by-rule is so prescriptive and limited that it is likely to be of little use for the regulated utility community. The Association notes that in other Department programs, the term "permit-by-rule" is used in situations where a regulated entity is "deemed" to have a permit under specific identified conditions without the need to submit an application. The current proposal creates a "permit-by-rule" which necessitates a pre-submission meeting, inclusion of a riparian forest buffer, a limit of 15 acres of disturbance at any one time during development of a project and the retention of the services of a professional Pennsylvania-licensed engineer, geologist or landscape architect to prepare and certify Erosion & Sediment (E&S) and PCSM plans, as well as oversee critical stages of construction and provide "record drawings" upon project completion. See generally §102.15(c). The additional criteria and costs associated with the proposed "permit-by-rule" do not make it an attractive option for the regulated utility industry.³

² Virginia's Department of Conservation & Recreation, in its Erosion and Sediment Control Program, offers a Land-Disturbance Guidance for Telephone, Cable, Electric, Natural Gas Pipeline and Railroad Companies, recognizing the uniqueness of these regulated multi-mile linear projects and providing for an alternate process which subcategorizes an industry(ies) that needs different requirements, such as exemptions and/or Variance Requests for certain land-disturbing activities. http://www.dcr.virginia.gov/soil_and_water/documents/utspec02.pdf

³ A streamlined "permit by rule" option is particularly necessary for routine utility projects such as planned outages and substations repairs which should not necessitate a 6-month notice in order to take a line out of service for

Moreover, the “30-day review and eligibility verification and determination for coverage” does not appear to streamline the historically provided 30-day review by the Department. The Association and its members continue to support and advocate for a maximum of thirty days to review general permits across all Department programs. A 30-day review period should continue to be the norm for general permits obtained under Chapter 102, as well.

Consequently, while the Association is supportive of a “permit-by-rule”, it is not convinced that the process proposed in this rulemaking is streamlined, less prescriptive, or less costly than adhering to the general permit process.

2. Responsibility for Long-Term PCSM Operation and Maintenance: How should the proposed rulemaking address responsibility for long-term operation and maintenance of PCSM BMPs?

Initially, the proposed rulemaking provides at §102.5(f) to add language stating that “[a] person proposing earth disturbance activities requiring a permit or permit coverage under this chapter shall be responsible to ensure implementation and long-term operation and maintenance of the PCSM Plan.” Additionally, in new §102.8(m) (PCSM requirements), the proposed regulations provide that:

[u]nless a different person is approved in writing by the Department, operation and maintenance of PCSM BMPs shall be the responsibility of the landowner of the property where the PCSM BMP is located. The deed for any property containing a PCSM BMP shall identify the PCSM BMP and provide notice that the responsibility for operation and maintenance of the PCSM BMP is a covenant that runs with the land and that is enforceable by subsequent grantees. A grantor that fails to comply with this requirement shall remain jointly responsible with the landowner for operation and maintenance of the PCSM BMPs located on the property.

See §102.8(m).

While the Association agrees with the Department that identifying a responsible party to ensure long-term operation and maintenance of the PCSM plan is crucial, the regulatory language is too prescriptive, assumes the need for engineered PCSM BMPs on every project requiring an NPDES Permit for Discharge and Stormwater from Construction Activities (NPDES Permit) and

several days. An expedited process will become increasingly more important as necessary work begins to develop a smart grid, made possible through stimulus award grants to utilities.

does not indicate that operation and maintenance obligations may terminate when final stabilization is achieved or when a Notice of Termination is approved.

Many natural gas and electric utility projects do not result in grade changes or increased impervious surface area and, once restoration is complete, do not require implementation and maintenance of PCSM BMPs. Further, the landowner is very often not the utility and may have no obligation to take on this role under existing agreements, or to add language to its deed. Distribution utilities may not have the ability to demand such deed amendments.

Accordingly, the Association's members seek language to provide for flexibility both in determining whether implementation and maintenance of PCSM BMPs is warranted and in identifying a responsible party. Utility projects which are multi-mile and linear in scope necessarily run across or through consecutive properties owned by different land-owners. The permittee likely does not own the property and may not be the party responsible for maintenance or have control over how the property within the easement or right-of-way is used by the landowner. Thus, flexibility and communication between the permittee and the Department on a case-by-case basis is necessary to determine the need for PCSM BMPs on a particular project and the party responsible for long-term operation and maintenance.

Adding the language "if necessary" to the end of proposed §102.5(f) should provide the requested flexibility, in part. Additionally, providing language in proposed Section 102.8(m), which acknowledges the unique position of the regulated distribution utility, and provides for the naming of a responsible party in cooperation with the Department without necessarily requiring the deed restriction will provide flexibility and a practical solution to this issue.

If the Department retains the position that permittees (utility companies) will be responsible for maintaining PCSM BMPs, the Association then requests that the Department reconsider the feasibility, practicality, cost, and future effect on the property of this requirement in the sections of the proposed rulemaking cited above. Compliance will require hiring a qualified professional to complete the tasks in §102.8(f)(10). As a utility, these costs of distribution and/or transmission service may be passed on to the ratepayer. If the property owner becomes responsible, he then assumes the cost as a private citizen who is penalized because he provided right-of-way for utility services. This additional cost will begin to be reflected in the utilities' right-of-way costs, which in turn, may be passed on to the ratepayer.

Currently, the National Pollution Discharge Elimination System (NPDES) Permit for the discharge of stormwater is required to be terminated by the acceptance of the Notice of Termination after an inspection by the conservation district that initially approved the E&S and NPDES permits and deems a site satisfactorily stabilized. The Association requests that the Department define an end point for conducting inspections of a stabilized utility line construction site. There is no value in continuing inspections and maintaining inspection records of a site that has no PCSM BMPs. The Department should continue the practice of terminating the permit after the site has been uniformly covered with 70% perennial vegetation or stabilized with another acceptable BMP, in lieu of the perpetual long-term operation and maintenance of the site, as stated in §102.8(m).

3. Mandatory Riparian Forest Buffers: Should the proposed rulemaking include a provision for mandatory riparian forest buffers?

The third general issue raised by the Water Resources Advisory Committee seeks comments on whether the proposed language found at §102.14(a)(1)(i) requiring a riparian forest buffer for activity located within an Exceptional Value (EV) watershed where the project site “contains, is along or within, 150 feet of a river, stream, creek, lake, pond or reservoir”, should be expanded to include all waters or should be voluntary for the permittee in all cases. The Association maintains that the language as proposed is too prescriptive and unworkable when it is applied to multi-mile linear utility projects that are often constructed on non-utility property subject to existing rights-of-way and easements. Many existing lines do parallel and/or cross water ways for practical and historical purposes.

Even if the requirement is limited to projects located within an EV watershed, the Association questions whether the riparian buffer must be forested, particularly where federal regulations (DOT Pipeline Safety, FERC and NERC) do not allow woody vegetation to be planted on a pipeline or where it could interfere with overhead lines. Flexibility and cost consideration is necessary and warranted, particularly in the area of the typical utility project involving underground pipelines or overhead electric transmission and distribution lines where costs are passed on to all ratepayers.

Moreover, the Association questions whether this requirement is appropriate in the context of preventing accelerated erosion and sedimentation, i.e., do the assumed environmental

benefits decrease erosion and sedimentation due to earth disturbance activity? A better way in which to promote the establishment of riparian buffers (all types) along waterways and achieve the desired environmental benefits would be through the creation of incentives, such as post-construction stormwater credits, rather than mandates.

B. Specific Comments

1. Association Comments on Proposed Definitions at §102.1

The Association offers limited comments on proposed new definitions and changes to existing definitions as follows:

BMPs – The Association notes that the revised definition now includes both “minimizing accelerated erosion and sedimentation and managing stormwater ... before, during and after earth disturbance activities.” Clarification is requested to limit the time “after earth disturbance activities” until such time as the site is permanently stabilized. Adding the language “to the extent practicable” to the end of the definition would address the concern of the regulated distribution utility industry.

Erosion and Sedimentation Plan – The Association questions the need for every erosion and sedimentation plan to consist of both “drawings and a narrative” particularly in situations involving minimal earth disturbance. With respect to the proposed new language reading “before, during and after earth disturbance activities,” clarification is requested to limit those BMPs dealing with minimizing accelerated erosion and sedimentation “after each disturbance activities” until such time as the site is permanently stabilized.

Licenses Professional - The Association requests that the Department expand the category of professionals named in the definition section to include a person who is a certified professional in erosion and sediment control (CPESC) or a certified professional in stormwater quality (CPSWQ).

Perennial Stream/Intermittent Stream – The Association seeks clarification with respect to the source for and intended use of these definitions. In defining these terms, does the Department seek to have permittees classify a stream as perennial or intermittent?

2. Association Comments on Proposed Changes Relating to the Obligation to Restore and Reclaim Water Quality and Existing and Designated Uses

A number of the proposed additions and revisions to Chapter 102 require that earth disturbance activities and related PCSM activities be planned and conducted so as to “protect,

maintain, reclaim and restore the quality of water and the existing and designated uses of water within the Commonwealth.” See, e.g. §102.1, §102.4(b)(4)(v); §102.8(b)(9); §102.11(a)(1) and (a)(2).

The Association agrees that a person involved in earth disturbance activities should be obligated both to protect and maintain the quality and existing and designated uses of waters of the Commonwealth during the activity and to implement BMPs to protect and maintain the water quality after the activities. However, the Association does not support the Department’s position that the restoration and reclamation of the waters in the project area that have **not** been degraded by the current project should become the responsibility of the current permittee/developer.

The Association requests that the Department retain the words “to the extent practicable” in §102.4(b)(4)(v), §102.8(b)(9), and add it to the definition of BMP in §102.1, and to §102.11(a)(1) and (a)(2), to be consistent with the other sections using these terms. The words, “to the extent practicable” afford the permittee an opportunity to take a realistic position in restoring and reclaiming the water quality and existing and designated uses of the waters of the Commonwealth.

3. Stormwater Event - §102.4(b)(5)(x)

With respect to the operation and maintenance of BMPs and documented post-event inspection reports after a “stormwater” event, the Association requests that the Department consider the nature of multi-mile linear utility projects and delete the words “stormwater event” and maintain the words, “measurable rainfall stormwater event”. Further, a clear definition of “measurable rainfall stormwater event”, such as 0.5 inches of rain in a 24-hour period, should be added to §102.1 of the proposed regulations to avoid uncertainty.

In utility projects, a “stormwater event” or “measurable rainfall stormwater event” may be occurring in one section of the project and not in another. The “stormwater event” or “measurable rainfall” can occur in an inactive (disturbed, but stabilized) section of the project and not in the active construction section of the project. It is impossible for a site inspector to be in every location simultaneously where BMPs are installed in such a project. The Association further requests that the Department recognize the uniqueness of a linear project in the implementation of the post-rain event inspection requirements of the proposed rulemaking and identify an endpoint for those requirements, such as once the site is restored and permanently stabilized.

4. Evaluation of Thermal Impacts - §102.4(b)(5)(xiii)

The Association suggests that this section should be eliminated from the E&SC plan as outside the scope of erosion and sedimentation control. This requirement has the potential to cost significant dollars and slow the permit approval time by months.

5. Inspection Reports - §102.4(b)(7)

The Association requests that the Department add the words "manned" to this section:

"The E&S Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district at the **manned location** or project site during all stages of the earth disturbance activity."

Flexibility is needed in requiring inspection reports and monitoring records to be kept onsite during construction. Many small construction projects do not have an onsite construction trailer or other place sufficient to keep these records. The inspections may be done by and kept electronically at a remote office, or in possession of an inspector who is not present on site at all times (such as a consultant or licensed professional). As long as the records can be produced promptly on request, (within 24 hours) – that should be sufficient.

6. Permit Coordination - §§102.4(d) and (e)

Utility projects are frequently phased projects. Some phases require earth disturbance, while others do not. Chapter 105 permits are often required for the non-earth disturbing phases. For example, a Chapter 105 GP-5 permit may be required for upgrading an aerial utility line crossing or a GP-11 may authorize reconductoring lines, neither of which involve earth disturbance. But these same lines may be leaving a substation, where earth disturbance is required for installing the substation equipment associated with the line upgrade.

The Association requests the Department's confirmation that a permittee may begin earth disturbance work in a substation or similar site before the permits for non-earth disturbing line work have been obtained. Frequently, below grade work must be completed before the line work is either designed or scheduled.

7. Permit Fees - §102.6(b)(2)

The Association acknowledges the Department's need to increase the fees for the permits issued for projects in the Chapter 102 program. The Association recommends that the Department adopt a tiered approach to the fee increases, similar to the fee schedule maintained by many conservation districts, based on ranges of acreage.

The increased fee schedule is acceptable, provided, the fees are used to augment the agency resources to improve responsiveness and provide reasonable application processing timelines. As proposed, these rules only impose timelines on the permittee for response to application deficiencies. Timelines should be spelled out for both completeness and technical reviews. General permit applications should not require a completeness review, but only a check to see that all required elements are present and incorporated into the main review time and that the standard conditions have been addressed.

8. Forested Riparian Buffers - §102.4(b)(5)(xv), §102.14

The Association questions whether inclusion of §102.14 is appropriate as a mandate in this rulemaking. This is one of many Best Management Practices (BMPs) in the PA Stormwater Manual. The discussion of this BMP in the Stormwater Manual presents this option as one that requires considerable planning. The first step in that planning is obtaining landowner permission and support. As presented in the proposed rulemaking, the landowner would not have a choice. This BMP appears mandated for development in situations identified in §§102.14(a)(1) and (2).

The PA Stormwater Manual also advises that the site conditions must be well understood, the buffer width may be flexible, and the appropriate plants should be selected for the site. The prescription for the mandated buffer in §102.14 is written to be implemented without deviation, which appears contrary to the language in the PA Stormwater Manual. If §102.14 remains in the proposed rulemaking, the Association requests that the Department replace the word, "shall" with "should" throughout this section. This requested change would be consistent with §102.11(3) that references the *Riparian Forest Buffer Guidance* with various design, construction, and maintenance standards.

Additionally, §102.14(e)(4)(i) lists construction or placement of utilities in a forested riparian buffer as an acceptable activity. Although identified as an acceptable activity, overhead electric utility lines could not be constructed in a forested riparian buffer. These overhead lines require a right-of-way varying in width from 30 to 100 feet, that must be cleared of trees and brush that could grow into the lines. Further, pipeline and public safety consideration prohibit woody vegetation from being planted over in-ground pipelines. These requirements already limit the property owner in the development allowed in the right-of-way or easement granted to a utility. The requirement to maintain or plant a forested buffer is contrary to present practices and federal requirements and will result in additional utility costs for property acquisition and possible buffer maintenance. Ultimately, these additional costs will fall on the ratepayer as transmission and /or distribution charges. While the Association acknowledges the biological value of a buffer, the Department should consider buffers other than forested if necessary for multi-mile linear utility projects.

In siting new utility lines or pipes, a company can try to avoid development within 150' of an EV stream with minimal earth disturbance in an effort to protect the water resources in the Commonwealth. However, §102.14(a)(2) appears to grant the Department discretionary authority to require a forested riparian in any project site. The Association requests that §102.14(a)(2) be deleted from the proposed rulemaking. It creates too much uncertainty and possible cost for the regulated public by potentially requiring acquisition of additional property and re-designing a project to include a forested buffer after the permit application has been submitted. Construction budgets and schedules are developed based on best available field data, project need, and specific permitting criteria. To permit such a vague permit criteria creates unnecessary risk in the project.

9. Typographical Corrections Suggested

§102.5(a) An NPDES permit stormwater discharges associated with construction activities.

The Association requests that the Department insert the word "for" after "permit" to read, "§102.5(a) An NPDES permit for stormwater discharges associated with construction activities."

§102.7(c) Until the permittee has received written acknowledgement an NOT...

The Association requests that the Department insert the word "of" after acknowledgement to read,

"Until the permittee has received written acknowledgement of an NOT..."

C. Compliance Costs

The Association maintains that the proposed rulemaking, if finalized without modification, will lead to increased compliance costs which will impact the rate of regulated utilities. The key items in PA DEP's proposed rule changes to Chapter 102 that could increase cost requirements include increased permit fees; PCSM plan implementation oversight, record drawings, and long-term inspection/reporting; and riparian forest buffer conservation (existing), construction (new) and maintenance. These are further clarified as follows:

1. Increased Permit Fees which the industry supports if tiered and used to improve timeframe for agency review.
2. PCSM plan requirements have been a component of the NPDES stormwater permitting process since 2002 and are addressed by utilities in their NPDES permit applications. The proposed rules now seek to codify these existing practices along with more stringent construction oversight and record drawing preparation. More specifically:
 - (a) the proposed rules require that a licensed professional (or designee) be present on-site and be responsible during critical stages of approved PCSM plan implementation, including underground treatment or storage (e.g., Tunnel substation), structurally engineered BMPs (possibly basins), or other BMPs as deemed appropriate by the PADEP. This could add significant cost depending on the size, number and complexity of PCSM BMPs for a given project;
 - (b) record drawings showing as-built conditions must be prepared and certified by a licensed professional for inclusion with the NPDES Notice of Termination. Again, this could be significant cost depending on the size, number and complexity of PCSM plan BMPs for a given project;
 - (c) the deed for the property containing the PCSM BMPs must identify the BMPs and provide notice that the responsibility for O&M of the BMPs is a covenant that runs with the land;

(d) written inspection and repair reports (per the long-term O&M plan and schedule of the PCSM plan) must be available for review and inspection by the PADEP.

Codification of these specific O&M requirements creates a compliance item which, in turn, creates long-term costs.

3. Riparian Forest Buffer Requirements

Both existing and newly established riparian forest buffers must be managed and maintained to provide for the required composition (including control of invasive species to the extent possible) for a period of 5 years. In addition to management and maintenance costs – the initial cost for land acquisition, design, and installation would be an even bigger factor.

III. Conclusion

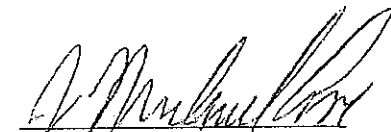
The Energy Association of Pennsylvania understands the Environmental Quality Board's (EQB) desire for increased protections to limit stormwater runoff from construction sites and to initiate buffer measures to preserve the existing quality of the Commonwealth's water supply. Further, EAPA and its members agree that a person and/or entity involved in earth disturbance activities should be obligated to protect and maintain the water quality after the activities for a defined period of time.

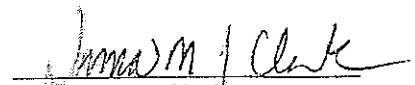
However, EAPA respectfully requests that the Department consider flexible and less prescriptive requirements for multi-mile linear utility projects which are clearly in a separate category from general construction projects and which generally do not result in grade changes or increased impervious surface area and which, once restored, do not require implementation and maintenance of PCSM BMPs. Since there is no indication that O&M obligations may terminate when sedimentation is stabilized or when a Notice of Termination is approved; and, since the utility is very often not the landowner, the obligation to take on a long-term O&M role under existing agreements or to add language to its deed may not be practicable.

EAPA suggests that proposed language surrounding riparian buffers is also too prescriptive and unworkable for multi-mile linear utility projects. A "one size fits all" approach does not work. Even if limited to projects located within an EV watershed, conflicts exist as FERC and NERC regulations do not permit woody vegetation to be planted on a pipeline or where it could interfere with overhead electric transmission lines.

Lastly, EAPA suggests that the EQB consider including a section to deal with emergency utility projects such as pipe repairs or repair of above ground or underground electric and gas utilities' facilities. The Association refers the Department to the Delaware Administrative Code Title 7, Section 3.1.4 Delaware Sediment & Stormwater Control⁴, which "may preclude prior plan review and approval" in lieu of notification of the appropriate plan agency orally and in writing within 48 hours of the initiation of such emergency activity and subsequent inspection of sediment control or site stabilization.

EAPA respectfully requests that the Board review and amend its proposed erosion and sediment control regulations to recognize and offer greater flexibility to unique utility multi-mile liner projects. The Energy Association appreciates the opportunity to provide these comments and looks forward to working with the EQB to comprise regulations that successfully employ best management practices that will maintain and protect the Commonwealth's water quality.

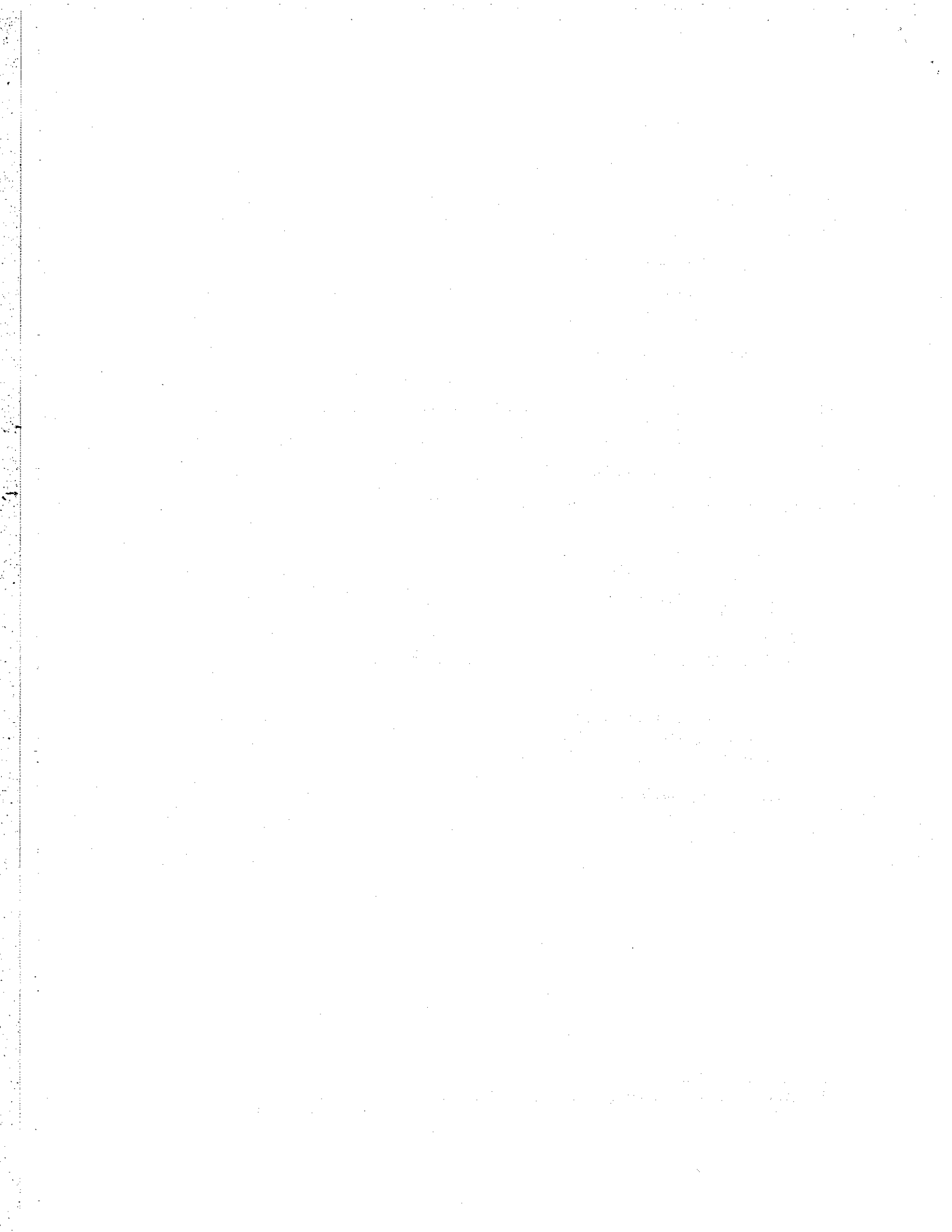

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Date: November 30, 2009

⁴ http://www.dnrec.state.de.us/dnrec2000/Divisions/Soil/Stormwater/Regs/SSRegs_4-05.pdf



Energy Association of Pennsylvania

POSITION SUMMARY

The Energy Association of Pennsylvania ("EAPA" or "Association") is a trade association working with the major electric and natural gas distribution companies in the Commonwealth. As with most utility work involving earth disturbance, its members engage primarily in linear multi-mile projects which most often occur on real estate owned by third parties. The utilities use of the property is primarily pursuant to easements and/or rights-of-way. Further, utilities are closely regulated by other agencies such as the PA Public Utility Commission and FERC and must adhere to certain other rule-making bodies such as NERC, which enforces national standards. While a project could extend 10 miles in a 50-foot right of way, it might only disturb soil at a discrete point rather than along the entire project route. The proposed amendments to Chapter 102 appear more applicable to earth disturbance activities in traditional "box development" construction projects, i.e., building construction and developments on a non-linear single-owner lot. Moreover, and importantly, the proposed amendments should be considered in the context of a cost/benefit analysis which recognizes that increased utility costs for prescriptive regulations will be recovered from ratepayers in subsequent base rate proceedings.

EAPA requests that the Department consider flexible and less prescriptive requirements for multi-mile linear utility projects which are clearly in a separate category and generally do not result in grade changes or increased impervious surface area. Moreover, following project completion and site stabilization, these types of projects do not necessarily require long-term maintenance of PCSM BMPs. As proposed, O&M obligations do not terminate when sedimentation is stabilized or when a Notice of Termination is approved. Since the utility is very often not the landowner, the obligation to take on a long-term O&M role under existing agreements or to add language to a third-party deed may not be practicable. Again, the issue of cost versus benefit to utility ratepayers should be considered by the EQB prior to imposing these proposed changes on the utility industry.

Additionally, EAPA suggests that proposed language surrounding riparian forest buffers is too prescriptive and unworkable for utility projects. A "one size fits all" approach is not the answer. Even if limited to projects located within an Exceptional Value watershed, conflicts exist as FERC and NERC regulations do not permit woody vegetation to be planted on a pipeline or where it could interfere with overhead electric transmission lines.

Lastly, while EAPA appreciates the Departments efforts to provide for an expedited "permit-by-rule" process, the proposed regulation offers no real advantage to regulated entities. As proposed, the "permit-by-rule" upfront preparation requirements are costly, extensive and prescriptive. Further, the 30-day review period does not provide a streamlined review; rather it mirrors the current review time frame.

EAPA respectfully requests that the Board review and consider amending its proposed erosion and sediment control regulations to offer greater flexibility for multi-mile linear utility projects that are distinct from general construction projects. The Energy Association suggests consideration of rules or guidelines similar to those found in Virginia for utility projects and Delaware for emergency utility work, as well as consideration of the proposed changes in the context of a cost/benefit analysis which recognizes the impact on ratepayers to increased utility costs.

