

# Water Resources Advisory Committee

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May 8, 2009

The Honorable John Hanger, Chairman  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA, 17105-8477

*Re: Proposed Rule amending 25 Pennsylvania Code Chapter 102 (Erosion and Sediment Control)*

Dear Secretary Hanger:

I write on behalf of your Water Resources Advisory Committee to share our concerns with the proposed rulemaking to amend the Department's erosion and sediment control regulations at 25 *Pennsylvania Code* Chapter 102.

The Department asked WRAC to provide input on this rulemaking package in April to accommodate its intention to bring the proposal to the Board in June. WRAC discussed the draft permit by rule elements of the rulemaking package on February 25. It discussed the rest of the package at its regularly scheduled April 8 meeting and at two special meetings on April 23 and 29.

Due to the complexities of the proposed regulation, the controversial nature of some of its components, and the short time we had available to review it, we are grateful that the Department has indicated its willingness to work with WRAC throughout the rulemaking process to respond to public input and to refine the rulemaking into final form. To facilitate a thorough vetting of the proposal, WRAC suggests that the Board conduct three public hearings and accept public comment on the proposed rule for at least 60 days.

WRAC also requests the Board solicit specific public comment on the following issues:

1. *Should the regulation limit or expand the availability of the proposed Permit by Rule?*

The permit by rule (PBR) is proposed for use with projects the Department characterizes as low-impact. The PBR would include a requirement for riparian forest buffers in watersheds classified as High Quality (HQ) waters and in all other waters not classified for Special Protection. The proposed PBR would not be available for use in watersheds classified as Exceptional Value (EV) waters. Some of the committee members recommended that the PBR be available for all waters, including EV waters. Others recommended that the PBR only be available for use in waters other than those classified as HQ and EV.

2. *How should the regulation address responsibility for long-term operation and maintenance of Post-Construction Stormwater Best Management Practices?*

The Department and the regulated community continue to struggle with the assignment of long-term responsibility for the operation and maintenance (O&M) of Post-Construction Stormwater

Management (PCSM) Best Management Practices (BMPs). The proposed rulemaking requires the permit applicant to identify a party with long-term responsibility for operation and maintenance of PCSM BMPs. It also includes a default provision that obligates the landowner to provide that long-term O&M function unless some other approach is approved by the Department. Some members of WRAC voiced concern that the regulation should clarify more detailed procedures to identify and assign responsibility to third-parties who may become responsible for PCSM BMPs through a future property transfer or as the owner of the property upon which a lessee is conducting a regulated activity. Such provisions would ensure that the BMPs are properly operated and maintained.

3. *Should the regulation include a provision for mandatory riparian forest buffers?*

The proposed rulemaking would require a permittee to install and maintain 150-foot riparian forest buffers for regulated activities that occur along EV streams. Some members were concerned with the lack of information provided by the Department and the proponents of the buffer mandate on the costs associated with the installation and maintenance of riparian forested buffers. Some of the members recommended that riparian forest buffers should be mandatory for regulated activities in all watersheds while others recommended that riparian forest buffers be used voluntarily as one of many BMPs that may be selected by the permittee to meet the watershed protection goals of the regulation.

Finally, given the substantive relationship between the Chapter 102 regulations and the Department's *Stormwater Best Management Practices Manual* and its *Erosion and Sediment Pollution Control Program Manual*, WRAC also suggests that the Department initiate and engage in a process to update the manuals on a continuing basis to ensure that they remain current with the latest stormwater management practices and procedures.

Thank you for your consideration of our comments and concerns.

***For the Water Resources Advisory Committee:***

  
Stephen W. Rhoads  
Chairman