



Senate Environmental Resources and Energy Committee

Senator Mary Jo White Chairman

Patrick Henderson, Executive Director

Room 169 • State Capitol Building
Mailing address: Senate Box 203021 • Harrisburg, PA 17120-3021
Phone: 717-787-9684 • FAX: 717-787-6088 • energy@pasen.gov

November 30, 2009

John Hanger, Chairman
Environmental Quality Board
15th Floor Rachel Carson Building
Harrisburg, PA 17105

**Re: Proposed Rulemaking – Erosion & Sediment
Control (#7-440)**

Dear Chairman Hanger:

I am writing to offer comments for the Environmental Quality Board's (EQB) consideration regarding the above-referenced proposed rulemaking.

As currently drafted, the proposed rulemaking would prohibit the use of a permit by rule within exceptional value watersheds. While I applaud the department's effort to create and implement a permit by rule – which can expedite a permit review timeframe by removing unnecessary delays without relieving a permit applicant of any of their environmental or conservation obligations – I urge the department to rethink its opposition to the use of a permit-by-rule within Exceptional Value waterways.

If the department is confident in the environmental safeguards included in its permit-by-rule initiative, then it should be immaterial whether a specific project is located within an Exceptional Value, High Quality or other watershed. This is of particular concern given the penchant for some groups to submit stream redesignation petitions to the department for the purpose of hindering development.

I also object to the requirement that an applicant who seeks to utilize the permit-by-rule option must install, maintain or otherwise incorporate into their project a 100-foot or 150-foot riparian buffer. There is no environmental or conservation justification for imposing a potentially costly and unnecessary requirement on a permit applicant simply because of the administrative review process they choose to utilize. Moreover, such a requirement reinforces the notion among some groups who object to the permit-by-rule option that the option is somehow less protective of the environment, and therefore additional, compensatory requirements must be imposed. This is particularly true for oil and gas development, where the earth disturbance is relatively limited, both in size and duration, and where Pennsylvania remains one of the few states to require an erosion and sediment control permit.

Similarly, I object to the requirement of including a mandatory 150-foot (300-foot total) buffer for any project that happens to be located within an Exceptional Value waterway. Such a requirement is arbitrary, and may impact other persons with potential interests in the waterway.

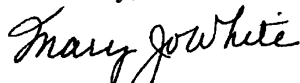
While riparian buffers certainly have benefits, and should be encouraged where appropriate and feasible, instituting a mandatory buffer threshold will have unintended consequences. I encourage the department to maintain the buffer setback as a best management option for applicants, or to be applied on a case-by-case basis. I also look forward to the department's estimated financial costs of mandating such a buffer, as requested by the Water Resources Advisory Committee.

I note that fees collected under Chapter 102 are expected to increase substantially, from approximately \$650,000 to nearly \$7.3 million. Much of this money will be retained by county conservation districts who implement the Chapter 102 programs on behalf of the department. I would appreciate an estimate of how much of the \$7.3 million will be retained by county conservation districts, and whether this revenue must be segregated by the county conservation districts and utilized only for implementation of the Chapter 102 programs, and not redirected elsewhere. Additionally, I would like to know whether county conservation districts can charge fees above and beyond those authorized in Chapter 102, and whether the department has based the new fee schedule on the actual time and expertise needed to review a permit application.

Finally, I am aware that the department has received numerous form emails regarding this regulation, particularly concerning the mandatory riparian buffer requirement. Many of these comments are the product of an orchestrated mass email campaign by Pennfuture and the Campaign for Clean Water. While interest in these regulations certainly is appreciated, I encourage the department to focus on those comments which offer substantive and original comments that can improve upon the final regulations presented to the EQB.

Thank you for your consideration of my comments.

Sincerely,



Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee