

Chairman Miller, Committee Members
House Committee on Environmental Resources and Energy
January 29, 2014

My name is Joseph A. Harcum.

As the treasurer of the Pennsylvania Builders Association, I appreciate the opportunity to offer comments concerning House Bill number 1565. Pennsylvania Builders Association is a state-wide association of about 5,700 members in the building and construction industry. I am also a real estate developer in Wayne County.

Pennsylvania Builders Association supports House Bill number 1565.

The revised Chapter 102 regulations implemented in November 2010 arbitrarily mandated a 150 foot riparian buffer zone for EV (Exceptional Value) and HQ (High Quality) watersheds. These buffer zones must be on both sides of a river, stream, creek, lake or pond. The regulation imposes other restrictions that affect all property owners in a broad way. The buffer zone must be deed restricted and a PCSM (post construction stormwater management) plan must run for perpetuity. This operation and maintenance plan is the responsibility of the land owner and the deed for the property must contain a covenant that runs with the land. The land owner will lose use of the buffer zone because the only use allowed is passive activity. The landowner however must still pay taxes on the land. Some may say this is a "TAKING" of land without compensation. DEP does have a waiver process to avoid the 150 foot mandate. However, there is no policy or general guidelines for the process. In fact, they will not even discuss a waiver with the landowner. When submitting the permit application, you submit the waiver request. DEP then makes its decision and informs the applicant. If the waiver is denied, they keep the application fee and the landowner starts all over again.

The real question is why does this mandate rise to this level? Why mandated? There are 35 BMPs identified in the DEP's Best Management Practices manual for stormwater management, 13 non-structural and 22 structural. The riparian buffer is classified as a non-structural BMP because it is not a constructed or engineered solution. These BMP's are already approved by DEP.

PBA believes water quality protection can be achieved with a more balanced and intelligent approach that can be done on a case-by-case basis by professionals that have been licensed by the State.

PBA does not dispute the conceptual environmental value and benefits of riparian buffers. However, we do not support the position of riparian buffers as a mandated regulatory requirement. The riparian buffer should be one of the possible BMPs. Determining the appropriate BMP should be fact based and site specific. The geographic features throughout the state vary greatly. Soil types, erodibility potential, slope, prior land use, land use adjoining uplands, ground cover and many other factors make each site different. With this approach, planners, engineers and developers can design projects where water quality protections can be achieved with a more balanced and intelligent approach on a case-by-case basis.

Chapter 102 in its current form has the potential to jeopardize current and future economic development. Businesses and industries have been suffering through really tough economic times given the length of the recession. These times have stressed individuals, businesses and state and municipal governments. There has been very little development in the three years since the buffers were mandated. The economy is now starting to expand again, maybe slowly, but at least it is moving forward.

As new projects and redevelopments move forward this mandate could not only kill the projects but also kill jobs that those projects would have created. As new applications are submitted and old permits seek renewal, projects will find the new rules of NPDES is triggered by the new 1 acre disturbance rule. This will cause many projects and developers to modify their plans under these new restrictions and increase project costs through re-design. Many of these projects won't make it through the process.

Most people look at EV and HQ watershed restrictions as a Northeast PA problem. There are 28 counties in Pennsylvania that have EV/HQ at 25% or larger of privately owned land in special protection watersheds. These counties cover Pennsylvania from the Northwest with Warren and Forest, to Somerset and Bedford in the Southwest and Chester in the Southeast (see attached map). We also know that DEP is constantly upgrading waterways in Pennsylvania. Any person or organization, including non-citizens of Pennsylvania, can petition DEP to do a water study and upgrade any waterway in Pennsylvania.

DEP did not present any documentation or scientific data to justify why a riparian buffer of 150 feet was needed in EV and HQ watersheds. It was an arbitrary decision by DEP. The regulation was intended to address a problem that does not exist. Scientific studies in Northeast Pennsylvania show that water quality has actually improved over the past several decades, despite an increase in residential and commercial development within special protection watersheds. In the 2012 Annual Report for the Lake Wallenpaupack Watershed Management District, page 5, "While the water quality only improved slightly, the population of the watershed increased by approximately 113%." What does that mean? Simply put, it means water quality is being protected and mandated buffers were not and currently are not needed. The study was done by an independent third party, Aqua Link, Inc. from Doylestown, Pennsylvania.

Pennsylvania needs regulations based on scientific studies and common sense. Pennsylvania DEP needs to concentrate on addressing real water quality problems around the state and in a way that provides options to affected property owners that achieve the maximum environmental benefits in a pragmatic and cost-effective way.

If the state of Pennsylvania is to have economic growth and development, these kinds of arbitrary regulations must be stopped. Projects that have substantial job creation will go to other states before incurring these additional costs and land use restrictions.

These restrictions could impact the value of the land, reducing the value because the highest and best use has been eliminated, thereby reducing the value of the property without any corresponding

monetary compensation. What is the value of lake front property if the 150 foot buffer with no allowable earth disturbance sits between the buildable lot and the lake? What effect could this have on a municipal's tax base? If local and county governments lose the ability to generate sustainable tax revenues to support increasing budgets, Pennsylvania has a serious problem.

Chapter 102 and its mandated buffers are such a substantial scope of regulation that it should require legislative review and oversight.

Once again, Pennsylvania Builders Association supports House Bill number 1565.

Respectively submitted,

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