

1301

Chambers, Laura M.

From: Ben.Lepage@exeloncorp.com
Sent: Monday, November 30, 2009 3:56 PM
To: EP, RegComments
Cc: Michael.Heffron@exeloncorp.com; halfred.ryan@exeloncorp.com
Subject: Comments on the proposed E&S changes

To Whom It May Concern:

Please find attached PECO Energy Company's comments and summary on the proposed changes to the PA Chapter 102 regulations. If you have any questions or require additional information, the please do not hesitate to contact me.

Cheers

Ben

Ben A. LePage, Ph.D., CSE, PWS
Senior Environmental and Remediation Project Manager
PECO Energy Company
2301 Market Avenue, S7-2
Philadelphia, PA 19103
Office: 215-841-5572
Cell: 215-776-5588
Fax: 215-841-5579
E-mail: ben.lepage@exeloncorp.com

***** This e-mail and any of its attachments may contain Exelon Corporation proprietary information, which is privileged, confidential, or subject to copyright belonging to the Exelon Corporation family of Companies. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution, copying, or action taken in relation to the contents of and attachments to this e-mail is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original and any copy of this e-mail and any printout. Thank You.





PECO Energy Company – Summary of Proposed E&S Regulations

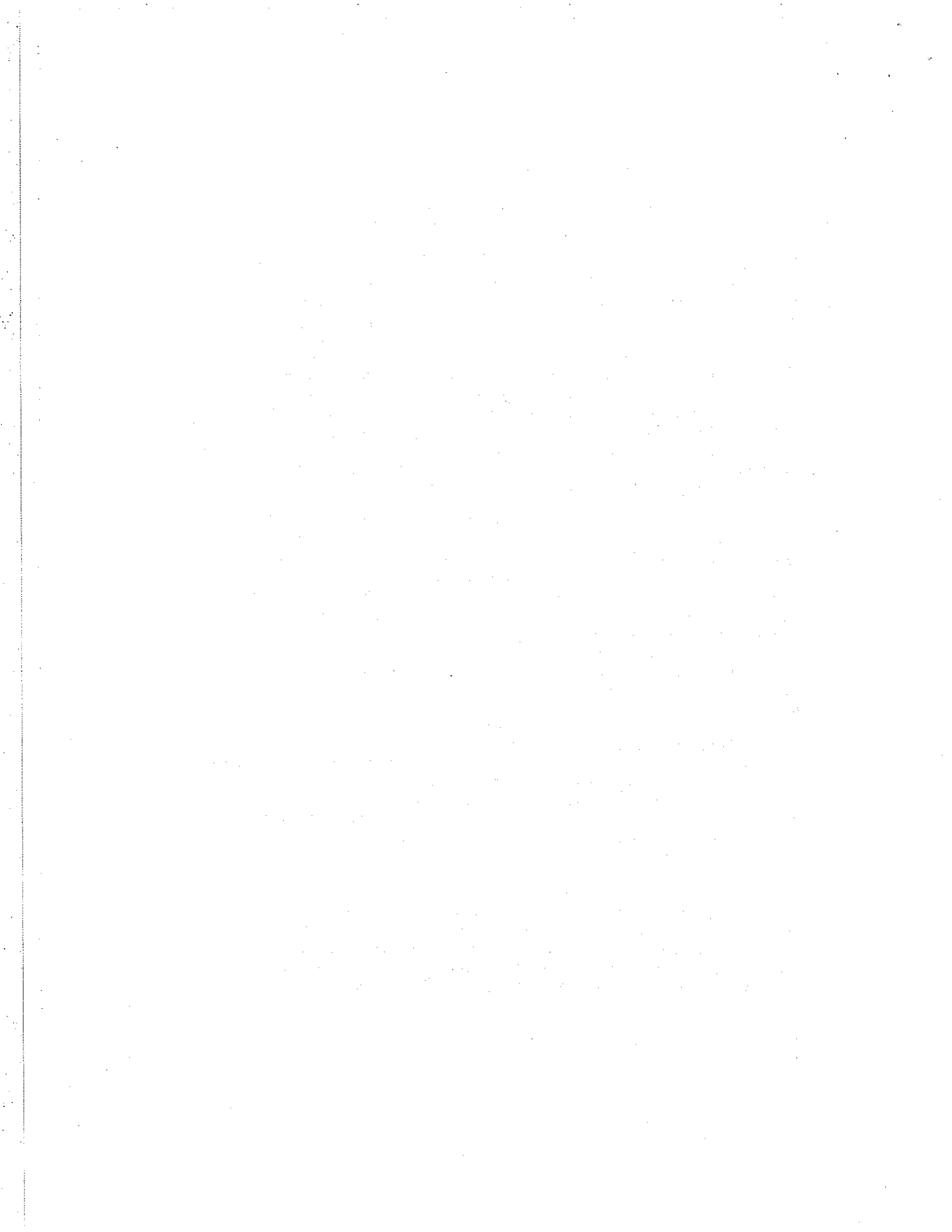
PECO appreciates the opportunity to provide comments to the Department on the proposed E&S regulations. We have reviewed the proposed regulations and we are pleased to see that PECO already practices most of the proposed changes to the regulations. Our concerns are centered on the procedures and processes where we have little to no control. Delays of any sort add to the difficulties of meeting FERC/NERC-mandated outages and failure to meet these schedules could result in large-scale regional outages and severe federal fines. PECO's main points concerns are summarized below.

1. One of our concerns is focused on the time that it has taken to obtain permits and approvals and the delays that we have encountered during the permitting process. We feel that the regulations offer the regulatory agencies too much latitude on interpretation and little accountability to process otherwise simple permit applications. We strongly endorse mandated agency review times, tighter language to reduce ambiguity and interpretation of the regulations, and a more streamlined permit/plan application package. Additionally, permit delays due to under-staffing or lack of a prescribed response time at the agency level associated with state and federally threatened and endangered species continues to be source of contention.

2. While it is important to understand the utility of BMPs and where they work best, there is significant discrepancy between various county conservation districts on which BMPs they prefer. The Department should provide more stringent and prescribed guidelines on the applicability of each BMP. Moreover, the concept of restoration implies a pre-defined starting point or baseline. We strongly recommend the department establish baselines for the State's regulated waterbodies, rather than placing the burden of establishing a baseline on the permittees, then having this baseline accepted by the Department and conservations districts.

3. Development and maintenance of riparian buffers in exceptional value watersheds would significantly increase costs that would ultimately be passed on to the rate payer. Most of our permitting requirements are associated with re-conductoring projects, which is the replacement of the electrical wires or the replacement of the static wire with an optical ground wire (part of the Smart Grid Program). While PECO has adopted the Department's policy of avoidance of wetlands and streams in these projects, it is still required to obtain the necessary State and Federal wetland permits as well as a letter of adequacy from the local conservation district for an E&S Plan. These riparian buffer requirements would add significant delays, result in additional cost, be largely self-defeating given that incompatible trees must be removed from the ROW, and create an unnecessarily complicated process for what is otherwise a very simple project that shouldn't require permitting.

PECO is requesting the opportunity to work with the Department to develop a Soil Erosion and Sediment Control package that meets the spirit of the proposed regulations, perhaps a programmatic permit, but provides PECO with variances in the regulations that help maintain electrical reliability throughout its service territory, while keeping the otherwise significant costs needed to implement these changes, but more importantly, reduce the time to review and approve such plans, while maintaining the company's environmental responsibility.





November 30, 2009

Environmental Quality Board
Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101-2301; RegComments@state.pa.us

Re: Proposed Rulemaking to Amend 25 Pa. Code Chapter 102

Dear Environmental Quality Board:

PECO appreciates the opportunity to provide comments to the Department on the proposed E&S regulations. As a recently certified ISO 14001 (Environmental Management System) company, PECO's corporate environmental policy states that we are committed to constantly improving our environmental performance through leadership in environmental management, by preserving, restoring, and enhancing the environment. Full compliance is our minimum standard. Our business initiatives are consistent with this environmental responsibility. As an electric and gas utility providing electricity to 1.5 million customers and natural gas to 460,000 customers, we must ensure that the public has a reliable source of electricity and gas, and that these products are provided in an environmentally responsible manner.

PECO's electrical activities are coordinated through PJM Interconnection. PJM is a federally-regulated regional transmission organization that keeps the electricity supply and demand in balance for over 51 million people in 13 states. This balance is accomplished by instructing power producers as to how much energy should be generated and by adjusting import and export transactions. PECO's expansion and enhancement of its transmission capabilities are commonly large-scale projects associated with specified outages of fossil and nuclear power plants and also with sections of PECO's transmission system. In most cases coordination of construction schedules, permitting requirements, and PJM constraints is critical to meet the outage schedules. Delays, such as those experienced with the issuance of permits add to the difficulties of meeting these federally-mandated outages. Failure to meet these schedules has the potential for significant electrical service interruption and severe federal fines.

The proposed guidance illustrates that little or no consideration of the issues involved in the transmission and distribution of electrical energy by the utility

industry is evident in the proposed guidance document, thereby mandating application of requirements which are impractical, antithetical to sound environmental and conservation principles, and lacking in procedures for allowing variances when circumstances favor such an approach.

As an electric and gas utility, PECO's concerns are centered on three aspects of the proposed regulation and timeliness of application reviews, failure to consider the unique issues of transmission and distribution utilities, and failure to account for costs in the imposition buffer requirements

- A. The proposed regulations do not change the current procedures and processes so that permittees are afforded timely regulatory review. Permittees have no control over the review track of the various reviewing bodies and historically, the lack of timely review has and will otherwise continue to adversely impact our obligations to the public.

Section 102.6(c) does not insure timely review and decision on permit requests. The Department should be given a set number of days to make a permit decision. There is no reason why small E&S plans could not be reviewed in 2 weeks. As it stands now, the Department has 20 days to review the permit application for administrative completeness even before it moves to technical review, which could take several more weeks. For smaller/simpler E&S Plans, a total of 3 weeks should be more than sufficient for adequate review. Currently, the Department is under no obligation to review and approve an E&S Plan in a timely manner.

Similar limitations on review time should be placed on Soil Conservation Districts. Recently, we identified a case where 2 identical permit applications were submitted and assigned to two separate individuals. One of the plans was approved in less than 3 weeks, while the other languished for nearly 6 months. If the regulations are to be meaningful and taken seriously, the latitude allowing such results must be eliminated.

Appropriate performance requires not only timely review across districts and regions, but consistency of the reviews as well. Currently each regulator has the power to request different items on the E&S Plan. The applicant knows what a reviewer's particular needs are in any E&S Plan only if an historical working relationship exists between the applicant and the particular regulator/reviewer. This of course leads to confusion, frustration, and more importantly, loss of time. This is unacceptable and the Department should take the opportunity provided by this regulatory initiative to correct this performance deficiency.

- B. Little or no consideration of the issues involved in the transmission and distribution of electrical energy by the utility industry is evident in the proposed regulations, thereby mandating application of requirements, which are impractical, antithetical to sound environmental and conservation principles, and lacking in procedures for allowing variances when circumstances favor such an approach.

PECO already manages stormwater during construction activities using best management practices ("BMP") (See Prop. Rule §102.2). However, it is unclear which BMPs may now constitute anti-degradation best available combination of technologies ("ABACT"). The regulation must clearly indicate what BMPs constitute ABACT.

Further, in defining BMPs, the use of the term "restore" raises issues of extreme concern to utilities. Restoration implies attaining a pre-defined standard and presumes water quality testing to determine what the current standard is relative to this pre-defined standard or benchmark. For any particular stream segment at issue, there is generally no benchmark for the quality of the water entering that stream segment. Additionally, utilities do not have control over what is occurring upstream. This leaves utilities in a precarious position and allows anyone to insist that the utility bring a stream segment up to standard simply because it crosses a ROW even though the degraded water quality is due to some other upstream source. These concerns are only enhanced by the inclusion of temperature in determining whether a water segment has been degraded.

Section 102.5(c) could be read to include oil and gas delivery to utility customers in a provision that appears to be meant for oil and gas exploration and production activities. The regulations should be clear that distribution activities are not included in the requirement.

- C. The achievement of various environmental goals that PECO favors, but believes the methods used in the proposed regulations fail to recognize methods that are more cost effective for the consumer of electrical services and circumstances where the benefits obtained are marginal compared to the financial and resource costs required to gain the marginal benefit.

The requirements for establishing, enhancing, and maintaining riparian buffers and controlling plant invasive species present tremendous cost issues that seriously challenge the benefits to be gained if applied in a manner that does not recognize specific features of sites that command less than the full range of measures provided for in the proposed rule.

The PADEP costs to establish and maintain riparian forest buffer has no basis in reality. PECO has experience in this area and recently created 2 riparian buffers (lightly forested/meadow buffers) over the last 3 years. Using site characteristics from real projects, totals range from a low of about \$5,000 to a high of about \$260,000 per acre and are significantly higher than the \$700.00 to \$4,700.00 proposed by the PADEP. In addition, the maintenance and monitoring (M&M) costs provided by the PADEP ranged from \$0.00 to \$2,725.00/acre, which are also considerably less than the approximately \$10,000.00 to \$15,000.00 annual cost industry is currently paying for M&M projects. Depending upon the site conditions and degree of work that would need to be performed, we estimate a likely spend of around \$80,000 to \$120,000 per acre for the creation of a typical riparian buffer with some tree removal, spot herbicide treatment for invasive species (understory shrubs), enhanced native species plantings, and 5-years of M&M.

For the nature of the work performed by utilities in either managing the vegetation in its right-of-ways as required by the Federal Energy Regulatory Commission (FERC), the Northeast Reliability Council (NERC), and Pennsylvania Public Utility Commission (PAPUC) rules, where the intrusion is of the most fleeting temporary nature, the costs associated with this group of proposed regulations are far out of sync with the benefits to be obtained. This is especially the case where current practices already include protection of habitat when such work is conducted.

The rule becomes even more out of sync when applied to re-conducting activities necessary for both system reliability and smart grid technologies. In most watersheds, PECO's transmission lines cross on average two streams for every linear mile. The proposed 150-foot riparian buffer in Exceptional Value (EV) watersheds would require 1-acre of restoration per stream crossing. The proposed guidance would conservatively add \$160,000 to \$240,000 per transmission mile. From a purely physical standpoint, here, the intrusion into habitat is even less so than with disturbances created in complying with vegetation management requirements.

These examples illustrate the costs expected under typical utility operations and would appear to be far out of proportion to costs the utility should be expected to bear for limited operations and for damages or degraded conditions due to other parties upstream of site activities.

PECO believes that a rigorous cost-benefit analysis should accompany this guidance document.

More importantly however, FERC/NERC requires PECO to remove all incompatible trees located within 35 feet of all transmission wire as a matter of electrical reliability and public safety. These additional riparian buffer requirements would add significant delays to the projects, result in additional cost, and be largely self-defeating given that all incompatible trees (trees greater than 15 feet tall) must be removed from the ROW.

As an electric and gas utility, PECO's concerns are largely centered on the aspects of the unique issues of transmission and distribution utilities and is requesting the opportunity to work with the Department and other electric and gas utilities to develop a utility-specific Soil Erosion and Sediment Control Plan that marries the regulatory/environmental needs with the constraints imposed by FERC, NERC, and the PAPUC. Such a program design would include accelerated permitting and could also allow for variances and programmatic permits. This type of program would easily fit within the proposed regulatory framework, allowing the utilities the ability to maintain electrical reliability throughout their service territories while continuing to manage their operations in an environmentally responsible manner.

Respectfully,



Ben A, LePage, Ph.D.

Senior Environmental Project Manger

Cc: Mike Heffron (PECO)

Al Ryan (Exelon)

