

Fixing a Broken System: Environmental Regulatory Reform for Pennsylvania

Introduction

It stretches the bounds of credulity to see a governmental agency adding new regulation which is not driven by a federal mandate; increasing fees, in some cases by over 1000%, and adding fees; cutting its ranks when regulatory approvals are already delayed, all at a time when our economy is at its worst since the Great Depression. From the standpoint of an agency whose mission is to provide vital public services that protect the environment and public health and safety, the biggest barrier to building multimillion dollar facilities which would lead to both added environmental protection and increased employment in the construction, manufacturing, and professional services sectors is the delays in obtaining the necessary regulatory approvals for water and wastewater projects. The ultimate results are increased project and service costs, lost employment, deferral of project benefits, and fewer projects due to squandered resources.

Current Circumstances

The current regulatory regime has several undesirable features:

Duplicated Efforts

Many projects require duplicated reviews by multiple agencies. For example, both Pennsylvania Department of Environmental Protection (DEP) and the Soil Conservation Service review soil erosion and run off matters. Both Delaware River Basin Commission (DRBC) and DEP review water supply projects and discharge standards for wastewater projects. Even where “expedited” review procedures have been established, reviews are inefficient and administrative delays occur. This delay is often compounded because one agency will not issue its approval, although its requirements have been met, until all approvals from other agencies have been obtained. While this can lead to a Catch-22 stalemates, at a minimum, it means weeks of administrative delay and effort tracking others’ approvals and then chasing final sign off by all agencies after the last agency approval, often weeks after the last agency approval is reached.

Delays

The “money back guarantee” has become meaningless. Application deficiencies are often identified at the last minute and are accompanied by a call asking the applicant to “suspend the deadline” or get the application back for later resubmission and loss of position in the approval queue. A recent Lehigh County Authority (LCA) “expedited” NPDES permit application took

over eight months for approval, well over the applicable time limits. Also, piecemeal reviews are being conducted, rather than comprehensive reviews, triggering multiple resubmissions. This practice is particularly troublesome as it triggers additional resubmission fees; this clearly raises the question whether agencies are using this practice to cover decreased revenues resulting from the depressed economy rather than cutting costs.

Differing Standards

Consultants and other professionals often practice in multiple DEP regions and find that what is acceptable in one region is not in another. This produces unnecessary resubmissions, costs, and lost time.

Expanding Regulation

At a time when the economy is stressed and DEP cannot handle its current workload, it is baffling that the agency would be issuing new and more onerous regulations. Many times these regulations address procedural or administrative matters that contribute to delay and have little or nothing to do with environmental protection. In other cases, they add significant compliance requirements without providing any scientific or cost/benefit justification for the added requirements.

Wastewater Planning

The current wastewater planning process (Act 537) is ineffective and punitive. The lengthy and growing scope of requirements punishes entities that try to do a bona fide long range plan; as a result, the use of planning modules and special studies has become the norm, turning planning into an ad hoc process rather than a thoughtful long range plan. In addition, DEP is continually expanding the requirements to include matters that are more appropriate to the design phase than the planning phase.

Value Added

The planning, permitting, and approval process contributes little or nothing to the project or service. Experienced designers and planners know regulatory requirements and design compliant projects to minimize delays and rework. Additionally, applicants have no incentive to skirt requirement considering the cost, delay, and liability to which they are exposed.

Workforce Capacity

DEP's ranks have been significantly depleted; particularly those positions which conduct permit reviews and approvals, creating even greater delay. In a recent conversation, a DEP

official indicated they would be unable to commit the necessary effort to review an application for a new waste discharge, even though there is no prohibition precluding submission of an application. Forecasts for the future workforce indicate that there will be a shortage of technical personnel like those that fill regulatory agency positions, further exacerbating the shortage of personnel. In a labor short marketplace, it is questionable whether DEP can even compete for the skill and expertise it needs.

The Consequences

As result of these circumstances, agencies like LCA see unnecessary delays and costs that undermine the ability to deliver services on a timely and cost effective basis. Essentially, both the environment and economy are worse off.

Without question, regulatory delays stall the completion of facilities that bring environmental, or economic benefits, or both. Projects sometimes receive special attention because of their impact, but at the unfortunate consequence that others suffer. In addition, the delays lead to significant increases in the cost of a project. In 2007 and early 2008, materials and contractor services were increasing at double digit rates. In the face of limited resources and dollars, this means less environmental protection, less capacity for growth or less reliable service.

The Remedy

To be clear, this proposal does not include eliminating or reducing any environmental standard or requirement nor eliminating or reducing any DEP enforcement activity. The sole purpose of this proposal is to improve the application and administration of DEP regulations and make them more cost effective and workable.

DEP already uses expedited or self administered regulations. For example, DEP has established general permits which provide standardized requirements for common activities or facilities with environmental impacts. Also, DEP allows water utilities to construct water main extensions without a water supply permit. Other states also allow self administered permits.

This proposal would establish self administered environmental permits and approvals* which would be based on the Professional Engineer's seal on plans normally submitted for regulatory approval. In other words, the Engineer's seal would be demonstrative of compliance.

*Permits and approvals include all construction, NPDES, water supply and Act 537 matters.

To encourage and enhance compliance, the following measures would be instituted:

1. DEP staff would randomly select projects for regulatory audit to verify compliance. Permittees would be authorized to proceed during the review.
2. If deficiencies are found, the permittee would be responsible to immediately remedy the deficiency at its sole expense. If the permittee disputes the deficiency, the permittee could appeal to the EHB.
3. DEP would be authorized to require full review of plans submitted by an Engineer having previously sealed plans, where the earlier plans reflect regulatory deficiencies.
4. Self administered plans would be limited to activities and/or facilities reflecting conventional technology, i.e. those that have been previously reviewed and approved by DEP via full regulatory review. To facilitate technology applications, DEP should develop a standardized review and approval process for the first time review or for major enhancements. This process could be conducted by central offices or regional staff; however, the determination of the review would then apply to all comparable applications across the state and henceforth be treated as conventional technology.
5. To facilitate utilization of self administration, DEP would be required to develop guidance and permit “standards” that reflect conventional technology, practice and performance standards where applicable. These standards would be uniformly applied across all DEP regions, and DEP will establish programs to assure that all DEP staff are knowledgeable of and follow the standards.
6. In addition, DEP should initiate a dialogue with other environmental regulatory bodies operating in Pennsylvania to develop mechanisms to eliminate duplicate reviews of the same regulatory request. Measures could include delegation agreements, single standards that address all agencies needs, among others.

The self administered permit would be effective upon submission of a plan and application. DEP would confirm the permit via issuance of a notice with the appropriate designations. Upon completion of construction, the permittee would submit a notice to DEP which would constitute the operating permit. DEP, at its option, could inspect the completed

construction. Any deficiency identified by the inspection must be remedied by the permittee at its sole expense.