



# CLINTON COUNTY CONSERVATION DISTRICT

45 COOPERATION LANE, MILL HALL, PA 17751

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May 30, 2006

## **Watershed Planning Advisory Committee Meeting Chatham Run and Fishing Creek Act 167 Stormwater Management Plan Update**

### Fishing Creek Act 167 Stormwater Management Plan Update

Bald Eagle, Castanea, Crawford, Greene, Logan, Lamar, Logan, Porter Township and Mill Hall & Loganton Borough

### Chatham Run Act 167 Stormwater Management Plan Update

Dunnstable, Gallagher, Pine Creek, Woodward Township

The Watershed Planning Advisory Committee meeting for both the Chatham Run and Fishing Creek watershed was held on Wednesday, March 22, 2006. A copy of the Draft Stormwater Management Plan and Model Ordinance for your watershed area was distributed at that meeting. All comments were due to our office by May 5, 2006. Attached are those comments, which we will discuss at our meeting tonight.

We also distributed a copy of the March 22<sup>nd</sup> meeting minutes, as well as, any pages with changes to the model ordinance to each municipality after the meeting.

The Clinton County Commissioners plan to hold a Public Hearing on **June 15, 2006**. They will then adopt the updated Stormwater Management Plans for both Fishing Creek and Chatham Run, possibly at their Commissioners meeting on June 22<sup>nd</sup>. All affected Municipalities will have 6 months from that date to adopt the new Model Ordinance.

Once finalized each Municipality will receive a copy of their respective Stormwater Management Plan and Model Ordinance with any changes. You will also receive a copy of a Stormwater Management Best Management Practices Design Manual.



**PLANNING DEPARTMENT**

**Timothy L. Holladay**  
*Director*  
**William B. Suydam, Sr.**  
*Asst. Planner/Grant Administrator*  
**Elisabeth L. Lynch**  
*Admin. Assistant*

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BY: \_\_\_\_\_

April 28, 2006

Mary Ann Bower  
District Manager  
Clinton County Conservation District  
45 Cooperation Lane  
Mill Hall, PA 17751

Dear Ms. Bower:

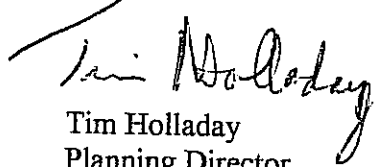
The Clinton County Planning Commission reviewed the Chatham Run and Fishing Creek Stormwater Management Plan updates during our April 18<sup>th</sup> Board meeting. We would like to make the following comments.

Our review of Act 167 indicates that stormwater management plans are to be watershed specific and that runoff management techniques are to be watershed specific. For these reasons we recommend that the plan updates should make it optional for each of the affected Municipalities to adopt their own implementation ordinance covering their entire Municipality. The adoption of an ordinance, covering the specific studied watershed, would remain mandatory. We also suggest that a Solicitor review the legal issues of how the County, requiring Municipal wide ordinances, is authorized under Act 167.

We are also concerned that the exemptions allowed under Section 302 are overly complicated. A homeowner may have difficulty doing the calculations. Additionally, Municipal zoning/permitting officers may have difficulty checking the exemption calculations. In many cases, it will take an engineer or other professional to determine if an activity is exempt or not. We recommend that the exemption criteria be simplified so that homeowners can determine whether or not their project is exempt.

Thank you for this opportunity to provide review comments. Please call me if you have any questions.

Sincerely,

  
Tim Holladay  
Planning Director

**Board of Commissioners**

**Thomas H. Bossert**  
Chairman  
**Harold C. Yost, Jr.**  
Vice Chairman  
**Richard K. Kyle**  
Commissioner



**Kathy Z. Conrad, Chief Clerk**  
**Lewis G. Steinberg, Solicitor**

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April 25, 2006

Mary Ann Bower  
Clinton County Conservation District  
45 Cooperation Lane  
Mill Hall PA 17751

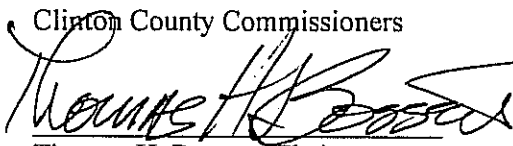
Dear Ms. Bower:

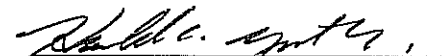
The Clinton County Commissioners after reviewing the Conservation District's 5 year strategy of Act 167, are considering your proposal of moving Act 167 implementation into the County Planning Department. However, at this time, it is impossible to do that due to a manpower shortage in the Planning Department. We are currently exploring the possibility of relieving this problem.

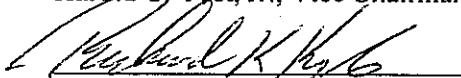
We are also in agreement with the Clinton County Planning Commission's comments in regard to the Chatham Run Stormwater Management Plan updates. Each municipality should have the option as to whether or not they adopt the Act 167 Ordinance.

Sincerely,

Clinton County Commissioners

  
Thomas H. Bossert, Chairman

  
Harold C. Yost, Jr., Vice Chairman

  
Richard K. Kyle, Commissioner

334 East Water Street  
Lock Haven, PA 17745  
(570) 748-9666 Tel  
(570) 748-9665 Fax

April 18, 2006

Clinton County Commissioners  
Clinton County Courthouse Annex  
232 East Main Street  
Lock Haven, Pennsylvania 17745

Clinton County Planning Commission  
Clinton County Courthouse Annex  
232 East Main Street  
Lock Haven, Pennsylvania 17745

Clinton County Conservation District  
45 Cooperation Lane  
Mill Hall, Pennsylvania 17751

Pennsylvania Department of Environmental Protection  
208 West Third Street  
Williamsport, Pennsylvania 17751

RE: WOODWARD TOWNSHIP/PROPOSED CHATHAM RUN  
WATERSHED ACT 167 STORM WATER MANAGEMENT PLAN AND  
ORDINANCE

Dear Ladies and/or Gentlemen:

In my capacity as Solicitor for the Township of Woodward, Clinton County, Pennsylvania, I have been authorized and directed to forward this reply in response to the proposed Chatham Run Watershed Act 167 Stormwater Management Plan and the Ordinance adopting the same. Currently, the Township maintains a Watershed Stormwater Management Plan for the Chatham Run Watershed together with a Stormwater Management Plan applicable to the remaining land of the Township. The Stormwater Management Plan governing the Chatham Run Watershed is considerably more restrictive for development and requires rather extensive involvement by Engineers to develop

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appropriate Plans and the accompanying cost factor for the preparation and processing of said Plans.

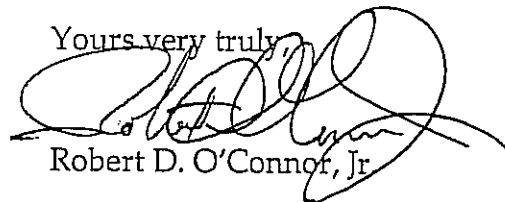
In this regard, it is noted that the proposed Ordinance would apply the Chatham Run Watershed Act 167 Stormwater Management Plan to any development occurring within the jurisdictional limits of the Township. While it is recognized that the Pennsylvania Stormwater Management Act is mandatory, Section 680.5 of the Act only requires a specifically-tailored Stormwater Management Plan for Watersheds to be applicable to Watersheds, not areas unaffected by the Watershed. (32 P.S. §680.5)

Accordingly, while the Board of Supervisors of Woodward Township is receptive to adoption of the proposed Chatham Run Watershed Act 167 Stormwater Management Plan to be applicable to the areas covered by the Watershed, the Township is not receptive to having the proposed Watershed Stormwater Management Plan applicable to the entire Township. Truly, each individual municipality should have the option of adopting a Watershed Stormwater Management Plan applicable to the entire Township or applicable to the Watershed areas only.

If you should have any questions or comments with respect to any of the above, please feel free to contact either a Township Representative or myself at your convenience.

Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Robert D. O'Connor, Jr.", written over a printed name.

Robert D. O'Connor, Jr.

RDO/rah

xc: Woodward Township Board of Supervisors

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COPLOFF, RYAN & WELCH  
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BY: \_\_\_\_\_  
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LARRY E. COPLOFF  
PAUL J. RYAN  
PAUL D. WELCH, JR.

April 10, 2006

Mill Hall Borough Council  
215 Beech Creek Avenue  
Mill Hall, PA 17751

Dear Folks:

Per your request, I have reviewed the proposed Fishing Creek/Cedar Run Watershed Stormwater Management Plan. As part thereof, I also reviewed the proposed Stormwater Management Ordinance and compared same with the Borough's present Ordinance.

As to the Plan, I understand the need for same and the desire of the State to assure "uniformity" in a particular watershed. A lot of the material is best understood by an engineer. In that regard, I believe you should refer same to the Borough's expert in that area.

I do note that Page 7 indicates that "Act 166" requires all municipalities in the combined watershed to enact ordinances that regulate the type and extent of development within flood plain areas. I am unfamiliar with Act 166. Perhaps Borough Council can learn whether "Act 166" is a "typo" and whether same should be "Act 167".

Otherwise, I confine my comments to the proposed Ordinance.

Under Article II (Definitions), I believe that there should be additional subparagraphs D and E adding the following:

D. The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other similar entity.

E. The words "used or occupied" include the words "intended, designed, maintained, or arranged to be used or occupied."

I believe the definition for "earth disturbance activity" in the Definitions section should be as follows:

A construction or other human activity which disturbs the surface of the land, including, but not limited to, clearing and grubbing; grading;

excavations; embankments; road maintenance; building construction; conversion of pervious surfaces to impervious surfaces; the moving, depositing, stock piling or storing of soil, rock, or earth materials; and any other action that causes any alteration or an alteration to the present condition of the land.

I believe that the definition of "land development" in the Definitions section should be as follows:

Inclusive of any or all of the following meanings: (i) the improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purposes involving (a) a group of two or more buildings, or (b) the division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features; (ii) any subdivision of land; (iii) any lot improvements regulated under the Borough Zoning Regulations (Chapter 27 of the Mill Hall Borough Code of Ordinances); (iv) development in accordance with Section 503(1.1) of the Pennsylvania Municipalities Planning Code.

As to the definition for "qualified professional", why does it indicate that the person must be licensed by the Department of State? What does "otherwise qualified by law to perform the work required by the Ordinance" mean? If it is the intent of the Borough to have its engineer be involved as a qualified professional, I believe that the definition should so indicate. If there are individuals otherwise qualified to perform the work required by the Ordinance, I believe that these qualifications should be specifically listed.

The following comments apply to Article III:

1. What is the purpose of Section 301(b)? Should the plans approved by the Borough not be, at all times, in the possession of the person carrying out the regulated activity?
2. Should there not be a provision for a waiver of a pre-design conference in Section 301(d)? This is especially true for "small" projects. Perhaps the language in the second sentence in the paragraph could read as follows:

Please note that a pre-design conference shall be required to discuss the design and implementation of peak rate

controls, and the preparation of an SWM site plan, unless specifically waived, in writing, by the Borough's Engineer.

3. Subsection (D) of Section 301 also provides for provision of a copy of the Borough's "applicable stormwater management design manual at the pre-design conference". Is it the intent of the Borough to actually have a design manual? Might it be better that the language indicate that the applicant/qualified professional shall obtain a copy of the Borough's Stormwater Management Ordinance prior to the pre-design conference?

4. Section 301(E)(1) makes no sense and I am unable to decipher what is intended.

5. Section 301(E)(2) is unclear.

6. Section 301(E)(3) is unclear. Perhaps it should read:

For projects that add impervious area to a parcel, such additional area, along with the present impervious area, shall be subject to the requirements of this Ordinance.

7. Section 301(F) is entirely too broad. For example, if a person discharges along the edge of another person's parcel (via a small ditch), and as a result of a project, will decrease any discharges through that ditch at the edge of the property, the adjacent property owner could defeat the project even though it has little or no effect on his/her/its property. This could be an especially serious problem where adjacent landowners do not "personally" care for each other. It seems to me that there has to be some measurable amount which would affect (also having to be defined) the other person's property. Perhaps the Borough should speak with its Engineer about setting up specific standards.

8. Article III, Section 302(F) should be changed to read as follows:

Exemptions from any provisions of this Ordinance shall not relieve the applicant from the requirements in Sections 301(F), (G), (H), and (J).

9. Section 303 deals with water quality. Section 303(A) addresses a "Simplified Method"; however, same is not defined. Subsection (B) addresses "Design Storm Method". This is not defined. In neither instance is there any indication when one or the other is to be utilized (If the landowner has a choice, this is not indicated.).

10. As to Section 304, I note that both Release Map Rate and BMP is not defined. In addition, it seems that there should be some indication that any determinations (i.e., analysis) under (A) and (B) should be made by the Borough Engineer.

Under Article IV Section 401 (Plan Contents), why not be more specific? I refer you to Section 133 of the Borough's present Stormwater Management Ordinance. Although it may be contemplated that an engineer will be providing the Plan, there may be occasions when that is not the case. Therefore, it seems that the more detail required by the owner, the better.

Article, IV, Section 403(C) provides for a limitation, in number of years, for the Borough's approval of a site plan. I suggest that the time-frame be the same as Pennsylvania's Municipalities Planning Code, i.e., five (5) years.

Article IV, Section 404 is, in my opinion, too vague in that there is no indication as to who decides whether the change involves the items listed. Perhaps there should be an indication that any proposed modification shall be submitted to the Borough, which shall determine if it involves a change listed in Section 404. If it does, then the Borough would require a re-submission.

Relative to Article VI, I do not believe that the Borough may charge legal review costs to an applicant. There was recent case law involving legal review costs for a zoning change disallowing same. I believe the principles are somewhat analogous. Accordingly, I do not believe that the Borough should include in its Ordinance anything relative to legal review costs. Of course, this does not mean that the Borough cannot seek fees for enforcement actions and the like. The particular Section in question refers to fees where an attorney reviews the plan to determine whether it adheres to the Borough's Ordinance.

In addition, I believe that Article VI should be more specific. Instead of being "general", I refer you to the provisions of Sections 151 through 155 of the present Stormwater Management Ordinance. Moreover, there should be, at a minimum, an indication that Borough Council may provide for a fee for various services, from time to time, via Resolution.

Relative to Article VIII, Section 801, I do not believe same to be sufficiently specific. There should be a definition of reasonable times (i.e., between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday/Saturday or whenever an emergency situation eminently dangerous to the public presents itself) and there should be a provision for the failure/refusal of an owner or occupant to allow an agent to inspect. On such occasion I believe the Ordinance should indicate that the Borough may obtain a Court Order upon showing of a reasonable basis to enter upon the premises and that the costs for obtaining same, including attorney's fees, be assessed against the owner and/or occupant. I do not believe, although the Borough's present Ordinance provides for same, that a Search Warrant is appropriate, in that the proposed Ordinance is not criminal in nature.

Article VIII, Section 803(B) should be amended to read as follows:

It shall be unlawful to alter, remove, or fail to implement any control structure required by the SWM Site Plan.

Under Section 804, dealing with suspension and revocation, there is no notice requirement contained therein. It certainly seems to me that if the Borough intends to revoke a privilege extended to an individual, it must provide some kind of notification prior to doing so. Once again, I refer you to Section 172 of the present Ordinance.

Article VIII, Section 805, definitely needs to be changed. A person cannot be fined for a violation of a civil statute, ordinance, etc. and cannot be found guilty of a "summary offense". On the contrary, the person can be found in violation of an Ordinance and can be assessed a civil penalty. It seems that besides changing this language, there should be additional language providing for attorney's fees.

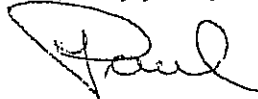
Article VIII, Section 806, relative to appeals is too general. There is no indication as to how the appeal process may work or is to occur, the mechanism for same (i.e., written notification by the landowner/occupant to the Borough, etc.), no indication as to who will make the decisions (i.e., Borough Council, etc.), and in what time-frame the decision must be rendered. Finally, I see no reason to include subsection B of 806.

At the risk of offending those individuals involved in preparation of the Plan and model ordinance (that not being my intent), I believe that Mill Hall Borough's present Stormwater Management Ordinance, with modifications contained in the proposed Model Ordinance, is more specific and therefore, in my opinion, will result in less uncertainty for both landowners and the Borough. As you may recollect, the Ordinance adopted by Borough Council was prepared by me based upon a model ordinance otherwise provided by the State.

In that regard, I note that I have, in one of my files, a Fishing/Cedar Run Watershed Act 167 Stormwater Management Plan adopted by the Clinton County Board of Commissioners on December 13, 1995. Is the one presently being proposed an amendment of that Plan? Why is there a need to re-enact?

I await Borough Council's thoughts/comments/recommendations/directions.

Very truly yours,



Paul D. Welch, Jr.  
Attorney-at-Law

~~PDW Jr:kw~~  
cc: Todd Pysker