

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

* * * * *

House Bill 200
Wetlands Issues & Legislation

* * * * *

House Environmental Resources & Energy Committee

Pocono Manor Inn
Pocono Manor, Pennsylvania

Friday, August 25, 1995 - 9:30 a.m.

--oOo--

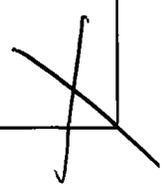
BEFORE:

- Honorable Robert Reber, Jr., Majority Chairman
- Honorable David G. Argall
- Honorable Jerry Birmelin
- Honorable Brett Feese
- Honorable Albert Masland
- Honorable Carole Rubley
- Honorable Jerry A. Stern
- Honorable Stanley J. Jarolin
- Honorable Greg Vitali

KEY REPORTERS

1300 Garrison Drive, York, PA 17404
(717) 764-7801 Fax (717) 764-6367

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



20000000 28180

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALSO PRESENT:

Honorable Howard L. Fargo

Honorable Joseph Battisto

**Frederick R. Taylor, Esquire
Counsel to Committee**

**Paul Ganzzo
Majority Research Analyst**

**Mark Brown
Majority Research Analyst**

09192.0000003

C O N T E N T S

	WITNESSES	PAGE
1		
2		
3	Jonathan A. Johnson, Policy Analyst Center for Rural Pennsylvania	5
4		
5	Donald K. Gartman Environmental Affairs Department Columbia Gas System, Inc. PA Gas Association Member	21
6		
7	Keith Klinger, President Pennsylvania Landowners Assoc., Inc.	32
8		
9	Chris Mele, Manager State Relations of the Pennsylvania Rural Electric Association	61
10		
11	Dr. N. Charles Bolgiano Legislative Liaison Unified Sportsmen of Pennsylvania	74
12		
13	Craig D. Todd, District Manager Monroe County Conservation District	88
14		
15	Bob Uguccione, Executive Director Pocono Mountains Vacation Bureau	117
16		
17	Edith D. Stevens, Water Specialist PA League of Women Voters	125
18		
19	Jill L. Shoesmith, Member Board of Directors, Brodhead Watershed Association	149
20		
21		
22		
23		
24		
25	John L. Styk, Concerned Citizen Certified Sewage Enforcement Officer	159

1 CHAIRMAN REBER: I'd like to call this
 2 particular public hearing of the House
 3 Environmental Resources and Energy Committee
 4 meeting to order. First order of business for
 5 the record, I would appreciate it if each and
 6 every member of the panel would identify
 7 themselves and the county or counties which they
 8 represent, starting at my far left. David.

9 REPRESENTATIVE ARGALL: I'm
 10 Representative Dave Argall down in Schuylkill
 11 and Berks Counties.

12 REPRESENTATIVE STERN: I'm
 13 Representative Jerry Stern. I represent Blair
 14 and Bedford County.

15 REPRESENTATIVE RUBLEY: Representative
 16 Carol Rubley from Eastern Chester County.

17 MR. BROWN: I'm Mark Brown, Republican
 18 staff of the committee.

19 CHAIRMAN REBER: My name is Bob Reber.
 20 I'm Chairman of the Committee.

21 REPRESENTATIVE BIRMELIN: I'm
 22 Representative Birmelin, and also representing
 23 the great Poconos of Wayne and Pike County.

24 REPRESENTATIVE FEESE: Brett Feese,
 25 Lycoming County.

1 REPRESENTATIVE MASLAND: Al Masland,
2 Cumberland County.

3 REPRESENTATIVE VITALI: Greg Vitali,
4 Delaware County.

5 REPRESENTATIVE FARGO: Howard Fargo,
6 Butler and Armstrong County.

7 CHAIRMAN REBER: Thank you, ladies and
8 gentlemen. I would like to thank all those in
9 attendance today. What we are going to be doing
10 today and next week and the weeks and months to
11 come is taking testimony on the general issue of
12 wetlands and some of the proposed pieces of
13 legislation that are pending. We are hopeful
14 from that dialogue to develop information, to
15 develop facts for the benefit of the committee
16 and for the benefit of the members of the House
17 and the General Assembly collectively.

18 Without further ado, we are interested
19 in hearing from the various interests that have
20 noted their interest in testifying. We are
21 going to call the first individual that we have
22 on the agenda, and that's Mr. Jonathan Johnson,
23 the Policy Analyst from Center of Rural
24 Pennsylvania. Jonathan, welcome.

25 MR. JOHNSON: Thank you. Mr.

1 small towns has the state's fastest growing
2 population during the 1980's. Most of this
3 growth was fueled by new residents moving into
4 urban areas. As a result, many rural and small
5 towns have seen a surge in construction. In the
6 last 20 years, nearly half the housing units
7 were built in rural and small towns. In Monroe
8 County alone, over 10,000 new housing permits
9 have been issued since 1988.

10 Most of this development has occurred
11 in townships, away from boroughs and small
12 cities which already have many public amenities
13 such as water, sewage and highways. The effect
14 of this development on the rural landscape has
15 been staggering. During the 1980's, the state
16 lost more than one million acres of farmland,
17 over 10,000 farms have disappeared, and billions
18 of dollars have been spent to provide water and
19 sewage treatment facilities and upgrades.

20 Despite this growth, a 1992 study by
21 DCA found that less than half of Pennsylvania's
22 rural and small towns have any type of
23 comprehensive planning or zoning ordinances.
24 More surprising, many communities may have
25 zoning but no plan to guide it; or conversely,

1 planning but no zoning. Fewer than a third of
2 the state's rural and small towns have both
3 planning and zoning regulations. In suburban
4 and urban communities, planning and zoning are
5 almost universal.

6 Wetland regulations in the context of
7 community planning. In many cases, the lack of
8 local controls has meant that the only barriers
9 to more development have been wetland
10 regulations and the need for state sewage
11 permits. While developments can benefit a
12 community, uncontrolled development can lead to
13 sprawl and the irrevocable loss of farmland.

14 Although it is beyond the scope of
15 this committee, there is an urgent need in
16 Pennsylvania for a comprehensive land-use
17 policy. This policy would enable the state and
18 its 2600 counties and municipalities to think
19 about and better plan for the future. Wetland
20 mitigation and permitting could be a
21 subcomponent of this overall policy.

22 By placing wetlands management within
23 the context of community planning, the state,
24 its counties and local governments, can better
25 regulate both the location and the rate of

1 development. Builders can know upfront where
2 investments will be made in public
3 infrastructure, (water, sewer, highways, et
4 cetera) and plan accordingly.

5 Currently, none of the pending
6 legislation views wetlands management within the
7 context of community planning. Protecting and
8 managing our state's wetlands is not just an
9 environmental issue. It's a community issue and
10 should be managed as such.

11 Wetland appraising versus ranking.
12 Most of the pending legislation on wetland
13 management focuses on the classification and
14 ranking. However, many of the proposed 3-tiered
15 systems, with stringent requirements for the
16 highest ranked wetland category, moderate
17 requirements for the middle category, and little
18 or no permits required for the lowest category,
19 mask important differences among the wetlands
20 within the same category. An alternative method
21 is to classify wetlands according to their
22 structure (forested wetland, shrub wetland,
23 emergent wetland, et cetera), and then appraise
24 them individually according to their specific
25 function in that specific location.

1 Not all wetlands are created equal.
2 For example, the small cattail patch located
3 between a large shopping mall parking lot and a
4 cold water stream may perform important
5 pollution prevention functions. Further, it may
6 be the only wetland left in the area that
7 performs that function. By simply classifying
8 it as a middle-tier wetland would blur the
9 measurable differences between it and another
10 middle-tier wetland in a less fragile
11 environment.

12 The difference between appraising
13 wetlands and ranking wetlands is more than just
14 semantics. By appraising wetlands as one would
15 appraise the value of a house, the regulatory,
16 environmental and building communities can
17 assign actual monetary value to the wetlands.
18 These values can be useful for increasing
19 property values and for establishing a
20 mitigation banking program. It may make more
21 economical sense for the half-acre wetland
22 behind the house to remain a wetland than to
23 build a garage upon it.

24 Need to establish wetland mitigation
25 banking program. The administration and the

1 legislature are currently considering the
2 creation of a wetland mitigation banking
3 program. At its most basic level, this program
4 would enable developers, transportation
5 agencies, and others to receive credit for
6 construction or expansion of wetlands and debits
7 for the activities which negatively impact
8 wetlands. Mitigation banking will not solve all
9 of Pennsylvania's wetland concerns. Indeed,
10 there are certain types of wetlands which cannot
11 be banked. However, mitigation banking can be a
12 useful tool for the state to balance the need
13 for environmental protection with the need for
14 growth and development.

15 In rural areas, however, wetland
16 mitigation banking may be a mixed bag. In
17 states with mitigation banking, the primary user
18 of the banks are transportation departments,
19 port authorities, and large industrial
20 proponents. Most of the development in
21 Pennsylvania's rural areas is being fueled by
22 small residential developers. Will these small
23 users be able to effectively utilize such a
24 complex banking system?

25 Moreover, it is unclear what impact

1 the wetland swap will have on existing water
2 supplies. According to the census, nearly half
3 of the homes in Pennsylvania's rural and small
4 towns are not part of a public or private water
5 system. Consequently, these residents depend on
6 wetlands for the safety of their drinking water.

7 Need to compensate wetland property
8 owners. In bond referendums, Pennsylvania
9 voters have said that they value farmland and
10 are willing to pay for its protection. The
11 lessons the state has learned from its
12 successful ag-land preservation programs could
13 be applied to protecting wetlands.

14 Landowners with highly valued wetlands
15 should enjoy the same economic opportunities
16 from their land as other landowners. Government
17 can play an important role in this area by
18 providing a level playing field. A highly
19 valued wetland that should not be built upon
20 is essentially a public good, since its function
21 benefits everyone in the watershed. The owner
22 of this wetland, therefore, might be compensated
23 for maintaining this public good through some
24 type of property tax abatement. In the long
25 run, consideration may be given to purchasing

1 the development rights to these wetlands in the
2 same fashion that farmland rights are purchased.

3 Conclusion. Protecting wetlands is
4 not a zero sum game. It requires cooperation
5 and education by both state officials, builders
6 and developers. In rural areas, wetlands are
7 important for maintaining the viability of many
8 communities, both from ecological and economic
9 perspectives.

10 As this committee hears from other
11 presenters from around the state, please keep in
12 mind that the demand for new homes, shopping
13 malls, and highways will come and go; but once a
14 wetland is paved over, it is gone for good.
15 Hence, the challenge for all of us is not to
16 focus on removing the barriers for development,
17 but to determine what is in the best long-term
18 interest for our communities and our children.
19 Thank you.

20 CHAIRMAN REBER: Thank you, Mr.
21 Johnson. At this time I think it's apropos to
22 note that Mr. Johnson was an excellent example
23 of sticking to the time frame that we have at
24 these hearings. That's basically set out where
25 we have basically a 10-minute presentation and

1 then a follow-up availability of approximately
2 10 minutes. We have 4 questions from members of
3 the committee. We have a rather aggressive
4 agenda of individuals that desire to present
5 testimony today. I'd like to stick very, very
6 specifically to that.

7 Additionally, it is a Friday. We have
8 a lot of members of committee that actually have
9 to travel to the far western part of the state.
10 So, unlike my past practices, I am going to be a
11 little bit more rigid in sticking to the time
12 frame. If we do have questions, I would hope
13 they would be questions that basically were not
14 covered in the testimony, but in essence, would
15 be to explore areas that were, in fact, not
16 covered.

17 At this point in time, with those
18 ground rules, if you will, in mind, I would also
19 say that if there is anyone who is not on the
20 pre-agenda for testifying, the record will
21 certainly be kept open for a week. You can see
22 Mr. Mark Brown, our Staff Analyst to my left and
23 he will give the necessary information if anyone
24 has a desire to supplement their testimony or
25 to, in essence, send to us anything that they

1 desire to have included in the record for
2 consideration by the members of the committee.

3 Furthermore, I would like to say that
4 we will be holding hearings on this issue in
5 Titusville next Tuesday on this particular
6 subject. We are planning on having some
7 follow-up hearings in Harrisburg probably
8 sometime in October of that nature of a time
9 frame. At this point in time, I look to my left
10 and ask if there are any questions?
11 Representative Argall.

12 REPRESENTATIVE ARGALL: Jonathan, I
13 found that the suggestion you had about the
14 property tax abatements and the similarities
15 with the agricultural development rights, have
16 any states moved in that direction?

17 MR. JOHNSON: Not to the best of my
18 knowledge. Just for the committee's
19 information, the Center just funded a report on
20 wetlands and looked at mitigation banking and
21 some other issues and I'll make a copy of that
22 report available once it is cleaned up to the
23 committee. No. No one has have done that to
24 the best of my knowledge.

25 REPRESENTATIVE ARGALL: Thank you.

1 CHAIRMAN REBER: Representative
2 Rubley.

3 REPRESENTATIVE RUBLEY: Thank you.
4 Mr. Johnson, you start out your testimony by
5 talking about the importance of community
6 planning, and then you go on under wetland
7 appraising versus ranking and mention an
8 alternative method as to classify wetlands by
9 their structure and appraise them individually
10 according to their specific function. I think
11 that's a very intriguing thought, but I'm
12 wondering who you would suggest to do this? At
13 the community level, or state level, or federal
14 level?

15 MR. JOHNSON: That's a very good
16 question. Ranking the specific function of the
17 wetland would be something left to the
18 scientific community. It might be the state's
19 responsibility to hire a consultant or for the
20 state to do it and saying this wetland in this
21 specific area is highly valued because it
22 performs A, B, and C functions which we feel are
23 valuable. But the community should be brought
24 in and be able to comment on the number they
25 come up with or the value that they come up

1 with. There should be a partnership between the
2 two.

3 REPRESENTATIVE RUBLEY: Thank you.

4 CHAIRMAN REBER: Any other questions?
5 Greg.

6 REPRESENTATIVE VITALI: May I just
7 bank the question that I would have used at this
8 segment and maybe draw upon it at a later
9 witness?

10 CHAIRMAN REBER: At this point in the
11 hearing, Representative Vitali, anything you
12 wish to do will be granted. Notice I said at
13 this point in the hearing. Representative
14 Fargo.

15 REPRESENTATIVE FARGO: I noticed here
16 in the wetland regulations in the context of
17 community planning that you indicate the lack of
18 local controls and method has meant that the
19 only barriers for the development would be in
20 the wetland regulations. That is really one of
21 the major reasons why -- You seem to indicate
22 that's an advantage. That's one of the major
23 reasons why we need wetlands legislation in the
24 first place because people are using it for
25 control and development. Anybody who has

1 somebody that's going to build a building beside
2 them they don't like, they start hunting for the
3 DEP to stop the building based on a couple of
4 cattails. I disagree with the fact that it's an
5 advantage. I kind of think that's a
6 disadvantage.

7 MR. JOHNSON: I'm sorry, let me
8 rephrase it. Using wetlands to control
9 development is like using an axe to do surgery.
10 It's not the right tool and it should not be
11 used for that. I just point out that it's
12 currently being used as that. It should not be
13 used as that. There should be other ways to
14 control development using sewer permits, and
15 wetland regulations is not the right tool.

16 REPRESENTATIVE FARGO: The idea of
17 appraising on a monetary basis like you do a
18 house or something like that is kind of
19 intriguing. But, how could you go about doing
20 that? It seems to me like -- Actually, you use
21 wetlands as a minus value as well as a plus
22 value. I don't know how you would come up with
23 an actual value to a person who is usually -- to
24 appraise a house with the idea of selling it if
25 you want to determine the value to sell. Are

1 you suggesting that we do this with wetlands, to
2 determine the value to sell the wetlands?

3 MR. JOHNSON: To determine the value
4 of that wetland to the community, because
5 wetlands don't serve that property only. It
6 serves all the adjacent property owners. The
7 question becomes, what is that worth to all the
8 adjacent property owners and then assign a value
9 to that.

10 REPRESENTATIVE FARGO: A monetary
11 value you are talking? Are you suggesting you
12 actually come up with a figure?

13 MR. JOHNSON: You can do that. You
14 can come up with a numerical value. That
15 numerical value then can be used for trading
16 rights and things like that. It's a similar
17 idea behind the way pollution rights for
18 industrial polluters are traded and swapped.
19 They are allowed to pollute X amount and then
20 they can trade among themselves for that amount.
21 The same concept to assign value to pollution or
22 not polluting could be used.

23 REPRESENTATIVE FARGO: Once you have
24 determined in value for a wetlands, then what's
25 the next step?

1 MR. JOHNSON: Once they are assigned
2 to a value, or a monetary value, or just a value
3 itself, then we can say if all the wetlands in
4 this certain classification are in the highest
5 rank Number 5, all one should not be disturbed.
6 It should be kept as is, or the only limited
7 action should be there. Once they are a lower
8 category or appraise a value within that same
9 forest or wetlands, it's okay to do whatever you
10 want to do on them.

11 It's a more fine-tuned classification
12 system. The way it currently is, I mean, you
13 just have 3 tiers, which are fine, but then
14 there is so much variation within each tier.
15 This would further focus on the need, perhaps.

16 REPRESENTATIVE FARGO: It would almost
17 seem to me that what you are suggesting here
18 would make more variations within each tier.

19 MR. JOHNSON: Yes, sir.

20 REPRESENTATIVE FARGO: Instead of fine
21 tuning it, you're kind of exploding it so that
22 we have more concerns such as, whether it's
23 timberland or what it might be. But it's an
24 interesting concept. Thank you.

25 CHAIRMAN REBER: The Chair thanks the

1 gentleman. Any further questions of this
2 witness?

3 (No response)

4 CHAIRMAN REBER: The Chair thanks you
5 very much, Mr. Johnson. The next witness is
6 Donald Gartman, Environmental Affairs,
7 Department of Columbia Gas Systems, Incorporated
8 which is a member of the Pennsylvania Gas
9 Association. Mr. Gartman, if you would
10 appropriately identify yourself to the reporter
11 and your presentation is -- we look forward to
12 hearing.

13 MR. GARTMAN: Good morning. My name
14 is Donald Gartman and I'm speaking on behalf of
15 the Pennsylvania Gas Association (PGA). PGA is
16 a statewide trade association whose members
17 include national gas local distribution
18 companies, interstate pipeline companies, and
19 individuals and companies otherwise associated
20 with the natural gas industry in Pennsylvania.

21 I am with the Environmental Affairs
22 Department of Columbia Gas System, which is
23 headquartered in Wilmington, Delaware. I have a
24 Master's Degree and Ph.D in Aquatic Biology from
25 Ohio State University. I am a certified

1 fisheries scientist and wildlife biologist with
2 the American Fisheries Society and the Wildlife
3 Society respectively.

4 Since 1974, I have been with
5 Columbia's Environmental Affairs Department,
6 where I have worked on energy projects in
7 numerous states and in Canada. I have closely
8 examined the environmental impacts of pipeline
9 construction across streams and wetlands, and I
10 have monitored pipeline projects which have
11 involved wetland construction.

12 Based on my training and experience, I
13 find that with properly planned and implemented
14 construction procedures, wetlands can be
15 traversed with little or no loss in wetland
16 value or function. Pipeline installation
17 imposes a temporary, minor and self-correcting
18 impact. In fact, it could be argued that having
19 a buried pipeline across a wetland area helps to
20 assure continuance of this landscape.

21 Consistent with standard operations,
22 natural gas pipeline easements preclude the
23 construction of facilities or structures on the
24 right of way. Once the wetland restores itself,
25 the easement provides the pipeline company with

1 a vested interest in ensuring that the wetland
2 is not disturbed in the future.

3 Pipeline construction is a relatively
4 fast-moving operation and wetland crossings can
5 be completed in a variety of ways. The typical
6 open-cut construction procedure involves the
7 following steps:

8 In right-of-way clearing, vegetation
9 is normally cut off at the ground level. Most
10 wetland vegetation regrows from the rootstocks
11 quite rapidly.

12 Tree stumps are removed and limited
13 grading takes place only in the immediate
14 vicinity of the trench (typically, the right of
15 way is 30 to 75 feet wide, while the trench
16 width in wetlands is normally 8 to 10 feet).

17 The top one foot of the topsoil from
18 the trench is then segregated from the deeper
19 soil. This top live layer has the rootstocks,
20 rhizomes and seeds which, when placed back on
21 top, results in rapid revegetation.

22 All equipment typically works off
23 pallets or with low-pressure tracks as needed to
24 minimize compaction of the wet soils.

25 When water conditions allow, the

1 welded pipe is pushed or pulled into the water-
2 filled trench with floatation and then lowered
3 into the trench when in place. The trench is
4 then backfilled (minimum of 3 feet of cover)
5 with the live layer placed back on top of the
6 substrate.

7 A very important requirement in
8 wetland construction is to return the disturbed
9 area to original grade. Wetland vegetation is
10 very responsive to changes in elevation, and
11 therefore, hydrology.

12 Any excess spoil is to be disposed of
13 at an upland site, although typically there is
14 no excess spoil. It would seem logical that the
15 volume of the material displaced by the pipeline
16 would require disposal. However, construction
17 actually causes the reduced muck material to
18 lose volume through oxidation and degassing.
19 This reduced material actually becomes somewhat
20 oxidized. This, along with minimal compaction
21 and minor filing of depressions, results in
22 virtually no excess material.

23 Because wetlands rapidly revegetate
24 with native species, they are not normally
25 seeded unless specified by a government agency.

1 It has been my observation that
2 pipelines can be constructed across virtually
3 any wetland with little or no loss in wetland
4 function. In fact, most wetland crossings
5 return to preconstruction status within 2
6 growing seasons. Obviously, in the case of a
7 forested wetland there is a change from a
8 dominance of woody vegetation to herbaceous
9 species; that is, soft stem species, grasses and
10 rushes. This has the effect of making the
11 pipeline right of way wetter after construction,
12 since herbaceous vegetation generally entails a
13 smaller transpiration loss than occurs with
14 trees and shrubs.

15 To illustrate these points, I have
16 attached several photographs showing pre- and
17 post-construction views of pipeline rights of
18 way. These photographs clearly show the rapid
19 recovery of wetland communities. Of particular
20 note, the revegetation takes place totally on
21 its own from the root and seed stocks in the
22 backfilled wetland soils.

23 Also, all natural gas pipeline
24 construction must meet specifications issued by
25 the Army Corps of Engineers under the federal

1 Clean Water Act. The clear majority of this
2 construction takes place in accordance with the
3 Army Corps of Engineers' Nationwide Permit
4 Number 12. This permit includes 26 conditions,
5 many designed to ensure that disturbance to
6 wetlands is minimized. To illustrate, the
7 Nationwide Permit 12 conditions include:

8 Topsoil--that is, the live layer--to
9 be segregated; navigation is to remain
10 unaffected; erosion and siltation controls are
11 required; aquatic life movements cannot be
12 disrupted, that is, fish migrations; the
13 equipment is to be placed on mats to minimize
14 soil disturbance; permit is not valid for
15 National Wild and Scenic River Systems; tribal
16 rights may not be impaired; Clean Water Act 401
17 certification is required; endangered species
18 may not be jeopardized; historic properties may
19 not be affected; no discharge in proximity of
20 any public water supply intake.

21 There is to be no discharge in
22 shellfish production areas; no discharge of
23 contaminated sediments. There is no discharge
24 in spawning areas; no discharge in migrating
25 waterfowl breeding areas, and all fill areas are

1 to be restored to preexisting elevations.

2 Thus, Nationwide Permit 12 takes into
3 consideration the conditions which normally
4 would be placed on any individual permit from a
5 state or federal agency. Even with all of these
6 conditions, virtually all pipeline construction
7 qualifies for inclusion under Nationwide Permit
8 12. Those few projects that do not qualify for
9 Nationwide Permit 12 receive site specific
10 review and permitting to mitigate effects on
11 nearby natural resources.

12 In my view, most routine pipeline
13 construction and repair can be efficiently and
14 adequately addressed with recognized
15 construction practices through Nationwide Permit
16 12 conditions, and through cooperation and
17 information exchange between natural gas
18 companies and state agency resource personnel.

19 Therefore, it would seem that in the
20 context of pipeline construction Pennsylvania's
21 General Permit 5, that is the GP-5 program,
22 should be conformed to the conditions of
23 Nationwide Permit 12. The GP-5 program is
24 generally workable as is, and it marks an
25 advance in cooperative environmental regulation.

1 Currently, however, GP-5 permits are
2 available only where the impact of wetland is 10
3 acres or less. This limit is inappropriate for
4 pipeline construction or other long-distance
5 linear, narrow-width projects. By making GP-5
6 no more stringent than the federal Nationwide
7 Permit, Pennsylvania would simply be extending a
8 successful program to a broader set of
9 circumstances.

10 In the same vein, the GP-5 program
11 should be amended so that routine right-of-way
12 maintenance procedures, such as mowing, overland
13 surveys, and inspections, could be conducted
14 without a permit.

15 Finally, in cases where a company
16 needs to conduct emergency repairs on a pipeline
17 in a wetland area, the regulations that
18 expressly permit the repair to go forward as
19 needed, with the pipeline company providing the
20 Pennsylvania DEP with follow-up notification
21 once the work is completed.

22 It is my hope that the above
23 information will demonstrate the intent of the
24 natural gas industry to build and operate its
25 facilities in a manner consistent with

1 protecting valuable wetland ecosystems. Based
2 on monitoring many pipeline construction
3 projects, across the wide spectrum of wetland
4 types, I conclude that wetlands and pipelines
5 are compatible.

6 I would welcome any questions you
7 might have. Thank you very much.

8 CHAIRMAN REBER: Thank you, Mr.
9 Gartman. I'm looking to my right, start down at
10 Representative Fargo's end, any questions?

11 REPRESENTATIVE FARGO: I guess what
12 you are asking that we amend this bill to
13 include Nationwide Permit 12 regulations so that
14 utilities can work within right of ways?

15 MR. GARTMAN: It's not specifically
16 dealing with any particular bill. This is a
17 generic request that the program, the GP-5, I
18 guess it's the 105 Permit program, be amended to
19 conform with the criteria of the Nationwide
20 Permit 12.

21 REPRESENTATIVE FARGO: Presently,
22 GP-5, which is the Pennsylvania General Permit
23 that you work under --

24 MR. GARTMAN: Right. That's the one
25 we work under.

1 REPRESENTATIVE FARGO: -- is a little
2 different than the Nationwide Permit 12.

3 MR. GARTMAN: Right. In the
4 Nationwide Permit there is no limit as far as
5 the acreage of wetlands. One of the problems we
6 have with GP-5 is, it's automatic. You need to
7 go for an individual site specific permit.

8 Let's say we are building a 10-mile
9 pipeline and we just nick the edge of an 11-acre
10 wetland--let's say we cover less than a tenth of
11 an acre of that 11-acre wetlands--we have to go
12 and get a site specific, individual 105 permit,
13 a more rigorous long-term permit.

14 REPRESENTATIVE FARGO: Well, I think
15 it behooves Columbia Gas to come up with and
16 work with anyone who is attempting to get the
17 wetlands legislation through, to give us what
18 you feel is necessary so that we can work with
19 that as far as you are working in right of ways
20 and also you are repairing right of ways. I
21 think it's necessary and I appreciate your
22 testimony. But I would hope that your
23 organization would give us some additional
24 information as to specifically what is necessary
25 in the legislation. Thank you.

1 MR. GARTMAN: We'll do that.

2 CHAIRMAN REBER: Mr. Gartman, no
3 further questions. As Chairman, I always like
4 to see that. It banks for me, if you will, a
5 little bit of additional time if we get delayed.

6 MR. GARTMAN: I have photographs
7 there. I have one from Chester County, by the
8 way.

9 CHAIRMAN REBER: Thank you very much.
10 Our next testament is Mr. Keith Klingler,
11 President of the Pennsylvania Landowners
12 Association. Welcome, Keith, and if you would
13 appropriately identify yourself before you start
14 your testimony.

15 I might say for the information of
16 those present that at all hearings of this
17 committee the record is kept open, as I said
18 earlier, for any additional testimony that is
19 desired to be submitted. Obviously, the
20 transcript of the testimony is available for all
21 members of the committee that are unable to be
22 present in particular hearings. That particular
23 testimony and exhibits and anything that is
24 presented is available and that is, obviously,
25 one of the main reasons for these; for all

1 members of the General Assembly to review the
2 testimony. So, we do have the availability of
3 all of this information being made and presented
4 and available for all members of the General
5 Assembly.

6 Keith, if our sound system is back and
7 under control, I think you can continue.

8 MR. KLINGLER: Thank you. Good
9 morning. My name is Keith Klingler and I serve
10 as President of the Pennsylvania Landowners
11 Association. PLA is a non-profit, tax-exempt
12 organization founded in 1987 by a group of rural
13 property owners who became frustrated and deeply
14 concerned about excessive government regulation
15 affecting the use of privately-owned land in
16 Pennsylvania. They believed that one of our
17 most basic and fundamental constitutional
18 rights, the right to own, use and enjoy property
19 was being trampled by regulatory bureaucrats and
20 ignored by the members of Congress.

21 PLA's initial objective was to educate
22 our legislative leaders, other landowners and
23 the general public about the devastating impacts
24 that these regulations were having upon decent,
25 hard-working individuals and upon the economy of

1 our country.

2 Ultimately, the goal was to achieve
3 legislative changes which would restore reason
4 and balance in environmental regulation and to
5 correct similar injustices which were occurring
6 throughout our country. Obviously, the voice
7 raised by this small handful of landowners
8 struck a responsive chord in many others as well
9 because, today, PLA is comprised of about 2,000
10 individual members and is recognized as the
11 leading advocate of property rights in
12 Pennsylvania. Our organization communicates and
13 networks with other like-minded Pennsylvania
14 organizations whose memberships exceed 100,000
15 individuals and businesses.

16 Since its inception, PLA has a great
17 deal of interest in the wetlands issue. Some of
18 the problems PLA encountered early on are still
19 major factors in the wetlands debate today. For
20 example, wetland vegetation still consists of
21 hundreds of plants that thrive on uplands as
22 well as low lying areas. Black cherry and some
23 species of maple trees have been classified as
24 wetlands vegetation along with other plant life
25 that most people don't consider to be found in

1 wetlands. This is mainly caused by continual
2 misleading information concerning wetlands.

3 It seems we are inundated with
4 everything from newspaper articles to children's
5 books portraying wetlands as swamps and bogs
6 with cattails, ducks, and most importantly,
7 standing water. Such deceptive articles
8 normally mention how important wetlands are to
9 fisheries, flood control and purifying water.
10 This is the picture environmental groups want to
11 paint in everyone's mind.

12 Subsequently, anytime there is a story
13 of a landowner wanting to work in an area that
14 has been classified as wetlands, the general
15 public will picture a beautiful swamp as
16 portrayed in an environmental article and become
17 outraged that the swamp is being destroyed.

18 Because some organizations who know
19 the reality of wetland regulations have exposed
20 this kind of misleading information and have
21 repeatedly proven that the vast majority of
22 wetland controversies have been over areas with
23 no standing water, which offer little or no
24 wildlife habitat, is the reason we are where we
25 are today in the wetland debate.

1 The new Department of Environmental
2 Protection must present a balanced view of
3 wetlands when creating publications to be made
4 available to the general public. They must also
5 stop generalizing wetlands as environmental
6 groups and the former DER have done by claiming
7 that all wetlands provide the same benefits.
8 Since my involvement in PLA, I have witnessed
9 8/100th of an acre with no standing water stop a
10 sewage plant from upgrading and expanding,
11 costing a small town hundreds of thousands of
12 dollars in delays.

13 Also, a half acre at a major
14 intersection classified as wetlands because of
15 highway drains that had backed up onto the
16 property. The owner had to abandon his plans to
17 build a small craft shop and eventually sold the
18 property. I have witnessed drainage ditches
19 that had recently been cleaned and the farmer
20 was forced to fill in the ditch because of the
21 claim wetlands had been disturbed. This not
22 only caused an economic hardship, but forced the
23 farmer to flood his own farmland. Due to the
24 fact organizations like PLA have brought an
25 awareness to these actual situations, the public

1 has started to realize how wetland regulations
2 are being enforced.

3 Another issue that has gotten very
4 little discussion is the wetlands gains in our
5 state. Dozen of dams have been constructed,
6 along with reservoirs and man-made waterways.
7 Obviously, there's no question that thousands of
8 acres are flooded, wetlands are created. The
9 fact that beavers are plentiful in number and
10 very active in this state also indicates that
11 wetlands are constantly being created. With
12 environmental groups and government agencies
13 constantly talking about continued wetland
14 losses, they are refusing to look at the gains.

15 In northwestern Pennsylvania,
16 thousands of acres of abandoned farms dot the
17 countryside, many of which were drained but now
18 have converted back into wetlands. Again, those
19 statistics are never brought forward.
20 Therefore, we do not have an accurate count of
21 wetland acreage and question the numbers that
22 government agencies promulgate.

23 The many different government agencies
24 dealing with wetlands also needs to be
25 addressed. At the federal level, the Clinton

1 Administration has implied to the public that
2 the National Resources Conservation Service
3 welds jurisdiction, but the U.S. Fish and
4 Wildlife Service and the Army Corps are involved
5 in wetland delineations, recommendations and
6 decision making also. The final decision,
7 however, continues to rest with the Environment
8 Protection Agency.

9 Within the Commonwealth, the DEP has
10 the majority of the responsibility concerning
11 wetland regulations, although, the Pennsylvania
12 Fish Commission and Pennsylvania Game Commission
13 still play an active role.

14 For a clear picture of what is
15 expected of them, landowners need to deal with
16 one agency and only one agency at both the state
17 and federal level. Too often, we have cases
18 where 2, 3 or 4 agencies are involved and it is
19 not unusual for agencies to disagree on wetland
20 determinations leaving the landowner uncertain
21 who has final jurisdiction. These types of
22 ridiculous disagreements between state agencies
23 must cease if we are to bring common sense to
24 new regulations.

25 Mitigation is also a major concern.

1 Mitigation has been very controversial since
2 some say man can't create a wetland that will
3 equal a natural one. These same folks don't
4 seem to have a problem classifying a wetland
5 from an area that has become saturated due to
6 runoff from a parking lot or a low lying area
7 created by a railroad bed or highway
8 construction project. Additionally, when a
9 beaver creates a new wetland, bureaucrats find
10 no problem enforcing regulations. These
11 conflicting theories are typical of the
12 environmental and regulatory community.

13 Mitigation costs have long been
14 debated. For a large developer or business the
15 cost may not be a factor, as they have the
16 ability to pass the expenses on to consumers.
17 However, for an individual landowner the costs
18 can be enormous and simply not feasible to
19 endure.

20 Mitigation can also burden townships
21 with a loss of productive land and erode their
22 tax base. Consideration should be given for
23 mitigation to occur on public lands. Knowing
24 that every Pennsylvanian has public land within
25 driving minutes of their home, location

1 a great ability to generate vast sums of money
2 when it comes to more land purchases or rails to
3 trails projects. In 1993, the state asked for
4 \$50 million and 15 percent of the annual real
5 estate transfer tax to maintain parks, zoos,
6 museums and libraries.

7 Quietly, millions of dollars were
8 built into the legislation behind Key 93 to
9 purchase more land when, admittedly, they can't
10 adequately care for the land already owned by
11 the state. The legislation also provides for
12 over a million dollars for rails to trails
13 programs which is becoming a very controversial
14 issue when, in some cases, private property is
15 taken to build these trails.

16 Recently, the Ridge Administration
17 doled out \$2.9 million to several conservancies
18 and a land trust group to purchase more private
19 property, as if the current 6 million acres of
20 government-owned land within the Commonwealth
21 isn't enough.

22 If wetland protection is so critical,
23 then why isn't this money being spent to
24 compensate landowners whose land has been
25 confiscated through wetland regulations? Also,

1 if the state were actively pursuing wetland
2 purchases, provisions would be made for
3 perpetual protection and preservation of
4 wetlands. To help defray purchasing costs,
5 consideration should be given to areas of the
6 state which have an abundance of state owned
7 land where small fragmented parcels of prime
8 farmland and timberland could be sold to private
9 landowners and the proceeds could go toward
10 wetland protection.

11 By promoting this initiative there
12 would be no additional cost to taxpayers,
13 productive land would be back into the private
14 sector and on the tax rolls, which would provide
15 funding needed to pursue wetland restoration and
16 protection. The result of this initiative would
17 provide a no net loss of private lands, a no net
18 loss and enhanced public lands and no burden to
19 taxpayers.

20 Key 93 land purchasing monies should
21 be directed solely toward protecting wetlands
22 and not used as a yearly piggy bank for the
23 conservancies and land trust groups to dip into
24 every time they find a property to their liking.
25 It's high time this state got its priorities

1 straight, and started protecting private
2 property with the same zeal as they are
3 protecting the environment.

4 Environmental groups say that
5 developers will abuse compensation. PLA feels
6 that if legislation is carefully written this
7 can be avoided.

8 The mission is clear. Truly
9 significant wetlands must be protected but only
10 with equal protection for the private landowner.
11 I thank you.

12 CHAIRMAN REBER: Thank you, Mr.
13 Klingler. I might note for the record that
14 Representative Stanley Jarolin has joined the
15 dais. I look to his end of the table for any
16 questions. Representative Vitali.

17 REPRESENTATIVE VITALI: A few
18 questions. I guess one basic assumption you
19 seem to be making which I strenuously disagree
20 with is that a person who owns property has the
21 absolute right to use it in any way and to
22 maximize the profit. That's just not the way it
23 works.

24 I have a single-family home in the
25 suburbs and I could probably double its value if

1 I could subdivide it into an apartment complex.
2 But, that would cause congestion to my
3 neighbors. I can't do that. I think that
4 zoning regulations and wetland regulations and
5 historic preservation regulations all provide a
6 valuable service and are needed. In my view of
7 required compensation is just a front for
8 thwarting regulations, preventing them from
9 going into effect.

10 MR. KLINGLER: May I comment on that?

11 REPRESENTATIVE VITALI: Not yet, if I
12 could. Having said that, I just want to get a
13 few specifics so I can really check this out.
14 You mentioned on page 3, I have witnessed
15 eight-hundredths of an acre with no standing
16 water stop a sewage plant. What plant was that?

17 MR. KLINGLER: Pleasantville,
18 Pennsylvania, a town that I reside near. There
19 was no standing water. I guess there were some
20 wetlands vegetation. The water table they
21 determined to be within 18 inches of the
22 surface. The town desperately needed to help
23 their environmental aspects and upgrade their
24 sewage treatment plant, which at that time DER
25 was forcing them to do. They stopped the

1 construction and cost the town \$200,000.

2 REPRESENTATIVE VITALI: Next, the
3 half-acre at a major intersection, what
4 intersection was that?

5 MR. KLINGLER: Route 27 and Route 6
6 near Pittsfield, Pennsylvania. I have pictures
7 and documentation of everything if you have any
8 questions.

9 REPRESENTATIVE VITALI: I would like
10 to see that. I think I'm hearing you saying the
11 gain in wetlands due to flooding of rivers and
12 so forth, do you have any quantification as to
13 the net loss or gain in Pennsylvania's wetlands
14 over time?

15 MR. KLINGLER: Well, not the flooding
16 of rivers. The flooding of dry valleys to
17 create dams, reservoirs, what beavers do,
18 there's no question, and we are not putting a
19 number on it, but there's no question when the
20 Kinzua, you flood 12,000 acres of dry uplands,
21 there is going to be some wetlands created.
22 What we are saying is, no one, I mean, there's
23 all this focus on the loss, but no one wants to
24 deal with gains because they would show more of
25 a balance.

1 REPRESENTATIVE VITALI: My question is
2 quantification. Do I understand your answer to
3 is that you don't have a quantification of
4 regard to net loss or net gain?

5 MR. KLINGLER: I'm not sure what you
6 are asking about quantification. We are just
7 basically presenting a point that needs to be
8 looked at.

9 REPRESENTATIVE VITALI: It's expressed
10 in acreage. You seem to be disputing a figure
11 that there's not a net loss in wetlands.

12 MR. KLINGLER: No, no. That's not
13 true. I didn't say that. All we are saying is
14 that, both sides should be looked at, the gains
15 and the losses so we can have a balance. I do
16 mention that, a balanced view of just how many
17 acres are being lost, if any.

18 REPRESENTATIVE VITALI: You are not
19 aware -- You don't have a figure as to whether
20 there is a net loss or gain?

21 MR. KLINGLER: No. We would if our
22 state and federal government would look at both
23 sides, then we would have a more clear picture.

24 REPRESENTATIVE VITALI: I'm a little
25 confused as to part of your testimony here. You

1 seem to be implying a misconception that there
2 is some sort of deception going on with regard
3 to certain wetlands, things that are being
4 described as wetlands but they don't have an
5 esthetic look to them.

6 Now, as I understand it, the value of
7 wetlands, as I understand it, is not esthetics
8 but functionality; in other words, the water
9 purification value, the flooding control value,
10 the home for wildlife value, educational study
11 value. Are you saying that if it doesn't look
12 pretty then it doesn't have a value?

13 MR. KLINGLER: Absolutely not. I'm
14 sorry if you didn't understand that part of it.
15 But, what we are saying is, when DER, or the new
16 DEP hands you a publication and all they picture
17 is swamps with the ducks and they even have
18 boats and fish jumping, when in reality most of
19 what is being regulated has none of that. We
20 are just saying, show both. Show the dry areas
21 that you are regulating as wetlands. Give the
22 general public a balanced picture of what is
23 really happening and what you are really
24 regulating.

25 REPRESENTATIVE VITALI: Again, I'm a

1 little confused with that, because if the
2 professionals realize that the value of wetlands
3 is flood control, water purification, things
4 along those lines, isn't that the real issue,
5 protecting those functions? I'm not sure the
6 importance of what sketch you put in a manual
7 distributed to the public.

8 MR. KLINGLER: We are just saying be
9 balanced and show everything that you are
10 regulating; not just the swamps, bogs and
11 marshes with the fish jumping.

12 REPRESENTATIVE VITALI: Do you have an
13 opinion as to the functions of wetlands, a large
14 pond, a large lake and the acreage there versus
15 some of the bogs and marshes? I mean, isn't
16 there, as I understand it, and I don't
17 understand it too thoroughly, functionally, the
18 marsh or bog may have more wildlife habitat and
19 other functions that, perhaps, a large lake does
20 not have. Do you recognize the distinction?

21 MR. KLINGLER: We have talked earlier
22 this morning about the different functions.
23 There's no question that a swamp or a bog might
24 have more wildlife functions, but again, I'm
25 simply saying, show the whole picture to the

1 general public. Show them the 8/100th of an
2 acre, the half acre of dry land with none of
3 these characteristics. Just show the whole
4 picture. I have no problem with showing the
5 swamps, bogs, marshes with the fish jumping, the
6 cranes and the geese, but show the whole thing.
7 Don't categorize them all as, this is how they
8 all look. Every time you talk about a wetland
9 being destroyed, it's always got the standing
10 water, the fish and the turtles. Just a
11 balanced picture, that's all we're asking for.

12 REPRESENTATIVE VITALI: Again, I'm
13 confused the importance of how they look. What
14 we want to do is give the public clean drinking
15 water. What we want to do is prevent the public
16 from a rush of damaging flood water because
17 wetlands upstream have been filled in. What we
18 want to do is to have a good balance of
19 wildlife. I mean, whether it looks esthetically
20 pleasing or not, isn't the important thing from
21 the public's perspective that they have pure
22 water and a home safe from flooding, regardless
23 of what they look like?

24 MR. KLINGLER: Absolutely, but don't
25 deceive them. That's all we are saying.

1 REPRESENTATIVE VITALI: The issue of
2 mitigation costs should be borne by society as a
3 whole. Again, I come back to the example of my
4 home. Should I be given another \$100,000 by the
5 government because I could double the value of
6 my home if I can convert it into apartments, but
7 there are regulations preventing me from doing
8 that?

9 MR. KLINGLER: What you are talking
10 about there is zoning and what we're talking
11 about is state regulation. I'm simply saying
12 that, if we can spend money for rails to trails
13 and we can spend money to buy forest land and
14 farmland with our state tax dollars, then why
15 can't we purchase wetlands and why can't we
16 compensate landowners to preserve wetlands?

17 If you went out and bought an antique
18 for \$5,000 and you're an antique buff; you
19 really like this antique. You put it up on your
20 mantel and you're admiring it and your friends
21 and neighbors are admiring it. A knock at the
22 door came and it's the historic and museum
23 society. They say we have a new regulation that
24 says that anything we feel should be in a museum
25 we can take and put it in a museum. They take

1 don't and we're hoping that at the local level
2 you don't have to fight a state bureaucracy.
3 You have more control because those are elected
4 officials at the local level that are directly
5 dealing out those regulations and are not
6 appointed bureaucrats. It's a whole different
7 ballgame.

8 REPRESENTATIVE VITALI: You feel the
9 property owner has a right to, in any way he
10 can't use his property the state ought to pay
11 for it if it's a state regulation?

12 MR. KLINGLER: I didn't say in any
13 way. Wetland regulations take away all economic
14 loss. Please don't put words in my mouth.

15 CHAIRMAN REBER: If I can interject
16 for the gentleman, Representative Vitali, your
17 bank time is getting near to bankruptcy state.
18 I just wanted to remind you. I do think for the
19 record --

20 REPRESENTATIVE VITALI: Maybe I'll
21 just stop at this point.

22 CHAIRMAN REBER: Thank you.
23 Representative Fargo, anything?

24 REPRESENTATIVE FARGO: Really just a
25 comment. It's been a pleasure for me to work

1 with the Pennsylvania Landowners Association.
2 They are one of the organizations that whenever
3 we started working on a piece of legislation and
4 asked for input, they are the one who I don't
5 always agree with everything they have, but they
6 did take the time to work with us. I appreciate
7 it, Keith. Thank you for your testimony.

8 MR. KLINGLER: Thank you.

9 CHAIRMAN REBER: Representative
10 Birmelin.

11 REPRESENTATIVE BIRMELIN: For the
12 members of the committee, anecdotally, I have an
13 incident that occurred in my own legislative
14 district that I'm very familiar with. I don't
15 think it's all that strange, probably happens
16 quite frequently across the state.

17 I had a gentleman who was building a
18 very small subdivision in Pike County. He had
19 to cross a stream for the subdivision to have
20 access to a highway locally. So, he went
21 through all the proper channels with DER and he
22 got his bridge building permit and things of
23 that sort. People who were working for DER, or
24 at least in a cooperative fashion with
25 Pennsylvania Fish and Boat Commission, they had

1 sent a certain employee to make sure that his
2 crossing of the stream was proper.

3 While she was there she investigated
4 this subdivision. She looked it over. He
5 showed her around. He only had something like
6 10 acres, and I think he only subdivided it into
7 10 different lots. While she was there she
8 indicated that everything looked fine; there was
9 no problems. He was doing everything according
10 to the book. He built the bridge, and then the
11 DER people got an anonymous phone call
12 complaining that he was destroying wetlands.

13 Guess who was called to come in and
14 investigate the wetlands complaint? The same
15 person from the Fish and Boat Commission who had
16 previously seen the subdivisions and said
17 everything was fine, no problems. She now came
18 on on the basis of this complaint and found that
19 lo and behold there was one-tenth of one acre
20 collectively in little spots, none of which
21 probably had a diameter of more than 20 feet,
22 where skunk cabbage was growing. It was on a
23 slope. It was not standing water. It was
24 strictly the vegetation and the fact that in the
25 spring it was damp ground.

1 Well, in the spring in Pike County
2 there probably is a lot of snow melting off.
3 Sure, the ground is going to be damp in some
4 areas. That same individual shut down that
5 subdivision for 2 years and made that developer
6 go through all sorts of wetlands delineation and
7 all sorts of hoops and barriers and nonsense
8 that ultimately cost him between 40 and \$50,000
9 more to take care of about one-tenth of one acre
10 of supposed wetlands. I think that that
11 incident underlines and emphasizes, Mr.
12 Klingler, much of what you have been saying.

13 I think we need legislation, and I'm
14 not sure that House Bill 200 is it, even though
15 I'm a co-sponsor of it. We need legislation
16 that puts common sense into this and says, add
17 up 4 little holes in the ground and you get a
18 tenth of acre and that becomes a significant
19 wetland I think it's ridiculous. He had to go
20 through at least 2 different state agencies.
21 When the one person represented 2 state
22 agencies, wore one hat and said it was okay and
23 came back and wore a hat a couple of months
24 later and said no, it is not all right, the very
25 exact same person. You tell me why that is fair

1 and that's just to the taxpayers of
2 Pennsylvania? Maybe I'll quit this job.

3 That is a real problem. I think what
4 Mr. Klingler is saying is partly frustration,
5 but it's greatly reality of a distorted and a
6 confusing and just a totally ridiculous
7 situation that the average Pennsylvanian faces
8 when he wants to do something with his land.

9 Mr. Klingler, I appreciate your
10 testimony. I want to thank you for the position
11 you have taken. I have had some contact with
12 your association over the years, and thank you
13 for standing up for the property owners of
14 Pennsylvania. Somebody needs to do that. I'm
15 glad that you are doing that.

16 MR. KLINGLER: We're here. Thank you.

17 CHAIRMAN REBER: Representative
18 Masland.

19 REPRESENTATIVE MASLAND: Mr. Chairman,
20 just one brief comment. I do feel I need to
21 note this. You go into great length on the
22 misuse, in your opinion, of the Key 93 money and
23 contend that it should be used for purchasing
24 these wetlands. I can sympathize with some of
25 your concerns and certainly some of the need for

1 some legislation. But, I think you are
2 misdirected and I think there's a misunder-
3 standing of the purpose of Key 93. There are
4 many things that money goes to.

5 Certainly, it was not set forth to the
6 public on the ballot that this is money that we
7 are going to use to buy wetlands, period. So, I
8 don't think that the Governor, or really
9 anybody, had been misusing these funds by using
10 them for rails to trails projects.

11 MR. KLINGLER: I can show you the
12 press releases on Key 93. We were never told
13 there were land purchase monies built in. We
14 were never told -- We knew this. We got the
15 word out. We got the actual legislation phrases
16 out there in our media and we shut it down in 15
17 counties because of that.

18 If the money would have simply been
19 for upgrading our zoos, parks, museums and
20 libraries, we would have been in favor of that.
21 But it went far beyond that. You don't buy
22 additional land, when you can't take care of
23 what you have. We have 22 percent of this state
24 owned by the government; makes us more dependent
25 on the government for resources. We're going to

1 say, if you can purchase land with the Key 93
2 monies, why aren't they wetlands? That's all we
3 are saying.

4 CHAIRMAN REBER: Representative
5 Rubley.

6 REPRESENTATIVE RUBLEY: Just very
7 briefly. I feel compelled to say, Number 1,
8 that I think you are absolutely correct, there
9 are changes that must be made with these
10 regulations. We have to bring some semblance of
11 reasonableness back to the table.

12 However, I represent a county, portion
13 of a county that is the second fastest growing
14 county in Pennsylvania. The people there have
15 indicated by referendum and by surveys they are
16 willing to have public money spent to acquire
17 land, to protect those amenities that we're
18 losing at a very fast rate. They are very happy
19 to see conservancies reimbursing owners
20 legitimately for these lands so that they will
21 remain open for the future generation. So,
22 there is another side to the story.

23 MR. KLINGLER: That's fine in areas
24 where it's needed. But, they are also buying in
25 areas where it's not need. In our area we got

1 700,000 acres of government-owned land in the
2 extreme northwest Pennsylvania and they continue
3 to buy more there. If they were only focusing
4 on the areas where it's needed and maybe selling
5 some of these small fragmented parcels, as I
6 mentioned, prime farmland and timberland in the
7 areas where it's not needed and where it's not
8 being used, because there's been no study done.
9 That's something else. You need to work on
10 legislation to get a study done to know where
11 these lands are needed, if any.

12 If they sold that land and used those
13 monies up in our area to purchase land in areas
14 like yours, that's fine. We have no problem
15 with that. But, Key 93, the whole reason behind
16 it was, we can't take care of what we have. We
17 need millions of dollars for maintenance and
18 current projects. Why buy more if you can't
19 take care of what you have? That's just a basic
20 bad policy.

21 CHAIRMAN REBER: Mr. Klingler, I have
22 a question. I'd be conspicuous by my absence.
23 A couple of things. First of all, I think
24 almost a triangular discussion just took place
25 between Representative Masland and

1 Representative Rubley and yourself. I think all
2 of you made a point that it's a collective
3 analysis that must be made so there isn't a
4 disproportionate amount of those dollars going
5 in the wrong area. I think it has to go there.
6 I'm very close to Carol Rubley and I'm also
7 recognizing what Representative Masland said and
8 I think we all are.

9 So, I think even though we are saying
10 it differently or emphasizing a different
11 aspect, we all hopefully want to get to the same
12 goal in seeing that the monies, as should always
13 be the case with public funds, to go where they
14 are needed the most.

15 On page 4 of your testimony, you noted
16 that for a clear picture of what is expected
17 other than landowners need to deal with one
18 agency and only one agency. You talk about too
19 often there is 2, 3, 4 of this type of
20 disagreement between the various agencies must
21 cease. I think from my own perspective, that is
22 one of the most frustrating -- and I'm not
23 necessarily now talking about large-time
24 developers. I'm talking about single individual
25 landowners.

1 I think I know, but I just want to
2 make sure, what are the various agencies that
3 you view, if you can tick off the 2, 3 or 4, or
4 5 different ones that you feel you have to hop
5 scotch through, where, as opposed if in the
6 course of looking at this issue, we could unify
7 and bring about a unicameral, if you will, type
8 of agency dealing with this particular issue?

9 MR. KLINGLER: Well, we would like to
10 see a DEP on the state level and the SCS on the
11 federal level. The problem is, the Clinton
12 Administration has opened it up to the Fish and
13 Wildlife, EPA and the Army Corps, to all enter
14 into the picture and on the state level we've
15 got the Fish Commission and at times the Game
16 Commission getting involved. We just feel
17 that's totally inaccurate.

18 CHAIRMAN REBER: I appreciate you
19 ticking those off because I thought that was it,
20 but I didn't just want to leave anyone out of
21 the mix.

22 MR. KLINGLER: Occasionally, you get
23 some local health departments involved, but
24 that's pretty rare.

25 CHAIRMAN REBER: All right. Thank you

1 very much. We appreciate your testimony.

2 The next individual we have on the
3 agenda is Chris Mele of the Pennsylvania Rural
4 Electric Association. Chris is the Manager of
5 State Relations for that organization.

6 MR. MELE: Good morning, Mr. Chairman,
7 members of the committee, and other legislators
8 that are in attendance. My name is Chris Mele,
9 Manager of State Relations of the Pennsylvania
10 Rural Electric Association. I'm not going to go
11 through and read this testimony word for word in
12 the interest of time and attention span, but
13 there are a few things that I'd like to point
14 out.

15 The issue of wetlands kind of reminds
16 me of when the Supreme Court was looking at
17 pornography. One of the justices said, I can't
18 define it, but I know it when I see it.

19 CHAIRMAN REBER: Justice Potter
20 Stewart, Jacobellis versus Ohio. I know it
21 well.

22 MR. MELE: As you can see, I'm not a
23 lawyer and I'm not a technical guy. I'm just a
24 poor country lobbyist. In any event, that's the
25 crux of the whole issue, what is it? Where is

1 it?

2 Let me just first start out by saying,
3 Pennsylvania Rural Electric Association is the
4 trade association representing Pennsylvania's 13
5 consumer-owned, not-for-profit rural electric
6 cooperatives, which provides power to over
7 600,000 rural Pennsylvanians. As we all know,
8 electricity is no longer a luxury, it's a
9 necessity. Right now the need for that
10 particular energy form is more important than
11 ever.

12 When the co-ops, and I would assume
13 the investor-owned companies, although I would
14 not want to speak for them, when the co-ops go
15 to build or construct, or even do maintenance on
16 an electric line, consideration for engineering,
17 economics and property owner concerns is our
18 main goal.

19 In rural areas electricity is
20 generally transmitted and distributed by
21 overhead lines with an occasional need for
22 underground distribution service. These lines
23 have little impact on vegetation below, and
24 while there is some effect on the environment
25 due to construction and maintenance of utility

1 lines, these effects are limited and temporary
2 and significant wetlands can be avoided, and in
3 most instances are avoided. It would cost us
4 more money to go through a swamp, for example,
5 than around one.

6 Some of the proposed legislation
7 regarding the wetlands issues contains language
8 that will, in fact, make it easier for the
9 electric cooperatives to provide affordable
10 electric service to current and to future
11 consumers. In addition, we hope that changes
12 can be made that will enable us to provide
13 timely maintenance and continue reliable service
14 to our current and future members.

15 The decision of how and to what extent
16 the government should affect individuals in
17 Pennsylvania while protecting such an important
18 natural resource, and I do mean important. As a
19 matter of fact, some of our co-ops are involved
20 in water or wastewater treatment on an on-lot
21 situation where we actually use wetlands to
22 help. There's no debate on the importance of
23 that. However, we believe that those elected to
24 represent the citizens ought to be the ones
25 debating this issue and not the bureaucrats.

1 The main things that we are concerned
2 with are consistency with any federal
3 legislation, getting certain exemptions in the
4 regulations, classifications of the wetlands and
5 the timing issues that are currently involved.

6 We feel that under any circumstances
7 there ought to be an exemption for aerial
8 utility lines, transmission distribution. It is
9 imperative. One of the main concerns we had
10 when the regulations were first promulgated a
11 few years ago was that there were no provisions
12 for that. There was a question of, if a line is
13 down, can you bring your maintenance crews in to
14 get it back up or do you need to get a permit?
15 That has since been working out, but it took
16 time.

17 We feel that the legislature needs to
18 put that in writing. There has to be an
19 exemption. Our concern is similar to the gas
20 company's, in that, it is a vital service.
21 Sometimes, time does not permit for a permit
22 process, or whatever, in the case of an
23 emergency. We need to have an exemption to get
24 in, maintain, repair, and construct when we need
25 to. Again, I'd like to stress that specifically

1 in the distribution side of the business, the
2 impact and effect is very minimal.

3 I'd like to jump to some of the
4 classifications that we have seen in the various
5 legislation, and we think that classifying them
6 is the right way to go, because I think
7 everybody believes that there are certain
8 resources that are more important than other
9 resources. You may debate which ones those are,
10 but there is a delineation there.

11 We think for Type A wetlands a
12 definition should be added that Type A wetland
13 would be a wetland consisting of 50 contiguous
14 acres. We think that that definition is needed.
15 Typically, when you do utility line construction
16 you may be running for a mile up to a hundred
17 miles of line. Imagine, if you can, the
18 possibility of having to permit 70 or 80
19 different wetlands along that route. It gets to
20 be very expensive and it gets to be very time
21 consuming.

22 As far as the Type B wetlands go, we
23 think that the mitigated wetlands ought to have
24 a higher degree of protection since these
25 wetlands were specifically created or restored

1 due to other wetland degradation or loss.

2 Incidentally, created wetlands deserve a lesser
3 degree of protection since these wetlands have
4 been unintentionally and artificially created
5 and should be classified as Type C. The two
6 bills that I'm aware of that are out there are
7 very similar to that. We would like to see that
8 delineation between Type B and Type C.

9 The other thing that we would like to
10 suggest, in Type C wetlands, we think that
11 definition should be added to all of the various
12 proposals that a Type C wetland is less than 2
13 contiguous acres. Any wetland less than 2
14 contiguous acres that definition should be in
15 there.

16 One last concern is regarding the
17 transition period. We think that the current
18 proposals are very ambiguous as to that
19 transition period. I, unfortunately, don't have
20 a suggestion for language to clear that up. I
21 would be happy to work with you on that. We
22 think that, perhaps, it needs to say that for
23 the next 3 years the current regs will be
24 followed and then will promulgate new ones.
25 That is going to have to be worked out as

1 needed.

2 I'd like to say thank you very much
3 for allowing us the opportunity. I apologize
4 that Bill Mowatt isn't here. Unfortunately, you
5 were stuck with me this morning. I think he
6 just sent me by myself so I wouldn't bother him
7 anymore. Thank you very much. I would be happy
8 to answer any questions. It's nice to see that
9 the committee is taking up this particular
10 issue.

11 CHAIRMAN REBER: The Chair thanks the
12 gentleman. Representative Fargo.

13 REPRESENTATIVE FARGO: Chris, some of
14 the items that you kind of skipped over had to
15 do with amendments that are currently going to
16 be or are included in the federal legislation
17 that's being considered. You are suggesting
18 that they be in the state.

19 MR. MELE: Yes, sir.

20 REPRESENTATIVE FARGO: The one having
21 to do with maintenance and access roads and the
22 one to do with access roads, I think, have been
23 discussed before and will be considered, I
24 believe. But, the one having to do with the
25 third one, proposed federal bill that exempts

1 activities for purposes of providing critical
2 infrastructure, we believe that construction,
3 maintenance, utility distribution and
4 transmission should be included in the
5 definition of critical infrastructure. Is that
6 already in the federal bill or is that something
7 you are trying to get in the bill?

8 MR. MELE: Representative Fargo, I
9 have to apologize. I have not read the federal.
10 That came out of our Engineering Department and
11 our federal lobbyist. I probably should have
12 brought him with me. I would be happy to sit
13 down with you and go over that. I just do not
14 have that information.

15 REPRESENTATIVE FARGO: I'm just
16 concerned that that really makes an expansion --
17 is a major exemption. The one for maintenance
18 and one for access roads I can understand.
19 Whenever you start doing for infrastructure, you
20 get to having a major exemption that you need to
21 be concerned about. Thank you, Chris. I
22 appreciate your time.

23 CHAIRMAN REBER: Representative
24 Vitali.

25 REPRESENTATIVE VITALI: You had talked

1 about some modifications to the classifications,
2 scheme A, B and C, and I presume Representative
3 Fargo's bill, and you suggested that to be a
4 Type A wetland it would need to be among a tract
5 of 50 contiguous acres.

6 As I read this, that is the only
7 classification that has a significant degree of
8 protection because, if you develop Type B
9 wetlands you would have -- the government
10 prevents development of Type B wetlands it has
11 to pay, which in my mind is going to seriously
12 dampen any regulations in that area. So, Type A
13 will be the only category that has any
14 significant protection.

15 Can you tell me what percent, using
16 this 50 contiguous acre criteria, can you tell
17 me what percent of Pennsylvania's wetlands will
18 now be in this Type A?

19 MR. MELE: No, I can't, sir. I
20 cannot. I will be --

21 REPRESENTATIVE VITALI: Even ballpark.
22 Are we taking 99 percent of the wetlands out of
23 it? Only one percent? Are we talking 50
24 percent? Do you have any sense at all as to
25 what protection you are removing from wetlands?

1 MR. MELE: I really do not have a
2 sense on the 50 contiguous acres. I would like
3 to say that I think that that number is fairly
4 ambiguous and that we could work on that. I
5 think the point we are trying to make is that,
6 there needs to be a contiguous acreage number
7 set for the various classifications ought to be
8 part of the definition.

9 REPRESENTATIVE VITALI: With regard to
10 Type C wetlands, again, these are wetlands that,
11 by definition, no permit is required. So, there
12 is no protection for those wetlands, at least no
13 permit is required if they are classified as
14 such. Are you saying that if a wetland is less
15 than 2 acres, it should be Type C per se?

16 MR. MELE: Correct.

17 REPRESENTATIVE VITALI: Again, can you
18 tell me what percent of Pennsylvania's wetlands
19 will fall into this category of no protection?

20 MR. MELE: Sir, I cannot. I think
21 that number is there as a starting point to
22 bring forward the position that some type of
23 acreage, limitations needs to be in the
24 definition.

25 REPRESENTATIVE VITALI: Because it

1 but not to go into the hardship story, I can
2 tell you that we do have a member of ours who
3 had his farm split by, I believe it was the
4 turnpike. When the construction was done a
5 wetland formed on the one side of his farm and
6 all of a sudden he has to keep a buffer zone and
7 everything surrounding it. Like I said, the
8 horror stories are out there. I'm not going to
9 argue with what you said. I think you are
10 correct in what you said.

11 I guess the other thing I'd like to
12 point out is that, I'm not here and my
13 association isn't here to promote development,
14 et cetera. We are trying to provide a service
15 to the most rural of the rural people in the
16 state. Co-ops wouldn't even be here if the
17 investor-owned companies would have wanted to
18 serve these people. But, they were so far out
19 and it would have cost so much money to serve
20 them, they took it upon themselves to create the
21 co-ops.

22 It's already very expensive to serve
23 these folks in these areas. We think that the
24 aerial crossings, when you look at a mile line
25 depending on the terrain, you are talking

1 anywhere from 30 to \$80,000. If you have to go
2 around something, you are costing more. These
3 people already --

4 REPRESENTATIVE VITALI: Nobody argues
5 that common sense shouldn't be applied. Even
6 Democrats don't. (Laughter)

7 It's a comment I think you made at the
8 beginning, this is my final point. I think you
9 made in the beginning and I think Mr. Klingler
10 also made it--I forget your wording--but the
11 implication seems to be, hey, this obviously
12 doesn't look like much, why are we putting a
13 value on it?

14 My only comment on that is, that
15 scientists tell me that this spits of wetland
16 that to me look worthless. I don't believe they
17 have value, but they tell me they have value. I
18 believe them because they are scientists. I
19 mean, the earth looks flat to me, but I believe
20 people when tell me.

21 My point is, why the emphasis on how
22 it looks as opposed to reliance on what
23 scientists say has value?

24 MR. MELE: I guess the only way I can
25 answer that question is that, I'm not going to

1 refute or debate that it doesn't have value.
2 What I'm saying is, by me crossing it with an
3 aerial utility line, we are not degrading that
4 value?

5 REPRESENTATIVE VITALI: Thank you.
6 Thank you, Mr. Chairman.

7 CHAIRMAN REBER: Chair thanks the
8 gentleman. Our next witness is Doctor Charles
9 Bolgiano, Legislative Liaison for the Unified
10 Sportsmen of Pennsylvania. I have the
11 indication from our reporter that the numbness
12 is off her fingers and we will proceed. If you
13 would identify yourself for the record, sir.

14 DOCTOR BOLGIANO: Good morning. My
15 name is Charles Bolgiano. I'm the Legislative
16 Liaison for Unified Sportsmen and also serve as
17 a lobbyist in Harrisburg. We represent 80,000
18 members of the sportsmen in Pennsylvania. It is
19 a pleasure to be here today to address the issue
20 of Pennsylvania wetlands.

21 For years, the Unified Sportsmen of
22 Pennsylvania has faced important environmental
23 considerations at both the national and state
24 levels. We are no newcomers to the wetlands
25 scene, having given testimony almost 4 years ago

1 on Senator Madigan's wetlands legislation. A
2 few years ago, we turned thumbs down on the
3 Broujos Acid Rain Bill and the Pennsylvania
4 legislature concurred with our position. We
5 have worked diligently for a property rights
6 bill both in Washington and Pennsylvania.

7 Currently, we are engaged in providing
8 support for common sense amendments to the
9 Endangered Species Act. As such, we are accused
10 by opponents of representing big business
11 interests. There is no truth to that accusation
12 as we take comfort in supporting common sense
13 legislation that promotes not only what's right,
14 but also what's in the best interest of the
15 nation and Pennsylvania. It is our sincere hope
16 that the legislature will finally adopt common
17 sense wetlands legislation after many years of
18 hesitation and pondering what to do.

19 On wetlands and property rights we
20 witness grave injustices promoted through the
21 federal regulatory system, and some state
22 agencies go too far with unnecessary
23 restrictions. The regulations go far beyond the
24 scope of reasonable protection. Despite the
25 constitutional duty of government to protect

1 property owner's rights, these rights are under
2 intense assault; the culprit, the government
3 itself. Wetlands restrictions are currently a
4 horrendous policy attacking land use and
5 property ownership rights.

6 As sportsmen and conservationists, you
7 might think that we should be focused on
8 sportsmen's issues. Well, we are as wetlands
9 are of concern as environmentally important land
10 on which we have hunted for generations.
11 Valuable wetlands must be protected for reasons
12 that have been made obvious. However, not all
13 wetlands are equally valuable.

14 When you are reminded by
15 preservationists and environmentalists that our
16 400,000 acres of Pennsylvania wetlands are one
17 of the most important habitats for Pennsylvania
18 vertebrate and vascular plant species, you are
19 hearing remarks that are only partly true. In
20 other words, they are telling you only what they
21 want you to hear without providing scientific
22 support. I can tell you that sportsmen do not
23 find any more abundant wildlife species on Class
24 C wetlands than they find on most other
25 farmlands.

1 To claim an abundance of wildlife, and
2 perhaps, some threatened and endangered species
3 do inhabit Class A and Class B wetlands is true,
4 and we believe that these wetlands should be the
5 prime targets for protection as valuable
6 ecological areas under wetlands regulations.

7 In drawing this observation and
8 conclusion, the Unified Sportsmen have not
9 witnessed any disparity in populations of either
10 birds or animals on Class C wetlands compared to
11 farmlands in general. We do not discount the
12 possibility that some soil types may be more
13 favorable to some insect and snail species.
14 However, that disparity would exist on all
15 farmlands whether they be classified Class C
16 type or not.

17 When we think of wetlands, we usually
18 think in terms of swamps, marshes, bogs, fens
19 and seeps, all of which perform valuable
20 functions that are recognized and delineated.
21 To cast Class C wetlands as nonessential to the
22 functions and expectations of all wetlands in
23 general just makes good common sense.

24 As with all lands, good stewardship is
25 an essential element for use of land in general,

1 whether it be forests, barrens, farmlands,
2 meadows, or whatever. Poor stewardship of lands
3 can be a definite threat to aquatic communities
4 and wetlands, especially within the same
5 watershed. To insure that our waters remain
6 clean, pollution and nutrient enrichment from
7 pesticides, sewage disposal, runoff from
8 agricultural fields and acid mine drainage can
9 be held within limits by guidelines that are
10 already in place. Vigilance in enforcement of
11 pollution laws is necessary.

12 You will most likely hear, if you
13 haven't already heard, that lack of full
14 scientific certainty should not be used as a
15 reason for diluting wetlands regulations. To
16 the environmental community, science is not
17 always welcome in determining what might or
18 might not be environmentally important wetlands.
19 According to the environmental community, human
20 existence has no more judicial rights than any
21 lesser species.

22 Furthermore, according to the
23 proponents of preservationism, the chief forces
24 threatening the earth is technology. As a
25 scientist, I find the logic of the environmental

1 community to be exasperating. In our opinion
2 there is very little risk involved in asserting
3 that Class C wetlands should be reformed
4 according to House Bill 200. Science is on the
5 side of making this decision easy, and so is
6 justice to the landowner.

7 Just listen to what the Clean Water
8 Committee of the National Academy of Science had
9 to say about wetlands when they submitted a
10 report to Congress last May. They said, quote,
11 there is no precise, general relationship
12 between wetland functions and the value of
13 wetlands to society, closed quote.

14 Then the committee added, that another
15 definition of wetlands will not be, quote,
16 precise in its ability to distinguish wetlands
17 from all other kinds of ecosystems. Judgment
18 and convention will continue to play a role, end
19 quote. And it adds, quote, the development of
20 indicators is an endless process of refinement
21 that is facilitated by research on wetlands,
22 closed quote.

23 While common sense says that wetlands
24 ought to be wet, the environmental community has
25 convinced federal regulators that this is not

1 necessarily so. They make it a matter of degree
2 and the feds bought that line, hook, and sinker
3 much to the dismay of property owners.

4 Wetlands can perform valuable services
5 such as sustaining some wildlife or purifying
6 water. Yet, the justification for protecting
7 them remains more esthetic than scientific.
8 Nevertheless, however subjective your desire to
9 protect wetlands may be, the effort by
10 government has created legal quicksand for many
11 otherwise law-abiding citizens. Some landowners
12 have gone to jail for inadvertently molesting
13 so-called wetlands. Countless others have
14 suffered financial hardship by being forced to
15 fight long court battles, incur huge fines, or
16 watch the value of their properties plummet
17 after being declared wetlands. The source of
18 these injustices are the standards themselves.

19 The law should be written in a simple,
20 consistent, concise and clear manner so that all
21 landowners can understand without having to
22 resort to aerial photography, satellite imaging
23 or computer modeling. We urge you to proceed by
24 applying the principles of justice rather than
25 commit yourselves to an endless process of more

1 refinement and definition. This bill must go
2 forward to the Governor's office. Please don't
3 take 2 more years for deliberation.

4 Finally, though far from perfect, our
5 society is the finest in history, and our
6 environment is very, very clean and improving.
7 Our society is awakening to the perils that
8 confront it in America, and people will defend
9 their rights they deem to be priceless; namely,
10 free enterprise, property rights and personal
11 freedom.

12 Thank you very much for this occasion
13 to speak to you today.

14 CHAIRMAN REBER: Thank you, doctor.
15 Looking to my left, Representative Jarolin on
16 your end, are there any questions for Doctor
17 Bolgiano? Representative Rubley.

18 REPRESENTATIVE RUBLEY: One quick
19 question, doctor. You make it very clear what
20 your position is on Class C wetlands. But, are
21 you satisfied with the definition of the A and B
22 as far as --

23 DOCTOR BOLGIANO: We have no problem
24 with that.

25 REPRESENTATIVE RUBLEY: Thank you.

1 CHAIRMAN REBER: Representative
2 Vitali.

3 REPRESENTATIVE VITALI: Thank you.
4 Doctor, thank you for coming today. We are very
5 interested in hearing the opinion of sportsmen.
6 Your testimony, I want to note at the outset is
7 at pretty significant odds with the testimony of
8 the Pennsylvania Federation of Sportsmen, or
9 rather their stated position.

10 For example, the comments to the
11 Ridge initiatives by the Northeast Division of
12 the Pennsylvania Federation of Sportsmen, I
13 quote, respectfully objects to the DER's
14 proposal to allow up to one-half acre of
15 wetlands to be filled through the issuance of
16 general permit. Also speaking with
17 representatives of that group, their opinion is
18 clearly different from yours.

19 Now, I ask you the following question
20 because I'm trying to find out who speaks for
21 sportsmen. You indicate that you represent
22 80,000 members. You are aware that that figure
23 has been greatly disputed? Could you tell us
24 how you arrived at your membership figure?

25 DOCTOR BOLGIANO: That figure was

1 to pass it along to Representative Smith. I'm
2 sure if you would desire, he can hold the
3 hearing at your request to pursue the line of
4 questioning that I saw this going to. I'm going
5 to put a stop to it after I allow the doctor a
6 30-second opportunity to respond to your
7 question that he really didn't have an
8 opportunity to respond. I think it's only fair.
9 Doctor, would you respond.

10 DOCTOR BOLGIANO: My response to our
11 number of members in our organization was
12 initiated by the Pennsylvania Game Commission
13 survey. The survey, in our estimation, was
14 technically incorrect. It prompted us to make a
15 resurvey of our membership. Our attorney wrote
16 to the Pennsylvania Game Commission a letter
17 several months ago following that dispute and
18 informed them that our membership in this state
19 is indeed 80,000 members. If he would like to
20 see a list of the memberships, we would gladly
21 provide it.

22 REPRESENTATIVE VITALI: This report
23 indicates that while you estimate significantly
24 higher membership than the Pennsylvania
25 Federation of Sportsmen, they indicate that you

1 are significantly lower than that; less than
2 10,000.

3 DOCTOR BOLGIANO: That's a joke.

4 REPRESENTATIVE VITALI: How is your
5 official position arrived at by your membership,
6 whatever that might be?

7 DOCTOR BOLGIANO: Official position on
8 what?

9 REPRESENTATIVE VITALI: The position
10 you are stating today on wetlands.

11 DOCTOR BOLGIANO: Four years ago we
12 published and circulated testimony on wetlands
13 on Senator Madigan's wetlands bill. There was
14 general agreement within our organization that
15 that was a correct political -- correct
16 political and sensible thing to do because it
17 provided common sense approach to the policies
18 that we were confronted with at that time.

19 This testimony here was written and
20 approved by the President, the Executive Vice
21 President, the Chairman of the Board, and myself
22 as Legislative Liaison lobbyist for Unified
23 Sportsmen. We, obviously, cannot circulate this
24 type of thing to 80,000 people and get a
25 consensus agreement.

1 REPRESENTATIVE VITALI: That's my
2 question. Of that 80,000 membership, how many
3 people had an input into this position? Was
4 there any surveys or any questionnaires
5 circulated?

6 DOCTOR BOLGIANO: We have been
7 circulating surveys. We have not addressed the
8 issue of wetlands in our surveys, and we
9 surveyed 5,000 of our members last winter. That
10 was our report --

11 REPRESENTATIVE VITALI: You have no
12 survey information regarding wetlands from your
13 members?

14 DOCTOR BOLGIANO: There was no
15 information in that survey on wetlands.

16 REPRESENTATIVE VITALI: Then your
17 official position is based on the 8 or 9, or
18 whatever people you just described, is that
19 correct?

20 REPRESENTATIVE VITALI: And our Board
21 of Directors which is comprised of about 12
22 people.

23 REPRESENTATIVE VITALI: And you're
24 also a member of the -- I noticed you are on the
25 letterhead of the Landowners Association too, is

1 that right?

2 DOCTOR BOLGIANO: I'm a director of
3 the Pennsylvania Landowners Association. At no
4 time was there any correspondence between
5 Unified Sportsmen, myself and the Pennsylvania
6 Landowners on this presentation here today. We
7 share some opinions and concerns of the
8 Pennsylvania Landowners expressing property
9 rights, Endangered Species Act and also on
10 wetlands.

11 REPRESENTATIVE VITALI: Thank you.
12 Thank you, Mr. Chairman.

13 CHAIRMAN REBER: Representative Feese.

14 REPRESENTATIVE FEESE: I want to thank
15 you for the legal counsel for a group of 2,000
16 sportsmen in Lycoming County which are also
17 members of the Unified Sportsmen. I thank you
18 for your testimony.

19 CHAIRMAN REBER: Any further
20 questions?

21 (No response)

22 CHAIRMAN REBER: The Chair thanks the
23 gentleman. Our next witness is Mr. Craig Todd,
24 the District Manager of the Monroe County
25 Conservation District.

1 MR. TODD: I am not going to read the
2 packet you got before you. My name is Craig
3 Todd. I'm the District Manager of the Monroe
4 County Conservation District. I want to thank
5 you for coming to the Poconos. You are,
6 obviously, welcome anytime.

7 We are the second fastest growing
8 county in the state. We have between 25 and 30
9 percent of the state's wetlands resources
10 located within a 3, 4-county area. A tenth of
11 the nation's population relies on the Delaware
12 River for its water. Philadelphia relies on
13 Pocono wetlands to keep salt water intrusion out
14 of its public drinking supplies, on and on and
15 on.

16 I provided you with some past
17 testimony and comments that cover pretty much
18 all the issues that are currently now trying to
19 be -- attempted to be addressed by both the
20 legislature and also DER. You will notice that
21 they are from the 1990's, '91 up to '95. I
22 don't have specific comments in reference to
23 legislation proposed right now. However, that
24 will follow. All of these testimonies will
25 provide insight into the issues that I think

1 that we are going to talk about today. They
2 also have all been approved by the Monroe County
3 Conservation District Board of Directors.

4 They include our January '90 Senate
5 Bill 1326 amendments, for the Dam Safety
6 Encroachments Act; our August '90 DER proposed
7 revisions to Title 25, Chapter 105; our May '91
8 Senate Bill 982 comments on the Wetlands Mapping
9 and Protection Act, which to a degree here is
10 legislation proposed now; our September '91
11 testimony to the Federal House Interior and
12 Insular Affairs Subcommittee on Energy and the
13 Environment on the '91 revised delineation
14 manual; and also our comments on that same
15 manual, the EPA during public comment period;
16 also our recent comments on proposed DEP General
17 Permit 15 for private residential construction
18 and wetlands.

19 I've also got a brief outline of the
20 district's involvement in wetlands protection
21 which expands 10 years. To a large degree, I
22 think we have broken some new ground in terms of
23 wetlands protection involving municipalities.

24 Please understand that we are not
25 protectionists. We are conservationists. We

1 also believe in wise use. Our philosophy is
2 simply, the wetland protection in sustainable
3 economic growth are compatible and can be
4 achieved with predictability which is important
5 to existing institutions and regulations. We
6 spent the last 10 years trying to do that.

7 I want to briefly run down through 10
8 issues, typical wetland issues that are both
9 discussed in our previous testimonies and
10 discuss those very briefly. I kind of had a
11 panic attack when I knew that I had 10 minutes
12 to talk about wetlands. I can talk about any
13 one of these issues for a couple of hours. But,
14 I will try to keep it brief. Hopefully, some
15 things that I say will elicit comments from you
16 people. We can embellish a little bit on some
17 of these issues.

18 One issue right now that we hear a lot
19 about here locally in Monroe County is, state
20 protection will be no greater than federal
21 protection. This butts heads with the
22 empowerment concept that now seems to be very
23 vogue that there is an attempt by government to
24 get down to the local location for people to
25 regulate certain resources to the degree that

1 they think is appropriate.

2 One of the problems we are seeing
3 right now is, the feds are deregulating and
4 saying, well, we think the states ought to take
5 primacy here. We think that the states ought to
6 take responsibility or more responsibility for
7 their resource protection.

8 The state is saying, we are not going
9 to do anything that's more restrictive than what
10 the federal government is doing. If you take
11 into consideration that they are deregulating,
12 that doesn't vogue well for local
13 municipalities. I recently had a discussion
14 with a solicitor for a township which has
15 adopted wetland protection provisions that
16 mirror now DEP regulations and 404 federal
17 regulations. That municipality is bailing out
18 of the wetlands protection game.

19 If you people think that you are
20 empowering local municipalities, the reason why
21 they have been willing to protect wetlands on
22 the local level is because they felt it was
23 important on the state and federal level. I
24 don't think that you will find carpenters and
25 school teachers being willing to stand up as the

1 final barrier between someone developing a
2 wetland or not. It's very important to keep
3 that in mind.

4 Classification is also a big issue.
5 Most classifications schemes deal are not based
6 on science. They tend primarily to be based on
7 aerial extent or some idea of how maybe that
8 wetland was established in the first place, or
9 how that wetland is zoned as outlined in a Class
10 C wetland in now proposed House Bill that says
11 all industrial properties Class C wetland and
12 permits are available.

13 None of this relates to permitting.
14 It seems like when you start classifying
15 wetlands, you forget the fact that permits are
16 available for activities in all wetlands. The
17 purpose of the permit review is to make sure
18 that the fill when placed or when the permit is
19 issued will not have negative impacts on
20 adjacent property owners or collectively within
21 a sub-watershed in which the activity is
22 proposed.

23 The other obvious problem with
24 classification, and you'll find a picture in the
25 back and our GP-15 comments, that shows what

1 happened when a half-acre forested wetland which
2 would be considered de minimis because of its
3 size was channelized. It's resulted in a
4 redirection of storm water flows and it created
5 a 30-foot deep gully, eroded gully, and flooded
6 out 3 houses and blew out a township road
7 culvert. If you think that size is a criterion
8 for classifying wetlands, you are going to be
9 involved in a lot of court cases by those people
10 whose property rights have been infringed upon
11 by the degradation and impact as the result of
12 that wetland being impacted.

13 Mitigation and replacement. I
14 personally am opposed to replacing small wetland
15 fills. I have seen many projects where the cost
16 of engineering, designing and construction of
17 small replacement wetlands to replace those
18 wetlands impacted for permanence by permit
19 issuance would actually cost more than the
20 actual project for which the permit was
21 originally applied for and issued for. That's
22 disturbing to me.

23 Any scientist that designs created
24 wetlands in non-hydrant situations will tell you
25 that they don't work. It's an embarrassment to

1 the wetlands protection program and it's nothing
2 more than science trying to mirror public
3 policies in the name a no net loss public policy
4 statement that occurred several years back. We
5 seem to embrace that, but we really don't know
6 how to accomplish that.

7 The bottom line is, we try to avoid,
8 minimize impacts on wetlands and look at
9 alternatives. We have thousand-acre projects
10 here in Monroe County that have impacted less
11 than a half acre of wetlands.

12 If you look at different types of
13 project design, you can make the same amount of
14 money, or in many cases even more if you don't
15 sprawl, and protect the wetland resources which
16 only generally constitute 2 percent of the
17 state's land mass. One of the things that you
18 recognize when you ride around is that, there is
19 a lot of uplands out there.

20 Mapping. I'll only say this. We did
21 an analysis of a mapping effort that was done in
22 New Jersey back when the mapping legislation was
23 proposed in '91. Based on New Jersey's
24 experience, which, by the way, they are
25 considering of abandoning because of the

1 problems associated with it, it would take
2 Pennsylvania 30 years and cost over \$22 million
3 to map the wetlands in the State of
4 Pennsylvania. Those maps, by the way, would be
5 of this scale. A one-acre lot would constitute
6 a two-tenths of an inch square on those maps. A
7 23 acres would be covered by one-square inch
8 square on those maps.

9 It's costly; it's ineffective. You
10 will end up in court. There's no way to do it.
11 That's why the permitting program exists so you
12 can analysis projects on a project-by-project
13 basis. House Bill 200 also requires, by the
14 way, to have it done in 5 years, which is
15 impossible, by the way.

16 Another is delineation of wetlands.
17 Different manuals have been kicked around. Some
18 now propose the use of only obligator 50 percent
19 wet and obligate species. Somebody said that if
20 you have a wetland species on your property, it
21 ends up being wetland. That's not true. It's
22 not how you delineate wetlands. It also
23 requires water at the surface for 21 days.

24 We field tested with other agencies
25 who proposed '91 manual that came out of

1 Washington in the field here in Monroe County.
2 We went to a site that did not have any
3 hydrology evident at the time of testing within
4 3 feet of the surface, and went back in the
5 spring and it was inundated with a foot of
6 surface water.

7 That's important because, if you
8 deregulate a wetland area like that and someone
9 builds a house during a dry month, they are
10 going to be mad when they have foot of water
11 around their house and in their basement. You
12 can call a skunk a coon, but if you grab the
13 coon you are going to have the same result. So,
14 be careful when you mess with science. There's
15 a very serious public policy and liability
16 consideration when you start doing that.

17 Compensation of takings. I am not
18 going to get into that. That's a whole other
19 hearing. I just don't understand why it only
20 applies to wetlands regulation. Please be
21 careful when you talk about empowerment and
22 compensation and takings in the same breath.

23 I also am very happy for the
24 construction of Route 80 and the flood control
25 dams that are located in Monroe County both on

1 Leaditt Branch and Geese Pond Run. Those were
2 done with public monies; have enabled me to live
3 in the house that I live in and have also
4 increased my property value. I'm very thankful
5 that the government hasn't asked me to reimburse
6 them for the increase in property value and for
7 my ability to live there.

8 Lack of recognition accumulative
9 impacts. We did an accumulative impact study
10 for 6 subdivisions in the plateau region of
11 Monroe County in reference to the proposed
12 GP-15. We looked at 15,000 lots. Five
13 thousands of those lots were wetland lots.
14 Twenty-five hundred, roughly, of those lots were
15 undeveloped at a half-acre clip under the GP-15.
16 You have a potential in just 6 subdivisions and
17 2 sub-watersheds of impacting over a thousand
18 acres of wetlands.

19 Also, if you consider that we say a
20 half acre of fill isn't very important and won't
21 half many impacts, most of those lots are
22 quarter-acre lots, which should logically tell
23 you something right off the bat that you don't
24 need a half acre of fill to live in a wetland.

25 Again, building in a wetland you'll

1 have structure failure. You'll have vector
2 problems, all the problems associated with
3 building in wetlands. People come to you and
4 mostly to the conservation district because we
5 are local, with the problems encountered by
6 development in wetlands.

7 I'm not going to address again the
8 House Bills. That's all contained within there.
9 We just want you to appreciate the fact that we
10 have worked for the last 10 years within the
11 framework of existing regulations state and
12 federal to come up with a method here in the
13 Poconos where we can develop each project, have
14 golf courses, PRD's, very large subdivisions,
15 and minimize impacts on wetlands. Please
16 understand it can be done.

17 We now feel like we are being
18 abandoned and there seems to be a just-kidding
19 attitude on the part of the state and the feds.
20 While we were serious before, but we don't think
21 what we tried to we obtain through a permitting
22 program can work so we are going to change them.
23 We are here to tell you they can work. I'll
24 entertain any questions if anybody here has any.

25 CHAIRMAN REBER: Thank you very much,

1 Mr. Todd. Representative Fargo.

2 REPRESENTATIVE FARGO: I am trying to
3 get through briefly what you have here and then
4 listening to you, I get just highly confused as
5 to what you are saying. I guess that you feel
6 that any legislation on the state level is just
7 not necessary at this point.

8 MR. TODD: Personally I don't feel it
9 is. A lot of these changes that lot of the
10 people who have been testifying that are asking
11 for it pertain to general permits that already
12 exist. General permits now on the state level
13 are going through a review process in which our
14 conservation district has been involved.

15 In fact, we even agree with some of
16 the changes to the general permits that have
17 been proposed here, but keep in mind that you
18 don't need a House Bill to eliminate a condition
19 in a general permit from a 10-acre wetland for a
20 utility crossing. You don't need a House Bill
21 to do that.

22 There is, I'm starting to feel, a very
23 important avenue for legislative involvement and
24 a demonstration of leadership particularly as it
25 relates to recognition that the state does not

1 want to have any regulations that are more
2 restrictive than the feds. Pennsylvania is not
3 Alaska. You have to recognize the fact when the
4 federal government issues a nationwide permit
5 for development in wetlands, it is doing so
6 keeping in mind the potential cumulative impacts
7 for all 50 states within the United States.

8 Oftentimes, you are going to find an
9 action on part of the federal government is not
10 going to be the best thing for Pennsylvania.
11 Pennsylvania with 75 percent of wetlands, we may
12 have supported the nationwide permit that was
13 recently issued for residential development in
14 wetlands. But again, it's not.

15 There's certainly a role that a lot of
16 the legislation that is proposed right now is a
17 rehashing of legislation that was proposed in
18 the early '90's of which you have our comments.
19 If they were obviously not good pieces of
20 legislation then, there's really no reason why
21 they would be today. We were opposed to all
22 other legislation that we gave you our comments
23 on except for the 105.

24 REPRESENTATIVE FARGO: Apparently,
25 Craig, you have a much better relationship with

1 the Department of Environmental Resources or DEP
2 than we do in the northwest. It sounds like you
3 run what's going on with your program in Monroe
4 County. You don't have the concerns about
5 dealing with Pennsylvania's bureaucracy.

6 MR. TODD: We had concerns and that's
7 why Monroe County Conservation District got
8 involved in wetlands protection. Way back 10
9 years ago we couldn't protect our wetlands, and
10 here we go with classification again because
11 they didn't have huge rafts of ducks on them.
12 Back then you only protected wetlands that had a
13 lot of ducks on them. That was one of the
14 primary criterion for protecting wetlands.

15 REPRESENTATIVE FARGO: That was never
16 in statutes or anything. That was just
17 something that you were dealing with the
18 Department of Environmental Resources'
19 representatives and they said that.

20 MR. TODD: Actually, when I make that
21 statement I'm primarily talking about the
22 federal government. At that time the state 10
23 years ago really wasn't doing anything in
24 reference to wetlands protection, even though
25 they had some of the strongest regulations on

1 the books in the country.

2 REPRESENTATIVE FARGO: They have
3 regulations, but no statutes.

4 MR. TODD: They weren't administrating
5 the regulations. They started administering
6 regulations when it became obvious and the feds
7 started administering their regulations in fresh
8 water upland wetlands that we have here. Most
9 of the federal enforcement of wetland
10 regulations was done in coastal areas. But, I
11 want to get back to your original question.

12 The reason why we got involved is
13 because we wanted to network and bring all the
14 agencies that had jurisdiction over wetlands
15 together so it would make it easier on the
16 residents of Monroe County to deal with the
17 permitting program. At the same time we
18 recognized that if you are going to regulate
19 activities in wetlands after the fact, that's
20 after permits and everything is approved by
21 townships; if the department personnel comes out
22 after a guy spent a half a million dollars on
23 project, design, and acquisition, and says,
24 guess what, you have 30 acres of wetlands, it
25 doesn't matter what the regulations say. They

1 are going to cause problems for private
2 enterprise.

3 We have been taking a proactive
4 approach where now all the municipalities
5 require wetland delineation. They require
6 minimization of impacts, which by the way, the
7 state and federal government requires. We are
8 afraid of this rolling back of regulations
9 through law to a situation where you don't need
10 delineations as shown in GP-15. There's not an
11 alternative's analysis to impacts that sometimes
12 people don't even think about, but is easily
13 rectified early on in the design process.

14 My point being, there's a way to do
15 it. We brought all the agencies together. It's
16 really not very confusing, at least to us here.
17 What I say is, because there's problems in the
18 western part of the state, we don't want to see
19 what's happening in the eastern part of state
20 abandoned. We would prefer that you people look
21 at what happened here and try it out in the
22 western part of the state.

23 REPRESENTATIVE FARGO: Oh, no.
24 Representative Birmelin is in the eastern part
25 of the state, and I've heard it all, you know;

1 not just Representative Birmelin's story this
2 morning, but a lot of other stories about the
3 eastern part of the state that have the same
4 kind of problems that we do in the western part
5 of the state. You are an exception, apparently.
6 You must have worked through Monroe County and
7 got all those things settled that I don't see
8 being settled anywhere else.

9 Your comments here about, you know,
10 it's impossible that in 5 years to have any kind
11 of a mapping and those kinds of things, I'm glad
12 to hear you make those statements, but I just
13 wonder what kind of a breational (phonetic)
14 background you have to make those kinds of
15 statements.

16 MR. TODD: As I said in reference to
17 the mapping, it's based on New Jersey's
18 experience. They also have the --

19 REPRESENTATIVE FARGO: Now we have new
20 methods for mapping here which are very
21 technical and computerized, and so forth, that I
22 think are much more to our thinking.

23 MR. TODD: What are those methods?

24 REPRESENTATIVE FARGO: It's a program
25 on a computer that really will make it so that

1 we can do mapping in a much more efficient --

2 MR. TODD: Are you talking about a GIS
3 system?

4 REPRESENTATIVE FARGO: I don't know.

5 MR. TODD: Because I'm not aware of
6 that.

7 REPRESENTATIVE FARGO: Apparently, you
8 are saying that legislation is not necessary so
9 there's not much use talking to you. I'd love
10 to talk to you about what should be in
11 legislation. I think it's very strongly
12 necessary.

13 MR. TODD: Right. I'm aware of that.

14 REPRESENTATIVE FARGO: I guess you
15 would be. I like your experience. I like what
16 you have. I like what you are doing here. I
17 see in the inventory areas you have some good
18 arguments. I don't disagree at all. But, I'm
19 really surprise to say that you and Monroe
20 County have this thing figured out and it's not
21 necessary for us to do anything on the state
22 level.

23 MR. TODD: I personally feel that way
24 right now. As I said before, I'd like to see
25 whether it's been tried -- It's just not Monroe.

1 It's also Pike County has been very active in
2 wetlands protection. The local conservation
3 district, again, they are part of this Pocono
4 region. I would like to see maybe someone
5 embrace what's been going on here and try to
6 expand that statewide, which is somewhat
7 happened in the southeast as opposed to saying
8 we got problems in the northwest. So, let's
9 just bag it and rewrite it and throw the baby
10 out with the bath water. That's what concerns
11 me.

12 You are not empowering local
13 municipalities. They are going to bail when
14 they are the last line between wetlands
15 protection and no wetlands protection. I've
16 heard the state say that they want DEP to mirror
17 what conservation districts do on the local
18 level.

19 I believe that one of the reasons why
20 we can do what we do on a local level is because
21 we've always had behind us a big shadow called
22 DER. If that shadow disappears, we are not
23 going to be able to get the voluntary compliance
24 that we get commended for all the time. It's
25 not because we are bigger, taller, or have

1 stronger regulations. Our regulations are state
2 regulations, but we back it up with DER
3 enforcement. If that big shadow disappears or
4 gets a big smile on its face, there's not going
5 to be much to emulate on the part of
6 conservation districts in trying to tailor
7 state program.

8 REPRESENTATIVE FARGO: Well, I frankly
9 don't believe that this legislation is going to
10 make that shadow disappear. Thank you.

11 CHAIRMAN REBER: Any further questions
12 to my right?

13 REPRESENTATIVE VITALI: What are you
14 doing on Tuesday?

15 MR. TODD: I would have to look at my
16 calendar.

17 REPRESENTATIVE VITALI: Want to go up
18 to Titusville and talk? (Laughter)

19 REPRESENTATIVE VITALI: No questions.

20 CHAIRMAN REBER: Representative
21 Masland.

22 REPRESENTATIVE MASLAND: No questions.

23 CHAIRMAN REBER: Representative
24 Stanley Jarolin.

25 REPRESENTATIVE JAROLIN: Thank you.

1 You have got some very, very good points on what
2 you are discussing down here in Monroe County.
3 Are you more or less convinced that counties
4 would have a better control over wetlands than
5 states or feds?

6 MR. TODD: No.

7 REPRESENTATIVE JAROLIN: Well, it
8 seems to me like your discussion adopting all
9 your regulations and everything else, that
10 seemed to be one of the points that you were
11 bringing up?

12 MR. TODD: Actually, what has happened
13 here, there's been a partnership. There's been
14 a partnership between the federal government.
15 That's Corps of Engineers and Fish and Wildlife.
16 There's been a partnership with Department now
17 Environmental Protection, our office in
18 Wilkes-Barre, regional office. There's been a
19 partnership with local municipalities, and
20 there's been a partnership with the county
21 planning commission.

22 That's a 5-way partnership between
23 different units of government to make things a
24 little easier for people in terms of compliance
25 with wetland regulations and also trying to take

1 a proactive approach to protecting them. I
2 don't mean to imply that the conservationist
3 district has done all of this at all. We have
4 been a part of something. It's a lot bigger
5 than just the conservation district.

6 My point is, is there seems to be a
7 movement -- a different point is, there seems to
8 be a movement for consistency and exactly the
9 opposite, I think, is going to happen. I don't
10 think we are going to be able to participate in
11 a partnership that we've had the ability to
12 participate in over the last 5, 6, 7 years
13 because of some of the proposals that are on the
14 board.

15 If some of this legislation goes
16 through, it's going to contradict existing
17 regulations on the federal level. Then it gets
18 very difficult to dance with someone when they
19 are doing a different dance. We have everybody
20 doing the same dance, state work with the
21 federal government to come up with a joint
22 permit application. We've got S.P.G.P. now
23 which some of you may be familiar with. A lot
24 has happened to make things consistent.

25 A lot of the things that are on the

1 table now are going to drive wedges between
2 those partnerships, not only here in Monroe
3 County, but on the state level. We haven't just
4 done it ourselves. I'm not implying we'll just
5 let districts administer wetland regulations.
6 I'm not implying that at all.

7 REPRESENTATIVE FARGO: I'd like you to
8 restate what those are? I know we don't have
9 the time to do it in. But just to say there are
10 a lot of things in there just to throw wedges in
11 there is really --

12 CHAIRMAN REBER: Howard.

13 REPRESENTATIVE FARGO: I apologize.

14 CHAIRMAN REBER: That's all right.
15 There is no apology necessary. We are going to
16 stop you for a few minutes, and then if you
17 desire, Chair will recognize you.

18 REPRESENTATIVE JAROLIN: Thank you
19 again, Mr. Chairman. Sorry, Fargo. One thing
20 I'm really relating to is the fact that the
21 particular area in Luzerne County where a
22 previous wetlands had been declassified in a
23 situation where a Class C permits were granted
24 to build homes. I believe on that particular
25 parcel of ground there's 5 or 6 or 7 homes that

1 were built. People who had their home built for
2 2 or 3 years didn't like the attitude and the
3 idea of somebody moving in maybe a couple feet
4 away from their house.

5 MR. TODD: Very familiar with that
6 attitude.

7 REPRESENTATIVE JAROLIN: Are you?

8 MR. TODD: Yes.

9 REPRESENTATIVE JAROLIN: This was a
10 situation where DER came in after the fact and
11 after the house was under roof and everything
12 and demanded that that be torn down and restored
13 to normal for the simple reason that a lady
14 complained that they were building over a
15 wetland, which was just a ditch of water for the
16 water rainoff.

17 I would estimate in that particular
18 case right there it was the local DER, first of
19 all, granted the permit to build. Secondly, the
20 municipality had something to say about it.
21 But, thirdly, regulations changed after awhile
22 because of a single individual complaint that
23 house had to be torn down and cost those people
24 thousands upon thousands of dollars. That's why
25 I was getting to the point of, do you think

1 counties and local communities have a better
2 jurisdiction over their own building rights and
3 wetlands?

4 MR. TODD: I think there's ample
5 opportunity for municipalities to get involved
6 in wetlands protection and resource management
7 in general. However, I think they are very
8 hesitant to do that when those regulations and
9 programs on the state level to do the same thing
10 begin to be changed significantly and resource
11 areas become deregulated. I don't think these
12 people are going to be the last stand between
13 somebody filling a wetland and not filling a
14 wetland. I have gotten indications of that from
15 other municipalities.

16 In reference to particular sites and
17 horror stories, and I've heard a lot of horror
18 stories and I've heard some here today. I know
19 that there have -- I don't know of a fine in
20 Monroe. I have been involved in over a hundred
21 illegals, wetland violations. Because of the
22 type of program we have there are very small in
23 size; I mean, nowhere near size of this room,
24 and we get voluntary compliance.

25 I'm not aware of anybody being fined

1 or it's costing them zillion of dollars to do a
2 restoration. So I can't address site files in
3 other counties. I can only address site files
4 in this county.

5 When I hear horror stories about sites
6 in my county, usually those horror stories are
7 significantly different than what is being
8 portrayed in the press or by whoever is
9 testifying. I know you addressed ones in my own
10 county here, I can't address Luzerne or anywhere
11 else.

12 REPRESENTATIVE JAROLIN: Thank you
13 very much, and just like the previous legislator
14 has said, would you want to go up to Titusville?
15 Thank you, Mr. Chairman.

16 CHAIRMAN REBER: The Chair thanks the
17 gentleman. Two things before I return to
18 possibly recognizing Representative Fargo.

19 Mr. Todd, if you could, it might be of
20 assistance, certainly to me, at least, and I'm
21 sure the members, you did have a checklist of
22 areas that you were concerned about. If you
23 might have those specifically reduced to writing
24 if you were testifying from, if there is any
25 amplification you feel necessary that you would

1 like to make, I will be most appreciative if you
2 could submit that in writing as a follow-up to
3 our staff person, Mark Brown, can coordinate
4 that with you. That may be of some assistance
5 to Representative Fargo so he really does have a
6 specific delineation of some of those things you
7 were talking about as to how you visualize and
8 view this to be working within the Monroe County
9 area.

10 I would also like to recognize for the
11 record that Representative Joseph Battisto has
12 been present during these hearings. He is
13 certainly welcome to join the panel after our
14 luncheon break if he has the time permitting.

15 Representative Fargo, is there any
16 follow-up now of anything you would like to make
17 in 30 seconds.

18 REPRESENTATIVE FARGO: I think you
19 handled that real well. I agree with you that
20 if he could take the time to tell us how the
21 provisions of the proposed legislation would
22 adversely affect him as I see he has done for
23 the proposal by the administration, I would
24 appreciate it very much.

25 CHAIRMAN REBER: Thank you. I might

1 say too that you referenced the concern with
2 what appears to be a vogue of no more stringent
3 than federal regulation being promulgated with
4 the states. I do think there should be a very,
5 very heavy caveat that is noted on that as far
6 as Pennsylvania is concerned. I say that from
7 the standpoint of having been the conferee, at
8 least from my side of the aisle during the Clean
9 Air discussions, when we talked about no more
10 stringent than the federal regulations.

11 We did and I did and emphasized very
12 much so that that is caveated upon the fact that
13 if there is some set of unique circumstances to
14 Pennsylvania like maybe the case in Alaska, that
15 we do have to look beyond the federal because
16 the federal is not so encompassing that
17 pragmatic scientific minds, governmental minds,
18 if you will, bureaucratic minds, can come to an
19 agreement that Pennsylvania does have an unique
20 set of circumstances. I think that exception
21 certainly always is meritorious of considering
22 when regulations and/or statute are being
23 promulgated for purposes of tracking federal. I
24 have always been one to not be so naive to think
25 that we as a Commonwealth do not have problems

1 the public hearing of the Environmental
2 Resources and Energy Committee on the wetlands
3 issues and proposed legislation.

4 Our next individual to testify is Bob
5 Uguccione, the Executive Director of the Pocono
6 Mountain Vacation Bureau. Bob, welcome.

7 MR. UGUCCIONI: Thank you very much.
8 I'd like to welcome you to the Pocono Mountains.
9 I want you to know this is a run-of-the-mill
10 usual day. If you were suffering from high
11 humidity and all that wherever you live, this is
12 not what it was here. This is the way it's been
13 here all summer and continues into the fall
14 except in the winter. When we get winter, it's
15 skis and snow. So, welcome. Thank you very
16 much for coming.

17 I prepared some testimony which I
18 believe you have before you and I'll read it.
19 My name is Bob Uguccione. I'm Executive
20 Director of the Pocono Mountains Vacation
21 Bureau, the official Commonwealth of
22 Pennsylvania Tourist Promotion Agency for the
23 Pocono Mountain area.

24 We thank the committee for the
25 opportunity to discuss wetland issues and

1 legislation. We know the committee realizes
2 that our field is not in the regulatory area or
3 in the area of technical expertise on wetlands.

4 The purpose of our presentation today
5 is to express our support for the preservation
6 of wetlands in the Pocono Mountain region. We
7 have been educated by the legislature, members
8 of this committee, and the conservation and
9 environmental community of the importance of
10 wetlands to our area. The excellent job that
11 the Monroe County Conservation District is doing
12 is one of the main reasons we have this level of
13 interest in wetland preservation.

14 The Pocono Mountain area is a tourist
15 area, and more and more we are focusing on
16 promotions and advertising to showcase the
17 natural resources we have in great abundance.
18 People come to the Pocono Mountains from all
19 over the United States to enjoy those products
20 and we need to continue to preserve them for our
21 industry's survival.

22 The tourism industry in the Pocono
23 Mountains generates over a billion dollars in
24 gross revenue a year. We employ over 18,000
25 people, and it is, indeed, the single largest

1 industry in this part of Pennsylvania.

2 Our support for environmental issues
3 is known, and in particular the interest we have
4 shown in wetlands has been documented.

5 One of the problems that people
6 continue to bring to our attention is the delay
7 in the process of getting wetlands information,
8 permits, et cetera. We hope the proposed
9 legislation, the new DEP permit and policy
10 addresses the costly delays that small and large
11 businesses have in acquiring the proper wetland
12 permits.

13 The announcement of a new wetland
14 general permit procedure seems to us to
15 eliminate additional paperwork that will
16 hopefully help in this area.

17 Governor Tom Ridge recently commented
18 that streamlining procedures and reducing
19 paperwork saves time and money for both
20 consumers and the government, and, of course, we
21 agree.

22 My presentation is very brief. We
23 want to thank you for allowing us to be here.
24 That concludes my testimony.

25 I also handed you out our Pocono

1 Nature Guide which is brand-new. It is a
2 departure form what you might consider the
3 traditional brochure as you would see on the
4 Poconos with resorts and skis areas and
5 restaurants. What we have done in the 4-county
6 area that we represent, Carbon, Monroe, Pike and
7 Wayne, is highlighted just some, but most
8 certainly not all, of the environmentally areas
9 that we have.

10 Frankly, ladies and gentlemen, we look
11 at that product as our most important product.
12 What we sell every day is our environment. It's
13 really why people come to our resort area. I
14 hope you will have more time to get outside
15 today if you haven't already and experience some
16 of that that occurs.

17 Particularly on the wetland issue just
18 to get on that again, we are looking for some
19 guidance as to the proper legislation or permits
20 from the conservation industry or conservation
21 people as to what type of legislation and what
22 regulations to support.

23 Again, the biggest single complaint I
24 have heard from resorts, hotels, restaurants,
25 people, we represent a thousand members here, is

1 the process; is the long time it takes to get to
2 know what they should do and what they shouldn't
3 do. Many times they don't argue too much about
4 what it is they have to do, but to actually find
5 out and get it in an expeditious manner is what
6 really is the problem that has surfaced.

7 I will be interested in answering any
8 questions you might have.

9 CHAIRMAN REBER: Thank you very much,
10 Mr. Uguccione. Any questions? Representative
11 Fargo.

12 REPRESENTATIVE FARGO: I guess just a
13 comment. I guess I have to refer back to the
14 prior testifier and say that, I didn't think you
15 had any problems in Monroe County. You have
16 everything taken care of here as far as you
17 dealing with the wetlands issue, and I certainly
18 don't want the state government to get involved
19 in it too greatly. I'm being facetious, so I'll
20 not ask any questions. Thank you very much.

21 MR. UGUCCIONI: We have a lot of
22 problems in Monroe County. I don't want to give
23 you that impression. What I think is happening,
24 and I know is happening, is that, we are working
25 more closely together in discussing these issues

1 and not in a vacuum anymore; not development
2 versus the environmental community. I think
3 that's what's changed. If we can continue to
4 sit and discuss these issues in that arena, I
5 think we can do better to resolve some of these
6 problems.

7 REPRESENTATIVE FARGO: I appreciate
8 that. I'm from western Pennsylvania. We think
9 it's God's country, and I have to say you have
10 God's country out here too. It's gorgeous out
11 here.

12 MR. UGUCCIONI: Thank you.

13 CHAIRMAN REBER: Representative
14 Vitali.

15 REPRESENTATIVE VITALI: No questions.

16 CHAIRMAN REBER: Just one comment. I
17 think there's a point that you made on the
18 second page of your testimony that I think,
19 certainly I and I know the members of the
20 committee are concerned about, that's addressing
21 the costly delay issue that various businesses
22 as well as individuals have.

23 I think, really, our task when you
24 dive into an issue such as this is twofold: The
25 substantive aspect of it as to what the

1 requirements may be, as well as the procedural
2 requirements in implementing whatever they are.
3 I know that many, many times and probably this,
4 like many issues, everyone is not going to be
5 totally satisfied with the ultimate outcomes.
6 But, I think there are really 2 stages that we
7 must go through.

8 We, certainly, I think, have to find a
9 way to address the costly delays in the
10 permitting process. I know this committee has
11 already this session spent a considerable amount
12 of time on the initial privatization aspects of
13 permitting processes for various types of
14 permits.

15 This particular issue in and of itself
16 I think what we want to do is ultimately
17 streamline it. We may not do a substantive side
18 or it may stay even as it is. But even if it
19 stays as it is, I think we have to get to that
20 final resolution, that final determination much
21 quicker. I think that's something that
22 certainly your testimony goes a long way to, at
23 least reemphasizing it in my mind and I
24 appreciate you presenting it.

25 MR. UGUCCIONI: The other thing is

1 exactly what an industry has to do. Not only
2 streamlining it, but detailing as much as they
3 can so they can really start from the beginning
4 playing by the rules rather than somewhere down
5 the road finding out that they're not.

6 I know you hear that a lot about
7 regulatory situations and interpretations and
8 all that. But that's something I hear a lot of.
9 We thought we were doing it right; we're not.
10 We have engineers and experts and they told us
11 we were doing it right, but we're not. It's got
12 to be --

13 I don't know how you address that.
14 It's not only the delay, but sometimes the mixed
15 signals we get on some of these issues that
16 really are a problem.

17 CHAIRMAN REBER: We did have an
18 earlier individual testify this morning that
19 spoke about that particular issue of the various
20 agencies that you had to go through, and many
21 times as an adjunct to that there were mixed
22 signals that you got. Even after you were done
23 you weren't sure that you were done. That
24 confusion and that delay also adds up to cost
25 and the meter continues to run, whether it's for

1 a single-family lot owner or whether it's for a
2 small or large business.

3 That's something that, frankly, is
4 inexcusable, obviously, in the high-tech society
5 that we now have come to know. There certainly
6 is more regulation, but when we had that more
7 regulation I think we have to appropriately and
8 procedurally manage it. I'm not so sure that
9 that's being done all the time. I think this a
10 core issue where that falls into place. Thank
11 you very much.

12 MR. UGUCCIONI: Thank you.

13 CHAIRMAN REBER: Seeing no further
14 desire for any additional questioning, you are
15 excused and we appreciate you taking your time.

16 Next individual we have on our agenda
17 is Edith Stevens, a water specialist with the
18 Pennsylvania League of Woman Voters. Welcome.

19 MS. STEVENS: Thank you everyone. I'm
20 very glad to be here. My name is Edith Stevens.
21 I'm the Water Specialist for the League of Women
22 Voters of Pennsylvania. I happen to live here
23 in the Poconos. I'm happy to have you here. We
24 appreciate you holding this hearing on wetland
25 issues and legislation in Pennsylvania. We

1 appreciate the opportunity to present the views
2 of the League to the committee on wetland
3 issues.

4 Thank you for holding the hearing in
5 the Pocono Mountains, an area that has been
6 written off in many minds as the home of heart-
7 shaped bathtub, but truly an area that should
8 not be so dismissed.

9 The Poconos are a unique area. They
10 demonstrate very clearly why we cannot write a
11 one-size-fits-all policy on wetlands protection
12 in Pennsylvania.

13 You will hear from many local
14 organizations and individuals today who will
15 provide excellent information about the area and
16 its wetlands, but we urge you also to look
17 around you and observe the beauty of the land,
18 the beauty that brings visitors back year after
19 year and provides the basis for a vibrant
20 tourist economy which I'm sure Bob Uguccioni,
21 before me, told you about. Much of this beauty
22 depends on the wetlands that occur throughout
23 the region.

24 The League of Women Voters of
25 Pennsylvania is a longtime supporter of wetlands

1 protection in the state. We supported the 1979
2 amendments to the Dam Safety Act which added
3 regulation of water obstructions and
4 encroachments to the already regulated
5 activities, dams and reservoirs, of the act.
6 Our support was based on a recognition that
7 wetlands would be better protected by the
8 amendments that were adopted.

9 In 1983, we saw a need to increase
10 public awareness of the wetlands protection
11 provisions of the Dam Safety and Encroachments
12 Act and published a fact sheet designed to
13 explain the various state and federal programs
14 which regulated activities in wetlands. In 1990
15 we published a position paper on wetlands issues
16 in the state. That position paper dealt with
17 many of the issues that have been resurrected in
18 the legislation recently proposed as Wetlands
19 Conservation and Management Acts specifically
20 House Bill 200 and House Bill 1049.

21 We would like to now summarize our
22 position on several of these issues; mapping or
23 wetlands identification and classification.

24 Both House Bill 200 and House Bill
25 1049 require the Department of Environmental

1 Protection to identify and classify all wetlands
2 in the Commonwealth. This would be a
3 mind-boggling task and require a great deal of
4 unnecessary work. Most of the wetlands in the
5 state are not on property destined for
6 development. What is the point in identifying
7 wetlands on state game lands or lands held by
8 the Nature Conservancy?

9 The League believes that
10 identification of wetlands is the responsibility
11 of the landowner wishing to use that land, just
12 as it is his responsibility to identify other
13 watercourses or soil types and many other
14 aspects of the land. The expense of mapping
15 wetlands should not be borne by the taxpayers.

16 House Bill 200 and House Bill 1049
17 attempt to develop a classification scheme to
18 apply to all wetlands across the state. We do
19 not believe that is a proper role for the
20 legislature. Wetlands vary in their functions
21 and values, that is true, but that variation can
22 only be defined by good science. We have
23 developed good science in Pennsylvania over the
24 past few years and the League believes that the
25 scientists who are doing their job should be

1 allowed to continue to do so.

2 The National Academy of Science
3 recently released a report on wetlands
4 delineation which notes that relying on broadly
5 drawn categories to determine the usefulness or
6 value of specific wetlands is probably not
7 possible. As we said before, we do not believe
8 a one-size-fits-all policy will work and should
9 not be attempted.

10 Compensation. House Bill 200 and
11 House Bill 1049 take different approaches to the
12 subject of compensation. House Bill 200
13 establishes a principle of inverse condemnation
14 that the denial of a permit constitutes a
15 compensable injury without a declaration of
16 taking. The League believes that the
17 determination of when regulation goes so far as
18 to constitute a regulatory taking belongs in the
19 courts where it has rested for many years.

20 Again, this is a situation where each
21 case will differ and must be considered on its
22 individual merits. Our review of the various
23 court decisions on regulatory takings leads us
24 to the opinion that the courts look closely at
25 each case and determine each on its particular

1 circumstances. This is proper and attempts
2 should not be made to legislate a blanket
3 definition on the regulatory taking.

4 House Bill 1049, on the other hand,
5 provides that property containing wetlands
6 should be assessed at a lower value, depending
7 on the classification of wetlands. We support
8 this concept. The presence of extensive
9 wetlands may decrease the development value of
10 some land and should be considered in
11 determining the assessed value of property.

12 However, legislation is not needed to
13 do this. It is happening right now here in
14 Monroe County and probably elsewhere in the
15 state. Maybe additional education is needed,
16 but we do not believe legislation is.

17 Mitigation is not addressed in House
18 Bill 200 or 1049, but we would like to include a
19 brief comment on the subject. The League
20 believes that mitigation, or creation of
21 replacement wetlands should be allowed only as a
22 last resort. Avoidance of wetlands should be
23 the principle under which development planning
24 occurs. Where replacement wetlands are
25 required, they should be located in the same

1 watershed as the wetland destroyed.

2 Individual lot owners. The burden on
3 small lot owners who purchased lots before
4 wetlands regulations were adopted has been a
5 subject of great concern, particularly here in
6 the Poconos where large land holdings with
7 extensive wetland systems were developed in the
8 '60's and '70's. Frequently, those developments
9 consisted of roads in upland areas and many of
10 the lots are in wetlands areas. Unsuspecting
11 buyers purchased land they were unable to use
12 when regulations changed after they bought the
13 land but before they attempted to build on it.

14 We sympathize with those buyers. We
15 believe a regulatory program should be developed
16 to ease their burden. However, the recently
17 proposed General Permit, GP-15, which would
18 allow an unlimited number of half acre fills for
19 individual lots throughout a subdivision goes
20 much too far. Proposed GP-15 would apply to
21 anyone who owned land at the time the regulation
22 establishing GP-15 becomes final. Right now
23 speculators are buying lots at tax sales with
24 plans for reselling them when GP-15 becomes
25 final. Do we really want to reward that

1 practice?

2 Discussions had been going on in
3 recent years to develop a more limited scheme to
4 ease the burden on lot owners who purchased
5 their lots before wetlands regulations were
6 adopted. A General Permit to cover this
7 circumstance is appropriate provided suitable
8 conditions that would allow townships a voice in
9 how the lot is developed are included.

10 Buyer notification. The League
11 believes that buyers should be notified when
12 land being transferred contains wetlands. This
13 requirement would help to break the circle of
14 unsuspecting buyers being unable to build on
15 their land. Such a requirement presently exists
16 for lots not served by central sewage and could
17 easily be adapted for lots containing wetlands.

18 In conclusion, we would like to
19 reiterate our belief that the wetlands
20 regulatory program that has developed in
21 Pennsylvania over the last several years is
22 based on good science and is working well. We
23 do not believe that new legislation is needed at
24 this time. Modifications to regulations to ease
25 the burden on individual lot owners caught by

1 poor development practices of the past are
2 appropriate.

3 There appears to be a fever around to
4 undo environmental regulations. However, poll
5 after poll reiterates that the public does not
6 support that movement. Now, more than ever, the
7 public is aware of the importance of wetlands.
8 Now, more than ever, the public is aware that
9 wetlands can be protected and developments can
10 be planned around, and even enhanced by
11 wetlands.

12 We call on this committee to
13 demonstrate leadership in the area of wetlands
14 protection. The clean water and clean air that
15 we depend on for human survival depend on the
16 existence of healthy wetlands systems. Your
17 leadership is needed to assure that future.
18 Please give us that. Thank you.

19 I would be glad to try to answer some
20 questions for you if you have any.

21 CHAIRMAN REBER: Thank you. Looking
22 to my right, Representative Fargo.

23 REPRESENTATIVE FARGO: Thank you. You
24 indicate on the second page that, and you said
25 several times a one-size -- that you don't

1 believe that a one-size-fits-all policy.

2 Presently, the policy that we have, if
3 we have a policy as far as the Department of
4 Environmental Protection is concerned is that
5 each area, each district office has what we call
6 a policy statement. Sometimes it's about that
7 thick and each one they have to learn about it
8 as to what they are doing. There's no
9 regulations, there is no statute or anything
10 like that. They use what the policy statement
11 says in that particular district. I know this
12 is true in Meadville area which is the area that
13 I have to work in. I'm sure that's true over
14 here in Monroe County also, because they don't
15 have statutes.

16 Because of that they are going to the
17 good science process that you are talking about
18 and, really, this bill as they suggested does
19 not change that. We are still considering the
20 scientific determination of what is a wetlands.
21 I don't believe there's any question about that.

22 But, my question then I guess is that,
23 if you have a half-acre wetlands as determined
24 under science on the back of a farm somewhere
25 and you have another 5-acre wetlands as

1 determined by science that is a swamp somewhere,
2 you don't consider in the application of the
3 rules and regulations that we presently have are
4 exactly the same for both of them, and they are;
5 at least that's what they attempt to do. You
6 don't consider that one size fits all that is
7 not accepted?

8 MS. STEVENS: By one size fits all,
9 I'm defining what's Class A, Class B, Class C
10 category. It's my understanding of the wetland
11 science that with value or the functions and
12 value of the wetlands is not determined by size
13 or its location, or what's growing there, but
14 all of those things together and its connection
15 to other systems. That's why that half acre on
16 the farm needs to be looked at just as carefully
17 as the 5 acres somewhere else because that half
18 acre might be connected to another system, to
19 another system that is part of a whole is very
20 important.

21 REPRESENTATIVE FARGO: You are
22 maintaining that we still do and have to
23 maintain a one-size-fits-all idea as far as the
24 scientific approach on wetlands is concerned,
25 regardless of no other conditions, no conditions

1 about economics, or any other factor should come
2 into it? We should determine it through the
3 scientific approach? Economics, development,
4 anything like that should not be a
5 consideration?

6 MS. STEVENS: In determining the value
7 of the wetlands in terms of hydrologic
8 functions?

9 REPRESENTATIVE FARGO: In determining
10 whether we are going to allow anything to happen
11 in that wetlands regardless of size or --
12 That's really what's happening right now. It's
13 one size fits all. That's probably the major
14 problem involved here. The only difference is
15 that there's not even a definition as to what
16 that one size is because each of the individual
17 Department of Environmental Protection offices
18 have their own determination as to what that one
19 size is.

20 MS. STEVENS: Maybe I misspoke. When
21 I said one size fits all, I didn't mean acreage
22 size. I meant a policy of one size. I'm not
23 familiar with individual district policy
24 statements. I'm familiar with Chapter 105 which
25 is the regulations that are followed here in

1 Monroe County and I believe across the state.
2 You're saying different regional offices address
3 Chapter 105 differently?

4 REPRESENTATIVE FARGO: Because there
5 are no statutes in Pennsylvania right now that
6 have to deal with wetlands. There's no
7 statutes. They used to by determination of
8 another piece of statute that has to do with
9 dams and waterways and from that through court
10 cases and so forth they have come up with
11 regulations.

12 What we're attempting to do here is to
13 come up with, I think, what you want -- well,
14 maybe not. But, we're attempting to come up
15 with some kind of a definition that people can
16 work with that makes it fair for everyone. I
17 think that the one size fits all is what is
18 really the problem in this particular instance;
19 that we should not be looking for, that type of
20 thing. We should be trying to make it so that
21 we have a possibility for knowing what we are
22 dealing with. Right now we don't know that.

23 Regardless, as far as compensation is
24 concerned, you don't seem to be at all concerned
25 as long as we can go to court and take care of

1 any problem we have, the cost of going to court.
2 Would you be willing to, if that were true, to
3 go along with letting the state pay for the cost
4 of the court whenever a person feels that he is
5 aggrieved as far as a failure to be able to get
6 a permit or failure to do something with the
7 wetlands and let the taxpayers pay for that
8 costs, since we are really putting it upon an
9 individual and his own individual property?

10 MS. STEVENS: You mean in any case
11 where a regulation affects the value or the use
12 of someone's property, or zoning law, or the
13 change in the highway direction, or where the
14 highway frontage moves away from your property,
15 any kind of --

16 REPRESENTATIVE FARGO: When a person
17 has been prevented from using his property by
18 the failure to give him a permit as far as
19 wetlands is concerned.

20 MS. STEVENS: I don't really see how
21 we could distinguish a wetlands regulatory
22 taking from any other regulatory taking. The
23 courts decided that coal miners had to leave 50
24 percent of the coal in their land underground to
25 support the surface. That's a regulation which

1 took property value, but the U.S. Supreme Court
2 decided that was a sensible regulation to
3 protect public health and safety.

4 REPRESENTATIVE FARGO: As far as the
5 individual property owner is concerned, that he
6 has wetlands and attempts to use it for
7 something, asks for a permit, is not able to get
8 it. It's his only recourse then because he lost
9 value is to go to the courts.

10 You would not be willing to put into
11 the legislation that the taxpayers through the
12 Department of Environmental Resources or the
13 Department of Environmental Protection would pay
14 the costs for that court?

15 MS. STEVENS: As I said, I don't see
16 how we can single out wetlands regulations
17 versus coal support regulations or lot size
18 regulations, or any of the other regulations
19 that we need because we need to protect public
20 health and safety. That's why we have wetlands
21 regulations.

22 REPRESENTATIVE FARGO: The individual
23 then, as far as he owns the property, it's his
24 tough luck if he wants to --

25 MS. STEVENS: As I said in the

1 testimony, the individual lot owner who has no
2 use for his property; that he bought before
3 wetlands regulations came into effect, we do
4 believe there is something there that needs to
5 be corrected. We believe that efforts are
6 underway to correct those problems. The large
7 landowner who can work around the wetlands in
8 his development designs, I think, is doing that
9 successfully and is doing that here certainly
10 and can do it elsewhere.

11 REPRESENTATIVE FARGO: The discussions
12 that have been going on in recent years to
13 develop more limited scheme to ease the burden
14 of lot owners who purchased the lots before
15 wetlands regulations were adopted. I'm not sure
16 that I understand what you are saying. You say
17 a general permit to cover this? Can you
18 describe that general permit for us?

19 MS. STEVENS: I can't, but there are
20 people here that can. Discussions took place
21 that involved Conservation District, the U.S.
22 Fish and Wildlife Service, Department of
23 Environmental Resources. I believe in the U.S.
24 Fish and Wildlife Service testimony on GP-15
25 that -- they call it a draft general permit.

1 That draft general permit is described. It was
2 a way that would allow individual lot owners who
3 bought their lots prior to the Chapter 105
4 becoming effective could use their lots on those
5 basis.

6 REPRESENTATIVE FARGO: Thank you. I
7 would like to emphasize that the legislation we
8 are considering really does not change the
9 determination as to whether a wetland is
10 wetlands. That's done through the good science
11 that you suggest. This legislation would not do
12 that. Instead, it would try to determine what
13 should not be permitted or what should be
14 permitted, a little bit more based on the use
15 and the value and things of this nature. Thank
16 you.

17 CHAIRMAN REBER: Representative
18 Masland.

19 REPRESENTATIVE MASLAND: Thank you,
20 Mr. Chairman. I'm just asking for a
21 clarification on the buyer notification section
22 of your testimony. You state you believe buyers
23 should be notified when the land being
24 transferred contains wetlands. Is that just
25 known wetlands? If I'm a seller and I know

1 there are wetlands on my property, do I have to
2 notify them? Or, if I'm a seller and I happen
3 to have some property that may have wetlands, do
4 I have to go out and pay for some kind of
5 survey, which I understand can be expensive, to
6 find out if there are wetlands on there so that
7 I can then tell the person yes or no?

8 MS. STEVENS: The form that I looked
9 at on the notification about sewage -- whether
10 central sewage was available, there was a form I
11 guess developed by the Realtors Association. I
12 haven't looked at it for awhile. That form
13 simply says you ought to know that this may be a
14 situation.

15 REPRESENTATIVE MASLAND: It's one
16 think to know whether you have central sewage or
17 not, but it's another thing to know whether you
18 have wetlands or not is a little bit different.

19 MS. STEVENS: True. But on that lot,
20 an on-lot system may or may not work and that's
21 the question that's not answered.

22 REPRESENTATIVE MASLAND: But what I am
23 saying is, you know if you have a on-lot system
24 that works or it doesn't. But, to have to go
25 out have a wetland certification done to find

1 out if you have wetlands, I think is a little
2 ridiculous.

3 MS. STEVENS: I agree. I agree. This
4 notification that I'm trying to describe doesn't
5 say you are going to have to put in a sand
6 mound, an in-ground system won't work. It says,
7 you don't have central sewage; better talk to
8 sewage enforcement officer to find out what kind
9 of a system you need before you buy this land.

10 I think it's actually a waiver of --
11 It's a notification. I know that this may be
12 something I ought to look at before I buy the
13 land. I sign this and turn it back to the real
14 estate agent is the way it works. It seems to
15 me we could adapt that process for wetlands
16 notification. I have looked at the land; I'm
17 aware. The buyer would indicate that he looked
18 at the land. He's aware that there may be
19 wetlands there.

20 REPRESENTATIVE MASLAND: So it's not
21 your intent to require --

22 MS. STEVENS: Not to require a
23 delineation by the seller, no.

24 REPRESENTATIVE MASLAND: Thank you.

25 CHAIRMAN REBER: Representative

1 Rubley.

2 REPRESENTATIVE RUBLEY: Thank you, Mr.
3 Chairman. Thank you for your presentation on
4 behalf of many years of League of Women Voters
5 work in this area. You have made it very clear
6 that you do not feel that we need any
7 legislative changes, but more massaging of the
8 regulatory program. I agree with you on the
9 need to do something to ease the burden on those
10 people who in good faith purchase properties
11 before these regulations went into effect.

12 We have heard testimony today, and at
13 other times, on other hardships that have been
14 caused by the current program. Do you see any
15 other areas, for instance, the timeliness in
16 getting a permit and reviewing, may be dealing
17 with the tiny pieces of wetlands that really
18 aren't a problem necessarily, in most people's
19 eyes, in trying to at least exclude them from
20 the process? Are there other areas where you
21 feel that we could improve regulations?

22 MS. STEVENS: I came in the middle of
23 the previous testimony and I heard your comments
24 about procedures may be taking too long and
25 holding people up. I'm not familiar enough

1 with -- I've never gotten a permit. I never
2 administered a permit, and I'm not familiar
3 enough with the process to know it's a problem.
4 I certainly heard it's a problem.

5 I do think, as I believe somebody
6 stated in that dialogue, frequently the problem
7 is that the applicant isn't familiar enough with
8 what he needs to do. So, he spends a lot of
9 time turning wheels, getting to the point where
10 he's got the right bunch of paper together. I
11 see an awful lot of notices in the Pennsylvania
12 Bulletin of permits issue for encroachments of
13 wetlands. I there is a lot of permits being
14 issued. I don't know how long it takes to get
15 them, and that's probably something you ought to
16 be looking at.

17 CHAIRMAN REBER: Edith, just one
18 question for clarification purposes. I know we
19 have some representatives of the department
20 present that might hear what I have to say on
21 the last page of your testimony, the second
22 paragraph. You reference the proposed GP-15
23 regulation and talk about the land speculators
24 that are going to have -- You did say proposed
25 GP-15 would apply to anyone who owned the land

1 at the time the regulation establishing GP-15
2 becomes final.

3 I don't think that's quite correct in
4 2 parts, because I did look at the proposed
5 regulation. It says the department's proposed
6 General Permit 15 is not valid for subdivisions
7 approved after March 6, 1995.

8 So, if this were ultimately
9 appropriate, promulgated and became a binding
10 regulation, particular lots would not be
11 permitted that were not approved subdivisions
12 prior to March 6. Obviously, the March 6 date
13 is certainly sometime in the past already.

14 I think there is something else there
15 that also causes me a little bit of concern.
16 Frankly, some ambiguity in your testimony
17 highlights it to some extent; that is the word
18 of our subdivisions, and earlier they talk about
19 established subdivisions. That in and of
20 itself, in my opinion, is a lot different than
21 lots. I think the department is going to have
22 to take a hard look at this because, if you just
23 have a singular piece of land that would fall
24 under the predate that didn't emanate from a
25 subdivision but has been there from time of

1 memorial, or a time prior to a subdivision,
2 review process under Act 537, or whatever the
3 case might be, I think this has to be looked at.
4 I think there's inherent ambiguities in the way
5 that is structured.

6 The reason I say that is, I hope that
7 they are dealing with what have heretofore been
8 approved subdivisions prior to March 6 date as
9 set forth in the regulation --

10 MS. STEVENS: And individual lots.

11 CHAIRMAN REBER: -- as opposed to
12 individual lots, because theoretically,
13 theoretically, when the local governing body and
14 its planning commission and its county planning
15 commission are reviewing these land development
16 subdivision plans prior to March 6, I think some
17 of these things were probably plugged in or
18 certainly would have hoped that they would have
19 been. They certainly should have been if it was
20 in anywhere have way being competently reviewed,
21 and not only other things, but wetlands issues
22 all would have been addressed and appropriately
23 identified on subdivision plans, et cetera, et
24 cetera.

25 The point I'm trying to make is, I

1 don't disagree with your concern and I don't
2 necessarily, because I have no knowledge,
3 disagree that there may be speculators buying
4 lots at tax sales with plans of reselling them
5 once GP-15 becomes final. But, I don't know if
6 it's, one, certainly could be that acute; and 2,
7 there may very well be a number of protective
8 aspects to it that we may not be apparently
9 aware of it at the present time.

10 This is something that certainly we
11 are going to have some dialogue with the
12 department on for clarification because, I
13 certainly won't put someone out there, you know,
14 speculating on things that are obvious and runs,
15 if you will, on this particular regulatory
16 scheme even as it is currently promulgated.

17 I just thought that was important to
18 point out because it's not like this thing could
19 be pending and go through the independent
20 regulatory review process and the clock keeps
21 running, and anything that's going on and people
22 are out there whipping thorough subdivisions
23 now, and I think even as, concerningly, as this
24 is drafted that could not be the case. It's
25 something we will certainly look at and I

1 appreciate you expressing that there is this
2 practice going on right now.

3 MS. STEVENS: I just heard about it
4 yesterday.

5 CHAIRMAN REBER: To use Representative
6 Vitali's language, do you have any quantitative
7 statistics as to how many tax sales have been
8 initiated because of this GP-15 scenario? Is it
9 too hard to figure?

10 MS. STEVENS: The story I heard
11 yesterday was about 6 lots in Mount Pocono.

12 CHAIRMAN REBER: That was directly
13 related to the GP-15 program was the ulterior
14 motive for the transaction?

15 MS. STEVENS: That's anecdotal.

16 CHAIRMAN REBER: Thank you very much.
17 Any further questions?

18 (No response)

19 CHAIRMAN REBER: We appreciate your
20 testimony. Our next witness is Jill L.
21 Shoemith, member of the Board of Directors of
22 the Brodhead Watershed Association. Jill,
23 welcome.

24 MS. SHOESMITH: I'd like to welcome
25 you here today, too. It is one of the

1 highlights of our summer, the weather like this,
2 we are really fortunate to live here.

3 The Brodhead Watershed Association is
4 a non-profit organization formed back in 1989 to
5 promote and preserve the environment of the
6 Brodhead Watershed and the water quality of all
7 the creeks in the watershed. The Brodhead
8 Watershed is a 285-square mile area of hills and
9 valleys draining into the Brodhead Creek. The
10 watershed stretches from Pike County and Barrett
11 Township in the north, McMichaels in the west,
12 through the Stroudsburgs, and ends at the
13 Delaware River. The McMichaels, Paradise,
14 Pocono, and Bordhead Creeks and their
15 tributaries are included in the watershed. The
16 watershed includes all or part of 17
17 municipalities, and most of the recreation and
18 residential area traditionally known as the
19 Poconos.

20 The Brodhead Watershed Association
21 believes that the future of the watershed and
22 water resource protection lies in your hands.
23 Our wetlands play a major role in maintaining
24 the high quality associated with the streams in
25 this region. We agree that the permitting

1 process may be tedious and time consuming, but
2 we caution you to look carefully before changing
3 the spirit of the legislation. Instead, we
4 would urge you to work on fine tuning the
5 administration of these regulations.

6 Please accept for your review the
7 following comments pertaining to the proposed
8 General Permit BDWW-G15 Private Residential
9 construction and 401 Certification:

10 It is our understanding of this
11 proposed General Permit that half acre of fill
12 will be allowed to be placed in a wetland, or
13 half acre of wetland can be excavated for the
14 purpose of building a private home. Our
15 organization objects strongly to this provision.
16 We are concerned about the impact of this
17 proposal on the Brodhead Watershed, simply
18 because this region is home to many wetlands
19 both large and small. In fact, the Pocono
20 region contains over 20 percent of all of the
21 wetlands in the Commonwealth.

22 As you know, wetlands are more than
23 puddles. They are swamps and bogs that serve as
24 an unique habitat and resource. Wetlands are
25 essentially nature's sponge that not only help

1 in flood control, but also act as a filtering
2 recharge zones for ground water supplies. It's
3 clear that our fine water quality and excellent
4 recreational fisheries are dependent upon the
5 protection of our existing wetlands. The
6 outstanding water quality of the Brodhead
7 Watershed is part of the attraction of the
8 Poconos as a place to live and to vacation. If
9 the qualities that bring people here are
10 destroyed, the economic base of the area could
11 also be destroyed.

12 Rapid growth in the Pocono region
13 originally caught our local governments
14 unprepared. We had little in the way of
15 technical knowledge to base decisions upon
16 regarding land use. Over the years we have
17 learned that responsibility is the key when it
18 comes to development. Municipalities are
19 finally beginning to work together toward sound
20 planning. Much of this planning is based upon
21 existing wetland regulations. Weakening these
22 guidelines will result in significant loss of
23 wetlands on the township level.

24 Many of the headwater streams of the
25 Brodhead Watershed rise in the wetlands on the

1 area known as Pocono Plateau. We are familiar
2 with the study done by the Monroe County
3 Conservation District on the numbers of
4 undeveloped wetland lots in existing
5 subdivisions on the Pocono Plateau. Many of
6 these lots are not owned by individuals, but
7 were retained by the developer as undevelopable
8 lots.

9 If the wetlands on these lots were to
10 be filled, we believe the cumulative impact on
11 the headwater tributaries in the Brodhead
12 Watershed would be significant and could have a
13 major impact on water quality throughout the
14 watershed.

15 Prior to 1984 many people anxious to
16 move to the country, bought properties that were
17 unbuildable simply because there were no
18 regulations. Perhaps, these individuals should
19 be given permit consideration, but this should
20 be done on a case-by-case basis. There is no
21 justification for watering down standards to
22 satisfy demands by those who acquired properties
23 containing wetlands after 1984.

24 We are also concerned about the impact
25 on water quality when buyers purchase individual

1 lots consisting of filled wetlands. Private
2 home septic systems constructed on this type of
3 base could fail and pollute nearby wetlands.

4 We have reviewed the Monroe County
5 Conservation District's comments and agree with
6 their suggestion that a General Permit could be
7 designed that provides relief for individuals
8 who have owned lots containing wetlands since
9 before the Chapter 105 regulations were adopted,
10 but minimizes the impact on the natural systems
11 that depends on wetlands.

12 Monroe County is fortunate to have an
13 excellent technical staff in the Conservation
14 District office. They are the team that
15 logically reviews and determines how specific
16 construction needs can be accommodated while
17 protecting the resource in a fair and objective
18 manner.

19 In addition, the county conservation
20 district has cultivated a fine working
21 relationship with the municipalities. We have
22 found their comments relating to this proposal
23 to be excellent. Remember, these are the people
24 who work with wetland decisions every day.
25 Their input should be considered invaluable.

1 As citizens of Pennsylvania and more
2 specifically residents of the Pocono Mountains,
3 we do not pretend to understand the scientific
4 mechanics utilized in the classification of
5 wetlands. However, we do know that our streams
6 are clear and our well water is pure.

7 Please reconsider this proposed
8 General Permit. As legislators you should be
9 concerned with making the permitting process
10 smooth and efficient. Give the responsibility
11 of wetland definitions and protection to those
12 with the technical background whose motives are
13 in the interest of us all. Together you can
14 develop a program that truly meets the needs of
15 both individuals and the natural systems we
16 depend upon. The future of our wetlands is in
17 your hands and our children will be the
18 benefactors of your decision. Thank you.

19 CHAIRMAN REBER: Thank you very much.
20 Look to my left.

21 (No response)

22 CHAIRMAN REBER: Representative Fargo.

23 REPRESENTATIVE FARGO: No questions.

24 CHAIRMAN REBER: On the second page of
25 your testimony you reference prior to 1984. The

1 '84 watershed date, is that the federal --

2 MS. SHOESMITH: Yes. I'm very
3 familiar with people that have moved to the
4 Poconos for their spot in the country and who
5 have built upon areas that weren't necessarily
6 classified as wetlands at that time, but now 10
7 years later are having significant difficulties,
8 whether it's problems with their basements,
9 problems with their foundation walls and their
10 septic systems as well.

11 This is just an area that Mother
12 Nature has pretty much determined that we should
13 stay out of. I think that we need to respect
14 that and to look at it further. It's not just
15 an economic issue.

16 REPRESENTATIVE FARGO: Mr. Chairman,
17 is that still happening or is there something
18 that will prevent that from happening in the
19 future?

20 MS. SHOESMITH: I feel at this point
21 in time each case is being reviewed on a
22 case-by-case basis as we had talked about. You
23 had talk talked about your county conservation
24 district and our county conservation district
25 looks at these proposals before they go in.

1 But, I think to fill wetlands is not necessarily
2 the answer. I think we need to build around.

3 REPRESENTATIVE FARGO: If I were to
4 move in here; if I were to buy some property in
5 Monroe County, in this area, I would know in
6 advance somehow that that was wetlands and that
7 I could not in any way build a property on
8 there? I would have that knowledge now, where I
9 would not have had that knowledge 10 or 15 years
10 ago?

11 MS. SHOESMITH: I don't know. I don't
12 know if you would or not. I hope you would. I
13 hope that the people that you would buy from now
14 in the Poconos are much more ethical and would
15 give you that information. But, I don't know
16 that that's necessarily required at this point.

17 REPRESENTATIVE FARGO: As
18 Representative Masland said, it's rather
19 difficult for -- especially under the scientific
20 rules and regulations, decisions that are made
21 now for someone who is not knowledgeable about
22 it, to make certain when they are buying
23 property that they are not buying property with
24 wetlands on it. Later on, the determination can
25 be and often is made to the detriment of the

1 person who purchased the property.

2 MS. SHOESMITH: Right.

3 REPRESENTATIVE FARGO: Thank you.

4 CHAIRMAN REBER: As a follow-up where
5 I was going with my comment concerning 1984, in
6 the GP-15, actually, I was technically incorrect
7 in my earlier discussion as being a proposed
8 regulation. It's actually an internal
9 department policy change relative to their
10 regulatory rights promulgated on Chapter 105.
11 So, let the record reflect that modification,
12 clarification, correction.

13 Notwithstanding that fact, do I read,
14 though, your 1984 date that, in your opinion, at
15 least, the March 6, 1994 date was the October, I
16 believe 1984 date when the federal Headwaters
17 Act and all that kind of stuff came down that
18 would be a more preferable time line?

19 MS. SHOESMITH: In my opinion, and you
20 need to understand that I am a citizen of the
21 Pocono Mountains. I am not an expert in any way
22 sense or shape. I'm an educator. From what I
23 know, from my opinion, that should be the
24 watershed date.

25 CHAIRMAN REBER: All right. By the

1 way, can we have to pass around and then you can
2 pick it up, the map of the watershed that I see
3 there?

4 MS. SHOESMITH: Sure.

5 CHAIRMAN REBER: Thank you very much.
6 We appreciate your testimony. Our next
7 individual to testify is John Styk, a Certified
8 Sewage Enforcement Officer here in Monroe
9 County.

10 MR. STYK: Good afternoon. My name is
11 John L. Styk. I am a concerned citizen and also
12 a sewage enforcement officer that does some
13 consulting. I would like to offer some comments
14 on General Permit GP-15, residential dwellings
15 in wetlands. I am opposed to GP-15 as proposed.
16 My suggestions are as follows:

17 A special regulation area should be
18 created for Monroe, Carbon, Pike, Wayne,
19 Lackawanna and Susquehanna Counties. Within
20 this area these conditions should be adhered to:

21 One-tenth acre fill maximum; fill to
22 contain only house, driveway and utilities.
23 Only individuals who purchased lots prior to
24 October 1984 would be eligible. All fills will
25 have suitable material, no construction debris

1 or toxic materials. No on-lot septic systems on
2 or in fills, only central sewage. Fills would
3 not be permitted in exceptional value wetland.

4 As a sewage enforcement officer who
5 does consulting, I am opposed to any on-lot
6 septic in or on these fills. The rate of
7 failure is high where permitted now by the
8 department. What can be expected in wetlands?
9 Attached is Item 1 regarding fill proposals
10 which was sent to me in 1990. This document
11 contains recommended conditions and items to be
12 considered.

13 I believe the basic answer to our
14 problem with wetlands is responsible growth.
15 One good method is called open space
16 development. This method designs development
17 wherever possible around natural features such
18 as wetlands. It preserves the resource and
19 keeps the developer or single homeowner out of
20 the permitting system, which would be
21 economically beneficial to them. A good example
22 of showing avoidance of wetland areas is Item 2,
23 taken from designing open space subdivisions by
24 Randall Arendt.

25 Unfortunately, many individuals

1 purchased properties after October 4, 1984 in
2 wetlands. This is referred to as a bad business
3 decision. When people purchase property or any
4 other item there are no guarantees. Property
5 owners must accept full responsibility for their
6 ignorance.

7 Other wetland issues: The Army Corps
8 of Engineers 1987 Wetlands Delineation Manual is
9 a scientific document tested and proven in the
10 field. To change criteria in this manual is not
11 warranted. In my opinion, this is bad science.

12 Classifying wetlands by size is not
13 good science. It is political. Good science
14 and poor politics do not mix. Bigger is not
15 always better.

16 In my part of the watershed which
17 contains high quality and exceptional value
18 streams, many of our small wetlands under 5 acres
19 have functions that are important as our big
20 wetlands. Especially in our headwater areas
21 where our clear, cold, macroinvertebrate-
22 abundant fish spawning, flora-dependent
23 tributaries begin.

24 Each watershed and sub-watershed can
25 only function properly if it is totally intact.

1 The wetlands within these watersheds whether
2 headwaters, riparian, or lower elevation
3 wetlands contribute to the overall watershed
4 function if kept intact. They were not to be
5 meant to be dredge filled or sustain any other
6 impacts, but as it can so often happen with
7 humans, impacts have occurred. To keep moving
8 in this direction will only mean impacts to
9 humans themselves.

10 Wetland replacement should be done by
11 purchasing wetlands for protection and restoring
12 old wetland sites to which they once were.
13 Finding areas that were not wetlands and trying
14 to develop wetlands at these sites is a losing
15 proposition.

16 The wetlands in the above-mentioned
17 6-county region are an essential component to
18 our quality of life. We depend on these
19 wetlands to act as storage areas for flood
20 water, releasing these water in a more
21 reasonable manner than if they were lakes, ponds
22 or not there at all. Our wetlands remove
23 sediments and other pollutants through the
24 aquatic vegetation they produce. They can act
25 as groundwater recharge areas, replenishing our

1 very important water supplies to our wells. A
2 great deal of these recharge areas have already
3 been impacted by development in the wrong areas.

4 Groundwater discharge is another
5 important function of our wetlands. In this
6 area they contribute source water for the
7 Delaware and Lehigh Rivers which serve as water
8 supply to over 2 million people downstream from
9 us. All of these function along with the values
10 of hunting, fishing, camping and other types of
11 recreation contribute a great deal to the
12 economic base of the region.

13 Our wetlands help produce and maintain
14 high quality waters for a clean environment and
15 productive economy. They provide valuable
16 habitat for flora and fauna of a diverse nature.

17 Wetlands were not introduced into our
18 ecosystems by accident. They are here for a
19 purpose. Before putting into motion a new set
20 of untested regulations, to benefit a few, let's
21 look at the big picture with the health, safety
22 and welfare of the general public in mind. We
23 all live downstream.

24 I would like to refer back to the
25 photos that I passed up to the front just to

1 give you a little overview of those. They are
2 storm water runoff photos from in the Poconos.
3 Typically, after a few inches of rain up here on
4 the plateau, that's how that plateau loads up.
5 Now we are going to go out and start to fill
6 more wetlands and we are going to displace more
7 water. I just think this really needs to be
8 looked at.

9 I would like people to come here when
10 we do have a storm event and just look around
11 once. It isn't what it seems to be. There is
12 all of a sudden after a few inches of rain a
13 surge of water that comes to the top of the
14 ground because of a restrictive layer through
15 this whole area.

16 Now I would just like to refer to the
17 other part that was sent up to you, alternate
18 futures of Monroe County, Pennsylvania. I'll
19 just read on page 40, if I may, at the top. The
20 majority of Monroe County has soils that are not
21 suitable to absorb septic discharge. The other
22 highlight part, if development continues to
23 outpace infrastructure investments, the
24 absorption capacity of the soil may eventually
25 be exceeded resulting in contaminated

1 subterranean aquifers. This should be of great
2 concern because, as stated earlier, most of the
3 drinking water consumed in Monroe County comes
4 from underground wells.

5 One other part I'd like to go over in
6 that is, Item 1, the last page of fill
7 proposals. The first sentence on the last page
8 reads: When a property is filled there is no
9 guarantee that the property, when retested, will
10 be acceptable for a system.

11 CHAIRMAN REBER: Thank you, John.
12 Looking to my right, Representative Fargo.

13 REPRESENTATIVE FARGO: Thank you, Mr.
14 Chairman. I don't find any, as the prime
15 sponsor of the legislation that we talked a
16 little bit about here today, I don't find any
17 real major problems in what you say in your
18 testimony because I don't think you're talking
19 about what we are talking about. You are
20 concerned about GP-15 and you are ready to go
21 down one-tenth of an acre instead of a half
22 acre. Third thing is, on the individually
23 purchased lots prior to October '84 would be
24 eligible.

25 If I'm buying property and there's

1 one-tenth of an acre somewhere on my property
2 that could ultimately be determined a wetland
3 because of a scientific definition of a
4 wetlands, would I know that under normal
5 conditions?

6 MR. STYK: If the developer went
7 through all the proper processes, through the
8 subdivision ordinance and whatever was supposed
9 to be done, I feel that it's the developer's
10 responsibility to put out to the lot buyer, you
11 know, it's a risk. That's what I feel. It's a
12 risk to anyone coming to the Poconos buying
13 land. There's good developers here and then
14 there's some that's not. That's been proven all
15 over this area.

16 REPRESENTATIVE FARGO: Most of the
17 property that's bought for building in this area
18 is bought through developers; not from private
19 individual or any individual persons?

20 MR. STYK: I would think that this
21 first or second most -- Monroe County most
22 developed area in the state, I would think most
23 of the land is sold by developers, yes.

24 REPRESENTATIVE FARGO: The last
25 statement you make on that page, when people

1 purchase property there's no guarantee.
2 Property owners must accept full responsibility
3 for their ignorance. I guess what you say you
4 do believe in.

5 On page 2, I don't have any problem
6 once more. You are talking about small wetlands
7 under 5 acres. Whenever you start getting to a
8 5-acre wetland, I certainly agree that that's
9 something you should be concerned about,
10 especially when it's in a watershed.

11 The legislation we are talking about
12 has to do with incidentally created wetlands,
13 for instance; farmlands where someone has done
14 some drainage. Because of that drainage, he now
15 has a puddle that could be, I guess,
16 scientifically determined as a wetland. There's
17 a lot of other considerations --

18 Certainly, a lot of your testimony has
19 to do with sewage systems. I certainly agree
20 that there's a major problem in that area that
21 should be taken care of. But, I don't see the
22 correlation between sewage systems and the
23 wetland issue, especially whenever we are
24 talking about -- I realize there's a correlation
25 between the two, but especially whenever we are

1 determining as GP-15 does one-half of an acre of
2 property, I don't know that I see a correlation
3 there.

4 Really, are you talking about
5 incidentally created wetlands that may be a half
6 acre because someone put a road through it and
7 all of a sudden you have a wetlands that wasn't
8 there before? Is that what you are concerned
9 about in your testimony?

10 MR. STYK: First of all, I'm concerned
11 about the impact on the wetlands themselves in
12 regards to water quality. The other thing is
13 the place, fills, on-lot septic on these
14 half-acre fields that are proposed is at best a
15 very risky business. Those fills may pass,
16 those on-lot systems may pass the probe and the
17 perk.

18 In my opinion, over a period of time a
19 condition called mounting probably will occur
20 underneath these systems and they will
21 malfunction. That is nothing but water building
22 up on top of water. That's happened before.
23 The fills -- I'll just let it go at that.

24 REPRESENTATIVE FARGO: The other GP-15
25 if I have a half acre on my property or under a

1 half acre and I fill it without the requirement
2 for a permit I pay my \$3,000 or whatever it
3 might be, and say, all right, I'm going to go
4 ahead and fill that, does that have an effect on
5 the septic tank, on the septic system?

6 MR. STYK: I'm not sure what you are
7 getting at.

8 REPRESENTATIVE FARGO: Your testimony
9 here seems to be, to a big extent, concerned
10 about septic systems and the septic discharge.
11 I understand that's the area that you work in as
12 sewage enforcement officer.

13 MR. STYK: It certainly is. I also
14 believe that what I'm saying is that a
15 tenth-acre fill is enough to cite what those
16 people need to get -- that gives them something
17 to get what they need on the lot. That's just
18 my basic feeling.

19 REPRESENTATIVE FARGO: Your concern is
20 that, if they fill in this with the idea that
21 they then can have a septic system because it is
22 no longer a wetlands, they are liable to end up
23 with a septic system which won't work?

24 MR. STYK: Certainly, but I still
25 personally do not consider it no longer a

1 wetlands. It is still a wetland. That fill is
2 sitting in a wetland.

3 REPRESENTATIVE FARGO: Thank you.

4 CHAIRMAN REBER: Representative
5 Vitali.

6 REPRESENTATIVE VITALI: Just let me
7 comment on something and see if you agree or
8 disagree. As I'm learning about this and the
9 Ridge initiative which would involve General
10 Permit 15 would streamline the development of
11 certain wetlands. It's my understanding that
12 the purpose of this initiative is to give some
13 relief to the individual residential landowner
14 to residentially develop a lot that he purchased
15 when he had a reasonable expectation he could
16 use it for a residential lot. It was not
17 intended to benefit the large scale developer or
18 the speculator.

19 I think that you are calling for a
20 tenth of an acre as opposed to half an acre
21 because, half an acre is about the size of half
22 of a football field, roughly, and you don't need
23 half a football field to protect your
24 expectation of building a home, you could do
25 that, your home and your driveway and so forth,

1 on a tenth of an acre. That's why scaling down
2 the limit to get this streamline process of
3 GP-15 to attempt versus what you are calling
4 for.

5 With regard to the October 1984 date,
6 again, this has been said a number of times, but
7 just to underscore it, the goal of this
8 initiative being to protect the reasonable
9 expectations of the individual owner prior to
10 the October 1984 date where they did have a
11 reasonable expectation they could develop it.

12 But after that date, given the status
13 of the law, they no longer had that reasonable
14 expectation. It's not something that there's
15 this need to protect. They bought it or should
16 have bought it with full-well knowledge that you
17 can't use it for a residential home. Is that my
18 understanding of why you are calling for these?

19 MR. STYK: For the 1984 date, yes; and
20 in fact, because that's when the federal
21 jurisdiction came into the headwaters here.

22 Also for the tenth-acre fill, it's a
23 minimal impact. It's as minimal as possible on
24 those wetlands. We are going to get in a
25 serious problem here if you fill these wetlands

1 up on this plateau in the Pocono region, and we
2 certainly will. You're displacing water. It
3 has to go somewhere. It's going to go
4 downstream and it's going to have impact. It's
5 going to have an impact that is going to produce
6 lawsuits, and this whole thing really needs to
7 be looked at, in my opinion, real close.

8 REPRESENTATIVE VITALI: Thank you.
9 Thank you, Mr. Chairman.

10 CHAIRMAN REBER: Representative
11 Rubley.

12 REPRESENTATIVE RUBLEY: Point of
13 clarification. You already touched on this. Do
14 you interpret the proposed GP policy to mean
15 that if someone has a half acre of wetland and
16 they want relief from it, they can fill it in?
17 They could put in an addition to a house and
18 driveway they could put an on-lot sewage system
19 on?

20 MR. STYK: Yes.

21 REPRESENTATIVE RUBLEY: The wording is
22 somewhat unclear. They say it is not allowed
23 unless the on-lot system is specifically
24 authorized by the local sewage authorities
25 permitting authority.

1 MR. STYK: Well, yeah, and that's the
2 local sewerage enforcement officer. In most
3 cases that sewage enforcement officer is going
4 to do that or -- he's going to allow the test to
5 happen. You see, that's the problem with it
6 because he almost has to. He's going to allow
7 the test to happen. I have seen this happen
8 before.

9 The test happens, it passes. The
10 system sets for awhile and then that condition
11 called mounting, and you can check back with
12 soil scientist on this, that occurs awhile down
13 the road and now you have a system that's been
14 put in an area that it was marginal at best, and
15 you have a system that's malfunctioned and now
16 what are they going to do? What are they going
17 to do? They are out of options. Now we are to
18 a single residence family sewage treatment
19 plant, or if there's enough of it, the whole
20 development is going to have be central sewage
21 because of the health factor.

22 REPRESENTATIVE RUBLEY: This wording,
23 although at first it says it is not authorized,
24 I think the wording has to be tightened up. To
25 just to leave it there, they would not be

1 authorized, period?

2 MR. STYK: Yeah, definitely.

3 REPRESENTATIVE RUBLEY: Filled
4 wetlands?

5 MR. STYK: Without a doubt. But it
6 puts the sewage enforcement officer in a bind,
7 because the way the regulation reads he has to
8 let the test happen, so he is going to authorize
9 that.

10 REPRESENTATIVE RUBLEY: Have you
11 submitted your comments to DEP on this GP-15?

12 MR. STYK: They went into dams and
13 waterways, yes.

14 REPRESENTATIVE RUBLEY: You've also
15 gave us the drawing of Randall Arendt's design
16 on a better approach for clustering homes. But,
17 obviously, when you take those 18 lots and put
18 them on a smaller lot, you have to have an area
19 that's publicly sewered or a regional treatment
20 plant. You don't seem to have any of those up
21 in this area.

22 MR. STYK: There is some, yeah. In
23 places they are trying to extend out for the
24 simple reason the soils were so poor here and
25 there's lots of malfunctions and they have to do

1 it and it is really cost prohibitive. It really
2 hits the homeowner. It cost a lot of money to
3 hookup and the user fees after that.

4 I just think that for responsible
5 growth there needs to be different planning
6 method here in these areas where we have real
7 sensitive areas. We really do. Again, the
8 impact to our wetlands here is really going to
9 start. It will cause us problems.

10 REPRESENTATIVE RUBLEY: Although some
11 of these proposals, legislative or policy might
12 work in other parts of the state. You are
13 saying that for this region we need to have a
14 special district?

15 MR. STYK: We certainly do. Yes.

16 REPRESENTATIVE RUBLEY: Thank you.

17 CHAIRMAN REBER: Representative
18 Jarolin.

19 REPRESENTATIVE JAROLIN: John, on this
20 particular drawing that we are referring to,
21 whose drawing was that?

22 MR. STYK: That was Randall Arendt who
23 developed that type of open space development.

24 REPRESENTATIVE JAROLIN: Are you
25 familiar with the area?

1 MR. STYK: That particular area?

2 REPRESENTATIVE JAROLIN: Yes.

3 MR. STYK: No, I'm not. But it's what
4 would typically be done if you were doing open
5 space development.

6 REPRESENTATIVE JAROLIN: Because I was
7 just taking notice, I don't see no elevation
8 readings on this or anything. I also see a
9 boggy brook and right next they will be putting
10 septic systems.

11 MR. STYK: This was in a booklet that
12 he put out, and what it was to do was to educate
13 the public or any -- the public in what open
14 space development is. That is not to be
15 considered a plan. It's a drawing. It gives
16 you an idea of what they do. The septic system
17 that was put in there at that point, you know,
18 it was put on the plan. But, if it was put on
19 the plan then, you would assume that it was in a
20 spot that it was supposed to be.

21 REPRESENTATIVE JAROLIN: The reason
22 I'm more or less even opposed to this particular
23 plan is because the geology about this
24 particular area indicates why a lake has been
25 created because everything is dumping into the

1 lake. Now, even if they build on-lot sewage
2 system in this particular area would be a big
3 sand mound costing maybe 10 or \$20,000 that will
4 not work 15 to 20 years down the road.

5 MR. STYK: What they are trying to
6 show there -- Let me back up just a little bit.
7 They took the natural features and designed
8 their development around that. That was the
9 idea of that schematic drawing of that plan. To
10 keep the developer out of the natural features
11 as much as possible, keeps them out of the
12 permit system, it is costing him less. He's not
13 trying to fill wetlands. That was the idea of
14 that. I wish I would have brought the book with
15 me.

16 REPRESENTATIVE JAROLIN: Are you a
17 county enforcement officer?

18 MR. STYK: No.

19 REPRESENTATIVE JAROLIN: Township?

20 MR. STYK: No, I'm not. I'm just
21 consult.

22 REPRESENTATIVE JAROLIN: Didn't you
23 have on here sewage enforcement?

24 MR. STYK: Yes, I am, Number 2379.

25 REPRESENTATIVE JAROLIN: 2379, is that

1 county or --

2 MR. STYK: That's state certified.

3 REPRESENTATIVE JAROLIN: Thank you
4 very much.

5 MR. STYK: Sure.

6 CHAIRMAN REBER: Can I ask a question?
7 What would you say is the average square footage
8 of -- This is probably difficult. What's the
9 average square footage of homes that are built
10 in the areas that you are familiar with when we
11 are talking new-construction type situations?

12 MR. STYK: I'm not that familiar with
13 it. I would suppose something a thousand square
14 feet, a big sized home. What we are talking, if
15 you are talking tenth-acre over 4,000 square
16 feet, to put your home on --

17 CHAIRMAN REBER: That's a big, big
18 house.

19 MR. STYK: Yeah, it sure is. That's
20 what we are talking about, the driveway,
21 utilities and the home. You can put a big house
22 on that.

23 CHAIRMAN REBER: Let me ask you this
24 question. I know a lot of times where we have
25 some relatively stringent zoning requirements

1 back in southeast Pennsylvania where we have
2 some wetlands issues and peripheral flood plan
3 type situations, we get involved in pervious and
4 impervious overlays for driveways and for
5 parking lots, and what have you.

6 On the driveway side of it, if we are
7 going to be doing, quote, driveway, through this
8 wetlands that is permitted; if we, in fact, in
9 some way, shape or form are dealing with
10 material that is the structural basis for these
11 driveways and they are more user friendly to the
12 wetlands, do you see that as being assistive in
13 the process of allowing this to take place?

14 MR. STYK: Certainly; anything that
15 will lessen the impact. Any different or new
16 methods to help this.

17 CHAIRMAN REBER: Let me ask you this
18 then. Getting back into tenth of an acre and
19 43,000 square feet to go into making up an acre,
20 so we're talking about 4,300 square feet for the
21 tenth of an acre. When it's all said and done,
22 in most instances, wouldn't the permit probably
23 be for all intents and purposes high percentage
24 wise tenth of an acre permits that would be
25 issued?

1 MR. STYK: Yeah, I would certainly
2 think so because, in this county I believe from
3 what I have read of that is probably around the
4 maximum fill that's been put in.

5 CHAIRMAN REBER: The reason I say it,
6 I'm just wondering if there might not be, a
7 little certain we'll look into this and find
8 out. I'm wondering what is the intent behind
9 the department's proposal of that additional
10 four-tenths of a percent and what would be the
11 reasoning for allowing that? I'm wondering, is
12 that for long driveways, long, long, long
13 driveways or what's it all about? I think we
14 take that under advisement. I appreciate your
15 testimony.

16 MR. STYK: Thank you very much.

17 CHAIRMAN REBER: All right. At this
18 point in time the record for this particular
19 verbal hearing is closed. We will keep the
20 record open for any additional comments that
21 anyone would like to submit. For another 7 days
22 they can be presented to my office through Mark
23 Brown, the Executive Staff and Analyst on this
24 particular issue.

25 For the information of the public, we

1 will be holding testimony out in the great
2 northwest, Titusville, on Tuesday regarding this
3 particular issue. Seeing no further business
4 before the committee, this hearing is adjourned.

5 (At or about 1:55 p.m. the hearing
6 concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.

Dated this 11th day of September, 1995.



Karen J. Meister - Reporter
Notary Public

My commission expires
10/19/96