

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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Wetlands Issues & Legislation

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House Environmental Resources & Energy Committee

Cross Creek Resort  
Titusville, Pennsylvania

Tuesday, August 29, 1995 - 9:00 a.m.

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BEFORE:

Honorable Robert Reber, Jr., Majority Chairman  
Honorable Sam Smith  
Honorable Jim Lynch  
Honorable Stanley Jarolin  
Honorable David Levdansky  
Honorable Sara Steelman  
Honorable Greg Vitali  
Honorable Teresa Brown  
Honorable Howard Fargo  
Honorable Scott Hutchinson

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ORIGINAL

ALSO PRESENT:

David L. Reddecliff, Majority Executive Director

Fred Taylor, Esquire  
Counsel to Committee

Paul Ganzzo, Majority Research Analyst

Mark Brown, Majority Research Analyst

Ed Haines, Minority Research Analyst

Mark Fedorco, Minority Research Analyst

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1           CHAIRMAN REBER: At this time, I would  
2 like to formally call to order the Environmental  
3 Resources and Energy Committee of the  
4 Pennsylvania House of Representatives for our  
5 ongoing statewide public hearings on wetlands  
6 issues and legislation currently pending before  
7 the General Assembly on this topic.

8           My name is Bob Reger, I am the state  
9 representative from Montgomery County and am  
10 Chairman of the Committee. At this point in  
11 time, we will probably have other Members of the  
12 Committee, as well as representatives from this  
13 great area who I have also invited to join us at  
14 the desk for these proceedings, coming in. I  
15 see some of them just coming in at this time.

16           What I would like to do is have the  
17 Members of the Committee and the Members of the  
18 Legislature that are joining us today identify  
19 themselves and the area they represent. I will  
20 start with my far left.

21           REP. BROWN: Teresa Brown from Crawford  
22 County, the 6th District.

23           REP. LYNCH: Jim Lynch, Warren, Forest  
24 and McKean Counties.

25           MR. BROWN: Mark Brown, legislative

1 staff.

2 REP. FARGO: Howard Fargo, Mercer,  
3 Butler and Armstrong Counties.

4 REP. VITALI: Greg Vitali, Delaware  
5 County.

6 REP. JAROLIN: Representative Jarolin,  
7 Kingston/Wilkes-Barre (Luzerne County).

8 CHAIRMAN REBER: As I said earlier, my  
9 name is Bob Reber, I am Chairman of the  
10 Committee and I am from Montgomery County. At  
11 this time we have at the witness table our first  
12 individual to testify, Mr. Eric Thomas.

13 And, Mr. Thomas, if you would  
14 specifically identify yourself for the record  
15 and proceed.

16 May I just say at the outset, the  
17 normal manner and procedures in which I carry  
18 out public hearings is that we allow the  
19 witnesses that are on the agenda to present  
20 their prepared testimony. We like to keep their  
21 prepared remarks somewhere in the neighborhood  
22 of 10 minutes or so and then avail ourselves of  
23 questions from the Members of the Committee.  
24 And as always, I ask the Committee to be  
25 specific with their questions because the real

1 concern is to hear from the people that have  
2 taken their valuable time to be present and  
3 testify and I prefer to hear from them as  
4 opposed to my colleagues because I will hear  
5 from them enough at a later date and we will  
6 certainly have an opportunity at a later date  
7 to, without any time frame, enunciate their  
8 positions and thoughts on the issue before us.  
9 But we will certainly have each witness stand  
10 for any pertinent questions that are timely to  
11 be addressed.

12 At this time, Mr. Thomas, you may  
13 proceed.

14 MR. THOMAS: Thank you, sir.

15 Good morning and welcome to  
16 northwestern Pennsylvania. My name is Eric  
17 Thomas. I am here today as a concerned citizen  
18 and small business owner. My brother started  
19 Thomas construction some 18 years ago and we now  
20 employ 20 people. We have no backing from any  
21 large corporations or other organizations. We  
22 don't have a hidden agenda. We do have not only  
23 our own families to support, but we feel the  
24 families of our employees are our responsibility  
25 as well. Supporting a family, providing jobs,

1 running an honest business are things that no  
2 matter what happens we can be proud of. As a  
3 young man, I remember my fellow Boy Scouts and I  
4 planting more trees than we could count and  
5 working on conservation projects not only in our  
6 community, but at the Philmont Scout Ranch in  
7 Cimmaron, New Mexico. We have always respected  
8 the land and now look to it to make a living.  
9 When people talk to me about the issue of  
10 wetlands, it's very difficult to explain because  
11 if you have not felt the force of a governmental  
12 agency breathing down your neck, you have a hard  
13 time comprehending it.

14 To make a very long story short, on  
15 April 15, 1991, one of DER's biologists walked  
16 on to Phase III of a planned residential  
17 community that we already had all the necessary  
18 permits to develop and declared it a wetland and  
19 unbuildable. The roadway was already installed  
20 along with the utilities and two new homes were  
21 over 50 percent complete in a plan of 21  
22 building lots. In Phase I and II, 17 other  
23 families had already invested their money and  
24 were living in homes we had built. In one short  
25 afternoon, one bureaucrat in one agency from my

1 home state changed my life and at that moment I  
2 made a vow that if DER was going to put my head  
3 in a vice, I was going to scream until somebody  
4 listened. Thanks for listening.

5 In preparation for appearing before you  
6 today, I reviewed some comments I made before  
7 the House Minority Conservation and  
8 Appropriation Committee's Joint Task Force  
9 concerning environmental affairs in Franklin on  
10 August 13, 1992. At that time, I was invited to  
11 speak to your colleagues because, frankly, I  
12 think they were tired of reading my letters.

13 Three key points were talked about at  
14 that time:

15 1) DER must be brought back under  
16 control they have been given too much power. As  
17 I mentioned, how can one biologist have so much  
18 power.

19 2) The permitting process is too  
20 cumbersome. When we started to investigate how  
21 to apply for a wetlands permit, my first thought  
22 was to call Harrisburg. I spoke with a  
23 gentleman at DER who informed me that I had to  
24 hire a wetlands consultant to fill out the  
25 paperwork. When I asked for a list of state

1 certified consultants that I could contact and  
2 hire, he said there were none. So I asked what  
3 the qualifications were to be a consultant. He  
4 said someone with a background in biology.  
5 Well, I can remember dissecting frogs in seventh  
6 grade so I guess I qualified. He obviously  
7 didn't appreciate that remark and we ended the  
8 conversation.

9 I could not believe that in a state  
10 where you have to have a license to cut  
11 someone's hair that you need no qualifications  
12 to be a wetlands consultant.

13 3) Use common sense in adopting  
14 legislation. That phrase, common sense, has  
15 been used a great deal recently and especially  
16 when dealing with environmental problems. I  
17 think we have lost sight of the simple life. In  
18 this day and age of we don't get paid unless we  
19 get money for you lawsuit happy society, we have  
20 forgotten the meaning of personal responsibility  
21 and therefore the government feels they must  
22 regulate our every move. By doing so, common  
23 sense gets lost in the process. When you go  
24 back to serve in Harrisburg, along with your  
25 briefcase, please don't forget the intelligence

1 and common sense God gave you.

2 Some of the things we talked about at  
3 those hearings at that time are happening, but  
4 we need to continue to work to protect the  
5 environment as well as the rights of property  
6 owners.

7 I didn't know it at the time, but many  
8 other people were being trampled on by the power  
9 of DER and they were screaming, too. The good  
10 news is the voters in 1994 were listening. Tom  
11 Ridge listened and has taken some steps to live  
12 up to a campaign promise to bring DER back under  
13 control. Howard Fargo listened and has  
14 introduced legislation that represents a common  
15 sense approach to the problem of managing our  
16 natural resources without taking advantage of  
17 property owners. I know Mr. Fargo has worked  
18 very hard to find a way to satisfy both sides of  
19 this very controversial and emotional issue.

20 As a property owner, I am not thrilled  
21 about the prospect of having to pay a fee to use  
22 my property, but, as a developer, I recognize  
23 that compromise may be necessary. I know that  
24 one of Mr. Fargo's goals is to settle this  
25 wetland issue through legislation and not

1 regulation. I couldn't agree with him more.  
2 The voters have no input on who the bureaucrats  
3 are, but they do have the final word on who sits  
4 in your chair and therefore it's up to you to  
5 make sure that no one person or one agency gets  
6 drunk with power.

7 I hope the Governor continues to work  
8 with the two new departments previously known as  
9 DER to allow them to better serve the people of  
10 this state. The key to that sentence, that I  
11 think they sometimes forget, is service. They  
12 have been hired to serve the taxpayers of this  
13 state. I want them, certainly, to have the  
14 power to intervene when someone is pumping  
15 diesel fuel into Lake Erie, but they also have  
16 to be sensitive to the rights of property owners  
17 as guaranteed by the Constitution.

18 Even though we have been pushed to the  
19 brink, we have survived and we will continue to  
20 share our thoughts and ideas with you in an  
21 effort to find a solution.

22 At this point I will mention that Mr.  
23 Quatchak is going to present after me. I didn't  
24 know that until this morning. He was very  
25 instrumental in what I am about to say, so if he

1 covers the same topic, I apologize.

2 Another specific story I would like to  
3 share with you involves the Grove City Factory  
4 Shops. As I said before, I am not here to speak  
5 on their behalf, but rather to make an  
6 observation so that you can understand the lack  
7 of common sense being used in the Department of  
8 Environmental Protection.

9 The Mercer County Regional Planning  
10 Commission was given a state grant to identify  
11 potential growth areas in Mercer County. A  
12 number of areas were pinpointed, one in  
13 particular was the intersection of Interstate  
14 Route 79 and State Route 208 near Grove City.  
15 No utilities were available at the intersection  
16 at the time, but due to the proximity of easy  
17 transportation, the planners knew development  
18 would happen there. Now their forecasts are  
19 starting to come true.

20 For those of you who don't know the  
21 area, I have enclosed a sketch that is on the  
22 last page of your pamphlet there of the  
23 Interchange.

24 In 1993, the prime group bought  
25 property at the southwest corner of the

1 intersection and began to invest \$40 million in  
2 Springfield Township, Mercer County. Over 3.5  
3 million of that money was spent on  
4 infrastructure that was needed at the site. The  
5 sanitary sewer system was extended over three  
6 miles from Grove City to the location and a  
7 small antiquated water system of a nearby  
8 community was updated and expanded to service  
9 the new growth. Stealing a line from the Field  
10 of Dreams, if you build it, they will come. Not  
11 only have shoppers filled the parking lots, but  
12 other businesses are starting to locate near the  
13 new shops to take advantage of the traffic that  
14 has been generated.

15 The taxes generated by the open field  
16 where the new mall now sits was about \$350 per  
17 year. Upon completion of the project and at the  
18 end of the abatement, the school district will  
19 realize \$600,000 per year, not including any  
20 other development that occurs at the  
21 Intersection. That figure also does not include  
22 wage taxes or the boost to the economy from the  
23 additional visitors to the area.

24 Many people worked very hard including  
25 state, county and local lawmakers to make this

1 project a reality. Many people involved  
2 commented how teamwork was the key to getting  
3 the job done. It was also noted how cooperative  
4 DER was to work with to obtain the necessary  
5 wetlands permits. PennDOT has conducted a  
6 traffic flow study and is considering adding  
7 another bridge over the Interstate to handle the  
8 traffic.

9 I think from a visitor's viewpoint, the  
10 development happening at the Intersection is a  
11 very positive experience. The new mall has just  
12 celebrated its 1st anniversary and we have had  
13 some time to take a look at the situation. To  
14 be more specific about the site, again refer to  
15 the sketch.

16 The wetlands on the site caused the  
17 developer to downsize the number of stores to  
18 make less of an impact on those wetlands. They  
19 also had to spend over \$1 million to mitigate  
20 wetlands on the east side of I 79. So what was  
21 once prime land for development as designated by  
22 the planning commission is now wetlands that are  
23 supposed to attract deer and other wildlife next  
24 to an interstate highway. Don't we have a big  
25 problem in this state with keeping deer off of

1 the roads?

2 I am very aware of the value of  
3 wetlands; however, the wetlands on this site and  
4 the new ones created are not considered  
5 exceptional value. No endangered species live  
6 in those wetlands on the mall property. Nor do  
7 those wetlands control flood waters. I don't  
8 think that the value of the human being is taken  
9 into consideration when DER makes its decisions.

10 In this specific case by allowing the  
11 developer to increase the number of stores, he  
12 would create more jobs and taxes for the  
13 community. By having an arrangement for the  
14 developer to pay a fee instead of mitigate those  
15 wetlands, more land would be available in a  
16 prime area that is currently served by  
17 utilities, again creating more jobs and taxes in  
18 an area that makes sense. The fee collected by  
19 the state would pay to expand valuable wetlands  
20 in any one of a number of already state owned  
21 parks or game lands.

22 It would be a win for the local  
23 municipality, it would be a win for the state,  
24 it would be a win for the environmentalists and  
25 it would be a win for the developer and a

1 bigger, a big, big win for the state.

2 In conclusion, I ask that you continue  
3 to listen to all sides of the issue. It's much  
4 better to debate an issue without settling it,  
5 than it is to settle it without debating it. I  
6 thank you for your time and your attention.

7 CHAIRMAN REBER: Thank you, Mr. Thomas.  
8 And possibly some of the Members of the  
9 Committee might have some questions of you  
10 relative to your testimony. If you would stand  
11 for those, we would appreciate it.

12 First of all, I would like to welcome  
13 to the panel, Scott Hutchinson, Representative  
14 Hutchinson, to my far left; and to my immediate  
15 right, Representative Sara Steelman.

16 At this time does anyone to my left  
17 have any questions of Mr. Thomas?

18 (No response.)

19 CHAIRMAN REBER: Looking down to my  
20 right, Representative Jarolin is recognized.

21 REP. JAROLIN: You have got indications  
22 over here about the wetlands on that side of  
23 I 79. Approximately what is the size of that  
24 wetland area, approximately how many acres?

25 MR. THOMAS: Mr. Quatchak could

1 probably answer that question. Again, I didn't  
2 know he was going to be here this morning. It's  
3 substantially probably five or six acres or  
4 better, right in the middle of that property.

5 REP. JAROLIN: Thank you very much.  
6 That was the only question.

7 CHAIRMAN REBER: Representative Vitali.

8 REP. VITALI: Thank you.

9 One of the things we are discussing  
10 today or within the purview of our discussion is  
11 the Ridge Initiative that involves the general  
12 permit GP-15 for residential development of  
13 small in size.

14 As a builder, is there any shortage of  
15 housing in this area?

16 MR. THOMAS: In Grove City?

17 REP. VITALI: Well, I guess in this  
18 region. In this region, are we dealing with a  
19 housing shortage?

20 MR. THOMAS: I can only speak about,  
21 you know, the greater Grove City area. I am not  
22 as familiar with Franklin, Titusville, Oil City.

23 In Grove City, yeah, I think there is a  
24 shortage of houses.

25 REP. VITALI: How does that manifest

1       itself? Why do you say that?

2               MR. THOMAS: Because we are as busy as  
3       heck. We are a builder and we can't keep up  
4       with the demand. We turn away more work than we  
5       can handle.

6               Look and talking to real estate agents  
7       and people like that, the inventory that they  
8       have for new homes to sell is very, very small  
9       of existing homes.

10              There is another developer who bought  
11      some property and developed in that a  
12      residential community and lots are selling  
13      faster than he can get them ready. So, I mean,  
14      in the Grove City area specifically, I think  
15      there is a real need. Again, I am not as  
16      familiar with this neck of the woods up here.

17              REP. VITALI: Now, it is my  
18      understanding that, as I read this literature,  
19      that 98 percent of, I guess in Pennsylvania in  
20      general is often nonwetland. I mean, is there  
21      any problem satisfying that shortage using  
22      upland property?

23              MR. THOMAS: Again, specifically in  
24      Grove City, and I am sure this area has some of  
25      those same problems.

1           To make a long story short, Grove City,  
2 if you are familiar with Moraine State Park,  
3 they call it Marine State Park because that's  
4 where the terminal moraine was when the Ice Age  
5 left here. That pushed up a lot of silt and  
6 sand and hydric soil. Grove City is relatively  
7 flat because of that. So millions of years ago,  
8 the soil that was dumped on Grove City is now  
9 considered wetlands. If you dug 18-inches deep  
10 on Broad Street in the middle of Grove City, you  
11 would find water. The water table is very high  
12 in Grove City. So the presence of the water  
13 table, the presence of hydric soil all play in  
14 to creating wetlands.

15           So in answer to your question, very  
16 little of the land around Grove City, even  
17 though it is buildable, it would will support  
18 housings and structures, it is considered  
19 wetlands and, therefore, unusable.

20           REP. VITALI: You say very little is  
21 considered wetlands?

22           MR. THOMAS: Very little is usable

23           REP. VITALI: Okay.

24           MR. THOMAS: It could be, I have heard  
25 anywhere between 60 or 70 percent of Mercer

1 County could be classified as a wetland so that  
2 is a problem. We are loosing our ability to  
3 expand because of that

4 REP. VITALI: I mean, you know, this is  
5 a pretty vast area, I have been driving through  
6 the past two days. Are your remarks confined to  
7 Grove City or do they extend to Titusville,  
8 towards Erie, towards, is it, Waterford up  
9 north? I mean, do your remarks extend up there,  
10 too?

11 MR. THOMAS: I have the most experience  
12 in Grove City. I do recognize that northwestern  
13 Pennsylvania has a great percentage of wetland  
14 as well, Geneva Swamp, Conneaut Lake, all of  
15 those areas.

16 Waterford, again when the Ice Age came  
17 down through here, that was all taken into  
18 consideration. You will find rocks from Canada,  
19 you know, around Moraine State Park so that was  
20 pushed down here from the Ice Age. And, again,  
21 the silt and sediment which was brought with  
22 that has created a lot of the, a lot of the  
23 conditions that we have today.

24 Again, I have more experience in Grove  
25 City. But, yes, some of those same conditions

1 apply in most of northwestern Pennsylvania, from  
2 my understanding.

3 REP. VITALI: Okay. Go back to the  
4 housing shortage. Is it locals that simply  
5 can't live here, is that the problem, because of  
6 lack of housing?

7 MR. THOMAS: No. Grove City is a very  
8 good community to raise children, crime rate is  
9 very low. We attract people from the Pittsburgh  
10 area. We have built some houses for new folks  
11 moving in from Michigan. Doctors moving into  
12 the hospital. The hospital has been expanded  
13 over the last couple of years so they are  
14 attracting more doctors to town. Those doctors  
15 coming from Ohio and Florida and different  
16 places. So Grove City is a good little growth  
17 community, a great little place to live.

18 REP. VITALI: In other words, the  
19 demand for housing is not coming from locally  
20 but from the outside?

21 MR. THOMAS: Yeah, I would agree with  
22 that.

23 REP. VITALI: And you said there is a  
24 shortage of nonwetland building lots?

25 MR. THOMAS: Yes, that is correct.

1 Yes, the lands available that are close enough  
2 to utilities and also nonwetlands are very few.

3 REP. VITALI: Like has your business  
4 been stopped because you can't find lots to  
5 build on?

6 MR. THOMAS: Stopped is not the -- We  
7 are not stopped dead in our tracks, no. We are  
8 still looking. But become more -- It was  
9 stopped when we were, when we were in the middle  
10 of that development when this issue all came up  
11 to us.

12 REP. VITALI: You are in a position now  
13 where you can't build because you don't have  
14 uphill lots, is that what you are saying?

15 MR. THOMAS: No, that is not too far  
16 away.

17 REP. VITALI: What's the typical size  
18 of a lot you put a residential home on around  
19 here? Let me rephrase that.

20 There is a discussion in the Ridge  
21 proposal with regard to the size of a lot  
22 necessary to put a residential home on and many  
23 feel that one-tenth of an acre is sufficient for  
24 a home and a driveway and the utilities  
25 associated with that. Would you agree that your

1 typical residential home in the Grove City area  
2 can be put on a tenth of an acre?

3 MR. THOMAS: No. From a zoning  
4 standpoint, they won't allow you to do that.

5 REP. VITALI: And I am talking about  
6 the footprint of the house and driveway.

7 MR. THOMAS: Oh, I understand what you  
8 are saying. Yeah, that's a possibility. If, if  
9 you have -- I understand what you are saying  
10 now. Yeah, that will work.

11 REP. VITALI: So it wouldn't really  
12 hurt, it wouldn't really hurt residential  
13 development if permitting were a relaxed only  
14 with regard to development of less than a tenth  
15 of an acre then?

16 MR. THOMAS: Wait. Say that again.

17 REP. VITALI: In other words, it  
18 wouldn't hurt the residential development if the  
19 Ridge proposal were modified so that only houses  
20 and driveways with a footprint of less than a  
21 tenth of an acre were allowed. In other words,  
22 the debate seems to be: should this residential  
23 development be extended to a half an acre versus  
24 a tenth of an acre? And what you seem to be  
25 saying is: since most of the houses you put up

1 are less than a tenth of an acre, then that  
2 wouldn't impede you if that adjustment were  
3 made?

4 MR. THOMAS: It is a little more  
5 complicated than that. Let's back up a step.  
6 Due to zoning regulations and the size of lots,  
7 it has to be at least half an acre. Let's  
8 assume that. So it is a house, let's assume you  
9 have a half an acre and one-tenth of that half,  
10 a tenth of an acre on that half acre is a  
11 wetlands and you are going to disturb that, is  
12 that what you are driving at?

13 REP. VITALI: Correct.

14 MR. THOMAS: So it is on the half an  
15 acre, but it's one-tenth of an acre on the half  
16 an acre that you are going to disturb.

17 REP. VITALI: I understand that you  
18 wanted to disturb a wetland of one-tenth an  
19 acre.

20 MR. THOMAS: Okay. But it's on your --

21 REP. VITALI: On a larger tract, yes.

22 MR. THOMAS: It's done on a larger  
23 tract?

24 REP. VITALI: Yes.

25 MR. THOMAS: In that case if we could

1     disturb that one-tenth, I think that would be  
2     helpful. The problem comes in is if you need to  
3     leave a portion of that undisturbed, it is  
4     difficult to build a house on a half acre  
5     without disturbing some of that wetland.

6             Let me give an example. My biologist  
7     friend from New York told me at one time that we  
8     were allowed to build right adjacent to a  
9     wetlands if a wetland is delineated -- and for  
10    example the wetland is this table -- I could  
11    build a house right here, right next to that  
12    table, which means I am going to put a basement  
13    eight feet deep, which means I am going to put  
14    drainage around that basement, which means I am  
15    going to drain this wetland. I am going to  
16    change this, I am going to take the water out of  
17    this soil here due to the fact that the rain  
18    that you used to fall on this area is now going  
19    to hit the roof and go in the gutters and run  
20    away. So I am going to change that. It is  
21    going to affect that wetland.

22             REP. VITALI: Right. Okay. My focus,  
23     and I think the focus of the Ridge proposal if I  
24     am understanding it, just deals with the  
25     wetlands size being, you know, disturbing that

1       ...

2               MR. THOMAS:  Um-hum.

3               REP. VITALI:  ... one-tenth of an acre  
4       versus one-half an acre.

5               I agreed that there are problems  
6       associated with building on wetland properties,  
7       cause the constructions higher, and then there  
8       is the chance of damage to a property  
9       constructed on a wetlands due to flooding and so  
10      forth after the fact.  Is the cost of  
11      constructing on a wetlands higher than upland?

12              MR. THOMAS:  There are minimal and  
13      there are things you have to do in the process  
14      differently.  You have to provide proper  
15      drainage.  As I mentioned before, as far as the  
16      soils supporting the structure, that is not a  
17      problem.  As far as when you dig a basement,  
18      there may be some water in there that you have  
19      to drain away.  That is not a big problem either  
20      as long as you know about it and you know what  
21      you are doing on the way in.  All the houses  
22      that we have built in Grove City have dry  
23      basements.  If that is any indication to you of  
24      how to handle the drainage, we have done that  
25      pretty well, we think.

1           And that's unusual in Grove City,  
2 Franklin. I mean, some of them older houses  
3 were built end up with wet basements because  
4 they are built in low-lying areas. So if you  
5 handle the drainage properly, no, it is not a  
6 problem.

7           REP. VITALI: It has been suggested  
8 that one way to deal with this problem  
9 developing wetlands is not to develop the  
10 wetlands but rather plan around them so that you  
11 you have a community where the wetlands area is  
12 preserved. And if there is no development, you  
13 don't have to deal with building permits. But  
14 the areas that are developed are in the  
15 nonwetlands areas, it is sort of a planned type  
16 community; is that something you have done as a  
17 builder?

18           MR. THOMAS: That is something -- what  
19 started our problem with DER was exactly that.  
20 As I mentioned, we tried to apply for a permit.  
21 We had a housing development existed and we had  
22 an adjacent piece of property that we wanted to  
23 develop. That piece of property, when we  
24 started through the permitting process, through  
25 the building permitting process and that sort of

1 thing, we were told we had to get a wetlands  
2 delineation done. We knew there were wetlands  
3 on that site and there was one corner of the  
4 property that we literally a pond which we  
5 wanted to maintain and preserve.

6 Of course, you don't want to build on a  
7 pond, you can't build a house on a -- or a  
8 structure on a pond. So we wanted to maintain  
9 this, but there were other wetlands similar --  
10 There was a piece of property that was similar  
11 to Swiss Cheese. I mean, there were small  
12 wetlands the size of this table, there were some  
13 other ones that were a little bit bigger, all  
14 throughout this 10-acre piece of property. To  
15 be able to preserve every one of those was  
16 impossible. So we asked if we could move or  
17 mitigate and work around them and that's what  
18 started our headaches and we have been fighting  
19 that ever since.

20 Again, if one of the proposals I think  
21 I have heard is that, if we could pay a fee to  
22 take all of the -- Let me back up two steps. I  
23 want you to be clear on this.

24 During the discussions with DER and the  
25 Army Corps of Engineers on the property at the

1 time, two questions were asked.

2 1) Are the wetlands that are on this  
3 property valuable? And the answer to that  
4 question was no.

5 2) Have we hurt the environment by  
6 building these houses the way we have? The  
7 answer to that was no.

8 So they are not valuable wetlands and  
9 we have not hurt the environment, what is the  
10 problem?

11 Well, they are waters of the  
12 Commonwealth and you can't touch them.

13 So if we could figure out some way to  
14 take those waters of the Commonwealth that are  
15 so valuable to somebody and put them all in one  
16 place so everybody can enjoy them instead of  
17 trying to keep them all -- and my statement  
18 before, you are not going to keep them all.  
19 Even if you, as hard as you try, if you allow me  
20 to build a house right next to them, they are  
21 going to dry up so they are going to become less  
22 value so take them and put them somewhere where  
23 everybody would love them; that's the issue.

24 REP. VITALI: Do you know the cost? As  
25 a builder, have you mitigated, have you replaced

1 wetlands or been involved in projects where  
2 someone else replaced wetlands?

3 MR. THOMAS: We have been involved --  
4 the Grove City Factory Shops, I have heard  
5 figures from between a million and \$4 million to  
6 replace those. That was a huge project.

7 REP. VITALI: Let me ask you a question  
8 in a way I can understand the answer.

9 MR. THOMAS: Sure.

10 REP. VITALI: Do you know the cost of a  
11 half acre of replacing a half acre of wetland in  
12 another location?

13 MR. THOMAS: Specifically I do not. I  
14 can get you that information if you would like  
15 to have it?

16 REP. VITALI: About, is it more or less  
17 than --

18 MR. THOMAS: It costs thousands of  
19 dollars.

20 REP. VITALI: Is it more or less than  
21 \$7,000?

22 MR. THOMAS: \$7,500, that's what your  
23 figure is.

24 REP. VITALI: Yeah. More or less than  
25 that?

1           MR. THOMAS: I would say it is  
2 comparable to that.

3           REP. VITALI: Yeah, because other  
4 people have estimated up to \$40,000 an acre and  
5 10 times that. But you think you can do it or  
6 have a half acre done for \$7,500?

7           MR. THOMAS: Well, it depends on the  
8 specifications required. That has a lot to do  
9 with it and what kinds of plants we are going to  
10 plant and, you know, where it is and how far you  
11 have to haul the material to get there. There  
12 is definitely a cost involved.

13           Wal-Mart, for example, built in Grove  
14 City and they mitigated wetlands half a mile  
15 away.

16           REP. VITALI: Do you know what they  
17 paid for that?

18           MR. THOMAS: I don't know the cost of  
19 that. Again, I can find that out for you if you  
20 want?

21           REP. VITALI: Do you know if it was in  
22 the \$7,500 a half acre range?

23           MR. THOMAS: No. It was more than  
24 that, that I know.

25           REP. VITALI: A lot more?

1           MR. THOMAS: The figures I heard, they  
2 were trying to, I think it was they took two or  
3 three acres there and it was in the  
4 hundred-thousand dollar range.

5           REP. VITALI: So many times more?

6           MR. THOMAS: Yeah.

7           REP. VITALI: Okay. I don't have any  
8 further. Thank you for your indulgence. I  
9 appreciate that. I asked a lot of questions.

10          CHAIRMAN REBER: Sure. Thank you,  
11 gentlemen. And we will certainly take the  
12 extension of your remarks under advisement for  
13 further use in accommodating the other members.

14          Representative Fargo.

15          REP. FARGO: Thank you, Mr. Chairman.

16          Eric, I appreciate you being here and I  
17 appreciate your kind words. I really only have  
18 one question. Whenever the factory shops came  
19 in, that property where they actually had to  
20 build it, was that wetlands created by 79 going  
21 up there or is that a wetlands which is a true  
22 wetlands, do you know?

23          MR. THOMAS: That is a good question,  
24 Howard. Not being old enough to have been  
25 around before 79, but looking at the way it was

1 designed, yes, there is drainage under 79 so  
2 that that was partially a field drain at one  
3 time. 79 did back some of that up and created  
4 probably some more wetlands in that area. How  
5 much more? I couldn't tell you. Again, Mr.  
6 Quatchak might know that.

7 REP. FARGO: I just wondered, we used  
8 the term incidentally created wetlands and I  
9 just wondered whether that was incidentally  
10 created wetlands or whether that was a true  
11 wetlands prior to 79 going through that  
12 property.

13 MR. THOMAS: Right. I know one of the  
14 big problems when they were designing the  
15 Factory Shops was to make sure that the drainage  
16 under 79, you know, water wouldn't back up and,  
17 therefore, ruin Interstate 79. I mean, state  
18 and federal people looked in on that and were up  
19 in arms about that to make sure whatever you do  
20 next to our highway, don't mess it up. I don't  
21 know the answer to that question, exactly, but  
22 it is a good thought.

23 REP. FARGO: Okay. Eric, thanks a lot  
24 and I appreciate your being here.

25 MR. THOMAS: Thank you.

1 CHAIRMAN REBER: Thank you very much,  
2 Mr. Thomas.

3 At this time, Mr. Gregory Quatchak will  
4 be our next witness -- I am sorry.  
5 Representative Steelman, does have a question.

6 MR. THOMAS: Sure.

7 REP. STEELMAN: Thank you, Mr.  
8 Chairman.

9 And thank you for being here today. I  
10 got a little bit confused about the chronology  
11 with your development and I also would  
12 appreciate the chance to get a better  
13 understanding of the scope of the residential  
14 development that you were involved in.

15 MR. THOMAS: Sure.

16 REP. STEELMAN: If you could give me a  
17 hand?

18 Now, you mentioned in your testimony  
19 that what you were working on when you came into  
20 conflict with DER was Phase III of a residential  
21 development?

22 MR. THOMAS: That's correct.

23 REP. STEELMAN: And how many building  
24 lots and houses were there in Phase I and Phase  
25 II?

1           MR. THOMAS: There were about 20  
2 building lots (17 of them were built at the time  
3 in Phase I and II). Phase III included another  
4 20 lots, so 22 lots. (There are 42 total lots  
5 available there.)

6           So when we planned this in 1983, 1984,  
7 1985, it was planned in three phases. We had  
8 finished Phase I and II.

9           And it was approved in three phases. I  
10 mean, all the necessary permits.

11           Once Phase I and Phase II were  
12 complete, we were going to move to Phase III and  
13 it was simply a rubber stamp, no problem,  
14 everything is ready to go. And it was at that  
15 time we started Phase III, we had an adjacent  
16 piece of property that was not permitted. I  
17 will sit here today, that was not permitted.  
18 But we had an adjacent piece of property and we  
19 said, okay, we got this development under  
20 control, let's think about this other adjacent  
21 piece of property.

22           At that time the regulations had  
23 changed and we had to have a wetlands  
24 delineation on that separate piece of property.  
25 So that's when I said to this guy in 1991,

1 walking on the property and he was walking  
2 around over here and he said, oh, yeah, you got  
3 some wetlands. And he comes over onto the other  
4 piece of property, he says, by the way, you have  
5 got wetlands here, too. Well, our response was,  
6 well, this is all permitted. We are just  
7 looking at this piece. He says, I don't care  
8 what you are doing, we are looking at this  
9 piece, too. And, by the way, we are shutting  
10 you down. So what was already done and approved  
11 by DER is now changed and we got in the middle.

12 REP. STEELMAN: Okay. So then actually  
13 there was Phase III and then the adjacent  
14 undeveloped land was potentially Phase IV?

15 MR. THOMAS: You could call it that,  
16 sure.

17 REP. STEELMAN: Okay. And that was  
18 what you were starting to go through the process  
19 of getting wetlands permit for?

20 MR. THOMAS: Exactly.

21 REP. STEELMAN: But --

22 MR. THOMAS: So the money was spent on  
23 Phase III for the roads, the utilities and all  
24 of that knowing that we had the right to do it.

25 REP. STEELMAN: And when did you get

1 the approval on permits for Phase III itself?

2 MR. THOMAS: It was about 1989 and  
3 earlier.

4 REP. STEELMAN: Okay. And at that  
5 point there was not a regulatory requirement to  
6 have a wetlands permit?

7 MR. THOMAS: Exactly, exactly.

8 REP. STEELMAN: So if Phase III had  
9 been grandfathered in, then that would not have  
10 been an issue, but really what created the  
11 difficulty for you was the DER biologist coming  
12 back and retroactively imposing a regulation  
13 that had not been in place at the time that you  
14 got the permits for that development?

15 MR. THOMAS: That's exactly right.  
16 That's exactly right. And there was no -- And  
17 that was one of my questions. Hey, you guys  
18 already approved it. You know, grandfather in.  
19 We don't mind jumping through state hoops, but  
20 just don't move the hoop.

21 REP. STEELMAN: I can understand that.  
22 How many acres did you have in Phase I  
23 and II, Phase III and then this adjacent piece  
24 that you were thinking of for Phase IV?

25 MR. THOMAS: Phase I and II and III is

1 roughly 35 acres. Phase IV is 10 acres.

2 REP. STEELMAN: And are you still  
3 working on getting a wetlands permit for Phase  
4 IV?

5 MR. THOMAS: No, we are hoping you guys  
6 change the regulations.

7 REP. STEELMAN: Okay.

8 MR. THOMAS: You guys are going to do  
9 that for me -- if you can make some sense out of  
10 this -- and then we will do whatever is  
11 necessary.

12 REP. STEELMAN: And in the meantime,  
13 where are you at with Phase III?

14 MR. THOMAS: Phase III is almost done.  
15 The good news is -- this is a statement, again  
16 from my friend the biologist -- we lost five  
17 lots over the issue. When I say lost five lots,  
18 we are not permitted to build on five lots.  
19 Roughly speaking five times \$20,000, a hundred  
20 thousand dollars. And that's what he said to  
21 me. He said, well, we --

22 Initially they shut down all of Phase  
23 III, which is 20 lots. And then we got to  
24 negotiating and drew a delineation map five  
25 different times. And he said, well, the good

1 news is you only lost five lots. I am glad he  
2 can play with a hundred thousand dollars like  
3 that. I certainly can't do it. So we lost five  
4 lots in Phase III. We are continuing to lick  
5 our wounds and go on and it is almost complete.  
6 And we are waiting to see what happens with you  
7 guys on Phase IV.

8 REP. STEELMAN: Okay. I am getting the  
9 idea that roughly when you are building these,  
10 you are putting them on about three-quarter of  
11 an acre lot?

12 MR. THOMAS: It is between half and  
13 three-quarter, some of them are even a little  
14 bit bigger than that an acre.

15 REP. STEELMAN: And what does the  
16 zoning authority that you referred to that  
17 mandates a minimum half acre lot in this area?

18 MR. THOMAS: That would be the Mercer  
19 County Regional Planning Commission.

20 REP. STEELMAN: So this is a  
21 county-wide zoning regulation?

22 MR. THOMAS: Well, they have -- We  
23 specifically were in Pine Township. They answer  
24 to Mercer County so it is really a Pine Township  
25 zoning thing, but Mercer County has an influence

1 as well, yes.

2 REP. STEELMAN: What is the rational  
3 between a half acre minimum lot in Pine  
4 Township?

5 MR. THOMAS: So everybody is not  
6 sitting on top of each other, I guess is one  
7 issue. The frontage of the lot has to be, I  
8 think, a hundred and twenty-five feet wide.  
9 That's if you have city sewer. If you have got  
10 a septic system, then the lots have to be  
11 bigger, so ...

12 REP. STEELMAN: Right. And the  
13 development that you are putting in, do you have  
14 the city sewer?

15 MR. THOMAS: Yes, ma'am.

16 REP. STEELMAN: Okay. So kind of  
17 circling back to what Representative Vitali was  
18 asking, what would happen particularly in your  
19 Phase III if Pine Township were willing to relax  
20 their zoning regulations so that perhaps you  
21 could cluster the houses more and actually fit  
22 20 houses into the acreage that you have got, if  
23 you could, say, create a couple of cul-de-sacs  
24 and put your houses on those and then leave more  
25 of the wetlands area undeveloped and have that

1 as kind of common ground?

2 MR. THOMAS: That's a very good  
3 question. If we were redoing this development  
4 today, knowing the wetlands regulations like we  
5 know them now, redesigning would not have been a  
6 problem. Once we have already spent the money  
7 and everything was in, that's where you got the  
8 --

9 REP. STEELMAN: You already had the  
10 roads in and you were not planning for cluster  
11 housing ...

12 MR. THOMAS: Exactly, exactly.

13 REP. STEELMAN: ... they were planning  
14 for block subdivision?

15 MR. THOMAS: Right. I mean, it could  
16 have been redesigned any number of ways had we  
17 known up front.

18 REP. STEELMAN: So part of the problem  
19 is not even the state regulations, although it  
20 is partly the heavy handedness of the state  
21 regulators, it is the collision between the  
22 state regulations and the local regulations and  
23 you get crunched in between the half acre  
24 minimum and the requirement not to build on  
25 certain parts of your property?

1 MR. THOMAS: Exactly.

2 REP. STEELMAN: Okay. Do you suppose  
3 that just to give us a better idea, I would kind  
4 of appreciate if you could get to us at some  
5 point a plot map of your development and maybe  
6 even a map of the wetlands delineation.

7 MR. THOMAS: Sure.

8 REP. STEELMAN: Because this seems like  
9 a very good example of these kinds of problems  
10 and I think it would be useful for us to be able  
11 to take a look at it as well as getting a  
12 description. Could we do that?

13 MR. THOMAS: Sure. I would be happy  
14 to.

15 CHAIRMAN REBER: You can have that sent  
16 to our office and we will disseminate it to all  
17 the Members of the Committee. Thank you, Mr.  
18 Thomas.

19 REP. STEELMAN: Thank you, Mr.

20 Chairman.

21 CHAIRMAN REBER: Sure.

22 Representative Lynch has a short  
23 question.

24 REP. LYNCH: Thank you. I don't have a  
25 question. I have a comment, I guess for my

1 colleagues and also for you. I would like to  
2 thank you for your testimony. One thing I wish  
3 you would have answered when you were asked the  
4 question why didn't you have cluster houses, the  
5 reason I live Warren County is because I don't  
6 want to live close by a lot of other houses.

7 MR. THOMAS: No.

8 REP. LYNCH: If I wanted to, I would  
9 live in Philadelphia.

10 MR. THOMAS: That's one of the things  
11 when we designed our development, the lots are  
12 over half an acre, some of them are an acre or a  
13 little better, 1.1, 1.2 acres, for that reason.  
14 I mean, you want to get the country feel, but  
15 live close to the town.

16 CHAIRMAN REBER: Thank you, Mr. Thomas.

17 MR. THOMAS: Thank you.

18 CHAIRMAN REBER: The next witness is  
19 Gregory Quatchak, Vice President of the Western  
20 Pennsylvania Chapter of the National Association  
21 of Industrial and Office Property. And before  
22 Mr. Quatchak begins his testimony, I would  
23 remind all the panel members of the highly  
24 jammed agenda we have and hope that we could  
25 keep our questions as specific as possible so we

1 don't have to invoke any closure rules at a  
2 later date in the proceedings, and I think  
3 enough said on that.

4 At this time, Mr. Quatchak, if you  
5 could introduce yourself for the court reporter  
6 and then present your testimony. Thank you for  
7 coming.

8 MR. QUATCHAK: Okay. Good morning. It  
9 is an honor and a pleasure to have the  
10 opportunity to spend a little bit of time this  
11 morning before the Committee on such an  
12 interesting issue. First, I would like to  
13 clarify briefly on the introduction. I am not  
14 the President of NAIOP Western Pennsylvania  
15 Chapter. I am here today partly representing  
16 the NAIOP Western Pennsylvania Chapter. I am  
17 Vice President of an engineering consulting  
18 firm, based in Pittsburgh, Pennsylvania, called  
19 Civil and Environmental Consultants.

20 Briefly, my background is that, for 15  
21 years, been working in the engineering  
22 consulting field as a principal in the firm. We  
23 provide consulting services to our clients,  
24 architects, land developers, industry and  
25 business. And working in land development

1 wetlands issues is a very prominent part of our  
2 work. So I come to you today to share some  
3 comments, both from the real world experience in  
4 having to go through the permitting process in  
5 Pennsylvania, as well as working with people  
6 such as the members of NAIOP, which that is  
7 their business.

8           During my testimony, I have passed out  
9 to the Committee a brief overview or outline of  
10 the issues I am going to touch on briefly, and  
11 the real emphasis of my testimony is on the  
12 permitting program that is in place now and why  
13 I feel, from my perspective of being in the  
14 field for 15 years, why there is the need for  
15 legislative change to make this permitting  
16 effort more user friendly but also more  
17 environmental friendly in reaching mutually  
18 obtainable goals.

19           Just quickly, some background  
20 information on the NAIOP because it is an  
21 organization that is very interested in the same  
22 issue and has made its interest known to this  
23 Committee as well as to Governor Ridge.

24           The NAIOP is the National Association  
25 of Industrial and Office Property Owners. It is

1 a membership comprised of over 4400  
2 professionals who are investors, developers,  
3 landowners, lenders, asset managers, brokers,  
4 architects, contractors, engineers and attorneys  
5 of commercial and industrial properties. Here  
6 in the Commonwealth, we have over 200 members  
7 active in three chapters: the Western  
8 Pennsylvania Chapter, Central Pennsylvania and  
9 the Delaware Valley Chapter.

10 The organization's mission is to  
11 provide the commercial and industrial real  
12 estate industry with a visionary, beneficial and  
13 responsive association. The focus of the  
14 organization is on the steadfast preservation of  
15 private property rights and developing the link  
16 between real estate and economic development.  
17 The Western Pennsylvania Chapter in particular  
18 has been very active and has seen a tremendous  
19 growth in their membership of over 200 percent  
20 in the past three years. And the Western  
21 Pennsylvania Chapter is active in transportation  
22 planning, economic developments, creation of  
23 private public partnerships, industrial site  
24 redevelopment and the formation of statewide  
25 alliance and the issue that I am here to discuss

1 with you today, that is, wetlands protection.

2           The NAIOP Western Pennsylvania Chapter  
3 has written a position paper on the bills that  
4 are being considered in the Commonwealth  
5 regarding wetlands reform. The information that  
6 I have passed out include an outline of my  
7 testimony and then there are two attachments.  
8 One is a copy of the NAIOP position paper and  
9 then there is also copies of a portion of the  
10 Pennsylvania Code Title 25, Environmental  
11 Resources; Chapter 105, Dam Safety and Waterway  
12 Management, which is really the crux of the  
13 regulations that are currently in place in the  
14 Commonwealth.

15           So with that as kind of a mouthful of  
16 introduction, let me get into kind of going  
17 through the outline for you.

18           Wetlands are regulated in Pennsylvania  
19 under, as I previously mentioned, Pennsylvania  
20 Code Title 25, Environmental Resources; the  
21 Department of Environmental Protection,  
22 particularly Chapter 105 on Dam Safety and  
23 Waterway Management. It is interesing to note  
24 that the regulations present in Chapter 105,  
25 this booklet form, went through many adoptions

1 and revisions but the basic regulations have  
2 been adopted and amended many times. Actually  
3 were readopted in 1980. So it gives you a feel  
4 for the age involved in terms of the regulatory  
5 framework that is being used to regulate water  
6 courses and wetlands issue in Pennsylvania.

7           There is period there of 15 years, and  
8 I am not saying that those have not been ever  
9 revised or supplemented, they have been. The  
10 basic regulations were issued in 1980.

11           Within the Chapter 105, you have basic  
12 definition of wetlands and water courses,  
13 instructions, all of those things are defined  
14 and that becomes the real crux of the regulatory  
15 framework.

16           Let me just touch on some of the issues  
17 or some of the definitions that are very  
18 important. One being wetlands. And the  
19 definition from Chapter 105 is wetlands are  
20 areas that are inundated or saturated by surface  
21 water or groundwater at a frequency and duration  
22 sufficient to support, and that under normal  
23 circumstances do support, a prevalence of  
24 vegetation typically adapted for life in  
25 saturated soil conditions, including swamps,

1 marshes, bogs and similar areas.

2 Yet the Chapter 105 also goes on to  
3 define the purpose of the act is to:

4 1) Provide for the comprehensive  
5 regulation and supervision of dams, reservoirs,  
6 water obstructions and encroachments in the  
7 Commonwealth in order to protect the health,  
8 safety, welfare and property of the people.

9 2) Assure proper planning, design,  
10 construction, maintenance, monitoring and  
11 supervision of dams and reservoirs, including  
12 preventative measures necessary to provide an  
13 adequate margin of safety.

14 3) Assure proper planning, design,  
15 construction, maintenance and monitoring of  
16 water obstructions and encroachments, in order  
17 to prevent unreasonable interference with water  
18 flow and to protect navigation.

19 4) Protect the natural resources,  
20 environmental rights and values secured by PA  
21 Constitution Article I, Section 27 and conserve  
22 and protect the water quality, natural regime  
23 and carrying capacity of watercourses.

24 Those are very clear purposes that I  
25 don't think anyone within the Commonwealth will

1 argue with. It is the enactment or the  
2 formation of a plan to comply with those  
3 purposes where I think we need a change to  
4 reflect more of the advances in technology and  
5 the advances in science with respect to  
6 wetlands.

7 Further in Chapter 105, in Section 16,  
8 there is a section that talks about  
9 environmental, social and economic balancing.  
10 That is the criteria that is to be used in  
11 evaluating permits to impact wetlands as well as  
12 other water courses and encroachments.

13 And to bring to your attention, Chapter  
14 105, Section 18, the special provisions that are  
15 necessary for reviewing and granting of permits  
16 of structures and activities in wetlands. And,  
17 again, these sections are copied for you in the  
18 materials that I have presented.

19 In addition to state regulatory action  
20 on wetlands, there is also federal jurisdiction  
21 and that comes under the provisions of Section  
22 404 of the Clean Water Act. In very simple  
23 terms, an overview, it is a program, a  
24 regulatory program that's under the jurisdiction  
25 of the United States Army Corps of Engineers

1 with the USEPA having an oversight role and a  
2 veto opportunity on all permit decisions.

3 Wetlands issue in Pennsylvania. The  
4 first issue and quite honestly the testimony  
5 that I am presenting very closely reflects or  
6 mirrors the NAIOP position paper which, in hand,  
7 very closely correlates very well with some of  
8 the issues in the House bills presented before  
9 the Committee regarding wetlands reform.

10 And the first issue is delineation  
11 methodology and the fact that there are  
12 conflicts with that. In 1989, a joint federal  
13 manual was issued entitled the 1989 Federal  
14 Manual for Identifying and Delineating  
15 Jurisdictional Wetlands. It was an interagency  
16 cooperative agreement between the US Army Corps  
17 of Engineers, the Soil Conservation Service, the  
18 USEPA and the US Fish and Wildlife Service.

19 The 1989 Manual became the so-called  
20 Bible for wetlands delineations. Most federal  
21 agencies adopted its use, most states adopted  
22 its use and as a consultant practicing in  
23 wetlands issues, consultants were required to do  
24 the delineations using the 1989 Manual.

25 After the 1989 Manual was published and

1 put into use, problems became evident and were  
2 encountered in its use and application. And as  
3 a result of that, and to summarise briefly,  
4 there was an agreement, the Memorandum of  
5 Understanding, between the federal agencies to  
6 cease using the 1989 Federal Manual and to go  
7 back to a 1987 Corps of Engineers Wetlands  
8 Delineation Manual that had been used by the  
9 Corps of Engineers prior to the 1989 Federal  
10 Manual publication.

11 The 1989 Manual, the federal agencies  
12 stopped using the manual two or three years ago.  
13 However, DER (currently DEP) continue to use the  
14 1989 Manual and require that all wetland  
15 delineations use the methodology presented in  
16 the 1989 Manual.

17 As one sidelight so that there is not  
18 confusion: from my perspective involved in  
19 wetlands delineations and permitting efforts,  
20 the Committee should be aware that there were  
21 not drastic differences between the 1987 Manual  
22 and the 1989 Manual. It would not have been  
23 possible to, let's say under an '87 methodology,  
24 to say you did not have a wetland and then under  
25 the '89 Manual say you do have a wetland. The

1 distinctions were not that great. For minor  
2 distinctions,, however, there were differences  
3 that did lead to discrepancies in wetland  
4 boundaries and the subjectivity of some of the  
5 criteria that was applied.

6 Finally this year, in 1995, in August,  
7 the long-awaited National Research Council's  
8 Report on Wetlands that was commissioned by  
9 President Bush during his presidency was finally  
10 issued. This was a report that was being waited  
11 for by all the federal agencies as well as  
12 states relative to conclusions on the  
13 methodology being used to delineate wetlands.

14 With that new National Research Council  
15 Report just coming out, it is entitled Wetlands  
16 Characteristics and Boundaries. It presents  
17 several issues, raises new issues and it is just  
18 being digested by the regulatory community and  
19 the agencies that involve the wetlands.

20 So, at this point, I can't provide you  
21 with an overview of what I think is going to  
22 happen as a result of that new NRC Report being  
23 issued. But what I would like to sum up in  
24 terms of the delineation methodology is, there  
25 is a need for consistency. You know, the

1 federal agencies quit using the manual. DEP has  
2 had a policy statement, I have been told,  
3 circulating within its offices to officially  
4 cease using the '89 Manual. And I don't know if  
5 that's been published in the bulletin yet. I  
6 don't believe it has been. But apparently they  
7 are going to fall in line with the rest of the  
8 federal agencies, in terms of the delineation  
9 methodology and going back to the '87 Manual.  
10 So that kind of, that example right there shows  
11 you the need to have a consistency to have  
12 Pennsylvania and its Department of Environmental  
13 Protection be up to the current advances in the  
14 science, in terms of what the other federal  
15 agencies are requiring.

16 The second item is regulatory  
17 classification of wetlands. Right now under  
18 Chapter 105, in actually 105, Section 17, DEP  
19 has two classifications of wetlands. One being  
20 exceptional value of wetlands. This category of  
21 wetlands deserves special protection.  
22 Exceptional value wetlands are wetlands that  
23 exhibit one or more of the following  
24 characteristics. (And there is a whole list of  
25 them that are listed there on page 105 - 32.)

1           In summary, they are wetlands which  
2       serve as habitat for fauna or flora listed as  
3       threatened or endangered. Wetlands that are  
4       hydrologically connected to or located to other  
5       wetlands. Wetlands located in or along flood  
6       plains with wild trout streams and other waters  
7       listed as exceptional value. Wetlands located  
8       in areas designated as natural wild areas but in  
9       state forests or park lands. And wetlands  
10      located along existing public or private  
11      drinking water supplies.

12           So you have exceptional value wetlands  
13      being one classification and the second  
14      classification being other wetlands. And that  
15      very briefly is being defined as, this category  
16      includes wetlands not categorized as exceptional  
17      value wetlands. Two very broad classifications  
18      of -- well, actually one. The other wetlands is  
19      very broad and the exceptional value wetlands  
20      are very distinctly defined.

21           I think that the legislation needs to  
22      address the need for wetland classification  
23      system by values, by scientific values, and  
24      functions. All the proposals being considered  
25      within Pennsylvania and being considered at the

1 national level, all deal with this as one of the  
2 major issues. It is a strong issue that NAIOP  
3 endorses. There are scientifically determined  
4 values and functions. Some of them bear real  
5 measurable quantities and functions that occur  
6 within a wetland, and those are the types of  
7 science which should be applied to determine  
8 classification of wetland systems which then  
9 could go in part to a permanent program with  
10 respect to weighing the real economic impacts of  
11 a project.

12 In addition to a classification system,  
13 I think the bill is under consideration in  
14 Pennsylvania to also endorse the federal  
15 proposals and that is to get into a long-term  
16 commitment to map so that wetlands are  
17 identified to property owners and people  
18 acquiring property so that they know where  
19 wetlands are and what types of wetlands are  
20 present on the properties that they own or are  
21 considering to purchase.

22 The third issue there is the regulatory  
23 permitting. Again, referencing Chapter 105,  
24 Section 18, there are very clear requirements  
25 outlined for the review of permitting within

1 wetlands in the Commonwealth. It basically  
2 stems from an overall theme or overall  
3 definition of showing or demonstrating project  
4 water dependency. Quite honestly in my  
5 professional opinion that's the fatal flaw of  
6 the regulation, the regulatory framework that we  
7 have to deal with right now. It is a  
8 predisposed premise that the project must be  
9 water dependent to encroach upon or impact a  
10 wetland.

11 A shopping center, a residential  
12 community, an expansion of industrial complex,  
13 the development office park, none of those types  
14 of projects are water dependent projects. So  
15 from the very beginning of a regulatory  
16 perspective, those are viewed as not being water  
17 dependent projects and, therefore, there must be  
18 an alternative to having those projects located  
19 such that impact the water resource. In this  
20 case: wetland.

21 That water dependency test involves a  
22 sequencing requirement which requires a permit  
23 applicant that is proposing to impact the  
24 wetland to first demonstrate that there is no  
25 way to satisfy the project purpose without

1 avoiding a wetland impact. And that  
2 demonstration has to include also looking at  
3 other properties.

4 So I promised to interject some  
5 examples of projects without getting into the  
6 details. A client of ours that had owned  
7 property for over 25 years, obviously when he  
8 purchased the property the wetlands regulations  
9 were not in place as they are now, he had to  
10 consider acquiring additional properties to  
11 satisfy his project purpose.

12 The second test of the project  
13 sequencing review and that is the first step is  
14 showing that you are not able to fulfill your  
15 purpose without impacting wetlands. If you are  
16 able to demonstrate that, then the second test  
17 that you have got to demonstrate is that you can  
18 not still fulfill your project purpose without  
19 reducing the scope of the project so that you  
20 reduce impacts or minimize the impacts to  
21 wetlands. And if you are able to demonstrate  
22 that, then a permit may be granted contingent  
23 upon mitigation. And under our current  
24 framework of Chapter 105, no permits are issued  
25 without compensating mitigation. So that that

1 is, in very brief summary, the project  
2 permitting requirements. That is, by no means,  
3 an easy task.

4           When I talk about the next item there,  
5 the permitting process as being arduous and time  
6 consuming, that sequence that I just talked  
7 about in terms of project sequencing and  
8 demonstrating water dependency, that process, in  
9 my experience in the past five or six years, has  
10 ranged from three months to 15 months. And you  
11 say, well, gee, if everyone is following  
12 Chapter 105, the same rules and regulations, how  
13 can you have such a variance in time? You know,  
14 were you dealing with 12 acres of wetlands that  
15 were extremely valuable and had high values and  
16 functions? You know, how can that happen?

17           That's the real premise of why I feel  
18 in my experience we need legislation to reform  
19 the process. It comes down to subjectivity, it  
20 comes down to political pressure and it comes  
21 down to the noisy wheel gets the grease.

22           The one client that was doing  
23 residential developments in northern Allegheny  
24 County that took 16 months to get a permit  
25 through the Pennsylvania Department of

1 Environmental Resources (now DEP) for six-tenths  
2 of an acre of wetland, got stuck in the system,  
3 had no political clout, had no connections, just  
4 went through the system, went through the  
5 process working with the people in DEP. Sixteen  
6 months later, he got his permit for six-tenths  
7 of an acre.

8 Grove City Factory Shops, the project  
9 that has been referenced in the gentleman  
10 providing testimony before me, a permit was  
11 issued there and in a little less than six  
12 months for six and a half acres of wetlands  
13 fill, with the resulting mitigation of 10 acres.  
14 That's the way that the permitting process goes.

15 Interesting, another project we had, an  
16 educational institution in the central part of  
17 the state, obviously land that they had owned  
18 for many years, was developing a new classroom  
19 building. It turned out that -- and this was in  
20 a high upland area -- there were some  
21 depressional topographical features within their  
22 proposed footprints, their proposed new  
23 classroom building. At the last minute, the  
24 local municipality there raised the issue of:  
25 well, before we issue you a building permit, you

1 have not demonstrated that you don't have any  
2 wetlands on the site.

3           Going through the delineation  
4 methodology, they came up with three-tenths of  
5 an acre of topographical depressions (in a  
6 layman's terms, basically puddles) that by  
7 definition met the criteria. However, in that  
8 particular case, the Department of Environmental  
9 Resources, at that time as they were known,  
10 waived the requirements for sequencing, they  
11 waived the requirements for mitigation and  
12 granted a permit in approximately three months  
13 time that allowed that construction project to  
14 go ahead.

15           Again, all those types of ranges and  
16 examples of projects supposedly occurring in the  
17 same book of regulations. Again, the theme  
18 being that there is a lot of subjectivity  
19 involved in it. And I think that things need to  
20 be better defined by science so that there are  
21 responsible time frames for permitting and  
22 everyone is on a level playing field.

23           This kind of hits on my next item there  
24 which was inconsistencies and regulatory  
25 interpretation of the regulations and policies.

1 I think just those examples that I cited show  
2 you the inconsistencies that you will find. It  
3 varies from offices of DEP. Our experience in  
4 the past couple of years with the Meadville  
5 Office, the regional office in the northwestern  
6 part of the state, has been very good people to  
7 work with, responsive to the needs, responsive  
8 to an applicant's needs, also being responsive  
9 to the environment.

10 I can sympathize. I am not at this  
11 point condemning the people that do the  
12 Department of Environmental Protection. They  
13 are very quality people, well-educated, trying  
14 to do their job and I think what we have to do  
15 is help them to do their jobs more fairly and  
16 not to put them under the pressures that they  
17 sometimes feel. But there is a great deal of  
18 difference between different offices of the  
19 Department of Environmental Protection, in terms  
20 of how fast the permits are reviewed, how  
21 strictly they look at water dependency, and how  
22 they present the policy in terms of mitigation  
23 and what they want to accomplish on mitigation  
24 objectives.

25 The other problems that we have in

1 Pennsylvania with our current permitting process  
2 is there are conflicts with federal permits. I  
3 touched briefly the fact that the federal  
4 agencies involved that are Corps of Engineers  
5 primarily with EPO oversight. For example,  
6 there are three nationwide permits the Corps of  
7 Engineers has in place: Nationwide Permit-14,  
8 Nationwide Permit-18 and Nationwide Permit-26  
9 that permit minor wetlands fills.

10 And particularly Nationwide Permit-26  
11 is a real stumbling block in Pennsylvania. It  
12 is a permit that the Corps of Engineers has  
13 issued which automatically authorizes wetland  
14 fills under certain criteria of less than one  
15 acre if they are in headwater conditions.

16 Currently, the regulatory framework in  
17 Pennsylvania does not acknowledge Nationwide  
18 Permit-26 in terms of granting water quality,  
19 state water quality certification. So in very  
20 simple terms, Nationwide Permit-26 cannot be  
21 used in Pennsylvania for wetlands fills of less  
22 than an acre and in headwater condition.

23 To put that into a layman's  
24 perspective: if I have a project in Ohio that it  
25 meets -- and I am over-simplifying things here

1 -- if there is a lot of criteria to meet, you  
2 consider it a headwater condition. But if there  
3 are headwater conditions met in Ohio, there is  
4 no need for any state permitting for impacting  
5 those wetlands. In Pennsylvania, you would be  
6 going through a complete individual permit  
7 application that is going to take you anywhere  
8 from four to six to eight months.

9           The last item is kind of a summary.  
10 The reason we need legislative change to improve  
11 our regulatory process -- and again it is not to  
12 scrap it or completely abandon it; I think a lot  
13 of provisions, my professional opinion is that  
14 there are very good provisions in Chapter 105,  
15 as it currently exists, particularly the  
16 provisions and the definitions of wetland values  
17 and functions, the mitigation strategy that's in  
18 105 are very good features -- I just believe  
19 that there needs to be an improvement,  
20 particularly with the advances that occurred in  
21 wetland science, in wetland issues over the past  
22 five years, stemming primarily from the public  
23 involvement.

24           As the gentleman presented testimony  
25 before me, you heard, you know, firsthand, some

1 stories of the average person and what they are  
2 facing in terms of trying to do their business  
3 and develop their business, is we need fair and  
4 consistent permitting procedures. The NAIOP  
5 position paper strongly advocates that. The  
6 bills being considered by this Committee  
7 advocate that as well as national legislation  
8 being considered. Those permitting procedures  
9 will be streamline and made more effective and  
10 timely if there are classification systems in  
11 place and more responsible time frames for  
12 making a permit decision in allowing for an  
13 appeal process.

14 The second item is an analysis of the  
15 overall environmental impacts of the site and to  
16 the watershed. Right now, the permitting  
17 program almost has blinders on. I can cite  
18 another example where a project in western  
19 Pennsylvania, a residential development, a large  
20 tract of property with one access to the  
21 property, one sole access from public roadways,  
22 that access crossed a drainageway. To get  
23 access to the property that drainageway had to  
24 be encroached upon, there were wetlands present  
25 in the drainageway, there was an impact of

1 three-tenths of an acre. That was minimized.  
2 The developer demonstrated the fact that he  
3 minimized everything to the extent that he could  
4 and still needed to impact three-tenths of an  
5 acre.

6 The rest of the property was that  
7 developer was required to do three-tenths of an  
8 acre of mitigation, which involved disturbing  
9 approximately ten acres of land and excavating  
10 over 40,000 yards of dirt and taking out over  
11 100 and 200 year old trees to make a  
12 three-tenths of an acre depressional area in an  
13 upland setting as part of his project approval.

14 That really is not, in my perspective,  
15 looking out for the overall environmental  
16 benefits of that project or of the resources on  
17 that particular site. I would like to see the  
18 new systems look not only at the site, but the  
19 overall impact to the watershed and the stream  
20 settings that these projects are located, that  
21 these impacts are proposed.

22 Mitigation of impacts goes hand in hand  
23 with that. There needs to be looked at at-site  
24 specific and watershed specific information on  
25 values and functions, what values and functions

1 are going to be lost by impact and how could  
2 those be mitigated effectively to the overall  
3 benefit of the environment in that setting.

4 Mitigation banking is an issue that I  
5 would like to see a regulatory reform include.  
6 Many states have endorsed this concept, many  
7 Departments of Transportation have endorsed this  
8 concept. One of the state agencies that is  
9 frustrated the most by wetlands impact and  
10 wetlands regulatory problems is PennDOT. A lot  
11 of states, and now their Departments of  
12 Transportation, are creating wetlands banks that  
13 then can be used to offset impacts from highway  
14 and construction projects.

15 Consideration of storm water management  
16 issues, I think is another aspect of wetlands  
17 reform that could go, serve dual benefits in  
18 terms of helping to alleviate negative impacts  
19 that exist in predeveloped areas that have  
20 resulted from increased storm water runoff.

21 And the other issue is the real reason  
22 to reform the regulatory process is in  
23 consideration of the current changes and  
24 revisions that have been occurring to the  
25 federal program. For example, some of the

1 things that have been touched on in the previous  
2 testimony: there has been new permits; there is  
3 a state programmatic general permit that was  
4 issued by the Corps of Engineers and accepted by  
5 the Department of Environmental Protection;  
6 there has been a new wetlands residential permit  
7 that was alluded to in the previous testimony  
8 with some questions; there has been a creation  
9 of a wetlands replacement fund.

10 The wetlands right now is very dynamic.  
11 It is encouraging to see that because, for many  
12 years in the '80s, it was stagnant, there was no  
13 change and just a lot of difficulties in working  
14 with the current regulatory framework. So with  
15 the process being very dynamic right now, we  
16 need to get our program, I think, in my opinion,  
17 we need to get it also dynamic, address the  
18 changes that are evolving presently in front of  
19 us and make it more responsive to both the  
20 citizens, the environment and the development.  
21 And that concludes my testimony.

22 CHAIRMAN REBER: Thank you very much,  
23 Mr. Quatchak. Your testimony was quite  
24 enlightening from the standpoint of a primer, if  
25 you will, on Chapter 105 and the ancillary and

1 other state regulations and the federal  
2 regulations.

3 I would ask each and every member of  
4 the panel to look at their watch, to look at the  
5 agenda, to look at the time frame set forth in  
6 the agenda. And as I am going to do, I am going  
7 to refrain from asking any questions of the  
8 witness as well as a number of other witnesses.  
9 And if I do have any anything of burning  
10 importance, I am sure they would have no  
11 objection to responding to an inquiry that I  
12 might place with them in writing at a later date  
13 if there is any analytical data that I want to  
14 discuss. So I would hope that any of the  
15 Members of the Committee would take under  
16 advisement the time constraints we do have. I  
17 know a number of members have come a great,  
18 great distance and have flights to catch later  
19 this afternoon, so I am going to remind everyone  
20 at this point in time.

21 I was remiss in not recognizing  
22 Representative David Levdansky who joined the  
23 Committee during the testimony of the first  
24 witness. David, welcome. I will recognize you  
25 first in light of the fact that you were not

1 here earlier. Is there anything you have a  
2 burning desire to question this witness with?

3 REP. LEVDANSKY: I don't know whether  
4 it is burning or not, but I think it is  
5 appropriate. I am looking at who all is going  
6 to testify. And I would like this gentleman's  
7 perspective. He raised one issue in particular,  
8 I just want to follow up on that in one question  
9 with: you gave three examples of how long it  
10 takes to get a permit, fluctuating from three  
11 months to sixteen months in your experience.  
12 Just real quick. I mean, two of the ones that  
13 you mentioned, I know in terms of Allegheny  
14 County versus Grove City (which is a whole,  
15 another DER region) versus that school district  
16 or whatever up in north-central Pennsylvania,  
17 those are at least three DER districts, and I  
18 think one of the downsides of decentralized  
19 management is that you can't have different  
20 kinds of decision making processes go on within  
21 regions of DER. I think that is just one of the  
22 downsides of DER's decision a couple of years  
23 ago to, in fact, let the local regional offices  
24 be more involved in the actual decisions that  
25 are made.

1           And in particular, you mentioned the  
2 Allegheny County, 16 months. I mean, Chuck  
3 DeReese's (phonetic) people down there are  
4 really good with the whole host of DER programs,  
5 but they don't have a whole lot of wetlands down  
6 in Allegheny County, the southwestern  
7 Pennsylvania, so he doesn't have a lot of staff  
8 people that really learn a lot about DER, about  
9 all of these regulatory schemes, national and  
10 state as well. So I think there is a real  
11 differentiation between also the quality of the  
12 staff between DER regions as well and a lot of  
13 that contributes, I think, to such a variety of  
14 time frames for making these decisions.

15           But let me ask you this: how long do  
16 you think is a fair time frame for the permit  
17 process for wetlands in terms of the decision  
18 and the appeal process?

19           What do you think, in your professional  
20 experience, what is the appropriate time frame  
21 from your particular perspective?

22           MR. QUATCHAK: Sure, I would welcome  
23 the opportunity to briefly respond to that  
24 question.

25           First of all, I do want to go on record

1 from my professional experience, DEP's decision  
2 to decentralize wetlands programs was the best  
3 thing they ever did. The 16 month horror story  
4 was when wetlands, all wetlands permits went  
5 through the Harrisburg regional office. It was  
6 a nightmare. You had to schedule meetings in  
7 Harrisburg at least two to three months in  
8 advance when you wanted to have the meeting to  
9 even get them to see you and consider a wetland  
10 application. So the decision by the Department  
11 to decentralize the whole wetlands functions in  
12 the branch offices, the regional offices, was  
13 the best thing that ever happened.

14 I think the need to in-house provide  
15 proper training to eliminate differences in  
16 policy is paramount. As a firm of 68 employees  
17 at my firm, we like our employees to know the  
18 policies of the firm and, therefore, we provide  
19 training on that. The Department of  
20 Environmental Protection just needs to do the  
21 same thing, in terms of developing consistencies  
22 with its field offices.

23 The people at DEP do a wonderful job.  
24 We just recently got a wetlands permit through  
25 the Pittsburgh regional office in less than

1 three months time. So I think all the offices  
2 are doing as best they can.

3 To answer your question, sir, I think  
4 from my perspective, a reasonable amount of time  
5 would be a 60 to 90 day time frame for a permit  
6 decision. You have got to provide ample time to  
7 look at the sites, research the values and  
8 functions and then draw a conclusion.

9 REP. LEVDANSKY: Thank you.

10 CHAIRMAN REBER: Thank you, Dave.

11 Any questions from any other members to  
12 my right?

13 Representative Vitali has one question.

14 REP. VITALI: It is only one question,  
15 but it has about 14 subparts. Just kidding.

16 A lot of what I heard from you and the  
17 other gentleman strikes me (for example,  
18 inconsistencies in applications of the law and  
19 anecdotal information about what one gentleman  
20 from the DER said and require to be done)  
21 strikes me as perhaps an example of the need to  
22 improve management as opposed to specific  
23 legislative changes that are being proposed.  
24 Do you think, for example, that the  
25 inconsistencies could be addressed through

1 change in management approaches?

2 MR. QUATCHAK: Well, I think that  
3 certainly there is always ways to improve  
4 management. As an owner of a business, we are  
5 always looking for ways to improve our  
6 management. So there certainly could be  
7 improvement in management. However, I have seen  
8 a great deal of change in management strategy in  
9 programs within the Department and I think they  
10 are really making long, big steps toward  
11 improving their operations. However, you know,  
12 I think the reason, one of the primary reasons I  
13 feel that legislation is necessary, is the fact  
14 that these things can change over night. The  
15 difference between when the Ridge Administration  
16 took over and how permits are being reviewed  
17 within the Commonwealth, it's like a switch went  
18 on, it is like night and day. And when there is  
19 another election, that can change again and  
20 there can be variations of that again.

21 REP. VITALI: In other words, what you  
22 are saying is existing law, when applied by a  
23 good administration, it works, it is fine?

24 MR. QUATCHAK: Well, yes and no. I  
25 mean, it is different ways that some of these

1 matters are being interpreted and being applied  
2 in permit decisions.

3 REP. VITALI: But it is not the letter  
4 of the law itself really which needs to be  
5 changed, but when you ensure its application is  
6 appropriate?

7 MR. QUATCHAK: In my opinion, it's  
8 both, it is both of those issues.

9 REP. VITALI: The time frame, I think  
10 is not a problem. You had mentioned time frame  
11 as a permitting deadline, but I don't think  
12 that's a real concern among environmentalists.

13 What other specific legislative changes  
14 do you think are required here?

15 MR. QUATCHAK: Well, the legislative  
16 changes that are contained within the bills that  
17 are being considered, the ones that I touched  
18 on.

19 REP. VITALI: Well, if you could be  
20 specific? What, how do you think the law and  
21 regulations need to be changed? What specific  
22 provisions need to be changed to improve and why  
23 are those changes needed?

24 MR. QUATCHAK: The need for a wetlands  
25 classification system? Right now, with two

1 classes: exceptional value and all other.

2 REP. VITALI: And tell me how that will  
3 improve things.

4 MR. QUATCHAK: How the classification?  
5 Well, the classification by itself will give you  
6 information on the values and functions that are  
7 present in that particular wetland and that will  
8 go a great deal in helping --

9 REP. VITALI: Why will that happen? I  
10 mean, I see the Fargo classification system.  
11 But wetlands are put into those three boxes, why  
12 will that tell us anything about those wetlands?

13 MR. QUATCHAK: The classification  
14 systems that have been proposed by  
15 Representative Fargo, as well as other  
16 legislation being considered nationally, also  
17 have with them the permitting issues, such as  
18 the type, the certain, the lowest classification  
19 of wetlands of whatever system has with it the  
20 no requirement for individual permit. There is  
21 another classification that has a permitting  
22 requirement that, you know, with mitigation,  
23 compensation mitigation

24 REP. VITALI: You will agree that that  
25 classification scheme, with regard to Category

1 C, takes away wetlands protection in a  
2 significant group of wetlands and Category B  
3 does the same because it would, in effect,  
4 require compensation. That's a drastic  
5 difference from the current system and it would  
6 -- pardon the pun -- open flood gates, many  
7 fear, to development.

8 Now, that seems inconsistent with what  
9 you are saying with regard to the system right  
10 now is working well under the management. The  
11 Fargo, and with due respect to Representative  
12 Fargo, is a dramatic, many people feel, change  
13 from what we are doing now, not simply a  
14 managerial adjustment.

15 MR. QUATCHAK: Well, I think the system  
16 is working well right now, but the system is  
17 working well now because it's being applied.  
18 The current requirements in Chapter 105 aren't  
19 being strictly adhered to, in terms of the water  
20 dependency.

21 REP. VITALI: What other changes do you  
22 think are needed here?

23 MR. QUATCHAK: Well, the time frame,  
24 you know, establishing a fair and realistic time  
25 frame for permit decisions to be issued and I

1 think really the issue of wetland mitigation  
2 banking and overall watershed planning is an  
3 important issue that should go into any changes  
4 to the regulatory program.

5 REP. VITALI: Thank you very much.

6 Thank you, Mr. Chairman.

7 CHAIRMAN REBER: Any questions,  
8 Representative Fargo?

9 REP. FARGO: Thank you, Greg. I really  
10 appreciate, as the Chairman has indicated, the  
11 the primer that you have given us on this whole  
12 issue and as far as the code is concerned. I  
13 asked Eric about the property over there. Is  
14 the property at the Grove City Factory Shops,  
15 would that have been a wetland if 79 had not  
16 gone up through it?

17 MR. QUATCHAK: Yeah, the original site  
18 where the Grove City Factory Shops was developed  
19 does have a natural stream corridor there that  
20 those were wetlands that were present.

21 REP. FARGO: That is really the  
22 headwaters for some areas?

23 MR. QUATCHAK: That's correct, it is  
24 the very headwaters. Now PennDOT did put a  
25 culvert under it, I-79, when it was constructed.

1 Our further analysis of that culvert, when we  
2 were doing the sign work for the Factory Shop,  
3 showed that the culvert was inadequately sized  
4 so it may have contributed to backwater backup  
5 of high recurrence interval storms probably  
6 enhanced the wetlands. But those wetlands, in  
7 my opinion, were probably there from the  
8 beginning. They were headwater condition.

9 REP. FARGO: In the area that you  
10 mitigated, was that part of that headwater  
11 condition?

12 MR. QUATCHAK: Yeah, the areas that the  
13 mitigation was created on were isolated upland  
14 areas with a major wetland complex on the other  
15 side of 79. There is a major wetland complex on  
16 each side of I-79.

17 REP. FARGO: Thanks again.

18 MR. QUATCHAK: You are welcome.

19 REP. STEELMAN: Thank you, Mr.

20 Chairman.

21 One question and one comment. When you  
22 were starting your testimony, you mentioned that  
23 there has been a good deal of work done on the  
24 biology and biochemistry of wetlands within the  
25 last decade, I think?

1 MR. QUATCHAK: Yes.

2 REP. STEELMAN: And that we have a much  
3 better quantifiable understanding of functions  
4 of wetlands and you felt that that, that those  
5 scientific advances ought to be taken into  
6 account in the legislation?

7 MR. QUATCHAK: In the regulatory  
8 reform, whether it is through legislation that  
9 prompts it.

10 REP. STEELMAN: Okay. Right. The  
11 question that I had then was, on the basis of  
12 what you said, I am thinking that the  
13 classifications of wetlands that we have in both  
14 of these bills are probably relatively  
15 unsophisticated in relation to our current  
16 understanding of what wetlands do. Would you  
17 propose that we try to improve the  
18 classification system within the legislation  
19 itself or that we try to perhaps create a  
20 broader mandate within the legislation for the  
21 regulatory process to develop classifications  
22 based on existing scientific knowledge?

23 MR. QUATCHAK: Well, that's my  
24 understanding. I think that, for example, the  
25 bill that Representative Fargo, with his

1 classification system, my understanding or  
2 interpretation of that is that that will go back  
3 to a regulatory arm. Those are broad  
4 classifications that then will be determined  
5 from science what actually constitutes those,  
6 what is the real definition of those  
7 classifications based on values and functions.  
8 That is the way it should proceed.

9 REP. STEELMAN: Well, having some  
10 experience with what happens when we create  
11 broad classifications and ask the regulatory  
12 agencies (for example the Department of Revenue  
13 even) to decide what falls into those  
14 classifications, I am thinking from what you are  
15 saying that, perhaps, we need some further  
16 definitions in the bill or some further language  
17 that explains to the regulatory agency what they  
18 need to do.

19 But you are saying that at least it is  
20 possible at this point to get a much better  
21 definition of what individual wetlands do and  
22 how that fits into the broad continuum of  
23 wetlands function than we could 10 or 15 years  
24 ago?

25 MR. QUATCHAK: That is correct, that's

1 my opinion.

2 REP. STEELMAN: Okay. Thanks.

3 And one quick comment. I very much  
4 like your idea, the idea that's been brooded  
5 about, that we should have a map of all the  
6 wetlands in the Commonwealth so that prospective  
7 buyers would know what they are getting into.  
8 On the other hand, I have been trying for the  
9 last five years to make it law in Pennsylvania  
10 that sellers have to notify buyers that they are  
11 actually buying property in a flood plain and  
12 the resistance to having that become law has  
13 been amazing. So we start actually trying to  
14 require that buyers know if they are getting  
15 into a wetland, I assure you, there will be  
16 great wailing and gnashing of teeth over that.

17 CHAIRMAN REBER: The Chair thanks the  
18 lady.

19 Anyone to my left?

20 (No response.)

21 CHAIRMAN REBER: Thank you very much,  
22 Mr. Quatchak. I think from my own personal  
23 perspective, and I think the members certainly  
24 recognize, that I guess as an overview, your  
25 testimony notes that there is need both on the

1 procedural side as to the permitting review  
2 aspects and the administration of those permits  
3 as well as some specific substantive areas that  
4 need remediation, if you will, in this issue.  
5 And I think your delineations set forth both of  
6 those areas very well and I appreciate your time  
7 and your testimony.

8 MR. QUATCHAK: Thank you very much.

9 CHAIRMAN REBER: Thank you.

10 Our next witness is Mr. Davitt  
11 Woodwell, a Western Pennsylvania Director of the  
12 Pennsylvania Environmental Council.

13 Good morning, Mr. Woodwell.

14 MR. WOODWELL: Good morning, Mr.  
15 Chairman.

16 Mr. Chairman, Members of the Committee,  
17 good morning. My name is Davitt Woodwell, I am  
18 Director of the Western Pennsylvania Office of  
19 the Western Pennsylvania Environmental Council.  
20 On behalf of the Council, I want to thank you  
21 for giving us this opportunity to testify on an  
22 issue of great importance to the Council and its  
23 members across the Commonwealth.

24 The Pennsylvania Environmental Council  
25 is a statewide nonprofit, nongovernment

1 environmental education and advocacy  
2 organization. Founded in 1970, the Council has  
3 been involved in a wide array of environmental  
4 issues over the last quarter century. One of  
5 the most important of these has been the  
6 question of how best to conserve our vitally  
7 important wetland resources while still  
8 encouraging the economic development that is key  
9 to the Commonwealth's future.

10 The Council has followed the debate  
11 surrounding wetlands for years and stands by a  
12 strong commitment to conserve and protect these  
13 resources because of their natural and economic  
14 importance. We also believe that the current  
15 system of regulation of development of wetlands  
16 is, with minor modifications in the permitting  
17 process, the proper approach to managing these  
18 resources.

19 Because this hearing is designed to  
20 address issues broadly, rather than to focus on  
21 a specific piece of legislation, I will be  
22 discussing several aspects of wetlands  
23 protection and conservation. These are: the  
24 effects of the current system of regulation,  
25 proposals for classifying wetlands, proposals

1 for compensating landowners for the impact of  
2 wetlands regulation, taxation issues and the  
3 Ridge Administration's Wetlands Initiative.

4 Wetlands are clearly an important  
5 natural and economic resource for Pennsylvania  
6 and the nation. At no point during the recent  
7 debate on wetlands has anyone, to my knowledge,  
8 stated that wetlands are insignificant or should  
9 be destroyed. The importance of wetlands for  
10 flood control, water purification and the  
11 propagation and support of species including  
12 commercial and sports fisheries and games  
13 species has been well-documented.

14 In fact, a study by the National  
15 Audubon Society puts the positive economic  
16 impact of wetlands nationally at between  
17 twenty-five and seventy-two billion dollars per  
18 year. And recent flood events in the west and  
19 midwest have resulted in findings by the Army  
20 Corps of Engineers that the damage could have  
21 been greatly reduced if wetlands had not been as  
22 seriously impacted by development as they were.

23 And yet, there is great debate about  
24 the federal and state programs. The Council  
25 believes that the reason for this debate is that

1 the current system of regulation is, to all but  
2 those who deal with it on a regular basis, a  
3 seeming morass of agencies, permit applications  
4 and confusion. In traveling around the state,  
5 the complaints and horror stories that I have  
6 heard about the wetlands program have not been  
7 about the taking of property so much as about  
8 the uncertainty of and the time taken in the  
9 permitting process.

10           However, these complaints are  
11 underscored by two facts. The first is that the  
12 average time for a permit application to be  
13 processed under the state Chapter 105 program  
14 has dropped by approximately 20 percent over the  
15 last year. And those applying to fill a wetland  
16 under a state general permit can get their  
17 permit within one week to two months.

18           Second, the vast majority of permit  
19 applicants get a permit. A study of the state  
20 program by the Department of Environmental  
21 Protection (while it was DER) shows that, for  
22 1992, over 90 percent of permit applicants  
23 received a permit.

24           With these facts in hand, it is  
25 necessary to ask where the perceived problem

1 with the program lies. It is the position of  
2 the Pennsylvania Environmental Council that the  
3 perceived problems can be addressed by  
4 streamlining the permit process and identifying  
5 one agency that is responsible to the public,  
6 with input from others, for the issuance of all  
7 wetland permits.

8 A number of proposals have been  
9 introduced that include the classification of  
10 wetlands, often as types A, B, and C with A  
11 being defined as the highest value wetland. The  
12 Council has previously taken strong positions  
13 against this type of broad, regulatory  
14 classification of wetlands when a program allows  
15 for permit-less development or requires  
16 immediate compensation in one of the classes.

17 While broad classifications of wetlands  
18 appear to solve some of the regulatory issues of  
19 wetland delineation, they fail to take into  
20 account the interrelatedness and  
21 interconnectedness of individual wetlands  
22 working together in a watershed. This is  
23 especially true when such classifications call  
24 for allowing development in all class C  
25 wetlands. Bolstering this is the admonition in

1 Pennsylvania wetland programs that, quote, the  
2 cumulative impact of a project and other  
3 potential or existing projects be determined,  
4 end quote.

5 The Council's position is that wetlands  
6 must continue to be assessed on a permit by  
7 permit basis except when a general permit has  
8 been properly developed and defined to address a  
9 particular type of situation, such as certain  
10 agricultural uses.

11 There has also been a great deal of  
12 debate at the state and federal level about  
13 compensating landowners when the government  
14 regulates property. One of the programs at the  
15 heart of this debate has been the conservation  
16 of wetlands.

17 The Council fully supports the just  
18 compensation provisions of the United States and  
19 Pennsylvania Constitutions. These provisions  
20 require that just compensation be paid whenever  
21 private property is taken for public use.  
22 Generally, wetlands regulations do not take  
23 property for public use, rather they protect  
24 against the public harm that would result were  
25 wetlands indiscriminately filled.

1           We also believe that the courts are the  
2 proper forum for deciding when compensation is  
3 due. For the last century, the courts have  
4 grappled with difficult questions as they  
5 balanced the ability of a property owner to use  
6 that property with the need to ensure that that  
7 use does not harm others in the community. The  
8 result is a careful case by case assessment of  
9 the facts of each compensation claim.

10           Legislating broad compensation in the  
11 wetlands program, much broader than required by  
12 the Supreme Court, removes the case by case  
13 analysis and would require payment no matter the  
14 landowner's intent for the property. The  
15 Council does not support this approach.

16           A criticism of keeping the process in  
17 the courts is that it simply costs too much  
18 money for a landowner to pursue a compensation  
19 claim through the courts. This criticism could  
20 be addressed by the formation of a law panel  
21 chartered to hear such claims shortly after  
22 denial of a permit. Such a panel would be  
23 mandated to apply the Supreme Court's balancing  
24 of factors in arriving at its decision.

25           However, because so few wetland permits are

1 denied, the panel might not have a large  
2 caseload.

3           There has also been discussion of  
4 giving wetlands a preferential tax assessment  
5 once a permit has been denied. The Council  
6 supports exploring the possibility of assessing  
7 wetlands at a different level than other lands  
8 in an effort to conserve these important  
9 resources. However, we do have some concern  
10 with applying that assessment only to those  
11 wetlands that have been denied permits for  
12 development.

13           A better approach, and one that would  
14 be more equitable to those who voluntarily  
15 conserve wetlands, might be a program along the  
16 lines of the state's existing Clean and Green  
17 program which gives tax breaks but requires that  
18 the resources be left in its current state. If  
19 the use is changed, then the landowner is  
20 required to pay a penalty based on the avoided  
21 taxes.

22           The Ridge Administration recently  
23 unveiled its Wetlands Initiative for  
24 reconsidering various aspects of Pennsylvania's  
25 wetland program. While the Council does not

1 agree with all aspects of the Initiative, we do  
2 believe that this approach is preferable to  
3 legislatively changing the program. This is  
4 because the administrative approach, involving  
5 all stakeholders, can better identify those  
6 areas that generate the most controversy and  
7 address them.

8           As stated earlier, most of the concern  
9 with the program appears to be in how the permit  
10 process is applied. Allowing the Department of  
11 Environmental Protection to investigate these  
12 areas and refine the process can result in a  
13 more effective and efficient wetlands program in  
14 Pennsylvania. Indeed, the Department issued a  
15 report last year reviewing the program and has  
16 already decentralized its permitting processes  
17 in order to encourage more timely permitting  
18 decisions.

19           As a result, the Council encourages  
20 this Committee to closely follow the activities  
21 of the Department in its Wetlands Initiative  
22 and, before taking or encouraging legislative  
23 action, to review the results of the Initiative  
24 as they apply to the concerns of the Committee  
25 and those of the various stakeholders in the

1 wetlands program.

2 I would also like to take this  
3 opportunity to encourage the Committee to take  
4 with a grain of salt all so-called wetland  
5 horror stories. Throughout the country, tales  
6 are being told of lives being ruined because of  
7 regulation of wetlands and other environmental  
8 resources. Usually these are compelling stories  
9 of government regulators running roughshod on  
10 the rights of small landowners whose only crime  
11 is the pursuit of the American Dream.

12 Were these stories all true, I would be  
13 the first to encourage wholesale change in the  
14 wetlands program. But, unfortunately, the  
15 stories often tell only half the facts and leave  
16 out critical information that tends to mitigate  
17 the impact of the story, if not change it  
18 completely. Such editing serves only to cloud  
19 the goal that I hope we all share: to ensure a  
20 wetlands program in Pennsylvania that protects  
21 and conserves valuable natural resources while  
22 at the same time recognizing the realities of  
23 our economic needs.

24 So, when you are confronted with one of  
25 these horror stories, please make sure that all

1 the facts have been presented. Also, I have  
2 available a collection of these stories from  
3 around the country that include both the story  
4 and the rest of the story. More copies of this  
5 compendium are available if you would like.

6 In conclusion, the Pennsylvania  
7 Environmental Council supports the current  
8 method of protecting the public health, safety  
9 and welfare by requiring a permit to undertake  
10 development activities in wetlands. However,  
11 the program should be examined to determine how  
12 to best improve it. This is currently being  
13 undertaken by the Department of Environmental  
14 Protection and the Department should be  
15 encouraged in these efforts to address  
16 criticisms of the program.

17 Again, I would like to thank the  
18 Committee for providing us with an opportunity  
19 to testify on this important issue.

20 CHAIRMAN REBER: I think it's extremely  
21 important to recognize some of the things that  
22 you reference in your testimony and I think it's  
23 things that this Committee certainly will be  
24 taking a look at as this particular issue  
25 continues to evolve and I think they basically

1 fall into the area, from my mind at least, of  
2 the uncertainty as you say in the time taken in  
3 the permitting process, the fact of the  
4 accountability of one agency taking full  
5 responsibility.

6 I think the issue relative to the  
7 taking of property for public use has to be  
8 looked at and looked at in the sense of the  
9 taking for public use obviously as mandated  
10 under eminent domain law as we know it in the  
11 court systems.

12 And I think additionally there is some  
13 interest in my mind of looking at the tax break  
14 aspect, as you referenced in your testimony on  
15 page six. And also specifically giving the  
16 Wetlands Initiative that the DEP has promulgated  
17 vis-a-vis the Ridge Initiative, as you call it,  
18 the opportunity for full and open consideration  
19 of discussion. I think that is an area also  
20 that we are going to be looking at. So I  
21 appreciate those remarks and those comments  
22 individually as a member of this Committee.

23 Looking to my left, are there any  
24 questions of this witness?

25 Representative Brown.

1           REP. BROWN: Yes, Mr. Chairman. Thank  
2 you.

3           One of your comments talked about one  
4 agency. You are assuming, or we are assuming,  
5 one state and one federal agency?

6           MR. WOODWELL: I think you could even  
7 go further and talk about one-stop shopping, in  
8 general, if that's something considered, yes.

9           REP. BROWN: With one state and one  
10 federal agency, do you have a suggestion on what  
11 agency that would be?

12           MR. WOODWELL: Off of the top of my  
13 head, I would say DEP.

14           REP. BROWN: And on the federal level?

15           MR. WOODWELL: Well, don't forget what  
16 is said in here is one agency with input from  
17 all the others affected so it is not just a  
18 closed group. So that you have got all the  
19 information coming in still, but that it is much  
20 clearer, sort of where a landowner is to go and  
21 exactly what the process is that is going to  
22 lead this on.

23           REP. BROWN: Okay. Thank you.

24           CHAIRMAN REBER: Representative Lynch.

25           REP. LYNCH: Thank you, Mr. Chairman.

1           Thank you, Mr. Woodwell, for your  
2 testimony. I have a few questions and I will be  
3 brief and I hope to ask them in such a way that  
4 you can answer it with a yes or no or something  
5 like that anyway.

6           The Pennsylvania Environmental Council,  
7 how many members do you have?

8           MR. WOODWELL: Approximately a  
9 thousand, 1500.

10          REP. LYNCH: Fifteen hundred. Who  
11 funds you?

12          MR. WOODWELL: We are funded by a  
13 variety. By our members, our corporate members,  
14 foundations, foundation grants, things like  
15 that.

16          REP. LYNCH: Who are some of your major  
17 contributors?

18          MR. WOODWELL: I would say we have, in  
19 the southwestern Pennsylvania area, for instance  
20 on our Board, Westinghouse is represented, PPG,  
21 a number of law firms and individuals.

22          REP. LYNCH: Is this private  
23 information or public?

24          MR. WOODWELL: No, no, it is just I am  
25 trying to think of this off the top of my head.

1 REP. LYNCH: But is it ...?

2 MR. WOODWELL: Oh, It is public, yeah.

3 REP. LYNCH: Could you provide this

4 REP. LYNCH: Would you provide this

5 Committee within the next week or so?

6 MR. WOODWELL: Within the next day, I

7 could do this.

8 REP. LYNCH: The second question I have  
9 -- and these will be brief questions -- on your  
10 page two. Well, kind of throughout the  
11 testimony, which is excellent testimony, you  
12 mention about the importance of wetlands. Are  
13 you aware of any studies that have been  
14 determined to determine how many acres of  
15 wetlands are necessary in Pennsylvania?

16 MR. WOODWELL: No, I am not.

17 REP. LYNCH: Does anybody know are  
18 necessary or necessary, indicate the importance  
19 of wetlands? Do we really know how many acres  
20 of wetlands are necessary?

21 MR. WOODWELL: No. And I don't know  
22 how you would answer that anyway.

23 REP. LYNCH: I don't either, I don't  
24 either. But often times, we hear people, I hear  
25 people, whether at a hearing like this or within

1 my district, telling me what. You know, we have  
2 to reserve these wetlands.

3 MR. WOODWELL: I think you have to look  
4 at them on a watershed basis and on a wetland by  
5 wetland basis almost because the importance is  
6 so directed towards its geographic locations,  
7 its association with the watershed. And I think  
8 one of the problems is: over time, lawyers like  
9 me have been asked this question. We are not  
10 the ones that should be answering it. It should  
11 be the scientists answering this question.

12 REP. LYNCH: All right. The third  
13 thing, it is more of a comment than anything  
14 else. You mentioned on page three, you said:  
15 second, the vast majority of permit applications  
16 get a permit. I have a question and a comment  
17 there and it may be a hypothetical question.  
18 But the question is: the vast majority of people  
19 get a permit, but are these permits for real  
20 wetland activity? And the reason I ask that  
21 question is this: I have a horror story to tell  
22 you and I will tell you it very quickly and it  
23 won't take that long.

24 But an individual who lives in Warren  
25 County within the district I represent who, on

1 his property, was a recipient of water drainage  
2 from a broken PennDOT culvert pipe that took him  
3 two years and \$25,000 to get the permit. Now,  
4 if this is going into the configuration of a  
5 person getting the permit, I got a hard time  
6 with two years and \$25,000 for a broken culvert  
7 pipe and a couple of cattails sprung up.

8 MR. WOODWELL: I would have a problem  
9 with that, too.

10 REP. LYNCH: I think there are a lot  
11 more of these than what maybe you indicate in  
12 your testimony.

13 MR. WOODWELL: Let me tell also tell  
14 you one of the horror stories which is very  
15 familiar similar to that which was broadcast on  
16 NPR. A farmer from Indiana County had a water  
17 line break on one of his fields and couldn't get  
18 a permit. Talking to the people in Indiana  
19 County, no one knew of anything like this that  
20 had happened -- closest to Kenny's was a sewage  
21 pipe had broken and that nobody wanted to farm  
22 it for a while.

23 REP. LYNCH: That must not be from  
24 northwestern Pennsylvania.

25 MR. WOODWELL: No.

1           REP. LYNCH: They should come up here.  
2 We have a lot more horror stories to tell you.

3           And the last one I would to make is: in  
4 your conclusion, in referring to nothing  
5 specific in the conclusion but just in general,  
6 let me ask you a question. Do wetlands follow  
7 population? You talk here about protecting the  
8 safety of people, but do wetlands follow the  
9 population or vice versa? I mean, is there a  
10 significant amount of the wetlands in  
11 Pennsylvania where the significant amount of the  
12 population is?

13           MR. WOODWELL: I think, yeah, wherever  
14 --

15           REP. LYNCH: Let me anser that for you.  
16 The answer is no. Okay? Most of the wetlands  
17 in Pennsylvania are not in Philadelphia.

18           MR. WOODWELL: Correct.

19           REP. LYNCH: The point I am making is  
20 if wetlands are so significant to the safety of  
21 the people, where are the wetlands in  
22 Philadelphia? I mean, most of the wetlands are  
23 in northwestern Pennsylvania, but yet most of  
24 the population is not there. Do you see what I  
25 am saying?

1 MR. WOODWELL: Yes.

2 REP. LYNCH: Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN REBER: The Chair thanks the  
5 gentleman.

6 Any questions at this end of the table?

7 Representative Vitali.

8 REP. VITALI: Thank you.

9 You had discussed the Ridge Wetlands  
10 Initiative and you indicated that you agree with  
11 some aspects and disagree with some aspects.  
12 Could you discuss, for example, the lot size  
13 requirement to get GP-15 one half acre versus  
14 one-tenth of an acre, the effective date of  
15 subdivision or purchase March of 1995, or it was  
16 October of 1984, the contribution scheme to  
17 national fish and wildlife and the whole issue  
18 of not taking into account the cumulative impact  
19 of all of potentially developed wetlands?

20 MR. WOODWELL: Oh, yes.

21 REP. VITALI: We submitted comments on  
22 GP-15 and had problems with the lot size and  
23 with the date and some problems with the  
24 question of whether you are creating new  
25 wetlands or restoring wetlands and I will put

1 those in order.

2 The lot size issue, half acre versus a  
3 tenth of an acre. A tenth of an acre, you can  
4 still put up a 50 foot by 50 foot house with, I  
5 think it is 1500 square feet left over. And  
6 going back to what you had been asking an  
7 earlier witness, this is talking about that  
8 amount of the lot that you are going to effect.  
9 If you have a lot that is a half acre, if it is  
10 completely wetland, under the tenth of acre  
11 provision, you could still put up a 50 foot by  
12 50 foot house there.

13 It is the feeling of the Environmental  
14 Council and a number of other groups that  
15 commented on this general permit that by going  
16 with a half acre, what you are doing is  
17 potentially allowing such great amount of fill  
18 without really being able to document it on an  
19 individual basis that the impacts to watersheds,  
20 to water purification, to some of the sports  
21 species could be devastating. But with a tenth  
22 of an acre, it is possible to do this without  
23 the same level of cumulative impact and still  
24 keep the watershed in place.

25 The date, one of the reasons we had a

1 problem with the 1995 date, there are those  
2 landowners who have foregone activities since  
3 1984 because of the wetlands program. And what  
4 you are doing is someone who might at an earlier  
5 time developed on these lots, between 1984 and  
6 1995, can set aside wetland areas but they  
7 couldn't do it, would now be in a disadvantage  
8 because they have just waited to fill in those  
9 spots. The other thing is that the law was not  
10 in place in 1984 and investment decisions have  
11 been made based on the fact that that law was in  
12 place since then.

13 The restoration fund, there is some  
14 uncertainty as to whether Partners For Wildlife  
15 will be participating in that. That was a very  
16 important aspect of the program as to whether  
17 they could participate. They have a program of  
18 restoration that is highly successful and  
19 respected. And again the question of whether  
20 you are talking about just creating wetlands  
21 which is very unsuccessful versus restoring  
22 prior wetlands which is very logistic.

23 thank you.

24 CHAIRMAN REBER: Any further questions  
25 to my right?

1           Representative Fargo.

2           REP. FARGO: Thank you, Davitt. I am  
3 going to ask the National Audubon Society  
4 representative, who I think is our last speaker  
5 on this, but on page two, you indicate this  
6 study puts positive economic impact of wetlands  
7 that's twenty-five to seventy-two billion  
8 dollars per year. In a general way, do you have  
9 any idea how they would come up with a figure  
10 like that on a quantitative basis?

11           MR. WOODWELL: Yes. What they did was  
12 they looked at sports fisheries, commercial  
13 fisheries and recreation dollars as well, other  
14 forms of recreation for the nation and put them  
15 all together. One reason for the wide range in  
16 there, is that there is a question as to how you  
17 include the avoided flood impacts, the avoided  
18 impacts of flooding, by saying here are wetlands  
19 that have not been developed and what they are  
20 doing is they are holding back these flood  
21 waters and the flood damage that would result if  
22 that went down is supposed to be that extra  
23 forty billion, or whatever. But that the solid  
24 lower number is taken from the amount people  
25 spend on fishing, birding, paddling, whatever,

1 as well as the commercial fisheries and the  
2 sport fisheries.

3 REP. FARGO: And this is going on the  
4 assumption that all wetlands are eliminated as  
5 compared to having the wetlands that we  
6 presently have?

7 MR. WOODWELL: I don't believe so. I  
8 think this is saying, this is trying to just  
9 look generally at how you can quantitatively  
10 look at the economic benefits associated with  
11 the wetlands.

12 REP. FARGO: You object to the idea of  
13 setting up three classifications of wetlands for  
14 permitting purposes. And we have had an example  
15 here of one. I think Representative Lynch  
16 indicated a broken culvert. And I believe that  
17 a previous speaker talked about factory shops  
18 with six or seven acres of wetlands. Do you  
19 feel that both of those categories should be  
20 handled in the same way, should require the same  
21 permitting, should entail the same process as  
22 far as wetland permitting is concerned?

23 MR. WOODWELL: No. I mean, there is  
24 definitely a difference between normal farming  
25 operations and major development in a wetland.

1           The fact is the shops of Grove City  
2 have gone in are pulling in a great number of  
3 visitors and tourists and money and they were  
4 permitted. And they went through the process  
5 and got a permit fairly quickly. That, as far  
6 as I know, was not really credited as falling  
7 downhill.

8           REP. FARGO: And that is Class B, as  
9 far as my legislation is concerned.

10           Class C is the item that we have got  
11 over here, as far as Representative Lynch is  
12 concerned, that has the same kind of problems,  
13 unless we do set up some kind of classification.  
14 We are not in any way in this legislation, we  
15 are trying to change the scientific  
16 determination of what wetlands is.

17           MR. WOODWELL: But I think two of the  
18 issues that are very important to remember about  
19 is Class B, if a permit is denied in one of the  
20 Class B's, there is compensation that is deemed  
21 to be owed to the property owner at that point,  
22 no matter what the reason for the denial. And  
23 Class C, no matter what the size, is a  
24 permit-less, it's deemed to be developable and  
25 you have automatic -- that's somewhere where,

1 for instance, a general permit might apply in a  
2 better case, but you are at least taking care of  
3 it.

4 REP. FARGO: I would like to have you  
5 describe to the Committee the general permit  
6 idea, but prior to doing that, then your  
7 objection to Class B is not the classification  
8 idea but the fact that there will be some  
9 potential attainment for taking, so far as Class  
10 B is concerned?

11 MR. WOODWELL: That and the  
12 possibility, the hope that if you do a  
13 classification system that you can go back and  
14 look at wetlands over time. Because they, being  
15 natural, they change, evolve, either upgrade or  
16 downgrade over time and then you are not stuck  
17 with one. But I think our main concern here is  
18 with the compensation, with the permit-less  
19 aspect of Class C, and also with going back and  
20 looking at the National Academy of Sciences  
21 Report that was just released that indicates  
22 that there are political considerations that go  
23 into all of these delineations and definitions,  
24 but that the science sort of is -- is have a  
25 harder look, take a look at it. And not being a

1 scientist, I am not qualified to really talk  
2 about it.

3 REP. FARGO: Once more, we are not  
4 challenging the scientific definition of  
5 wetlands in any of this legislation. We are  
6 merely trying to set up categories as far as the  
7 management and the functional use of them is  
8 concerned and the development of them. More the  
9 lack of development of them.

10 MR. WOODWELL: I think some of the  
11 scientific is being challenged, especially when  
12 you get into things like how many days when you  
13 have got standing water on the surface and  
14 things like that. And the National Academy of  
15 Science Report raises some issue with that so  
16 that that is necessarily needed to show that  
17 something is a wetlands.

18 REP. FARGO: But that is part of the  
19 scientific determination under the manuals, is  
20 it not?

21 MR. WOODWELL: It is a lower number  
22 than that. I can't remember specifically what  
23 it is. But the National Academy of Sciences  
24 says there would be understandable political  
25 consideration going into this a little bit, but

1 truly wetland functions, you don't necessarily  
2 have to have that standing water.

3 REP. FARGO: Finally, the state general  
4 permit, which made the permit possible within  
5 one week to two months, would you explain to us,  
6 I don't understand the state general permit and  
7 I probably should.

8 MR. WOODWELL: There are a number of  
9 state general permits and nationwide permits as  
10 well and what they generally do is say that if  
11 you fall within a specifically defined category  
12 of activity that you do not have to go through  
13 the full-blown permit process. You merely would  
14 have to identify what you are going to do, send  
15 in a letter saying you are going to do that to  
16 the appropriate agency and then they will notify  
17 you that you are registered on that permit and  
18 to go ahead with your activity.

19 REP. FARGO: Sounds like Classification  
20 C.

21 MR. WOODWELL: But it is done more on a  
22 basis of looking at the impact of the activity  
23 rather than on the wetland. And what C does is  
24 looks at a wetlands and says that this wetland  
25 is open for all development, rather than saying

1 a particular activity can take place within a  
2 wetland.

3 REP. FARGO: Thank you. I appreciate  
4 your testimony.

5 CHAIRMAN REBER: The Chair thanks the  
6 gentleman.

7 Any further questions?

8 (No response.)

9 CHAIRMAN REBER: Thank you very much,  
10 Mr. Woodwell.

11 We are now 45 minutes behind time and  
12 the luncheon recess is coming into jeopardy, I  
13 remind the members. We may very well have to go  
14 on a dietary budget here as far as our time is  
15 concerned and possibly forego lunch. We do have  
16 some built-in reserve time up til the 2:00  
17 adjournment since we only had scheduled til 1:00  
18 testimony. But, nonetheless, I want to make  
19 sure that we have the opportunity to hear from  
20 all the scheduled witnesses as far as their  
21 remarks are concerned. So, once again, I will  
22 reenforce the questioning to a minimum if at all  
23 possible.

24 Our next witness is Mark S. Henry,  
25 Chairman of the Wetlands Committee of the

1 Pennsylvania Federation of Sportsmen's Clubs,  
2 Incorporated.

3 Mr. Henry, welcome.

4 MR. HENRY: Thank you.

5 Good morning. My name is Mark Henry  
6 and I am here to present testimony on behalf of  
7 the members of the Pennsylvania Federation of  
8 Sportsmen's Clubs.

9 By way of introduction, I am here as a  
10 volunteer for the Federation. I am not a paid  
11 staff member, and I am very concerned about  
12 wetland protection, so I have volunteered to  
13 come and talk to the Committee today about the  
14 Federation's position.

15 In regard to the current testimony, the  
16 Federation, for many years, has recognized the  
17 value of wetlands and the need to implement an  
18 effective and efficient wetland protection  
19 program. The values that we recognize include  
20 their critical role in protecting property  
21 through flood control, ability to improve water  
22 quality and supply, provide a food supply and  
23 serve important ecological functions for the  
24 state's fish, wildlife and plant resources. It  
25 is unfortunate that in years past, these wetland

1 values were not recognized and much of the  
2 Commonwealth's wetlands were degraded and even  
3 destroyed resulting in lost economic  
4 opportunity, property destructions and a loss of  
5 our natural heritage.

6           The Federation further believes that  
7 wetland protection programs need to reflect a  
8 balanced approach that conserves and enhances  
9 wetlands, supports the rights of all property  
10 owners (and when we say that, we include all  
11 property owners and not just those who want to  
12 misuse their property to the detriment of other  
13 people), provides for economic interest and  
14 makes provision for essential public  
15 infrastructure.

16           As a result of our beliefs, the  
17 Federation embraces and promotes the concept of  
18 wetlands education programs, wetland restoration  
19 and enhancement programs and effective and  
20 efficient wetlands protection programs.

21           Having outlined the Federation's  
22 overall wetland philosophy, I would like to  
23 address three specific proposals that are of  
24 importance to the Federation.

25           The first item is the recent

1 legislative proposals to redefine wetlands as  
2 lands that have water present at the surface at  
3 least 21 days during the growing season. This  
4 redefinition will eliminate at least 75 percent  
5 of the remaining wetlands in Pennsylvania from  
6 the permit program. These proposals also  
7 include a classification system that will  
8 further remove from protection another large  
9 acreage of wetlands. These proposals run  
10 counter to the National Academy of Sciences  
11 Report which does not recommend a classification  
12 system, considers facultative as well as  
13 obligate wetland vegetation, and recognizes  
14 subsurface water saturation in determining  
15 wetlands. The Federation believes it is  
16 important to base all wetland programs on good  
17 science rather than arbitrary and unscientific  
18 proposals. Thus, we strongly support the  
19 recommendations of the National Academy of  
20 Sciences rather than the unscientific  
21 legislative proposals.

22 Second, we are concerned about the  
23 cumulative loss of wetlands and the recent  
24 proposal to exempt up to one half acre fills  
25 from the permit process. While we recognize

1 the need to accommodate homeowners who  
2 unknowingly purchased a lot in wetlands, we  
3 believe the one half acre exemption is larger  
4 than it needs to be. In conversations with  
5 Monroe County Conservation District personnel  
6 and othe wetland scientists, the vast majority  
7 of problems could be resolved with a one-tenth  
8 acre exemption. This we feel is a more  
9 appropriate approach and is the one we support.

10 Lastly, the Pennsylvania Department of  
11 Environmental Protection has proposed forming a  
12 Wetlands Management Advisory Committee for the  
13 purpose of consulting with the Department on  
14 rules, regulations, policies, procedures and  
15 other actions that affect wetlands within the  
16 Commonwealth. The Federation supports and  
17 welcomes the formation of such a Committee and  
18 would like to be included. We believe that such  
19 a Committee will provide for a broad diversity  
20 of interests to be able to discuss proposals and  
21 reach a common consensus. With this consensus,  
22 we can provide for practical and workable  
23 wetlands programs and avoid unscientific and  
24 radical programs.

25 I would like to thank the Committee for

1 this opportunity to testify and I would be happy  
2 to answer any questions.

3 MR. REDDECLIFF: Thank you, Mr. Henry.  
4 The Chair had to step out so he asked me to keep  
5 this moving along. I am not sure he had a  
6 system worked out, but we will start on the far  
7 right to see if there are any questions from the  
8 members.

9 It is to you, Howard.

10 REP. FARGO: I am just a little  
11 concerned about redefinition will eliminate at  
12 least 75 percent of the remaining wetlands of  
13 Pennsylvania from the permit program. How did  
14 you ever come up with a figure like that? Or,  
15 quantitatively, how is that determined, 75  
16 percent? I can't believe that this piece of  
17 legislation could, through coming up with this  
18 three definitions of wetlands instead of using  
19 the present system whereby you have to have  
20 everything permitted as wetlands, can eliminate  
21 at least 75 percent of the remaining wetlands of  
22 Pennsylvania. Quantitatively, how was that  
23 arrived at?

24 MR. HENRY: That figure was arrived at  
25 in conversations with the Corps of Engineers and

1 the Wildlife Service biologists.

2 REP. FARGO: Thank you.

3 CHAIRMAN REBER: Sara.

4 REP. STEELMAN: Just a quick question.

5 Mr. Henry, I have asked a couple of the  
6 previous testifiers whether they felt that the  
7 advances that have been made in our scientific  
8 understanding of wetlands would indicate that we  
9 could, in fact, develop a classification system  
10 but we could develop a more sensitive and  
11 perhaps more sophisticated classification system  
12 than that which is broadly proposed in the  
13 pieces of legislation that we have before us.  
14 Do you feel that it is, in fact, possible  
15 appropriately to classify wetlands within the  
16 Commonwealth if we go on the basis of what is  
17 actually known about them at this point?

18 MR. HENRY: The current classification  
19 proposal in my reading of the National Academy  
20 of Sciences, reading their executive summary,  
21 they are not real supportive of a classification  
22 system because there are so many variables. I  
23 am not in the position to sit here and say that  
24 it is not possible to do what you just stated, I  
25 am not a wetlands scientist, but there are many,

1 many variables and I think something like -- we  
2 would need to look toward an organization such  
3 as the National Academy of Sciences to formulate  
4 such a structure. I don't know if that answers  
5 your question.

6 REP. STEELMAN: And I gather that you  
7 would agree with our previous witness that  
8 whatever we do with regard to classification, we  
9 ought not to have any classification that would  
10 permit development without any oversight  
11 involved ...

12 MR. HENRY: That's correct.

13 REP. STEELMAN: ... in the private  
14 owner's decision to go ahead and do whatever he  
15 or she wants with that property?

16 MR. HENRY: That's correct.

17 REP. STEELMAN: Thank you.

18 No further questions, Mr. Chairman.

19 CHAIRMAN REBER: Any questions to the  
20 left?

21 REP. SMITH: No.

22 REP. BROWN: Thank you, Mr. Chairman.

23 Good morning, Mr. Henry.

24 MR. HENRY: Good morning.

25 REP. BROWN: I noticed that you said

1 that the Federation is concerned about the  
2 cumulative loss of wetlands. Could you explain  
3 that?

4 MR. HENRY: I believe you are referring  
5 to the half acre exemption that was mentioned.  
6 With a half acre exemption, what that could  
7 possibly lead to is one half acre and one half  
8 acre and one half acre and one half acre  
9 continuing and we would end up with hundreds and  
10 even thousands of acres being lost and there has  
11 been no review, there have been no permits and  
12 so that's why we are concerned about that.

13 REP. BROWN: And sort of like the  
14 process, has the state, federation, come out  
15 with support or opposition to any of the  
16 wetlands legislation that is now proposed?

17 MR. HENRY: Yes.

18 REP. BROWN: There has been like an  
19 official vote?

20 MR. HENRY: Pardon me?

21 REP. BROWN: There has been an official  
22 vote?

23 MR. HENRY: Yes, there is an official  
24 policy by the Federation that has been developed  
25 on wetlands and we have testified before

1 legislative hearings and we have written letters  
2 in regard to specific pieces of legislation, pro  
3 or con, depending upon the legislature.

4 REP. BROWN: Now, could you also tell  
5 me if there is like a coalition of different  
6 sportsmen's clubs or organizations within the  
7 Federation that have also voted in support? Or  
8 could you tell me if there are other  
9 organizations within a wetlands coalition that  
10 you have met with to help make your decisions,  
11 for example, the Audubon Society, the Sierra  
12 Club, etc.?

13 MR. HENRY: Have we met with other  
14 environmental groups and discussed?

15 REP. BROWN: Yes.

16 MR. HENRY: Yes, we have.

17 REP. BROWN: Can you name what  
18 organizations you have worked with?

19 MR. HENRY: We have worked with the  
20 Pennsylvania Environmental Council which just  
21 testified, we have worked with the Sierra Club  
22 which is scheduled to testify, we have worked  
23 with the Audubon which is scheduled to testify.  
24 You are testing my memory here. The Chesapeake  
25 Bay Foundation, we have worked with them. There

1 are a couple more, I just don't recall all who  
2 the groups are at the present time.

3 REP. BROWN: Now, has the sportsmen's  
4 federation ever worked with, say, unified  
5 sports? Or has the Federation ever sat down and  
6 met with the legislators who are prime  
7 sponsoring the wetlands legislation?

8 MR. HENRY: We have met, the Federation  
9 of Sportsmen's Clubs, has met with the  
10 legislators in the past, because I personally  
11 have met with Senator Brightbill, for example.  
12 I mean, I am a volunteer so I take off work so I  
13 can't do this as often as I would like, but I  
14 know that we do have staff that has met with  
15 legislators and talked about wetlands issues.

16 Did I answer all of your questions?

17 REP. BROWN: Thank you.

18 CHAIRMAN REBER: Any other questions?

19 (No response.)

20 CHAIRMAN REBER: Thank you very much,  
21 Mr. Henry. I appreciate your testimony.

22 MR. HENRY: Thank you.

23 CHAIRMAN REBER: And I apologize for  
24 having to leave the room for a short moment, but  
25 I certainly will be reviewing your written

1 testimony as well as the transcript of all the  
2 dialogue that did take place. Thank you very  
3 much.

4 MR. HENRY: Thank you.

5 CHAIRMAN REBER: Our next witness is  
6 Martin Visnosky, the Chairman of the Wetlands  
7 Committee, the Pennsylvania Chapter of the  
8 Sierra Club.

9 Good morning, Mr. Visnosky. You may  
10 proceed.

11 MR. VISNOSKY: My name is Martin  
12 Visnosky and I am the Wetlands Chair of the  
13 Sierra Club Pennsylvania Chapter. I would like  
14 to thank the Chairman for holding these hearings  
15 this morning and all the Members of the  
16 Committee for their time. As you are all aware,  
17 wetlands have become, in the past several years,  
18 the topic of intense scrutiny and debate in  
19 communities, the legislative bodies, the courts,  
20 within our scientific community. This debate at  
21 times has been acrimonious and thoughtless while  
22 other times it has been civil and reasoned. I  
23 am pleased to add to the record today of this  
24 ongoing debate on behalf of the 19,000 members  
25 of the Sierra Club Pennsylvania Chapter.

1           I would first like to comment on the  
2 Administration's Wetland Initiative as published  
3 in the Pennsylvania Bulletin. The  
4 Administration proposes to issue General  
5 Permit-15 for private residences in established  
6 subdivisions. Under this proposed change, the  
7 DEP would issue permits allowing applicants to  
8 fill up to one half acre (that's 21,780 feet of  
9 wetland) a significant change from the one-tenth  
10 of an acre.

11           Monroe County Conservation District  
12 Manager, Craig Todd, and his colleague in Pike  
13 County, Susan Beecher, estimate that as a result  
14 of this change that the total wetland acreage  
15 that may be lost if it is implemented in just  
16 those two counties would exceed 6,535 acres. It  
17 has been reliably estimated that the  
18 Commonwealth has already lost half of its  
19 original wetlands. Make no mistake, this  
20 proposal would put in serious jeopardy the  
21 remaining wetlands acreage, particularly in the  
22 northwestern and northeastern corners of our  
23 state.

24           This proposal also seemingly disregards  
25 several facts clearly associated with

1 construction and development. Simply put,  
2 wetlands are generally poor building locations  
3 for a variety of reasons. To site only two of  
4 these: septic/sewerage and foundation  
5 considerations.

6           The GP-15 permitting process  
7 discourages developers from avoiding wetlands.  
8 It also simplifies the process to the point that  
9 it encourages manipulation. Does the Department  
10 intend to field check the information provided  
11 by the applicant on the notification of use form  
12 to see that it is valid and factual? I believe  
13 not, in reading the Bulletin. Part of the  
14 dilemma we now face is the public's lack of  
15 knowledge about these ecosystems, let alone  
16 their ability to identify and delineate them.  
17 We strongly object to this permitting process.

18           We further oppose the Advanced Wetland  
19 Replacement Fund and the National Fish and  
20 Wildlife Foundation Replacement Fund to offset  
21 impacts of up to one half acre. Has the United  
22 States Fish & Wildlife Service agreed or not to  
23 participate with the state in this program? Is  
24 the fee schedule adequate to fund replacement  
25 costs, and and is it based on new replacement --

1 an emergent technique with 5 percent to 50  
2 percent success rates -- or on restoring prior  
3 converted wetlands? Who are the other parties  
4 besides PennDOT and the utilities referred to in  
5 the notice for the Advancement of Wetlands  
6 Replacement Fund?

7           The DEP would create a 16 member  
8 Wetland Management Advisory Committee under this  
9 initiative. We support this concept, but advise  
10 that the Members of this Committee should have  
11 no direct financial or economic interest in the  
12 wetland regulation. We also request that the  
13 proposed committee include a representative of  
14 the United States Fish and Wildlife Service as  
15 one of the federal agency members.

16           Yet another question raised by this  
17 Initiative is how it affects the no net loss  
18 policy of the Commonwealth in existence since  
19 1987. What ratio will replacement take place  
20 at? We favor a 3:1 ratio due to reported  
21 failure rates of replacement wetlands of up to  
22 50 percent.

23           In summary, this Administration  
24 proposal raises more questions than it solves.  
25 The cumulative adverse impacts on wetland

1 ecosystems and the associated impacts on water  
2 quality; flood control; dependent plant,  
3 wildlife and aquatic species have the potential  
4 for further unacceptable damage and loss to an  
5 already impaired resource. We believe that the  
6 regulatory burden on small landowners can be  
7 minimized but not with these proposals.

8 I would now like to share with you some  
9 of our comments on legislation currently before  
10 the General Assembly, and discussed today.  
11 House Bill 200 and House Bill 1049 essentially  
12 seek to regulate wetlands in a similar manner  
13 except for provisions found in Section 305 and  
14 other minor differences. These bills seem to  
15 copycat what federal legislation authored by now  
16 Governor Ridge, formerly my Congressman, and  
17 copycat also past efforts in the General  
18 Assembly, classify wetlands in an unscientific  
19 way ignoring factual considerations. Another  
20 common thread is that while recognizing the  
21 benefits and, quote, their integral role in  
22 maintaining the quality of life, end quote, they  
23 contradict their stated intent of limiting the  
24 loss of ecologically significant wetlands. They  
25 fail by replacing accepted science by defective

1 politics.

2           While it may be politically convenient  
3 to classify wetlands as Types A, B and C,  
4 prescribing certain characteristics to each, as  
5 well as legislatively setting delineation  
6 criteria, ensuring that lands delineated are  
7 wetlands as defined in this act, it sets the  
8 stage for losses of greater than 80 percent to  
9 our Commonwealth's remaining wetlands.  
10 Certainly, this is not the proper attack to take  
11 when one of the stated purposes is conservation  
12 of the resources and its benefits to society.

13           The 103rd Congress charged the National  
14 Academy of Sciences through a committee formed  
15 by the National Research Council with the task  
16 of, quote, assessing the scientific and  
17 technical validity of federal regulatory  
18 practice in the identification and delineation  
19 of wetlands, end quote. The findings of this  
20 committee are specific and applicable to state  
21 decisions and I recommend the 300 page report to  
22 you and your staff. I have provided the ISBN  
23 cite there. (Press ISBN 0-309-05134-7)

24           Let me briefly note some of those  
25 specifics that apply to these bills. Quote,

1 creation of a national scheme that would  
2 designate wetlands of high, medium, and low  
3 value based on some general guidelines involving  
4 size, location, or some other factor that does  
5 not require field evaluation. It is not  
6 possible, however, to relate such categories in  
7 part because of the relationship between the  
8 categories and functions are variable and in  
9 part because we still have insufficient  
10 knowledge of wetland functions. Yet, these two  
11 bills do just that. By placing sound, albeit  
12 developing science, and the overriding public  
13 interest in the backseat while putting special  
14 interests and a vocal minority in the driver's  
15 seat.

16 The NRC committee further found that  
17 the 21 day requirement for surface saturation  
18 during the growing season lacks a scientific  
19 basis and even viewed the 14 day period as,  
20 quote, provisional. They recommend, quote, a  
21 more sophisticated approach ... such as using  
22 degree days, end quote.

23 The report also tells us that, quote,  
24 wetlands that lack hydric soils or hydrophytic  
25 vascular plants although unusual, should not be

1 excluded from regulation simply because they  
2 lack the most common indicators. It is often  
3 scientifically defensible to infer information  
4 about one factor from another ... end quote.  
5 Thus the regulations either of these bills would  
6 promulgate, calling for a determination only in  
7 cases where all three criteria are present, it's  
8 scientifically indefensible.

9           These are only three instances where  
10 these bills make a mockery of wetlands science.  
11 The NRC report is rife with other examples of  
12 how these proposed bills and current  
13 congressional legislative attempts fail to pass  
14 scientific muster.

15           A problem that has consistently plagued  
16 wetland delineation is enough trained, competent  
17 staff to do the field work. Does the General  
18 Assembly, in these tough economic times, plan to  
19 increase funding to the DEP to carry out the  
20 mandates as put forth in these bills? Are the  
21 members confident that the DEP can effectively  
22 complete determinations in the 90 day time  
23 frame?

24           Both bills call for replacement or  
25 mitigation. Our position is firm that if this

1 should occur, it should be at 3:1 ratio and that  
2 such replacement or mitigation be geographically  
3 and/or regionally sensitive.

4           The major difference between House Bill  
5 200 and House Bill 1049 is in Section 305.  
6 House Bill 200 has a compensation provision if a  
7 permit is denied. Will this provision pass  
8 judicial scrutiny, particularly in light of 200  
9 years of case law and recent Supreme Court and  
10 appellate court decisions? Where will the funds  
11 come from to compensate aggrieved parties? Will  
12 unwilling taxpayers be asked to pay for this  
13 so-called injury? Could this be called an  
14 unfunded mandate?

15           House Bill 1049 on the other hand has a  
16 taxation provision. We would be willing to  
17 consider a scheme providing for the reduction in  
18 assessed values if it were fashioned in a manner  
19 similar to the state's Clean and Green program  
20 and in consultation with county officials.

21           In closing, I would like to thank again  
22 the Committee for allowing the Sierra Club,  
23 Pennsylvania Chapter, this opportunity to share  
24 with you our positions and for enabling all who  
25 testified this time. We would welcome working

1 with the members to craft legislation that is  
2 scientifically sound and defensible while at the  
3 same time benefiting the interests of concerned  
4 Pennsylvanians. Thank you.

5 CHAIRMAN REBER: Thank you very much,  
6 Mr. Visnosky. As has been the position of this  
7 Chairman during the entire legislative session,  
8 it is always good to hear from the Sierra Club  
9 and all of the major initiatives that the  
10 committee is considering and this is, no less,  
11 one of those particular pieces of legislation  
12 certainly at issue.

13 MR. VISNOSKY: Thank you.

14 CHAIRMAN REBER: I look to my far  
15 right. Is there any questions from that end of  
16 the table?

17 Stanley, David, Greg, Howard, Sara?

18 (Above addressed response is no.)

19 CHAIRMAN REBER: Representative Smith.

20 REP. SMITH: Thank you, Mr. Chairman.

21 You had mentioned in there a couple of  
22 times about the 3:1 ratio and I know that I have  
23 heard different ratios over time. I am curious  
24 if you have any knowledge as to where the basis  
25 is for that?

1           MR. VISNOSKY: The basis is found in  
2 the actual success rate or failure rate,  
3 depending how you look at it, of 5 to 50  
4 percent.

5           If you are looking to mitigate -- and  
6 it is an iffy science right now, I know, in  
7 reading trade publication, Environmental  
8 Protection. And about six months ago, they had  
9 quite the lengthy article on it, involving just  
10 this creative wetlands. And basically the  
11 article found that in order to be successful,  
12 you had to have more than a 2:1 ratio.  
13 Although, it didn't specifically say 3:1. They  
14 found that in doing this, if you are going to  
15 satisfy, in this case, their industrial  
16 customers for mitigation, you had to purchase  
17 quite a bit of land.

18           REP. SMITH: So you mean that so when  
19 you say this study, whatever it was that  
20 indicated that you needed to have more than a  
21 2:1 ratio in order to ensure success, does that  
22 take into account how those wetlands were  
23 constructed and, you know, what process was used  
24 to determine where we are going to do this?

25           MR. VISNOSKY: We are talking about new

1 construction here, not, let's say, prior  
2 converted wetlands and returning those.

3 REP. SMITH: I would be talking about  
4 new construction, right.

5 MR. VISNOSKY: Right. Actually the  
6 trade publication is not an environmental trade  
7 publication, it is an industry trade publication  
8 and these are the people who are actually  
9 building wetlands for mitigation purposes. In  
10 northwestern Pennsylvania and northeastern  
11 Pennsylvania, due to the soils and due to the  
12 glaciated conditions that we experienced, it may  
13 be possible to do less than 3:1. But when you  
14 look at a policy for the Commonwealth as a  
15 whole, and in certain areas, you are going to  
16 have to do that 3:1 to make it successful for  
17 the replacement to work.

18 REP. SMITH: Has there been any  
19 discussion about where those wetlands, in a  
20 mitigated situation, where those wetlands would  
21 be located? And I ask that because, as we all  
22 have our own personal horror stories that  
23 constituents have told us about that tend to  
24 perhaps skew our thought processes at a time, I  
25 am aware of a situation where a company was

1 seeking a permit, needed to do some mitigation,  
2 or was requested to do some mitigation, and they  
3 were looking at a 5:1 replacement ratio, went  
4 around for quite a while looking for some  
5 suitable land that could be adapted for that  
6 purpose, found the acreage needed and it was a  
7 good site that could have had a high probability  
8 of being converted into a good wetlands. And  
9 they were turned down. And I forget which  
10 agency that was involved, who actually kind of  
11 put the, you know, the kibosh to it. But they  
12 were turned down because there was no public  
13 access to this wetland that was being created.  
14 And that always stuck kind of in the back of my  
15 mind as being very ironic because, frankly, I  
16 don't think the values of a wetland should be  
17 based on public access. So I am curious if you  
18 are aware of any discussion or thought process  
19 from the people you deal with that would deal  
20 with the issue of where the wetlands mitigated  
21 case would be located.

22 MR. VISNOSKY: Well, certainly, I don't  
23 think in the discussions I have had with people  
24 that they would require a public access point to  
25 a wetland.

1           I know a case in Erie County where a  
2 willing seller actually was going to sell  
3 wetlands to mitigate (for the Mill Creek Mall,  
4 for that matter) and community pressure,  
5 particularly from certain groups, essentially  
6 scuttled that project and you had a very willing  
7 seller, a willing buyer. And a replacement  
8 would have been, I believe 2.5 to one. And in  
9 that case, it was turned down. So there are  
10 variables that play into the mitigation process,  
11 also. I mean, that aren't, don't have to do  
12 with wetland science, they do have to do with  
13 permits.

14           (Reporter changed paper.)

15           REP. SMITH: I kind of lost my train of  
16 thought there.

17           MR. VISNOSKY: I was going to ask you  
18 to repeat, Representative.

19           REP. SMITH: But the bottom line was in  
20 the case of mitigation assuming that the lands  
21 identified to be created into a wetland, the  
22 location of that could be subject to some local  
23 pressures of yes or no?

24           MR. VISNOSKY: (Nods head  
25 affirmatively.)

1           REP. SMITH: But beyond that, you are  
2 not aware of any other factors as far as the  
3 public access?

4           MR. VISNOSKY: No, that's a new one on  
5 me.

6           REP. SMITH: Okay. Thank you.

7           MR. VISNOSKY: If anything, I would  
8 think I would want waterfall access.

9           REP. SMITH: That's the way I sort of  
10 looked at it. This was a very ironic twist  
11 here, so.

12           Thank you, Mr. Chairman.

13           REP. HUTCHINSON: Mr. Chairman, could  
14 I?

15           CHAIRMAN REBER: Certainly.

16           REP. HUTCHINSON: I guess almost a  
17 statement, but a question. We had a previous  
18 testifier that was in support of House Bill 200  
19 and he believes, as I do, that we have to get,  
20 that this is an attempt to put more objectivity  
21 and more scientific delineation behind, of  
22 wetlands. But you are sitting here and saying  
23 that we are devoid of science in this  
24 legislation, you feel very strongly?

25           MR. VISNOSKY: Representative, I am not

1 saying that, the National Academy of Sciences is  
2 saying that. They have looked at various  
3 wetland schemes.

4 If you are familiar with House Bill  
5 1330 which our now Governor (Congressman Ridge  
6 then) cowrote with Sam Hayes from Louisiana. It  
7 proposed the same type of A, B, C scheme.

8 Currently, Chapter 7 of the House of  
9 Representatives 961, which are the Bud Schuster  
10 amendments to the Clean Water Act, proposes this  
11 exact same type of scheme. Probably the  
12 difference there is when Representative Hayes  
13 from Louisiana wrote in the fact that there was a  
14 limit on the number of Type A wetlands and he  
15 limited that to 20 percent.

16 When they looked at these schemes, they  
17 categorically -- and it's in my testimony and I  
18 would really urge the Committee or the staff of  
19 the Committee to get ahold of this report --  
20 they categorically said that you could not do  
21 that. And they said that for two reasons. One,  
22 the fact that wetland science is progressing at  
23 a rapid rate. And the other was the fact that  
24 we are trying to assign values to something  
25 really that it flies in the face of scientific

1 logic to discriminate against different types of  
2 wetlands because they all serve a valuable  
3 function. Do you follow?

4 REP. HUTCHINSON: I know what you are  
5 trying to say, but I don't agree.

6 MR. VISNOSKY: We already have  
7 exemptions in certain instances.

8 Right now, nationwide, fully greater  
9 than 90 percent, as has been earlier testified  
10 here, of the permits are granted. Certainly we  
11 are looking at diminishing resource that is  
12 valuable. A recent study by the Corps of the  
13 Mississippi flooding estimated that more than 75  
14 percent of the damage caused by those floods  
15 would not have happened if wetlands would not  
16 have been filled in. So consequently you are  
17 looking certainly at cost to society on both  
18 sides of the coin whether using a classification  
19 system which I oppose -- which you support -- or  
20 the other way which I support and the Sierra  
21 Club supports and that is using sound science to  
22 determine whether the wetlands are of value or  
23 not.

24 REP. HUTCHINSON: Well, I still think  
25 that what we are trying to do here is use

1 objective criteria to classify those wetlands  
2 which are important and those which are not, and  
3 I think that can be done.

4 MR. VISNOSKY: I personally recognize a  
5 legislator's dilemma with wetlands. This is an  
6 emerging science, gentlemen and ladies. And,  
7 quite frankly, the scientific community is just  
8 getting a handle on this. And so are the people  
9 who develop land, getting a handle on this.  
10 They are realizing that if they would have,  
11 perhaps, saved some of the wetlands functions  
12 that now surround some of their building, they  
13 might not have some of the problems they do.

14 The UPS Company built their world  
15 headquarters outside of Atlanta on an enormous  
16 parcel of property. They saved 50 percent of  
17 the wetlands on that property. When they bought  
18 the property, they didn't disturb anything.  
19 They built their headquarters around the  
20 wetlands.

21 In Erie County right now, Bush  
22 Industries, which the state has provided a  
23 considerable amount of money for and tax  
24 benefits to move into Erie County, is in the  
25 process of not mitigating wetlands but of saving

1 wetlands in the construction of their plant and  
2 that's a good story.

3 We hear the horror stories all the time  
4 and I think that's unfortunate. I don't think  
5 we hear the stories right in the Commonwealth,  
6 right in my county, Bush Industries. They are  
7 saving wetlands. They are not destroying them  
8 to build their complex. And they are employing  
9 people to do that. It is one of those things.  
10 It is a tough dilemma. And I feel for you. But  
11 classification systems are not the way to go,  
12 science is.

13 REP. HUTCHINSON: I think science is  
14 classification, but I guess we could argue that  
15 all day.

16 I don't have any questions. Thank you.

17 CHAIRMAN REBER: On the first page of  
18 your testimony, Mr. Visnosky, you referenced the  
19 Initiative of the Administration. First of all,  
20 I think I would be remiss if I didn't say for  
21 Members of the Committee who were not present  
22 last week at the hearing at the Poconos, we did  
23 have the pleasure of hearing from Mr. Craig Todd  
24 of the County Conservation District. So his  
25 testimony was presented in depth as referenced

1 by you in the last paragraph of the first page  
2 of your testimony.

3 I just want to make sure I understand  
4 where you are coming from when you say at the  
5 end of the last page: make no mistake, the  
6 Administration's wetland initiative proposal  
7 GP-15 would put in serious jeopardy the  
8 remaining wetlands acreage particularly in the  
9 northwest and northeast corners of our state.  
10 It is my understanding that that particular  
11 GP-15 proposal would only be applicable to  
12 subdivisions that were in existense prior to  
13 March 1995 and, therefore, it would have a very  
14 narrow scope as to its applicability.

15 It is my understanding this particular  
16 general permit proposal would not have any  
17 applicability for any development in wetlands  
18 areas of subdivision nature that are established  
19 after that benchmark milestone date of March  
20 6th, 1995, so I am just wondering how you make  
21 the sweeping statement there that it would  
22 jeopardize all remaining wetlands in the state.  
23 And maybe I am not understanding what you meant.

24 MR. VISNOSKY: Well, right now, from my  
25 understanding of the situation in the Poconos,

1 the fact is that there are many established  
2 subdivisions there which would take advantage of  
3 these changes and to construct on what are  
4 essentially now parcels of wooded land.

5 CHAIRMAN REBER: Okay. I understand  
6 that. And it is a given that obviously those  
7 subdivisions that would find approval and would  
8 fall within a number of qualification that exist  
9 in GP-15 as written. And again I think that  
10 also is suspect to some interpretation because  
11 at some points, it has also got to establish  
12 subdivisions that were approved by local  
13 governing authorities prior to March 6th, 1995.

14 And I think those particular terms were  
15 chosen appropriately because obviously in the  
16 course of reviewing subdivisions, under Act 537,  
17 during the period prior to that time by the  
18 respective local governing authorities that are  
19 given the statutory mandate to so review, one of  
20 the things, of course, that would have been  
21 taken into consideration would have been the  
22 wetlands aspects. So I think there is some  
23 mitigation that even went into those  
24 subdivisions that are being given somewhat  
25 status, unique status, under GP-15. But putting

1 all that aside, I don't think we can say that  
2 this -- And, by the way, I don't necessarily  
3 agree with this, okay? Do you understand? Let  
4 me put that in there, also.

5 MR. VISNOSKY: I understand that,  
6 Representative.

7 CHAIRMAN REBER: But I am concerned  
8 about the misrepresentation that this will  
9 somehow affect all remaining wetlands in the  
10 Commonwealth. Because, in my opinion, if a  
11 wetland doesn't fall with it under -- or if a  
12 particular lot subdivision prior to March 6th  
13 does not fall under this, anything that is not  
14 within that particular time frame does not fall  
15 under this and, therefore, would not be subject  
16 to the provisions contained therein. So I just  
17 don't think it is quite as sweeping as your  
18 initial statement meant. And I am wondering  
19 what you meant by that or if it was just an  
20 oversimplification.

21 MR. VISNOSKY: It may have been an  
22 oversimplification on my part, but it does put  
23 in serious jeopardy these wetlands.

24 CHAIRMAN REBER: It puts in serious  
25 jeopardy in your opinion ...

1 MR. VISNOSKY: In my opinion.

2 CHAIRMAN REBER: ... the wetlands that  
3 fall under the prior March 6th, 1995 definition  
4 of GP-15, correct?

5 MR. VISNOSKY: Right.

6 CHAIRMAN REBER: It would have no  
7 effect?

8 MR. VISNOSKY: The cumulative effect of  
9 this would happen, the cumulative effect.

10 CHAIRMAN REBER: You are saying that  
11 the effect that this would have of any  
12 particular lots that would fall under that  
13 subdivision area would have such a cumulative  
14 effect to, in essence, deteriorate all other  
15 wetlands that are not directly effected or do  
16 not --

17 MR. VISNOSKY: I am kind of lost.

18 CHAIRMAN REBER: Okay. It is not that  
19 important.

20 Were you aware of the March 6th, 1995  
21 time frame date that nothing after that date  
22 gets GP-15 qualification?

23 MR. VISNOSKY: Right, I am. Yes.

24 CHAIRMAN REBER: I am not going to  
25 belabor it and avoid my own admonitions. I

1 learned that word from Judge Ito, admonitions.  
2 I never used it until just recently.

3 I think Howard had one question.

4 REP. FARGO: But one question is, you  
5 mentioned the possible mitigation up in Erie  
6 County that was objected to by some  
7 organizations and caused it to ultimately be  
8 done.

9 MR. VISNOSKY: Yes.

10 REP. FARGO: Would you tell us what  
11 those organizations are? I am curious to know  
12 what organizations.

13 MR. VISNOSKY: Actually, the Cafarro  
14 Corporation, who owns the Mill Creek Mall, they  
15 wanted to expand the Mall. And as a matter of  
16 fact, they just received the permits to do that.  
17 Approximately a month ago. They had applied for  
18 permits, approximately I believe three and a  
19 half to four years ago for this expansion.

20 REP. FARGO: But what organizations  
21 objected to it?

22 MR. VISNOSKY: If you would allow me,  
23 Representative?

24 And they found a willing buyer in  
25 Fairview Township, outside the City of Erie.

1 And this willing buyer was willing to sell them,  
2 at the fair market value, wetlands to mitigate.

3 The Fairview Township Supervisors  
4 approached the buyer and asked him exactly  
5 whether notice for this sale appeared in the  
6 real estate transfers, what he intended to do  
7 with this property in selling it to the  
8 Cafarros.

9 In fear of, perhaps, Cafarro seeking  
10 the mitigation, the Pennsylvania Landowners  
11 Association approached the Fairview Township  
12 Supervisors and raised the red flag on this, in  
13 almost a turnabout of their stated policy, and  
14 said that this buyer should not sell. Or told  
15 the Fairview Township Supervisors that they  
16 should oppose this sale because this property  
17 would then not be on the market. And the  
18 Pennsylvania Landowners Association, in  
19 conjunction with the Fairview Township  
20 Supervisors then, proceeded to block the sale.

21 REP. FARGO: I see the representatives  
22 from the Landowners is here shaking his head no.

23 But the other question I have has to do  
24 with what Chairman Reber just mentioned, and  
25 that is the overall -- You talk about scientific

1 and you say that we are an emerging science.  
2 And, heaven forbid, it gets more scientific,  
3 because pretty soon even the uplands are going  
4 to be wetlands. But at the same time, you  
5 indicate that this bill that we are considering  
6 here sets the stage for losses of greater than  
7 80 percent to our Commonwealth's remaining  
8 wetlands. Was that scientifically determined  
9 that we are going to potentially lose 80 percent  
10 of our wetlands if this bill is passed?

11 MR. VISNOSKY: Again, if you compare  
12 Senate Bill 851 in the United States Senate with  
13 this bill, very similar provisions, the United  
14 States Army Corps of Engineers and the United  
15 States Fish and Wildlife Service and several  
16 other agencies studied 36 states and they looked  
17 at the potential losses from Senate Bill 851,  
18 the United States Senate, of remaining wetlands  
19 in those states and they found that Pennsylvania  
20 was one of two states on the very high end, 80  
21 plus, greater than 80 percent possibility of  
22 losing the remaining wetlands.

23 I imagine, Representative, that you  
24 might be able to obtain a copy of this report or  
25 I might be able to obtain one for you from the

1 US Army Corps or the EPA. And that, that's  
2 where that figure came from.

3 REP. FARGO: Well, I question a  
4 scientific determination that we are going to  
5 lose 80 percent because we set up three of these  
6 classifications of wetlands. Yes, I would like  
7 to have the report. Thank you.

8 CHAIRMAN REBER: The Chair thanks the  
9 gentleman.

10 Thank you very much, Mr. Visnosky. We  
11 appreciate your testimony.

12 MR. VISNOSKY: Thank you.

13 Thank you, members.

14 CHAIRMAN REBER: Our next witness is  
15 Edward Perry of US Fish and Wildlife Service.

16 MR. PERRY: Mr. Chairman, I heard your  
17 admonition to the panel members about  
18 timeliness. So in the interest of timeliness, I  
19 am probably not going to read my entire  
20 statement. I will try and speed read through  
21 some of this and if anyone gets lost, they can  
22 stop me.

23 My name is Edward Perry, I am the  
24 Assistant Supervisor of the Fish and Wildlife  
25 Service Field Office located in State College,

1 Pennsylvania. And I want to thank the Committee  
2 for inviting us here to speak today about  
3 wetland issues. I am going to concentrate my  
4 efforts today on House Bills 200 and 1049 as I  
5 was requested to do and essentially key in on  
6 three areas that have been discussed at length:

7 1) Identification.

8 2) Classification.

9 3) Mapping.

10 And these, it is important to recognize  
11 that identification and classification are two  
12 separate issues and they are being confused as  
13 we talk about this. The interesting thing is,  
14 though, although water is the driving force  
15 behind wetland creation, this is the single most  
16 parameter that is the most difficult for the  
17 average citizen to use. And the irony is that  
18 those most unfamiliar with wetland science, this  
19 is the parameter that most are interested in  
20 using.

21 Because of the transient nature of  
22 water, state and federal manuals use the plants  
23 and the soils as the best long-term indicators  
24 as the true wetness conditions of a site. This  
25 procedure has worked very well since it was

1 first established by the Environmental  
2 Protection Agency in the early 1980s and then by  
3 the Corps of Engineers in 1987.

4 It is actually the most reasonable way  
5 to identify wetlands because it ensures that  
6 uplands that are flooded for long periods and  
7 wetlands subjected to severe droughts are not  
8 misclassified because the plants and the soils  
9 remain regardless of the onsite wetness  
10 conditions.

11 The bill's provision requiring that  
12 water be present at the surface for 21  
13 consecutive days during the growing season is  
14 not workable. We do not know of any procedure  
15 or data bank that will enable us to determine if  
16 the site meets this criteria. We doubt that  
17 such information or procedure exists.

18 If we examine some wetlands, obvious  
19 wetlands that we all would recognize during this  
20 month of August, the dry period that we have  
21 had, many of these wetlands would not meet this  
22 criteria. Requiring water to be present during  
23 the delineation period is analogous to the  
24 insurance investigator going out to the site of  
25 a burned down home and not being able to make

1 that determination because he wasn't present  
2 when the flames were there.

3 The National Academy of Sciences  
4 address this issue in their report to congress  
5 stating, although specific hydrologic conditions  
6 are an absolute requirement for the maintenance  
7 and formation of wetlands, the direct assessment  
8 of these conditions in the field by use of  
9 information on water tables or inundation is  
10 often infeasible and should not be held as a  
11 strict requirement for the identification and  
12 delineation of wetlands.

13 Recently, the Corps of Engineers, our  
14 agency, and the Environmental Protection Agency,  
15 tested House Bill 200's definition, as we have  
16 tested other wetland definitions at the state  
17 and federal level, and have determined that they  
18 would eliminate about 85 percent of  
19 Pennsylvania's remaining wetlands. And the  
20 reason for this is quite simple: the bill  
21 requires that some obligates be present and it  
22 requires water above the surface for 21 days  
23 during the growing season. Pennsylvania has  
24 about 320,000 acres of wetlands. There is  
25 220,000 acres of forested wetlands. Most

1 forested wetlands do not have obligate wetland  
2 plants and they are not wet above the surface  
3 for 21 days, that automatically eliminates about  
4 two-thirds of all the wetlands.

5           You have to remember, we are not  
6 talking about an abundant resource of the state.  
7 Of Pennsylvania's 26 million acres of land,  
8 wetlands make up less than one and a half  
9 percent of the state's land mass. Frankly, it  
10 is difficult for me to imagine that a  
11 significant number of citizens and developers  
12 are being completely -- and I emphasize the word  
13 -- completely frustrated in their development  
14 plan when considering that most of Pennsylvania  
15 is available for development.

16           Wetland classifications. Contrary to  
17 some claims, the state and federal government do  
18 not treat all wetlands equally. I have yet to  
19 see a permit application for a mud puddle or a  
20 three-foot pothole that I have heard so much  
21 about. Perhaps the Department of Environmental  
22 Protection is withholding these permit  
23 applications from our review. I doubt that.  
24 Because I don't think we are receiving many of  
25 these kinds of actions.

1           Biologists who evaluate permit  
2 applications for wetlands fills essentially  
3 conduct a wetland classification during every  
4 site visit, whether it is for permit action or  
5 to resolve a wetland violation. This is the  
6 principal reason most permits are issued.  
7 Although most are issued with some modification.  
8 For example, the Baltimore District of the  
9 Corps, I think recently analyzed their permit  
10 program and from 1990 to 1994 they found they  
11 acted on 18,000 permits. This is about a four  
12 and a half year period. They issued over 99  
13 percent of these permits, with about 44 percent  
14 of those being modified in some fashion to  
15 reduce the environmental impact.

16           If we were treating all wetlands  
17 equally as is being claimed, all of these  
18 permits would have been denied.

19           In fact, over 95 percent of all permits  
20 at both the state and federal level are issued.

21           Contrary to what you have heard, there  
22 are actually wetland classification systems.  
23 There are scientifically, as best we can,  
24 scientifically defensible procedures that have  
25 been developed to classify wetlands. The Corps

1 of Engineers had recently developed the  
2 hydrogeomorphic classification system for  
3 wetlands. But these are somewhat complicated  
4 procedures and they can require considerable  
5 training and expertise to use and some of them  
6 are a half to one-inch thick.

7           Although we have these procedures, we  
8 have found it is not possible to designate  
9 wetlands as having high, medium or low value  
10 using just general guidelines based on size,  
11 location or some other factor. And let me give  
12 you an example. For example, a pristine bog up  
13 in the Poconos with no development around it  
14 does not have the opportunity to perform  
15 substantial water quality functions, because  
16 there is nothing around it. However, a wetland  
17 in the midst of a heavily urbanized or developed  
18 area has a significant opportunity to protect  
19 our drinking water further down stream. So  
20 these wetlands would have high value for  
21 protecting water quality. However, the bill,  
22 both bills, would categorize these as Type C  
23 wetlands and permits for Type C wetlands are  
24 automatically approved.

25           Mapping. I am not going to talk much

1 about mapping unless I get a lot of questions  
2 about it. The only thing I would recommend, if  
3 the legislature is intent on mapping, I would  
4 suggest contacting Mr. William Cubberly, who is  
5 New Jersey's mapping coordinator. I have his  
6 name and phone number in my testimony. And he  
7 can give you some information about the  
8 difficulty in mapping.

9 New Jersey has spent nearly 10 years  
10 and \$4.3 million to map their wetland.  
11 Pennsylvania is six times the size of the State  
12 of New Jersey. And just to give you some idea  
13 of the problems you might encounter mapping,  
14 take a look at the last page of my testimony.  
15 And if you look at the last square on the bottom  
16 of the page, it shows a square. This is the  
17 typical mapping scale for USGS topographic map  
18 and most mapping is done at this scale.

19 The smallest rectangle within that  
20 large square, or the smallest square within that  
21 largest square, is an acre in size and that  
22 solid rectangle is a one-third acre lot with a  
23 house on it. Now just take your pencil and draw  
24 a line through that one-third acre rectangle and  
25 you can see the utility of trying to map

1 wetlands at this scale.

2 I am not saying mapping is a bad idea.  
3 I am just saying if you want to spend money on  
4 it, take a look at the tax map scale up at the  
5 top. Mapping can be very useful in highly  
6 developed areas and I think it would be a good  
7 idea to have very good maps, but you have to  
8 remember, these maps have to be at a useful  
9 scale and the scale, in my view, would have to  
10 be one inch equals 200 feet which the map scale  
11 at the very top of the page.

12 The final issue I would like to address  
13 are cumulative impacts. Although neither bill  
14 addresses this issue directly, there is a common  
15 misperception that small wetland fills are  
16 inconsequential. For example, the Department  
17 has proposed a general permit that would allow  
18 up to a half acre of fill to construct homes  
19 within established subdivisions.

20 Now, we have worked with Mike Pipe in  
21 Monroe County for many years and are aware of  
22 many subdivisions, literally hundreds of  
23 subdivisions with vacant lots and wetlands that  
24 are poised to be filled using this general  
25 permit and we estimated that about 6,000 acres

1 would be lost in just these two counties from  
2 this proposed general permit.

3 Now you might get the idea from this  
4 that we are opposed to this general permit or  
5 for a general permit for houses. Actually,  
6 1991, I drafted a general permit for houses in  
7 wetlands and presented it to the Department. At  
8 that time, I guess it just was not feasible to  
9 work on it.

10 We became aware of the problem when we  
11 went around to hearings in 1991 when DER was  
12 changing their regulation and we heard the  
13 complaints from the regulated community about  
14 lot owners who purchased lots in the '50s and  
15 '60s and '70s and now were building their  
16 retirement home. So in response to that  
17 complaint, we developed a general permit that we  
18 thought would address the legitimate complaints  
19 of individuals who bought a piece of property  
20 for their retirement home and only to be caught  
21 in a regulatory change.

22 We proposed that only one-tenth acre be  
23 permitted, or fill be permitted, and that the  
24 lot had to have been purchased before October  
25 1984. We felt that this would provide a relief

1 to those who had the most reasonable  
2 investment-backed expectations. Because after  
3 1984, with all of the public education that our  
4 office and the conservation districts up there  
5 had done, we felt that the substantial portion  
6 of the regulated community knew about the  
7 wetlands program.

8 So now we have a bill or general permit  
9 that would allow up to a half acre of fill and  
10 in our view, this would cause substantial and  
11 unreasonable cumulative adverse impacts on  
12 Pennsylvania's wetland resources.

13 To summarize our position on these two  
14 bills, it is our view that the public would be  
15 adversely impacted by the virtual elimination of  
16 wetland protection in the Commonwealth.

17 Legislation does not seem necessary at this time  
18 because the Department is making substantial  
19 changes to its permitting program in an effort  
20 to make it more user friendly. These bills do  
21 not make permit applications easier to fill out  
22 or streamline the system. However, they will  
23 adversely impact the government's ability to  
24 protect wetland.

25 Wetlands protection has always rested

1 with the legislature. You have the ability to  
2 maintain our present level of protection or  
3 reduce or eliminate it. The unintended  
4 consequences of your actions are a return to a  
5 dual permit system with different wetland  
6 delineation methodologies and permitting  
7 criteria. I would hope that is not going to  
8 happen.

9           You heard from the gentleman today, Mr.  
10 Quatchak, who was complaining about all the  
11 changes in the manual. I want to assure you  
12 that no one in the federal government advocated  
13 any of those changes in those manuals. It was  
14 the development community that advocated those  
15 changes and they were acted on, enforced on us  
16 by Congress. We strongly supported the 1989  
17 Manual and we would still be using that manual  
18 if we had not been told to use other manuals.

19           That concludes my testimony and I would  
20 be happy to take any questions from the  
21 Committee if they would so desire.

22           CHAIRMAN REBER: Thank you, Mr. Perry.

23           Looking to my right, Representative  
24 Jarolin, Representative Levdansky?

25           The gentleman is recognized.

1           REP. LEVDANSKY: Just maybe one quick  
2 comment. I note that in the agreement between  
3 the different federal and state agencies, you  
4 were looking at a one-tenth acre exemption  
5 rather than I believe a half an acre exemption  
6 and you put a line of demarcation on October  
7 4th, 1984, but I am reading on in your testimony  
8 that the Dam, Safety and Encroachments Act was  
9 passed in 1980.

10           MR. PERRY: Correct.

11           REP. LEVDANSKY: But you move when you  
12 suggested using '84 ...

13           MR. PERRY: Correct.

14           REP. LEVDANSKY: ... as the demarcation  
15 date for what reason?

16           MR. PERRY: Well, we initially  
17 supported 1980 because we said, well, that was  
18 the date of DER's, the passage of the Dam,  
19 Safety and Encroachments Act. And DER argued,  
20 with some persuasion, well, our program really  
21 was not up to speed and all of our citizens  
22 really did not know about the program.

23           Well, from 1980 to 1984, both Pike and  
24 Monroe County Conservation Districts and our  
25 office embarked in a major wetland education

1 campaign. And in 1983, in conjunction with  
2 that, in 1983, the Department for the first time  
3 denied water quality certification for the  
4 headwaters permit, for Nationwide Permit No. 26.  
5 So that permit was no longer valid in  
6 Pennsylvania.

7 And finally in October 4th, 1984, the  
8 Corps of Engineers revised their permit  
9 regulations to say that no longer in a  
10 subdivision was each individual eligible for one  
11 acre of fill. That only the entire subdivision  
12 was eligible for one acre. And I know you heard  
13 an individual earlier speak about his  
14 frustration with not being able to use  
15 Nationwide Permit No. 26 in Pennsylvania,  
16 whereas, in Ohio, you can.

17 I think you have to look at the  
18 difference between these two states. How many  
19 citizens of Pennsylvania do you hear being  
20 interested in running to Ohio to fish or hunt?  
21 Pennsylvania has one of the best wetland  
22 resource protection programs in the country, as  
23 far as our office is concerned, and we have very  
24 high quality fishing and hunting opportunities,  
25 we have nationally recognized trout streams and

1 it is because of this vigorous wetlands  
2 protection and resource protection that the  
3 department is engaged in.

4 Ohio does not have the same standards  
5 and I don't hear very many people that are  
6 interested in going to Ohio to fish or hunt. As  
7 a matter of fact, most of the people we see,  
8 about half of the people we see in Pennsylvania  
9 are from Ohio and New Jersey. So, anyway, I  
10 digress from your basic question, but I did want  
11 to get some information in about that.

12 REP. LEVDANSKY: But do you think that  
13 it is important to have both the one-tenth of an  
14 acre versus the half and the clear line of  
15 demarcation, given the regulatory and statutory  
16 frame work that was constructed at least up to  
17 1984?

18 MR. PERRY: right. We felt that that  
19 was the most legally defensible date and the  
20 most reasonable because that would allow some  
21 people who were not quite familiar with DER's  
22 changes in regulations to get up to speed.

23 REP. LEVDANSKY: I like the speed, line  
24 of demarcation approach. It is just that my  
25 recent experience in the General Assembly trying

1 to get some line of demarcation established  
2 relative to some other important environmental  
3 legislation, I met with some difficulty. But I  
4 hope maybe on this front, we can, perhaps, can  
5 be a little more successful. Thank you.

6 MR. PERRY: Thank you.

7 CHAIRMAN REBER: Representative Fargo.

8 REP. FARGO: I just want to make the  
9 statement that I am glad we are up to 85 percent  
10 and maybe, in the future, we will get to 90 or  
11 95 percent that these bills will eliminate the  
12 wetlands. I think that's -- I don't know.

13 MR. PERRY: I would have to say one  
14 thing about that, Mr. Fargo. All of you have  
15 gotten a color brochure of a publication that we  
16 produced about five years ago. If you leaf  
17 through that, many of the pictures that you see  
18 will no longer be wetlands under this bill. We  
19 have many examples of house foundations that are  
20 flooded. People going out to see their home,  
21 seeing how their house construction is going and  
22 seeing a swimming pool instead of a foundation.  
23 Most of these are being constructed in forests  
24 and wetlands that do not meet this criteria  
25 right off the bat.

1           REP. FARGO: I think, Mr. Perry, you  
2 would have to be specific as to what caused  
3 figure 2 with all the water in a place where  
4 they were going to put a -- what caused that not  
5 to be a wetlands, as far as our classifications  
6 are concerned. And I don't want to get into  
7 that. But just putting pictures and saying it  
8 would not receive it, I think needs a little bit  
9 more explanation. And I am not asking you to  
10 give it to me. Some day, you and I ought to get  
11 together and we will look at some of your  
12 pictures and we will discuss them.

13           MR. PERRY: Right. Well, you know, the  
14 time of the year that most people buy property  
15 is not in November, December, January, February,  
16 March and April. They are going out in June,  
17 July and August and forests and wetlands are  
18 very difficult for the average first-time  
19 homebuyer to identify.

20           Trees are great at pumping the  
21 groundwater, lowering the groundwater table.

22           So the dryest times of the year when  
23 people are buying the property, this is when  
24 developers are selling property.

25           When you cut the trees down in forests

1 and wetlands, bullrushes often come up, because  
2 the trees are not there to transpire and lower  
3 the groundwater table and so the groundwater pops  
4 to the surface and you have true aquatic  
5 vegetation taking hold. That's why people are  
6 often surprised when they buy a piece of dry  
7 property in the forest and wetland in July and  
8 August and they come back late in the fall or  
9 early in the spring to see how their house  
10 construction is going and they are horrified.

11 REP. STEELMAN: I am interested that it  
12 seems as though when we were talking about  
13 classification earlier, I was asking some  
14 questions about the scientific basis of any  
15 potential classifications, but the only  
16 objective criterion that we have actually within  
17 the legislation itself is the requirement that  
18 surface water has to be present for 21 days.

19 You discussed at some length the fact  
20 that there might be some real problems with  
21 using the presence of surface water for 21 days  
22 in classifying the wetland. Most of the  
23 emphasis has been on the fact that things that  
24 do, in fact pieces of ground that serve wetland  
25 functions, may not show surface water for 21

1 days. Is there not -- and I ask this question  
2 because there are some personal experiences I  
3 had this spring -- also a real possibility that  
4 a significant piece of land that does have  
5 surface water on it for 21 days may not, in  
6 fact, serve any wetland functions whatsoever?

7 MR. PERRY: It is possible. And that's  
8 why over 95 percent of the permits are issued.  
9 We make classification judgments when we go out  
10 to a site. Most of us have taken classification  
11 and identification courses. And the one thing  
12 that you might want to get, look at in this  
13 bill, is there is some two issues. One is  
14 wetland identification and one is classification  
15 and everyone is mixing the two together.

16 The fact that you need water on the  
17 surface for 21 consecutive days during the  
18 growing season does not pertain to the  
19 classification, it pertains to the  
20 identification of wetlands; that is entirely  
21 separate from classification.

22 What I am saying about the  
23 classification is that there are scientifically  
24 defensible procedures, but they look at each  
25 function and rate it for that function, one at a

1 time. For example, go to the example that Mr.  
2 Fargo used of a wetland near an industrial  
3 development and they will rate it for flood  
4 control, for water quality, for nutrient  
5 retention, for fish and wildlife values. That  
6 one may rate very low for fish and wildlife  
7 value, but rate very high for flood control.  
8 On the other hand, you build a wetland  
9 undisturbed area and it might rate very high for  
10 fish and wildlife and low for water quality. We  
11 don't mix them all together.

12 The problem with the classification  
13 system, as this one is, is it mixes all of the  
14 numbers together and you can't do that, that's  
15 not a workable solution, it is not  
16 scientifically defensible, you can't work like  
17 that.

18 REP. STEELMAN: So it would be  
19 difficult, if not impossible, to take the  
20 systems of wetlands classification or  
21 identification that exist now and say because  
22 this particular wetland ranks at such and such  
23 points along the various scale, we can therefore  
24 say that it serves limited or marginal or  
25 significant? These adjectives are not easily

1       quantifiable, is that correct?

2                   MR. PERRY:  They are not easily  
3       quantifiable on a single piece of paper.  That's  
4       why these classifications -- the classification  
5       system that has been developed is, you know,  
6       three-quarters of an inch thick.  I mean, you  
7       have to go through various procedures:  where is  
8       its location, what is its size, what is it  
9       adjacent to, what kind of development is around,  
10      what kind of plants are on site, how close it is  
11      to the stream.  There are a whole host of  
12      questions that are asked to determine what is  
13      its value.

14                  REP. STEELMAN:  Okay.  And I would like  
15      to make a very brief statement to the effect  
16      that I agree with Representative Hutchinson that  
17      science is classification, but one of the most  
18      important things in science and one of the  
19      things that we see in evolution of scientific  
20      thought is the increasing confinement of systems  
21      of classification.

22                  And as an example, let me point out  
23      that bats used to be classified with birds and  
24      dolphins used to be classified with fish, but  
25      with increasing understanding of anatomy and

1 physiology, we have come to understand that both  
2 of those animals are more closely related to us,  
3 other mammals, than they are related to fish or  
4 birds. And I think what we may be trying to do  
5 with this bill is create the same sorts of  
6 classifications of wetlands that biologists in  
7 the 12th Century created with regard to  
8 different species.

9 CHAIRMAN REBER: The Chair thanks the  
10 lady.

11 Any questions to my left?

12 (No response.)

13 CHAIRMAN REBER: Just one comment, Mr.  
14 Perry. I like your reference on page four  
15 relative to the Department's initiative in  
16 establishing the October 4th, 1984 date because  
17 I think you said that the Department of  
18 Environmental Protection argued that their  
19 program was not fully functional for a few years  
20 from the 1980 date up to your benchmark date of  
21 1984. And I would have to submit that I am not  
22 so sure that the Department's program is still  
23 fully functionable in light of the fact that we  
24 had the 1987 Corps Manual, then you had the 1989  
25 Federal Manual and then you had the 1995

1 Wetlands Report relative to characteristics and  
2 boundaries, etc. So I guess if we are going to  
3 talk about time frames and time lines, we can  
4 draw the line in the sand for a lot of places  
5 for a lot of reasons, especially when we are  
6 using the fully functional aspect. And I think  
7 that, in part, from what I have heard at these  
8 hearings, and your testimony confirms that, in  
9 part, as well, that's been one of the major  
10 complaints that exists out there relative to  
11 this particular wetlands issue, is, when do we  
12 have a fully functional pragmatic streamlined  
13 program that is applicable and equally and  
14 equitably applied in all situations from one  
15 corner of the state to the other?

16 MR. PERRY: I hear what you are saying  
17 about that. And I have heard some of the  
18 inconsistencies. And if you would look at some  
19 of the projects I have worked on, you would see  
20 permit application times ranging from --  
21 comments ranging from two days to seven years.  
22 The Meadville Mall and Mill Creek Mall are two  
23 good examples up in this area.

24 CHAIRMAN REBER: Didn't Meadville  
25 actually go eight years?

1           MR. PERRY:  Something like that.  And I  
2 met with the Editorial Board in the Erie  
3 newspaper and they pretty well hammered me on  
4 that.  And I said we look at each of these on  
5 its own merits.  And if someone comes in with a  
6 bad project and insists on building it in a  
7 particular location regardless of the adverse  
8 environmental impacts, they can expect to take a  
9 long time.

10           On the other hand, Mill Creek Mall, we  
11 went out there and in one field visit, we  
12 evaluated the wetlands and that day we told the  
13 developer, it looks good to us, we think you can  
14 do your expansion here and we just recommended  
15 that he mitigate the loss.  So the reason for  
16 the disparity is, in my view, in many cases, is  
17 in the willingness of the applicants to give up  
18 on a bad project.

19           This is not all on the back of the  
20 regulatory agency.  The wetlands program does  
21 affect someone's ability to use their property  
22 however they wish, regardless of its impact on  
23 the neighbors and the general public.  It does  
24 affect that.

25           CHAIRMAN REBER:  Well, I can't

1 necessarily quarrel with that. I know in my  
2 prior life, sitting as a solicitor for many  
3 local municipalities, every subdivision land  
4 development has its problems and I guess, as  
5 they say, beauty is in the eye of the beholder  
6 so that's why we have the review process. Thank  
7 you very much.

8 MR. PERRY: Thank you.

9 CHAIRMAN REBER: What we are going do  
10 is call our next witness, Scott Sesler, of the  
11 Pennsylvania Builders Association. And I have  
12 been advised that hopefully if we can conclude  
13 in about 10 or 15 minutes, we can take a  
14 luncheon break.

15 Mr. Craig Adams, who was scheduled to  
16 testify at 11:30, our last witness prior to the  
17 luncheon break, has graciously agreed to stay  
18 after and kick off our three witnesses then that  
19 we will have immediately following our luncheon  
20 break which hopefully will take till about 12:45  
21 and we will reconvene at 12:45.

22 Scott, thank you very much and you may  
23 proceed at will.

24 MR. SESLER: Good afternoon. I would  
25 like to take this opportunity to thank the

1 Committee for this opportunity to address them  
2 and provide comment on the very important issue  
3 of wetlands in Pennsylvania. My name is Scott  
4 Sesler. I am a third generation builder and  
5 developer from Erie. My brothers and I are  
6 involved in light commercial and residential  
7 construction and our firm recently celebrated  
8 its 35th Anniversary.

9 The manner in which Pennsylvania treats  
10 wetlands and wetlands property owners has been a  
11 problem since 1987. Up to now, the General  
12 Assembly has, unfortunately, not passed any  
13 legislation that would define what a wetland is  
14 or what a wetland owner can or should do with  
15 their property.

16 The General Assembly has given the  
17 control of wetlands to bureaucrats who have  
18 succeeded in nothing more than to cause  
19 tremendous grief and aggravation to property  
20 owners across the Commonwealth, many of them  
21 right here in northwestern Pennsylvania. Lack  
22 of consistency in interpretations and procedures  
23 has made most dealings with wetlands futile  
24 and/or extremely costly.

25 We have, in Pennsylvania, wetlands

1 regulations based upon the one time mention of  
2 the word wetlands in the definition of a body of  
3 water in the Dam, Safety and Encroachments Act.  
4 This ever so brief mention enabled the  
5 Department of Environmental Resources (now the  
6 Department of Environmental Protection) to  
7 create a package of wetlands regulations which  
8 far exceed even the Federal government's  
9 requirements.

10 Governor Ridge has time and time again  
11 stated that Pennsylvania should not exceed  
12 federal requirements on environmental issues.  
13 Secretary Seif of the DEP has echoed the  
14 Governor's statements many times as well.

15 I am aware that the new DEP has  
16 proposed changes in the wetlands programs and  
17 that these changes will bring some relief to the  
18 property owners. The effort is a welcome step  
19 in the right direction, but it needs to be taken  
20 further.

21 The DEP's proposals to create a  
22 wetlands replacement fund is much too limited in  
23 scope. As written, the fund can only be used  
24 for those projects which impact wetlands of half  
25 an acre or less in size. The DEP needs to

1     implement a broader, more flexible program which  
2     encompasses the use of wetlands mitigation  
3     banking for those unavoidable mitigation issues  
4     which arise.

5             The use of wetlands mitigation banking  
6     is an essential part of any credible wetlands  
7     policy, and it ensures that more wetlands  
8     functions are created. The federal government  
9     and many other states are considering this  
10    approach.

11            The DEP has also proposed a new general  
12    permit for private residential construction in  
13    wetlands. While I support this concept, the  
14    efficient permit processing and predictability  
15    in the proposal are restricted by the  
16    limitations placed on the use of the permit.  
17    Although Pennsylvania's general permit is  
18    modeled after the federal one, it is, to no  
19    one's surprise, more stringent than the federal  
20    permit. The federal permit does not require  
21    mitigation or compensation.

22            While DEP's efforts should be applauded  
23    and encouraged, the wetlands issue requires  
24    statutory attention. It is important to note  
25    that even if the Department was proposing and/or

1 implementing wetlands changes that would mirror  
2 federal law today, there is still the need for  
3 this Committee to act and for the General  
4 Assembly to provide statutory relief.

5           Pennsylvanians need and deserve a  
6 wetlands statute that defines wetlands by their  
7 environmental value. Statutory direction which  
8 states how property owners can and cannot  
9 develop their land. Statutes which give clear  
10 direction to the courts for compensation of lost  
11 land usage.

12           House Bill 200 encompasses these  
13 critical provisions. I support passage of House  
14 Bill 200, and thank Representative Fargo for  
15 sponsoring this much-needed legislation.

16           I urge this body to move this bill out  
17 of committee and to the full House at the  
18 earliest possible opportunity. Thank you.

19           CHAIRMAN REBER: Thank you very much,  
20 Scott.

21           Looking to my left, are there any  
22 questions from any of the members?

23           (No response.)

24           CHAIRMAN REBER: Seeing none to the  
25 left, I look to the right with the same hopeful

1 exuberance that the response will be identical.

2 (No response.)

3 CHAIRMAN REBER: Thank you very much,  
4 Scott.

5 MR. SESLER: Thank you.

6 CHAIRMAN REBER: At this time we will  
7 stand in recess until 12:45, at which time we  
8 will reconvene for the last three witnesses that  
9 are on the agenda.

10 (Lunch recess taken.)

11 CHAIRMAN REBER: At this time I would  
12 like to reconvene the hearing of the House  
13 Environmental Resources and Energy Committee.  
14 Our next witness will be Mr. Craig Adams, an  
15 employee with Hickman Lumber Company, also a  
16 member of the Hardwood Lumber Manufacturers  
17 Association of Pennsylvania.

18 Thank you very much, Mr. Adams, for  
19 your indulgence to us and sticking around for  
20 after our break. We are running a little late  
21 and I deeply appreciate you hanging on. As I  
22 certainly appreciate the two individuals who  
23 will be testifying after you, also for being  
24 patient and appreciate their waiting.

25 We have a couple of members that will

1 be coming in shortly, but to expedite matters,  
2 we thought it would be a good idea to get  
3 started.

4 MR. ADAMS: Well, that's no problem  
5 with me because my presentation is very short.  
6 It is more of question than of concern.

7 Good afternoon. As an employee of a  
8 manufacturer of high grade Pennsylvania  
9 hardwoods, I welcomed the opportunity of  
10 entering comments to the Environmental Resources  
11 and Energy Committee on Wetlands Issues and  
12 Legislation.

13 We agree that wetlands play an integral  
14 role in maintaining the quality of life, serve  
15 important natural resource functions and by  
16 utilizing normal silvicultural activities, will  
17 enhance the wetland areas. House Bill 200  
18 affords the timber industry the capability of  
19 this without time consuming permitting in Class  
20 B and C wetlands.

21 We also agree that in a Class A  
22 wetland, our main problem is access through the  
23 area. Under part (b) Determination, number (2)  
24 it states, if the wetlands under application are  
25 classified as Type A, the permit shall be

1 denied. With silviculture being exempt from  
2 permits, it is very unclear if we are allowed in  
3 a Type A wetland. Will a GP-8 permit, that is  
4 in existence, allow the industry access to  
5 timber through a wetland with a defined bed and  
6 bank at its narrowest point, or is access  
7 denied? With this legislation, will this permit  
8 allow access? If a Type A Wetland is delineated  
9 as EV or HQ, is access denied?

10 In House Bill 200, it states under  
11 Section 301, paragraph 5, addressing  
12 construction of roads, it states that roads are  
13 constructed and maintained in accordance with  
14 best management practices to assure the flow and  
15 circulation patterns and chemical and biological  
16 characteristics of the waters are not impaired,  
17 that the reach of waters is not reduced and that  
18 adverse effect on aquatic and environment will  
19 be otherwise minimized.

20 For example, Mr. Farmer has a Type A  
21 wetlands on his property that divides his  
22 property in two with timber on both sides. He  
23 wants to sell his timber and offers Hickman  
24 Lumber Company the opportunity to purchase said  
25 timber. Do we need a permit to cross the Type A

1 Wetland? We will encroach the wetland with a  
2 skid road and place a temporary bridge to cross  
3 the defined inflow or outflow to access the  
4 timber. Does Hickman Lumber Company need a  
5 permit to cross the inflow or the outflow?

6 Other than this wetland issue, the GP-8  
7 permit is used to cross streams with a defined  
8 bed and bank. Will this permit be necessary?  
9 Will the PNDI need to be addressed? This  
10 example will occur in Pennsylvania. How are our  
11 foresters to proceed with the purchase of timber  
12 using this as an example?

13 Notwithstanding the above situation,  
14 you have created a workable solution by the  
15 introduction of this legislation with the  
16 citizens of the Commonwealth in mind.

17 Thank you for the opportunity to  
18 address the meeting today and I commend you for  
19 the work you have done.

20 CHAIRMAN REBER: Thank you, Mr. Adams.  
21 And I will certainly personally call  
22 specifically the concerns that you expressed in  
23 your testimony to the attention of a number of  
24 the Members of the Committee that have a high  
25 interest in the lumber interest in the

1 Commonwealth. And when and if we develop  
2 anything in this area, we will certainly take  
3 that into consideration.

4 Any questions here to my right?

5 REP. FARGO: Yes.

6 CHAIRMAN REBER: Representative Fargo.

7 REP. FARGO: Hi, Craig. Thanks for  
8 being here. What happens right now if you have  
9 the description of the problem that you have  
10 between a swamp and you have got timber on each  
11 side and you have a swamp that you have to  
12 cross?

13 MR. ADAMS: Okay. Under the Chapter  
14 105 regulations, of course, normal silviculture  
15 is exempt from a permit. Except for ingress and  
16 egress encroachment, we are not allowed to  
17 encroach a wetland area. So in order to save us  
18 time problems with permits and what not, we do  
19 not build skid roads. We are allowed to  
20 encroach into a wetland if we do not do that.

21 This piece of legislation specifically  
22 addresses that. We will be allowed to encroach  
23 in that wetland, but it is unclear, in my  
24 reading of it and in talking with Kent Fox, of  
25 the Type A Wetland. If it says the permit will

1 be denied, but it goes on to say under Section  
2 301 (c), previous permits previously issued by  
3 the Department for activities, structures  
4 affecting wetlands will still be in effect.

5 The GP-8 is a temporary stream-crossing  
6 permit that we can acquire through the  
7 conservation district with no problem  
8 whatsoever, but it is unclear to us, when it  
9 says that you can go through a wetland area  
10 other than Class A. Class B and C, you can  
11 ingress and egress with no problems.

12 REP. FARGO: I am still not sure of the  
13 answer as to what happens right now if you have  
14 what we consider a Class A between two timber  
15 lands on a person's property. Can you presently  
16 go across that Class A under the present rules  
17 and regulations? Can you get a permit to go  
18 across it?

19 MR. ADAMS: GP-8 permit will allow you  
20 to go across a defined bed and bank, yes, you  
21 can go into it.

22 REP. FARGO: And whenever you say go  
23 across, that includes building a road across it,  
24 a skid road?

25 MR. ADAMS: No, you do not build a road

1 across it. You build a road to the defined bed  
2 and bank and put a bridge.

3 REP. FARGO: Okay. I don't know the  
4 answer to your question based on this. It is a  
5 good question and I think we will have to take a  
6 look at it, but I don't know the answer to it.

7 MR. ADAMS: Well, it definitely needs  
8 to be clarified. In our instance of timbering,  
9 since we are exempt and since the timbering  
10 process does enhance wetland areas that we can  
11 work in conjunction with some of the other  
12 organizations that say you are going to destroy  
13 it, basically in doing the timbering process it  
14 will enhance it to the point where it will open  
15 up the understory and regeneration will occur,  
16 you will have your, like what we like to call  
17 the wetlands sisters, flora and fauna, will be  
18 generated from the timbering process.

19 REP. FARGO: Okay, Craig. Actually,  
20 utilities have indicated the same kind of a  
21 concern and thank you for bringing it up and  
22 thank you for being here today.

23 CHAIRMAN REBER: Thank you very much,  
24 Mr. Adams. I appreciate it very much.

25 Our next witness to testify is Mr.

1 Robert Kaufman, Chairman of the Clarion County  
2 Conservation District.

3 Mr. Kaufman, thank you very much for  
4 your patience and indulgence. It is deeply  
5 appreciated by the Chair.

6 MR. KAUFMAN: Thank you, Mr. Chairman,  
7 Members of the Committee.

8 In addition to being a chairman of the  
9 Clarion County Conservation District, I am the  
10 1st Vice President of the Pennsylvania  
11 Association of Conservation Districts and the  
12 President of the Western Pennsylvania Coalition  
13 for Abandoned Mine Reclamation. I am a member  
14 of the Mill Creek Coalition of Jefferson and  
15 Clarion Counties and I am President of the  
16 Clarion River Basin Commission, a five county  
17 organization designed to abate pollution along  
18 the Clarion River.

19 The title of this session today  
20 certainly implies that wetlands issues and  
21 legislation are important, whether you are for  
22 them or against them. On the against them side,  
23 please remember that a dozen years ago and  
24 before, the Feds, through the Department of  
25 Agriculture's Soil Conservation Service, SCS

1 (now the NRCS and the ASCS) were designing and  
2 cost sharing drainage projects for farm fields  
3 (get the water out, get the plow in). Urban  
4 development was much the same (get the storm  
5 water out of my development as soon as possible  
6 and control flooding with Corps of Engineers  
7 dams and SCS 566 channelization projects).

8 But thinking about how to handle rain  
9 has recently changed and this ties in with a lot  
10 of previous testimony about the scientific side  
11 of it and that we are learning a lot of things  
12 about water in wetlands. Consciously or not,  
13 the idea that maybe Mother Nature knew what she  
14 was doing came into the minds of planners.  
15 Maybe we should not drain the bogs and  
16 straighten out the stream channels. If we left  
17 them alone, storm water wouldn't be such a  
18 problem and those downstream, whether in the  
19 Bay, the Delaware or the Ohio, wouldn't have to  
20 suffer from problems that we upstreamers  
21 generated.

22 There are other aspects of water  
23 management that affect us and that we affect.  
24 Before our forefathers cut down the forests of  
25 Penns Woods, mined the coal that fueled the

1 Industrial Revolution in America and forged the  
2 weapons of our wars, and drilled for the oil and  
3 gas that heat our homes and industries, again  
4 Mother Nature washed out of the earth minerals  
5 that polluted the waters of the Commonwealth,  
6 but she also provided a remedy in the bogs and  
7 marshes which, through natural processes,  
8 removed much of the contaminants.

9 Now, in the somewhat recent past, those  
10 resource utilization activities have greatly  
11 increased the harmful mineral loading of our  
12 streams and rivers.

13 The last issue of water management that  
14 I want to mention is ground water, the aquifers  
15 that provide water for most people in rural  
16 Pennsylvania and to a considerable extent those  
17 in urban areas. As you know the aquifers don't  
18 make water, they have to be recharged and the  
19 recharge mechanisms are wetlands. However, not  
20 all marshes contribute to recharge. A farm pond  
21 must have an impervious lining, usually clay,  
22 and, in general, an onlot sewage system must not  
23 have one. For the same reasons, some wetlands  
24 permit water to flow to the aquifers and some do  
25 not.

1           Now, to get to the point of why I am  
2 interested in wetlands. Specifically, wetlands  
3 have a major influence on water quality. I like  
4 trout and suckers and catfish and frogs and  
5 Canada geese, but I also like people and all of  
6 the above need quality water. Tourism,  
7 recreation, hunting, fishing are all important  
8 to many of us, but the water that comes out of  
9 the tap is of critical importance to all of us.  
10 To make much of the Commonwealth's water potable  
11 and commercially and industrially usable, we  
12 must remove contaminants either by human or  
13 Mother Nature's systems.

14           I am a conservationist. I believe in  
15 the conservation of our natural resources, not  
16 preservation at all costs. I would urge you to  
17 reach an appropriate balance between the use of  
18 our natural resources for the economic and  
19 social benefit of people today and the  
20 preservation of resources for tomorrow.

21           In order to reach that objective, the  
22 first requirement is to arrive at a universal  
23 definition for wetlands. And you have heard  
24 lots about that. Unlike people, all wetlands  
25 are not created equal and the definition must

1 take this into account. If a wet spot is small,  
2 contributes little or nothing to water quality  
3 improvement or aquifer recharge and breeds  
4 mosquitoes, does it need protection? If it has  
5 medium characteristics, can mitigation be a  
6 solution? Incidentally, there have been some  
7 mitigation projects constructed in the  
8 Commonwealth and some by the Commonwealth where  
9 the cost to taxpayers has been all out of  
10 proportion to the benefits gained.

11 And finally is the issue of  
12 compensation. We now deny mining permits in  
13 cases where it is apparent that water  
14 degradation problems will arise. This is  
15 proper, it is no different than denying a swamp  
16 draining permit where major damage to the public  
17 interest would occur. We get back to the  
18 definition problem.

19 Again, I urge you to take a  
20 conservation approach to the wetlands  
21 legislation problems and not preservation at all  
22 costs.

23 CHAIRMAN REBER: Thank you, Mr.  
24 Kaufman. I kind of chuckled as you said it  
25 because it is sort of a feeling that I have

1 always tried to approach these kinds of issues  
2 and that is you used the word appropriate  
3 balance.

4 I have always felt where we have  
5 situations like we have before us today and we  
6 are discussing to try and spread the  
7 dissatisfaction minimally and evenly. It seems  
8 when somebody is real happy and somebody is real  
9 upset, you haven't done your job. But if they  
10 are still talking to me and they are just each a  
11 little bit upset and still talking to me, I  
12 think that is when you probably, to use your  
13 words, achieve the appropriate balance that I  
14 think you are looking for.

15 And it is certainly my hope, as we go  
16 forward in this particular exercise in our  
17 deliberations and what have you, that that  
18 appropriate balance can be judiciously brought  
19 about. So I thank you for that comment. I  
20 certainly don't disagree with that observation.

21 I look to my left, Representative Sam  
22 Smith.

23 REP. SMITH: Thank you, Mr. Chairman.

24 Really, I just wanted to make an  
25 additional comment. If you look at the first

1 couple of lines of Mr. Kaufman's testimony, he  
2 indicates some of the other organizations he is  
3 affiliated with.

4 Then for the Members of the Committee,  
5 I wanted to make note that the Mill Creek  
6 Association is an association that has taken  
7 about using, creating wetlands in essence to  
8 treat acid mine drainage as well as that is a  
9 consistent endeavor that the Western  
10 Pennsylvania Coalition for Abandoned Mine  
11 Reclamation has undertaken.

12 And, Mr. Kaufman, certainly feel free  
13 to comment further on that aspect of the Mill  
14 Creek Association, but in the mining, especially  
15 in the aspect of abandoned mine reclamation, the  
16 mining industry has been doing a lot of work in  
17 order to try to identify where proper wetland  
18 identification is affecting the water quality.  
19 There are some cases where an abandoned strip  
20 mine pit holding water would be identified as a  
21 wetland and therefore a remining permit might be  
22 denied, but in fact that wetland impoundment  
23 might be serving simply as a recharge for an  
24 acid mining drainage steep elsewhere on the  
25 property and within that permit boundary.

1           So he kind of understands some of the  
2 other issues that he has been involved with, I  
3 think in terms of wetland utilization for  
4 treating acid mine drainage and I wanted to  
5 bring that to the attention of the Committee.

6           MR. KAUFMAN: I would like to comment  
7 on that. These various organizations that I am  
8 associated with, we have built a lot of  
9 wetlands. So far, we have not run into the  
10 problem of having a wetlands there and we need  
11 to do something with it to improve water quality  
12 in the streams. We are going to run into that  
13 pretty shortly and whatever regulations are in  
14 effect may give us a problem as to whether or  
15 not we can modify that wetland to use it for our  
16 purposes of acid mine drainage abatement.

17           CHAIRMAN REBER: Representative Vitali.

18           REP. VITALI: On Friday, we were up in  
19 the Poconos and Craig Todd from the Monroe  
20 County Conservation District testified and their  
21 conservation district took an official position  
22 opposing GP-15.

23           It basically stated that they feel that  
24 the current legislation and regulations were  
25 basically working, they have gotten used to them

1 and didn't feel the adjustments that have been  
2 proposed were necessary. I am wondering if your  
3 conservation district has taken a position on  
4 GP-15 or other legislation?

5 MR. KAUFMAN: No, we have not  
6 specifically taken a position.

7 REP. VITALI: Thank you.

8 CHAIRMAN REBER: Representative Fargo,  
9 Representative Steelman?

10 REP. STEELMAN: Thank you.

11 I was wondering, in view of your  
12 remarks about the importance of some wetlands,  
13 but not necessarily all wetlands to water  
14 recharge systems, what you think of the idea  
15 that has been proposed that perhaps instead of  
16 trying to mitigate very, very close to the site  
17 where a given wetland is going to be, going to  
18 suffer as a result of development, the  
19 possibility of creating or expanding wetlands in  
20 the same watershed drainage area but perhaps at  
21 a site that would be better for wetland  
22 development and might even offer greater  
23 environmental conservation benefits than a  
24 simple, straightforward mitigation site. Do you  
25 think that even if the, quote, mitigation,

1 unquote, were some distance away that the  
2 possibility of this kind of banking has some  
3 potential?

4 MR. KAUFMAN: I am not a  
5 hydrogeologist. Those that I have talked to, I  
6 don't think know the answer to that question. I  
7 certainly don't. How you determine where to  
8 best build that mitigation, I think still  
9 requires some investigation. I think that that  
10 mitigation should take into account, as far as  
11 we are able to, where you build it so you  
12 acquire the best benefits, whether it is  
13 recharge or where you are going to put it back  
14 in the stream or whatever.

15 REP. STEELMAN: One more question. We  
16 have been talking mostly at the hearing today  
17 about classifying wetlands and ranking wetlands,  
18 but your testimony also raises the possibility  
19 that instead of simply classifying wetlands,  
20 maybe we should also be looking at ranking  
21 wetlands functions. Because in your testimony,  
22 you are implicitly and explicitly saying that  
23 you think that water recharge, purifying water  
24 for human and other uses is perhaps the most  
25 important, followed by flood control, followed

1 by wildlife habitat; and that, maybe rather than  
2 some of these other criteria such as size, that  
3 is how we should be looking at wetlands. Would  
4 you encourage us to go on with that sort of  
5 approach?

6 MR. KAUFMAN: I certainly would  
7 encourage you. I think that we are looking at  
8 it, what I said, that I am a conservationist and  
9 not a preservationist. I think that people are  
10 very important to us and that we need to look at  
11 what's that wetland doing as it affects people  
12 beyond the wildlife, the fishing and that sort  
13 of stuff -- I believe in that too -- but I think  
14 we have to look at the wetlands as what are  
15 people going to gain or lose by it.

16 REP. STEELMAN: I concur with you that  
17 that's a pathway that perhaps we should explore  
18 further.

19 Thank you, Mr. Chairman.

20 CHAIRMAN REBER: The Chair thanks the  
21 lady.

22 Any further questions of this witness?

23 (No response.)

24 CHAIRMAN REBER: Thank you very much,  
25 Mr. Kaufman. Again, I appreciate you taking the

1 time and listening to what went before you and  
2 giving us your wisdom as well. Thank you so  
3 much.

4 MR. KAUFMAN: Thank you, Mr. Chairman,  
5 Members of the Committee.

6 CHAIRMAN REBER: Our final witness is  
7 Marci J. Mowery, the Executive Director of the  
8 Audubon Council of Pennsylvania.

9 Marci, thank you very much for your  
10 indulgence of the Committee and the time that  
11 you have taken here today awaiting to testify.  
12 We anxiously look forward to your testimony.

13 MS. MOWERY: Thank you.

14 The Audubon Council of Pennsylvania is  
15 pleased to testify before the state House of  
16 Representatives Environmental Resources and  
17 Energy Committee on wetlands protection in the  
18 Commonwealth. These hearings offer an important  
19 opportunity to examine the need for stronger  
20 wetland protection.

21 The Audubon Council of Pennsylvania is  
22 a nonprofit conservation organization with more  
23 than 26,000 members in the State of  
24 Pennsylvania. These members are dedicated to  
25 the preservation of our natural resources.

1           Protecting Pennsylvania wetlands has  
2           been a high priority activity for the Council  
3           since its incorporation in 1987. The membership  
4           has voted it our number one issue annually since  
5           that date.

6           My name is Marci Mowery and I am the  
7           Executive Director of the Audubon Council of  
8           Pennsylvania. I came to the Council after  
9           completing my Master's Degree in  
10          Geoenvironmental Studies -- or the spacial  
11          relationship between man and his environment.  
12          While completing my Master's, I held an  
13          assistantship with the Shippensburg Area Chamber  
14          of Commerce. I developed a number of projects  
15          while at the Chamber, but the one I would like  
16          to share with you today is my work on a  
17          comprehensive guide to industrial and commercial  
18          site locations for the Shippensburg region.

19          The site location guide proactively  
20          identified over 20 locations in the region which  
21          would be suitable for development, based upon  
22          infrastructure, soil types, hydrology,  
23          availability and other factors. This guide was  
24          and is used by the Chamber and the state for  
25          recruiting business into the Shippensburg

1 region. This guide assured that economic  
2 development would occur without impact to the  
3 region's valuable natural assets.

4 I share this scenario with you, for  
5 economic development and environmental  
6 protection (wetlands protection) are not  
7 mutually exclusive concepts. Time and time  
8 again environment is framed against economics,  
9 but as the example portrays, the environment can  
10 be protected as long as planning for future  
11 growth of an area exists.

12 In a 1994 study conducted by the  
13 Institute of Southern Studies, entitled Gold and  
14 Green, the 50 states were ranked on economic  
15 performance and environmental stress. The 20  
16 economic indicators included annual pay, job  
17 opportunity, and business start up; the 20  
18 environmental measures ranged from toxic  
19 emissions to spending for natural resource  
20 protection. Those states that ranked high on  
21 environmental measures, also ranked high in  
22 economic indicators. Conversely, those states  
23 which ranked low on environmental measures,  
24 ranked low on economics indicators. This is not  
25 the first study to find a strong positive

1 correlation between environmental protection and  
2 economic development. Incidentally,  
3 Pennsylvania ranked 21 on economics and 23 on  
4 the environment.

5 Wetland protection goes beyond the  
6 debate of, do wetland regulations hinder  
7 economic development to the reality that  
8 wetlands are an economic gain? Well over half  
9 of all Pennsylvanians participated in wildlife  
10 associated recreation in 1991 -- wildlife that  
11 is dependent on wetlands for survival. These  
12 wildlife activities contributed \$2.5 billion to  
13 the Pennsylvania economy. Expenditures were  
14 mainly for equipment and travel -- new money  
15 into the rural communities of Pennsylvania.

16 Wetlands and adjacent flood plain lands  
17 often form natural flood ways that convey flood  
18 water from upstream to downstream points.  
19 Floods in Pennsylvania have caused millions of  
20 dollars in damage. Between 1972 and 1986,  
21 public assistance to help pay for flood damage  
22 averaged \$20 million per year.

23 Wetlands improve water quality by  
24 removing suspended particles and dissolved  
25 chemicals, including pollutants. Tinicum Marsh

1 in southeastern Pennsylvania removes nitrates  
2 and phosphates from Darby Creek, which receives  
3 sewage from many sources. The Connertown Marsh  
4 near Girardville in Schuylkill County has  
5 treated acid mine drainage and raw sewage so  
6 successfully that fish now live in the  
7 Shenandoah Creek for the first time in 100  
8 years. Wetlands remove pollutants from nonpoint  
9 sources, such as from agriculture, parking lots,  
10 highways and developed land. According to a  
11 1985 study by E.H. Clark, an average of  
12 \$53 million per year is saved in water quality  
13 improvements associated with intact wetlands in  
14 the Mid-Atlantic region.

15 When the economic impacts of poor water  
16 quality are reviewed, we see that \$53 million is  
17 rather conservative. For example, according to  
18 a study review published in the August edition  
19 of the Environmental Synopsis of the  
20 Pennsylvania General Assembly, the Natural  
21 Resource Defense Council found that Pennsylvania  
22 had 14 beach closings in 1994, predominately due  
23 to high bacteria levels. Similarly, 20 percent  
24 of Pennsylvania's surface water do not meet  
25 water quality standards. During the 1992 to

1 1993 bathing season, 44 bathing areas in the PA  
2 State Park System were closed due to fecal  
3 contamination. Fish consumption advisories  
4 caused by toxic contamination have been issued  
5 for 22 state water bodies. These figures are  
6 not conducive to promoting Pennsylvania's second  
7 leading industry -- tourism -- nor do they  
8 provide the quality of life sought by many  
9 companies looking to relocate.

10 Benefits of retaining water in wetlands  
11 where seepage occurs can also be expressed in  
12 terms of maintenance of in-stream flow and  
13 regulation of lake levels. The 1994 boating  
14 season realized 322,318 registered boats in the  
15 Commonwealth. This amounts to \$292 million in  
16 direct expenditures, and \$416 million on  
17 indirect expenditures. These indirect  
18 expenditures include fuel, lodging, meals,  
19 admission and entrance fees.

20 The presence of wetlands does not  
21 necessarily limit development or decrease real  
22 estate value. Numerous examples exist of  
23 housing developments in which the wetlands were  
24 maintained by reducing lot size, performing  
25 cluster development, or by incorporating common

1 open space. The protection of these wetlands  
2 has proven beneficial, both to the developer,  
3 who was able to ask a higher price for the lots  
4 and homes, and for the homeowner, who did not  
5 have the remedial effects of building in a  
6 wetland -- subsidence, vermin, wet basements,  
7 and malfunctioning septic systems. The wetland  
8 also offered a natural, in effect, storm  
9 retention basin.

10 Again, I would like to emphasize that  
11 wetland protection can occur without impinging  
12 on economic gains.

13 Concerns surrounding current proposals.  
14 In a recent address to the Pennsylvania  
15 Environmental Council, Governor Ridge stated,  
16 Sound science, not simply speculation, will  
17 determine our regulations and policies. The  
18 current legislative and administrative proposals  
19 on wetland protection do not reflect sound  
20 science.

21 In 1993 the US Congress requested that  
22 the National Academy of Sciences provide an  
23 assessment of the validity of wetland  
24 definitions, present knowledge of the structure  
25 and function of wetlands, and regional

1 variations of wetlands. On May 9, 1995, the  
2 National Academy of Science released the  
3 findings of the committee set up by the National  
4 Research Council.

5 Current legislative proposals would  
6 rewrite the definition of wetlands to ... an  
7 area where water is found at the surface of the  
8 land for at least 21 consecutive days during the  
9 growing season in which delineation is made ...  
10 According to the Academy study, the threshold  
11 for duration of saturation can be approximated  
12 as 14 days during the growing season in most  
13 years, the depth of which should be evaluated is  
14 the upper plant rooting zone. The 14 day  
15 duration threshold is provisional, and should  
16 take into account the length of growing season.  
17 (Pennsylvania's growing seasons range from 120  
18 days to 180 days.)

19 Current legislative initiatives also  
20 propose an elaborate and costly classification  
21 scheme. This scheme -- high, medium and low  
22 value wetlands -- would determine which wetlands  
23 were afforded protection. According to the  
24 National Academy of Sciences, assessment of  
25 values requires comprehensive scientific

1 knowledge of wetland functions, along with the  
2 use of methods from economics and other related  
3 fields.

4           The study goes on to say, it is not  
5 possible, however, to relate such categories in  
6 a reliable way to objective measures of wetland  
7 functions, in part because the relationships  
8 between categories and functions are variable  
9 and in part because we still have insufficient  
10 knowledge of wetland functions. This can be  
11 exemplified by a 1993 Philadelphia Inquirer  
12 story. After a country club filled in 10 acres  
13 of wetlands to expand a golf course, nearby  
14 neighbors found their water no longer drinkable.

15           Under current wetland regulations,  
16 Pennsylvania is losing about 1200 acres of  
17 wetlands per year -- a large figure considering  
18 less than 2 percent of Pennsylvania's landmass  
19 is wetlands. If the proposed classification  
20 schemes were enacted, along with the 21 days of  
21 saturation, 70 percent or more of Pennsylvania's  
22 wetlands would be removed from protection.

23           Mitigation. An emphasis on the use of  
24 mitigation as a solution to wetlands losses has  
25 been proposed by both the Administration and the

1 General Assembly. Mitigation is a last resort  
2 -- avoid, minimize, mitigate. Many of the  
3 proposed permits are for activities which are  
4 not water dependent and therefore should not be  
5 placed within a wetland.

6           When it is necessary to mitigate (such  
7 as in cases of road construction, water  
8 dependent projects, where there is a question of  
9 health and safety, or to insure a more  
10 successful mitigation of incremental small  
11 losses) mitigation should occur within the  
12 watershed and should provide similar functions  
13 as the destroyed wetland. To replicate these  
14 functions is a difficult task, because we often  
15 do not understand all of the functions performed  
16 by a wetland until after the wetland is  
17 destroyed.

18           Mitigation is the burden of the  
19 applicant, not the state, just as the burden of  
20 automotive repairs to pass state inspection is  
21 the burden of the automobile owner.

22           In a hierarchy of what constitutes  
23 mitigation, based upon chances of success, we  
24 propose restoration, enhancement (if function of  
25 the wetland is not changed) and creation. We do

1 not believe that the purchase of wetlands  
2 constitutes mitigation -- as the purchased  
3 wetlands are protected by wetland regulations,  
4 and purchasing wetlands does not promote the  
5 concept of no net loss. The ratio of wetland  
6 replacement needs to be determined on a case by  
7 case basis.

8 Compensation. The Audubon Council does  
9 not support the concept of takings as proposed,  
10 although we do recognize the need to compensate  
11 landowners through other methods. Takings  
12 protection is provided under the US  
13 Constitution, and in cases where all use of the  
14 property are lost, compensation does occur. But  
15 in most cases, the denial of a permit to develop  
16 a wetland does not eliminate all use of that  
17 land, and is therefore not a taking. All  
18 citizens of the Commonwealth should not be  
19 expected to pay for the speculative purchase of  
20 land.

21 The Council strongly supports tax  
22 abatements for wetland landowners, as is used in  
23 agricultural areas. Transfer of development  
24 rights could also be used, as well as easements.

25 We propose that the presence of

1 wetlands be made part of the real estate  
2 disclosure. Although at first this might sound  
3 a bit overwhelming, I really do not believe it  
4 would be. Many homeowners may already be aware  
5 of the presence or absence of wetlands on their  
6 property, such as those residing in metropolitan  
7 areas. Many municipalities have delineated  
8 wetlands as part of comprehensive planning, and  
9 have these records and maps available. Each  
10 county has a conservation district, who have  
11 available soil maps which depict hydric soils,  
12 often an indicator of the presence of wetlands.  
13 Finally, a database of GIS map of wetlands  
14 delineated by the private sector, state, federal  
15 and local agencies, could provide the  
16 information needed for real estate disclosure  
17 without increased costs to the consumer.

18 GP-15. Recently, the Administration  
19 proposed a new general permit for the fill of up  
20 to one half acre of wetland. The Council is not  
21 opposed to general permits, but we believe this  
22 general permit does not protect the public  
23 interest.

24 We can empathize with those private  
25 landowners who purchased land prior to wetland

1 regulations, and who are now unable to build.  
2 If the GP is an attempt to passify these  
3 landowners, then it should be limited to those  
4 subdivisions that existed prior to wetland  
5 regulations, either federal (1972) or state  
6 (1980). Any land purchases or subdivisions  
7 after the enactment of legislation, was done so  
8 knowing that development limitations would  
9 exist. (The speedometer of my car reads to 125  
10 miles per hour, but that does not mean that I  
11 can drive my car at that speed. I purchased the  
12 vehicle knowing that safety regulations would  
13 limit my use of the vehicle.) Additionally, the  
14 one half acre size proposed by GP-15 is too  
15 great -- a tenth of an acre fill would be  
16 sufficient.

17 The cumulative impact of wetlands  
18 losses should not be forgotten. The carrion  
19 beetle can devour a carcass one bite at a time.  
20 We too can destroy our wetland resource a  
21 quarter of an acre at a time until it is too  
22 late.

23 The Audubon Council of Pennsylvania  
24 empathizes with the frustrations and delays that  
25 some applicants may experience when applying for

1 a wetlands permit, but believe a rewrite of  
2 wetland regulations and general permits is not  
3 the answer. In the spring of this year, the DER  
4 introduced a SPGP that addresses some of the  
5 concerns addressed by permit applicants. We  
6 must allow this initiative time to determine if  
7 it has been successful. Legislative changes  
8 will not address the complaints regarding DEP  
9 staff or field offices -- but adequate staffing,  
10 funding and training of staff will.

11 If the presence of wetlands were part  
12 of the real estate disclosure, we could avoid  
13 speculative interest in areas unsuitable for  
14 development. Tax incentives, transfer of  
15 development rights, easements, education, etc.,  
16 are all methods to protect both wetlands and the  
17 consumer.

18 The wetlands debate should not be  
19 framed around wetlands protection, as wetlands  
20 are an important part of the health and economic  
21 well-being of the state. Instead, the message  
22 should be the need for planning. You wouldn't  
23 build a house without a blueprint -- likewise,  
24 you shouldn't develop an area or the state,  
25 without a plan.

1           And I have two additional handouts.  
2           One is the study conducted by the National  
3           Aubudon Society which quantifies a number of  
4           issues. And also, on page 112 of the Audubon  
5           Magazine is both sides of the Johns' (phonetic)  
6           life story which is a horror story that is often  
7           used when we are talking about wetlands  
8           protection.

9           CHAIRMAN REBER: Thank you very much,  
10          Miss Mowery. I appreciate your testimony. And  
11          we would note for the record that those two  
12          documents that you have referred to at the end  
13          of your testimony have been distributed to the  
14          members and will certainly be made part of the  
15          permanent record.

16          I look to my far right for any  
17          questions of this witness.

18          REP. LEVDANSKY: Excellent testimony.

19          MS. MOWERY: Thank you.

20          CHAIRMAN REBER: Representative Fargo  
21          is recognized.

22          REP. FARGO: You mentioned that ... we  
23          do not believe the purchase of wetlands  
24          constitutes mitigation ... and purchasing  
25          wetlands does not promote the concept of no net

1 loss. You know as far as the state is concerned  
2 we purchase farming developmental rights under  
3 the farm preservation to keep that land in  
4 farming, and it would seem to me that maybe  
5 under what you are talking about here would be a  
6 good idea here for us to purchase wetlands or at  
7 least give the value, and if its the  
8 developmental area, the difference between what  
9 it is as a wetland which is useless to a lot of  
10 people and what the value would be if it was not  
11 a wetlands. Do you have any problem with that  
12 concept?

13 MS. MOWERY: As I said, I agree with  
14 the tax abatements, etc., similar to what we use  
15 to agriculture lands. I reside in Lancaster  
16 County and we have a number of those programs to  
17 protect our fine soils in the county.

18 And as for purchasing wetlands, we are  
19 not opposed to purchasing wetlands to protect  
20 them, but not as a form of mitigation.

21 REP. FARGO: There are a lot of  
22 wetlands being made as we go along here,  
23 whenever they put a road through and you end up  
24 dividing it and you have a puddle on one side  
25 and you start getting into wetlands; do you

1 consider that as an area that should be  
2 protected since we have now created the wetlands  
3 and that wetlands should be protected in the  
4 future?

5 MS. MOWERY: I think we look at the  
6 caseload development on a case-by-case basis.

7 REP. FARGO: And if in that instance it  
8 is a wetlands on a scientific definition of  
9 wetlands and that there is some water there and  
10 they have got some soil that looks like it is  
11 wetland soil, that it should be protected?

12 MS. MOWERY: That would be dependent on  
13 whether or not it is performing a function.  
14 Again, it is on a case-by-case basis.

15 For highway projects, most of the times  
16 the permit is given. And as we have heard  
17 today, 96 percent of the permits are given.

18 REP. FARGO: Okay. Thank you. I  
19 appreciate your testimony.

20 MS. MOWERY: Thank you.

21 REP. STEELMAN: It is interesting to  
22 hear a horror story from the other side in some  
23 sense. Will you have a copy of that story in  
24 the Inquirer that you would share with us?

25 MS. MOWERY: Yes, I will.

1           REP. STEELMAN: And also coming like  
2 Representative Smith in an area in which we have  
3 got some water problems due to mining, I know  
4 that there is a legal responsibility for a mine  
5 owner, who as a result of mining operations  
6 destroys water supplies of families living in  
7 the area, to provide some form of replacement  
8 for them. Did the country club have to do  
9 anything for the people whom the value of whose  
10 property was destroyed as a result of their  
11 water loss?

12           MS. MOWERY: I will have to refer back  
13 to the article. But interestingly the gentleman  
14 who operated the backhoe that filled in the  
15 wetlands was one of the town's developments  
16 (phonetic) even before the water quality was  
17 impacting.

18           REP. STEELMAN: Well, in a way, I guess  
19 that seems --

20           MS. MOWERY: Quite an injustice.

21           REP. STEELMAN: Actually, that is an  
22 inappropriate punishment, almost. But what I am  
23 wondering is, then, if we were to increase the  
24 use of wetlands in the Commonwealth, if we could  
25 start seeing developing the doctrine that there

1 was a legal responsibility on the part of  
2 developers for any consequences to the families  
3 downstream from them.

4 No further questions, Mr. Chairman.

5 CHAIRMAN REBER: The Chair thanks the  
6 lady.

7 Any questions to my left?

8 (No response.)

9 CHAIRMAN REBER: Miss Mowery, just a  
10 couple of thoughts on your observations. In the  
11 testimony you referenced that Governor Ridge  
12 stated, quote, Sound signs, not simple  
13 speculation, will determine our regulations and  
14 policies, end of quote. And at times during the  
15 course of these hearings, I have heard  
16 statements that sound science should govern. My  
17 question is this: how do I, as a member of this  
18 Committee and a member of the General Assembly,  
19 make a determination who I should believe when  
20 they are testifying on behalf of, quote, sound  
21 scientific principles, end of quote, and they  
22 are the hired gun, if you will, of one side of  
23 the issue or the other?

24 It is similar to the dilemma that you  
25 have with an expert witness in a court

1 proceeding.

2           And I just wonder what the Governor's  
3 definition of sound science is and how we are to  
4 extrapolate that from the individual that is  
5 offering that particular philosophy, theory,  
6 hypothetical, whatever might be the case. I  
7 will have an opportunity to ask him that at some  
8 time.

9           My question is to you: what is your  
10 recommendation as to where and how we should go  
11 to, in essence, if we have to, visa vis  
12 regulation or statutory authority, develop the  
13 necessary empirical data that has to go into  
14 that from that sound scientific principle? And,  
15 how do we make sure that we are getting the best  
16 and the brightest? That's a difficult question.

17           MS. MOWERY: It is a very difficult  
18 question. And it's something that I do ask  
19 myself, when I am reading the literature and the  
20 journals, which side do you believe? Because I  
21 try to gather all the facts when I am forming an  
22 opinion. And I think sound science, one, we  
23 should be looking at the scientific  
24 professionals and looking at their background  
25 and who they represent because money talks. I

1 mean, if they are representing the scientific  
2 community or are they representing a specific  
3 interest.

4 CHAIRMAN REBER: Let me ask you it this  
5 way: at least for a starting point for myself,  
6 would I look to the reknowned expert regardless  
7 of who he may be testifying for or writing for  
8 and look for those areas of similar discussion  
9 on a similar point and where they are in sync  
10 regardless of who they may be working for, the  
11 Audubon Society or whoever, where they are  
12 similar? Should I then extrapolate from that  
13 that this is relatively uncontroverted,  
14 noncontroversial testimony and that is a pretty  
15 good place to start as far as developing a sound  
16 scientific basis on which to promulgate  
17 legislation and/or statute? Is that one of the  
18 ways that we could go about this?

19 MS. MOWERY: I think it would be a  
20 start and you can explore something as being  
21 reiterated by many different people that this  
22 could be accurate, but there is always cause for  
23 further research.

24 CHAIRMAN REBER: Yeah, I understand  
25 that.

1           In the course of your matriculation  
2           towards your Master's Degree in Geoenvironmental  
3           Studies and some of your experiences since that,  
4           have you been able to determine or are you aware  
5           of any data that is out there that represents  
6           for us areas of wetlands that are of exceptional  
7           quality without question, and do, in fact, and  
8           currently, and if projected out into the future  
9           when there may be development in that area, are  
10          of such exceptional quality that they absolutely  
11          have to be preserved, as opposed to a mapping,  
12          if you will, of areas that are a wetland, no  
13          question about that, no one on any side of the  
14          issue could debate that fact, but other factors,  
15          steep slopes, pollution, or things of that  
16          nature, would preclude that area from ever being  
17          developed where that wetlands and the necessity  
18          of regeneration might go through it?

19                 Is there any kind of study we can look  
20                 at that you are aware of that takes under those  
21                 kinds of considerations which gives us some idea  
22                 that we could take this 2 percent that I hear  
23                 everybody about, or less than 2 percent, and  
24                 then determine of that 2 percent, that universe,  
25                 what, if anything, is or is not available for

1 GP-15 consideration or some other form of  
2 general permit consideration?

3 Is there any documentation, any  
4 mapping, any studies, anything out there that we  
5 could really grasp upon that you are aware of?

6 MS. MOWERY: Not as far as I am aware  
7 on the exceptionality because the exceptionality  
8 changes over time. I mean, at one point Tinicum  
9 Marsh may not be -- have that considered an  
10 exceptional wetland, but at this point it is an  
11 exceptional wetland because it has gotten the  
12 function of treating the effluent in Darby  
13 Creek. So I kind of like somebody classifying a  
14 wetland even as simple as that exceptional  
15 wetland or an okay wetland similar to somebody  
16 coming into my office on any one given day and  
17 saying, I am a good worker, I am a bad worker,  
18 because it really changes over time, what  
19 function it is performing and how you would rate  
20 it.

21 CHAIRMAN REBER: Okay. I will be able  
22 to report back to you because in about three  
23 hours, I am going to be flying over Tinicum  
24 Marsh and I will check on how the nitrate and  
25 the phosphate and the removal process is

1 working.

2 MS. MOWERY: Okay.

3 CHAIRMAN REBER: Okay. Thank you very  
4 much.

5 Any further questions of anyone in the  
6 Committee?

7 (No response.)

8 CHAIRMAN REBER: All right. Thank you  
9 very much for your testimony. And at this point  
10 in time, I will announce that the public hearing  
11 on the wetlands issues and legislation that has  
12 been proffered by members of the General  
13 Assembly is hereby concluded and recessed.  
14 Thank you.

15 (Whereupon, the House Environmental  
16 Resources and Energy Committee Public Hearing  
17 was concluded at 1:40 p.m.)

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I hereby certify that the proceedings  
and evidence are contained fully and accurately  
in the notes taken by me on the within  
proceedings, to the best of my ability, and that  
this copy is a correct transcript of the same.



Roxy Cressler, Reporter

Notary Public