



# **Pennsylvania Environmental Council**

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**TESTIMONY OF**

**THE PENNSYLVANIA ENVIRONMENTAL COUNCIL**

**BEFORE THE**

**PENNSYLVANIA HOUSE OF REPRESENTATIVES  
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE**

**HEARING ON WETLANDS ISSUES**

**TITUSVILLE, PENNSYLVANIA  
AUGUST 29, 1995**

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TESTIMONY OF THE PENNSYLVANIA ENVIRONMENTAL COUNCIL

Mr. Chairman, members of the Committee, good morning. My name is Davitt Woodwell and I am the Director of the Western PA office of the Pennsylvania Environmental Council. On behalf of the Council, I want to thank you for giving us this opportunity to testify on an issue of great importance to the Council and its members across the Commonwealth.

The Pennsylvania Environmental Council is a statewide non-profit, non-government environmental education and advocacy organization. Founded in 1970, the Council has been involved in a wide array of environmental issues over the last quarter century. One of the most important of these has been the question of how best to conserve our vitally important wetland resources while still encouraging the economic development that is key to the Commonwealth's future.

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

Because this hearing is designed to address issues broadly, rather than to focus on a specific piece of legislation, I will

be discussing several aspects of wetlands protection and conservation. These are: the effects of the current system of regulation, proposals for classifying wetlands, proposals for compensating landowners for the impact of wetlands regulation, taxation issues and the Ridge Administration's Wetlands Initiative.

### Effects of Current Wetlands Regulation

Wetlands are clearly an important natural and economic resource for Pennsylvania and the nation. At no point during the recent debates on wetlands has anyone, to my knowledge, stated that wetlands are insignificant or should be destroyed. The importance of wetlands for flood control, water purification and the propagation and support of species including commercial and sports fisheries and game species has been well documented.

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

And yet, there is great debate about the federal and state programs. The Council believes that the reason for this debate is that the current system of regulation is, to all but those who deal with it on a regular basis, a seeming morass of agencies,

permit applications and confusion. In travelling around the state, the complaints and "horror stories" that I have heard about the wetlands program have not been about the taking of property so much as about the uncertainty of and the time taken in the permitting process.

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

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

With these facts in hand, it is necessary to ask where the perceived problem with the program lies. It is the position of the Pennsylvania Environmental Council that the perceived problems can be addressed by streamlining the permit process and identifying one agency that is responsible that is responsible to the public, with input from others, for the issuance of all wetland permits.

### **Classification of Wetlands**

A number of proposals have been introduced that include the classification of wetlands, often as types A, B, and C with A

being defined as the highest-value wetland. The Council has previously taken strong positions against this type of broad, regulatory classification of wetlands when a program allows for permit-less development or requires immediate compensation in one of the classes.

While broad classifications of wetlands appear to solve some of the regulatory issues of wetland delineation, they fail to take into account the interrelatedness and interconnectedness of individual wetlands working together in a watershed. This is especially true when such classifications call for allowing development in all class C wetlands. Bolstering this is the admonition in Pennsylvania's wetland program that: "the cumulative impact of [a] project and other potential or existing projects [be determined]." 25 Pa. Code, Section 105.14(b)(14).

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

#### **Compensation for Wetlands Regulation**

There has also been a great deal of debate at the state and federal levels about compensating landowners when the government regulates property. One of the programs at the heart of this debate has been the conservation of wetlands.

The Council fully supports the just compensation provisions of the U.S. and Pennsylvania constitutions. These provisions

require that just compensation be paid whenever private property is taken for public use. Generally, wetlands regulations do not take property for public use, rather they protect against the public harm that would result were wetlands indiscriminately filled.

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

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

A criticism of keeping the process in the courts is that it simply costs too much money for a landowner to pursue a compensation claim through the courts. This criticism could be addressed by the formation of an law panel chartered to hear such claims shortly after denial of a permit. Such a panel would be mandated to apply the Supreme Court's balancing of factors in arriving at its decision. However, because so few wetland permits are denied, the panel might not have a large caseload.

## **Taxation**

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

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

## **Wetlands Initiative**

The Ridge Administration recently unveiled its Wetlands Initiative for reconsidering various aspects of Pennsylvania's wetlands program. While the Council does not agree with all aspects of the Initiative, we do believe that this approach is preferable to legislatively changing the program. This is because the administrative approach, involving all stakeholders, can better identify those areas that generate the most controversy and address them.

As stated earlier, most of the concern with the program appears to be in how the permit process is applied. Allowing the

Department of Environmental Protection to investigate these areas and refine the process can result in a more effective and efficient wetlands program in Pennsylvania. Indeed, the Department issued a report last year reviewing the program and has already decentralized its permitting processes in order to encourage more timely permitting decisions.

As a result, the Council encourages this Committee to closely follow the activities of the Department in its Wetlands Initiative and, before taking or encouraging legislative action, to review the results of the Initiative as they apply to the concerns of the Committee and those of the various stakeholders in the wetlands program.

### **Horror Stories**

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

Were these stories all true, I would be the first to encourage wholesale change in the wetlands program. But, unfortunately, the stories often tell only half the facts and leave out critical information that tends to mitigate the impact of the story, if not change it completely. Such editing serves



only to cloud the goal that I hope we all share; to ensure a wetlands program in Pennsylvania that protects and conserves valuable natural resources while at the same time recognizing the realities of our economic needs.

So, when you are confronted with one of these "horror stories," please make sure that all the facts have been presented. Also, I have available a collection of these stories from around the country that include both the story and the rest of the story. More copies of this compendium are available if you would like.

#### **Conclusion**

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

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