SIERRA CLUB Pennsylvania Chapter

P.O. Box 606
Harrisburg, PA 17108

TESTIMONY

of

MARTIN E. VISNOSKY

WETLANDS CHAIR

to the

HOUSE ENVIRONMENTAL RESOURCES

and

ENERGY COMMITTEE

August 29, 1995

My name is Martin E. Visnosky and I am the Wetlands Chair of the Sierra Club Pennsylvania Chapter. I would like to thank the Chairman of the House Environmental Resources and Energy Committee, Rep. Robert Reber, Jr. and all the members of the committee for holding this public hearing on wetlands issues and legislation. As we are all aware wetlands have become, in the past several years, a topic of intense scrutiny and debate in communities, legislative bodies, our courts, and within the scientific community. This debate has at times been acrimonious and thoughtless while at other times civil and reasoned. I am pleased to add to the record today of this ongoing debate on behalf of the 19,000 members of the Sierra Club Pennsylvania Chapter.

I would first like to comment on the Administration's wetland initiative as published in the Pennsylvania Bulletin Vol. 25, No. 26, July 1, 1995. The Administration proposes to issue General Permit-15 for private residences in established subdivisions. Under this proposed change the DEP would issue permits allowing applicants to fill up to ½ acre that's 21,780 sq. ft. of wetland, a significant change from the current .1 acre. Monroe County Conservation Dist. Mgr. Craig Todd and his colleague in Pike County Susan Beecher estimate that as a result of this change that the total wetland acreage that may be lost if it is implemented in just these two counties could exceed 6,535 acres. It has been reliably estimated that the Commonwealth has already lost half of its original wetlands. Make no mistake, this proposal would put in serious jeopardy the remaining

wetlands acreage, particularly in the Northwestern and Northeastern corners of our state.

This proposal also seemingly disregards several facts clearly associated with construction and development. Simply put wetlands are poor building locations for a variety of reasons. To site only two of these - septic/sewerage and foundation.

The GP-15 permitting process discourages developers from avoiding wetlands. It also simplifies the process to the point that it encourages manipulation. Does the Department intend to field check the information provided by the applicant on the notification of use form to see that it is valid and factual? Part of the dilemma we now face is the publics lack of knowledge about these ecosystems, let alone their ability to identify and delineate them. We strongly object to this permitting process.

We further oppose the Advanced Wetland Replacement Fund and the National Fish and Wildlife Foundation Replacement Fund to offset impacts of up to $\frac{1}{2}$ acre. Has the U.S. Fish & Wildlife Service agreed or not to participate with the state in this program? Is the fee schedule adequate to fund replacement costs, and is it based on new replacement - an emergent technique with 5% to 50% success rates- or on restoring prior converted wetlands? Who are the "other" parties beside PENNDOT and utilities referred to in the notice for the AWRF?

The DEP would create a 16 member Wetland Management Advisory Committee. We support this concept, but advise that a majority

of the members of this committee should have no direct financial or economic interest in wetland regulation. We would also request that the proposed committee include a representative of the U.S.F.&W.S. as one of the federal agency members.

Yet another question raised by this initiative is how it affects the "no net loss" policy of the Commonwealth in existence since 1987. What ratio will replacement take place at? We favor a 3:1 ratio due to reported failure rates of up to 50%.

In summary this Administration proposal raises more questions than it solves. The cumulative **adverse** impacts on wetland ecosystems and the associated impacts on water quality, flood control, dependent plant, wildlife, and aquatic species have the potential for further unacceptable damage and loss to an already impaired resource. We believe that the regulatory burden on small landowners can be minimized but not with these proposals.

I would now like to share with you our comments on legislation currently before the General Assembly. HB 200 and HB 1049 essentially seek to regulate wetlands in a similar manner except for provisions found in §305. These bills copycat what federal legislation coauthored by now Gov. Ridge, formerly my Congressman, and past efforts in our General Assembly have attempted to do; classify wetlands in an unscientific way ignoring factual considerations. Another common thread is that while recognizing the benefits and their "integral role in maintaining the quality of life" they contradict their stated intent of "limiting the loss of ecological significant wetlands".

They fail by replacing accepted science by defective politics.

While it may be politically convenient to classify wetlands as types A, B, C, prescribing certain characteristics to each, as well as legislatively setting delineation criteria "ensuing that lands are delineated as wetlands as defined in this act"[s]. It sets the stage for losses of greater than 80% to our Commonwealth's remaining wetlands. Certainly this is not the proper tack to take when one of the stated purposes is conservation of the resource and its benefits to society.

The 103rd Congress charged the National Academy of Sciences through a committee formed by the National Resource Council with the task of assessing "the scientific and technical validity of federal regulatory practice in the identification and delineation of wetlands." The findings of this committee are specific and applicable to state decisions and I would recommend the 300 page report to you and your staff. National Academy Press ISBN 0-309-05134-7

Let me briefly note some of those specifics that apply to these bills."Creation of a national scheme that would designate wetlands of high, medium, and low value based on some general guidelines involving size, location, or some other factor that does not require field evaluation. It is not possible, however, to relate such categories in a reliable way to objective measures of wetland functions, in part because the relationships between the categories and functions are variable and in part because we still have insufficient knowledge of wetland functions." [emphasis added]

Yet, these two bills do just that. By placing sound, albeit developing science, and the overriding public interest in the backseat while putting special interests and a vocal minority in the drivers seat.

The NRC committee further found that the 21 day requirement for surface saturation during the growing season lacks a scientific basis and even viewed the 14 day period as "provisional". They recommend a "more sophisticated approach ... such as degree days".

The report also tells us that , "wetlands that lack hydric soils or hydrophytic vascular plants although unusual, should not be excluded from regulation simply because they lack the most common indicators. It is often scientifically defensible to infer information about one factor from another..." Thus, the regulations either of these bills would promulgate calling for a determination only in cases where all three criteria are present is scientifically indefensible.

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

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

Both bills call for replacement or mitigation our position is firm that if this should occur it be at 3:1 ratio and that

such replacement or mitigation be geographically and regionally sensitive.

The major difference between HB 200 and HB1049 is in §305. HB 200 has a compensation provision if a permit is denied. Will this provision pass judicial scrutiny, particularly in light of 200 years of case law and recent Supreme Court and appellate court decisions. Where will the funds come from to compensate aggrieved parties? Will unwilling taxpayers be asked to pay for this so called injury? Could this be called an unfunded mandate?

HB 1049 on the other hand has a taxation provision. We would be willing to consider a scheme providing for the reduction in assessed value if it were fashioned in a manner similar to the state's Clean and Green program and in consultation with county officials.

In closing I would like to again thank the Committee for allowing the Sierra Club Pennsylvania Chapter this opportunity to share with you our positions and for enabling all who testified this time. We would welcome working with the members to craft legislation that is scientifically sound and defensible while at the same time benefitting the interests of concerned Pennsylvanians.