United States Department of the Interior

FISH AND WILDLIFE SERVICE

STATEMENT OF EDWARD PERRY
U.S. FISH AND WILDLIFE SERVICE
PUBLIC HEARING ON WETLAND ISSUES AND LEGISLATION
AUGUST 29, 1995

My name is Edward Perry, I am the Assistant Supervisor of the U.S. Fish and Wildlife Service's Field Office in State College, Pennsylvania. Thank you for the opportunity to present our views on proposed legislation and other wetland issues. Today, I would like to concentrate on three major issues addressed in House Bill 200 and 1049:

1) Identification
2) Classification
3) Mapping

HOUSE BILL 200 AND 1049

Wetland Identification Although water is the driving force behind wetland creation, it is the parameter that is the most difficult to identify in the field. Therefore, State and federal wetland identification manuals use vegetation and soils to confirm that water is present for a sufficient period of time to ensure that the site is functioning as a wetland. This procedure has worked well since it was first adapted by the Environmental Protection Agency in the early 1980's and then by the Corps of Engineers in 1987. It is actually the most reasonable way to identify wetlands because it ensures that uplands flooded for long periods and wetlands subjected to severe droughts are not misclassified. The plants and soils are the only true measure indicating the long-term site characteristics. The bill's provision requiring that water be present at the surface for 21 consecutive days during the growing season is unworkable. We do not know of any procedure or data bank that will enable us to determine if a site meets this criteria. We doubt if such information or procedure exists. If we evaluated some wetlands vegetated with cattails or some other obvious wetland plants this month using the bill's criteria, it is likely that even some of these areas would not be wetlands because the water would not be present. Requiring water to be present during the period the delineation is made is analogous to a insurance investigator being unable to determine that fire destroyed a building because he was not present when flames were present. The National Academy of Sciences addressed this issue in their report to Congress stating "Although specific hydrologic conditions are an absolute requirement for the formation and maintenance of wetlands, the direct assessment of these conditions in the field by use of information on water table or inundation is often infeasible and should not be held as a strict requirement for the identification and delineation of all wetlands."

The Corps of Engineers, Environmental Protection Agency and the Fish and Wildlife Service have conducted field tests of the proposed new wetland definition and determined that redefining wetlands in the manner advocated by the two bills will eliminate about 85% of Pennsylvania's remaining wetlands. Wetlands having high value for storing flood water and

protecting water quality would be eliminated from protection. This includes obvious wetlands along major river systems, such as the Susquehanna River, and in watersheds draining into it.

Given the values of Pennsylvania's wetlands, it does not seem reasonable to eliminate protection for such a scarce resource. Out of Pennsylvania's 26 million acres of land, vegetated wetlands total about 320,000 acres, or less than 1 1/2% of the State's land mass. It is difficult to imagine that a significant number of citizens and developers are being completely frustrated in their development plans when considering that most of Pennsylvania is available for development.

Wetland Classification Contrary to some claims, the State and federal government does not treat all wetlands equally. I have yet to see a permit application for a mud puddle or the three foot pothole that I have heard so much about. Biologists who evaluate permit applications for wetland fills essentially conduct a wetland classification during every site visit, whether it is for a permit action or to resolve a wetland violation. This is the principal reason that most permits are issued, although many are issued with some modification. For example, the Baltimore District of the Corps recently analyzed their permit program and found that they processed 18,000 permits in a 4 1/2 year period (1990-1994). They issued 99.7% of these permits, with approximately 44% being modified in some fashion to reduce the environmental impact. If we treated all wetlands equally as is being claimed, all of these permits would have been denied. In fact, over 95% of all permits at both the State and federal level are issued.

Over the years, scientists have attempted to develop a methodology for classifying wetlands. The most successful of these are somewhat complicated procedures requiring considerable training and expertise to use. However, we have found it is not possible to designate wetlands as having high, medium or low value using some general guidelines based on size, location or some other factor that does not require field evaluation, as these bills propose to do. For example, wetlands in the midst of highly urbanized areas have the greatest opportunity to perform vital wetland functions, such as protecting downstream water quality and storing runoff from major storms. Both bills categorize these as Type C wetlands. Permits for Type C wetlands are automatically approved.

House Bill 1049 classifies Type B wetlands as those that provide for a significant population of avian, aquatic or wetland dependent wildlife or provide significant enhancement or protection of water quality and significant natural flood control. Based on this definition, it seems that these would be among Pennsylvania's highest quality wetlands. Yet the bill stipulates that the Department may issue general permits for any category of activity in these wetlands if the Department determines that the activities are similar in nature. In other words, if the Department wishes to develop a general permit for houses in Type B wetlands, this bill would facilitate that endeavor.

Mapping Both bills require the Department to identify and classify wetlands within five years. We believe it would be useful if maps could be

produced that could be used for regulatory purposes. However, there are some details to consider. The state of New Jersey has spent nearly 10 years and $4.3 million to map their wetlands. Pennsylvania is six times larger than New Jersey. In addition, Pennsylvania's wetlands will be much more difficult to ground-truth due to the remote location of many wetlands. Due to these problems, it will cost considerably more to map Pennsylvania's wetlands.

To give you some idea of the scale of mapping needed for regulatory purposes, please refer to the attachment to our testimony. Note that on the square at the bottom of the page, the thickness of a pencil line delineating the wetland boundary would obliterate a 1/3 acre lot. In other words, wetland delineation at this scale for regulatory purposes would not be useful. However, this is the scale that is most commonly used and is the scale used on USGS topographic maps. Because different scale mapping will be required, new flights will be necessary as well as new air photos. All of this is feasible if the Department is willing to commit substantial funds to the effort. If the intent of mapping is to have a product that the average citizen can use to determine the location of wetlands on their property, then mapping at a much larger scale, such as depicted in the first and second square, will be necessary. However, before conducting any mapping effort, I would suggest discussing this with Mr. William Cubberly (609-984-2532), who is New Jersey's mapping coordinator. Mr. Cubberly should be able to give you more information about what will be required. I believe he will tell you that the state cannot possibly complete the mapping within the time required unless the legislature is willing to commit substantial funding for this effort. Incidentally, even after New Jersey's mapping is completed, the property owner will still need to have project boundaries delineated for any project proposal.

As an alternative, we suggest replacing the mapping provision with language requiring that anyone selling property or moving soil for construction purposes must first have the property checked for wetlands. The Department could develop agreements with County Conservation Districts authorizing them to hire biologists who would be paid with fees collected from developers and property owners requesting delineations. Once the wetland boundary was delineated, the line would be surveyed and plotted on a map of suitable scale that would eventually depict all of the wetlands in the county. This proposal is similar to how New Jersey operates their delineation program.

Although neither bill addresses this issue directly, there is one other issue we would like to discuss. There is a misperception that small wetland fills are inconsequential. For example, the Department has proposed a General Permit that would permit up to 1/2 acre of fill for the construction of homes within established subdivisions. Based on information provided by the Pike and Monroe County Conservation Districts we estimated over 6000 acres of wetlands would be eliminated from these two counties if the GP was issued as proposed.

Although this discussion may give the impression that we are opposed to a general permit for houses in wetlands, in fact, we proposed such a general

permit to the Department in 1991.

We became acutely aware of the problem with lot owners who purchased lots prior to the date of the Department's Dam Safety and Encroachments Act of 1980 when we became involved in public hearings on the Department's proposed changes to their wetlands program in 1991 . After listening to public concerns about DEP's wetlands program, the Service, along with the Monroe County Conservation District, proposed that the DEP adopt a General Permit for houses in wetlands. At that time, the DEP was reluctant to adopt it. However, in 1994, we met with the (then) Director of the Bureau of Dams, Waterways and Wetlands, Mr. Joseph Ellam, to develop a General Permit which would address the legitimate concerns of individuals who purchased lots prior to the date of DEP's Dam Safety and Encroachments Act (1980) while continuing to regulate the public that did not have the same reasonable, investment-backed expectation and minimize the acreage of high quality wetland resources that would be adversely impacted. The draft GP we developed with the Pike and Monroe County Conservation Districts and DEP permits up to 0.10 acre of fill in wetlands to construct a single-family home if the lot was purchased before October 4, 1984. The 1984 date was selected because the DEP first denied Section 401 water quality certification for Nationwide Permit No. 26 on November 2, 1983. As a result, the Corps modified NWP 26 on October 4, 1984. Originally, everyone (except DEP) recommended that the effective date for the GP should be 1980 (the date the Dam Safety and Encroachments Act was enacted). However, DEP argued that their program was not fully functional for a few years; therefore, some individuals were unaware of their wetlands protection program. We agreed to their reasoning and the 1984 date. More importantly, based on our experience and Monroe County's data, the cumulative impacts would not be significant. The general permit that we thought we had reached agreement on would have provided relief to individuals who had been caught in regulatory changes while maintaining protection for high quality wetland resources.

To summarize our position on these two bills, it is our view that the public would be adversely impacted by the virtual elimination of wetland protection in the Commonwealth. Legislation does not seem necessary at this time because the Department is making substantial changes to its permitting program in an effort to make it more "user friendly." These bills do little to make permit applications easier to fill out or streamline the system. However, they will adversely impact the government's ability to protect wetlands. Wetlands protection has always rested with the legislature. You have the ability to maintain our present level of protection, or eliminate it. The unintended consequences are a return to a dual permit system with different wetland delineation methodologies and permitting criteria. I would hope that would not happen.

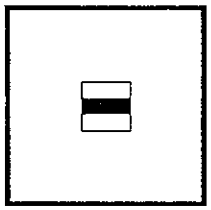
Residents along the Mississippi and Missouri Rivers are beginning to appreciate the value of floodplain and wetland protection as they have experienced successive record floods. Over time, 17 million acres of wetlands have been eliminated from these two river basins and over 400 legal and illegal levees constructed. This has helped cause record floods, adversely affecting many property owners who have never been flooded

before. The problem is that too often we are tempted to heed the complaints of individuals or developers who are unable to do whatever they wish with their property, regardless of the impacts on their neighbors, while it is the public who must bear the costs of increased flooding, reduced water quality and declining fish and wildlife resources. I urge you to give great weight to this thought as you continue your deliberations.

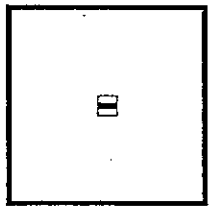
Details To Consider

When Mapping Pennsylvania's Wetlands

Tax Map scale
1" = 200'
Large square is about 1 acre
Darkend rectangle is a 1/3 acre lot



Largest square - 1" = 800' = 14.69 acres
Small square = 1 acre
Solid rectangle = 1/3 acre lot



Largest square - 1" = 2000' = 91.63 acres
Small square = 1 acre
Solid rectangle = 1/3 acre lot