



**Testimony of  
James M. Seif  
Secretary  
Department of Environmental Protection  
on  
Wetlands Protection and House Bill 200  
before the  
House Environmental Resources and Energy Committee  
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Harrisburg, Pennsylvania**

Thank you Chairman Reber, Rep. George and other members of the Committee, for providing the Department of Environmental Protection with this opportunity to talk about wetlands protection and House Bill 200.

With me today are Dr. Hugh Archer, who is deputy secretary for Water Management, and Ken Reisinger, head of our Wetlands Protection Program.

With the help of your Committee and the bipartisan support of the General Assembly, we have just completed a very productive year on environmental issues.

Governor Ridge set an ambitious goal for us at DEP-- to fundamentally transform Pennsylvania's environmental programs from a "government knows best" philosophy to an approach that encourages private ingenuity to achieve our environmental goals and to become a national leader in finding new and innovative ways to protect the environment.

The core mission of our agency has not and will not change-- to protect our environment. But how we accomplish that goal has changed. For example:

**Splitting DER.** The old DER had become a lightning rod for criticism, much of it justified, and was sinking with the burden of greater and greater responsibilities with fewer and fewer resources.

If we didn't change the way DER did its job, DER would have no longer been in a position to accomplish its basic mission-- environmental protection-- let alone continue to make progress.

Through bipartisan leadership, the proposal to split DER was guided through the legislative process to near unanimous approval in both Houses. This success is testimony to both this Committee's leadership and the "rightness" of that legislation.

Now the departments of Environmental Protection and Conservation and Natural Resources have clearly defined missions and the capabilities to pursue those missions.

**Promoting Industrial Site Cleanup and Reuse.** Again, many Committee members here were instrumental in gaining broad bipartisan support for the Land Recycling Program. This program liberates sites from environmentally unnecessary cleanup demands



and liability requirements and will help our cities attract investors to reuse properties that have been vacant in some cases for decades.

The long-term result of this policy, we believe, will be to put less development pressure on green spaces like wetlands and other important natural features.

The interest in this program has been extraordinary, over 1,000 consultants, lawyers, property owners and local governments attended workshops describing this new program in the last few months. Over 30 sites have entered the Land Recycling Program, and many more are on the way. We will soon have a six-month report on these efforts that we will share with you.

**On-Time Permit Decisions.** Governor Ridge established the Money-Back Guarantee Permit Review Program by executive order that guarantees permit decisions within set deadlines or the applicants' fee are returned. It's working. First quarter results -- 702 permit applications, no returns. We are expanding the permits included beyond the original 19 (about 40 percent of DEP's workload) and intend to have all permits included by July 1.

**Regulatory Basics Initiative.** DEP started an unprecedented year-long Regulatory Basics Initiative to identify regulations and policies that were more stringent than federal rules without reason, which imposed disproportionate costs without significant benefits, served as barriers to pollution prevention efforts or the use of new technologies or were simply confusing or made compliance difficult as they were written.

Over 100 individuals, groups and companies submitted over 1,000 pages of comments as a result of the Initiative. We will be working with a variety of advisory committees and other groups to develop rule changes to implement many of these suggestions.

**Office of Pollution Prevention & Compliance Assistance.** The Ridge Administration is the first to come to Harrisburg with a program to help people prevent pollution before it happens and to assist people in complying with our environmental laws. Our soon to be finalized proposal to create the Office of Pollution Prevention & Compliance Assistance will implement that commitment, both to help people outside and inside the agency achieve these objectives.

**Public Participation.** We have also put an emphasis on creating more opportunities for public participation in agency decision-making and providing information on agency programs in new ways, like through the Internet. We will be working closely with DEP's Citizens Advisory Council to implement many of the recommendations they made in a report we asked them to do on Public Participation Reform.

I prefaced my remarks with these initiatives because they outline the general approach to environmental protection we are implementing across the agency-- focusing on the objective to be achieved, using regulatory "common sense," looking for timely permit decisions, encouraging public input and helping people understand what they need to know to comply.

Let me now describe how we put those principles to work specifically in the wetlands protection program.

Pennsylvania has about 400,000 acres of wetlands-- 1.4% of our land surface. By some estimates, more than 56 percent of our wetlands have been lost in Pennsylvania since Colonial times. This loss points to the need to make a clear public policy decision about

the wetlands resources we have left and determine how best to encourage the restoration of wetlands.

Over the last 20 years, the value of wetlands and the need to protect them has become well recognized by the scientific community and the public. It is the methods we have used to protect wetlands that have been controversial.

Wetlands were initially regarded as swamps or bogs-- useless unless filled in. We now recognize that wetlands serve as indispensable filters for pollutants, critical habitats and as natural flood protection.

We have rediscovered the recuperative powers of wetlands in providing our streams and rivers with clean, fresh water -- in fact, manmade wetlands are effectively being used to treat acid mine drainage from coal mining, control non-point source pollution and may even be useful in some hazardous waste cleanups.

The role of wetlands as a natural flood control mechanism is now well documented and the preservation of wetlands have been made a key element in some local storm water and flood control plans in parts of the United States.

Wetlands also serve as unique ecosystems that provide habitats for a vast array of waterfowl, threatened and endangered species and other wildlife. It is the habitat aspect of wetlands that has made sportsmens' groups like Ducks Unlimited one of the most authoritative organizations in the country on wetland replacement.

The conflicts between development and wetlands protection are becoming fewer and fewer as developers routinely factor wetlands protection into their development plans just like they do other natural features such as soil conditions, slopes or floodplains. County conservation districts and others have played a key role in this education process.

It is the remaining conflicts that the Ridge Administration is attempting to address in a series of initiatives I announced last June before the Pennsylvania Council of Farm Organizations. These initiatives will--

- provide consistency between state and federal requirements;
- simplify permit requirements and focus staff resources on protecting wetlands where it does the most good;
- provide more options for replacing wetlands unavoidably lost;
- address particular concerns of farmers and residential lot owners; and
- involve the public in shaping our wetlands protection program.

We offered these proposals for public comment and received several hundred replies; proving again how interested the public is in wetlands protection.

**Public Involvement.** Let me first start with public involvement. It was clear we needed a process to develop a consensus on how the wetlands protection program should proceed. An earlier effort to continue a wetlands advisory committee by the previous administration was disbanded.

The Wetlands Management Advisory Committee we proposed last June attracted almost 80 people interested in serving. We will shortly be announcing members of the Committee that will be composed of a cross-section of landowners, environmentalists, professionals and local government stakeholders in wetlands protection. The committee will help advise and guide the department in further developing wetland policies and regulations.

I would like to offer the assistance of the Wetlands Committee in helping the General Assembly, as well as our agency, reach consensus on the shape of the programs needed to best protect wetlands. I would like to direct the group, as its first order of business, to review wetlands protection legislation now in the General Assembly and have them develop suggestions for the Committee.

It seems to me this could be a very fruitful area of cooperation between the legislative and executive branches of government.

**Consistency With Federal Requirements.** We have taken a number of sensible steps to make our wetlands protection program more consistent with federal requirements, without forgetting about the needs of Pennsylvania.

We are today announcing the final adoption of a common state-federal method for mapping wetlands. This change will help permit applicants avoid the unnecessary expense of filing duplicate wetlands maps with permit applications and end a long-standing inconsistency between the state and federal methods for delineating wetlands.

We are also announcing the final adoption of a policy to exempt prior converted croplands -- agricultural lands that were in production before 1985 and still in production today -- from state wetlands regulation. This matches a policy the federal government adopted in 1994.

Last March, DEP and the U.S. Army Corps of Engineers implemented the Pennsylvania State Programmatic General Permit process, which provides one-stop shopping for more than 80 percent of wetland permit applicants. In addition, through delegation agreements with 41 county conservation districts, virtually all of the over 4,000 general permits registered with those offices will now automatically receive federal permits as well.

**Simplifying Permit Requirements.** A study of the wetlands program conducted by the previous administration found DEP staff spent too much time reviewing permit applications for relatively insignificant wetlands impacts.

Frankly, we agreed with that assessment.

In 1992, for example, 61 percent of the wetlands permit applications covered a total of only 22.6 acres of wetlands. DER, at the time, ended up approving the filling of 16.5 acres as insignificant impacts and saved only 6.1 acres from being filled.

Of the 100 to 150 permits we review every year, 80% are for wetlands of one-half acre or less, most are one-quarter acre or less.

One way to focus our staff effort is to concentrate on reviewing permits for activities that cause real harm to larger wetlands, while giving other activities less review.

We are today finalizing a general permit to allow some wetlands to be used for one particular purpose-- the construction of homes by the owners within subdivisions established before November 1991. This permit helps solve a long-standing problem for unsuspecting landowners who purchased their lots before wetland requirements were widely known and enforced.

As part of the permit, we will require users to minimize impacts on wetlands and contribute to a new Wetlands Replacement Fund that will finance projects to replace those wetlands lost through the use of the permit. On-site wetland replacement will no longer be the only real option.

Changes were made to the general permit to deal with several concerns raised during the comment period. First, the permit can only be used to construct a home, driveway and utility access. Conditions added to the permit require the lot owner to avoid creating storm water runoff problems for neighbors.

We would also like to enter into agreements with conservation districts or others to study how these general permits are used in the field. If we determine storm water or other problems will be created in certain areas by this permit, we will add other conditions or suspend issuing these permits for that area and work with local governments to deal with any potential storm water management problems.

We feel this is a common sense approach to a very difficult issue that allows homeowners to use their lots, while at the same time protecting a very valuable resource.

**Wetland Replacement Options.** In the past, DER had few options for replacing wetlands unavoidably lost to projects, in particular, for offsite wetland replacements.

We are today announcing the final adoption of a Wetlands Replacement Fund for permit applicants who are unable to provide replacement wetlands on-site. Applicants needing up to half an acre of replacement wetlands would qualify to use the Fund. The contributions to the fund will finance wetland replacement and restoration projects on a larger-scale and in locations where the chances of success will be greatly enhanced.

I am pleased to tell you we are now in discussions with the Pennsylvania Land Trust Association to manage the Fund.

As a result of a recommendation from our Agricultural Advisory Board and county conservation districts, last July we established a voluntary Wetlands Registry for property owners who want to have wetlands on their property restored or enhanced. The Registry will be made available to permit applicants and organizations seeking available sites for wetlands projects. Already two dozen landowners have registered, and there are potentially hundreds of landowners who could benefit from the Registry.

The department is also working with individuals and agencies who are interested in establishing wetland mitigation banks on their property as another option for permit applicants. The Department of Transportation, DEP and the U.S. Army Corps of Engineers are working to develop mitigation banks in several PennDOT districts.

With this discussion as background, now let's talk about House Bill 200.

I would like to touch on several key aspects of the bill in my comments-- the definition of wetlands, classification and permitting, mapping, mitigation banking, the Wetlands Conservation Fund and finally the takings issue.

**Definition and Classification.** A scientifically sound definition of wetlands is a fundamental element of any wetlands protection program. Once we have a sound definition, we can then decide which types of wetlands or activities in those wetlands should be regulated.

Recently, the National Academy of Sciences validated the general approach used to identify wetlands which relies on hydrology, vegetation and soils information. We believe an approach based on scientific determinations is in keeping with the Ridge Administration philosophy.

With respect to House Bill 200, there is a concern that using terms like "critical significance," "limited functions" and "marginal functions" in defining or classifying

wetlands will lead to further confusion on the part of the regulated community and DEP in applying the definition in the real world.

In terms of a regulatory program, the classification of wetlands and determining which activities in wetlands may be harmful are the real meat of the program.

We suggest the first step is to identify those wetlands that are totally exempt from permitting requirements because of their location, incidental occurrence or prior use or conversion. Examples include wetlands that are found in storm water or sedimentation control facilities; wetlands that are designated as prior converted cropland by the Natural Resources Conservation Service; wetlands in abandoned mine lands; incidental wetlands in developments or industrial and commercial areas that occur as a result of human influences or activity; wetlands constructed as a treatment facility; and wetlands that have been historically maintained in an unnatural condition for non-wetland purposes, such as lawns, athletic fields or recreation areas.

Many of these types of wetlands are already identified in House Bill 200.

We support waivers for activities that would not adversely affect the environment when best management practices are followed, including: normal farming practices, such as plowing, seeding and cultivating; agricultural best management practices for grassed waterways and terraces; maintenance of existing structures, such as bridges and roads; installation and maintenance of underground and overhead utility lines; and construction and maintenance of farm and stock ponds.

Not all these exempt activities are included in House Bill 200.

After developing an initial list of those wetlands and activities that will be exempted or waived from permitting requirements, we are essentially left with a choice of how to develop a system of protecting the remaining wetlands.

We would favor regulating all other wetlands and activities in wetlands through a sensible permit application process to allow case-by-case determinations of whether impacts are significant or not based on objective criteria.

Those review criteria should include a number of factors-- some of which are already in House Bill 200-- presence of threatened or endangered species, impacts on Exceptional Value or High Quality waters, designated trout streams, scenic rivers and similar sensitive areas.

We believe the classification and related provisions requiring certain permit actions contained in the bill could be streamlined to avoid controversies over classifications and permit determinations. We are also concerned about the cost of implementing the provisions as written.

We would be happy to work with the sponsor of the bill and the Committee to further develop the classification system to avoid these problems.

**Mapping.** The concept of mapping wetlands in the state is a good idea. Early identification of wetlands resources will help developers and others factor them into land development plans.

As drafted however, we are concerned with the cost and practicality of mapping and classifying wetlands in areas of the state that may not be proposed for development.

As an alternative, we suggest that since most land use planning occurs at the local level, it may be appropriate that funding for mapping could be directed to those

counties or municipalities under significant development pressure or which are known to have critical wetland areas that must be identified in order to provide adequate protection.

In filling this need, both the state and local governments should make better use of geographic information systems that provide easy access to not only wetlands information, but other natural resources information so developers can factor that information into development planning as well.

Such a mapping program would target resources to where they are most needed.

**Mitigation Banking.** DEP supports not only the concept of wetlands mitigation banking, but has already taken a number of steps to promote its use in our wetlands protection efforts as I noted earlier.

**Wetlands Conservation Fund.** DEP supports the creation of an account that would help the agency finance its wetlands protection and restoration activities.

**Takings.** The Ridge Administration has been a strong advocate for protecting property rights and has opposed unreasonable government regulation of property. We support compensation for lost property value where the owner is denied all reasonable use of their land because of government action. The current system provides courts with the ability to make these determinations and we think that is proper.

We have concerns about the provisions of House Bill 200 that would automatically require compensation where permits are denied without the opportunity for a court to make individual determinations of a taking.

We are very concerned about the amount of funding needed to implement an automatic compensation provision and its potential impact on the General Fund.

We believe a reasonable wetlands protection program and the reforms we have proposed will protect private property rights.

We believe having a wetlands protection program that protects valuable wetlands and eliminates needless regulation is important to the environmental and economic future of Pennsylvania.

We hope these comments have been helpful in understanding the current status of wetlands protection efforts, the steps we at DEP have already taken to deal with the remaining wetlands program issues and where we think we would like to go in the future.

We do not oppose this or other constructive proposals that will help us create an effective and fair wetlands protection program in Pennsylvania.

We invite the Committee's review of our efforts to date and again offer to help your review of our wetlands protection program with the Wetlands Management Advisory Committee.

If I may, allow me to close with a quote from the book "Save Our Land, Save Our Towns," by Thomas Hylton, who has analyzed Pennsylvania's land development trends--

"Just as the community makes it possible for us to enjoy our property, each community has the right -- the obligation, in fact -- to ensure private property is used in ways that will benefit the long-term public interest."

Serving the long-term public interest -- is the foundation of our wetland initiatives.

Thank you. Dr. Archer, Mr. Reisinger or I would be glad to answer your questions.

