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HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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Stormwater Management

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House Environmental Resources  
and Energy Committee

Findlay Township Municipal Building  
Findlay, Pennsylvania

Tuesday, September 9, 1997 - 9:30 a.m.

--oOo--

BEFORE:

- Honorable Robert Reber, Majority Chairman
- Honorable Charles Dent
- Honorable John Pippy
- Honorable Harry Readshaw

ALSO PRESENT:

- Frederick Taylor, Esquire  
Majority Counsel to Committee

KEY REPORTERS

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1           CHAIRMAN REBER: Good morning. I'd like  
2 to call this public hearing of the Pennsylvania  
3 House of Representatives Environmental Committee  
4 to order.

5           My name is Bob Reber. I'm the Chairman  
6 of the Committee, and I would like initially for  
7 the record the Members present with myself here  
8 today to introduce themselves and their county  
9 affiliation.

10           REPRESENTATIVE DENT: I'm Representative  
11 Charlie Dent from Lehigh County. I represent  
12 the City of Allentown.

13           REPRESENTATIVE PIPPY: I'm  
14 Representative John Pippy from Allegheny County,  
15 and I represent Findlay and portions of West  
16 Allegheny County.

17           CHAIRMAN REBER: And present with us  
18 today is Chief Counsel to the Committee, Fred  
19 Taylor. For the information of those present,  
20 I would like to say that this is one of a series  
21 of hearings that the House Environmental  
22 Resources and Energy Committee has been holding  
23 throughout the Commonwealth of Pennsylvania  
24 taking a look at stormwater management issues.

25           Many of these things have been

1 highlighted tremendously over the recent past  
2 year and a half or so, especially recently in  
3 Southeastern Pennsylvania where there's been a  
4 tremendous amount of property damage and loss of  
5 life as a result of stormwater and related  
6 flooding issues.

7 We have held two hearings: One in  
8 Harrisburg earlier this year and one in Bucks  
9 County in southeast Pennsylvania just a few  
10 weeks ago. At those particular hearings, we  
11 took testimony from the Department of  
12 Transportation as well as the Department of  
13 Environmental Protection.

14 They presented a very comprehensive  
15 overview on the issue at our hearings in  
16 Harrisburg. As a matter of fact, at the end of  
17 last session before the Legislature went out of  
18 existence for the 86/87's (sic) session's year,  
19 we did hold at the end of the session a hearing  
20 on this issue.

21 It was highlighted at that time by  
22 pending legislation of Representative Thomas  
23 Michlovic of Allegheny County; dealt with many  
24 issues relative to the concerns that Members of  
25 the Committee have been attempting to address.

1           And that was one of a few prototypes that have  
2           been talked about.

3                       And I'm not sure whether Representative  
4           Michlovic is going to ask for the Committee to  
5           consider that particular piece of legislation  
6           again; but we will certainly be looking to that  
7           past draft that he had introduced during the  
8           last session as one of the pieces of guidance  
9           that we will be looking at in the attempts to  
10          formulate some legislative updating, if you  
11          will, of the Stormwater Management Act and any  
12          other particulars that come out of these  
13          sessions.

14                      At the Bucks County hearing, we took  
15          testimony from various Pennsylvania emergency  
16          management people both on the state and local  
17          level as well as representatives from the  
18          federal government.

19                      We also heard from some local officials  
20          there as we are going to hear today. With that  
21          being said, I would also like to note that I  
22          deeply appreciate the interest that  
23          Representative Pippy has taken with this issue  
24          both with his own interest from a district  
25          standpoint as well as with his professional

1 background on these particular kinds of  
2 concerns.

3 It has been a tremendous asset to the  
4 Committee during this session to have someone  
5 with his interest, background, and expertise on  
6 the Committee.

7 At this time, I would like to thank  
8 Representative Pippy for making the  
9 arrangements. It's always something that is not  
10 really very much known, but there's a lot that  
11 goes into coordinating events such as this when  
12 we travel about the Commonwealth.

13 At this time, I would like to recognize  
14 Representative John Pippy for a few introductory  
15 remarks. John.

16 REPRESENTATIVE PIPPY: Thank you,  
17 Representative Reber. I want to thank everyone  
18 for taking the time today to come up to Findlay  
19 Township.

20 Special thanks goes to Findlay and  
21 Garret Clayman (phonetic), the manager, and also  
22 the board of supervisors for allowing us to use  
23 the facilities.

24 As the Chairman said, I have a degree in  
25 environmental engineering and I worked very hard

1 to get on the Environmental Committee with the  
2 belief that I could hopefully help and provide  
3 some insight and a different perspective.

4 What he has done is taken the time, and  
5 he mentioned earlier, to go out across the  
6 Commonwealth and address our problems we're  
7 having with stormwater management.

8 And particularly in the district I  
9 represent where we do have a lot of growth and  
10 development going on, we do need to take the  
11 time to ensure that the Stormwater Management  
12 Act is current and it will allow for a  
13 combination and a coordination between our  
14 state, local, and federal agencies and also  
15 alliances so that in the future we don't have a  
16 lot of the runoff and a lot of the flooding  
17 problems that we've had.

18 So I want to particularly thank  
19 everyone who will be testifying today for taking  
20 the time to testify. Quick commercial:  
21 My office is in Moon Township if anyone needs  
22 information on this issue.

23 So with that, I'll turn it over to the  
24 Chairman. Special thanks goes to Charlie Dent,  
25 the Representative from Allentown, Lehigh

1 County, who took the time to come all the way  
2 out here.

3 If you look, we have a good mix of  
4 people from all across our Commonwealth. If we  
5 want a successful legislation, we need to  
6 have that mix of different perspectives and  
7 different committees. So with that, I'll turn  
8 it over to the Chairman. Thank you very much.

9 CHAIRMAN REBER: Thank you, John. At  
10 this time, I'd like to recognize two gentlemen  
11 from the U.S. Army Corps of Engineers: Jim  
12 Purdy and Ricky Lowe. And they have the  
13 pleasure of being the first testaments today.  
14 Jim, if you would proceed, please.

15 MR. PURDY: Thank you. Good morning, my  
16 name is Jim Purdy and I'm Chief of the Natural  
17 and Cultural Resources Branch of the Planning  
18 Division of the U.S. Army Corps of Engineers,  
19 Pittsburgh district.

20 Our office is located in the William S.  
21 Morehead Federal Building, 1000 Liberty Avenue  
22 in downtown Pittsburgh. As you mentioned,  
23 I'm accompanied today by Mr. Ricky Lowe. And  
24 Ricky is a civil engineer in our planning  
25 division.

1           I appreciate the opportunity to attend  
2 this hearing and to give a brief explanation of  
3 the Corps of Engineers' programs available to  
4 address flooding problems and to answer any  
5 questions about these programs you may have.

6           As a federal agency, we have no really  
7 no direct involvement in the Commonwealth of  
8 Pennsylvania's stormwater law; however, in  
9 carrying out our own programs, we work very  
10 closely with many of the state and local  
11 entities who are involved in implementation of  
12 the state law.

13           One of the Corps of Engineers' programs  
14 for addressing localized flooding problems is  
15 the Section 205 Program. The authority for this  
16 program lies in Section 205 of the Flood Control  
17 Act of 1948 as amended.

18           Under this program, the Corps can  
19 investigate and construct small local flood  
20 damage reduction projects without having to  
21 obtain specific congressional approval.

22           Under this program, the federal share of  
23 the total cost of a particular project is  
24 limited to \$5 million. A project may consist of  
25 structural solutions which consist of a channel

1 enlargement, earth levies, or a concrete flood  
2 walls and/or nonstructural solutions such as  
3 flood warning systems, flood proofing of  
4 individual structures, and the acquisition and  
5 relocation of floodplain developments.

6 The primary prerequisites for a project  
7 to be implemented under this program are: (1),  
8 the benefits attributable to the project. In  
9 other words, the monetary value of the damages  
10 that would be prevented by the project must  
11 equal or exceed the cost to construct the  
12 project;

13 (2), the project must be environmentally  
14 and socially acceptable; and (3), nonfederal  
15 governmental entity must serve as the local  
16 project sponsor and in that capacity share in  
17 the cost of the project investigations and  
18 implementation and also assume full  
19 responsibility for maintenance after the project  
20 is built.

21 The local sponsor may be a municipality  
22 in which the flood problem is located or the  
23 county or the state or a combination of these  
24 entities.

25 As shown on this chart that I have to my

1 right, the first phase of a project development  
2 is called the feasibility phase or feasibility  
3 study. In this list, the first \$100,000 of cost  
4 is funded entirely by the Corps of Engineers.  
5 Costs in excess of a hundred-thousand dollars  
6 must be cost shared 50/50 with a nonfederal  
7 sponsor.

8 The next phases are the preparation of  
9 plans and specifications and the actual project  
10 construction. Cost sharing of these phases are  
11 65 percent federal and 35 percent nonfederal.

12 And as I previously mentioned, the limit  
13 on the federal share of the cost of a project is  
14 \$5 million. After the construction's completed  
15 by the Corps, the project is turned over to the  
16 local sponsor who is responsible for the  
17 maintenance.

18 Traditionally for local flood damage  
19 reduction projects, the Commonwealth of  
20 Pennsylvania Department of Environmental  
21 Protection contributes funds to the local  
22 sponsor to assist them with their financial  
23 obligation toward the particular project;  
24 however, such funding by the Department of  
25 Environmental Protection is determined by that

1 agency on a case-by-case basis.

2 To initiate the investigation of a  
3 project under Section 205 program, the potential  
4 local sponsor must submit a letter to the Corps  
5 of Engineers; and in that letter they request  
6 the investigation and indicate their intent to  
7 assume the financial responsibilities of the  
8 local sponsorship.

9 Upon receipt of the letter, the district  
10 office of the Corps requests funds from its  
11 higher authority to initiate the investigation.  
12 At the present time, the Corps' Pittsburgh  
13 district office has Section 205 projects at  
14 three different locations on Connoquenessing  
15 Creek in Beaver and Butler Counties, and one  
16 location in the Youghiogheny River in  
17 Connellsville, Pennsylvania.

18 We have a handout of which I've provided  
19 several copies. Looks like this. I hope there  
20 will be sufficient copies for people to pick up  
21 as they leave.

22 The Corps of Engineers has another  
23 program called the Floodplain Management  
24 Services Program, and it's designed to provide  
25 information to the occupants of floodplain areas

1 as to what actions that they might be able to  
2 take to reduce property damage and to prevent  
3 the loss of life caused by flooding.

4 The program's authority stems from  
5 Section 206 of the 1960 Flood Control Act as  
6 amended. The Floodplain Management Services  
7 Program differs from the Section 205 program  
8 that I previously described in that it is not  
9 aimed at producing a detailed design for the  
10 construction of a Corps of Engineers project.

11 Instead, under this program, the Corps  
12 can provide a range of technical services and  
13 planning guidance that are needed to support  
14 effective floodplain management. And these  
15 services include:

16 General technical services. For  
17 example, this could include information on flood  
18 levels and flood frequencies at different  
19 locations in a basin; services can include  
20 general planning guidance.

21 This could include special studies such  
22 as floodplain delineation studies and stormwater  
23 management studies; and thirdly, guides,  
24 pamphlets, and supporting studies. And as an  
25 example would be handout material that the Corps

1 prepares on topics which include flood proofing  
2 techniques, floodplain regulations, and so  
3 forth.

4 These services are provided at full  
5 federal cost to state, regional, and local  
6 governments and other nonfederal public agencies  
7 contingent upon the availability of funds.  
8 Program services can also be offered to the  
9 private sector on a 100 percent cost-recovery  
10 basis.

11 We have a white handout that I've  
12 provided copies of -- it looks like  
13 this -- titled Water Resources Planning, which  
14 further explains the Floodplain Management  
15 Services Program and how to request assistance  
16 from the Corps of Engineers under the program.

17 A third program is our Planning  
18 Assistance to States Program which we call  
19 Section 22 Program because the authority lies in  
20 Section 22 of the Water Resources Development  
21 Act of 1974 as amended.

22 Under the Section 22 Program, the Corps  
23 can assist the state, local governments, and  
24 nonfederal entities by performing technical  
25 studies and at a planning level of detail which

1 can serve as a basis for local planning  
2 decisions on water resources issues.

3 The Section 22 Program is similar to the  
4 floodplain management services program which I  
5 just described except that the Section 22  
6 Program requires that studies be cost shared  
7 50/50 with a nonfederal sponsor. And this  
8 program is also described in the white  
9 publication that I just mentioned before.

10 The fourth and final program that I'll  
11 briefly describe is our Emergency Operations  
12 Program which applies to a short time frame  
13 immediately after the occurrence of a flood.

14 Under this program, the Corps of  
15 Engineers' services may consist of emergency  
16 assistance to save lives and protect property.  
17 For example, this could include such efforts as  
18 furnishing technical advice; clearance of  
19 drainage channels or bridge openings blocked by  
20 debris deposited during the particular flood  
21 event; clearance of blockages of critical water  
22 supply intakes and sewer outfalls; and other  
23 emergency efforts.

24 Certain criteria must be met to obtain  
25 Corps of Engineers' assistance under the

1       Emergency Operations Program: First, the  
2       assistance must be supplemental to state and  
3       local efforts; second, written request must be  
4       made to the Corps of Engineers by the governor  
5       or his authorized representative; and third, the  
6       local interests must provide certain assurances  
7       prior to the undertaking of any work.

8                 We have a brochure here that I've  
9       provided copies on, our Emergency Operations  
10      Program which provides additional details. In  
11      summary, I briefly described four programs of  
12      the Corps of Engineers that address flooding  
13      problems:

14                First, the Section 205 Program which can  
15      possibly lead to the construction of a Corps of  
16      Engineers flood damage reduction project if the  
17      project is feasible and if a nonfederal  
18      governmental entity agrees to be the local  
19      project sponsor;

20                The second program is the Floodplain  
21      Management Services Program which provides  
22      technical services to nonfederal governmental  
23      entities at the federal cost;

24                Third is the Section 22 Program, or  
25      planning assistance to states, which similarly

1 provides technical and planning services to  
2 nonfederal governmental entities on a cost  
3 sharing basis;

4 And finally, our Emergency Operations  
5 Program under which the Corps can provide  
6 short-term assistance after a major flood event.

7 We have handout materials on the three  
8 programs. And I might point out they're at the  
9 back of the room. If there are not sufficient  
10 copies, Ricky Lowe, who's with me here today,  
11 has a sign-up sheet.

12 And please give him your name and  
13 address, and we'll certainly be happy to send  
14 you copies of these brochures or handout  
15 material.

16 And I'm available along with Ricky Lowe  
17 to answer any questions that you might have, and  
18 I thank you for the opportunity to be at the  
19 hearing this morning.

20 CHAIRMAN REBER: Thank you very much,  
21 Jim. Just one quick question -- and I don't  
22 know if you have it or Ricky might have it. The  
23 Section 205 Program, the Floodplain Management  
24 Services Program, and the Section 22 Program,  
25 how many opportunities have been taken by

1 agencies in the Commonwealth, be they local  
2 municipalities or county agencies, to draw down  
3 any of the funding availabilities of these? Do  
4 you have any kind of statistical, empirical data  
5 on that?

6 MR. PURDY: I don't know totally in the  
7 State of Pennsylvania. There's a \$500 annual  
8 limit on the Planning Assistance to States  
9 Program for each state.

10 And for the Corps of Engineers, there's  
11 four Corps of Engineers districts within the  
12 State of Pennsylvania: The Baltimore district,  
13 the Philadelphia district, the Pittsburgh  
14 district, and the Buffalo district.

15 And usually the Pittsburgh district will  
16 get maybe two or three at the most annually, but  
17 I don't know the total number for the state.

18 CHAIRMAN REBER: The reason I say that,  
19 I know in speaking with some of our  
20 appropriations people with the Department of  
21 Environmental Protection -- DEP -- over the past  
22 year or year or two years, I believe, the  
23 Stormwater Management Act and its ancillary  
24 funding mechanisms under that Act 167 have not  
25 been totally drawn down, that there has been

1 available monies for certain types of flood  
2 management studies, investigations, whatever.

3 And I was just curious whether there has  
4 been an attempt to also possibly use some of  
5 these programs you have.

6 Let me ask you this question:  
7 Obviously, the funds that would be made  
8 available under a state program could qualify as  
9 the ancillary match, if you will, that you're  
10 talking about from the locals; is that correct?

11 MR. PURDY: Yes, sir. Yes, sir. The  
12 state can be a nonfederal partner and have been  
13 a nonfederal partner in the past.

14 CHAIRMAN REBER: Let me ask you this:  
15 From your perspective in working on these  
16 programs, is there anything in the current  
17 law -- the Stormwater Management Act which was  
18 enacted back in 1978 -- are there any  
19 particulars in there that have caused any  
20 problems from attempting to leverage and draw  
21 down any of your funds?

22 Is there anything contradictory there?  
23 I'm not suggesting that I know of something.  
24 I'm just curious because as we move forward on  
25 this issue we want to make sure we clean up some

1 things if, in fact, they need cleaning up.

2 MR. PURDY: I must apologize. I'm not  
3 intimately familiar with the law. I did read it  
4 quickly yesterday. And from my quick reading, I  
5 didn't see anything that I thought might be in  
6 conflict.

7 I mentioned the Corps can help with  
8 stormwater management under these programs. I  
9 would not expect that we would get involved in a  
10 total stormwater management program for a basin;  
11 but we may be able to help with the hydrology  
12 analysis, you know, that would contribute to a  
13 stormwater management study.

14 In that regard, we're working with or  
15 hope to work with again the Montour Valley  
16 Alliance and doing some work for that watershed.  
17 We've already provided under the Planning  
18 Assistance to the State's Program a water  
19 quality report that they've found useful and  
20 that they have been able to build upon and  
21 expand and do additional studies by contract.  
22 And then we're working to even be able to help  
23 them some more.

24 CHAIRMAN REBER: I guess my concern and  
25 the reason why I was moving in the direction

1 that I've been moving as far as leveraging and  
2 coordinating and what have you, it takes me back  
3 to my experiences in a prior life as a municipal  
4 solicitor that I spent many, many years doing.

5 And I know many times you may be  
6 operating with a local or with a county or even  
7 with a state agency and you never know where the  
8 federal side of it might interact and be able to  
9 be used in conjunction with management programs  
10 such as this.

11 So I think one of the things I know I  
12 for one want to do when we ultimately wrap this  
13 up is try to make sure there is a formal  
14 checklist, if you will, of coordination of  
15 benefits between the various agencies -- both  
16 state, county, local, and federal. So that's a  
17 concern that I have.

18 MR. PURDY: Okay. I would encourage if  
19 local municipalities in doing their stormwater  
20 management studies feel that the Corps of  
21 Engineers can help, certainly contact us.  
22 Certainly, you know, write a letter.

23 I've included some contacts' names in  
24 the back of the one handout -- the glassy white  
25 handout. But contact us. We're willing to work

1 with you. We want to work with the communities  
2 and find out if there's a good fit under some of  
3 our programs.

4 CHAIRMAN REBER: Thank you.

5 REPRESENTATIVE PIPPY: Mr. Purdy, for  
6 the benefit of those who may not have the  
7 handout, if the local municipality here has  
8 questions, who should they call in your office  
9 in Pittsburgh?

10 MR. PURDY: I would suggest that they  
11 contact Jack Goga, who's the chief of our  
12 Planning Division -- and his name is included in  
13 the handout -- or you can contact myself.

14 REPRESENTATIVE PIPPY: For those, Jack's  
15 phone number is 395-7200?

16 MR. PURDY: Correct.

17 REPRESENTATIVE PIPPY: The second  
18 question I have was we're having problems in  
19 some of the communities, and particularly  
20 Carnegie, where they have small streams that  
21 over the last ten years because of development  
22 in other areas outside of Carnegie have  
23 experienced extreme increases in amount of flow.

24 And during large storms, I've have seen  
25 a lot of erosion of not public lands but actual

1 private residences and their backyards where  
2 you're now having sinkholes in private  
3 residential backyards.

4 Is there anything that the Corps has any  
5 program that could help these private  
6 individuals? This is not a public project per  
7 se, but we do have some safety aspects and also  
8 have erosion problems.

9 MR. PURDY: Unfortunately, the Corps  
10 doesn't have any programs where we can help  
11 private individuals. We can become involved  
12 when it becomes a public problem, but not  
13 private residents or for private landowners.

14 REPRESENTATIVE PIPPY: Okay. Thank you  
15 very much.

16 REPRESENTATIVE DENT: Just a follow-up  
17 to the sinkhole question. I represent the City  
18 of Allentown where we have the largest sinkhole  
19 that ever hit any municipality, I think, in the  
20 United States a couple years ago.

21 And are you saying that if there's a  
22 sinkhole on public land -- we lost a major  
23 street to a sinkhole. We were without road  
24 service for several months because of this  
25 event. The Corps of Engineers can assist

1 PennDOT and any municipality in that regard?

2 MR. PURDY: The Corps of Engineers'  
3 programs are water resources-related programs.  
4 So if we have a program, we can provide  
5 emergency stream bank protection if it will  
6 affect public facilities.

7 But if it was a sinkhole in the middle  
8 of a town away from the water resources, then I  
9 don't believe that the Corps has a program  
10 wherein they could help.

11 REPRESENTATIVE DENT: There were  
12 underwater streams, if you will, that washed  
13 away lime -- I won't get into the geology of it.

14 MR. PURDY: I'm not sure which agency  
15 you'd have to turn to, but I don't think the  
16 Corps would be the answer in that case.

17 REPRESENTATIVE DENT: I didn't think so,  
18 but I thought I'd ask anyway because we have a  
19 number of these episodes in Eastern  
20 Pennsylvania. We're just sinkhole prone.

21 REPRESENTATIVE PIPPY: One more  
22 question: You mentioned if there's a public  
23 road because of streams that are cutting the  
24 banks, is there any way where as part of that  
25 public project you may extend the project

1 another 50 feet onto a private residence area if  
2 they want to pay the additional cost or we just  
3 don't do that?

4 MR. PURDY: It's pretty much protection  
5 of public facilities.

6 REPRESENTATIVE PIPPY: Okay. Thank you.

7 MR. PURDY: If it's a roadway or a  
8 municipal sewage treatment plant or a sewage  
9 line or something like that, we can become  
10 involved; but if it's private, no.

11 REPRESENTATIVE PIPPY: Okay. Thank you  
12 very much.

13 CHAIRMAN REBER: Thank you very much,  
14 Mr. Purdy. I appreciate your time.

15 MR. PURDY: Thank you.

16 CHAIRMAN REBER: Our next witnesses that  
17 have been scheduled is Mrs. Janet Thorn and Aldo  
18 Angelo of the Montour Valley Alliance.

19 MS. THORN: Thank you. Can you hear me  
20 all right?

21 CHAIRMAN REBER: Yes.

22 MS. THORN: My name is Janet B. Thorn,  
23 and I'm appearing today as a representative of  
24 Hollow Oak Land Trust. HOLT is a membership  
25 organization that is focused on the protection

1 of open space and quality of life issues in  
2 Western Allegheny County.

3 Since our founding in 1991, HOLT has  
4 acquired forested hills and stream areas that  
5 have been dedicated as open space; and we are  
6 actively negotiating for additional  
7 acquisitions.

8 A central project for HOLT over the past  
9 few years has been promotion of a greenway or  
10 protected corridor of open space to buffer  
11 Montour Run and its tributaries. I did bring  
12 the brochure. I have copies if you all are  
13 interested.

14 Montour Run essentially divides Moon  
15 Township from Robinson and Findlay from North  
16 Fayette. It's 37-square-mile watershed contains  
17 much of the Pittsburgh International Airport as  
18 well as the Montour Trail, a Rails-to-Trails  
19 project.

20 Resources also include a natural  
21 heritage area identified by the Western  
22 Pennsylvania Conservancy and intensive retail  
23 and housing development.

24 The proposed Montour Greenway would  
25 protect the steep slopes surrounding Montour Run

1 and its tributaries as well as help to minimize  
2 flooding and erosion through maintenance of  
3 vegetation cover.

4           Although the Stormwater Management Act  
5 does not mention projects such as ours,  
6 encouragement in stormwater plans for creation of  
7 greenways to buffer streams like Montour Run  
8 would significantly increase the level of  
9 protection against floods and erosion that is  
10 provided to the state's waterways.

11           In 1988, eleven years after passage of  
12 Act 167, the Allegheny County Planning  
13 Department published a Montour Run Watershed  
14 Stormwater Management Plan.

15           To my knowledge, only twelve watersheds  
16 in the county have such a plan. And since the  
17 new administration, the county has allocated no  
18 budget or staff for preparation of additional  
19 plans.

20           In Western Allegheny County, the only  
21 watershed with a finalized and approved plan is  
22 Montour Run. When no plan exists for a  
23 watershed, there can be no enforcement of  
24 requirements for stormwater controls.

25           The Montour Run plan was approved in

1 1989. All of the affected municipalities have  
2 adopted ordinances consistent with the plan.  
3 Despite that, local residents know that the  
4 frequency of flooding and the velocity of water  
5 in Montour Run has increased. The problem is in  
6 the implementation of the Act through the  
7 ordinances.

8 The Act requires that Act 167 be  
9 reviewed -- I'm sorry -- requires that the plans  
10 be reviewed and revised at least every five  
11 years. The Montour Run Plan, however, has not  
12 been updated by Allegheny County during the  
13 eight years since its publication.

14 Presumably, the enforcement required by  
15 the Act was assigned to the Department of  
16 Environmental Protection after the  
17 reorganization of the Department of Natural  
18 Resources.

19 Since that time, it appears that DEP has  
20 been less than assertive in ensuring compliance  
21 with the Act. We recommend that correcting the  
22 current lack of enforcement of the existing  
23 terms of Act 167 should be a first priority of  
24 this Committee.

25 Adequate funding must be provided

1 immediately so that the Department of  
2 Environmental Protection has the staff and other  
3 resources to compel counties to prepare and  
4 adopt plans in accordance with the Act.

5 The lack of enforcement undoubtedly has  
6 led to the lack of compliance that currently  
7 exists. The result is the tremendous bill to  
8 the taxpayer for flood control and repair when  
9 far less could have been spent to prevent the  
10 problem in the first place.

11 In our area of Western Allegheny County,  
12 substantial new development is taking place on  
13 previously undeveloped forestland and farmland.

14 A Suburban retail center, "The Pointe,"  
15 on Route 60, covers over 250 acres of formerly  
16 forested hillsides and currently is the largest  
17 such development in the country.

18 New single-family housing developments  
19 sprawl out across the landscape and also add  
20 significantly to the amount of impermeable  
21 surface already being generated by commercial  
22 development.

23 The clear-cutting of trees and removal  
24 of other vegetation reduces the water holding  
25 capacity of all of these acres.

1           If Act 167 were being implemented as  
2           intended, we could expect to see no increase in  
3           the amount of water carried by Montour Run  
4           following a rain.

5           Theoretically, all of these developments  
6           would be retaining on site at least as much of  
7           the water that falls on their property as is  
8           added to the runoff because of the development.  
9           The reality is just the opposite.

10          On the next two pages, I have included  
11          some pictures I'd like you to see. The first  
12          two pictures show normal flow and a flooding  
13          event looking downstream on Montour Run. The  
14          second set of pictures are looking upstream from  
15          that same point.

16          These pictures were taken in Moon  
17          Township during the spring of 1996 at the Forest  
18          Grove Sportsmens' Club near Hassam Road. Please  
19          pay particular attention to the top picture on  
20          the first page because it shows the extensive  
21          system of riprap and concrete slabs that the  
22          club has placed on the stream banks in an effort  
23          to keep their property from being eroded away.

24          You can see clearly how much effort and  
25          expense are being spent to battle the

1 significant flooding events that are occurring  
2 more and more frequently in this part of Montour  
3 Run watershed.

4 The Montour Trail Council is finding  
5 portions of the trail under increasingly  
6 frequent assault by flood waters and, like the  
7 sportsmens' club, is spending a considerable  
8 amount of time and money in an effort to protect  
9 this important recreational resource.

10 As is true with the collapse of most  
11 natural systems, destruction does not take place  
12 with a catastrophic event. Instead, one small  
13 activity or event combines with another and then  
14 with countless others until the combined force  
15 of all these activities results in the  
16 destruction of the system.

17 Flooding occurs in the same way. Each  
18 section of impermeable surface, each cut tree,  
19 each bulldozed hillside increases runoff in some  
20 small and probably insignificant amount. It is  
21 the cumulative effect of all of these activities  
22 that results in the type of flooding you seen in  
23 those pictures.

24 Assuming the continuation of present  
25 ordinances and land use policies and with the

1 continuing development that is taking place in  
2 the watershed, in a few years we're likely to  
3 look back at those pictures and say, Oh, back  
4 then the water only was that high.

5 I want to call your attention to a  
6 report recently published by The Trust for  
7 Public Lands entitled Protecting the Source. In  
8 a cover letter for this document, President  
9 Martin J. Rosen states that the study, quote,  
10 underscores serious declines in both the quality  
11 and quantity of America's drinking water and it  
12 traces those declines directly to ill-conceived  
13 and uncontrolled development in the watersheds  
14 that protect and replenish our water supplies.

15 He goes on to note that groundwater  
16 recharge zones are being paved over at an  
17 alarming rate. The report demonstrates that the  
18 preservation of critical buffer lands,  
19 filtration and recharge zones even in small  
20 amounts can generate enormous benefits through  
21 reduced levels of contamination and increased  
22 quantities of source water.

23 Modest investment in watershed  
24 protection could not only significantly reduce  
25 capital construction costs but could effect

1 significant savings in operating costs for  
2 decades to come.

3 The publication contains a tremendous  
4 amount of excellent information primarily  
5 directed at drinking water issues but including  
6 discussions of the importance of watershed  
7 resources and protection of recharge areas.

8 Recharge areas are restricted by  
9 impermeable surfaces. Watershed resources are  
10 destroyed by additional runoff and erosion. To  
11 avoid those impacts, Act 167 needs to be  
12 strengthened to be able to address all the small  
13 and insignificant development activities and  
14 halt runoffs at that level before it is able to  
15 combine with water flows from other disturbed  
16 areas.

17 We recommend that the following specific  
18 amendments be made to Act 167: (1), strengthen  
19 section 3, Purposes and Policies, such that,  
20 quote, Encourage planning and management be  
21 changed to Require planning and management; (2),  
22 Authorize a comprehensive program would be  
23 changed to Mandate a comprehensive program; and  
24 (3), Encourage local administration and management  
25 be changed to Require local administration and

1 management.

2 Second, the watershed plan advisory  
3 committees should be permanently constituted to  
4 be advisory board to planning commission and  
5 governing bodies for municipalities within the  
6 watershed. One board in each watershed would  
7 provide information and advice to all the  
8 municipalities in that watershed.

9 Third, DEP could provide training and  
10 certification to bona fide watershed groups so  
11 that they can monitor construction projects to  
12 help ensure proper erosion and sedimentation  
13 control and report any violations that are  
14 identified.

15 Fourth, the Commonwealth should adopt  
16 legislation that sets up stormwater management  
17 districts in Pennsylvania. Such legislation  
18 already has been introduced in the General  
19 Assembly and was before this Committee in July,  
20 1996.

21 In closing, I would like to revisit the  
22 finding of the General Assembly that were stated  
23 in the Section 1 of the Act. They found that,  
24 quote, (1), inadequate management of accelerated  
25 runoff of stormwater resulting from development

1 throughout a watershed increases flood flows and  
2 velocities, contributes to erosion and  
3 sedimentation, overtaxes the carrying capacity  
4 of streams and storm sewers, greatly increases  
5 the cost of public facilities to carry and  
6 control stormwater, undermines floodplain  
7 management and flood control efforts in  
8 downstream communities, reduces groundwater  
9 recharge, and threatens public health and  
10 safety;

11 Second, a comprehensive program of  
12 stormwater management including reasonable  
13 regulation of development and activities causing  
14 accelerated runoff is fundamental to the public  
15 health, safety, and welfare and the protection  
16 of the people of the Commonwealth, their  
17 resources, and the environment.

18 These statements are as true today as  
19 they were in 1978. Legislation like Act 167 is  
20 desperately needed. It is needed, however, in  
21 strong and effective language that mandates  
22 implementation on the local level.

23 It is needed in clear and enforceable  
24 terms that provide direction and support for  
25 local efforts to protect stream resources.

1 Thank you for giving me this opportunity to  
2 state our concerns.

3 I don't know whether you would like to  
4 hear first from the Montour Valley Alliance and  
5 have us both answer questions or would you  
6 prefer to ask me questions?

7 CHAIRMAN REBER: No. I think that would  
8 be the preferable way if Mr. Angelo -- is that  
9 correct? -- is going to be presenting testimony  
10 on behalf of the Alliance, if he would want to  
11 come forward and do that; then we could return  
12 and speak with both of you.

13 MR. ANGELO: Mr. Chairman, Mr. Pippy,  
14 Members of the Committee. My name is Aldo  
15 Angelo, and I wish to thank you for this  
16 opportunity to participate in this hearing on  
17 stormwater and flood control management issues  
18 as they relate to implementation of Act 167.

19 I'm now retired; and however, I worked  
20 as a hydrometeorologist and hydrologist for most  
21 of my 35 years with the U.S. Government. My  
22 positions include serving as a researcher and  
23 then as a river and flood forecaster and finally  
24 I was responsible for providing hydrologic  
25 services including flood watches and warnings in

1 the Upper Ohio River Drainage Basin in Western  
2 Pennsylvania.

3 I am here today representing the Montour  
4 Valley Alliance, a coalition of organizations,  
5 businesses, agencies, and private citizens in  
6 Western Allegheny County that have as their  
7 common goal the environmental health of Montour  
8 Run, a stream whose watershed includes parts of  
9 the townships of Findlay, Moon, North Fayette,  
10 and Robinson and the Borough of Coraopolis.

11 The MVA seeks a balance between needed  
12 development in these townships and protection of  
13 Montour Run's natural, cultural, educational,  
14 and historic resources that provide tourism,  
15 recreation, and quality of life values for the  
16 people who live and work in the watershed.

17 My testimony today focuses primarily on  
18 Section 13, Articles (1) and (2) of the  
19 Stormwater Management Act. As you know, the  
20 goal of Act 167 as stated in Article 1 is to  
21 assure that the maximum rate of storm runoff is  
22 no greater after development than prior to  
23 development activities.

24 And Article (2) adds: To manage the  
25 quantity, velocity, and direction of resulting

1 stormwater runoff in a manner which otherwise  
2 adequately protects health and property from  
3 possible injury.

4           These are laudable goals just as the Act  
5 itself is important and laudable legislation.  
6 The problem however is that there is little  
7 compliance with the terms of the Act in  
8 Allegheny County and currently there exist few  
9 workable standards by which the goals stated in  
10 Section 13 can be achieved or enforced.

11           I will propose a modification to the Act  
12 that I believe will provide in part the needed  
13 standards.

14           The problem: The following is an  
15 example of the difficulty of implementing and  
16 enforcing the Act. I serve on the Board of  
17 Management of a nonprofit organization that is  
18 located in the Montour Run Watershed. On a hill  
19 above this organization's facilities, a  
20 developer in 1988 began clearing existing  
21 vegetation in order to construct single-family  
22 homes.

23           There are two drainageways or  
24 ravines that lead from the housing development  
25 to a stream on my organization's property.

1           Runoff from the top of the hill collects in  
2           these drainageways and then crosses our property  
3           before flowing into Montour Run.

4                     During periods of high rainfall, one of  
5           the drainageways carries sediment from the  
6           housing development and deposits debris in the  
7           bed of the stream on our property. The sediment,  
8           in turn, blocks the normal flow of water in the  
9           stream. The stream overtops its banks and water  
10          floods across our property and into our  
11          facilities.

12                    The cost of cleanup runs into  
13          the thousands of dollars for each flooding  
14          event, and the estimated cost of repairs needed  
15          after the latest flood in May of this year was  
16          as much as \$40,000.

17                    Our organization wrote a letter to the  
18          association representing the property owners of  
19          this development requesting reimbursement for  
20          damages.

21                    To date, there has been no response. We  
22          do not know if the developers have complied with  
23          Act 167 or with local ordinances regarding  
24          stormwater runoff. That is a moot point since  
25          if there was compliance, the results are

1 unacceptable.

2 We strongly believe that the  
3 construction activities on the hill above us  
4 have increased runoff from that area through the  
5 removal of vegetation and installation of  
6 impermeable surfaces.

7 We also believe that the additional  
8 runoff has increased the frequency and magnitude  
9 of flooding to our land and our facilities and  
10 that this increased runoff crosses our land and  
11 enters Montour Run, contributing to the flooding  
12 that occurs in that stream. This is the kind of  
13 activity that Act 167 was enacted to govern.

14 Although it may appear otherwise, Act  
15 167 provides little help for assessing and  
16 proving culpability for incidents like this.  
17 The burden of proof for recovering damages, of  
18 course, rests with the damaged party.

19 And proof is almost impossible to obtain  
20 because of the nature of rainfall and runoff  
21 relationships and the difficulty of collecting  
22 the requested statistical proof.

23 The amount of runoff that results from  
24 any particular storm is dependent upon (1), the  
25 amount of rainfall; the intensity of the

1        rainfall; and the amount of water already being  
2        held in the soil and the soil moisture  
3        conditions before the rain began.

4                Also when the ground is frozen in  
5 winter,  
6        more rain will flow off the site than when the  
7        soil is soft and absorbent as occurs in summer.  
8        All of these conditions would have to be  
9        identical before the results of one storm can be  
10       compared accurately with another storm.

11               Under laboratory conditions, if it were  
12       possible, we could duplicate storm conditions  
13       and compare flood damage caused after  
14       development with pre-development conditions.

15               The developer would then be clearly  
16       liable for the additional damages caused by the  
17       increased runoff directly attributable to that  
18       development.

19               Outside of the laboratory, however, the  
20       landscape previous to development cannot be  
21       recreated nor the exact conditions of the site  
22       be duplicated.

23               In realistic terms, it is rare  
24       that the proper conditions and information exist  
25       to achieve the goals stated in Section 13,

1 Article (1).

2 It is my considered opinion after having  
3 watched the water level of Montour Run over the  
4 past fifteen years that the flow has increased  
5 significantly from the earlier years.

6 On my way to and from my place of  
7 employment, I always made a visual inspection of  
8 the flow in Montour Run to get an idea of how  
9 rainfall and snow melt was affecting smaller  
10 streams in the area.

11 The flood in the spring of 1996 was the  
12 worst that I have ever seen. Again, this is  
13 only  
14 an opinion. Actual data are needed to establish  
15 it as factual.

16 We are seeking answers to what is  
17 causing the apparent increase in flows and  
18 flooding in parts of the Montour Run Watershed.  
19 And one is, Do retention ponds fill with silt  
20 and debris over time? Do the spillways of  
21 impoundment structures erode? Or are some local  
22 municipalities simply failing to comply with Act  
23 167 as it is defined?

24 It is possible with a stream like  
25 Montour Run to take flow measurements over time

1 to determine trends in flow patterns. The MVA  
2 is investigating the feasibility of beginning a  
3 project like this in Montour Run so that the  
4 future trends can be identified.

5 This requires keeping accurate records  
6 of soil moisture, stream stages, rainfall,  
7 snowfall, and snow depths. Stream flow ratings  
8 which measure stage and discharge relations have  
9 to be developed as well as velocity profiles.

10 Expensive as these measurements are,  
11 this is the only way to determine how  
12 development has impacted the runoff in a  
13 particular area.

14 Again, no matter how well measurements  
15 are taken, however, these records would not be  
16 able to identify the specific developer  
17 responsible for a specific amount of increased  
18 runoff if there is more than one development  
19 that drains its stormwater into the monitored  
20 stream.

21 At best, these measurements will provide  
22 a good indication of the level of compliance  
23 with Act 167 that is taking place in the  
24 watershed.

25 Under recommendations, there is no

1 question that both the volume and rate of runoff  
2 from a site are increased when vegetation is  
3 replaced by impermeable surfaces such as for  
4 roads and buildings.

5 Act 167 therefore should be modified  
6 such that the burden of proof is placed on  
7 developers to certify and confirm by validated  
8 methods of computation that the as-build plans  
9 meet the requirements of the Act and that their  
10 activities did not increase the velocity and  
11 maximum runoff peaks.

12 Act 167 should define a standard with  
13 strict requirements that developers prepare  
14 preconstruction and postconstruction peak  
15 discharge modeled projections for all  
16 developments for storms of various intensities  
17 and durations; i.e., the 2-year, 5-year,  
18 10-year, 25-year, 50-year, and 100-year storms.

19 Also, Act 167 should mandate that flood  
20 facilities be periodically maintained and that  
21 plans be updated at least once every ten years  
22 to ensure that, in fact, Act 167 is being  
23 complied with.

24 Funding needs to be provided to ensure  
25 compliance with approved stormwater management

1 plans. Thank you for the opportunity to provide  
2 my thoughts on the subject.

3 CHAIRMAN REBER: Thank you very much,  
4 Mr. Angelo. Maybe I'll just start with you,  
5 Mr. Angelo, while you're at the microphone.

6 Just out of curiosity, you referenced  
7 the 1988 development that in your opinion had  
8 caused some silt disbursement, if you will.  
9 What municipality is that located in?

10 MR. ANGELO: Moon Township.

11 CHAIRMAN REBER: Moon Township. And in  
12 1988 when that -- I assume it was 1988 when that  
13 development --

14 MR. ANGELO: Started.

15 CHAIRMAN REBER: -- was started, did  
16 Moon Township have land development subdivision  
17 ordinance requirements at that time?

18 MR. ANGELO: I don't know, sir. I  
19 didn't check that out.

20 CHAIRMAN REBER: And, of course, the  
21 reason that I ask that is that obviously there  
22 would be certain soil erosion sediment runoff  
23 issues that would have been taken in conjunction  
24 with the development.

25 And I was just curious whether there has

1           been any looking back on those plans, those plan  
2           approvals to see if, in fact, there has been  
3           compliance with those particular profiles  
4           relative to that issue.

5                       That's where I was going to go; but if  
6           you don't have a background history on that,  
7           that's quite all right.

8                       Mrs. Thorn, if I could just ask you a  
9           question. On the pictures that you presented on  
10          the flooding on Montour Run --

11                      MS. THORN: Yes.

12                      CHAIRMAN REBER: -- what kind of  
13          development has gone on over the past -- let's  
14          go back. From 1978 when the Stormwater  
15          Management Act was put into place, has there  
16          been a significant amount of upstream  
17          development in that area since that particular  
18          period of time?

19                      MS. THORN: A tremendous amount. I've  
20          only been a resident of the area since the  
21          mid-1980's; however, since that time, I've seen  
22          an incredible amount of new development in the  
23          area, particularly most obvious is "The Pointe."

24                      I don't know if you've driven around the  
25          area at all before you came in today, but "The

1       Pointe" and Robinson Town Center, currently we  
2       have a major interchange going on at Ewing Road  
3       in Moon Township that is cutting away massive  
4       acres of hillside and forest and so on.

5               This point indicated by the pictures is  
6       about a third of the way upstream from the Ohio  
7       River and the watershed; and so we have roughly  
8       two-thirds of the watershed that is being  
9       drained to that point. And so it's a  
10       37-square-mile watershed. Quite a bit of land  
11       is being drained.

12              CHAIRMAN REBER: Let me ask you this  
13       question: Are the municipalities in this  
14       general region very creative in developing any  
15       form of escrowing or bonding requirements?

16              And I'm not talking just for a short  
17       period of time but a period out of three to five  
18       to ten years for stormwater management  
19       facilities, restoration, and maintenance as well  
20       as for the operatableness of those particular  
21       facilities and just generally for the water  
22       discharges that might emanate from those  
23       facilities based upon the certified plans of the  
24       developer's engineer.

25              Is there creativeness, if you know, by

1 the municipalities to attempt to address some of  
2 these problems both from a maintenance ongoing  
3 standpoint so you have a funding mechanism built  
4 in to handle that as well as some form of escrow  
5 or bond pay back for calculations that were not,  
6 frankly, correct in the manner in which they were  
7 made because in the real world it didn't work  
8 that way and we have an accelerated off-site  
9 discharge that's causing the damages?

10 I know it's something of rather newness  
11 in Southeast Pennsylvania that some  
12 municipalities which seem to have a proclivity  
13 for this type of damage to be rather creative to  
14 attempt to make sure that what is certified  
15 through the Pennsylvania Municipalities Planning  
16 Code and its plan review process does, in fact,  
17 have some teeth for ultimate enforcement and pay  
18 back, if you will, if God forbid some of these  
19 things do not work out the way they were placed  
20 on paper.

21 MS. THORN: My answer is I don't know.  
22 It sounds like a wonderful idea. I have not  
23 heard any such topic discussed in any of the  
24 meetings I have attend, and I would hope if our  
25 local municipalities aren't aware of that option

1           that someone provide them with the information  
2           on it.

3                       CHAIRMAN REBER: I also listened with  
4           interest and reread in some parts with interest  
5           your comments about specific amendments to the  
6           Act. And I do appreciate you taking the time to  
7           delineate those and your reasons for that.

8                       I don't necessarily disagree in some  
9           part about some of your suggestions. I cringe a  
10          little bit when you use the word mandate and  
11          require. That's not necessarily a popular word  
12          on the state scene relative to imposing  
13          certain mandates, if you will, on local  
14          agencies, political subdivisions and the like.

15                      But nonetheless, there may  
16          be some times when we at the state level have  
17          to bite that bullet and take that particular  
18          heat if that seems to be the only way that the  
19          damage can be remediated.

20                      MS. THORN: I think we have to measure  
21          the impact of not doing anything, and it's not  
22          an impact just on a local level. It's on the  
23          state level; it's on the national level.  
24          There's taxpayer money on every level going to  
25          correct the kinds of problems that are being

1 created.

2 CHAIRMAN REBER: All right. Thank you  
3 very much. First of all, I'd like to introduce  
4 and ask him to identify himself for the record  
5 as to his district and area, Representative  
6 Readshaw.

7 REPRESENTATIVE READSHAW: Thank you very  
8 much, Mr. Chairman. I'm Representative Harry  
9 Readshaw. I represent the 36th Legislative  
10 District in Allegheny County.

11 CHAIRMAN REBER: At this time,  
12 I'll turn to Representative Pippy for any  
13 questions of the two witnesses from Hollow  
14 Oak Land Trust who are the Montour Valley  
15 Alliance.

16 REPRESENTATIVE PIPPY: Really, I want to  
17 thank you, Ms. Thorn, Janet, for taking the time  
18 to come out today. I had the opportunity of  
19 talking to you many times, and I think the  
20 Hollow Oak Land Trust along with Montour Valley  
21 Alliance is doing a great job out there. And  
22 what we're going to do is try to address some of  
23 the problems.

24 I agree with the Chairman. We try not  
25 to use the term mandate or require because in

1           I agree with the Chairman. We try not  
2 to use the term mandate or require because in  
3 most cases we can't at the state level come up  
4 with one big program that will fix everyone's  
5 individual problems.

6           So what I'm trying to do and what the  
7 Chairman's trying to do is provide information,  
8 education, different ideas; look at exactly  
9 where is our problem almost to the point of who  
10 is our problem, if it has to be that far, and  
11 then try to find different ways -- you asked  
12 about our municipalities.

13           I know the communities I  
14 represent -- Moon, Findlay, North Fayette, South  
15 Fayette, Bridgeville, Carnegie -- are  
16 all -- Oakdale, McDonald -- I don't want to skip  
17 any -- are all looking at this issue and saying  
18 with the growth and economic development that's  
19 happened in West Allegheny County and in  
20 particular in the airport region we have to  
21 think of new and innovative ideas.

22           But I'm an advocate of letting the local  
23 authorities, local areas find their best  
24 solutions. So what I will do in answer to your  
25 question is find out that information for you,

1           what are our local municipalities doing; and  
2           we'll have that.

3                       The other thing is I do want to say that  
4           we need economic development in Western  
5           Allegheny County and the airport region but we  
6           also have to balance out with environmental  
7           protection and quality of life. So this  
8           Committee is committed to doing that to the best  
9           our capabilities. So thank you very much.

10                   MS. THORN: Thank you.

11                   CHAIRMAN REBER: Representative Dent.

12                   REPRESENTATIVE DENT: No. I just wanted  
13           to thank you for your very thorough and  
14           comprehensive testimony. I have no questions,  
15           but you've given me a lot to think about. Thank  
16           you.

17                   CHAIRMAN REBER: Representative  
18           Readshaw, I know you've just come aboard; but is  
19           there any questions that you have for these  
20           witnesses?

21                   REPRESENTATIVE READSHAW: No specific  
22           questions, Mr. Chairman; but I would like to  
23           reiterate what Representative Pippy said. I  
24           think he put it in the best light.

25                   This is a problem which must be

1 considered. And hopefully through hearings such  
2 as this and other decisions at the state level  
3 we're able to somehow, some way rectify these  
4 problems. Thank you, Mr. Chairman.

5 CHAIRMAN REBER: One follow-up question  
6 for either of the witnesses if you have any  
7 background knowledge: Has there been any  
8 problems with any of your local agencies whether  
9 it be at the county level or at the local level  
10 in attempting to draw down Act 167 grants?

11 To your knowledge, have any of the  
12 municipalities had any -- has that been said to  
13 you as a reason why certain things have not been  
14 done that there's been a finding by the county  
15 and/or the local planning agencies or governing  
16 bodies that they've not been able to get money  
17 that they've asked for?

18 MS. THORN: I have not heard that stated  
19 in any way.

20 CHAIRMAN REBER: I sort of ask that  
21 question of local officials from all regions  
22 just to make sure that that is not the case  
23 because at one time I know that was a serious  
24 concern out there.

25 And I guess to some extent it was

1 because of the initial massive demand, if you  
2 will, from at least many municipalities  
3 attempting to leverage some of the Act 167  
4 Program's grants and fundings and what have you.

5 To my knowledge, that has not  
6 necessarily been the case that there is money  
7 available. And that's another outgrowth  
8 hopefully of this particular review by the  
9 Committee that we can make it very much well  
10 known to the various local municipalities  
11 throughout the Commonwealth not only if you  
12 don't have it to get on board, which obviously  
13 is a major concern; but also to review and  
14 retrofit your existing programs to bring things  
15 into updated compliance because of developments  
16 going on.

17 All right. Thank you so much. John.

18 REPRESENTATIVE PIPPY: One more quick  
19 comment, Mr. Chairman. I do want to thank HOLT  
20 and Montour Valley Alliance. If you look at the  
21 pictures there, I happened to visit that area.  
22 And the area that's flooded now, when I was  
23 there I saw a couple young gentlemen trout  
24 fishing.

25 And they were talking about how five

1 years ago you couldn't do that on that stream.  
2 And it was nice to see that a private  
3 organization made up of volunteers had made that  
4 happen.

5 And what was interesting is in a small  
6 area of a couple hundred yards we had trout  
7 fisherman, we had men and women firing their  
8 rifles at the firing range; and across the berm  
9 less than 10 feet away, we had bikers and people  
10 walking.

11 So I think this is a fine example of how  
12 we can get the state and local communities to  
13 work together to have a greenway and improve our  
14 quality of life. So thank you for all of the  
15 work that you've done.

16 MS. THORN: Thank you.

17 CHAIRMAN REBER: Thank you again. We  
18 have a representative from the County  
19 Commissioners Association of Pennsylvania. I'm  
20 going to take about 30 seconds to give the  
21 stenographer an opportunity to flex her phalanges  
22 there that tighten up about this time in the  
23 morning.

24 (At which time, there was a brief pause  
25 in the proceedings.)

1                   CHAIRMAN REBER: I'd like to welcome  
2 before the panel today Mr. Doug Hill of the  
3 County Commissioners Association of  
4 Pennsylvania. Doug, if you're prepared to  
5 proceed, we'll entertain your remarks.

6                   MR. HILL: Ready to go, Mr. Chairman.  
7 Thank you very much. I'm Douglas Hill,  
8 Executive Director of the County Commissioners  
9 Association of Pennsylvania.

10                   We are a nonprofit, nonpartisan  
11 association providing legislative research,  
12 educational, insurance, and other services on  
13 behalf of all of the Commonwealth's 67 counties.

14                   It's a pleasure to be here with you  
15 today, first, just to meet with you and get  
16 ready for the fall session to get going again;  
17 and it's also a pleasure for me to be out here  
18 because I grew up down over the hill here in  
19 Coraopolis and I'm familiar with Montour Run  
20 from the days when there was an active railroad  
21 running up that way.

22                   I've also been up the trail now that  
23 it's been developed and restored, and it's a  
24 wonderful facility. And I really congratulate  
25 all those involved.

1                   My parents still live down that  
2                   direction and they are loyal constituents of  
3                   Fred Trello. And so anyhow, it's a pleasure to  
4                   be out here with you today.

5                   I do apologize. Some travel and  
6                   logistical problems meant that I was not able to  
7                   have written comments here for you today, so I  
8                   will be speaking from some notes and I will get  
9                   you some written remarks sometime very soon.

10                  I guess we're a little bit of the focus  
11                  of these hearings since counties have the  
12                  primary responsibility under the Act 167 for  
13                  development of the Stormwater Management Plans.  
14                  And today I want to focus on a couple different  
15                  areas:

16                  First is our level of compliance with  
17                  Act 167. And I also want to talk a little bit  
18                  about agency inter-relationships relative to  
19                  stormwater and program relationships relative to  
20                  stormwater and then finally conclude with some  
21                  recommendations.

22                  First, on the matter of compliance, Act  
23                  167, of course, requires counties to develop  
24                  watershed plans. Then once those plans are  
25                  developed and adopted and approved by DEP, it

1 requires the municipalities to amend local  
2 zoning and subdivision ordinances and practices  
3 to come into compliance with those plans and to  
4 give those plans some teeth.

5 It also requires the counties to  
6 periodically update the plans and requires the  
7 state to participate in the funding for the  
8 plans.

9 Now, I'm sure you've all seen the  
10 figures. At this point, we have 53 watersheds  
11 done out of about 356 here in the Commonwealth.  
12 We have just 37 counties that have had some  
13 activity out of the 67 counties; and, frankly, I  
14 can't tell you what the level of compliance is  
15 at the municipal level.

16 And on the face, that is not a good  
17 record; and we will admit to that. There is  
18 more that can be done. There are a couple  
19 mitigating circumstances though, and so I don't  
20 know that those numbers are all bad.

21 First, I think you have to take into  
22 account some of the demographic, economic,  
23 geographic, and topographic issues here in the  
24 Commonwealth.

25 For example, if you take a look at

1 Forest County, which has not submitted any  
2 plans, Forest County is not a hotbed of  
3 development. It's better than 60 percent  
4 forestland, either state or federal; it does not  
5 have the types of economic or residential  
6 development activity that really place pressure  
7 on the watersheds in that area.

8 So in that type of county, there are  
9 many more circumstances and watersheds like  
10 that. The need for prompt action on the  
11 development of stormwater management plans  
12 probably isn't there.

13 We also have at the other end of the  
14 spectrum the counties that have had pressure.  
15 Allegheny County's a great example. Some of the  
16 counties in the Susquehanna Basin are good  
17 examples as well, and those counties have  
18 stepped forward and have at least worked toward  
19 taking care of the most critical watersheds in  
20 those counties.

21 We've also had some great examples of  
22 multi-county cooperation for watersheds. There  
23 are a couple particularly in the Upper  
24 Susquehanna Basin and in the Poconos regions.

25 And so I think some of the areas where

1 the most critical needs for a stormwater  
2 management plan to exist, that planning has been  
3 progressing forward.

4 There had been some other issues in  
5 regard to implementation of Act 167,  
6 particularly among the requirements is that the  
7 State was to develop guidance for the counties  
8 and municipalities on how they comply.

9 Now, you recall the Act requires us to  
10 develop plans within two years of its enactment.  
11 That's been almost two decades. We, in fact,  
12 had -- I don't recall exactly when the State  
13 guidance documents were in place; but I know it  
14 was at least six years and it may have been  
15 about eight years before they were even  
16 available for the counties and municipalities to  
17 rely upon.

18 Finance is also another issue. And  
19 Chairman Reber, you, I know, have been asking that  
20 question. It's become something of a chicken  
21 and the egg scenario. Do we not plan because  
22 the money's not there or is the money not  
23 appropriated because we've not submitted the  
24 planning request?

25 Frankly, when the Act first was put in

1 place, there were a large number of requests;  
2 the state appropriation was not significant; the  
3 number of applications tailed off; and now for  
4 almost two decades, we've had just this  
5 comfortable little relationship where it's  
6 hard to tell whether the state appropriations is  
7 driven by the number of applications or whether  
8 the number of applications -- the relatively low  
9 number of applications drives the lower  
10 appropriation on the State's behalf.

11 The appropriation, as you know, has ranged  
12 anywhere from 250,000 to now typically a little  
13 over a half a million dollars. I think there  
14 was one supplemental that raised it up over a  
15 million dollars one year, but that's really a  
16 relatively low level of appropriation for a  
17 program like this.

18 The typical cost of a plan to our  
19 understanding runs somewhere between 50 and  
20 \$150,000. It's not a huge amount of money; on  
21 the other hand, compared the fiscal priorities  
22 and the other program requirements the county  
23 governments have, it can be a fair chunk to take  
24 out of a particular budget.

25 And that in itself argues for allowing

1 us to take watersheds sequentially over a period  
2 of time. It's also a matter of local resources.

3 Although the Act does require 75 percent  
4 state funding or state reimbursement rather for  
5 the county plans and then for the modification  
6 of municipal ordinances, that still means the 25  
7 percent has to come from local coffers.

8 And particularly at the county  
9 level -- I never miss an opportunity to beat  
10 this drum -- we do need other revenue sources  
11 particularly now that we've lost virtually all  
12 access to the personal property tax.

13 That means about the only tax left at  
14 the county level is the real property tax. And  
15 it is difficult to go back to that well time and  
16 again for the whole list of services we're  
17 required to provide, whether that's prisons or  
18 the cost of elections or human services.

19 The list goes on and on, and this is one  
20 other issue that has to be fit into that overall  
21 scheme of priorities.

22 The last issue is municipal compliance.  
23 And there --

24 CHAIRMAN REBER: Doug, can I interrupt  
25 you for a second before you get off that?

1 MR. HILL: Yes, sir.

2 CHAIRMAN REBER: What has been your  
3 experience since we have broadened the  
4 parameters of PennVest and allowed funding draw  
5 down, if you will, or applications for drawing  
6 down under grant and/or low-interest loans for  
7 stormwater management issues by locals?

8 Have you all been tracking that and  
9 seeing if there's been a plethora of activity  
10 being filed?

11 MR. HILL: We have not. My  
12 understanding is that's been more at the  
13 municipal level where they're a little closer  
14 allied to the issue of implementation of the  
15 plans in terms of the concrete, mortar sense.

16 CHAIRMAN REBER: I guess I say that  
17 because to a great extent we were very concerned  
18 a few years ago when we broadened the enabling  
19 legislation of the overall PennVest Program,  
20 which has been highly successful, to encompass  
21 that issue to try and alleviate some of those  
22 concerns that were out there certainly early on  
23 about available funding mechanisms to be made to  
24 the locals. I was just curious if you had any  
25 thought before you got off that?

1                   MR. HILL: Not really at the county  
2 level, no.

3                   CHAIRMAN REBER: Sorry to interrupt you,  
4 but that's one of the privileges of being the  
5 Chairman.

6                   MR. HILL: In fact, the last point I did  
7 want to make under compliance issues is  
8 municipal compliance. Counties, of course, are  
9 involved in plan review for local subdivision  
10 submittals and land development plans.

11                   And the experience that we have is that  
12 even in circumstances where the county does not  
13 have a plan in place for a particular watershed,  
14 that most of the plan submittals are still being  
15 made in compliance with the stormwater  
16 guidelines.

17                   And that more particularly being in  
18 compliance with the overall objective of the Act  
19 that the discharged postdevelopment not exceed  
20 the discharge predevelopment.

21                   And that's something that we have -- a  
22 tool that we have been able to use even without  
23 a stormwater plan being in place to help  
24 regulate growth on a prospective basis.

25                   It also has given the counties some

1 opportunity as they review plans to work with  
2 the municipalities, turn that around, and both  
3 the county comprehensive plan and the municipal  
4 comprehensive plan to try to address particular  
5 stormwater and runoff issues either existing or  
6 prospective and, again, whether or not there is  
7 a more comprehensive stormwater plan in place  
8 for that watershed.

9 Even without the plans, I guess my point  
10 is the Act is still serving a purpose and does  
11 provide us a tool.

12 I want to talk a little bit now about  
13 agency and relationships because we can't  
14 really look at Act 167 in a vacuum. And there  
15 we have been dealing with a number of different  
16 agencies and number of different perspectives.

17 PennDOT is one, highway construction is  
18 an issue, mitigation of current problems is an  
19 issue, highway occupancy permits as we do cuts  
20 from local developments to provide access onto  
21 state roads is another issue.

22 And this is one where the interaction  
23 had been more between the municipalities and  
24 PennDOT because of maintenance responsibilities.  
25 And an outgrowth of negotiations on House Bill

1 979 last session was a series of negotiations  
2 with PennDOT on how the relationship would  
3 resolve itself on maintenance of stormwater  
4 facilities in the vicinity of state highways.

5 DEP, of course, is involved. Both land  
6 disturbance permits just for the basic  
7 development itself and in the larger sense as we  
8 develop plans to try to bring them into  
9 compliance with topographical issues and so on.

10 We have, of course, interactions with  
11 the municipalities primarily in planning and  
12 subdivision and zoning levels. You've heard  
13 today from the Corps of Engineers. They're also  
14 involved.

15 We also have interaction with the EPA  
16 over actually the quality of the water that  
17 enters and exits the stormwater system. So  
18 there are quite a number of agencies that have  
19 to be a part of the process on how we deal with  
20 comprehensively the stormwater issues.

21 There are also a number of program  
22 inter-relationships. We talked about PennVest.  
23 There's also just the larger issue of land use:  
24 What is the role of the stormwater component in  
25 the overall development or the overall dealing

1 with land development and land regulation  
2 issues?

3 For example, on -- if we continue with  
4 our current system of zoning and subdivision,  
5 what is the net effect on stormwater or can  
6 other land development strategies be pursued for  
7 other reasons such as clustered zoning, open  
8 space zoning, some of those things?

9 How do they impact on the stormwater  
10 issue and are those strategies that are being  
11 pursued for other reasons also issues that can  
12 be pursued to mitigate stormwater problems?

13 GIS: Right now we are only in the  
14 infant stages of developing a coordinated GIS  
15 system here in the state. PennDOT has GIS  
16 information, DEP has GIS information, DCED has  
17 GIS information, individual municipalities have  
18 GIS information, counties have it for  
19 comprehensive planning, they have it for 911,  
20 they have it for assessment records; but we  
21 don't have any single, coordinated system yet  
22 here in the state.

23 There are a number of agencies and  
24 individuals trying to bring that together, but  
25 it hasn't happened yet. And that's something

1 that is in many ways an impediment.

2 It could be a useful tool, but right now  
3 is an impediment to us being able to develop  
4 something on a more comprehensive basis to  
5 address stormwater issues.

6 We see other programs such as nutrient  
7 management. In fact, that's one where our rural  
8 counties are more active. They aren't  
9 addressing the runoff as a stormwater issue, but  
10 they are addressing it as a nutrient management  
11 issue.

12 And there they work extensively with the  
13 local cooperative extensions and the farming  
14 community and others and in a roundabout way  
15 addresses stormwater management issue; but,  
16 again, for another reason. Greenways is another  
17 example. Other recreation programs and  
18 conservation programs all have their impacts.

19 Turning now to a few recommendations:  
20 I think the biggest issue for us is that  
21 something be done on a coordinated basis and a  
22 more comprehensive basis.

23 Our association, our current president  
24 is Terry Kauffman, who's a commissioner from  
25 Lancaster County; and he has convened a

1 sustainable communities task force.

2 And we hope to work with our national  
3 organization in one direction and with other  
4 local groups here within the Commonwealth to  
5 develop a more coordinated mechanism for dealing  
6 with growth here in the Commonwealth.

7 And that's not just its impact on land  
8 but its impact on transportation corridors, on  
9 economic development and all the rest. And this  
10 we think fits in with that larger pictures. It  
11 is an important component, but it is a component  
12 of the larger picture that needs to be  
13 addressed.

14 Funding is another issue. We think that  
15 the State could start by appropriating more  
16 funding towards stormwater planning, but just  
17 placing the funding out there isn't enough.

18 There can be some more encouragement we  
19 think, some more promotion, if you will, because  
20 this is a longer-term process. The State's  
21 appropriation typically, since it's a  
22 reimbursement, follows behind the plans that  
23 they know are underway or about to be submitted.

24 We think we've developed a good working  
25 relationship with DEP and that we can develop

1           some mechanism to promote stormwater planning to  
2           get a few more counties more actively involved  
3           and then the municipal component after that.

4                         And parenthetically with that, we don't  
5           think any sticks are really necessary. The  
6           Commissioners recognize this is an important  
7           issue. And, again, we've been trying to address  
8           the watersheds that are more critical; and I  
9           think there's a commitment to address the other  
10          watersheds.

11                        But again, it's a balance of local  
12          priorities. Sticks aren't the  
13          answer -- penalties, if you will, we don't think  
14          are the answer but rather a cooperative working  
15          relationship that promotes more active local  
16          involvement we think would be productive.

17                        Those though are more prospective  
18          issues. We know there is a retrospective issue,  
19          and that is dealing with existing stormwater  
20          problems.

21                        House Bill 979 last session and however  
22          that evolves into this session is something that  
23          we are interested in taking a look at. We have  
24          been participating in some of the negotiations  
25          on that issue.

1           Frankly, I don't believe there's been  
2 much activity on that issue yet this session.  
3 We do not wholly support the legislation as it's  
4 been introduced in the past.

5           For those of you not familiar with the  
6 bill, the legislation would create stormwater  
7 management districts with an appointed body that  
8 could levy fees that could be used to offset  
9 improvements in existing stormwater management  
10 systems and to help fund prospectively for new  
11 stormwater issues as they develop.

12           Our preference -- we think a regional  
13 concept is the answer. There's no question  
14 about that. More than 2500 municipalities in  
15 Pennsylvania, some as small as 1 square mile,  
16 you really can't adequately deal with those  
17 stormwater issues on a comprehensive basis  
18 because the water's coming in from one side and  
19 going out the other. And so we think a regional  
20 approach does make sense.

21           Our preference though is that it remain  
22 with a governmental entity an elected  
23 governmental entity, for example, the county,  
24 particularly because as the bill was structured  
25 you're talking about levying a fee which we

1 think rightfully -- that type of enactment  
2 rightfully belongs with some elected body rather  
3 than an appointed agency.

4 There are a number of other issues with  
5 the bill. I don't know that we need to go into  
6 a great amount of detail with it at this point,  
7 but we think the concept is a good one and we  
8 would like to continue with the discussions on  
9 the bill with that legislation.

10 With that, I will conclude; and I will  
11 be happy to answer your questions.

12 CHAIRMAN REBER: Thank you very much,  
13 Mr. Hill. I appreciate your comments. I find  
14 them very forthright and very helpful. I would  
15 say that as Chairman, the bill that you were  
16 relating to I don't believe is Representative  
17 Michlovic's legislation. It's been around for  
18 some time.

19 Having ascended to the Chairmanship of  
20 the Committee just last session, this is one of  
21 the issues that I felt has been hanging out  
22 there for a number of years; and that's why we  
23 are very aggressively pursuing testimony around  
24 the state to formulate the necessary substantive  
25 as well as empirical data to really hopefully

1 help us move in that direction.

2 It's my intention to bring on board --  
3 Tom Michlovic was a member of this Committee for  
4 many years; and I did have him testify at the  
5 hearings on this issue right at the end of last  
6 session.

7 And, obviously, the fact that there has  
8 been little if no attempts to work wonders, if  
9 you will, to bring the Stormwater Management Act  
10 into the forefront over many years -- 2, 2 1/2  
11 years is a relatively short time -- that  
12 hopefully this Committee can do something to  
13 bring that about.

14 I plan on bringing in Representative  
15 Michlovic as well as Representative Steils in  
16 Bucks County, who have been working on this  
17 issue, as well as a number of the Members of  
18 this Committee who have a sincere interest in  
19 the issue and also some expertise and  
20 professional background.

21 So that's where we're ultimately going.  
22 So we hope to bring about some kind of blending,  
23 if you will, of all of these prototypes that  
24 have been floating around for some time and  
25 ultimately move this to the forefront and get

1           some form of procedural and substantive  
2           enactment on the issue.

3                       When we had the representatives of the  
4           Department of Environmental Protection before  
5           the Committee in Harrisburg, they had the  
6           assistant chief counsel assigned to that  
7           division present with other representatives who  
8           were the spokespeople for the Department of  
9           Environmental Protection.

10                      And I asked counsel if, in fact, Section  
11           10 of the Act which allows the Department -- and  
12           that being DEP now -- may institute an Action in  
13           Mandamus in the Commonwealth Court to impel  
14           counties to adopt and submit plans in accordance  
15           with this Act whether in her tenure or in her  
16           knowledge since the inception whether that has  
17           ever been attempted or done.

18                      And her response was in the negative,  
19           that there has not been any action brought. And  
20           I frankly in a relatively polite but demanding  
21           way asked for the Department to be a little bit  
22           more aggressive in setting up some types of  
23           milestones, if you will, with some of the areas  
24           that have shown that there really is a need to  
25           address the problem with some expeditious review

1 because of what's been going on.

2 And I think the Department -- and I  
3 believe one of the earlier testifiers was  
4 somewhat critical and I think justifiably so,  
5 which has been one of the concerns that did I  
6 point out to them very directly when they  
7 testified in Harrisburg.

8 Let me ask you this question: From your  
9 perspective -- and I think you certainly have  
10 somewhat of a prejudice in your response  
11 representing counties -- are there any counties  
12 out there that have attempted to not do what  
13 they should be doing in light of existing  
14 stormwater issues that are running rampant in  
15 their particular confines?

16 MR. HILL: Well, I really doubt I'd have  
17 a conversation with commissioners where they  
18 would say, Our intent is to ignore the Act.  
19 When we talk about it among our members, their  
20 more typical response is that they try to deal  
21 with the watersheds that are critical; that they  
22 have priorities for a list of services and  
23 outside stormwater issues and scarce resources  
24 to pay for those; and so based on the relative  
25 need, this particular function may or may not be

1 funded.

2 In response to your comment about  
3 mandamus actions, that's correct; I don't know  
4 of any either. I think -- I guess what I was  
5 hinting at in the testimony is that perhaps what  
6 we need to do is to prioritize watersheds and  
7 take a look at the ones where either there is a  
8 current critical issue or ones where we  
9 anticipate growth pressures in the very near  
10 future so that the plans are in place there.

11 And I think we are all in a  
12 position -- we as an association and the working  
13 relationship we have now with DEP -- that we can  
14 work with those counties and encourage them to  
15 get the plans done in those particularly  
16 critical watersheds.

17 CHAIRMAN REBER: That was where I was  
18 going with my review of this issue with the  
19 Department when they were before the Committee.  
20 And frankly, I'm not really interested in seeing  
21 counties spend a lot of money in defending  
22 mandamus actions.

23 All that does is fatten the coffers of  
24 the county solicitors depending on what kind of  
25 arrangement they have with respect to counties.

1                   But I really would hope that the  
2                   Department has and is in the process of doing  
3                   just what you said, prioritizing where some of  
4                   these things should be addressed because I  
5                   think that's the kind of dialogue and interplay  
6                   that has to take place to attempt to bring this  
7                   to the forefront in those areas which are in  
8                   need of that acute awareness of the issue. So,  
9                   all right.

10                   Representative Pippy, any questions of  
11                   this witness?

12                   REPRESENTATIVE PIPPY: You hinted at it  
13                   about prioritizing watersheds. Does the  
14                   Commissioners Association have or has certain  
15                   counties been identified as ones that would be  
16                   critical?

17                   Have you worked with DEP at all or is  
18                   this the point where we now need to go to DEP  
19                   and say we have to look at what are our critical  
20                   watersheds?

21                   And the second part of that question is,  
22                   You mentioned you would recommended rather than  
23                   a watershed management appointed board, allow  
24                   our elected officials, which I agree with,  
25                   maintain control.

1                   How would we ensure that when we have a  
2 watershed that crosses two or maybe even three  
3 counties? That's our problem. How do we -- we  
4 obviously won't have a county commissioner from  
5 Washington County levy tax or any type of fee or  
6 service for a resident of Moon Township, at  
7 least not while I'm here. So what's -- you  
8 don't want the board; but what's the solution  
9 then?

10                   MR. HILL: Actually, I think we do have  
11 good examples of cooperation. In this area, you  
12 have the Southwest Regional Planning Commission;  
13 and I think that kind of agency can coordinate  
14 that effort.

15                   And it is important too because  
16 obviously the river flows from county to county  
17 and so do most of the streams. And we do have a  
18 good track record of cooperation among counties  
19 just in doing the plans under the current law.

20                   I mentioned in the earlier testimony a  
21 group of counties in the Poconos who have done  
22 joint planning on a single watershed that flows  
23 through three of the counties. And, of course,  
24 the counties in the Upper Susquehanna Basin have  
25 been doing some work to the watersheds there and

1 again in recognition of downstream impact.

2 There are other regional planning  
3 agencies throughout the state that I think would  
4 be good bodies to help convene that. I know all  
5 of the counties are active participants in each  
6 one of those. I think those would be good  
7 mechanisms. I'm sorry. Your first question was  
8 on --

9 REPRESENTATIVE PIPPY: Prioritizing  
10 watersheds.

11 MR. HILL: Okay. No, we have not  
12 actively undertaken doing that. We would be in  
13 a position to assist the Department in getting  
14 the counties together to develop that planning  
15 process.

16 I should also say we have a good  
17 relationship with the Pennsylvania Planning  
18 Association, which consists primarily of county  
19 planners plus planners at the municipal level.  
20 And I think that group might be a good one to  
21 help identify and privatize watersheds.

22 REPRESENTATIVE PIPPY: Thank you,  
23 Mr. Hill.

24 CHAIRMAN REBER: Representative  
25 Readshaw.

1                   REPRESENTATIVE READSHAW: I would just  
2 like to thank the Executive Director for his  
3 comments, Mr. Chairman. I have no questions.

4                   CHAIRMAN REBER: Thank you.  
5 Representative Dent.

6                   REPRESENTATIVE DENT: Just a follow-up  
7 on what has been discussed earlier. I would  
8 encourage you to engage in the planning process  
9 with respect to privatization. I think that  
10 would be very helpful to all of us on this  
11 Committee and I think that would make our job a  
12 bit more manageable. No more comments.

13                  CHAIRMAN REBER: And Doug, I understand  
14 you will try to capsulize your remarks in  
15 writing?

16                  MR. HILL: Yes.

17                  CHAIRMAN REBER: That would be most  
18 appreciated because there are a number of  
19 Members of the Committee that we do disseminate  
20 the testimony to. They have a tendency to read  
21 that. They don't always sit down and read  
22 the transcribed testimony of this lovely lady.

23                  So I'll appreciate it if you could  
24 capsulize at least that. And thank you very  
25 much for traveling today.

1 MR. HILL: Thank you.

2 CHAIRMAN REBER: Our next set of  
3 individuals are representatives of certain local  
4 government agencies. I've been advised that  
5 Gary Klingman, the manager of Findlay Township,  
6 is here.

7 Gary, if you could come up as well as  
8 Councilman Kenneth Kuiros of Chalfant Borough.  
9 And also, we're to have a representative of the  
10 Pennsylvania League of Cities and  
11 Municipalities. Is someone present for that  
12 organization?

13 MR. BANFIELD: Yes. My name is Andy  
14 Banfield.

15 CHAIRMAN REBER: Okay. Andy, if you  
16 would want to come forward also -- if you three  
17 gentleman would like to move over to the  
18 mike -- normally, we have a table set up; but  
19 since we have the podium format, if you  
20 gentlemen could each take a respective spot back  
21 there and, I guess, Gary, we'll start with you  
22 and if you would want to make your comments and  
23 any questions, I think what we'll do is wait  
24 until all three of you have had your opportunity  
25 to present your testimony to the Committee.

1 MR. KLINGMAN: Good morning, Chairman  
2 Reber. I appreciate the opportunity along with  
3 the other Committee Members to address you this  
4 morning on what I consider to be a very  
5 important issue in the state of Pennsylvania.

6 Actually, I'm wearing two hats this  
7 morning. I'll be speaking on behalf of  
8 the Pennsylvania State Association of Township  
9 Supervisors, which Findlay Township being a  
10 second-class township is a part of.

11 We happen to be eye-to-eye on this  
12 particular issue; and, therefore, they asked that  
13 I speak on their behalf. But also I'll be  
14 speaking on behalf of Findlay, and you will see  
15 as my remarks go on that it relates to that.

16 Certainly, it's a known fact that  
17 flooding has caused tremendous financial losses  
18 and devastation throughout our history in the  
19 Commonwealth. And most recently, we have even  
20 had an example of this in Western PA with the  
21 Pitcairn in the Monroeville area.

22 According to DEP right now, Pennsylvania  
23 has 355 designated watersheds, yet only 51 of  
24 those watershed plans have been approved in  
25 about 30 to 35 counties. And my belief and the

1 Association's belief, this is due mostly to the  
2 lack of funding.

3 As you alluded to before in the  
4 testimony prior to mine that PennVest is now  
5 offering low-interest loans to assist in those  
6 matters, my understanding in talking with our  
7 regional representative for PennVest that it is  
8 slow to get moving. The funds are limited.

9 And I think if the competition were to  
10 really get moving they're probably going to find  
11 themselves without the source of funds to really  
12 fund those to the extent that they would be  
13 needed. But at this point, it is slow;  
14 therefore, funds are available.

15 CHAIRMAN REBER: Gary, could I just  
16 interject that you may want to take back to your  
17 Association -- I would suggest that if and when  
18 any of your municipalities make application for  
19 anything with PennVest under this that they do  
20 two things -- well, they do one thing and two  
21 things will fall from it:

22 They should keep in direct contact with  
23 their representatives in Harrisburg, whether it  
24 be the Senator or the local House Member. On  
25 the PennVest board, we have representatives from

1 each of our four caucuses.

2 I had the distinction of being one of  
3 the original authors of the PennVest Legislation  
4 and also served in capacity on that board. And  
5 I do know that if the voting board members are  
6 aware of the exigent circumstances behind some  
7 of these applications and are kept abreast of  
8 what is going on and some of the background from  
9 the respective representative in the district  
10 where the application is emanating from, it's  
11 very helpful for the voting board members to  
12 articulate and advocate on behalf of that  
13 application. And I think that's something that  
14 people should understand.

15 They contact us for everything, but some  
16 things they should contact us for more  
17 importantly than others. And that certainly  
18 is one of those where that type of dialogue is  
19 very, very helpful in getting not only a quicker  
20 approval but approval ultimately in the  
21 end. I'm sorry to interrupt you.

22 MR. KLINGMAN: No problem. Procedurally  
23 and structurally, the regulation of stormwater  
24 should coincide with an entire defined  
25 watershed.

1           And I think that goes back to some of  
2           the discussion about regionalized,  
3           looking -- from a planning perspective, looking  
4           at the watershed in its total context and it's  
5           comprehensive context.

6           The Municipalities Planning Code does  
7           provide townships with the responsibility for  
8           subdivision and land use review and approval.  
9           Counties in that framework have review and  
10          comment capability.

11          In Findlay Township, the land use  
12          regulations are based on performance zoning  
13          which provide for resource protection that  
14          includes impervious surface ratios, steep slope  
15          regulations, and other methods of conserving  
16          natural features that help to accomplish a  
17          conservation/prevention type of goal.

18          This variety of zoning practices coupled  
19          with structural stormwater controls can define  
20          success in stormwater management for  
21          Pennsylvania watersheds.

22          The tools to see this through can be  
23          appropriately implemented at the municipal  
24          level. Incentives need to be provided, meaning  
25          dollars, for counties to develop watershed plans

1 while municipalities adopt and implement  
2 ordinances to regulate that stormwater  
3 management.

4 We see no problems with giving the  
5 county the ability to comment on plans submitted  
6 to determine compliance with the stormwater  
7 management plan; however, we cannot give support  
8 to veto power over subdivision and land  
9 development approval.

10 This approval should remain a local  
11 decision. And the district, slash, county role  
12 should be merely to advise the municipality on  
13 compliance with the county stormwater plan for  
14 the affected watersheds similar to the county  
15 commenting on the zoning and subdivision plans.

16 Having lived and worked in Lancaster  
17 County, the Chesapeake Bay Program recognized  
18 the important role of local governments.  
19 Located within the watershed of the bay, they  
20 play a significant role in restoring and  
21 protecting the bay and all the way to and beyond  
22 Lancaster County.

23 Local governments participate in an  
24 action program that aims to focus on land  
25 management and stewardship, stream corridor

1 protection, and restoration and also  
2 infrastructure improvements.

3 These same principles and practices can  
4 be applied to any properly defined watershed.  
5 We see these necessary layers of responsibility  
6 needing to effectively be in place in order for  
7 the Commonwealth to be successful.

8 And I've sort of outlined some of the  
9 roles that I saw agencies taking in terms of the  
10 state and the Commonwealth.

11 Financing and education seem to be a  
12 significant role that they can play. From a  
13 district or county watershed basis, it would be  
14 establishment of the stormwater management plans  
15 with that review and comment on the plans taking  
16 place so that there is compliance with the  
17 stormwater management plan.

18 And then at the local municipality  
19 level, the land use and subdivision approval,  
20 development of ordinances that implement  
21 stormwater management; and in addition to that,  
22 the zoning and structural stormwater management  
23 practices need to be employed. And there are  
24 many of those and they each apply to a  
25 particular development or a particular

1 watershed.

2 So there is not one plan that you can  
3 lay over and say this will work structurally in  
4 this instance and not in another. They're all  
5 case by case.

6 When you compare Pennsylvania with other  
7 states, we are far behind most of the states all  
8 around us. Part of the challenge in making the  
9 switch to more progressive stormwater management  
10 is changing the mind-set of municipal officials  
11 and their engineers; and that is to look at the  
12 performance side of zoning, look at the resource  
13 protection, look at the way in which development  
14 can impact on that.

15 A township that develops without a  
16 proper stormwater management plan, in effect,  
17 increases its chances of flooding, risks damage  
18 to its infrastructure, puts its streams and  
19 groundwater at risk, and opens itself up to  
20 citizens' complaints and possible lawsuits.

21 With looming problems like that, a  
22 comprehensive stormwater management plan that  
23 tries to prevent or correct runoff problems,  
24 incorporates sound zoning and land use  
25 techniques and preservation mechanisms along

1 with structural control simply makes good sense.

2 It becomes much more difficult to take  
3 care of a problem after the fact than to tackle  
4 it from the beginning and try to prevent it.  
5 With a good, comprehensive stormwater management  
6 plan in effect, perhaps local governments will  
7 have just a little less reason to fear Mother  
8 Nature when she reels up and presents us with  
9 some of the storm events that we've had in the  
10 recent past. And that's the end of my remarks.

11 CHAIRMAN REBER: Thank you, Gary. At  
12 this time, Mr. KUIROS, you have some comments on  
13 this issue. We'll take those remarks.

14 MR. KUIROS: Thank you. What I'd like  
15 to address today is the comments relative to the  
16 House Bill 979 concerning permitting counties to  
17 form stormwater management districts.

18 I sort of shortened it up because I  
19 think everybody, we're all speaking the same  
20 thing but in different ways we're approaching  
21 it.

22 From the borough's aspect, we agree that  
23 improved stormwater management is required  
24 throughout Pennsylvania both through the  
25 development and implementation of Act 167

1 Stormwater Management Plans and completion of  
2 remedial flood control activities.

3 However, I believe that the current bill  
4 has several flaws that need to be addressed -- I  
5 should say we believe, the boroughs. The  
6 district board will be appointed and will have  
7 limited or little accountability to its  
8 constituents.

9 A seven-member executive Committee would  
10 govern the day-to-day operations of the  
11 district. Three of the seven members would be  
12 appointed by the county. This represents  
13 excessive representation from the county. All  
14 executive committee members should be elected by  
15 the entire district board.

16 Provisions should be contained in the  
17 bill to ensure that the operation and  
18 maintenance cost of facilities required by the  
19 district cannot be passed on to the local  
20 municipalities. This is a very tough thing that  
21 the local municipalities -- we have 130 of them  
22 in Allegheny County.

23 And what's happening now, our  
24 infrastructure's bad; we are just -- we're just  
25 falling apart. I hate to say it. And

1 everything comes down to the basic thing that  
2 the bottom line is we need money.

3 And especially the boroughs in the Mon  
4 Valley who we were so U.S. steel-orientated and  
5 Westinghouse and all these are gone. Our tax  
6 base is just about nothing because we have no  
7 industry to support this.

8 We've gone to the residents and  
9 residential revenue, and a lot of the people in  
10 that area are on fixed incomes; and this  
11 represents a problem.

12 The boroughs do want to comply and do  
13 everything possibly they humanly can, but it  
14 gets to the point that there is no money. The  
15 C.O.G.s have helped us out several times.

16 We're very fortunate that out of the  
17 hundred and thirty communities about a hundred  
18 nineteen of them belong to one of the eight  
19 C.O.G.s in Allegheny County.

20 I think that's the greatest thing that  
21 ever happened since the zipper. And I think the  
22 reason the C.O.G.s are working is because you  
23 don't lose identity. This is a key role in what  
24 we're trying to do here: Not losing identity  
25 with the municipalities.

1 I've been a politician for 35 years.  
2 And I know everybody likes to say, My town; my  
3 people. And they don't want to give that up.

4 But I think we're getting to the place  
5 we're going to have to give that up. We're  
6 going to have to pull together and start working  
7 towards one goal.

8 And also in closing I'll say the  
9 districts should not have a veto authority as I  
10 think the gentleman before me says on  
11 development plans reviewed by the  
12 municipalities.

13 There's more to it, but I think we've  
14 covered a lot. It would just be repeating but  
15 in different words. That's the end of my  
16 report.

17 CHAIRMAN REBER: Thank you very much,  
18 Ken. Andy, do you have some remarks from  
19 the -- I believe the cities and the  
20 municipalities? Give your full name for the  
21 record.

22 MR. BANFIELD: Yes. My name is Andy  
23 Banfield, civil engineer. I work with the firm  
24 Gateway Engineers in Pittsburgh. Personally,  
25 I've been a civil engineer for ten years and

1 I've been mainly focusing on the issues of  
2 stormwater management, floodplain management,  
3 and floodway management.

4 I was asked by the League of Cities and  
5 Municipalities to speak today last week, so I  
6 apologize for not having any written comments;.  
7 But I too will put these together and forward it  
8 for your review.

9 What we're looking at again -- and we've  
10 been talking about the comprehensive issues:  
11 Veto powers, things such as that. What I'm  
12 looking at is from more of a technical  
13 standpoint on where we're looking to go on some  
14 of our stormwater management issues.

15 At Gateway, we represent 31  
16 municipalities in Butler, Allegheny, and  
17 Washington Counties. Our municipalities'  
18 stormwater management ordinances range from no  
19 ordinance from that to a very restrictive  
20 ordinance such as Butler Township where the  
21 release -- or the stormwater must be detained  
22 from a 100-year storm back to a 5-year storm  
23 intensity.

24 So there's actually possibly some  
25 overdetection going on there. So we run the

1 gamut with that. And what my concern is, Act  
2 167, again, the concept of it is good.

3 But we do need to get a little bit more  
4 detailed to look at not only the larger storms  
5 where we're seeing the large impact flooding;  
6 but let's also look at the nuisance storms.

7 These are called the two-year, the  
8 five-year storms. They happen quite a bit that  
9 we have constant flooding where the residents  
10 are really being bothered by this.

11 Obviously, the big floods everyone is  
12 bothered. But you have more localized problems  
13 with these smaller storms. I believe  
14 Representative Pippy mentioned Carnegie. We  
15 were also the engineers for Carnegie, and we've  
16 seen these problems happening. So we'd like to  
17 focus on that.

18 Also another thing to mention is that  
19 stormwater management is not in the form of a  
20 detention structure, a detention basin, or any  
21 type of flood control project is not always the  
22 answer.

23 Again, the value of having a  
24 comprehensive stormwater management study, you  
25 can see how everything in the watershed works.

1 Normally, the first thing you see is if you have  
2 a development, the first thing you do is put in  
3 a detention basin.

4 But as these detention basins are  
5 popping up all over the landscape, they combine,  
6 they start working together. Obviously the idea  
7 of a detention basin's to hold back the water  
8 and release it at the rate that it previously  
9 left the property.

10 As these all combine with respect to  
11 time, sometimes you'll get an actual increase in  
12 flow. So again, the regional concept is very  
13 good and it's good to know what is happening  
14 throughout the watershed. Really, it's a micro  
15 versus macro type of stormwater management that  
16 we're looking at.

17 As an example, in Peters Township  
18 Washington County -- that's one of our  
19 municipalities -- I along with the township have  
20 developed a stormwater management model for all  
21 their streams.

22 They have built pressure on the  
23 watershed -- Peters Creek Watershed and the two  
24 largest ones. We've gone through and using GIS  
25 data developed subareas and come up with subarea

1 release rates.

2 We hope that this will be enacted by the  
3 end of year. Again, it'll be a little bit  
4 tougher ordinance to stop some of the flooding  
5 that we have.

6 And we hope that in the future we can  
7 get this to Washington County and work with them  
8 to make this part of a studied watershed. Also  
9 that way the county's not really spending a lot  
10 of money since a lot of the footwork has been  
11 done. So we're hoping that will be a good part  
12 of the stormwater management plan.

13 Another issue that was brought up before  
14 was maintenance requirements. We can have the  
15 best designed detention basin or detention  
16 facility in the world; but if no one touches it,  
17 it will not work.

18 I don't really have a solution on how  
19 you write that into the Act to, you  
20 know -- again, we don't like the word mandates  
21 and such.

22 But that is very critical and it also  
23 leads to the point where the municipalities  
24 still need to be involved with the decisions on  
25 stormwater management because if they're going

1 to be taking over the basins and they don't have  
2 a appropriate say on what is approved, they're  
3 going to be left with a problem if it's designed  
4 improperly. So I believe that the  
5 municipalities, you know, still need they're say  
6 on the words.

7 In closing, I would like to thank the  
8 panel for the opportunity to be here. Again, I  
9 will put these comments in writing and I hope  
10 that any questions you have we can answer.  
11 Thank you very much.

12 CHAIRMAN REBER: Thank you very much,  
13 Andy. While you're at the microphone, has it  
14 been your experience that the municipalities in  
15 your professional capacities that you represent  
16 where they do have ordinances that create  
17 certain forms of the detention basin  
18 necessities, is there an appropriate reserve  
19 being handled for long-term maintenance of those  
20 facilities?

21 MR. BANFIELD: Not really. That's not  
22 something that they are looking at. It's  
23 something that in -- most municipalities have  
24 turned over to the public works department and  
25 they maintain them as they can.

1                   And I think that's where the problem is.  
2                   I believe it was mentioned earlier about the  
3                   escrow for future maintenance. This is  
4                   something that we're trying to do in Peters  
5                   Township with our revised stormwater ordinance  
6                   that there is a bond put up for five to ten  
7                   years that would cover that if the  
8                   individual -- if it was a private facility that  
9                   did not maintain it, then the township could  
10                  draw from that bond and do the maintenance.

11                  CHAIRMAN REBER: Have you noticed or  
12                  have you experienced problems where someone is  
13                  raising the issue that there is lack of  
14                  authority for the municipality suggesting or  
15                  requiring that as part of the planned approval  
16                  process or condition of approval?

17                  Have you been met with that or have you  
18                  been able to artfully find the necessary  
19                  authority under the existing statutes?

20                  MR. BANFIELD: Yeah, that's a very good  
21                  point. The authority is not there.

22                  CHAIRMAN REBER: In other words, it's  
23                  nebulous at best that you're trying to tie this  
24                  in from some stretch of the language under  
25                  the municipality's planning code --

1 MR. BANFIELD: Right. And we always  
2 require a maintenance schedule at least be put  
3 into the report. And then obviously the hard  
4 part is enforcing that and having it followed.

5 CHAIRMAN REBER: Okay. Thank you.  
6 Representative Readshaw, do you have any  
7 questions of any of the three witnesses? Feel  
8 free to address it to any of them.

9 REPRESENTATIVE READSHAW: I would just  
10 like to make a comment, Mr. Chairman, on Ken's  
11 remarks relative to House Bill 979. On the  
12 sheet provided, it is -- I see the provision  
13 should be contained in the bill to ensure that  
14 the operation and maintenance cost of facilities  
15 required by the district request not be passed  
16 on to local municipalities.

17 Now, I know there obviously will be some  
18 controversy about a statement such as that. But  
19 I represent two municipalities in the Mon  
20 Valley -- Munhall and West Homestead; and his  
21 comments about unemployment and the loss of the  
22 steel industry are well taken.

23 And I think that his suggestion,  
24 although it could be controversial, should be  
25 considered and is an important fact for

1 consideration. Thank you, Mr. Chairman.

2 CHAIRMAN REBER: Thank you.

3 Representative Pippy.

4 REPRESENTATIVE PIPPY: Thank you,  
5 Mr. Chairman. I do too want to say that I think  
6 Ken and also Gary both did an excellent job and  
7 brought up some points that will be taken very  
8 seriously.

9 And I've had the pleasure of working  
10 with both gentlemen at different times, and  
11 they've done a good job in our area and the  
12 areas they've covered.

13 And I think that they pretty much did it  
14 in a very quick manner of explaining the biggest  
15 problems. And to summarize it in the interest  
16 of good stormwater management, we don't lose the  
17 controls that our local municipalities have  
18 always appreciated.

19 And I think that goes back to my earlier  
20 comment of the State allowing the education,  
21 providing resources and funding; but ultimately,  
22 it will be the local municipalities, the  
23 nonprofit organizations that working together  
24 will find the right balance. So thank you very  
25 much, gentlemen, for your comments.

1 CHAIRMAN REBER: Representative Dent.

2 REPRESENTATIVE DENT: (No audible  
3 response.)

4 CHAIRMAN REBER: No questions. All  
5 right. We're actually five minutes early, and  
6 that's always laudable in the General Assembly's  
7 way of doing business. So I always like to at  
8 least keep this committee's record intact with  
9 be rather punctual.

10 I'd like to thank Representative Pippy  
11 for his assistance, as I said, at the outset.  
12 I'd also like to thank the administration of  
13 Findlay Township and the governing body for  
14 allowing us to use your facilities. It was  
15 excellent.

16 And I would also like to thank all those  
17 in attendance for their interest in this issue.  
18 As I said, the Committee will be meeting in  
19 open-work session in the near future to collate  
20 a lot of the substantive testimony that we've  
21 taken.

22 And we'll be moving forward with former  
23 sponsors of House Bill 979 as well as other  
24 Members of the General Assembly and certain  
25 members of the Committee that have interest in

1           this issue and hopefully we can collate  
2           many of the different things that have been  
3           talked about throughout these hearings into some  
4           form of remedial legislation to tighten up what  
5           was started in 1978 and hopefully we can be of  
6           assistance to all of the local municipalities  
7           and the county agencies throughout the  
8           Commonwealth on this particular issue.

9                        Thank you very much, and I'm going to  
10           adjourn this meeting.

11                       (At or about 11:25 a.m., the hearing was  
12           adjourned.)

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## C E R T I F I C A T E

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2  
3 I, Deirdre J. Meyer, Reporter, Notary  
4 Public, duly commissioned and qualified in and  
5 for the County of Lancaster, Commonwealth of  
6 Pennsylvania, hereby certify that the foregoing  
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20 Notary Public. My commission  
21 expires August 10, 1998.  
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