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COMMITTEE HEARING

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1:05 P.M.

PRESENTATION ON SB 1261
ESTABLISHMENT OF MUNICIPAL AUTHORITIES
FOR STORMWATER MANAGEMENT
PLANNING AND PROJECTS

BEFORE:

HONORABLE TOM C. CREIGHTON, MAJORITY CHAIRMAN
HONORABLE MAUREE GINGRICH
HONORABLE TIM HENNESSEY
HONORABLE DAVID S. HICKERNELL
HONORABLE ROSEMARIE SWANGER
HONORABLE MARCY TOEPEL
HONORABLE ROBERT FREEMAN, DEMOCRATIC CHAIRMAN
HONORABLE JAKE WHEATLEY

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*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

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3 MAJORITY CHAIRMAN CREIGHTON: Seeing that the time
4 of 1 o'clock has reached, we can begin our hearing.

5 There will be no roll call, but we're being recorded
6 by videotape, so you might want to know that.

7 Sort of the reality of how terms work here, 2-year
8 terms, we don't have much of a window of opportunity to get
9 this bill processed, but depending on this hearing, I think
10 we'll know where we want to go and what we want to do with the
11 bill.

12 The Erickson bill, it's the shortest bill I've ever
13 seen. It's six words, and it doesn't go into all the details
14 of what an "authority" is, but it is very interesting what the
15 implications are of those six words.

16 I believe the Erickson bill is a good bill, and it
17 just needs some refinement. That's the reality that we have, a
18 short period of time to add amendments to it. It sort of hurts
19 us to get a good piece of legislation through.

20 I have some reservations trying to understand how
21 these authorities would be formed. I'd like for the presenters
22 to try to address the issues of what municipalities, like
23 counties, like townships, like boroughs, how do they come
24 together to form an authority?

25 The process: Many watersheds have several

1 municipalities feed into the same watershed, and when that
2 happens, the headwater or white-water sheds are probably the
3 culprits and downstream guys are in trouble with impervious
4 surfaces that are upstream. How do you tax something like that
5 fairly? How do you create a tax situation that's going to work
6 and not feel the fairness part of it?

7 Also, eminent domain. There would be wetlands
8 formed and you'd probably need to acquire some land, and how
9 does that all work together?

10 So we would like the hearing to be short in terms of
11 presentations. Just, you know, we don't need read to; we need
12 to understand. So this is an educational kind of session. We
13 want to learn as much as we can about it.

14 It's a huge issue. We could be here for days
15 delving into all the details of what's going on. So I would
16 like to have a back and forth. As we keep it short in
17 presentation, we'll extend the questions and answers as part of
18 it.

19 So our first presenter is Kelly, but before I do
20 that, Bob, do you have things to say?

21 MINORITY CHAIRMAN FREEMAN: Thank you, Mr. Chairman.

22 I just want to thank the Chair for holding today's
23 hearing. Stormwater management is a very important issue and
24 in parts of the State a very serious issue of growing concern,
25 particularly in the southeast part of the State and in my own

1 native Lehigh Valley.

2 This issue has been attempted to be addressed in
3 previous sessions with actually more comprehensive legislation.
4 The bill that I recall that first sought to tackle the issue
5 of stormwater management was introduced by our colleague,
6 Dave Steil, a Republican Member from Bucks County. He put
7 forth a very comprehensive proposal that went far beyond what
8 is envisioned here in this legislation. But that met with some
9 resistance as we tried to get it through the process. When
10 Dave retired from the Legislature, I reintroduced that
11 legislation at his request, and again, we made some progress
12 but were unable to get it across the finish line.

13 I think what Senator Erickson has attempted to do
14 here in this legislation is find an easier way to allow
15 communities to grapple with the very serious problem of
16 stormwater management by simply expanding upon the kinds of
17 authorities that can be created -- in this case, the stormwater
18 authority -- that would in turn be able to address those very,
19 very real and serious concerns that exist in so many of our
20 communities, particularly in the southeast.

21 So I look forward to today's testimony and want to
22 thank the Chair again for your willingness to allow the
23 committee to examine this issue, examine this legislation, and
24 have a good back-and-forth dialogue.

25 MAJORITY CHAIRMAN CREIGHTON: Thank you.

1 We begin with Kelly Heffner. Kelly has total
2 understanding of MS4, and she's going to educate us on what
3 that's all about, what EPA is all about, and DEP. So good
4 luck.

5 DEPUTY SECRETARY HEFFNER: Very good. Thank you. I
6 wish I knew what EPA was all about.

7 Anyway, thank you very much for the opportunity to
8 share DEP's perspective on SB 1261. I'll just take a few
9 minutes to share DEP's position of support, and then we'll
10 attempt to address some of the questions which I think are
11 actually excellent questions.

12 Successful municipal stormwater management requires
13 stable and reliable funding. There are examples within
14 Pennsylvania as well as in other States of effective municipal
15 stormwater programs that rely on funding through fees assessed
16 and administered by a stormwater authority. Our own city of
17 Philadelphia is one such example, and through a line item
18 included in a user's monthly water bill, this municipality has
19 supported a comprehensive water management program that
20 addresses complex stormwater and sewage infrastructure-related
21 needs.

22 Smaller municipalities such as the county of York
23 and the city of Lancaster are currently exploring approaches to
24 stormwater management that would similarly address the spectrum
25 of water management issues. Pennsylvania DEP supports SB 1261

1 because it would clarify that for the development of an
2 authority for municipalities like York and Lancaster, that
3 would be a viable way to develop additional funding sources for
4 the needed upgrades to their infrastructure to adequately
5 address stormwater in a manner that protects public health and
6 safety and meets the Federal and State regulatory obligations.

7 DEP further supports SB 1261 because it is our
8 observation that the use of an authority as a funding mechanism
9 remains an issue for many municipalities due to the real or
10 perceived ambiguity under existing law as to whether
11 municipalities are authorized to assess fees for stormwater
12 management. DEP is supportive of legislation that would
13 clarify this ambiguity and that expressly establishes the legal
14 authority of municipalities to form stormwater authorities.
15 SB 1261 does just that and expressly authorizes the creation of
16 municipal authorities with the power to oversee stormwater
17 management and assess fees for stormwater planning and, more
18 importantly, implementation. This legislation would provide
19 additional tools to municipalities who face significant
20 challenges associated with funding local stormwater programs.

21 Since the late 1970s, all municipalities in
22 Pennsylvania have had stormwater management obligations under
23 Act 167, the Pennsylvania Storm Water Management Act, as well
24 as the Federal Clean Water Act. These Federal and State
25 statutory obligations address the recognized need to manage

1 uncontrolled stormwater runoff in order to protect developed
2 land, public health and safety, and the environment.

3 Since 2003, Pennsylvania has had approximately 1,000
4 municipalities that are regulated under the Federal Clean Water
5 Act Municipal Separate Storm Sewer Systems, or MS4s, and these
6 are permitted under the National Pollutant Discharge
7 Elimination System, or the NPDES, permitting program.

8 DEP administers the Federal Clean Water Act
9 regulatory requirements in Pennsylvania through a delegation
10 agreement with the United States Environmental Protection
11 Agency. DEP has structured the implementation of the Federal
12 and State municipal stormwater obligations in a manner that
13 allows municipalities to meet most of their State and Federal
14 obligations with one consolidated program. Under this
15 consolidated program, municipalities must address both
16 stormwater planning and management requirements and must adopt
17 and implement a stormwater management ordinance that regulates
18 land use and the associated stormwater runoff.

19 Those municipalities who have obligations under the
20 Federal NPDES MS4 permit program may also have to address the
21 requirements for discharges to water bodies that have been
22 determined to be impaired or have had a Total Maximum Daily
23 Load, or a TMDL, completed for them. The TMDL is required for
24 any water body that is not meeting water quality standards.
25 These additional requirements can be specific pollution

1 reduction targets for a watershed that are called for in a
2 local TMDL or a more general pollutant reduction plan such as
3 that specified for MS4 permittees in the Chesapeake Bay
4 Watershed.

5 To help our MS4 permittees, DEP negotiated an
6 approach to MS4 permitting with EPA that included our existing
7 stormwater management requirements. This insured that our
8 permittees were not undertaking duplicative efforts in order to
9 comply with these permitting obligations. In addition, DEP
10 held 15 separate workshops covering the new permit
11 requirements. These workshops were geared to municipal
12 officials and consultants who would be preparing applications
13 for the September 14 application submission deadline. These
14 workshops were held at various locations across the
15 Commonwealth from January through March of this year.

16 Although administration of the State and Federal
17 requirements has been streamlined to the extent allowable,
18 there are nonetheless costs to municipalities associated with
19 the construction, operation, and maintenance of stormwater
20 management infrastructure. The funding for these obligations,
21 however, is not stable, and the lack of funding has resulted in
22 some instances in either compliance struggles under these laws
23 and/or inadequate stormwater management.

24 A reliable funding source should also allow for more
25 holistic watershed-based solutions to stormwater issues. This

1 approach ultimately relies on actions by informed county and
2 local officials who must be able to balance health, safety, and
3 environmental protection with economic development and
4 community sustainability.

5 In closing, DEP believes that legislative support
6 for additional funding mechanisms would assist municipalities
7 in meeting their obligations.

8 Thank you very much.

9 MAJORITY CHAIRMAN CREIGHTON: Thank you, Kelly.

10 Are you ready for questions?

11 DEPUTY SECRETARY HEFFNER: Sure; absolutely.

12 MAJORITY CHAIRMAN CREIGHTON: Do you have anything?

13 MINORITY CHAIRMAN FREEMAN: I have something.

14 MAJORITY CHAIRMAN CREIGHTON: Sure; go ahead.

15 MINORITY CHAIRMAN FREEMAN: Deputy Secretary, thank
16 you for your testimony.

17 DEPUTY SECRETARY HEFFNER: Sure.

18 MINORITY CHAIRMAN FREEMAN: I appreciate it.

19 Under the kinds of requirements that the Federal
20 Government is imposing in terms of stormwater management, for
21 municipalities to meet that obligation and to comply with the
22 Federal regulations, what sources of funding can they now
23 currently draw on to be able to meet those obligations?

24 DEPUTY SECRETARY HEFFNER: Yeah; that's a great
25 question. While I wish there was something really permanent,

1 right now they can look to the Federal 319 Nonpoint Source pot
2 of money. They can also look to Grower Greener II for some
3 money for these types of projects. DEP and EPA have small pots
4 of money for demonstration projects.

5 MINORITY CHAIRMAN FREEMAN: But in terms of being
6 able to fund whatever needs to be done as a remedial approach
7 to the issue, is there any solid reliable source of funding?

8 DEPUTY SECRETARY HEFFNER: Not to the best of my
9 knowledge. Nothing permanent.

10 MINORITY CHAIRMAN FREEMAN: So most of it is
11 competitive grant applications.

12 DEPUTY SECRETARY HEFFNER: Right now, yes.

13 MINORITY CHAIRMAN FREEMAN: In light of that, does
14 that mean more or less that if a municipality is getting to a
15 point where they're out of compliance with the Federal
16 requirements on stormwater management that they will have to
17 draw on their own tax base, say real estate taxes?

18 DEPUTY SECRETARY HEFFNER: I believe at some point
19 that they will have to work from moneys that they have within
20 the municipality. One of the reasons we're supporting this is
21 it's a way to look at a source of funding that might be
22 available and could be a bit more equitable in terms of, you
23 know, you don't just necessarily go to the homeowner or to the
24 small business.

25 In terms of whether or not they'd be out of

1 compliance, we have some latitude there because we are the
2 permitting authority. So we can work with the municipalities
3 to finish their permit applications, make sure they have permit
4 coverage. One of the things, and not to get into too much
5 horrible detail, but a component of an MS4 permit is what they
6 call six MCMs, or minimum control measures. At least two of
7 those MCMs can be met by complying with existing department
8 programs. So if a municipality, you know, requires a
9 Chapter 102 plan for E and S control or they require
10 post-construction stormwater plans, the same way the department
11 would, then they're automatically meeting two out of the six
12 minimum control measures.

13 MINORITY CHAIRMAN FREEMAN: Do you anticipate the
14 Federal Government expanding upon the current requirements?

15 DEPUTY SECRETARY HEFFNER: EPA was in the process of
16 rewriting their stormwater regulations. They ran into some
17 problems with their modeling and with some of the numbers that
18 they were using in their calculations. They've kind of stopped
19 that process, stepped back. So I don't know if it would be
20 considered kind of ratcheting down, but there definitely will
21 be more information coming in the near future.

22 MINORITY CHAIRMAN FREEMAN: And again, just to
23 clarify, as you mentioned, you and the department see this as a
24 fairer approach to funding some of the needed requirements.

25 DEPUTY SECRETARY HEFFNER: Yes.

1 MINORITY CHAIRMAN FREEMAN: Because it could be done
2 based on a user fee that would be reflective of the use as
3 opposed to possibly drawing on the local real estate tax.

4 DEPUTY SECRETARY HEFFNER: Right; absolutely.

5 MINORITY CHAIRMAN FREEMAN: Thank you.

6 Thank you, Mr. Chairman.

7 MAJORITY CHAIRMAN CREIGHTON: Tim.

8 REPRESENTATIVE HENNESSEY: Thank you, Mr. Chairman.

9 Deputy Secretary, with regard to the state of the
10 economy today and the lack of funding availability that you
11 acknowledge and I think we all are aware of, when a municipal
12 government has a compliance shortfall, I understand you're
13 saying that you're working with them to finish the permitting
14 requirements. Is that because that's the least expensive
15 component of this process until they start to put concrete into
16 the ground or pipes underground---

17 DEPUTY SECRETARY HEFFNER: Right.

18 REPRESENTATIVE HENNESSEY: ---that, you know, we
19 don't run up a tremendous amount of money? Because engineering
20 costs, you know, can be pretty steep in and of themselves.

21 DEPUTY SECRETARY HEFFNER: Exactly.

22 I haven't done all the math, but I imagine it's
23 certainly one of the more inexpensive activities, although it
24 is a required activity. I think more to my point is, we want
25 to make sure that they have permits in place, that they

1 understand their requirements, and that over time we can work
2 with them to implement some of the on-the-ground measures they
3 might need.

4 One of the things that's useful about MS4 is it
5 gives us the opportunity to have a conversation with the
6 applicant. And I should mention that municipalities are free
7 to work together to weave themselves into being one applicant.
8 So if you have six municipalities, for instance, you know,
9 centered on the same watershed, they're welcome to work
10 together to be one applicant.

11 So I know earlier the question was posed about how
12 do we kind of carve these things and let these municipalities
13 work together. That's one way. So if they were thinking about
14 an authority where maybe six townships went together, one of
15 the benefits is they would only need one MS4 permit. So what
16 that then would allow folks to do is work to assess, from a
17 planning perspective first, what would happen high up in the
18 watershed as opposed to what might need to happen lower in the
19 watershed.

20 We've been, the department has been working with
21 PENNDOT, the borough of Carlisle, to work on some of their
22 stormwater concerns, and we absolutely have identified and as a
23 challenge moving forward is this concept of winners and losers.
24 So we have to make sure that folks understand that if you're
25 high up in the watershed and you're doing the right thing to

1 manage your stormwater, and by virtue of doing that you're
2 helping out, you know, the town at the bottom of the watershed,
3 that that doesn't make you a loser, that you're overall maybe
4 an authority or a multi-municipal winner in terms of being
5 supportive of all the folks that live around there.

6 REPRESENTATIVE HENNESSEY: Okay. Well, just to
7 follow up on that, I appreciate the fact that DEP is taking
8 sort of a light-handed approach in terms of recognizing the
9 fact that municipal governments and their budgets are pretty
10 well strapped at this point. But engineering, I mean, keep in
11 mind that engineering costs can sometimes go through the roof
12 even while you're taking this Federal type of approach to this.

13 You mentioned two sources, the Act 319 moneys that
14 might be available or the Growing Greener moneys. Is this a
15 Federal mandate that has come down with no Federal funding
16 sources at all and it's strictly when we talk to municipalities
17 we have to refer them to State resources because there's
18 nothing available at the Federal level?

19 DEPUTY SECRETARY HEFFNER: Generally, that's
20 correct. Just as a minor point of clarity, the 319 are Federal
21 dollars but they're competitive dollars, and the Growing
22 Greener are State dollars.

23 REPRESENTATIVE HENNESSEY: Okay.

24 DEPUTY SECRETARY HEFFNER: They're also competitive
25 dollars.

1 REPRESENTATIVE HENNESSEY: Okay. Thank you.

2 Thanks, Mr. Chairman.

3 MAJORITY CHAIRMAN CREIGHTON: The question I had,
4 MS4 is a set of standards.

5 DEPUTY SECRETARY HEFFNER: Okay.

6 MAJORITY CHAIRMAN CREIGHTON: Is that true?

7 DEPUTY SECRETARY HEFFNER: Yes.

8 MAJORITY CHAIRMAN CREIGHTON: Now, we already have a
9 set of standards for clean water.

10 DEPUTY SECRETARY HEFFNER: Well, an MS4 is a type of
11 system. It's an urbanized area that has a system or conveyance
12 of stormwater that discharges directly to a body of water.
13 Underneath that MS4, in order to comply with the permit
14 requirements, there are six, what I mentioned before, the MCMs
15 or the minimum control measures. So there are basically six
16 things a municipality has to do to be in compliance.

17 MAJORITY CHAIRMAN CREIGHTON: And those six things
18 are delineated in a form, an application form?

19 DEPUTY SECRETARY HEFFNER: Sure. They're delineated
20 in both the department's application and they're also
21 delineated on EPA's Website, and we can certainly see that the
22 committee gets both of those documents.

23 MAJORITY CHAIRMAN CREIGHTON: Sure.

24 Okay; are there any further questions for this
25 presenter? Kelly, you're welcome to stay with us and you have

1 standing to ask questions, if you'd like.

2 DEPUTY SECRETARY HEFFNER: All right. Thank you
3 very much.

4 MAJORITY CHAIRMAN CREIGHTON: The next presenter is
5 Patrick Starr, Executive Vice President of the Pennsylvania
6 Environmental Council.

7 MR. STARR: Good afternoon. I'm Patrick Starr,
8 Executive Vice President of the Pennsylvania Environmental
9 Council. On behalf of PEC's board, staff, and members, I thank
10 you for inviting us to speak with the committee today.

11 We are a statewide nonprofit organization focused on
12 both policy and project work. Better management of stormwater
13 has been identified by our board as an issue of strategic
14 significance to Pennsylvania. I would like to offer our
15 perspectives on how stormwater management remains a vexing
16 issue for communities throughout the State -- and this is based
17 on our actual collaboration and work with these municipalities
18 across the State -- and that SB 1261 is an important step
19 towards solving this environmental and public safety challenge.

20 We all know that rain is a cherished resource, but
21 stormwater results from human action that is the built
22 environment, the footprint we've made on our landscapes. It's
23 a problem that has been in the making for 400 years, so it's
24 safe to say we'll be working on this for awhile. By the way,
25 I'm summarizing a bit of my testimony to be brief, Chairman.

1 SB 1261 does one very important thing: It ensures
2 that local governments have the ability to form an authority,
3 as they already do for wastewater and drinking water needs,
4 that can provide better coordination and options to
5 municipalities to manage stormwater. That's it. It doesn't
6 impose any new fees and it doesn't promulgate any new
7 regulations; hence, six words in the legislation, very brief.
8 It merely provides communities with an important option to
9 locally address this enormous issue, and if we choose not to
10 provide more options, the costs could escalate, and
11 municipalities are already learning this firsthand.

12 Streams in the more heavily developed areas of
13 Pennsylvania simply can't handle the volume of water and the
14 sediments, nutrients, and other pollutants that are being
15 flushed into them. Obviously, we all know flooding is
16 life threatening and damaging to property; that's easy.
17 Additionally, flooding contributes to stream channel erosion,
18 and that in itself is also a threat to private property and
19 public infrastructure such as bridges and roads, and for that
20 matter, wastewater collection systems, pipes and such, and the
21 pollutants carried by stormwater undermine drinking water
22 quality as well as recreational fishing and boating.

23 We're asking our local governments -- for those of
24 you following along, I'm skipping three paragraphs -- we're
25 asking our local governments to take on a complex set of

1 responsibilities. These responsibilities have to do with the
2 conveyance system that they are responsible for, so the
3 infrastructure; not new water quality standards but new
4 responsibilities around the management of that system of
5 infrastructure. While we cherish and we respect our local
6 governments in Pennsylvania, the MS4 program puts
7 municipalities in a new and we think somewhat awkward position
8 for them. The more than 900 municipalities are now regulated
9 entities by DEP; i.e., they are permittees, not a relationship
10 they like one bit that I've encountered. Furthermore, most are
11 ill prepared to actually take on these new responsibilities.
12 Our municipalities need tools. That's what SB 1261 gives them.

13 All right; so what does the MS4 program ask them to
14 do? Now, I'm not going to speak with the authority of the
15 Deputy Secretary, but from our perspective what we see is that
16 municipalities are on the hook for water quality objectives
17 related to their stormwater conveyance infrastructure in their
18 community in a way they have never been before. And when you
19 think "infrastructure," think ditch, culverts, stormwater
20 basins, of course, and things like that. But these are some
21 things that we've taken for granted for a long time but that do
22 convey stormwater. Frequently, this infrastructure is in fact
23 on private property, and I think historically many
24 municipalities have tried to minimize their responsibility by
25 requiring that subdivisions and private property owners

1 actually retain responsibility for this infrastructure.

2 So while this is not an entirely new responsibility,
3 the management of it towards a goal of reducing pollution and
4 managing stormwater or reducing stormwater really is unfamiliar
5 and requires talents and expertise many municipalities simply
6 don't have; again, a good reason for forming municipal
7 authorities.

8 So the simple old "life and safety" solution of
9 conveying stormwater away from property as fast as possible and
10 discharging it into the most convenient waterway doesn't cut it
11 anymore. It isn't enough, just a discharge of stormwater, even
12 at a controlled rate, particularly if the municipality is
13 located in a watershed -- and you've heard this before, TMDL --
14 with a TMDL already in place. So that's a Total Maximum Daily
15 Load regulation. So that adds new responsibilities under MS4
16 and in the Chesapeake drainage, as the Deputy Secretary
17 mentioned, and municipalities are supposed to help in this
18 cleanup effort.

19 Now, what does this have to do with municipal
20 authorities? The General Assembly provided in its wisdom for
21 municipal authorities to help municipalities to manage
22 challenging problems such as treatment of drinking water and
23 sewage that required expertise that the municipalities didn't
24 have, and it afforded municipalities a way to manage and reduce
25 costs by economies of scale. So we know many municipal

1 authorities are multiple, they cover more than one
2 municipality, so they manage the costs and reduce those through
3 economies of scale. They distribute those costs then to
4 ratepayers. So through a series of stormwater conversations
5 PEC convened all across our Commonwealth, we heard that there
6 were municipal officials that would actually choose to work
7 collaboratively on these problems given the chance, even at a
8 watershed scale, and the formation or adaptation of an existing
9 authority we believe would enable them to do that.

10 Similarly, these services can be paid for by the
11 users of the services and not from the general revenues of the
12 municipal tax base, and I think that's a key point here.

13 Municipal authorities have the ability, if they choose, to
14 assess fees for services being provided based upon usage. And
15 I would add that they are set up to do that. They have been
16 doing it traditionally for wastewater or drinking water, so
17 they have those systems in place to be able to do this.

18 Stormwater management presents exactly those
19 conditions. Specialized staff, equipment, and infrastructure
20 maintenance activities are required. There are economies of
21 scale realized in sharing these resources. The specific fees
22 levied in accordance with the volume of stormwater conveyed
23 from a given property that recognizes that while it may be
24 raining on all of us, stormwater is being produced from
25 properties based upon the conditions on those specific

1 properties. So that is how one can create fees based upon
2 properties and the specific contribution by those properties of
3 stormwater into the conveyance system.

4 So across the nation and increasingly here in
5 Pennsylvania, stormwater management fees are being assessed
6 based on how much stormwater a given property generates.
7 Already mentioned has been the city of Philadelphia program.
8 It's not the only one; there are others. Meadville, we
9 understand, and also the city of Lancaster are working towards
10 this. This is often based upon the percentage of a site that
11 is impervious -- that is, water cannot infiltrate -- and
12 factors in different stormwater rates for types of surfaces
13 such as pavements and rooftops, hardscapes, even lawns, versus
14 wooded sites, a forest, or a tall-grass meadow. Municipal
15 authorities have the capacity to assess and charge fees,
16 collect payment, and efficiently deliver services that might
17 address these contributions to the system.

18 So the simple act of including stormwater management
19 in the Municipal Authorities Act provides local municipal
20 officials with another tool. This amendment provides
21 permission. It does not impose fees or any specific solution;
22 it gives options.

23 In closing, there really isn't anything novel about
24 what this legislation does. It simply enables Pennsylvanians
25 to solve problems and removes the perceived barrier, and I use

1 the word "perceived" because I've heard over the past several
2 years that there are lawyers, maybe in the room even, who
3 believe that authorities could have done stormwater without
4 this specific amendment. But there has been enough lack of
5 clarity that we have welcomed Senator Erickson's effort to
6 clarify this. But to remove this perceived barrier and to get
7 on with the work of cleaning up Pennsylvania's streams,
8 recharging our groundwater, reducing damaging and
9 life-threatening flooding, and making good on Pennsylvania's
10 constitutional guarantee that the citizens of this great
11 Commonwealth are entitled by right to clean air, pure water,
12 and the preservation of the natural, scenic, historic, and
13 aesthetic values of the environment.

14 Thank you.

15 MAJORITY CHAIRMAN CREIGHTON: Thank you for your
16 precise presentation.

17 Do we have questions?

18 Mauree.

19 REPRESENTATIVE GINGRICH: Thank you, Mr. Chairman.

20 Mine is really more of a comment -- thank you for
21 testifying -- on the timeliness of this effort. As I'm
22 listening to your testimony and reading through myself, I'm
23 looking at some of the specific issues, and we're seeing a lot
24 of the choking sediment in the streams and waterways that we
25 have unprecedented flooding in my particular area here in

1 central Pennsylvania, shockingly so. And a lot of it is just
2 that: there's an awful lot of clogging of sediment, and not to
3 mention the wildlife and the cycle of aquatic life, that even
4 aside, we're having some real over-the-banks flooding. Yeah,
5 with the local municipality being "charged" with that
6 responsibility, so to speak, we're having a hard time getting
7 that all done and cleared up. And the ambiguity that you refer
8 to, is it something we can do now or can't, this definitely
9 would clear that up, and I honestly think we probably need to
10 do this very soon.

11 MR. STARR: I can tell you from our work with
12 municipalities that there are officials out there that are
13 seeking this clarification. I think you'll be hearing from
14 some following me. And so there is an actual customer demand
15 for this that I have heard spoken to me directly.

16 So I think that there are both municipal authorities
17 ready to move into this field -- again, not all -- and there
18 are some municipalities that will choose to either establish a
19 new municipal authority or work through an existing one to
20 accomplish this work. So I think the demand is real, and I
21 think the time is now.

22 REPRESENTATIVE GINGRICH: However it gets done, it
23 needs to be done is my point.

24 Thank you.

25 MAJORITY CHAIRMAN CREIGHTON: Marcy.

1 REPRESENTATIVE TOEPEL: Thank you for your
2 testimony.

3 Just a comment, basically, on the funding mechanism
4 and the tax base. Basically, I see it as money coming from the
5 same people. I mean, you can call it a fee. The townships are
6 struggling with meeting their budget, but you're going to get
7 money from the same taxpayers, whether it's a fee or it's on
8 the property tax. So my concern is the amount of money that's
9 going to be passed back to the residents of the township to pay
10 for this new authority, who now is an unelected authority who
11 has taxing ability. So that is my concern.

12 MR. STARR: I understand.

13 MAJORITY CHAIRMAN CREIGHTON: Would you recommend
14 that a municipality form an authority with other municipalities
15 if there are multiple municipalities involved in doing this, or
16 how does that happen? A municipality could do it right away;
17 is that true?

18 MR. STARR: I think the answer to your question is
19 yes. And would I recommend it? I think it depends upon the
20 circumstances. It's really hard to say. Ideally, as an
21 environmentalist sitting here and speaking with you, you know,
22 we would love to see larger numbers of municipalities come
23 together on a watershed basis to address this.

24 And, Mr. Chairman, you spoke to that immediately in
25 your opening remarks about the complexity of dealing with an

1 entire watershed. It is feasible, it is conceivable, that you
2 could have an authority established that would cover a
3 watershed, and you could conceivably actually have then a
4 concerted approach to this. I don't think that's going to
5 happen in all cases, but I actually do think it might happen in
6 some.

7 And it is also true that a single municipality could
8 do this themselves, and I think it would be beneficial. I
9 couldn't agree more that we're talking money out of the same
10 people's pockets, to the prior comment. But at least with this
11 authorization, an authority could approach that as a fee based
12 upon contribution, and you could have, I think, a
13 professionally managed plan.

14 And I do think that there's something about the
15 nature of this work, which is why, again, many drinking water
16 and wastewater authorities were established in our State.
17 There is a definite engineering and professional aspect of this
18 work, which is not to say that municipalities can't do that,
19 many can, but many others simply can't.

20 MAJORITY CHAIRMAN CREIGHTON: So a municipality
21 would be at the mercy of the upstream headwaters of that
22 watershed?

23 MR. STARR: Well, I would like that they weren't.
24 One thing that I can say to that, I know the DEP is working on
25 regulations for the potential of offsets for stormwater. It is

1 conceivable that in a watershed-type approach, one could prefer
2 activities up watersheds or upstream.

3 We've actually at PEC been exploring how you might
4 undertake a trading or offset approach. We looked specifically
5 at a watershed called the Wissahickon, which is in Montgomery
6 and Philadelphia Counties, and how you might go about doing
7 that. And there's no question that it is beneficial to do
8 things upstream in the headwaters from an environmental
9 perspective. If you can capture the rain closest to where it
10 falls and if you can infiltrate it and manage it as close
11 onsite as possible, that's an entirely better approach. Our
12 2,500-plus municipalities tend to get a bit in the way of doing
13 that, and the authority approach might be a tool for getting to
14 a watershed-type approach.

15 MAJORITY CHAIRMAN CREIGHTON: Would there be
16 justification to prevent upstream planning if it doesn't comply
17 with downstream?

18 MR. STARR: I'm not sure if I understand.

19 MAJORITY CHAIRMAN CREIGHTON: In other words, a
20 municipality would come up with a plan but they're restricted
21 by what's upstream coming at them, so.

22 MR. STARR: Is this in the case of an individual
23 municipality, or---

24 MAJORITY CHAIRMAN CREIGHTON: Yes.

25 MR. STARR: Yes. I mean, I think that that's going

1 to be very hard to regulate.

2 But to the hypothetical that you've been asking
3 about, you know, what if you had a multi-municipal authority,
4 it's conceivable that a downstream municipality would be
5 contributing capital into the authority or contributing fees
6 into the authority that would help build that infrastructure
7 upstream. So that's one of the beauties of this potential
8 approach. You would actually have investment by all of the
9 residents in the watershed.

10 And it might be that where you want that investment
11 is at the headwaters. Again, speaking of the Wissahickon, this
12 is not just a matter of flooding. The Wissahickon is a
13 watershed where groundwater has been severely depleted, and
14 people on wells are having tremendous problems getting to their
15 groundwater. So if you can infiltrate in the headwaters,
16 that's a hugely advantageous approach.

17 MAJORITY CHAIRMAN CREIGHTON: Very good.

18 Chairman?

19 MINORITY CHAIRMAN FREEMAN: Thank you, Mr. Chairman.
20 Patrick, thank you for your testimony.

21 MR. STARR: Sure.

22 MINORITY CHAIRMAN FREEMAN: As I recall the major
23 provisions of Dave Steil's previous legislation, the more
24 comprehensive approach to this issue, one of the main focuses
25 was to address the shortfalls of Act 167, which is, Act 167

1 deals with development as it occurs now, but there is plenty of
2 development that was pre-Act 167 that still contributes to the
3 problems of managing stormwater. Do you envision that with
4 this authority, to be able to create stormwater authorities,
5 that they could be in a position to address those longstanding
6 problems that are beyond the reach of the current Act 167
7 language?

8 MR. STARR: Yes, I do, and that would be
9 particularly true in the case of where there's a TMDL attached
10 to that MS4.

11 The MS4 itself, I don't want to speak for the Deputy
12 Secretary, but my sense of the programming is that that itself
13 is not going to really get at those historical development
14 issues and challenges. But when you have a TMDL, let's say
15 that TMDL is for something we call sediment. Okay; we think
16 sediment is easy to understand. Well, it's not. It's really
17 complicated. So if you're trying to eliminate sediment from
18 the stream and preventing it from getting into the stream,
19 guess what you have to do? You have to manage stormwater,
20 because the way the sediment gets into the stream is it's
21 conveyed in the stormwater.

22 So that's the connection, Representative. If you
23 are actually trying to manage sediment, then the best thing you
24 can do is, back to my example of infiltrating through rain
25 gardens, naturalized basins, creating potentially riparian

1 areas, planting new trees, things of that sort, and the best
2 place to do that would be upstream. And you would begin to
3 actually remedy some of the flooding problems, because what
4 you're managing is stormwater volume in order to eliminate the
5 pollutant that we call sediment from the stream.

6 And again, there are many, like I said, it's
7 complicated, because it's not just sediments that are being
8 conveyed, the flooding also erodes the stream bank which
9 releases sediment into the stream. It scours it and brings it
10 into the stream. So anything you do to manage the volume,
11 you're actually reducing the sediment.

12 So it's sort of the tail wagging the dog because the
13 regulations are around sediment control, but in order to fix
14 the sediment problem, what you really need to fix is the
15 stormwater problem. You really need to manage that stormwater.

16 MINORITY CHAIRMAN FREEMAN: So just to run with your
17 example of the sediment and the runoff caused by stormwater.
18 Is it fair to say that under the current provisions of Act 167,
19 many municipalities might find themselves in a position where
20 it's almost impossible for them to address TMDL requirements or
21 standards because they are on the receiving end of sediment and
22 don't have the ability to control its source, but under a
23 watershed authority, there would, hopefully through a
24 cooperative effort at the very least, be better tools in which
25 to address the TMDL standards?

1 MR. STARR: I feel like I'm being pushed into a
2 hypothetical I may not -- I think the answer is probably yes,
3 but.

4 MINORITY CHAIRMAN FREEMAN: You're just going to---

5 MR. STARR: I'd rather you bring the Secretary and
6 the Deputy Secretary up and ask her.

7 MINORITY CHAIRMAN FREEMAN: But just working off of
8 your example of sediment and how it can affect stormwater.

9 MR. STARR: Yeah. I definitely think it's a help,
10 and I do think that downstream communities under Act 167 are
11 not going to get the satisfaction that they need. We work with
12 a bunch of communities in the Pennypack, which is also in
13 Montgomery County, and the downstream communities naturally
14 hate the upstream communities because of the flooding. They've
15 had property damage. They've had deaths. They've had all
16 sorts of issues.

17 And, you know, they are now adopting and they have
18 recently adopted an Act 167 plan, but that's not going to solve
19 that problem, because Act 167 moves forward. It only goes
20 forward with the new development that's coming. And even
21 though the current generation of Act 167 plans also typically
22 require new controls on redevelopment sites, so not just new
23 development but if you have an existing property and you make
24 significant changes, you have to incorporate, it's a really
25 slow process of fixing that problem over time. And I think

1 that, you know, it would be conceivable that you could really
2 make a lot more progress with a multi-municipal authority
3 tackling that with what are called integrated watershed
4 management plans or other kinds of plans that could be adopted,
5 which harkens back to what you're talking about from
6 Representative Steil's original bill. And the package, you
7 well know, supported that original bill---

8 MINORITY CHAIRMAN FREEMAN: Yes.

9 MR. STARR: ---and lights that suite of programs and
10 planning, and it also included the idea of funding through
11 fees.

12 MINORITY CHAIRMAN FREEMAN: And it strikes me that
13 under what's envisioned in this legislation, it could be a far
14 simpler approach. Dave's legislation was excellent; it was
15 well thought out, but it also required a lot more in terms of
16 steps and activity.

17 MR. STARR: Absolutely.

18 MINORITY CHAIRMAN FREEMAN: Where this could be done
19 possibly on a more flexible level at the local level.

20 MR. STARR: I tip my hat to Senator Erickson. He
21 selected a simple, short, effective approach, and we're here to
22 support him.

23 MINORITY CHAIRMAN FREEMAN: Thank you for your
24 testimony.

25 Thank you, Mr. Chairman.

1 MAJORITY CHAIRMAN CREIGHTON: Any further questions?

2 All right. Thank you.

3 MR. STARR: Thank you very much.

4 MAJORITY CHAIRMAN CREIGHTON: We now have
5 Mark Bowen, Senior Engineer and Ecological Engineering Team
6 Leader.

7 Mark.

8 MR. BOWEN: The bulk of my written testimony echos
9 quite a bit of what we've just heard. I don't think I'm going
10 to read down through every word of it, but I want to state
11 clearly that I think that forming a municipal authority amongst
12 many of the urban areas would put Pennsylvania municipalities
13 on a level playing field with other States.

14 I am here to encourage you to send this legislation
15 to the floor, and if it's okay with you, I'm going to skip down
16 to what I think has not been testified to already, which is
17 labeled as "Are Townships Prepared for this Program?"

18 Recently, I reached out to 100 municipalities across
19 Pennsylvania to determine how well they were prepared for the
20 submission of their application under the MS4 Phase II program.
21 All the municipalities that I spoke with stated that they would
22 have difficulty complying with the conditions of the permit for
23 one or more of the following reasons:

- 24 • Lack of available funds;
- 25 • Lack of understanding of the requirements;

- 1 • Lack of time to dedicate to the program; and
2 • Lack of land available to construct the required
3 stormwater management improvements.

4 Part of the reason many municipalities are not
5 prepared for the implementation of this program is because it
6 is a complex undertaking.

7 I am skipping to "The Cost" section because I think
8 that most of the next two paragraphs were testified well by the
9 Pennsylvania Environmental Council.

10 MS4 communities within the impaired watersheds that
11 have reported projected costs to build BMPs to me anticipate
12 between \$300,000 and \$700,000 of expenses in the first 5-year
13 permit cycle. In general, these communities did not include
14 the cost of staff time in their estimates. Most did not
15 include capital expenses such as street sweepers either. This
16 estimated 5-year cost is close to the average annual cost of
17 operating a public works department within Pennsylvania. The
18 2010 average annual cost is \$506,000. A municipal authority
19 that includes several MS4 communities could afford to dedicate
20 staff to a program of this size, producing efficiencies that
21 individual municipalities may not.

22 It has been my experience that municipal authorities
23 are generally better equipped to deal with complex regulatory
24 programs such as this one. Combining several municipalities
25 under one municipal authority would reduce the cost of

1 preparation of the application, preparation of load allocation
2 plans, and reduce the application fees, annual fees, and
3 reporting fees that are required by this program. Municipal
4 authorities generally experience a savings in operation costs
5 due to the large scale of their operation than any single
6 municipality. A municipal authority may be better able to
7 manage the engineering and construction of stormwater
8 management infrastructure. In addition, there is a long-term
9 maintenance and operation requirement that an authority is
10 better prepared to handle.

11 If authorities move forward with the implementation
12 of the MS4 program, like cities with CSOs that have moved
13 forward with long-term control plans, either a tax or
14 stormwater fee would likely be required to meet the anticipated
15 expenses. Legal precedent established across the country
16 requires that fees for stormwater charges by stormwater
17 authorities or utilities must be based on actual anticipated
18 cost and there must be a way for users to reduce or eliminate
19 the fee. This is not the case with taxes. Taxes are available
20 for general expenditures and might not be used for stormwater.
21 For this reason alone, it may be better to allow the formation
22 of an authority so that the cost of stormwater is transparent.

23 I go on to describe how it has been shown in other
24 municipalities that implementing a fee has actually been shown
25 to lower the cost to homeowners and to workers, but I think I

1 would like to stop the reading and take questions.

2 MAJORITY CHAIRMAN CREIGHTON: I guess we don't have
3 questions.

4 REPRESENTATIVE HENNESSEY: Actually, could I? Thank
5 you.

6 Mr. Bowen, thank you for your testimony.

7 Back on page 2 of your testimony you were talking
8 about whether the townships are prepared for the program, and
9 you mention that one of the things that they say is that they
10 don't have the land available for the construction of required
11 stormwater improvements. I mean, isn't that an engineering
12 problem? Aren't they supposed to find ways to size the
13 engineering or the required improvement to the available land?
14 Give me an example where somebody is being asked to put an
15 improvement in that they simply don't have the space to do it.

16 MR. BOWEN: The MS4 infrastructure is defined as
17 "ditches," "pipes," "roadways," interestingly enough, and the
18 improvements that must take place in order to reduce total
19 suspended solids, as had been discussed earlier, has to be done
20 within the property that the municipality owns and within that
21 urbanized area. So there are several municipalities who
22 reported to me that simply do not own a good-sized piece of
23 park area in order to put in green infrastructure or don't
24 currently have the ability to be able to retrofit their storm
25 drain system to reduce total suspended solids.

1 When you're talking about nitrogen removal,
2 phosphorus removal, those are more complex processes, would
3 require more land that they don't have, and there are other
4 pollutants that are named in various DMDLs that actually might
5 be impossible to remove within the urbanized area.

6 REPRESENTATIVE HENNESSEY: And when a municipality
7 is presented with that kind of a situation where they simply
8 don't have the ability to remove, you know, the sediment or the
9 pollutants to the level required, is that -- I mean, it seems
10 to me that at that point the standards have been made much too
11 stringent by either the Federal Government or the State
12 Government or somebody. I mean, we can't put impossible
13 burdens on our municipalities and then expect them to not react
14 and react badly.

15 MR. BOWEN: Fortunately, it's as to the maximum
16 extent practical in the legislation, which leaves removal of
17 PCBs, for instance, being one of the probably more difficult
18 ones that I can think of, with some ability to be able to move
19 on that requirement.

20 REPRESENTATIVE HENNESSEY: Okay.

21 In your comments, you're generally reporting to us
22 what municipalities have said to you, not what individual
23 property owners might have said to you.

24 MR. BOWEN: That's correct. Individual property
25 owners would be covered under Chapter 102 regulations, which is

1 part of the minimum control, the six minimum control guidances
2 that MS4 communities have to follow. But retrofit of private
3 basins or something of the like to achieve the load reductions
4 is currently not part of what's permitted.

5 REPRESENTATIVE HENNESSEY: I'm sorry; it's currently
6 what?

7 MR. BOWEN: Not part of what's permitted. So it
8 wouldn't be private property owners that would be involved
9 here. It's going to be the municipal and municipal properties
10 that are involved.

11 REPRESENTATIVE HENNESSEY: In terms of your
12 approach, but that's not what I think I heard from Mr. Starr.
13 I thought we were talking about somehow empowering a municipal
14 authority to have the power to assess various fees on property
15 owners.

16 For example, if your neighbor has a 2-acre property
17 and you have a 20-acre property, identical houses, identical
18 driveways, I'm envisioning a situation where, you know, the
19 person with the 20-acre property is going to have a fee
20 10 times larger than the person with the 2 acres. And, you
21 know, the concern I would have with that is the municipal
22 authority might find it simply more beneficial and practical to
23 go after the fee that the 20-acre parcel would generate and
24 sort of, you know, forget or exempt or not find the time to
25 file against, to file the same legal claims against the 2-acre

1 property because it's not in their financial interest to do so.

2 MR. BOWEN: Well, I think I misunderstood your
3 question then. If we're talking about fees and how the fees
4 would be assessed, I think you're right; it would be assessed
5 based on the size of the impervious surface on a given lot. If
6 we're talking about how a municipal entity needs to go about
7 reducing total suspended solid loads from their MS4 storm
8 sewer, they can't do it by reducing on private property
9 currently. There is legislation -- I'm sorry; it's not
10 legislation. It's policy, I believe, being worked out called
11 offsets that would expand on the ability to be able to trade
12 nutrients and total suspended solids. But those are kind of
13 two different issues, the cost and then the load reduction.

14 REPRESENTATIVE HENNESSEY: And where are those
15 policies being developed? At what level?

16 MR. BOWEN: The Department of Environmental
17 Protection, Harrisburg.

18 REPRESENTATIVE HENNESSEY: Harrisburg.

19 MR. BOWEN: Yes.

20 REPRESENTATIVE HENNESSEY: Okay. Thank you.

21 MAJORITY CHAIRMAN CREIGHTON: Marcy.

22 REPRESENTATIVE TOEPEL: Thank you. Thank you for
23 your testimony.

24 Just a follow-up question to Representative
25 Hennessey, because you cite, I guess, a study by the University

1 of---

2 MR. BOWEN: North Carolina.

3 REPRESENTATIVE TOEPEL: North Carolina. So there
4 are fee structures already in place being used by certain
5 municipal authorities in assessing the fees for the stormwater
6 management?

7 MR. BOWEN: There are. There are at least a
8 thousand across the country at this point, the one from
9 South Carolina I think being very educational, showing that a
10 tax tends to burden an upper-middle-class earner or a fairly
11 good sized household, whereas a stormwater fee can reduce that
12 to about half to that individual.

13 REPRESENTATIVE TOEPEL: So they're both being used
14 now, taxes and fees. There are two different models basically
15 out there.

16 And the fee structure you're saying is basically
17 assessing the fee based on the impervious surface on the
18 property?

19 MR. BOWEN: There are several ways---

20 REPRESENTATIVE TOEPEL: And not land mass?

21 MR. BOWEN: There are several ways to do it. It
22 simply has to be directly tied to the stormwater being
23 generated. Impervious surface seems to be the most popular and
24 certainly what Philadelphia has done.

25 REPRESENTATIVE TOEPEL: Right. In an urban area,

1 that would make sense.

2 MR. BOWEN: Yes.

3 REPRESENTATIVE TOEPEL: Out where I am and in other
4 parts of the State, I'd be concerned about the impact on farms
5 and the farm communities and the large tracts of land that they
6 own. And I don't know how the other municipal authorities have
7 addressed that -- on the fee structure, if they use that model.

8 MR. BOWEN: Farming, of course, is governed under
9 several other regulations, and it is not clear to me how a
10 stormwater authority in Pennsylvania would address that. But
11 you are quite correct, it is a piece of the pie that needs to
12 be worked in.

13 REPRESENTATIVE TOEPEL: Thank you.

14 MINORITY CHAIRMAN FREEMAN: Just a follow-up to the
15 line of questioning that was just taking place.

16 Where the impervious surface has been used as its
17 measurement for the fee structure, that makes sense, because
18 that's what actually causes stormwater problems, if you have
19 too much impervious surface. Do those entities or governments
20 that impose that fee, do they take into consideration newer
21 techniques of construction, which creates, for instance, a road
22 surface which is actually pervious, where you have the ability
23 to drain stormwater through that system and not have the same
24 kind of impervious surface that you do with, say, macadam?

25 MR. BOWEN: Yes, they do. I think Philadelphia is

1 probably the closest example of this. A greened acre would be
2 -- you would be credited towards a greened acre for installing
3 porous pavement. Or a green roof, for instance, reducing the
4 extent of impervious in a watershed.

5 MINORITY CHAIRMAN FREEMAN: So in a sense that model
6 also builds in an incentive to use more cutting-edge approaches
7 to dealing with the impervious surfaces by coming up with a
8 pervious surface that obviously reduces the stormwater load.

9 MR. BOWEN: Absolutely. And, you know, I'd like to
10 reiterate that it's generally accepted law that these fees must
11 credit people for installing and eliminating the runoff from
12 their impervious surface, for instance. So it even encourages
13 innovation on a smaller level.

14 MINORITY CHAIRMAN FREEMAN: That's good to know.
15 Thank you.

16 MR. BOWEN: Sure.

17 MAJORITY CHAIRMAN CREIGHTON: Seeing no more
18 questions, thank you, Mark, for your time and testimony.

19 MR. BOWEN: Thank you.

20 MAJORITY CHAIRMAN CREIGHTON: I would like to move
21 on to Robert Bender, Executive Director of the North Wales
22 Water Authority.

23 MR. BENDER: Good afternoon, and good afternoon,
24 everyone.

25 Before I begin my testimony, I just have to comment

1 that you couldn't have picked a better day for us to discuss
2 this thing. I drove the turnpike from Bucks County and then I
3 walked from the parking garage without an umbrella, so it is
4 near and dear to my heart.

5 My comments, I think, will be from a perspective, I
6 think if you had a chance to see my biography that it may be a
7 little unique in that I served as a township manager for about
8 20 years, and I dealt with the municipal budget process and I
9 dealt with the stormwater management regulations from the
10 municipal side. For 10 years I went to the dark side and I
11 became a land developer and I dealt with it from the
12 perspective of building stormwater basins and trying to get the
13 homeowners' associations to take them over because the town
14 didn't want them, and my friends tell me that I've come to my
15 senses and I'm back on the municipal side of business and I'm
16 with the Water Authority now. But let me give you my comments
17 and give you some thoughts about what we think could help our
18 municipalities deal with this issue.

19 Again, I'm the Executive Director of the North Wales
20 Water Authority, and we support SB 1261. The North Wales
21 Authority is in southeastern Pennsylvania. We serve over
22 27,000 homes at this point. We serve customers in seven
23 municipalities, and we sell water in bulk shares to several
24 other authorities and neighboring municipalities. So we
25 already have this regional thing pretty well figured out.

1 We serve about 8 million gallons a day, and on a
2 peak day we might serve 15 million gallons a day. We also run
3 a sewage treatment plant that serves the borough of North
4 Wales. So we have some expertise that would lend itself to
5 this issue.

6 I appreciate the opportunity, in part because our
7 authority is right now putting together a pilot program that we
8 hope to offer to municipalities that we currently serve to help
9 them meet the mandates that have been bestowed upon them and
10 satisfy at least their MS4 requirements. However, our
11 solicitor is reluctant to let us go ahead with this
12 multimillion-dollar venture without the clarity that this bill
13 affords.

14 We think we have some inherent authorities. We
15 think it's within our authority to protect the aquifer upon
16 which we rely. We have seven wells. We also draw water from
17 the somewhat infamous Point Pleasant pump project on the
18 Delaware River. So we have surface water and we have
19 groundwater, and we think it's within our duties and
20 responsibilities but not necessarily our legal authorities to
21 protect that aquifer, and this bill would make that crystal
22 clear and would give my board the comfort necessary to make the
23 financial investment necessary to offer the services we hope to
24 offer to the towns.

25 Having been a municipal manager, I see the problem

1 at the local level in that, and I have to admit this, I was the
2 guy who framed the budget many times, but after dealing with
3 police and road and paving and snow and ice and dealing with
4 water and sewer issues, because we had our own water and sewer
5 issues, street lights and traffic signals and paying the
6 insurance, stormwater was somewhere down there after the Easter
7 egg hunt every year. And stormwater was something we dealt
8 with when we had the summer kids that worked with the road
9 crew, and if they got time, we sent them out to clean the
10 inlets. And I have to admit it, 20 years as a municipal
11 manager, that's kind of what stormwater -- that's the attention
12 it got and that's the attention we could afford to give it, and
13 that's a sad thing.

14 But it has not been adequately funded at the local
15 level, and it has not been considered an important part of
16 public works activities in all too many municipalities. That
17 has become such a burden to many municipalities that for the
18 past decade, back when I was on the dark side, many
19 municipalities have said we don't even want to take dedication
20 of these things anymore, "these things" meaning basins and
21 detention basins and retention basins: Give them to the HOA;
22 let the shopping center own it; let the industrial park own it.
23 And if you've visited these -- you'll see my comments on the
24 second page -- you know what they look like. They're full of
25 weeds. They're full of trash. They generally haven't been

1 cleaned. And unless someone gives them a citation and makes
2 somebody do something about it, they're way up in the back of
3 the shopping centers and they're full of trash and they're
4 silted in, and they don't even have the capacity that they were
5 built to have because they've been silted in over the years;
6 hence, additional stormwater flooding.

7 The basins in the streets, typically the last time
8 they were cleaned was when the developer did them right before
9 they had to get dedication, and the only reason they did it
10 then is they wouldn't get their escrow money back unless they
11 cleaned them out and the township wouldn't take dedication of
12 the stream. So very few municipalities have a program. They
13 don't have the staff. They don't have the \$700,000 or \$800,000
14 piece of equipment to vac them out and jet them out and do the
15 things that they would need to do to comply with the DEP
16 mandate.

17 And without a regular program with these types of
18 inspections, with this type of cleaning, what do you get?
19 We've just done a pilot program. What you get is, every storm
20 in the town, we used to call them catch basins. I'm old enough
21 to remember that. Well, they're not catching anything because
22 they're filled to the brim and it's hard as a rock, and when
23 the water passes by, it carries with it all the debris that the
24 water can carry because nothing is dropping into the catch
25 basin any longer because they're full of debris. They're full

1 of whatever the homeowners may dump, whether it's oil cans,
2 whether it's bottles that rolled off the street, whether it's
3 grass trimmings, whether it's trash that was thrown out of a
4 car or trash that blew around when it was garbage collection
5 day. That's what's in there. And when they're full, it washes
6 through and it goes into the stream, it goes into the ponds, it
7 goes into the lakes, and it helps fill up those basins we just
8 talked about.

9 So that's the burden that the town has. And what
10 happens when they clog up? We all see that. I just came down
11 the turnpike and was almost hydroplaning. The storm drains
12 back up, the water floods the street, floods the houses, floods
13 the neighborhoods, floods the businesses, and whatnot. So
14 stormwater management, I think, even starts at that local level
15 in the neighborhood and then works its way down the stream, and
16 we talk about the erosion and the scouring of the streams and
17 the like.

18 I'm a boater. I boat the Chesapeake. I saw what
19 happened to the oyster beds down there. This is near and dear
20 to my heart as well. And as an authority person it is
21 important to me, because we have to protect this aquifer. We
22 have to protect it for our kids and their kids, this constant
23 contamination and pollution that's happening. So we're talking
24 about the volume of stormwater but also the quality control of
25 stormwater when you have a good program.

1 Why an authority? I think authorities can do things
2 from a regional perspective. We're set up to do those types of
3 things. We can look at watersheds. The example I brought to
4 you about my solicitor saying, "I think you have the authority,
5 Bob, to deal with this when it's within the aquifer that leads
6 to one of our wells. But if you go on the other side of town
7 and you cross the hill and the watershed starts flowing the
8 other way, I'm not so sure." So maybe you can offer the town
9 some service but maybe not all the service, because I'm not
10 sure that we have the legal authority to step outside of our
11 specific recharge zone.

12 And proving a recharge zone is almost impossible. I
13 mean, it's underground geology and you need all kinds of
14 scientific studies and we're subject to challenge, and it's
15 going to be -- authorities like ours are ready to step up to
16 the plate, but not without legislation like this that makes it
17 clear that we have the authority, the legal authority, to do
18 this type of work and we can say to the town, if you want to
19 engage our services, we can cover your whole municipality, and
20 we don't have to do 10 years of science to prove it, so.

21 Now, we also have this type of technology in-house,
22 and I'll just tell you exactly what we offer, and that sounds
23 like a commercial, but here is what typical authorities have:
24 We use GPS. We use GIS. I can locate every valve box. We
25 have the little sticks and they use the satellites and it goes

1 to the computer that the guy is holding, and we can take a
2 photograph and we can attach it to that location. So we can
3 photograph before and after every inlet. We can photograph
4 every outlet pipe. We can do every detention basin. We have
5 that.

6 We have laboratories. We test our water every day.
7 We can test the debris that we pick up. We have that
8 technology now, because you just don't pick this stuff out of
9 the storm inlets and take it to the landfill; it has to be
10 tested first. It may be contaminated. It might have to be
11 incinerated, another burden for the town. We do that because
12 we have sludge out of our sewer plant every day. We're used to
13 that thing.

14 We can finance things over 20 and 30 years. We have
15 the ability to bond. We do that regularly. We are doing a
16 major, major water pipe project right now. It's a \$100 million
17 project. We're going to finance that over 20 years. So we're
18 used to those types of things.

19 So we think long term. We have the technological
20 abilities to do it. We have a vested interest in protecting
21 the groundwater and the surface water. And I think authorities
22 were set up many, many years ago by you folks, your
23 predecessors, because they recognized the ability, the
24 character of an authority to handle something like this on a
25 regional basis.

1 And an authority doesn't have to do this solely by
2 assessing taxes. I'm meeting with many township managers and
3 I've already got the comment, "You guys finally figured out how
4 to tax rain." So it doesn't have to be done like that. There
5 are fee-basis options. There are cafeteria plans and menus for
6 services. And there are other ways to skin this cat as well,
7 in as little as doing some supplemental services, to a road
8 crew, to a total turnkey operation where we would do the
9 paperwork and turn the data into the DEP.

10 So I'm in favor of it. I think it's something we
11 can offer. It's somewhat self-serving because it helps protect
12 the groundwater that we depend upon and the surface water, but
13 it also serves the towns that we already serve.

14 Thank you.

15 MAJORITY CHAIRMAN CREIGHTON: Thank you.

16 Questions?

17 MR. GRELL: Bob, one of the issues with this is the
18 power of eminent domain.

19 MR. BENDER: Yes.

20 MR. GRELL: As an individual in a position to try to
21 put one of these things in place if you had the legal
22 authority, would you imagine that you would need the power of
23 eminent domain for anything that you would reasonably want to
24 do?

25 MR. BENDER: I am very gentle when dealing with my

1 municipalities, being an ex-township manager, because we always
2 were worried about the authorities coming in and taking over
3 and doing things. So my perspective, the way I look at this,
4 is we would work with a community and we would enter into a
5 service agreement to provide the stormwater management
6 services.

7 Someone earlier spoke about when, for instance, I do
8 have a circumstance right in North Wales Borough. In order to
9 limit the amount of stormwater flowing from that borough,
10 perhaps the solution might be to build some additional basins.
11 There are not very many places in that little borough where you
12 can do that. So you might have to partner with a neighboring
13 town and acquire some land in the neighboring town to build a
14 basin so that collectively you have reduced the flow; you have
15 been able to detain more money. If Town A and Town B were
16 willing to do that and wanted the authority to implement that
17 program, an authority could use eminent domain to acquire an
18 acre or two of land to build a storm basin.

19 So it could be done, but I don't think -- I don't
20 perceive the authority needing to come in and condemn property
21 and do all kinds of things that would cause disruption in a
22 community. But there is a tool that the authority could use in
23 a circumstance like that to overcome a problem.

24 MR. GRELL: And again, as someone in a position to
25 put this in place, what do you think the fees might be to

1 property owners?

2 MR. BENDER: There are two things that the town
3 managers -- I'm actually meeting with seven municipal managers
4 in about a week to brainstorm this. But the first thing they
5 said is, "How much?"; and secondly, "Can you guarantee me
6 compliance with DEP?" My answer so far is, "I don't know" and
7 "Absolutely not."

8 But based on some preliminary work we've done, it is
9 taking us about 15 minutes to clean every inlet out, and we're
10 getting about 14 to 15 pounds of debris out of every inlet. So
11 based on some preliminary numbers, that's about \$45 an inlet.

12 The town I was manager at, New Britain Township,
13 Bucks County, roughly has 2,000 inlets. That puts them at
14 about a \$300,000 a year venture. However, I don't believe it's
15 always going to be that way, and the reason I say that is, one,
16 most of the inlet grates haven't been touched for years and
17 they've been blacktopped over. We've had to jackhammer them to
18 get them open. Secondly, they're filled to the brim; in fact,
19 the pipes are in many cases that lead into them. So I believe
20 after a couple of times around, the grates will come off
21 faster, we'll take less material out of each inlet, and it will
22 get faster and it will get cheaper.

23 But the first couple of laps through the
24 municipalities I think is going to be very costly. And that's
25 according to what the debris is, because if it's something we

1 can take to a landfill, that's one price per ton; if it's
2 something that has to be shipped to Baltimore or somewhere else
3 to be incinerated, obviously the municipality is going to face
4 a lot larger invoice.

5 But if you used, for purposes of discussion today,
6 about \$45 an inlet to clean them and dispose of the material,
7 that's about where we are.

8 MR. GRELL: So in terms of expenses, it may not be
9 some elaborate multimillion-dollar thing that you would need to
10 bill but rather it's more these routine expenses -- cleaning
11 these inlets out, et cetera -- that may be more of the cost
12 drivers.

13 MR. BENDER: One of the things that costs, right
14 upfront it's about a million dollars' worth of equipment to buy
15 the vacuum truck and the jet trucks and the GIS equipment and
16 the things that DEP wants you to do to document your work, and
17 that's where I think something, whether it's done by an
18 authority or a consortium of municipalities or just two
19 neighboring towns can get together, you can have that benefit
20 of the economy of scale to do that. Because, you know, we're
21 looking at buying just one truck, the vac truck. Just to give
22 you a perspective, that's about a \$400,000 piece of equipment,
23 and it's going to have an 8- to 10-year life cycle. If I were
24 a single municipality, back when I was a town manager, that
25 just wasn't doable, but if I can spread that piece of equipment

1 over seven municipalities and I can go to every municipality
2 twice a year and do all their storm work, I figure I'll need
3 seven municipalities to keep my people busy 48 weeks a year,
4 and that's what I would have to do to make this project work.

5 So, I mean, it's going to have to happen on a
6 regional basis in order to justify it. I'm looking at hiring a
7 minimum of four employees, a dump truck, a pickup truck, a vac
8 truck. I'm talking close to a million-dollar investment right
9 upfront just to kick the program off. So, I mean, that's
10 what's tough on a small municipality. When I was our manager,
11 that was 3 years of our public works budget, so it just wasn't
12 going to happen by a local municipality.

13 We're going to offer, just so you know that one of
14 the things that was talked about was the taxation. I'm
15 familiar with that program and I'm familiar with the
16 Philadelphia program, and it works well. And what they do is,
17 actually it's a net stormwater discharge. So someone with a
18 mom-and-pop store with a quarter acre of blacktop is not going
19 to pay anywhere near something that has a mall, obviously with
20 acres and acres of blacktop.

21 In the town I live in, for instance, Bedminster
22 Township, Bucks County, they have a program that limits
23 impervious surface, but you can mitigate that on your lot. I
24 can do a rain garden in my backyard. I can do a dry well. I
25 can show the township engineer how I'm recharging the

1 groundwater, and then I'm only charged for, hypothetically, the
2 net gain. So there are a lot of things that people can do.

3 We talk about the farm ground and the suburban
4 people. They can actually do a lot of groundwater recharge and
5 maybe pay nothing for stormwater management, but the big
6 parking lots would be paying on square footage. Or the
7 township could decide to suck it up and pay it through, if they
8 could afford to do so, they could simply hire us to come in and
9 do the work. So I don't think it automatically means tax
10 increases to anyone.

11 MAJORITY CHAIRMAN CREIGHTON: One issue I'm still
12 trying to understand, Wilkes-Barre or Williamsport have
13 tremendous costs, multimillion dollars in terms of flood
14 control.

15 MR. BENDER: Yes.

16 MAJORITY CHAIRMAN CREIGHTON: Now, is that different
17 than surface water or is MS4 -- I mean, how do those projects
18 get going?

19 MR. BENDER: Yeah; we're really looking at this more
20 on a local level as compared to a flood control where you would
21 build some type of large containment. Those things are
22 typically done, at least where I come from, on a countywide
23 level, flood control structures.

24 Now, if you keep all your inlets clean, if you keep
25 your storm drains clean, if you keep all your basins clean, I

1 think hundreds of thousands of those being done properly will
2 help all flood control. It will help the scouring of the
3 streams and all those things. But I'm not talking about flood
4 control on a large scale where somebody might be building a
5 dam. I guess I could dream, but. It could be done, but it's
6 typically done on a county level as even compared to an
7 authority level, I believe.

8 MAJORITY CHAIRMAN CREIGHTON: Okay. Thank you.

9 Are there any other questions? No? Well, thank
10 you, Bob.

11 MR. BENDER: Thank you very much.

12 MAJORITY CHAIRMAN CREIGHTON: Thanks for your
13 testimony.

14 We now move to Elam Herr. Elam may be having a
15 different opinion. Normally he does.

16 MR. HERR: That keeps everybody on their toes,
17 Mr. Chairman. Actually, it's only a slightly different opinion
18 today, so we'll go from there.

19 As everyone knows, I'm Elam Herr. I'm with the
20 Township Supervisors Association.

21 And stormwater management has been an issue with
22 local government since back before 1978 when the Stormwater
23 Management Act took place. But it was the result of the
24 conditions that transpired in the early seventies with the
25 floods that Pennsylvania had.

1 You have my testimony. I'm not going to read from
2 it; I'm just going to hit a couple of points. Some of the
3 comments that were made previously addressed a number of the
4 comments that I was going to make, so I'm going to even keep it
5 shorter than that.

6 The two issues that really are causing a lot of
7 problems here, and you've heard today about the MS4s and also
8 the Chesapeake Bay initiatives, they're putting a lot of
9 responsibilities onto the municipalities. The biggest problem
10 that municipalities have with this is the resources, and you've
11 heard about that and the cost that is out there.

12 And the other problem to this situation is that the
13 State has no money. Back in '78 when the Stormwater Management
14 Act was passed, the Legislature put money in there for county
15 planning and municipal planning and enforcement. It was less
16 than a million dollars back then. Through the years, we got it
17 up to over \$2 million, but not much more, and if you go into
18 any type of stormwater planning or implementation statewide,
19 that just does not cover it. As a matter of fact, in some
20 counties, one county could have eaten up all that money alone.
21 So municipalities can't look to the State.

22 As far as the Feds are concerned, yes, they do give
23 some money to the State, that municipalities can go after
24 grants, but again, that's not sufficient. So what it comes
25 down to is it's on the backs of the municipalities, and they

1 have to comply.

2 In recent years, in this area you have the
3 Chesapeake Bay initiative and then the rest of the State is
4 under the MS4s. In both cases there, the Federal Government is
5 demanding on the State, DEP, to do certain things. First of
6 all, I want to commend DEP because they have been working with
7 us and the municipals in trying to get something reasonable
8 from the standpoint that they understand that they must,
9 Pennsylvania must meet the Federal Clean Streams Act, but it
10 should be done in a financially reasonable way. I don't know
11 if the EPA can understand that. I'm not sure the Federal
12 Government understands anything when it comes to money and
13 expenditures.

14 We're talking, you know, billions of dollars alone
15 just on stormwater management concerns out there, if you look
16 at, again, the Chesapeake and MS4s, what it will cost. And
17 this isn't just for the larger urban municipalities. With MS4s
18 now, it's starting to hit smaller municipalities in different
19 parts of the State. As a matter of fact, some of my
20 municipalities, some townships are being notified that they're
21 in violation of MS4s and they never knew they were an MS4
22 municipality.

23 One example: A township in Blair County does not
24 have a curb in the municipality at all, and they were told in
25 that letter that they were to be street-sweeping their roads.

1 Now, what do you sweep on a street that doesn't have a curb
2 that stops anything? They didn't know, but EPA was making that
3 demand upon them.

4 So the end result is, the ultimate cost falls back
5 onto the property owner. One thing the previous gentleman said
6 about authorities and taxing, authorities really don't have
7 taxing, it's a fee, but when you put them altogether, whether
8 it's a tax or it's a fee, it comes from the same person, and
9 that's what has to be considered. That's where SB 1261 comes
10 in, and it is a viable solution to the problem that is out
11 there.

12 But the concern that we have is that although it's a
13 good start, it's just a few words that say you can create an
14 authority. Again, I'm not picking on the previous testifier,
15 but comments that he made were that they feel that they have
16 the means and the authority to do it, maybe not the legal
17 authority to do it but they can do it. What can they do? He
18 discussed one type of solution, of cleaning out the storm
19 basins and the activity that would take place with it. That's
20 fine, but how does that affect another municipality or another
21 area of the State with the idea of an authority out there?
22 What would they look at?

23 A question was asked also about the use of eminent
24 domain. That is one of the concerns that we have, with the
25 possibility of eminent domain. A regional solution is the way

1 to go and get municipalities involved, but the end result is,
2 what authority is this bill potentially giving to the municipal
3 authority?

4 The other concern that we have -- again, I'm not
5 sure how this is addressed since it is very minimal in the act
6 -- is the responsibility that does come back onto the
7 municipality. If the municipalities create authorities to take
8 care of the stormwater problem, it is the municipality that's
9 ultimately responsible back to the State and the Feds under the
10 MS4 program. Does that qualify to take care of that concern?
11 We don't know.

12 The other side is, you know, who should decide what
13 programs need to be addressed in order to take care of the
14 problems with the stormwater? Again, the previous speaker was
15 talking about the storm drains. Again, where you have storm
16 drains, especially if they haven't been maintained and cleaned
17 out, that's a great solution to that problem, but that may not
18 be the total problem for the stormwater issues that come down
19 with the MS4 program and the responsibilities.

20 So by creating this authority, will it be able to
21 address the entire stormwater problems or are you going to end
22 up having two different masters over the public; i.e., the
23 municipality, which has to pass certain things or do certain
24 things, and then also the authority? I don't know. It doesn't
25 say that in this piece of legislation, and that's part of the

1 concern that we have with the bill.

2 Our whole issue when it comes down to it is, you
3 know, what is reasonable, what is expected of the municipality,
4 what is expected of the municipal authority they create? If
5 you just create a municipal authority and don't put any
6 parameters on it, could it be that they can go and do whatever
7 they want to do? I don't have the answers to those questions,
8 but they are concerns that we have with moving something
9 forward without some parameters that are there.

10 The last thing that we're concerned about with this
11 piece of legislation -- and again, it comes down to, you know,
12 the lack of parameters, for lack of a better word at this point
13 -- is how far can the authority go once we give it to them? As
14 far as the fee structure, again, the gentleman before me gave a
15 good rationale on the fee structure that they would need to
16 take care of what they thought was a solution, but we don't
17 know what else is out there.

18 Under MS4s, it is also going back onto the
19 municipalities. I'm hoping that the last testifier today will
20 talk about some of the issues that they have had down in the
21 southeast where it has gone directly onto the residents in a
22 municipality, where the municipality is starting to have to
23 look at the impervious surfaces when somebody wants to do
24 something.

25 There are other concerns that are out there, and the

1 last example I'll give you is a township in Lancaster County
2 with the MS4s. When the EPA came up to do a study, they went
3 out and all the outflows in the township met criteria that was
4 there. They went and looked at the storm drains. They seemed,
5 everything, to be the way they were supposed to be. The
6 township manager thought he was doing pretty good until he got
7 back to the township maintenance building, and there the
8 maintenance department was draining the oil out of one of the
9 trucks and putting it into, catching it into an oil pan. The
10 person from EPA said, "What are they doing?" and he said,
11 "Changing the oil." "What are they doing?" He said, "Changing
12 the oil." "How do you know that? Where is the manual?" He
13 said, "Well, they don't need the manual. They drain it into
14 the pan. They put the pan in a tank. We have a recycler that
15 comes in and empties the tank." They were cited for being in
16 violation of the MS4s because of that potential oil getting
17 into the streams.

18 Now, in that case, I get back to my previous
19 statement of where, if we create the authorities, where does
20 the responsibility on one hand stop and begin on the other one?
21 I don't know.

22 So to end this and open it up to questions, I would
23 say this is a viable solution of creating authorities,
24 especially on a possible regional basis, individual/regional,
25 but I think that there needs to be some more clarification.

1 And with that I'll suggest that you read our testimony, but
2 I'll open myself to any questions.

3 Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN CREIGHTON: Elam, it seems like
5 the main point is that you need cooperation among several
6 municipalities to make one of these authorities work. How can
7 that happen?

8 MR. HERR: Well, it happens today with sewer and
9 water. It's out there. I'm not sure that is the biggest
10 obstacle that's out there for the cooperation. I think what it
11 is is what authority -- I hate to keep using the word
12 "authority" when you're talking about authorities -- but it's
13 what authority does the municipal group give to the municipal
14 authority to do? How far can they go? What is their
15 responsibility once it is created or once it's given that
16 authorization to do something?

17 Cooperation: You know from Lancaster County, you
18 know, LASA and the other authorities that are out there,
19 they're multi-municipal. It works. They can work. But again,
20 what are the parameters?

21 MINORITY CHAIRMAN FREEMAN: Elam, thanks for your
22 testimony.

23 In terms of your concerns on the parameters, isn't a
24 lot of that going to be addressed when you create the
25 authority? The municipality creating the authority or joining

1 with other municipalities in a multiple authority will set down
2 within that implementing legislation or agreement pretty much
3 the parameters that will be provided for.

4 MR. HERR: If you just listened to the previous
5 speaker, his comments were he thinks he already has the
6 authority; he has the ability to take care of the problems;
7 it's just his solicitor saying you don't have the legal
8 authorization to do it.

9 MINORITY CHAIRMAN FREEMAN: Well, there's some
10 ambiguity in the Authorities Act; that's why the legislation is
11 here.

12 MR. HERR: Well, but what I'm saying is, what
13 authority was given to them besides, quote, unquote,
14 "protecting their watershed"---

15 MINORITY CHAIRMAN FREEMAN: But I'm saying---

16 MR. HERR: ---to take care of the problems?

17 MINORITY CHAIRMAN FREEMAN: The point I'm making is
18 that the municipality doesn't just give carte blanche when it
19 creates an authority. It sets down what the parameters of the
20 authority are in that implementing document. And obviously
21 that can vary from municipality to municipality. The
22 sophistication of the solicitors that advise the supervisors as
23 to what needs to go into that document will vary as well. But
24 pretty much that leaves the power within the municipality when
25 it creates the authority to set down those parameters and those

1 limitations.

2 MR. HERR: If you're creating a new authority. But
3 again, using the previous gentleman, he's saying that if this
4 law passes, he thinks, in his opinion, that that would give the
5 solicitor the go-ahead to say, you have the authority now to
6 move forward. I'm not sure if that's the intent here or not.

7 I agree with you; I think the municipality or
8 municipalities should set the parameters and work there. That
9 would most likely be, and I would hope, for new ones, but what
10 about the existing ones?

11 MINORITY CHAIRMAN FREEMAN: Do you see the need
12 within the text of the bill then to more clearly delineate
13 whether you're creating a new authority or whether you're
14 empowering an existing authority?

15 MR. HERR: I think it has to just be clear that the
16 municipalities, and hopefully once they create the authority,
17 work together to accomplish whatever is set out, and that has
18 to be somewhere stated so that---

19 MINORITY CHAIRMAN FREEMAN: Which it will in the
20 agreement that creates the authority.

21 MR. HERR: You would hope.

22 MINORITY CHAIRMAN FREEMAN: Yeah.

23 MR. HERR: But we have authorities out there today
24 that, under existing like water and sewer, that go in opposite
25 directions of what the municipal governments want.

1 MINORITY CHAIRMAN FREEMAN: Oh, yeah, particularly
2 in terms of comprehensive planning versus how they -- yeah.

3 MR. HERR: And that's our concern, that we want to
4 make sure---

5 MINORITY CHAIRMAN FREEMAN: Yeah; that's legitimate.

6 MR. HERR: ---that with this, it goes in the right
7 direction, that if you create the authority -- and I don't know
8 the solution; I don't think this bill addresses it -- but what
9 responsibility falls back onto the authority when they take
10 over something and do it compared to what the municipality has
11 in meeting the State and Federal requirements.

12 MINORITY CHAIRMAN FREEMAN: And just again to
13 clarify, any authority would be made up of a board appointed by
14 the municipal government. So there is a linkage to the goals
15 of the municipal government at the time of the appointment.

16 MR. HERR: I'm glad you put the end on there "at the
17 time of the appointment," because it does change.

18 MINORITY CHAIRMAN FREEMAN: Yeah. Well, you can
19 also stipulate the terms of the service on the authority.

20 MR. HERR: Yes, that's correct.

21 MINORITY CHAIRMAN FREEMAN: Which can provide a
22 looser rein in terms of bringing authority boards in that are
23 acting in a rogue fashion, you might say.

24 MR. HERR: Yeah. I'm not sure how the Authorities
25 Act goes. I know they can be on for 5 years. I don't know if

1 you can limit that time period or not. But in any case, there
2 is at least a statutory limit, like no more than every 5 years
3 you can replace the person.

4 MINORITY CHAIRMAN FREEMAN: And I'm sure given
5 past positions of PSATS that you would want to see any
6 legislation dealing with this to have some measure of
7 flexibility to accommodate the different needs of your
8 different townships.

9 MR. HERR: Correct.

10 MINORITY CHAIRMAN FREEMAN: Okay.

11 MR. HERR: You know, again, and it seems like I'm
12 picking on the previous testifier, but in his case what he has
13 proposed may be the solution to the problem in his area.
14 That's great. It may not work in another solution, just
15 cleaning out drainage basins, because maybe it's a
16 municipality, as Representative Toepel had said earlier, where,
17 you know, it's more suburban/rural than it is, you know,
18 suburban/urban. So you do need that flexibility.

19 MINORITY CHAIRMAN FREEMAN: Thank you.

20 MR. HERR: Thank you.

21 MAJORITY CHAIRMAN CREIGHTON: Thank you, Elam.

22 MR. HERR: Thank you, sir.

23 MAJORITY CHAIRMAN CREIGHTON: You didn't fail to let
24 me down.

25 John.

1 MR. BROSIOUS: Thank you, Mr. Chairman.

2 Good afternoon, Members of the committee. I'm
3 John Brosious, the Deputy Director of the Pennsylvania
4 Municipal Authorities Association.

5 At the risk of being redundant, I was going to get
6 up here and say my comments are just ditto to what everybody
7 else said, but Elam and I flipped a coin to see who would go
8 first and skewer the other one, and so I feel perhaps I need to
9 address some of the issues of my contrarian friend, Mr. Herr.
10 But before that, I just want to make a few points, and then
11 Elam actually can come back up if he'd like. We're used to
12 this tag-team match.

13 But the day started over at the PEC Stormwater
14 Conference with former Senator Frank Kury, who some of you may
15 remember, some of the younger Members may not, and he gave a
16 little history of this since it started back in the 1970s, how
17 he drafted the first stormwater bill and a floodplain
18 management bill. And he wasn't real excited about the House
19 not passing that for two sessions, and then they finally got it
20 through. So we go back to the late seventies, almost 35 years
21 ago, that we actually had the first stormwater bill in
22 Pennsylvania and a companion floodplain management bill.

23 I would note that EPA didn't start taking this
24 seriously until the late eighties, and in the early nineties
25 and late nineties is when we first got the Federal Phase I and

1 Phase II stormwater. So Pennsylvania was precedent to the
2 Federal Government in this.

3 So you've heard a lot of testimony about lack of
4 funding, and it has been zeroed out for several years. Now, it
5 was never very much to begin with, \$1 million to \$2 million a
6 year, so there wasn't much of that around either.

7 To the question of stormwater authorities, I've had
8 that question asked of me for at least 12 of the 15 years I've
9 been with PMAA. It often comes from DEP. Every year I get a
10 call from a different DEP person, "Can we form a stormwater
11 authority?" I hear it from local solicitors; I hear it from
12 county planners, and our answer has been, at least since 2001,
13 that we think you can form a stormwater authority now under the
14 provisions of our act. The reason we say that, I have in my
15 opening paragraph there the act is broadly written to just say
16 you can form an authority dealing with sewer, sewer collection,
17 and sewer treatment for a whole generation. That nomenclature
18 to engineers and all was that you had two types of sewers -- a
19 sanitary sewer and a storm sewer. In fact, the MS4 uses that
20 in its -- and the acronym stands for "Municipal Separate Storm
21 Sewer System." So we felt that if you take the word "sewer,"
22 that could be inclusive of both sanitary and storm and you
23 could form one.

24 I would also say that to date, none exist. So for
25 all the times we told people we think you can do it, it hasn't

1 been done yet in Pennsylvania. So we are supportive of
2 SB 1261. We think that it does add a degree of clarification
3 and comfort to a lot of people in the legal community on that.

4 The next part of my testimony you've heard some of
5 from other people. It's a little bit of historic perspective.
6 It's the difference between "sanitary" and "storm." The only
7 thing I want to mention there in the second paragraph is about
8 for many years we included that in the same system, which led
9 us to combine sewer overflows and sanitary sewer overflows,
10 which are the bane of many communities' existence now, because
11 DEP and EPA want you to separate them. So we'd want to
12 separate storm sewers from sanitary sewers, and there's both
13 Federal legislation and regulations that deal with how we would
14 do that. And I list some of the occasions that are somewhat
15 nasty in communities where you have overflows of these combined
16 systems with raw sewage into streams and waterways and onto
17 roads and into fields and blowouts at the plant and things
18 along that line.

19 The last part of what I had there dealt with
20 solutions. You also heard people testify that this is a more
21 than one municipality issue, it's multi-municipal or regional,
22 and that stormwater management transcends political boundaries,
23 and therefore, it might be better to look at this from a bigger
24 perspective, a more holistic perspective, than any one
25 municipality.

1 And you heard some of the earlier testimony also
2 where I think Patrick in particular noted that one municipality
3 can do what they want, but they have upstream ramifications of
4 what's coming in. And likewise, depending on what they do, it
5 might all be erased by a downstream municipality that may not
6 enact the same things.

7 Probably after the storm we're going to see today,
8 you'll see a good example of that. You see certain plumes of
9 brown sediment right now. I saw them on the way here in the
10 Conodoguinet, and by tonight, the Conodoguinet will all be
11 brown. I don't know if that comes from Carlisle where Don
12 is in charge of that, or Silver Spring or Hampton or
13 East Pennsboro, but by the time it gets to the river, in 2 days
14 the Susquehanna will all be brown. So you have this kind of
15 cause and effect, and therefore, looking at it as a singular
16 entity sometimes may not be the right approach.

17 I also list some of the detriments to doing this.
18 You have geographic issues between municipalities, you
19 certainly have political issues, you have funding issues, and
20 you have the whole intergovernmental cooperation issue, which
21 we know is often so alive and well in certain areas of
22 Pennsylvania that it's hard to share that concept at times, and
23 this is one of those areas where it's very difficult to try and
24 put people in the room and come up with a cooperative
25 stormwater management approach.

1 SB 1261 amends our act to specifically allow the
2 creation of a stormwater authority, but it is not a mandate.
3 It is, you know, what we call a "may" provision. I mean,
4 there's nothing in our act that says you have to mandate any of
5 the 17 types of authorities we're already allowed to create.
6 This would create an 18th type of an authority. It's up to the
7 individual municipality or municipalities or county whether
8 they want to form an authority and incorporate one and they
9 want to do that jointly or multi-municipal. So it is not, it
10 is not a mandate. And also, in the absence of an authority
11 being created, all of the stormwater regulations and the
12 stormwater laws will continue to fall upon the municipality to
13 implement.

14 So I think you also heard that if -- in fact, I
15 believe it was Kelly from DEP who mentioned that if we do go
16 together and form a multi-municipal authority, the transfer of
17 the NPDES permit, much like it is now from a municipality to an
18 authority for sewage treatment, can occur, so the
19 responsibility would transfer then.

20 You've also heard authorities can be
21 multi-municipal, and we think in this particular area that
22 might be the best way to do that.

23 You've heard some discussion about how to assess
24 fees. Authorities are a little bit different. We're a
25 fee-based government entity as opposed to a tax-based entity.

1 And there are fees. I believe Mark testified about there are
2 thousands of these entities, whether you call them an authority
3 or a stormwater management unit or whatever, across the
4 country, and they all have different ways of looking at it.

5 The easiest is a flat fee where everybody gets the
6 same thing. You charge a dollar a month on a sewer or a water
7 bill; you charge \$5 a quarter. It's just the same for every
8 customer. That's not the most equitable, but it certainly is
9 the easiest for a municipality or for an authority.

10 There are also more representative fee structures,
11 and that can be based on the property size. You've heard that.
12 It can also be calculated on the amount of pervious or
13 impervious areas and whether there are water collection
14 structures or dispersion structures on a property. So when you
15 really drill into this, you can come up with a number of
16 different ways to charge fees or to offset fees depending on
17 how people handle stormwater, either individually or as a
18 community.

19 An example was raised about the farms and whether
20 the farms would pay more. In fact, the farms may pay less if
21 they retain all of that runoff on their fields. There was an
22 article in "GOVERNING" magazine a few months ago and it talked
23 about the Philadelphia project, and it gave some figures. The
24 University of Pennsylvania is paying \$14,000 a month as a
25 stormwater surcharge to the city, but Penn just implemented a

1 whole bunch of rain gardens and ponding and green roofs and
2 different things, so their monthly bill to the city went from
3 \$14,000 a month to \$3,000 a month. They saved \$11,000 a month
4 by implementing green infrastructure. Conversely, the
5 Philadelphia Airport, which, you know, has huge amounts of
6 impervious surface on the runways and the tarmac, their bill
7 went from \$53,000 a month to \$126,000 a month. So in their
8 case, the bill doubled, and in the case of Penn, it was
9 significantly reduced.

10 So we see that. We see that there are both
11 communitywide controls. These are usually run by, they're the
12 responsibility of the municipality right now but could become
13 the responsibility of an authority. They're expensive. You
14 heard Bob talk about what it's like to get in there and do all
15 the work, and your upfront costs and ongoing maintenance costs
16 will be borne by the whole community or communities. You also
17 have individual controls, you know, green roofs and rain
18 barrels and dispersion on your property and things along that
19 line.

20 But I have a line in here, and Elam mentioned it,
21 about the Chesapeake Bay. The single biggest cost in the DEP
22 Chesapeake Bay Tributary Strategy, the one that came out in '05
23 that estimated the costs, was \$5.7 billion for stormwater, to
24 address stormwater issues for nutrient and sediment flow to the
25 Bay. So from midstate Pennsylvania, the stormwater piece was

1 the single biggest dollar amount for addressing Chesapeake Bay
2 runoff for sediment and nutrient, and that was \$5.7 billion.
3 That is five times what it is for the sewage treatment plants,
4 which is \$1.4 billion. So I wanted to point that out.

5 I would just like to finally, you heard a lot of
6 discussion about the six mins, the six minimum controls. These
7 probably aren't things you'd get real worked up about it as I
8 read them to you, but you did hear Elam talk about they're
9 trying to narrow this down. There will be more regulatory
10 oversight for this in the coming years, and that will be from
11 both DEP and EPA. Each of those entities now, probably in the
12 course of a year, hit a dozen or maybe two dozen communities
13 for not doing any implementation of stormwater management.

14 But here is what the six mins say. The first one is
15 public education and outreach. Okay; that's not too tough.
16 The second is public participation and involvement. Again,
17 that's not too tough. The third is identifying illicit
18 discharge and elimination of them, so that involves some work
19 on the municipality. Fourth is construction site runoff
20 controls. So existing construction: you're doing your hay
21 bales and silt fences and things along that line. The fifth is
22 post-construction stormwater management in new development and
23 redevelopment. So you're going to go look at, you know, how
24 new developments are handling that. You heard that with
25 retention ponds and detention ponds and things along that line,

1 or in existing developments how there might be some retrofits.
2 The sixth is pollution prevention and good housekeeping at the
3 municipal operations and maintenance. I thought Elam was going
4 to say they just drained the oil into the grate and it went to
5 the nearest stream.

6 So those are the six mins, and frankly, they don't
7 sound very expensive, you know, on the face, but when you hear
8 Bob's testimony and you start seeing what DEP and EPA are going
9 to require of you, it gets real expensive real fast. And
10 therefore, I think to Senator Erickson's credit, you know, he
11 has two bills out there to address this. This is the simplest.
12 It allows that decision to be made by the local municipality or
13 municipalities. And his other bill I believe is SB 465.
14 That's the more comprehensive approach that both Representative
15 Steil and Representative Freeman have put forward in the past,
16 and that hasn't moved from the Senate Environmental.

17 So with that, I'll stand for any questions. Thank
18 you.

19 MINORITY CHAIRMAN FREEMAN: John, thank you for your
20 testimony.

21 Two questions. First, in terms of the current
22 language in 1261, do you see it sufficient in terms of allowing
23 a municipality, or whoever the creating entity is, to go one of
24 two routes: either to create a separate stormwater authority,
25 or to delegate that responsibility to some existing authority,

1 whether it be a water authority or a sewage authority, as an
2 add-on to their current charge of responsibilities?

3 MR. BROSIOUS: On and off for the 15 years that I've
4 been at PMAA, we warn our guys that at some point the
5 municipality is going to look at you and say, you guys are the
6 pipe guys, you're the treatment guys; we can't deal with the
7 stormwater regulations anymore; we're going to turn it over to
8 you. That has always been addressed to our sewer authority, so
9 I'm kind of glad Bob is here today to show us that our water
10 authorities are also willing to take a look at this.

11 So I think the approach, Bob, is you can use an
12 existing authority, whether it's a sanitary authority, a sewer
13 authority, or create a new one that would be delegated simply
14 to stormwater responsibilities.

15 MINORITY CHAIRMAN FREEMAN: If you use an existing
16 one, does that require a re-doing of the agreement that created
17 the authority?

18 MR. BROSIOUS: At a minimum, it would require a
19 change in the articles of incorporation and the bylaws just to
20 address that, that they now would be responsible for management
21 of stormwater. And that could be as short or lengthy as they
22 care to detail that out. I know that was Elam's concern, you
23 know, what kinds of details you would get into, and that could
24 be, you know, put in the articles of incorporation, incorporate
25 it in their bylaws, or just developed as they kind of go

1 through the process.

2 MINORITY CHAIRMAN FREEMAN: And my second question
3 gets to Elam's concern about MS4 responsibilities. And Elam,
4 forgive me if I'm not quoting you exactly, but I believe your
5 point was you weren't certain whether creating an authority
6 would relieve the municipality of its MS4 responsibilities. Do
7 you see the creation of a stormwater authority as a way to
8 relieve the municipality of at least hands-on responsibilities,
9 or would there be some grey area or concern that would have to
10 be addressed either from the Federal level or in terms of this
11 legislation?

12 MR. BROSIOUS: Well, in addition to Elam, I think
13 one or two other testifiers have said the attorneys might have
14 some concern about how that plays out under environmental
15 regulation. And, you know, I would say as a layperson that
16 between what Kelly said, that if you form a municipal
17 authority, particularly if its regional, and that power is
18 delegated, DEP would recognize that and it would probably be
19 recognized the same way that an authority having an NPDES
20 permit instead of the municipality to manage this sewage
21 treatment plant. So now a municipality can certainly run a
22 sewage treatment system and plant and hold an NPDES permit or
23 an authority. So the responsibility would rest with the holder
24 of that permit, and given that Kelly seems comfortable with
25 that and, I don't know, LeeAnn, I don't want to put you on the

1 spot as the only attorney I know in the room, but I'm thinking
2 that could also cover stormwater authorities, too.

3 MINORITY CHAIRMAN FREEMAN: And so since DEP
4 actually is the enforcer of the MS4 regs, if they're okay with
5 it, pretty much that resolves the issue.

6 MR. BROSIOUS: Just as long as Elam's okay with it.

7 MINORITY CHAIRMAN FREEMAN: Thank you for your
8 testimony.

9 MR. GRELL: How about the role of eminent domain in
10 any of this? Do you have any comments or observations on that
11 based on your experience?

12 MR. BROSIOUS: Well, under the Municipality
13 Authorities Act, we have the power of eminent domain, so I
14 think it can be exercised the way it has been exercised for all
15 the other types of authorities that have had to take land for
16 one reason or the other. Hopefully it's done in the best
17 possible way. I know that that can be an onerous issue
18 depending on whose property is taken, but it certainly is
19 exercised already by water and sewer and other types of
20 authorities.

21 MR. GRELL: Can you get out the crystal ball then as
22 to how frequently that might be needed?

23 MR. BROSIOUS: I believe, just in looking at a lot
24 of the stormwater, although I was struck by the comment about
25 the municipality that did not have enough land to actually

1 incorporate some way of handling that. But I would say unless
2 you're in a really tightly built out municipality, there is
3 open space that might be available already, that through
4 municipal ownership or county ownership might be better used
5 before you look at eminent domain procedures.

6 There is also a lot of individual onlot stuff that
7 can occur as part of a broader outreach and education program
8 to retain the water onsite. It might also be the type of thing
9 where you can, in perhaps a friendlier way, go in and instead
10 of having the existing, you know, detention and retention ponds
11 that we have now with the inherent problems, you know, create
12 passive wetlands and things like that that, you know, perhaps
13 could go on agricultural land and a farmer might welcome, or
14 you would have other organizations that might be interested in
15 that, like Ducks Unlimited and all, who actually partner to
16 create those kinds of things.

17 So there's a whole range of things you can do to
18 manage stormwater that, you know, strictly relying on eminent
19 domain to put something in, particularly if it's pipes and
20 they're buried, you know, that could be as simple as an
21 easement as opposed to eminent domain procedures.

22 MAJORITY CHAIRMAN CREIGHTON: Any further questions?

23 Thank you, John.

24 MR. BROSIOUS: Thank you.

25 MAJORITY CHAIRMAN CREIGHTON: The next presenter is

1 Douglas Blazey from the Pennsylvania Stormwater Coalition.

2 You're ganging up on us a little bit here.

3 MR. BLAZEY: If that's all right. I've actually got
4 a third.

5 Thank you, Mr. Chairman and Members, for inviting us
6 to testify.

7 First, it's with great pleasure that we as
8 representatives of the Pennsylvania Stormwater Coalition appear
9 before you today and offer our comments on SB 1261 and the
10 closely related issue, in our minds, of additional management
11 authority for our direct units of local governments. In other
12 words, we support SB 1261 not with a "yes, but..." but with a
13 "yes, and..." and I will elaborate upon this in a moment.

14 But let me first introduce the members of the
15 Coalition that are here with me today, and during the questions
16 and answers I'm sure they'd be pleased to offer their comments
17 and expertise.

18 To my right is the Chairman of the Coalition,
19 Michael J. Fox. Chairman Fox is also a Supervisor of
20 Montgomery Township, Montgomery County. Chairman Fox has been
21 our leader since April of 2009 in reaching out to and
22 coordinating with the Pennsylvania DEP and the U.S. EPA on the
23 implementation of the MS4 program for our communities.

24 We now, I think, represent about 55 primarily
25 southeastern Pennsylvania communities -- boroughs, second-class

1 townships, first-class townships, and a third-class city in
2 Reading. So we've got a broad reach of communities that we've
3 been working with, and our goal is to have realistic stormwater
4 management programs and improvements.

5 And then to my left, who kindly sat over there, is
6 Lawrence J. Gregan, the Executive Secretary of the Coalition
7 and the Township Manager from Montgomery Township. Manager
8 Gregan not only has 30 years of municipal government management
9 experience but he has firsthand coordinated the efforts of our
10 Coalition in their efforts to understand and advocate regarding
11 the most recent DEP and U.S. EPA permit program initiatives for
12 municipalities, and that's important. The initiative is for
13 municipalities, not for authorities at this point, who have
14 separate storm sewer systems, usually called or identified as
15 "MS4s."

16 And Chairman Fox said I should also say that I
17 served proudly as the Chief Counsel of the DER under Secretary
18 Goddard, then Secretary Jones, and then Secretary Duncan, and
19 then Secretary DeBenedictis, and under two Governors, both
20 Governor Shapp and Governor Thornburgh. And I left when
21 Secretary DeBenedictis was here, not because -- we remain
22 friends and very active together, but I joined the U.S. EPA
23 when Ruckelshaus came back as the Administrator, and I served
24 as the Regional Counsel for EPA in Region 2, which is New York,
25 New Jersey, and the U.S. Caribbean. So if it becomes relevant

1 to talk about my perspective on the regulatory agencies, I'm
2 happy to, but that's not the primary thrust of our testimony.

3 However, and very importantly, we believe that in
4 many instances, local government would choose not to create a
5 new municipal authority or to enlarge the mission of an
6 existing authority if the municipal corporation itself had the
7 authority to create a stormwater management district and charge
8 appropriate fees to those discharging stormwater within the
9 district. It is this authority that is lacking in our
10 corporation codes and that SB 1261 does not address. We
11 believe SB 1261 should be amended to address this or that a
12 companion bill be drafted and introduced specifically for this
13 purpose.

14 Why is it likely that many municipalities would
15 choose to utilize a stormwater fee structure directly if they
16 had the authority to do so? There are at least two core
17 reasons.

18 First, authorities cannot be established and
19 operated without cost and administrative overhead and are, by
20 their very nature, insulated from direct municipal governance.
21 In some communities, the supervisors, commissioners, or council
22 members may prefer to directly retain the stormwater management
23 responsibility in the interests of cost efficiency and
24 representative government, particularly if they could establish
25 a fee for a discharge system to support the needed improvements

1 and maintain them.

2 Second, stormwater management relates to a broad
3 range of municipal government activities which are not as
4 easily or neatly separated from other municipal government
5 activities as is the provision of electric, public water,
6 telephone and cable, or sanitary wastewater services. And
7 while others may have additional reasons, the following come to
8 my mind.

9 First, stormwater from private property often
10 discharges to and travels along public roadways already built,
11 owned, and/or maintained directly by the municipality.

12 Two: The roadway itself requires its own stormwater
13 drainage capacity which is built and maintained by the
14 municipality. Just think, for example, now traveling along the
15 turnpike, and everyplace you see a new section being widened
16 there are new basins going in, and that's to maintain and
17 control their drainage.

18 Three, and very importantly, new land development or
19 redevelopment initiatives today require greatly enhanced
20 stormwater management controls. These are among the minimum
21 control measures that the previous witness specified. And
22 these controls are all imposed and overseen by the
23 municipalities themselves. These go through the Planning
24 Commission, the Board of Supervisors. They're under the SALDO
25 ordinance. That's where those basins and systems are reviewed

1 and approved.

2 And finally, many of the new or enhanced stormwater
3 management facilities that we contemplate being necessary are
4 already upon municipally owned property or will likely be
5 established in conjunction with other landowners. Further, if
6 new property were to be acquired, those decisions would be made
7 by elected officials rather than appointed authority members.

8 Missing from the various municipal codes is that
9 specific authorization needed to establish if municipal
10 government so chooses. In other words, it's very important
11 here. We're not trying to compel one vehicle or another; we're
12 saying there should be a range of vehicles and that municipal
13 government should have the breadth of choice. I'm using the
14 general taxation powers to having a fee structure that it can
15 administer or to relying upon a municipal authority if it so
16 chooses.

17 We are providing to this committee the Coalition's
18 March 24, 2011, "Legal Assessment of Municipal Corporations'
19 Authority to Manage and Regulate Stormwater Within Their
20 Municipal Boundaries," and that, I think, is attached to the
21 testimony. And we attempted in that to analyze the municipal
22 codes where authority was present and where it was lacking, and
23 as you might expect, since these codes have been created over
24 decades, if not centuries, the language differs. It differs
25 for cities than for boroughs, for first-class and second-class

1 townships. And in general, things can be built, but there's no
2 clear authority generally to maintain them through a fee
3 structure, only through general taxation.

4 The simple takeaway message of this assessment is
5 that if additional stormwater management facilities are needed
6 for existing stormwater flows, the cost of constructing and
7 maintaining those stormwater facilities must be borne by the
8 general taxpayer -- that's the current state of affairs -- and
9 cannot be specifically assigned to those needing or utilizing
10 the service. If we want municipal government to be able to
11 establish either a general or district-oriented stormwater
12 management system with related fees, additional legislative
13 authorization is required.

14 We do not recommend a universal and mandatory fee
15 system for stormwater but a permissive authorization that
16 allows local government to deploy or utilize a fee-for-service
17 system, if it so chooses, appropriate to its specific
18 circumstances.

19 In conclusion, we favor clarifying the ability of
20 municipal authorities to address stormwater if their sponsoring
21 municipalities wish them to undertake this task. Second, we
22 favor enlarging the authority of our municipal corporations to
23 create stormwater management districts and charge appropriate
24 fees for this service. We favor flexibility and choice.

25 We offer to participate in any effort to draft this

1 new language and stand ready to respond to any questions you
2 might have, and thank you again for this opportunity to appear
3 before you.

4 MAJORITY CHAIRMAN CREIGHTON: Thank you.

5 MR. BLAZEY: You're welcome.

6 MAJORITY CHAIRMAN CREIGHTON: Questions? I guess
7 we're slowing down here a little bit.

8 Let's say those who presented -- Pat and Elam and
9 John -- do you have any questions of anybody here? Do you have
10 anything, a closure to make a final statement or anything?

11 Go ahead; Pat.

12 MR. STARR: Yeah; I appreciate that opportunity,
13 Mr. Chairman. Thank you. I had jotted down a couple of things
14 that I thought might be useful clarifications.

15 I think that what has ended up being discussed today
16 is that options and tools are what our communities need in
17 order to address this complicated program, and so I think that
18 I would urge that just because we might need other tools, that
19 you would not choose to act on this particular tool. So I just
20 wanted to comment on that.

21 It was interesting, I actually happen to know
22 several of the parties who have addressed you today, including
23 Doug Blazey and Bob Bender, and I've been aware of their work
24 and I'm sympathetic on both sides. So I think the fact is, we do
25 need new tools as we get into a program that's unfamiliar, as I

1 mentioned in my testimony, to these municipalities, and it's a
2 significant learning curve.

3 So I would hope that we would allow some innovation
4 to occur in our communities and give them the permission they
5 need to try some new approaches. We've even been discussing
6 shared-services agreements with municipalities that we've been
7 working with, and so that's the old tool that doesn't need any
8 new help. But, you know, there are lots of different ways to
9 get at this problem, but this one that you have before you
10 today would certainly be beneficial and helpful to many.

11 I thought, if I may, I just wanted to address
12 something to Representative Hennessey who was asking about the
13 2-acre parcel versus the 20-acre parcel. And while you've
14 heard that it's not necessary that a fee would be based on
15 impervious surface or any of the other criteria that several of
16 us have talked about, I just thought, consider this: If you
17 had a 20-acre parcel with a home and that 20 acres was wooded
18 other than the home site, which we know doesn't really take up
19 very much space -- I mean, let's say, you know, a few thousand
20 feet, and we'll forget about the driveway for the time being,
21 just to keep it simple, but it's a forested 20-acre site -- and
22 then you had a 2-acre site that somebody, for whatever crazy
23 reason, decided they wanted to pave over, it's entirely likely
24 in that impervious fee situation that the 2-acre parcel would
25 pay significantly more than that wooded 20-acre site. So

1 that's the difference between the idea of assigning this cost
2 based upon contribution versus the general tax or just a fee.

3 Now, we know that authorities could just do a flat
4 fee. I would hope they wouldn't, because when you do in fact
5 charge based upon the contribution of stormwater, it actually
6 creates an incentive, if the program is designed properly, to
7 reduce your contribution of stormwater. And so that's one of
8 the hopes that an environmental organization like PEC brings to
9 this table, that with a fee-based approach, you might actually
10 see, we call it a market incentive to actually change practices
11 and in fact reduce that fee by capturing the stormwater,
12 because that's what we actually want to have happen, is not to
13 collect the money but to actually reduce the stormwater that's
14 getting into the creek and killing all the critters.

15 So I appreciate the opportunity to make a couple of
16 additional remarks. Those were just two things that I actually
17 had noted down I thought would be useful to discuss.

18 REPRESENTATIVE HENNESSEY: Just to follow up on
19 that, I agree with you. You know, certainly 2 acres of, you
20 know, macadamed surface obviously is going to shed a lot more
21 water, but what gives me a little bit of pause is when you go
22 on and talk about, you know, a lawn versus a wooded area or a
23 lawn versus a marshy or high tall-grass meadow.

24 MR. STARR: Yeah.

25 REPRESENTATIVE HENNESSEY: I mean, it's a little

1 unsettling to think that someone who happens to have a lawn
2 would be more subject or subject to a higher fee than someone
3 who simply allowed their property to grow up into tall marsh,
4 you know, some sort of meadow grasses. I mean, for the most
5 part, the municipalities down my way would probably cite the
6 owner for allowing the grass to grow that high.

7 MR. STARR: I'm well aware of that.

8 REPRESENTATIVE HENNESSEY: They would say, you know
9 what? Either mow it or you'll get a fine for not mowing it.
10 And this gives a little bit -- I mean, it was unsettling when I
11 read the comparison, that you could actually say that a lawn is
12 more impervious than a tall grassy field, which most of the
13 people down my way don't want to see.

14 MR. STARR: I will leave that to the engineers, is
15 all I can say. They create things that are basically runoff
16 coefficients, they are called, and they know that stuff and I
17 don't know that stuff. I'm not that technical. But it does
18 factor into the discussion. You're absolutely right,
19 Representative.

20 REPRESENTATIVE HENNESSEY: Yeah. I mean, just as
21 another example, I know that we used to have a farmer down our
22 way who always mowed the stream banks of a little creek that
23 ran through his farm, and everybody remarked about how nicely
24 manicured his lawn was.

25 MR. STARR: Nice and clean; sure.

1 REPRESENTATIVE HENNESSEY: And then suddenly he
2 started letting all kinds of grass grow and he didn't mow
3 within 20 feet of the stream banks or whatever it might have
4 been, and people started, what's the matter? You know, it must
5 have changed hands; it must be a new owner. And it turned out
6 that it was, you know, the environmental people had sort of
7 blown the whistle on him and said that keeping his lawn that
8 nicely manicured somehow created a situation where the water in
9 that creek would move through the yard faster than it would if
10 we had these long grasses that grew up along the stream bank.

11 You know, if you asked me to take a survey of the
12 neighbors and find out whether they liked, you know, the nice
13 manicured lawn and the stream banks or they liked the overgrown
14 stuff that was, you know, growing up 3 or 4 or 5 feet higher
15 than the surrounding lawn, you know, the environmental impact
16 would not have won, would not have carried the day. Most of
17 the neighbors would have liked to see it look like the fairway
18 of a golf course.

19 MR. STARR: I'm Pennsylvania Dutch. Where I grew
20 up, we mowed to the stream bank, until I grew up and learned
21 that wasn't the best environmental approach. So I completely
22 understand. I was one of the guys out there doing the mowing,
23 let me tell you, growing up. But obviously the point is---

24 REPRESENTATIVE HENNESSEY: You know, you sometimes
25 can find an engineering calculation that says this is the best

1 way to do it, but it's not going to be a very popular way.

2 MR. STARR: So with regard to suburban homes, it has
3 been mentioned by several people here that even on a
4 suburban-sized lot, it's not that anybody would suggest that
5 people would not mow their lawns. But a rain garden can
6 capture stormwater runoff, and it only takes up a few hundred
7 square feet and can be very attractively maintained and
8 landscaped. It should be, in fact.

9 So there are many ways to actually deal with
10 stormwater, whether it's -- and that's always going to be a
11 private property decision, unless you get into -- I mean, of
12 course, if it's getting into a fee situation where there's a
13 possible credit, then you're entering into a discussion with
14 the authority or whatever about that. But otherwise, I don't
15 think you need to worry that we're going to suddenly see people
16 letting their lawns go crazy. I don't think that's what's
17 going to happen.

18 Thank you very much.

19 REPRESENTATIVE HENNESSEY: Thank you.

20 MAJORITY CHAIRMAN CREIGHTON: Mark, would you want
21 to defend the engineering position?

22 MR. BOWEN: Well, I can provide this clarification:
23 Lawn is not an impervious surface. It is not considered one of
24 the big generators. It is, however, a credit that a township
25 could apply for to create a meadow situation where it's

1 appropriate, similar to a rain garden. It certainly wouldn't
2 be done in somebody's front lawn, not under this regulation,
3 not under most township regulations where I work. It wouldn't
4 be permitted, as yours. It's the BMP, it's not the offender,
5 if that makes any sense.

6 REPRESENTATIVE HENNESSEY: It's the best management
7 practice?

8 MR. BOWEN: It is a potential best management
9 practice to encourage meadow growth where appropriate, but not
10 in someone's front lawn.

11 REPRESENTATIVE HENNESSEY: Okay. Thank you.

12 MAJORITY CHAIRMAN CREIGHTON: Bob, would you like to
13 make final comments?

14 MR. BENDER: I think everybody in this room, at one
15 time or another I worked with them, so I agree with most of
16 what they said from both sides.

17 I think perhaps I might have given the impression
18 that it was an all-or-nothing proposition for an authority to
19 get involved in this business, and I don't think it's that way
20 at all. Several municipalities that we've spoken to have
21 indicated some interest in having us come in and to give the
22 turnkey type of operation and perhaps empower us to assess fees
23 and whatnot. Others, such as was spoken about, his group might
24 be wanting to do their own thing and then decide where their
25 districts are and assess their own fees, and perhaps in that

1 situation we would just contract services.

2 And we believe the legislation that is being
3 considered now would give us the right to provide the turnkey
4 operation where we're invited in, where the charter allows us
5 those particular authorities, or simply to enter into an
6 intermunicipal service agreement to provide some level of
7 stormwater services to the town that wants it.

8 So we support it, and we think that what they
9 suggested was a good idea as well.

10 MAJORITY CHAIRMAN CREIGHTON: Good. Thank you.

11 Elam? You have taken enough abuse?

12 MR. HERR: Never.

13 MAJORITY CHAIRMAN CREIGHTON: Okay. Well, that's
14 it. The meeting is adjourned. Thank you so much for everybody
15 being here.

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17 (The hearing concluded at 3:17 p.m.)

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1 I hereby certify that the foregoing proceedings are
2 a true and accurate transcription produced from audio on the
3 said proceedings and that this is a correct transcript of the
4 same.

5
6 Debra B. Miller

7 Committee Hearing Coordinator/

8 Legislative Reporter

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