

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1565

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House Environmental Resources & Energy Committee

Matthew Ryan Office Building  
Room 205  
Harrisburg, Pennsylvania

Wednesday, January 29, 2014 - 9:02 a.m.

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COMMITTEE MEMBERS PRESENT:

Honorable Ron Miller, Majority Chairman  
Honorable Martin T. Causer  
Honorable Jim Christiana  
Honorable Becky Corbin  
Honorable Eli Evankovich  
Honorable Garth D. Everett  
Honorable Matthew Gabler  
Honorable Jim Marshall  
Honorable Donna Oberlander  
Honorable Jeffrey Pyle  
Honorable Kathy Rapp  
Honorable Chris Ross  
Honorable Thomas Sankey  
Honorable Greg Vitali, Minority Chairman  
Honorable Bryan Barbin  
Honorable Matthew D. Bradford  
Honorable Mike Carroll  
Honorable Frank Farina  
Honorable Jaret Gibbons  
Honorable Steve McCarter  
Honorable Steve J. Santarsiero  
Honorable Pam Snyder

1300 Garrison Drive, York, PA 17404  
717.764.7801

1 NON-COMMITTEE MEMBERS:

2  
3 Honorable Marcia Hahn

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5  
6 STAFF MEMBERS PRESENT:

7  
8 Jonathan D. Lutz  
9 Majority Executive Director

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SUBMITTED WRITTEN TESTIMONY

Craig Todd, District Manager  
 Monroe County Conservation District

Lisa Schaefer, Director of Government Relations  
 County Commissioners Association of PA

(See other submitted testimony and handouts online.)

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1 MAJORITY CHAIRMAN MILLER: I'll call the  
2 House Environmental Resources and Energy Committee  
3 to order. You will note that the lights are on for  
4 the record stations back there, so this meeting is  
5 being recorded and may be used for broadcast.

6 Today we have a hearing on House Bill  
7 1565. While we all have come to recognize the  
8 importance of riparian buffers, there seems to be a  
9 few issues that people would like to see addressed,  
10 so that's why we have scheduled the hearing for  
11 today. We're gonna gather testimony about the  
12 issue from various testifiers and organizations.

13 I am going to dispense with the roll  
14 call for now. We have a lot of members that are in  
15 other meetings will be filtering in and out. Pam  
16 will take note of the attendance for the day, but  
17 we're going to dispense with roll call to start.

18 Representative Vitali, do you have any  
19 comments before we start the hearing?

20 MINORITY CHAIRMAN VITALI: I don't, but  
21 thank you for asking.

22 MAJORITY CHAIRMAN MILLER: Thank you. I  
23 would now like to welcome the prime sponsor of this  
24 bill, Representative Marcia Hahn, to step forward  
25 and give a few brief remarks on the legislation.

1                   REPRESENTATIVE HAHN: Good morning. I  
2 want to thank Chairman Miller and Chairman Vitali  
3 and members of the Committee for welcoming me and  
4 holding the hearing today on this issue so that we  
5 can learn more important facts about it.

6                   As many of you are aware, riparian  
7 buffer requirements have been a source of  
8 frustration across the Commonwealth among both  
9 businesses and landowners alike. Many of you are  
10 here today have heard frustrations about the  
11 negative impacts our buffer requirements have had  
12 on development and land use in Pennsylvania.

13                   To be specific, our Chapter 102  
14 regulations essentially prohibit persons proposing  
15 or conducting earth-disturbance activities from  
16 within 150 feet of a perennial or intermittent  
17 stream, river, creek, lake, pond, or reservoir when  
18 the project site is located in an exceptional-value  
19 or high-quality watershed. I think everyone can  
20 agree that these buffers are an important tool in  
21 protecting our streams and waterways, and I think  
22 everyone can agree on the importance of doing so.

23                   However, rarely is a one-size-fits-all  
24 approach the only way to reach a certain goal. In  
25 this case, when developing land or even planning

1 land uses, we are rendering large portions of the  
2 land off limits, when doing so may not be the most  
3 practical, efficient, affordable or effective way  
4 to protect our waterways on every occasion.

5 Furthermore, for landowners, these  
6 regulations have effectively resulted in taking a  
7 private property without legislative oversight or  
8 approval. Therefore, with these considerations in  
9 mind, I have introduced House Bill 1565 to amend  
10 our Clean Stream Law simply to clarify that  
11 riparian buffers and riparian forested buffers may  
12 only be required as a choice among other best  
13 management practices to design standards to  
14 minimize pollution from erosion and sedimentation.  
15 And this way, those proposing different land  
16 disturbances could select tools that best meet the  
17 needs for each individual project. This would  
18 result in continued protection and enhancement over  
19 valuable water resources while providing  
20 flexibility in doing so.

21 Again, I'd like to thank both chairmen  
22 for holding this Committee. And I look forward to  
23 hearing testimony from both sides.

24 MAJORITY CHAIRMAN MILLER: Thank you for  
25 your remarks. I would invite you, if you would

1 like, to take one these seats and join the  
2 Committee for the hearing.

3 REPRESENTATIVE HAHN: All right. I  
4 appreciate it.

5 MAJORITY CHAIRMAN MILLER:  
6 Representative Vitali.

7 MINORITY CHAIRMAN VITALI: I just want  
8 to be very clear what the bill does. I understand  
9 the value -- exceptional-value and high-quality  
10 streams and the need for a 150-foot riparian  
11 buffer.

12 So your bill, I kind of want to get  
13 crystal clear in my mind current law versus how  
14 your bill would change that. Right now, are there  
15 any provisions in law or regulation that would give  
16 DEP discretion with regard to that? I'm sort of  
17 thinking, is there analogy to zoning, like, you can  
18 with special exceptions or variances? Right now is  
19 there any mechanisms by which that 150-foot buffer  
20 could be modified?

21 REPRESENTATIVE HAHN: I believe there  
22 are some exceptions right now. What I'm looking to  
23 do is have other options for them to use.

24 MINORITY CHAIRMAN VITALI: Right. I'm  
25 trying -- Again, I really didn't do my homework



1 today, but I'm trying to catch up. I'm trying to  
2 get at the -- Because, as I read this and making it  
3 optional, my gut reaction is, why can't you set out  
4 those, like, extraordinary circumstance criteria in  
5 this legislation if, in fact, current law doesn't  
6 already do that? I'm trying to --

7 Do you know what I'm saying? I'm trying  
8 to get at, as I read the bill, it just -- I just  
9 wonder if it can be tightened up a bit. That's  
10 what I'm trying to get at, what current law is.  
11 Have you given any consideration to, rather than  
12 making it simply optional, saying this 150 foot  
13 could be compromised given certain -- if certain  
14 factors were met that would justify compromising an  
15 exceptional-value stream?

16 REPRESENTATIVE HAHN: Maybe Jonathan can  
17 clarify this a little bit better than me. My  
18 understanding is, there's certain options that they  
19 don't have right now; that if we change this, they  
20 would have.

21 MINORITY CHAIRMAN VITALI: I hate to be  
22 intrusive here. Maybe Jonathan could lay out right  
23 now.

24 MR. LUTZ: Yeah. Part of the problem  
25 here is that the one-size-fits-all approach to the

1 buffer regulation, while it does allow for some  
2 exemptions, it can be problematic on the one hand.  
3 And on the other hand, the problem with putting  
4 other best management practices or exemptions into  
5 the bill is, you then run the risk of leaving some  
6 out. So, the bill, in a sense, would defer that to  
7 the department to make the choices as to what best  
8 management practices fit which need.

9           MINORITY CHAIRMAN VITALI: That may  
10 be -- Maybe even some of the subsequent speakers  
11 can talk to this. Conceptually, you have these  
12 broad criteria that, you know, like, extraordinary  
13 circumstances or -- If you just use that broad  
14 legal language we see in a lot of bills, maybe that  
15 would give the department that discretion to make  
16 some exceptions without really compromising. Maybe  
17 we can hear from some others.

18           MAJORITY CHAIRMAN MILLER: I think  
19 you've laid a little bit of groundwork that,  
20 possibly, we can use to listen to what the --

21           MINORITY CHAIRMAN VITALI: Yeah. Sure.

22           MAJORITY CHAIRMAN MILLER: -- next  
23 testifiers will testify to and see how it plays.

24           MINORITY CHAIRMAN VITALI: Thank you.  
25 Sure.

1           REPRESENTATIVE HAHN: I did have a  
2     constituent in my district. A homeowner wanted to  
3     build. They bought a piece of property and didn't  
4     realize the wetlands and things that were involved.  
5     They had a little bit over an acre. So there were  
6     no exceptions for them. They had to put the house  
7     right at the road. They had this big property, but  
8     they could -- there was only one spot they could  
9     put the house.

10           That was something that we're trying to  
11     give exceptions in those cases; other options,  
12     rather, that they could do; maybe vegetation;  
13     something that they could have put in there that  
14     they could have moved the house back. My  
15     understanding is now, that wasn't an option for  
16     them. That's why I'm looking to try to add some  
17     other options.

18           MAJORITY CHAIRMAN MILLER: Again, you're  
19     welcome to join the Committee for the hearing.

20           Our first testifier is Harry Campbell  
21     with the Chesapeake Bay Foundation. Good morning,  
22     Harry. You may proceed when ready.

23           MR. CAMPBELL: Chairman Miller, Chairman  
24     Vitali, and other distinguished members of the  
25     House Environmental Resources and Energy Committee.

1 My name is Harry Campbell, and I'm the Executive  
2 Director of the Pennsylvania Office of the  
3 Chesapeake Bay Foundation. I would like to thank  
4 you today for the opportunity to discuss House Bill  
5 1565 which would alter the riparian buffer  
6 requirement for land developments that require  
7 erosion and sedimentation control and  
8 post-construction stormwater management permits  
9 when occurring alongside Pennsylvania's special  
10 protection waters.

11 A detailed version of my testimony has  
12 been submitted for your consideration.

13 Simply stated, no other pollution  
14 reduction practice provides so much benefit for so  
15 little investment as forested riparian buffers. A  
16 large and robust number of peer-reviewed scientific  
17 studies have documented the expansive water  
18 quality, societal and economic benefits associated  
19 with buffers.

20 For instance, as detailed in my written  
21 testimony, research has continuously indicated that  
22 forested buffers provide significant removal of  
23 non-point source pollution such as nitrogen,  
24 phosphorus and sediment, the leading causes of  
25 stream degradation in Pennsylvania and the major

1 pollutants impacting the Chesapeake Bay. While  
2 site-specific conditions dictate the effectiveness  
3 of buffers, many researchers have concluded that  
4 they can remove upwards of 80 to 90 percent of the  
5 contaminants running off the land when greater than  
6 100 feet in width.

7           Research by the Stroud Water Research  
8 Center in Pennsylvania on Pennsylvania streams has  
9 concluded that forested riparian buffers do  
10 something that no other reduction practice or  
11 stormwater management practice has been documented  
12 to do--increase the pollutant processing in the  
13 stream itself.

14           Specifically, Stroud researchers have  
15 noted that increased in-stream nitrogen processing,  
16 or attenuation, associated with forested riparian  
17 buffers, with such stream is upwards of 200 to 800  
18 percent greater than for non-forested streams.  
19 Even toxic pesticides are degraded at a faster rate  
20 when the stream has a forested riparian buffer  
21 alongside it.

22           Stream-side forests also enhance habitat  
23 for fish and other aquatic organism, a vital  
24 component for maintaining ecological health in our  
25 streams. Woody debris and decaying leaves add

1 organic food and supports biological abundance,  
2 diversity and productivity in streams. In small  
3 upland streams, as much as 75 percent of the  
4 organic food base in the stream may be supplied by  
5 dissolved organic materials and detritus, leaf  
6 material, from the adjacent forest canopy.

7 Benthic macroinvertebrates, the bugs  
8 that live in the stream, feed on this material  
9 forming the basis for aquatic food chain;  
10 therefore, supporting ecologically important, yet  
11 extremely sensitive game species such as  
12 Pennsylvania's native brook trout.

13 While the presence of a forested buffer  
14 clearly improves fish habitat measures and water  
15 quality, the lack of a significant buffer can lead  
16 to severe losses of important game species. A  
17 study of Pennsylvania's streams found increases of  
18 4 to 9 degrees Fahrenheit when a forested buffer is  
19 lost, which is the equivalent of moving the stream  
20 roughly 400 miles south.

21 Studies have noted that not only the  
22 presence, but also the size of the forested buffer  
23 have profound impact on the stream's ability to  
24 support trout populations; a very important  
25 economic fish species in many of our communities.

1 Researchers have found that when a forested buffer  
2 widths were reduced from 100 feet to 50, stream  
3 temperatures and sediments increased, resulting in  
4 81 to 88 percent reduction in young trout  
5 populations. Water-quality benefits and forested  
6 buffers are well-documented.

7           However, studies also indicate that  
8 forested buffers offer numerous economical and  
9 societal benefits as well. The tree canopy created  
10 by a forested riparian buffer contributes to the  
11 health of a stream by maintaining core temperatures  
12 provide healthier habitats for economically and  
13 environmentally important fish species.

14           Recreational fishing provides over  
15 4.75 billion in economic activity to Pennsylvania's  
16 local communities. Buffers, by providing a  
17 fundamental habitat and maintaining cool waters,  
18 play a significant role in supporting local  
19 economies. Stream-side forest provides stormwater  
20 function because they capture, absorb and store  
21 amounts of rainfall up to 40 times greater than  
22 disturbed soils, like agricultural fields and  
23 construction sites, and 15 times more than lawns.

24           Research has consistently concluded that  
25 because of these benefits, those projects would

1 preserve and restore forest buffer systems, often  
2 require less and smaller size stormwater  
3 infrastructure, and can be less land consuming than  
4 traditional stormwater management.

5 In Fairfax County, Virginia, estimated  
6 that such buffers were providing \$57 million in  
7 stormwater reduction benefits annually to local  
8 taxpayers in 1999 dollars. This represents an  
9 opportunity cost that was not realized by the  
10 taxpayers.

11 A 2010 report by the World Resources  
12 Institute found that for each pound of nitrogen  
13 pollution removed by a forested buffer, it cost  
14 roughly \$3.10. Conversely, that same study found  
15 that standard stormwater management practices on  
16 new development sites cost, on average, \$92.40 per  
17 pound of nitrogen pollution removed. In that WRI  
18 study, stream-side forests were found to be nearly  
19 29 times less costly at nitrogen pollution removal  
20 than the typical post-construction stormwater  
21 management technique.

22 Forested buffers also reduced the cost  
23 of treating drinking water. According to Penn  
24 State University, 56 percent of Pennsylvanians get  
25 their drinking water from surface-water sources,



1 including 43,000 miles of streams. Research has  
2 indicated that trees play a vital role in  
3 maintaining the quality of the water entering our  
4 drinking-water treatment plants and, therefore,  
5 reduces the cost of treatment. In fact, studies  
6 indicate that on average, for every 10 percent  
7 decrease in forest cover loss within a watershed,  
8 treatment costs increase approximately 20 percent.

9           The USEPA estimates that treatment cost  
10 to source water protection ratio, which includes  
11 forest buffer restoration and preservation, on  
12 average, is 27 to 1. Thus, for every dollar spent  
13 on source water protection practices, like forested  
14 riparian buffers, \$27 is saved in treatment costs.

15           Homes alongside forest riparian buffers  
16 also enjoy increased property values by adding to  
17 the natural character and providing viewsheds  
18 within the community. In the Pennypack Park area  
19 of Philadelphia, the forested stream buffer network  
20 was found to increase adjacent property values by  
21 33 percent, for a net increase of more than 3.3  
22 million in real estate values.

23           Another buffer network in Bolder,  
24 Colorado, was found to increase property values as  
25 well, resulting in an additional \$500,000 in tax

1 revenue per year. In a national study of 10  
2 programs that diverted development away from stream  
3 edges, researchers discovered that developed land  
4 next to protected flood plains with buffers had  
5 increased economic value of adding an average of  
6 \$10,400 per acre.

7 In a 2010 study in North Carolina  
8 concluded homes adjacent to a preserved buffer had  
9 6,000 to 600 and 800 in added value. Just living  
10 within that subdivision with a preserved buffer,  
11 added \$1,500 in property value.

12 It is because of these clear benefits  
13 that for nearly two decades, Pennsylvania has  
14 invested in restoring the forested buffers that  
15 we've lost. They are an integral component of  
16 Pennsylvania's effort under the Chesapeake Bay  
17 clean water blueprint. Preserving what we have is  
18 paramount to our efforts to protect Pennsylvania's  
19 best streams, restore water quality in degraded  
20 streams, and maintain the Chesapeake Bay clean  
21 water group in progress.

22 In conclusion, the science is robust and  
23 clear. Stream-site forests are one of the best  
24 practices we have at restoring and protecting  
25 Pennsylvania's rivers and streams. No other

1 pollution reduction practice provides so much  
2 benefit for so little investment. Thank you.

3 MAJORITY CHAIRMAN MILLER: Thank you,  
4 Mr. Campbell. We'll go to some questions.  
5 Representative Vitali.

6 MINORITY CHAIRMAN VITALI: Maybe you can  
7 take a shot at the question we posed earlier. The  
8 issue of what criteria exists now to modify -- does  
9 the DEP have to modify existing -- What criteria  
10 now is in place, if at all, for the DEP to modify  
11 the 150-buffer requirements under certain  
12 circumstances? Do any exists?

13 MR. CAMPBELL: There are a number of  
14 waivers that are specific to the regulation. I  
15 believe that answer should be most robustly  
16 addressed by the Department of Environmental  
17 Protection. But the idea was that, certainly to  
18 try to avoid the hardship of the individual  
19 homeowner; thus, therefore, when looking at those  
20 thresholds for permitting requirements. But, there  
21 are a number of waivers that have been --

22 MINORITY CHAIRMAN VITALI: Got it.

23 MR. CAMPBELL: -- requested and asked  
24 for.

25 REPRESENTATIVE VITALI: I know in my

1 neck of the woods, we don't have a lot of  
2 exceptional-value streams. We have the normal  
3 streams, but we have these tremendous flooding  
4 problems. Like Darby Borough, for example, it just  
5 gets killed with flooding. One of the reasons  
6 cited is because we've developed those stream  
7 sides. I know that one of the benefits generally  
8 of buffers is that water absorption that prevents  
9 that sudden rush of water that prevents damages  
10 downstream.

11 Is that an argument that can be made for  
12 exceptional-value and high-quality streams also?  
13 Or, is that a -- are those in areas which don't  
14 have those downstream flooding issues? What I'm  
15 saying is, is the flooding prevention issue  
16 relevant to high-quality and exceptional-value  
17 streams?

18 MR. CAMPBELL: It's a component of it.  
19 Certainly, you see high-quality and exceptional-  
20 value streams that do have or are upstream of  
21 boroughs and communities, older developments.  
22 There are a number of streams that have that  
23 component associated with them; whether it be those  
24 kind of downtown scenarios or large lot development  
25 that has occurred over the decades.

1                   MINORITY CHAIRMAN VITALI: I was  
2                   thinking of Representative Hahn's example of that  
3                   homeowner and couldn't get her development -- I was  
4                   thinking maybe that was protecting some  
5                   constituents downstream from it. Okay, thank you.

6                   MAJORITY CHAIRMAN MILLER: Thank you.  
7                   Representative Evankovich.

8                   REPRESENTATIVE EVANKOVICH: Thank you,  
9                   Mr. Chairman. Just a real brief clarification  
10                  question.

11                  In much of your testimony you were  
12                  referring to forested buffers. I think that part  
13                  of the discussion here is talking about buffers  
14                  that are not forested; buffers that are just stream  
15                  banks and fields, maybe with development right up  
16                  against them.

17                  My question is, all the statistics and  
18                  everything, you had cited from places like, I think  
19                  you said Stroud, which I'm not sure who they are.  
20                  But some of the statistics you had cited, did they  
21                  take into account that not everywhere where the  
22                  exceptions might be applied would be non-forested  
23                  buffers to begin with?

24                  MR. CAMPBELL: Yes. One of the things,  
25                  for instance, if you look at the Stroud Water

1 Research Center, the data, and many of the other  
2 data, and including some of the graphics therein,  
3 it does distinguish between forested riparian  
4 buffers as well as buffers associated with other  
5 types of vegetation. The distinguishing factor  
6 there is, forested buffers, based on the research,  
7 are exponentially greater in their total  
8 effectiveness, regardless of the parameter that  
9 you're looking at, generally. And they also  
10 provide in-stream habitat as well as processing,  
11 compared to, say, a grass buffer, which has its  
12 individual benefits as well. Certainly, it is  
13 greater than no buffer at all. It's greater than  
14 --

15           When I speak of grass, we're talking  
16 about native vegetation as opposed to lawn right up  
17 to the extent of the bed-stream bay. So, there are  
18 differentiations between the two, but a buffer of  
19 any sort is better than no buffer at all.

20           (Pause).

21           MAJORITY CHAIRMAN MILLER: Have you  
22 completed, Representative?

23           (No response).

24           MAJORITY CHAIRMAN MILLER: Okay.  
25 Representative Barbin.

1           REPRESENTATIVE BARBIN: Thank you, and  
2 thank you for your testimony, Mr. Campbell. I was  
3 just wondering. Looking through this when we're  
4 looking at the map, it basically shows an area of  
5 northeastern Pennsylvania that is going to be  
6 eliminated from development if these rules stay in  
7 effect. Are there any other states that are using  
8 150-foot buffer that have looked at it the same  
9 sort of approach that Representative Hahn is  
10 looking at?

11           As I understand her bill, she's looking  
12 for some flexibility that will allow some  
13 development while providing some balance for water-  
14 quality issues. Is any other state in our area  
15 looking at the same issues as Representative  
16 Hahn's?

17           REPRESENTATIVE HAHN: As it pertains to  
18 other states, a large percentage of those in the  
19 Mid-Atlantic region, particularly Maryland,  
20 Virginia, New Jersey, have rules either similar to  
21 ours in Chapter 102 or actually greater than ours.  
22 In the instance of New Jersey, where the buffer  
23 with the requirements are actually, roughly 300  
24 feet associated with the type of streams that we're  
25 talking about.

1           The waiver scenario is roughly the same.  
2 We modeled that from the other states. However,  
3 it's not precisely the same. I can't speak to the  
4 level of detail that they may or may not be having  
5 conversations similar to this, although those  
6 particular buffer requirements are longstanding in  
7 many regards.

8           REPRESENTATIVE BARBIN: Is New York  
9 looking at revising their law similar to  
10 Representative Hahn's bill?

11           MR. CAMPBELL: I'm not familiar with New  
12 York doing such, nor am I familiar with any other  
13 state looking at these things.

14           One of the components of this is that,  
15 why forested buffers? Why has this been primarily  
16 called out, particularly for those exceptional-  
17 value streams. Why other states have done this is  
18 because of the benefits I note in my testimony;  
19 that it's not only just water quality, stormwater  
20 management, but ecological health. No other best  
21 management practice offers the most bang for the  
22 buck in that regard. That's why others states and  
23 sites have really prioritized it as a fundamental  
24 practice.

25           REPRESENTATIVE BARBIN: My only question



1 from the testimony that you provided from what we  
2 heard up to now is that, if you accept the premise  
3 that one size fits all, then you've basically said  
4 no matter where you are, whether you're in  
5 northeastern Pennsylvania or southwestern  
6 Pennsylvania, you have to have this one rule. To  
7 me, when you start doing that and you start taking  
8 that away from local decision making, you end up  
9 not being equal under the law. You end up being  
10 unequal.

11 I still have some questions, but thank  
12 you for your testimony and information.

13 MAJORITY CHAIRMAN MILLER:

14 Representative McCarter.

15 REPRESENTATIVE McCARTER: Thank you, Mr.  
16 Chairman. If I could go back to the question  
17 before that was raised a little bit earlier by  
18 Representative Hahn in terms of current homeowner  
19 wanted to do a project, and whether, in fact, they  
20 were impacted by this, can you help us out a little  
21 bit with the nature of who would actually be  
22 covered? Under the current law, my understanding  
23 was that current homeowners, or whoever owns  
24 property along these particular areas, is exempt  
25 already under the requirement. Is that correct or

1 not?

2 MR. CAMPBELL: That's correct. If you  
3 are a current homeowner and you live alongside of  
4 these areas, you are exempt unless you will be  
5 proposing a development on that land that is  
6 greater than one acre in size, and thus, requiring  
7 an NPDES or -- basically, a permit for erosion,  
8 sedimentation control and post-construction  
9 stormwater management.

10 REPRESENTATIVE McCARTER: So the key is  
11 the one-acre limitation at that particular point.

12 MR. CAMPBELL: Right.

13 REPRESENTATIVE McCARTER: That means the  
14 property itself is one acre or the development is  
15 over an acre?

16 MR. CAMPBELL: The land disturbance area  
17 is greater than one acre.

18 REPRESENTATIVE McCARTER: Thank you.

19 MAJORITY CHAIRMAN MILLER:

20 Representative Carroll.

21 REPRESENTATIVE CARROLL: Thank you, Mr.  
22 Chairman. As Representative Barbin pointed out,  
23 those of us from northeastern Pennsylvania have  
24 real questions here when it comes to this 150-foot  
25 buffer. The map essentially eliminates any

1 development in Wayne, Pike, Monroe, and big parts  
2 of Carbon, Northampton, Lackawanna and Luzerne.

3           The reality is that, those of us, I will  
4 say many of us in the House and Senate that may be  
5 supporters of the 150-foot riparian buffer in all  
6 likelihood will be on the phone with DEP asking for  
7 some sort of an exception because of the unique  
8 circumstances that might exist in a particular  
9 region of our state.

10           And so, like others in this room and on  
11 the Committee, I am a believer that we should have  
12 some flexibility. And to have a single rule that  
13 applies to all 67 counties, regardless of what the  
14 unique circumstances are, seems unreasonable.

15           The other irony that I would point out  
16 is that, the rules that are now being imposed on  
17 the Poconos mostly, are being imposed on  
18 communities that have done a wonderful job to the  
19 extent that they have all these exceptional-value  
20 streams. So, the very communities that we're going  
21 to impact with this rule, over the course of the  
22 life of the Commonwealth, have done a wonderful job  
23 with respect to managing development to have the  
24 streams in the first place as exceptional-value and  
25 high quality.

1           There seems to be some unbelievable  
2 irony there from my perspective, that we're going  
3 impose these harsh rules on the very communities  
4 that have done a wonderful job in maintaining these  
5 exceptional-value streams, and the communities that  
6 don't have the exceptional-value streams, the  
7 development has already been completed. It's  
8 probably a little bit late with this whole thing  
9 with respect to where we are now. To impose it now  
10 at this point seems grossly unfair to me.

11           From my perspective, I'd like to have  
12 some flexibility, because this 150-foot buffer rule  
13 has a direct effect on eastern Pennsylvania in a  
14 very unfair way; and, by the way, north central  
15 Pennsylvania, too, as I look at this map. I  
16 appreciate the desire and understanding the  
17 importance of requiring buffers. But, a one-size-  
18 fits-all approach generally is not a model that I  
19 embrace.

20           I just point that out, not expecting an  
21 answer to the question. I understand your  
22 position. But I appreciate the testimony. I just  
23 wanted to highlight the unique circumstances that  
24 are in play here when you look at this map.

25           MAJORITY CHAIRMAN MILLER: Thank you.

1 You've been quite generous with your time here,  
2 Harry, but one more question or maybe two.  
3 Representative Pyle.

4 REPRESENTATIVE PYLE: Thank you, Mr.  
5 Chairman. I apologize for arriving late. I need a  
6 couple of blanks filled in, if you could.

7 MR. CAMPBELL: Sure.

8 REPRESENTATIVE PYLE: You're saying, as  
9 the representative has pointed out, northeast PA  
10 has done exceptional work with EV streams and  
11 whatnot. Are you saying now that because of this  
12 rule, that if you are within a football field of a  
13 stream, people have to come to you basically for  
14 permits to do whatever they want to do?

15 MR. CAMPBELL: No. Certainly not me,  
16 because it's not --

17 REPRESENTATIVE PYLE: DEP.

18 MR. CAMPBELL: -- DEP. But they would  
19 be going to DEP for permits regardless.

20 REPRESENTATIVE PYLE: Even on somebody's  
21 private land?

22 MR. CAMPBELL: If they already live on  
23 that stream side, and they're just proposing to  
24 keep on living as they have in the past, there's  
25 absolutely nothing that they're required to do.

1 It's only if they're proposing a development  
2 project that disturbs greater than one acre in size  
3 what they have.

4 REPRESENTATIVE PYLE: Even on  
5 privately-held land, a farm? Say a farmer has  
6 streams running through his property and he wants  
7 to put up a meat shop?

8 MR. CAMPBELL: Typically, if they need  
9 an NPDES permit for erosion, sedimentation control  
10 and post-construction stormwater management, then  
11 they would also be falling under the guise of this  
12 rule.

13 REPRESENTATIVE PYLE: So if this guy  
14 wants to put up a meat shop and he's down by the  
15 stream, you're going to make him plant 150 feet of  
16 trees between him and the stream to get the permit?

17 MR. CAMPBELL: No. Only if -- The only  
18 requirement to actually restore the forested  
19 riparian buffer is if that stream is already not  
20 meeting water quality standards and officially  
21 determined to be impaired under the Integrated  
22 Water Resources report, which is the Department of  
23 Environmental Protection. Otherwise, they just  
24 have to stay away from it.

25 REPRESENTATIVE PYLE: Thank you for

1 your -- They just what? Say the last part again?

2 MR. CAMPBELL: Otherwise, the 150-foot  
3 setback is just -- they don't have to do anything  
4 with it because it's already there. So unless  
5 they're disturbing --

6 REPRESENTATIVE PYLE: That part about  
7 stay away from it caught my attention.

8 MR. CAMPBELL: I apologize. What I mean  
9 is that, they have to stay outside of the boundary  
10 of the forested riparian buffer. If there's no  
11 impairment, they don't have to do anything  
12 associated --

13 REPRESENTATIVE PYLE: Who determines  
14 impairment?

15 MR. CAMPBELL: Department of  
16 Environmental Protection.

17 REPRESENTATIVE PYLE: Okay.

18 MAJORITY CHAIRMAN MILLER: And they're  
19 up next, Representative Pyle.

20 REPRESENTATIVE PYLE: Thank you for the  
21 clarification.

22 MAJORITY CHAIRMAN MILLER: Thank you,  
23 Mr. Campbell, for your testimony. Thank you.

24 Up next is Kelly Heffner, Deputy  
25 Secretary for Water Programs, Pennsylvania

1 Department of Environmental Protection. Welcome,  
2 Ms. Heffner.

3 MS. HEFFNER: Good morning, sir. How  
4 are you?

5 MAJORITY CHAIRMAN MILLER: Wonderful.  
6 You may proceed when you're ready.

7 MS. HEFFNER: Thank you. Chairman  
8 Miller and Chairman Vitali, thank you for the  
9 opportunity to appear before you today to discuss  
10 House Bill 1565. The department can be supportive  
11 of this legislation given sufficient flexibility is  
12 included to ensure projects undertaken remain  
13 protective of water quality.

14 The Commonwealth has an obligation to  
15 maintain existing and designated water quality  
16 uses. However, there are several ways to adhere to  
17 this obligation. One, but not the only one, of  
18 which is to use the use of riparian buffers and  
19 riparian forested buffers.

20 Pennsylvania's riparian buffer  
21 requirements found in Chapter 102 were developed  
22 under the authority of the Clean Streams Law.  
23 These portions of the law not only underscore the  
24 inherent obligation to protect water quality as a  
25 trustee of the Commonwealth's resources, but also



1 the economic necessity of maintaining clean waters.

2 Since the Chapter 102 buffer  
3 requirements became effective in 2010, DEP has  
4 issued approximately 6,337 NPDES stormwater  
5 construction permits. Of those 6,337 permits, 155  
6 permits included riparian buffers, and of that  
7 subset of 155, 75 permits qualified for waivers of  
8 the riparian buffer requirements.

9 Riparian buffers are an effective tool  
10 in reducing the quantity of non-point source  
11 pollutants found in stormwater entering streams.

12 Some of these documented benefits of riparian  
13 buffers include, the reduced effects of storm  
14 events, flood attenuation, ice damage control,  
15 infiltration and maintenance of stream flow,  
16 filtration of pollutants in runoff, pollutant  
17 processing, channel and shoreline stability, and  
18 light control, meaning light from the sun, and  
19 water temperature moderation.

20 Riparian buffers, including riparian  
21 forest buffers, can be a cost-effective means of  
22 limiting pollution associated with stormwater  
23 runoff. The cost of engineered stormwater best  
24 management practices, commonly referred to as BMPs,  
25 are generally more expensive, varying between \$500

1 per acre to \$10,000 per acre to construct, you  
2 incur annual maintenance costs and typically needs  
3 replaced every 20 to 30 years. Riparian forest  
4 buffers, on the other hand, can cost between zero  
5 and \$4,800 per acre to establish, and are  
6 relatively cost free to maintain once established.

7 Although riparian buffer requirements  
8 apply to roughly 31 percent of streams in  
9 Pennsylvania, the development of the Chapter 102  
10 regulations recognize certain areas of the  
11 Commonwealth, such as the northeast, contain  
12 substantial numbers of HQ and EV water.

13 Section 102.14 of the regulations  
14 contain the following nine exemptions to the buffer  
15 requirements. You have the testimony and you can  
16 review those at your convenience. I would like to  
17 identify specifically, though, road maintenance  
18 activities, the repair and maintenance of existing  
19 pipelines and utilities, oil and gas, timber  
20 harvesting, and mining activities for which site  
21 reclamation or restoration is part of the permit  
22 authorization, and then a single-family home not  
23 part of a larger common plan of development where  
24 the parcel was acquired prior to November 19, 2010.

25 Further, if a development project is

1 unable to qualify for one of the nine exemptions  
2 listed above, Chapter 102 also contains six waiver  
3 provisions that may be secured in order to allow  
4 the project to continue. If an applicant can  
5 demonstrate that there are reasonable alternatives  
6 for compliance with the riparian buffer  
7 requirements of Chapter 102, and so long as any  
8 existing riparian buffer is undisturbed to the  
9 maximum extent practicable, the following waivers  
10 may be granted.

11           Again, at your convenience you can  
12 review these in detail. However, the projection is  
13 necessary to abate a substantial threat to public  
14 health or safety. Linear projects, abandoned mine  
15 reclamation, projects of a temporary nature,  
16 redevelopment projects, and projects for which  
17 compliance with general requirements for riparian  
18 buffers or riparian forest buffers is not  
19 appropriate or feasible due to site characteristics  
20 or existing structures at the project site.

21           As described above, Chapter 102 contains  
22 a number of exemptions and waivers to allow for the  
23 environmentally responsible development along  
24 special protection waters, and DEP's internal  
25 permitting data bear this out. There is a chart

1 included in the testimony that identifies the  
2 construction permit projects by region. DEP  
3 analyzed this data from November 19, 2010, which  
4 was the effective date of the Chapter 102 buffer  
5 requirements. During that time period we covered  
6 earlier in the testimony, the 155 permits that were  
7 issued, this chart indicates -- or this bar graph  
8 indicates the location by DEP region those 155 --  
9 location is 155.

10 Many applicants assumed riparian buffer  
11 waivers would be required. However, upon future  
12 investigation of their project, frequently riparian  
13 buffer waivers were unnecessary. Fifty-nine of the  
14 155 projects did not need to apply for the buffer  
15 waiver. This was due to a number of factors,  
16 including limiting their disturbance for the  
17 project to areas 150 feet or farther from the water  
18 body, the project including an allowable activity  
19 such as a bridge or stream crossing, or the project  
20 qualifying for one of the nine exemptions  
21 identified in Section 102.14.

22 Again, the department has an obligation  
23 to maintain existing and designated water-quality  
24 uses. However, there are several ways to adhere to  
25 this obligation, one, of which, is the use of

1 riparian buffers and riparian forested buffers.

2 The department should be authorized on a  
3 case-by-case basis to require riparian buffers or  
4 riparian forested buffers, if the department  
5 determines that doing so is necessary to protect  
6 water quality.

7 DEP again thanks the Committee for the  
8 opportunity to present testimony, and I would  
9 certainly be happy to take questions.

10 MAJORITY CHAIRMAN MILLER: Thank you for  
11 your testimony. It helped to answer a few of the  
12 questions that arose earlier. Representative  
13 Vitali.

14 MINORITY CHAIRMAN VITALI: Yeah, thank  
15 you. I should have read this beforehand.

16 So there are the regs set out, nine  
17 exemptions -- nine categories of exemptions and six  
18 categories of waivers that can be employed to get  
19 around -- or to develop in that 150-foot zone. I  
20 should know this, but exemptions versus waivers,  
21 just sort of explain conceptionally.

22 MS. HEFFNER: Conceptionally, the  
23 exemption is something that you would be able to  
24 determine that you fit into as you're preparing  
25 your application or you're preparing your site

1 plan.

2 The waiver, on the other hand, is  
3 something that requires a bit more detail to be  
4 submitted to the department. Then the department  
5 will evaluate that information and determine if the  
6 waiver is appropriate.

7 REPRESENTATIVE VITALI: Is there  
8 discretion with regard to a waiver; if you meet the  
9 exemption you --

10 MS. HEFFNER: If you meet an exemption,  
11 you don't need to meet a waiver.

12 REPRESENTATIVE VITALI: Got it. You had  
13 mentioned, did you say 75 waivers have been granted  
14 -- or 75 waivers and exemptions have been -- You  
15 mentioned 75 either waivers or waivers and  
16 exemptions. I was trying to get at over what time  
17 period -- I just want to kind of pin that down.

18 MS. HEFFNER: The data we've recorded in  
19 this testimony is from November 19th, 2010, which  
20 was the effective date of the regulations until, I  
21 would say, yesterday; not today.

22 REPRESENTATIVE VITALI: So in that time  
23 frame, 75 waivers have been granted? Is that what  
24 you're saying?

25 MS. HEFFNER: It's 155 permits included

1 riparian buffers. Of that subset, 75 qualified for  
2 waivers.

3 REPRESENTATIVE VITALI: So, are you  
4 saying half?

5 MS. HEFFNER: Right. Half of the ones  
6 that were -- we were evaluating under the buffer  
7 requirements. I think, perhaps, a more telling  
8 number is that, over that same period of time, the  
9 department actually issued over 6,000 NPDES  
10 construction permits.

11 REPRESENTATIVE VITALI: Is it safe to  
12 say you do, with some regularity, grant waivers?  
13 I'm just getting --

14 MS. HEFFNER: Yeah, I think that's a  
15 fair sentence.

16 REPRESENTATIVE VITALI: So it's not  
17 bottling up development and buffers completely?  
18 You do look and --

19 MS. HEFFNER: I think there remains  
20 concerns in the developing community. One of the  
21 things that we've attempted to do, both just  
22 generally and through our permit decision guarantee  
23 program, is strongly encourage pre-application  
24 meetings. We don't necessarily want folks to  
25 assume anything on their own, and our doors are

1 wide open to help folks through this process and  
2 determine whether they do fit into an exemption or  
3 a waiver; and if not, how they can proceed, and we  
4 can provide suggestions on, you know, site layout.

5 REPRESENTATIVE VITALI: Thank you.

6 MAJORITY CHAIRMAN MILLER:

7 Representative Ross.

8 REPRESENTATIVE ROSS: I'm still a little  
9 confused by your figure 1 chart. And I guess maybe  
10 my question would be, how many waivers were applied  
11 for that were turned down during that time period?

12 MS. HEFFNER: I don't have that  
13 specifically in front of me, but I do believe the  
14 answer is zero. I will double check it to make  
15 sure I'm not misrepresenting it.

16 REPRESENTATIVE ROSS: Okay.

17 MS. HEFFNER: But I don't think we --

18 REPRESENTATIVE ROSS: I'd like you to  
19 let us know that. In other words, if somebody  
20 asked for a waiver, basically, over the last three  
21 plus years, they got it.

22 MS. HEFFNER: Um-hm.

23 REPRESENTATIVE ROSS: Thanks.

24 MS. HEFFNER: Sure.

25 MAJORITY CHAIRMAN MILLER: Thank you,



1 Representative Ross. Representative Evankovich.

2 REPRESENTATIVE EVANKOVICH: Thank you,  
3 Mr. Chairman. And thank you, Miss Heffner, for  
4 your testimony. I'd like to real briefly applaud  
5 you and your office, because several projects in my  
6 district had applied for waivers.

7 My first question is maybe add a little  
8 granularity to Representative Ross's question. By  
9 saying that none were denied that applied, can you  
10 speak to maybe why they weren't denied? Did they  
11 have to alter their development plans in some way?  
12 Did they have to meet other requirements in order  
13 to obtain that permit? Was there something they  
14 had to do differently; waiver from an original  
15 plan?

16 MS. HEFFNER: And I do want to preface  
17 this with I don't have that specific information in  
18 front of me. But, I think that's probably a fair  
19 observation. We work with folks to try to get an  
20 approvable project in the file.

21 REPRESENTATIVE EVANKOVICH: So, for the  
22 benefit of the Committee, by saying that none were  
23 denied doesn't really tell the whole picture. The  
24 whole story is that, yes, they were granted some  
25 type of a waiver, but it might have substantially

1 altered the original development plans that they  
2 had?

3 MS. HEFFNER: We will check into that  
4 and report that back with the first piece of  
5 information.

6 REPRESENTATIVE EVANKOVICH: Thank you.  
7 The second question I have, in this permitting  
8 process and in the process for obtaining the  
9 waiver, what role do the conservation districts  
10 play in the process, if any?

11 MS. HEFFNER: Typically, the department  
12 does the evaluation related to the waivers.

13 REPRESENTATIVE EVANKOVICH: Okay. Thank  
14 you.

15 MAJORITY CHAIRMAN MILLER:  
16 Representative Carroll.

17 REPRESENTATIVE CARROLL: Thank you, Mr.  
18 Chairman. Thank you for your testimony, ma'am.

19 I think just for some context here, at  
20 the very beginning of your testimony, I believe  
21 that you indicated that the department is  
22 supportive of the legislation.

23 MS. HEFFNER: Yes, sir.

24 REPRESENTATIVE CARROLL: So, when we  
25 consider the exemptions and the waivers that are

1 available, you know, I find it curious that,  
2 despite those exemptions and waivers, the  
3 department still feels compelled to support the  
4 legislation.

5 So, my conclusion from that is that the  
6 department doesn't feel the exemptions and waivers  
7 are thorough enough to be able to accommodate all  
8 the various scenarios that exist?

9 MS. HEFFNER: I would, perhaps, add that  
10 every now and then we do run into some  
11 implementation challenges. I think increasing  
12 flexibility in our regulations is always useful.

13 REPRESENTATIVE CARROLL: Okay. And  
14 again, I'm not an engineer. Legislator instead.

15 MS. HEFFNER: I'm not either.

16 REPRESENTATIVE CARROLL: I'm sorry?

17 MS. HEFFNER: I'm not either.

18 REPRESENTATIVE CARROLL: Fair enough.  
19 The nine exemptions that I read and the waivers  
20 that are in your testimony, it seems to me that the  
21 typical project probably wouldn't qualify for any  
22 of those nine exemptions. Just when I look at the  
23 actual language that's embedded in each of the  
24 nine, I'm not sure that -- they seem very, very  
25 narrow in their prescription. You don't have to

1 answer that. It's just my own interpretation of  
2 what the nine are, and probably --

3 I'll conclude, that is probably one of  
4 the reasons why the department has taken a position  
5 in support of the legislation.

6 I just get back to the unique  
7 circumstances that exist in our corner of the  
8 state, and the real need to have some sort of  
9 flexibility because, despite the department's  
10 willingness to support exceptions and waivers in  
11 2013 and 2014, for those of us that represent that  
12 corner of the state, we have to think about who's  
13 going to be sitting in your chair three or four  
14 years from now, and who's going to be at the  
15 department in DEP with respect to how this is going  
16 to proceed.

17 From the perspective of northeastern  
18 Pennsylvania, I appreciate the department's support  
19 for the legislation and the willingness to go  
20 forward with some additional flexibility. I'll  
21 stop there. Thank you, Mr. Chairman.

22 MAJORITY CHAIRMAN MILLER: Thank you.  
23 Seeing no other questions, thank you for your  
24 testimony. I apologize. Representative  
25 Santarsiero.

1           REPRESENTATIVE SANTARSIERO: Thank you,  
2 Mr. Chairman. I'm over here in the corner, so, no  
3 worries. Thank you for your testimony this  
4 morning.

5           Hearing Representative Carroll's  
6 concerns, I'd like to get a better sense of the  
7 facts. Because I look at the statistics you have  
8 here, and you have 2.4 percent of these 6,337  
9 applications have riparian buffer issues. Is there  
10 any analysis -- Because the map that was provided  
11 with the previous witness's testimony is a map that  
12 doesn't provide the detail of different areas of  
13 the state that I think would be helpful.

14           Looking, for example, at the northeast  
15 part of the state, has there been any analysis of  
16 just how much of an impact these regulations are  
17 having? In other words, the numbers you have in  
18 front of us here don't suggest that for most  
19 development throughout the state, this is really  
20 much of an issue right now. I'm curious as to,  
21 again, trying to get my arms around the facts,  
22 because I think before any legislation like this is  
23 ultimately considered by this Committee or the  
24 entire House, we should really have a better sense  
25 of exactly what the impact is, so that, if there is

1 some proposed fix, we're sure that it's narrowly  
2 tailored to actually deal with a problem as opposed  
3 to a perceived problem.

4 MS. HEFFNER: That's a good observation.  
5 We have done an analysis, I think twofold is  
6 probably a best way to describe it, and we can make  
7 sure that information gets over here. One of the  
8 things that we've done is look at the HQ and EV  
9 stream throughout the Commonwealth. And, by and  
10 large, you're absolutely correct. It's in the  
11 northeast part of the state. What I will do is  
12 collect that information and get that sent over  
13 here in terms of the percent of HQ/EV streams over  
14 the entire 86,000 miles of stream in the  
15 Commonwealth. That's one thing we can get you.

16 The other thing that we will provide is,  
17 also, I think in tandem to the information we're  
18 going to provide, number 1, which is the types of  
19 applications we received and the way those  
20 applications have been evaluated. The thing that  
21 the department can't speak to is decisions that  
22 folks have made about parcels where they either  
23 have never applied or they've made assumptions on  
24 their own. So, if we haven't been engaged in the  
25 conversation, then I don't think the department can

1 speak to those outcomes.

2 REPRESENTATIVE SANTARSIERO: Mr.  
3 Chairman, if I may. I appreciate that, and that's  
4 an important point for us to consider as well. And  
5 this may just be beyond the scope of the  
6 department's ability to gather this kind of  
7 information. But, is there any resource out there  
8 that we can turn to to get some handle on how many  
9 acres of land are being impacted by this in terms  
10 of acres of land that would not be developable in  
11 any way?

12 MS. HEFFNER: I think through, maybe,  
13 some GIS applications, that's something that we  
14 might be able to take a stab at. I guess I'm not  
15 wholly committed to the fact that there's parcels  
16 that are undevelopable. I think maybe we want to  
17 either have a more detailed conversation about that  
18 or --

19 Again, I know folks don't always  
20 appreciate that the process isn't simple. As much  
21 as we want to provide certainty, sometimes we do  
22 need to work with individual applicants on a  
23 one-on-one basis to help them and their engineers  
24 through that siting process.

25 REPRESENTATIVE SANTARSIERO: Mr.

1 Chairman, if I may. I appreciate that response,  
2 because I think, really, the issue that's  
3 ultimately going to be in front of this Committee  
4 with respect to this legislation is, exactly what  
5 is the impact, and what is the impact that the  
6 legislation is attempting to ameliorate, because  
7 there are lots of -- As Representative Evankovich I  
8 think tried to get at earlier, there are lots of  
9 levels of impact. It may mean in some  
10 circumstances one fewer house in a development,  
11 right?

12 MS. HEFFNER: Absolutely.

13 REPRESENTATIVE SANTARSIERO: It may mean  
14 more clustered development. There are lots of  
15 different impacts that ultimately could flow from  
16 this. And before we actually pass legislation, I  
17 think we ought to have a much better sense of what  
18 those impacts are.

19 MS. HEFFNER: And we will do our best to  
20 collect that data and get that back over here.

21 REPRESENTATIVE SANTARSIERO: Right.

22 Thank you.

23 MAJORITY CHAIRMAN MILLER:

24 Representative Barbin.

25 REPRESENTATIVE BARBIN: I'm going to



1 follow up on Representative Santarsiero's request.  
2 In your testimony you have figure 1, the NPDES  
3 stormwater permits by region. If you could provide  
4 the Committee with maybe six -- Since you break  
5 them down into regions anyway, if you could provide  
6 us with maybe a map that's similar to Chesapeake  
7 Bay's testimony on the statewide level. If you  
8 could do that on a regional level for each of the  
9 regions, that might give us a better idea how many  
10 streams are really affected.

11 The problem with their blow-up map is,  
12 it's too small to really make any sense for the  
13 other regions other than the northeast. If you  
14 have that information and you would be able to  
15 submit it to the Committee, I think that will help  
16 us.

17 MS. HEFFNER: We'll see what we have,  
18 and we'll do our best.

19 MAJORITY CHAIRMAN MILLER: I believe  
20 Representative Vitali has one follow-up question,  
21 and then we'll move forward.

22 REPRESENTATIVE VITALI: I'm trying to  
23 focus in on the issue of your statement that the  
24 DEP supports this legislation, because you talked  
25 earlier about the nine exemption criteria and six

1 waiver criterion, and it seemed like a logical  
2 approach here.

3 Do you support this bill as it's  
4 written, or do you support this bill with  
5 amendments you would be preparing to preserve  
6 criteria to protect riparian buffers?

7 MS. HEFFNER: I think probably the best  
8 answer to that question is, we would be more than  
9 welcome to sit with whoever you would like us to  
10 sit with and talk this through. I guess I don't  
11 have anything specifically written today to  
12 answer --

13 REPRESENTATIVE VITALI: So you're not  
14 necessarily supporting this bill as written?

15 MS. HEFFNER: I think we would like to  
16 continue to talk through it.

17 REPRESENTATIVE VITALI: I mean, this  
18 bill, as written, is that going to knock out the  
19 entire waiver and exception criteria if it's  
20 just -- as I read it, possibly, is that what it's  
21 going to do?

22 MS. HEFFNER: I'm not sure that I'm the  
23 best person to answer that today, but I do know  
24 we're interested in talking about additional  
25 flexibility.

1           REPRESENTATIVE VITALI: Maybe a final  
2 point, which you may not even want to answer. I've  
3 just have been around long enough to know that the  
4 policy decisions of an administration may differ  
5 widely than the feelings of the program people that  
6 enter the Department of Environmental Protection,  
7 scientists, engineers; other people who enter it to  
8 protect the environment may differ from an  
9 administration, which kind of comes in and dictates  
10 positions on issues.

11            Could you just give me a sense for where  
12 this -- I know you may get yourself in trouble,  
13 but --

14           MAJORITY CHAIRMAN MILLER: I was just  
15 going to say, I'm not sure --

16           REPRESENTATIVE VITALI: I'll withdraw  
17 that question. We'll continue that as a statement.

18           MS. HEFFNER: Some of you who know me I  
19 very rarely can keep my mouth shut, but --

20           REPRESENTATIVE VITALI: Yeah, that's my  
21 concern, how the program people who are the  
22 experts--I've seen this in many instances in my 21  
23 years--their opinions on an issue may differ from  
24 the top layer or two of government who comes in and  
25 is more politic driven and policy driven, if you

1 know what I'm saying.

2 MS. HEFFNER: I know exactly what you're  
3 saying.

4 REPRESENTATIVE VITALI: You don't have  
5 to answer that.

6 MS. HEFFNER: Okay. Cool.

7 MAJORITY CHAIRMAN MILLER: With that,  
8 thank you very much.

9 MS. HEFFNER: You're quite welcome.  
10 Thank you welcome.

11 MAJORITY CHAIRMAN MILLER: Whatever you  
12 want to send, send it to my office.

13 MR. HEFFNER: Very good. Thank you.

14 MAJORITY CHAIRMAN MILLER: Next up on  
15 your agenda it says Marel Raub. She's is the  
16 Pennsylvania Director for the Chesapeake Bay  
17 Commission. She's being joined today by Ann  
18 Swanson, who is the Executive Director for the  
19 Chesapeake Bay Commission. Ann's office is in  
20 Annapolis. And in full disclosure, I sit on the  
21 Chesapeake Bay Commission, so I get to work with  
22 these two ladies quite extensively. When you're  
23 ready, you may proceed.

24 MS. SWANSON: I'll start by taking you  
25 at sort of a more macro scale. First of all, I

1 want to thank Chairman Miller, Chairman Vitali, and  
2 all the Committee members and guests for allowing  
3 us this time to speak. It's an extraordinary  
4 opportunity, in part, just because we work at the  
5 tri-state scale, which I'll explain. The other  
6 reason is because of the incredible importance of  
7 buffers in terms of environmental protection and  
8 water-quality protection; and, actually, quality of  
9 life. I'll try to go over some of that.

10 By way of background so you can put the  
11 comments into a context, I'm the executive director  
12 of a tri-state legislative commission that advises  
13 the general assemblies of Pennsylvania, Maryland  
14 and Virginia on matters of Chesapeake Bay-wide,  
15 watershed-wide concern. It's made up of seven  
16 members from each of the three states. So here in  
17 Pennsylvania, your own Representative Ron Miller is  
18 not only the chairman of the Pennsylvania  
19 delegation, but also the full commission this year  
20 at that tri-state level.

21 Also, Senator Brubaker is Pennsylvania's  
22 delegation vice chair. Representative Garth  
23 Everett is a member of the commission, as is  
24 Representative Sturla, Secretary Chris Abruzzo  
25 representing the Governor, and Warren Elliott, our

1 citizen member. There is also a second member from  
2 Pennsylvania Senate. That was Senator Waugh until  
3 his recent retirement, so that slot is vacant.

4 You can imagine the commission, there  
5 are seven members from the other two states as  
6 well, including two senators and three House  
7 members from each of those jurisdictions. So the  
8 commission works at that interstate scale, and we  
9 work not only on legislation in all three states,  
10 but by law, we also work with the U.S. Congress on  
11 issues that are of deep concern to you; everything  
12 from the farm bill, to ballast water management, to  
13 invasive species management, and the Clean Water  
14 Act; a whole host of issues at that federal level  
15 that directly affect the air, water and living  
16 resources in Pennsylvania's Chesapeake Watershed.

17 We have a 34-year history at this point  
18 within the Chesapeake, and over those years we've  
19 worked on everything. We work on land, air, water,  
20 living resources, water quality, habitat. And so,  
21 of that, it should be no surprise that one of the  
22 issues that has been really central to our work  
23 over the years, going back through all the annual  
24 reports, is this notion of buffers. We have worked  
25 legislatively at both the state and federal level

1 in each of the states working on buffers because of  
2 their critical importance.

3 Both Harry and Kelly have already spoken  
4 how this is not your ordinary best management  
5 practice. A riparian forest buffer is  
6 exponentially more important feature of the  
7 landscape. What I hope in the brief time I have  
8 today is to just talk about the importance of that  
9 function a little bit, and then talk to you about  
10 what's been going on at the federal level or at the  
11 other state level. There were some questions.

12 What is Virginia or Maryland doing? I  
13 can't really speak for New York or West Virginia or  
14 Delaware. I can a little bit but not a lot because  
15 those are not our member states. But in terms of  
16 Virginia and Maryland, I can at least tell you what  
17 they could do so you can put your own activities in  
18 a context.

19 Let's just start more at the partnership  
20 level. The activities for riparian forest buffers  
21 really began in earnest in 1994 when the  
22 partnership, and that's that Chesapeake Bay  
23 partnership; that Maryland, Pennsylvania, Virginia,  
24 the District of Columbia; the federal agencies,  
25 there's 17 now actively involved, and the

1 Chesapeake Bay Commission all work in partnership.  
2 They adopted a goal of restoring 110 miles of  
3 riparian forest. I'm sorry, 2,010 miles of  
4 riparian forest by 2010. In the lead on that  
5 negotiation, just for those of you who may remember  
6 him, was Senator Wenger.

7           And then after that -- And that goal was  
8 accomplished. In 2005, the entire partnership  
9 agreed to try to set a goal of 70 percent of the  
10 forest -- of the riparian forest intact, so try to  
11 either preserve, continue or restore in order to  
12 get our streams buffered to the 70 percent scale.  
13 There's an enormous amount of science that backs  
14 that up just in terms of that relationship between  
15 a healthy forest and water quality. But even more  
16 importantly, connect the dots here. It's really  
17 riparian forest and the health of fish, and they  
18 have directly connected that, because the important  
19 food sources that those dropping leaves provide  
20 into the water in terms of forage fish. So that's  
21 pretty important.

22           Then in 2011, they also promised to try  
23 to target 695,000 acres, including forest, of the  
24 really high value forest that are deeply impacting  
25 water quality. So again, think buffer, throughout



1 the watershed because they were recognizing that  
2 importance. When I say they, those are the  
3 governors; those are the chairmen of the Chesapeake  
4 Bay Commission; that's the administrator of DPA.  
5 Those are the people, the Mayor of District of  
6 Columbia who are signing these agreements.

7 Now, then in 2010, another very, very  
8 significant thing occurred here, and I'm sure it's  
9 no secret to this Committee, so I won't dwell on it  
10 because I certainly don't want to be redundant, and  
11 that is the imposition of the federal total maximum  
12 daily load. That was something that we in the  
13 region were trying to avoid.

14 In fact, for a good eight years, we had  
15 labored at trying to develop the water quality  
16 standards and the basically precursors to the TMDL  
17 so that we could avoid that federal imposition.  
18 But sadly, we were unable to restore the water  
19 quality to a place where we could take it off the  
20 federal dirty water's list.

21 So long as we were on that list, then we  
22 ultimately needed to succumb to what's called a  
23 total maximum daily load. That total maximum daily  
24 load, just think about it like a Weight Watchers  
25 diet. They give you a number and they basically

1 say, this is your nitrogen limit; this is your  
2 phosphorus limit; this is your sediment limit,  
3 because in our region that's what the TMDL is. And  
4 then, you basically have to take all the pollution  
5 out to get to that level.

6 The same as if somebody told me I could  
7 have 1400 calories. I can do it any way I want.  
8 However, that's ultimately what I have to get to,  
9 right, to be healthy; in the same way the watershed  
10 has to be healthy. That's what's going on now in  
11 the region, and we all are operating under a TMDL.

12 Just like Weight Watchers. Then each  
13 state has been told, you need to devise a watershed  
14 implementation plan, and in that watershed  
15 implementation plan, you tell us how you're going  
16 to get there in the same way that you could get to  
17 the 1400 calories by eating only ice cream. Marel  
18 could do it with a lot of carrots and celery. We  
19 can all do it a different way, but we're going to  
20 get there.

21 The point for me explaining this TMDL  
22 is, in our watershed, watershed-wide, the forest  
23 buffer is the second most relied upon management  
24 strategy to get those reductions. So it is  
25 exceedingly important throughout the watershed,

1 because of the enormous efficiencies in terms of  
2 pollutant removal that a riparian buffer gives.  
3 Marel will talk more specifically, but the  
4 Pennsylvania WHIP, for example, that watershed  
5 implementation plan, has identified 7,232 acres to  
6 be restored buffer per year. That's about 602  
7 miles of 100-foot-wide buffers annually.

8           So with that, just some background at  
9 the federal level of what's going on, let me talk  
10 for a minute about Virginia or Maryland. Let me  
11 just make two points here. One is, you're not  
12 alone, I'm about to tell you. You're not alone.  
13 Buffers have been focused on throughout the  
14 watershed.

15           The other thing is that, you  
16 Pennsylvanians, you can stand so strong in terms of  
17 your riparian forest focus. You are a model in the  
18 watershed, and I'd like to tell you why there. I'd  
19 like to tell you why you should stand strong and be  
20 proud instead of just join the average, because  
21 you're not average. You're above average.

22           Given what I know from a 30-year career  
23 in this field, and I'm also trained full disclosure  
24 as a forest ecologist and wildlife biologist,  
25 there's nothing like a riparian forest buffer.

1           So with that, let me tell you, first of  
2 all, Virginia. Virginia, really, what I should  
3 really highlight is their Chesapeake Bay  
4 Preservation Act. Their Chesapeake Bay  
5 Preservation Act they adopted in 1984 (sic), and it  
6 basically creates -- I'm sorry, I misspoke. They  
7 did it in 1998. Basically, what it does is, it  
8 requires the designation of a 100-foot-wide  
9 resource protection area along all streams, all  
10 large water bodies, so think lakes, and connected  
11 wetlands within the tide water region. So what  
12 that means for you that are not that familiar, it's  
13 east of 95. So when you're heading to North  
14 Carolina, just think east. That's basically that  
15 entire area, as well as the whole Albemarle-  
16 Pamlico Sound area falls under this regulation for  
17 this 100-foot-wide resource protection area. And  
18 just like Pennsylvania, there are a variety of  
19 different waivers and exemptions. It does allow,  
20 for example, water dependent use, things like that.

21           In addition, Maryland, in 1984, passed  
22 what's called the Critical Areas Law. The Critical  
23 Areas Law is broader. It deals with 1,000 feet to  
24 the head of tide. So you go to the head of tied  
25 and then 1,000 feet beyond, that entire swath falls

1 in this highly regulated, development restricting  
2 zone essentially.

3 For today's conversation, the important  
4 thing is, it includes a 100-foot buffer. That  
5 100-foot buffer also has provisions, flexibility  
6 that allow various encroachments. However, and for  
7 example, in the 50 feet of that 100 feet, it can be  
8 for water dependent uses. Also know that, if  
9 denuding of the forest does have to occur for a  
10 variety of reasons, then you have to apply for a  
11 buffer management plan. You get that buffer  
12 management plan, and in most situations, it does  
13 require replanting, and it does require replanting  
14 with native species, for example.

15 You are allowed to do, for example, a  
16 view cut. You are allowed to have access to the  
17 water. You are allowed to put in a walking path.  
18 There's a variety of different things like this  
19 that are allowed. But again, the focus is to have  
20 that last line of defense before the water. And  
21 remember, that it's not only about water quality.  
22 It's also about that buffer between human activity  
23 and natural activity going on in the water. It's  
24 all about flood protection and allowing for that  
25 space; that intertidal zone space.

1           And also, critically important, and I  
2           can probably can end here, is, earlier the Stroud  
3           Water Resource Center was mentioned. It seemed  
4           like some of you might not have been familiar with  
5           Stroud. Stroud is your ace in a hole. There's  
6           nothing like it in the whole watershed. Stroud is  
7           in Chester County. It's a forest research facility  
8           of renowned capabilities. They basically did a lot  
9           of research having to do with the importance of the  
10          leaf fall into the water and that critical role  
11          that that plays in the food chain.

12           So, we don't always get wrapped around  
13          the axle in terms of water quality. And, of  
14          course, this is in your erosion and sediment  
15          guidelines. However, just know that it's really  
16          about a much bigger issue as well.

17           So that gives you the oversight. Now  
18          what we thought is, Marel would talk to you  
19          specifically about Pennsylvania.

20           MS. RAUB: Thank you, Ann. Thank you,  
21          Chairman Miller, Chairman Vitali, members of the  
22          Committee. And Representative Hahn, thank you for  
23          bringing this issue and having this forum today.

24           Pennsylvania has done an extraordinary  
25          job as far as raising the issue of buffers and

1 promoting buffers as a priority practice.

2 Pennsylvania, by far, has the largest and most  
3 successful Conservation Reserve Enhancement Program  
4 of anywhere across the watershed. They made an  
5 extraordinary investment along with USDA, nonprofit  
6 partners such as CBF Trout Unlimited, and helping  
7 to promote and restore buffers across the watershed  
8 mostly in agricultural context.

9 And having these buffer requirements and  
10 protections in special protection watershed is a  
11 really wonderful complement to what we have been  
12 doing, on the other hand, to restore buffers that  
13 have otherwise been removed. What we have learned  
14 through that process is that, it's really expensive  
15 and really difficult to restore a buffer and the  
16 function of a buffer once we lost it. It takes an  
17 extraordinary amount of financial assist, an  
18 extraordinary amount of technical assistance to  
19 work a landowner through the process of restoring a  
20 buffer.

21 So, to the extent that we can protect  
22 existing buffers that we already have, we not only  
23 avoid the environmental cost of removing that  
24 buffer, but we avoid the cost of having to restore  
25 that function of a buffer down the stream.

1           Ann mentioned the goals in  
2           Pennsylvania's own web and WHIPs across the  
3           watershed and meeting the TMDL. Meeting these  
4           goals is very important. It's not voluntary  
5           anymore. There is a regulatory component to this.  
6           There are consequences that Pennsylvania doesn't  
7           meet its WHIP obligations and TMDL obligations.  
8           Those potential consequences are outlined here in  
9           the written testimony. But, they could be severe  
10          on agriculture, on local governments with  
11          stormwater programs, point sources.

12           We've already seen what has happened as  
13          new permit limits have come down on them. We don't  
14          want to risk putting our municipalities and our  
15          agriculture under further regulation.

16           So, it is important that we meet these  
17          goals. It's important we keep moving our progress  
18          forward. We're not going to meet these goals with  
19          sort of a two-step forward, one-step-back approach.  
20          We really just need to keep steady progress moving  
21          forward; and, in fact, accelerated progress moving  
22          forward. We'll be evaluated on not only counting  
23          acres of practice or units of practice. That's one  
24          important way that EPA is going to be evaluating  
25          our progress, but also on just our programmatic



1 efforts here. Those E and S updates to Chapter 102  
2 were a really important problematic step forward  
3 for the Commonwealth in helping us to meet our  
4 obligations for Chesapeake Bay. It's really  
5 important that we maintain them.

6 Just getting back again, stepping away  
7 from Chesapeake Bay, we already have over 16,000  
8 miles of Pennsylvania streams across the state that  
9 are impaired. Our issues with Chesapeake Bay are  
10 just a symptom of issues that we're having with  
11 local water quality here in Pennsylvania. What's  
12 impairments within the bay watershed are really no  
13 different; they're not particularly unique,  
14 although the sources might be unique than other  
15 watersheds across the state.

16 Again, we're dealing with legacy issues  
17 when it comes to water quality. And from that  
18 standpoint, we should be protecting the existing  
19 high-quality and exceptional-value waters that  
20 already exists.

21 MAJORITY CHAIRMAN MILLER: Thank you.  
22 Questions? Representative Vitali.

23 MINORITY CHAIRMAN VITALI: We've heard  
24 earlier about the nine exemptions and six waivers.  
25 Do you think they give adequate flexibility to the

1 department in protecting buffers? Do you think  
2 Pennsylvania's current system is working?

3 MS. RAUB: The exemptions, as I read  
4 them, and going back to your example,  
5 Representative Hahn, of the single-family home, it  
6 appears the single-family home would fall within  
7 that. It sounds like there might be some site-  
8 specific issues that are going on. To the extent  
9 that, if additional flexibility is needed,  
10 apparently there are some cases out there where  
11 that might be the case.

12 But, essentially, it's important that  
13 the buffer be the preferred and the presumed best  
14 practice in a riparian area. So, I guess that's  
15 where --

16 MS. SWANSON: I think the important  
17 thing here is, and this is where a political body  
18 is so important, is that, if flexibility is what's  
19 going to keep Pennsylvania's buffer program strong,  
20 then you need to exam the pieces of that  
21 flexibility; the pieces that will help.

22 But, fundamentally, keep in mind that  
23 Pennsylvania has some extraordinarily healthy  
24 areas. There are 97,000 TMDLs across the country.  
25 I used to think it was 40,000, and I thought that

1 was a lot. So, anything you can do to maintain  
2 that.

3 So, the specifics with the flexibility,  
4 if there is a certain rub, a certain area that  
5 really needs to be looked at, then I think it's  
6 very important for this body to sit down with DEP  
7 and the others and really exam it. Otherwise, the  
8 most important thing is, keep your buffer program  
9 at the top of the watershed's game. That's where  
10 it is now.

11 MINORITY CHAIRMAN VITALI: So this bill  
12 says forest buffer shall not be required under this  
13 section. I'm assuming you don't agree with that?

14 MS. RAUB: I think it's important that  
15 buffers be recognized as really a unique and  
16 special practice, and that they not just be lumped  
17 in with other potential practices, because, buffers  
18 are really about the function of the stream itself  
19 and not just what may reach the stream from the  
20 land. It's really about how the stream itself  
21 functions, because there are activities that happen  
22 within the stream, not just for habitat, but within  
23 the nutrient and sediment realm; to capture  
24 sediments, to process nutrients in the vegetation  
25 and the living resources to help maintain a really

1 healthy system overall.

2           So, a buffer, you can't just equate it  
3 with other practices. That's why I think it's  
4 important that the buffer be the presumed best  
5 practice. If additional flexibility is needed on a  
6 site-specific basis, I can understand that. But  
7 that, in fact, a buffer should be a presumed best  
8 practice.

9           MINORITY CHAIRMAN VITALI: I'm going to  
10 let you off the hook and not ask anymore questions.

11           MAJORITY CHAIRMAN MILLER:  
12 Representative Carroll.

13           REPRESENTATIVE CARROLL: Thank you, Mr.  
14 Chairman. Ladies, thank you both. I took a quick  
15 look on my iPhone to see how many watersheds we had  
16 in the Commonwealth. By my calculation, four it  
17 looks like: Delaware, Chesapeake, Ohio and St.  
18 Lawrence.

19           My first question is, do you think these  
20 four watersheds have unique needs that are -- well,  
21 unique needs. Let's stop there. Or are all four  
22 the same? Let's re-characterize it that way?

23           MS. SWANSON: If you're asking  
24 ecologically, is each watershed different, I would  
25 have to say to you, of course; just the same way

1 each family is different. But if you're asking,  
2 are buffers important to the streams in each one of  
3 those watersheds, then, ecologically,  
4 scientifically, I have to answer yes, in all  
5 situations they are; particularly, in Pennsylvania,  
6 where Pennsylvania is a forest ecosystem.

7 Now, if you were asking me, say, in the  
8 Midwest Great Plains region where a forest is not  
9 natural, then I'd have to answer differently. But  
10 here where forests are a natural part of our  
11 ecosystem, they are all important. The species of  
12 tree may vary.

13 REPRESENTATIVE CARROLL: So at the  
14 beginning of your answer, you at least concede that  
15 they are all different, and they all have different  
16 needs and have different challenges?

17 MS. SWANSON: All watersheds are  
18 different, because all watersheds are a function of  
19 the natural and ecological and human-induced  
20 conditions of that watershed. Each watershed may  
21 have very different soils. One watershed, you  
22 know, like, not in Pennsylvania, but, for example,  
23 let's take Maryland, some of the watersheds are  
24 saline. They have saline waters, which are more  
25 vulnerable to nitrogen. Fresh water is more

1 vulnerable to phosphorus.

2           You may have some areas where the soils  
3 are saturated with phosphorus, and therefore,  
4 phosphorus is moving in the water. Others where  
5 it's not, and so, you don't really have an  
6 phosphorus issue. So each one is unique. But  
7 again, it's unique in terms of the chemistry of  
8 that system.

9           REPRESENTATIVE CARROLL: Okay. And when  
10 I look at the map of the Delaware River Watershed  
11 where the bulk of the EV and high-quality streams  
12 are in northeastern Pennsylvania, virtually, that  
13 whole area is exclusively in the Delaware  
14 Watershed. I understand the passion on behalf of  
15 the Chesapeake Bay that you obviously have as a  
16 result of the position that you hold, and I'm  
17 thankful that you have that passion for Chesapeake  
18 Bay.       The reality is, for those of us from  
19 northeastern Pennsylvania, our focus probably is  
20 more directed toward Delaware Watershed, and what  
21 steps are going to be taken to make sure that we  
22 can have the protection of the watershed, and at  
23 the same time be able to develop in a fair and  
24 reasonable way.

25           And, you know, there's some level of

1 irony that every single one of these buffers that  
2 could be imposed in Monroe and Wayne and Pike  
3 counties, none of those, zero, will affect the  
4 Chesapeake Bay.

5 MS. SWANSON: I should clarify. While I  
6 may articulate on the Chesapeake Bay, which just  
7 comes from the sheer fact I've worked on the bay  
8 for almost 30 years, when I'm speaking on these  
9 issues, I'm not Chesapeake Bay eccentric. I'm  
10 speaking to you about that relationship between the  
11 land and the water. That's special throughout  
12 Pennsylvania, throughout Montana, throughout -- It  
13 really is a bigger issue.

14 So, I don't mean in any way here to  
15 convey a unique specialness to the Chesapeake.  
16 That's my job. So I can answer more questions  
17 about the Chesapeake, but the Delaware Valley and  
18 the Delaware Valley's relationship of land to water  
19 is equally important. It really is.

20 REPRESENTATIVE CARROLL: I appreciate  
21 that. I would highlight, I think, Representative  
22 Barbin opened this door a little bit, that New York  
23 State I think does, in fact, have the very  
24 flexibility that Representative Hahn seeks with her  
25 bill. New York State has made a calculation, it

1 seems, that with respect to a part of their state  
2 that's embedded in the Delaware Watershed, that  
3 this sort of flexibility would be consistent with  
4 the preservation of the watershed.

5 So, I think that, to go back to your  
6 original answer to my question related to the  
7 watersheds and their differences, I think we have  
8 stark differences, subtle differences between the  
9 watersheds. Those sorts of differences are the  
10 ultimate endorsement of the flexibility that the  
11 bill seeks.

12 I think that in an effort to make sure  
13 that we preserve the watershed and the stream  
14 value, I think that we can get there and preserve  
15 what we have, especially in northeastern  
16 Pennsylvania, in a way that's not so specifically  
17 and narrowly prescribed as the 150 foot with some  
18 very small and narrow exceptions.

19 MAJORITY CHAIRMAN MILLER: Thank you.

20 REPRESENTATIVE CARROLL: Thank You.

21 MAJORITY CHAIRMAN MILLER:

22 Representative Ross.

23 REPRESENTATIVE ROSS: Just for point of  
24 clarification, I too am in the Delaware Watershed.  
25 The Stroudsburg Research Center has done all their



1 studies, or a tremendous amount of their studies in  
2 the Delaware Watershed on stream-bank issue in the  
3 Delaware Watershed.

4 Is it not true that the Delaware  
5 Watershed also has issues in relation to nitrogen,  
6 phosphorus, some of the main things you've been  
7 talking about in relation to the Chesapeake  
8 Watershed. And we have federal requirements that  
9 are coming down, perhaps not as fast, but still  
10 many of them that are in places well in the  
11 Delaware Watershed.

12 MS. SWANSON: Yes, that is true.

13 REPRESENTATIVE ROSS: And is it not true  
14 that this is kind of a zero-sum game? If we take  
15 acres out of the stream-bank buffers, that the  
16 remediation that we're counting on for those acres  
17 will have to be made up in some other area, either  
18 through agriculture or through the point sources  
19 which we often consider sewage treatment facilities  
20 so that they would have to increase or limit the  
21 amount that they're allowed to process -- increase  
22 the treatment level or reduce the amount that  
23 they're allowed to process?

24 MS. SWANSON: That is true, and it would  
25 probably come at greater expense.

1           REPRESENTATIVE ROSS: I know, in  
2 particular, because I have a constituent actually  
3 also owns property up in the Poconos region, that  
4 he was prevented from being able to develop his  
5 property because the sewage treatment facility was  
6 not able to handle additional attachments  
7 adequately.

8           MS. SWANSON: Hookups.

9           REPRESENTATIVE ROSS: Hookups. There  
10 was no technique or technology sufficient, even  
11 regardless of however much he was able to pay, to  
12 meet the necessary requirements that were currently  
13 in place for water quality in that area.

14           So if we take land out of the buffer  
15 system, we might actually, in a different way,  
16 restrict development by preventing the access to  
17 sewage treatment that would be required for that  
18 development. Is that not true?

19           MS. SWANSON: Well, it could be. I  
20 mean, at the end of the day, the TMDL is a math  
21 situation. So, if you're increasing, go back to  
22 our calorie count. If you decide to do something  
23 over here that's going to raise the number of the  
24 pollutant load, you have to do something else to  
25 counter it. I mean, you have to, so in that

1 regard.

2 I should make one point about putting on  
3 my forest ecology hat. It's just important to  
4 understand. People think about the forest buffer  
5 as so important because you've got these big  
6 massive trees. You can imagine a lot of it,  
7 there's a lot of pollutants being sucked up  
8 essentially.

9 What I want to leave with you is, a lot  
10 of it is about the sponge. It's about that forest  
11 floor and that duff layer it's called. When you  
12 get into a big forest, you know, it's soft.  
13 Essentially what that is, it's like a giant  
14 nutrient and sediment sponge, and a lot of it is  
15 happening there.

16 So as you're thinking about the various  
17 things that are allowed or not allowed, because a  
18 buffer has to have flexibility. It is the line  
19 between human activity and the water. So to make  
20 it inviolate would to make it fail, and you don't  
21 want that. You don't want that. So instead, think  
22 about, just, where is it that you can provide that  
23 flexibility, but also keep that duff as intact as  
24 you can.

25 MAJORITY CHAIRMAN MILLER: Thank you.

1 Thank you for your testimony.

2 MS. SWANSON: Sure.

3 MAJORITY CHAIRMAN MILLER: One moment.  
4 Representative McCarter.

5 REPRESENTATIVE McCARTER: Thank you, Mr.  
6 Chairman. If I could follow up on one point,  
7 because earlier this week, we heard testimony in  
8 another hearing dealing with the impact of the  
9 Biggert Waters Act and the increase in flood  
10 insurance that's taking place. One of the things  
11 that, obviously, the expansion of the flood plain  
12 maps that are showing the number of properties that  
13 are now in flood plains that were not before, and  
14 the fact that --

15 MS. SWANSON: Not me.

16 REPRESENTATIVE McCARTER: Well, many of  
17 us I think in this room may even fall into that  
18 category, too.

19 MS. SWANSON: I paid my bill.

20 REPRESENTATIVE McCARTER: I'm waiting  
21 for the newest maps to come down in our area as  
22 well.

23 As part of that, looking at the flood  
24 insurance increases from over 100 percent, and in  
25 some cases over 700 percent increases. The areas

1 are, obviously, increasing. Would it be a fair  
2 statement to say that any reduction, really, in the  
3 amount of buffer that we maintain on streams will  
4 impact that also in terms of increasing the amount  
5 of flood plain size downstream from wherever we are  
6 in terms of these buffers, and will ultimately  
7 increase, then, flood insurance for people in those  
8 particular areas?

9 MS. SWANSON: I obviously don't have  
10 data to back me up. But, intuitively, you have a  
11 very valid point. It makes me also remember to  
12 mention that --

13 I mentioned the Maryland program which  
14 is 100 feet. It's a 100-foot buffer. However,  
15 that buffer can be as high as 300 feet in  
16 situations where sensitive soils, step slopes or  
17 wetlands are involved. So they specifically have  
18 their eye on that mitigating effect of water  
19 retention, essentially, during times of either high  
20 tide or high flow. It's important.

21 REPRESENTATIVE McCARTER: If I could  
22 add, Mr. Chairman, then it would seem, really, any  
23 reduction, if anything, maybe we should be talking  
24 about increasing the size of buffers instead of  
25 reducing them on the basis, with flexibility, I

1 think as some of my colleagues are obviously  
2 calling for. But the idea that we really need to  
3 increase buffer zones to increase more absorption  
4 of water, with increases as we're all seeing in  
5 terms of precipitation, at least in our area of the  
6 world, as part of whether it's climate change, or  
7 for whatever reason, that's happening.

8 So, if you look in that direction,  
9 flexibility may be important. But at the same  
10 time, we have to look at the value of the buffers  
11 as one of the key factors, if not the most key  
12 factor, in helping with that absorption as you were  
13 talking about the sponge area near the streams to  
14 help us with the downstream problems that take  
15 place.

16 MS. SWANSON: Yeah.

17 MAJORITY CHAIRMAN MILLER: Okay. I'm  
18 just going to cut it a little bit short, if I may,  
19 to be fair to our next group of testifiers. Thank  
20 you very much.

21 MS. SWANSON: Thank you very much.

22 MAJORITY CHAIRMAN MILLER: Gentlemen,  
23 the good news is that Jonathan has gotten quite  
24 good at this. One of the hardest things for a  
25 chairman to do is keep everything on track, but we

1 have plenty of time for you. So please come  
2 forward.

3 Next panel is Joe Harcum, President of  
4 Duck Harbor Group; Brian Oram, CF Environment  
5 Consultants; and Tom Reilly, Reilly Associates, PA  
6 Builders Association. If you would have seats  
7 there, and you can -- I assume you have an order  
8 that you're going to proceed in, so we'll leave  
9 that up to you.

10 MR. HARCUM: Good morning, sir, Chairman  
11 Miller, Chairman Vitali. My name is Joe Harcum.  
12 I'm the treasurer of Pennsylvania Builders. On  
13 behalf of Pennsylvania Builders, I'd like to say  
14 thank you for this opportunity.

15 We feel a passion for this subject. We  
16 have 5,700 members throughout the state involved in  
17 home building and construction, and these are  
18 factors they have to deal with on a daily basis.  
19 I'd also like to add that I'm a real estate  
20 developer in Wayne County, so I live with these,  
21 too.

22 We take the position that the 150-foot  
23 buffer should not be a requirement. We're not  
24 against buffers. We're not against the use of  
25 buffers, and we understand buffers do wonderful

1 things, but it should not be a requirement.

2 Wayne County, which is where I'm from,  
3 there are 425,000 acres out of 455,000 acres owned  
4 by individuals. That's 93 percent is tied up in  
5 these buffers. My personal development, the Woods  
6 of Duck Harbor, is a 960-acre development with a  
7 big lake and five streams. If I was starting that  
8 development today, it would take 127 acres out of  
9 the use of the community.

10 Remember, these buffers now can only be  
11 used for passive activity. So if you have a  
12 building site on a lake front, you have 150 feet of  
13 woods between the buildable lot and the lake. This  
14 development was timberland for 200 years, and all  
15 those trees are still there, but they can't be  
16 disturbed. So, is it really lake front, or is it  
17 really not lake front?

18 Not only that, this buffer zone has to  
19 be deed restricted. It has to be part of the deed;  
20 you have to have an OEM agreement. It has to be  
21 maintained in perpetuity forever.

22 The homeowners in my community are going  
23 to pay an expense every year for those buffers to  
24 be inspected; for any maintenance to be done.  
25 Mother Nature blows over some trees; Mother Nature,



1 heavy snow and fallen ice, trees fall over, they  
2 have to be cut, harvested, removed, replanted, and  
3 cared for forever.

4 We think there are 35 best management  
5 practices that DEP has approved. It's in their  
6 Best Management Practices Manual. We think this  
7 should be one more option that can be used to  
8 maintain the quality of water.

9 Pennsylvania has a lot of geographic  
10 diversity. You look at northeast Pennsylvania,  
11 southwest Pennsylvania; you look up the mid-tier.  
12 We think that with different characteristics,  
13 whether it be soils, slopes, ground cover, trees,  
14 prior uses, current uses, that the licensed  
15 engineers, planners, designers can design what is  
16 best for that specific site, and that's all we're  
17 asking.

18 Remember, the permit still goes to DEP.  
19 They guarantee water quality based on what is being  
20 submitted in that permit. So those combinations of  
21 different buffers, different BMPs has to meet water  
22 quality standards in order for the permit to be  
23 issued.

24 We also feel like there's not really a  
25 need for this particular in punishing the

1 northeast. Lake Wallenpaupack is the biggest body  
2 of water separating Wayne and Pike counties. For  
3 21 years, that watershed has been studied and  
4 inspected by a third independent party called Aqua.  
5 That water quality has increased every year for 21  
6 years. And that same period of time, economic  
7 development and the population around that lake  
8 area has increased 113 percent. We don't think  
9 development is hurting water if we continue to do  
10 the practices that we have used in the past.

11 Now, I know there's been a lot of  
12 conversation about the northeast, but there's 28  
13 counties in Pennsylvania that have 25 percent of  
14 the privately-owned land that's EV or HQ. That  
15 stream classification is being increased  
16 constantly. DEP, quite often, comes into an area,  
17 upgrades a stream. Anybody in New York State or  
18 Maryland can request a study, and DEP will go out  
19 and do a study and upgrade that water. Not even a  
20 citizen of Pennsylvania can cause that water to be  
21 elevated in terms of criteria.

22 Those 28 counties go all the way from  
23 the northwest, Warren and Forest counties; to the  
24 southwest, Somerset and Bedford counties; and to  
25 the southeast, Chester. It's really more of a

1 statewide problem than just a northeast problem.

2 We also think that this is a very high  
3 demand for counties with EV and HQ, and we think it  
4 could have a severe impact on the State of  
5 Pennsylvania. Very little economic development,  
6 very little home building has been done in the last  
7 three years since this restriction has been in  
8 existence. Particular in residential construction,  
9 it's been a recession of huge magnitude. So we  
10 really don't know the impact this is having on  
11 permits and it's having on residential  
12 construction. The waiver that's been granted are  
13 probably more for commercial activity.

14 In my own town, Honesdale, Pennsylvania,  
15 we tried to build a new CVS from downtown -- to  
16 downtown where we took an old office building site  
17 and we wanted to redevelop it. The only thing is,  
18 the Lackawaxen River goes right smack through the  
19 entire town of Honesdale. It took a hell of a long  
20 time, and it was very expensive to get a waiver to  
21 meet the requirements and keep that store in  
22 downtown Honesdale.

23 With that, I'd like to say PBA supports  
24 bill 1565 because it will give flexibility and  
25 creativity and let the licensed people do what

1 needs to be done; and, at the same time, will not  
2 degrade water anywhere because we still have to  
3 comply with Chapter 93. We still have to comply  
4 with all the degradation and other requirements  
5 that DEP mandates that we do. Thank you.

6 MAJORITY CHAIRMAN MILLER: Thank you.  
7 Are you other gentlemen just testifying also or --  
8 Who's up? Pull the mike around. Identify  
9 yourself.

10 MR. ORAM: My name is Brian Oram. I  
11 would like to thank you for the opportunity to be  
12 here. I'm a licensed geologist, soil scientist,  
13 and owner of CF Environmental Consultants. I lived  
14 my entire life in Pennsylvania, except for a short  
15 stint in California, which is probably the leftover  
16 of my ponytail.

17 I'm here today as a citizen and a  
18 licensed professional. I don't own lots of real  
19 estate. I have a single-family house, but I am in  
20 support of House Bill 1565. The main reason is for  
21 this reason, is to provide the flexibility that's  
22 really needed; to manage stormwater properly in our  
23 state, and it needs to be managed based on a  
24 site-based analysis.

25 I had slightly different testimony prior

1 to coming here today, and that's been submitted.  
2 But there's a couple things I'd like to point out  
3 after listening to the other testimony. All the  
4 wonderful values that are attributed to riparian  
5 buffer zones related to water quality are  
6 protected. We don't build in flood plains now. We  
7 did in the past. We don't build in floodways. We  
8 did that in the past. We don't do that now, and  
9 we're not permitted to build in wetlands. And if  
10 we attempt to encroach on those areas, there's  
11 special permits needed.

12 Most of the riparian buffer zone that we  
13 talk about are those areas. Any large development  
14 in northeastern Pennsylvania or Pennsylvania goes  
15 through a process of saying, where's the streams,  
16 where's the wetlands, where's the flood plains,  
17 where's the floodways; stay out. The idea of  
18 making this change encroaches on those areas, at  
19 least the core of those, is mistaken.

20 Secondly, there was a question asked,  
21 and I don't have the full detail, but basically, a  
22 150-foot buffer zone on a hundred-foot stream -- a  
23 hundred-foot length of stream, no matter what size  
24 the stream is, from one-foot wide to 300-foot wide  
25 is the equivalent of preserving 7.5 acres. For

1 every hundred foot of linear stream, we're  
2 automatically taking off the table three-quarters  
3 acre of the property no matter what's there. No  
4 matter the stream is a foot wide or the size of the  
5 Susquehanna River.

6 I'd like to point out there's a dynamic  
7 process here where we have licensed professionals  
8 looking at doing engineering and non-engineering  
9 controls, they are then reviewed by other  
10 professionals. So there's a process of feedback  
11 where site conditions that are specific can be  
12 dealt with.

13 I'd also like to suggest, when you do  
14 get the information from the Susquehanna River  
15 Basin, I would pose the question as if, how many of  
16 the projects that came in that had that preliminary  
17 meeting walked away with a completely new concept  
18 for their site, because that preliminary conference  
19 meeting they walked in and said, hey, we'd like to  
20 do this. After that conference meeting they said,  
21 well, you can do that, but it's going to take you  
22 seven months to a year to get through this waiver  
23 process. It might be more cost-effective for you  
24 not to do that. After being in some of those  
25 meetings, that happens a lot. Many times it's not

1 just six months to a year. It's a lot longer.

2 I think giving the professionals MPA the  
3 tools they need to make a choice is what we need to  
4 do. There are sites, especially agricultural  
5 areas, where engineering -- advanced engineering  
6 controls really aren't implemented; where riparian  
7 buffer zones have been taken out of service, but we  
8 do have in place programs to help farmers replant  
9 those zones; for example, the CREP program.

10 I'm a past board member of the Poconos  
11 Northeast RC&D Council. We're one of the councils  
12 in the state that assists with what's called  
13 Consortium For Scientific Assistance to Watershed  
14 groups through the Growing Greener Program. We're  
15 also a council that aids farmers in the CREP  
16 program to preserve those high-priority areas next  
17 to streams that have been destroyed really aren't  
18 effective agricultural use. That put in place  
19 habitat that not only the farmer can use for  
20 habitat, but also potentially for use for the farm  
21 by planting a bio-fuel like switch grass and other  
22 grasses. So it's not taken off the table. It's  
23 still an economic potential benefit to the farmer.

24 In closing, I'd like to say that we  
25 shouldn't have a one-size-fits-all approach to

1 managing stormwater in Pennsylvania, and it should  
2 not be a policy. If we're going to have anything,  
3 we should base our things on legislation. We have  
4 long history in Pennsylvania, especially recent  
5 history, where policy -- attempted policies have  
6 created either nightmares or potential nightmares.  
7 The most recent example is, in fact, the stormwater  
8 manual that's out, and the recent attempt to manage  
9 nitrates from septic systems.

10 I think a fact-based scientific approach  
11 that's done by professionals; that are being  
12 licensed by the state, when the license can be  
13 taken away, and are reviewed by other professionals  
14 which is what the employees of DEPR is the way to  
15 go for PA.

16 I thank you for the opportunity. I do  
17 appreciate it.

18 MAJORITY CHAIRMAN MILLER: Thank you.  
19 Mr. Reilly.

20 MR. REILLY: Thank you. My name is Tom  
21 Reilly. Thank you, Chairman Miller and Chairman  
22 Vitali. Thank you all representatives of the  
23 Committee.

24 I am a professional engineer, registered  
25 in Pennsylvania and New York; president of Reilly



1 Associates, engineering firm based in Pittston and  
2 with offices also in Monroe County. Our practice  
3 is focused on civil and environmental engineering  
4 for public and private infrastructure projects and  
5 land development. Our firm has been around for  
6 over 80 years, and the last 30 years I've been an  
7 active practitioner in the application of new  
8 stormwater regulations and every other water  
9 quality regulations.

10 What has fascinated me with the practice  
11 of civil engineering is that, each site requires a  
12 customized solution. Each site is a unique  
13 challenge. You have the opportunity to provide a  
14 great benefit for the people who are going to use  
15 that site, as well as the many people downstream  
16 and in the neighborhood.

17 I also love the diversity we have in the  
18 landscapes of Pennsylvania throughout where we have  
19 many, many different conditions, from rural to  
20 urban, from mountains to valleys, and many  
21 different types of streams. I support it because I  
22 believe that we can protect the streams' water  
23 quality by applying the combination of best  
24 management practices on a site-specific basis.

25 We can use a holistic approach where the

1 topography soils, flora and fauna, the water  
2 resources, the property rights, transportation and  
3 other utility infrastructure are evaluated in the  
4 context of the project program, and all the green  
5 infrastructure techniques, including buffers, are  
6 part of the solution.

7           There are wide range of management  
8 practices that have -- that are of -- most of which  
9 are in the manual that have -- that are able to be  
10 applied, that can achieve the non-degradation  
11 requirements of the Clean Water Act. Riparian  
12 buffer should be part of that mix in planning and  
13 designing elements with that width of buffer  
14 adjustable based on the specific site conditions  
15 and the nature of that water resource.

16           We mentioned before bio-retention, water  
17 gardens, vegetated swales, green roofs, pervious  
18 pave, together with buffers can provide that  
19 treatment and protection. Right now the waters  
20 which require riparian buffers, basically, you  
21 could have an intermittent stream, the width of  
22 this table here, would require 150 feet on both  
23 sides of it. The same -- And a pond that was dug  
24 by a farmer a hundred years ago, the size of this  
25 room, requires a 150-foot buffer all the way around

1 it.

2 Basically, the same 150 feet is required  
3 for these types -- the types of topography in  
4 the -- called the highlands and plateaus of Wayne,  
5 Pike and Monroe County, you have fingers of these  
6 intermittent streams and small ponds that weave  
7 their way through properties, and you apply 150  
8 feet on each side of the small farm pond and the  
9 finger of intermittent stream, many of which were  
10 created by a farmer 120 years ago to drain his  
11 field, are now, basically, a hundred acres that  
12 three-quarters of a width is outlined with buffer.

13 If you took a site-specific approach to  
14 that, you would find that in certain portions of  
15 the site, a hundred foot, 200 feet makes sense. In  
16 other portions, you're looking at 25 feet, 50 feet,  
17 75 feet, based on the characteristics of the soil,  
18 the characteristics of the slopes. You know, is  
19 that an old farm ditch that's now called an  
20 intermittent stream, or is it a -- or is it one of  
21 the finest trout waters in the state? We have all  
22 of those conditions.

23 The benefits of a riparian buffer,  
24 including the establishment and preservation of  
25 greenways that enhance wildlife and enhance

1 community recreation, increase property values, as  
2 well as protecting water, each of these benefits  
3 are most ably pursued in balance with the property  
4 owner interests through local and regional  
5 planning, zoning and stormwater regulations.

6 I'm familiar with many local codes  
7 throughout Pennsylvania, and many codes have 25 to  
8 75 foot from the top of the stream bank. There's  
9 also many towns that have come in and said, that  
10 particular lake or pond needs a hundred feet, or  
11 that particular pond needs -- or lake is so  
12 pristine it needs a certain other, but these are  
13 implemented by people who look at the specific  
14 resources and often employ ecological specialist to  
15 look at it on a community's behalf to best protect  
16 it in a very specific way.

17 My work also includes a lot of similar  
18 projects across the border in New York State where  
19 the topography is very similar, and there are --  
20 The new stormwater manual came out about the same  
21 time as Pennsylvania; has a lot of similarities in  
22 terms of the best management practices, and some of  
23 the -- called the water quality scoring systems.  
24 But the buffers are part of the best management  
25 practice mix.

1           Just because you go below a hundred feet  
2 for a particular site, you say, well, I'm going to  
3 put in a vegetated swale and a rain garden and a  
4 50-foot buffer or a 70-foot buffer, because that  
5 buffer in that particular case will provide a nice  
6 shade to the stream, and it fits in with the shape  
7 of the property very well, where the roads are;  
8 where you have to put your -- get your highway  
9 permit, you still get buffer benefits, and you get  
10 the benefits of the other best management  
11 practices. You're basically customizing and  
12 tailoring how you lay out the site to the actual  
13 conditions on that site.

14           So, keeping Pennsylvania and the parts  
15 of Pennsylvania with the extensive high quality and  
16 exceptional-value watersheds, keeping them  
17 economically competitive and keeping the water  
18 clean requires a holistic approach and a flexible  
19 approach, the NPDES permitting.

20           MAJORITY CHAIRMAN MILLER: Thank you.  
21 We have a few minutes for questions.  
22 Representative Vitali.

23           MINORITY CHAIRMAN VITALI: Can you think  
24 of any tweaks to the waivers and exceptions that  
25 may give you more flexibility here as opposed to

1 throwing out the whole system that's in play here;  
2 adding waiver standards or exceptions to this  
3 current regulations?

4 MR. REILLY: Well, I think, given the  
5 diversity of circumstances, it's hard to really  
6 prescribe something that's going to work in every  
7 case. It comes down to -- A waiver comes down to  
8 the judgment of the people in the room reviewing  
9 the waiver.

10 For example, the way the waiver reads  
11 now, there is an item about site-specific  
12 circumstances. That's very, very broad. You could  
13 get -- You could have someone -- Someone in the  
14 department could agree that you had a site-specific  
15 circumstance that applied to your project, and an  
16 opponent of the project could oppose your permit  
17 issuance at the Environmental Hearing Board saying,  
18 we don't really agree that's an adequate  
19 site-specific waiver.

20 I really don't think -- I think in terms  
21 of -- Especially the northeast, I don't think that  
22 the last two years have been an adequate test of  
23 the waiver application process, because the housing  
24 industry has been hit so very hard by the recession  
25 in the Poconos. The amount of economic and housing

1 activity is a tiny percentage of what it was 10  
2 years ago.

3 MINORITY CHAIRMAN VITALI: So you don't  
4 think we can -- Brian, do you have any thoughts on  
5 adding waivers or exemptions to give this  
6 flexibility?

7 MR. ORAM: First of all, I'd like to  
8 clarify a mistake in my testimony. My mistake was  
9 I used SRBC when I meant DEP. I wanted to correct  
10 that.

11 I personally think that would be a bad  
12 approach. I think what happens by adding -- by  
13 trying what Tom suggested. Trying to account for  
14 the variability with waivers is going to be  
15 difficult. I think we have a great history in  
16 Pennsylvania that when we put the pressure on DEP  
17 to make, maybe a decision that appears arbitrary to  
18 some; what appears to be arbitrary decisions to  
19 some end up in court cases where DEP attempts to  
20 defend and we lose.

21 I think right up at the front of the  
22 project we put the onus on the person proposing the  
23 project to defend their approach, saying here's the  
24 combination of engineering tools we're putting in,  
25 prior to even getting near riparian buffer zone,

1 we're taking out 90 percent of the sediment or a  
2 hundred percent of the sediment and 85 percent of  
3 the phosphorus. We're meeting our water-quality  
4 control criteria, and we're also going to be  
5 maintaining the riparian buffer because, one, it's  
6 already in the flood plain; we didn't develop on  
7 it. It's wetlands. And on top of that, the local  
8 agency has a 10-foot buffer zone away from  
9 wetlands, and we're willing to use it as a hiking  
10 trail. I think it puts the pressure then back on  
11 the landowner and that professional staff to defend  
12 their case.

13 And the other part of that --

14 MINORITY CHAIRMAN VITALI: The bill  
15 seems to take all criteria away, and the complaint  
16 seems to -- I'm trying to see if there's some sort  
17 of balance that can be drawn here.

18 One of my --

19 MAJORITY CHAIRMAN MILLER: Draw it to a  
20 close. We have five minutes. We asked the Chief  
21 Clerk to extend. We, by rule, have to be done by  
22 11 when session starts, but we've been granted five  
23 more minutes. Representative Ross.

24 REPRESENTATIVE ROSS: I'll be quick.  
25 First of all, I would sympathize with your



1 position, Mr. Reilly, better about everything being  
2 site specific if, unfortunately, water didn't  
3 continue to flow into the system as a whole. So a  
4 small effect in a first-order stream can be  
5 amplified because it is multiplied over many  
6 similar situations, and you can have a cumulative  
7 effect by the time you get to the stem.

8 My question is very quick. It doesn't  
9 have to be answered here. As a matter of fact, I  
10 prefer if you take it back and bring it back to me.  
11 We have a lot of history and a lot of science on  
12 the effects of buffers to the nature of 150 feet in  
13 terms of phosphorus removal, nitrogen removal,  
14 sediment reductions.

15 Would you and Mr. Oram come back to us  
16 with a comparable, mechanical engineered  
17 alternative that would take out the similar amounts  
18 of materials that could be a comparable best  
19 management practice for that stretch of a stream so  
20 we could take a look at those two things? We may  
21 want to be more specific since we're being asked to  
22 be more flexible here, but we should know what the  
23 specifics and the cost of the alternative for a  
24 similar type of technique would be so we don't  
25 leave just DEP out at sea on that. That's all I

1 have. Thank you.

2 MR. REILLY: I'd like to thank you for  
3 the opportunity to do that.

4 MAJORITY CHAIRMAN MILLER: We look  
5 forward to seeing that. Representative  
6 Santarsiero.

7 REPRESENTATIVE SANTARSIERO: Thank you,  
8 Mr. Chairman. I don't have questions for the  
9 gentlemen. I do want to make a brief statement,  
10 and that is, before this legislation moves further,  
11 I would respectfully ask the Chair to hold another  
12 hearing on this issue, once we have some of the  
13 information that's been requested today, to get a  
14 better sense of what the scope of the alleged  
15 problem is; to make sure that any legislation  
16 that's considered at the end of the day adequately  
17 and narrowly addresses that problem.

18 I'm struggling still with, really,  
19 getting a handle on exactly what the scope is,  
20 because I hear lots of testimony about impediments  
21 to development. As I said earlier, that can mean a  
22 lot of different things. I do note -- And I would  
23 request, actually, I think it was Mr. Harcum, at  
24 the beginning you mentioned some statistics about  
25 acreage, which were not in your written testimony.

1 If you could get that to us as well, I'd be  
2 grateful for that. Thank you.

3 MAJORITY CHAIRMAN MILLER: Thank you.  
4 We'll take a look at that and see if that's  
5 something we can do.

6 With that, thank you. I hope you found  
7 this useful for your legislation. With that, we're  
8 going to adjourn the meeting. Thank you, everyone.

9 (At 11:04 a.m., the hearing concluded).

10 \* \* \* \*

11 C E R T I F I C A T E

12 I, Karen J. Meister, Reporter, Notary  
13 Public, duly commissioned and qualified in and for  
14 the County of York, Commonwealth of Pennsylvania,  
15 hereby certify that the foregoing is a true and  
16 accurate transcript, to the best of my ability, of  
17 a public hearing taken from a videotape recording  
18 and reduced to computer printout under my  
19 supervision.

20 This certification does not apply to any  
21 reproduction of the same by any means unless under  
22 my direct control and/or supervision.

23  
24 Karen J. Meister  
25 Reporter, Notary Public