



MONROE COUNTY
CONSERVATION DISTRICT

Conserving Natural Resources for the Future

January 27, 2014

sent via regular and email [jlutz@pahousegop.com]

Jonathan Lutz, Executive Director
Environmental Resources and Energy Committee
Pennsylvania House of Representatives (R)
237 Ryan Office Building
Harrisburg, PA 17120

RE: Monroe County Conservation District comments on HB 1565
Environmental Resources and Energy Committee Hearing January 29, 2014

Dear Mr. Lutz:

Thank you for your email message of January 15, 2014 in which you invited the Monroe County Conservation District to send written testimony on HB 1565 to you. As we have not heard from you regarding the schedule for the hearing on January 29, 2014, we are submitting the attached testimony for the committee's consideration.

Please contact me if you have any questions or require additional information.

For the Board of Directors,

Craig Toad
District Manager

CT/or
encl.

cc: Mark Sincavage, MCCD Board Chairman (via email)

MONROE COUNTY CONSERVATION DISTRICT COMMENTS ON HB 1565
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE HEARING
JANUARY 29, 2014

The Monroe County Conservation District has been involved with water resource buffers over the last 25 years. The District has a delegation agreement with DEP which allows us to conduct engineering reviews of NPDES permit applications, and we have had a staff engineer since 2009 to expedite NPDES permits in Monroe County. In addition to participating in numerous studies with the U.S. Environmental Protection Agency, the Delaware River Basin Commission, the PA Fish and Boat Commission, and East Stroudsburg University, the District collaborated with the Monroe County Planning Commission to write the model stormwater ordinance in the 2006 Brodhead-McMichaels Creek Act 167 Stormwater Management Plan update. In 2003, we began researching the benefits of riparian buffers on stormwater management, streambank erosion, and water quality. One of the documents we referenced was a literature search of over 140 scientific articles dating as far back as 1984. Buffer science is not new. It offers not only the benefits of buffers of varying widths, but their effectiveness in specific applications.¹ DEP's decision to include riparian buffers as a mandatory best management practice (BMP) was scientifically defensible when the Chapter 102 riparian buffer requirements were adopted in 2010.

Although this legislation proposes to amend the PA Clean Streams Law, it targets the buffer provisions in PA Title 25, Chapter 102 erosion control regulations. While Chapter 102 places requirements on the regulated community, it was also written to satisfy requirements placed on the Commonwealth by the federal government. The riparian buffer requirements found in Chapter 102, Section 102.14 are intended to allow permit applicants to meet federal antidegradation requirements. Implicit in this statement are two critical facts. Riparian buffers are mandatory only on projects that require an NPDES stormwater permit and then only in special protection watersheds. Further, riparian forest buffers are only required when the water quality of the special protection waters is impaired.²

It has been stated that this legislation will allow those seeking erosion and sedimentation approvals to have greater flexibility in protecting water quality in Pennsylvania. The suggested flexibility compromises compliance with antidegradation requirements and shifts the responsibility of proving compliance toward the applicant. It takes time and money to demonstrate that an alternate standard is equally or more protective of water quality, which is why applicants typically use DEP design guidelines. The elimination of mandatory buffers in favor of flexibility could actually cost more time and money and increase DEP review times, which is compounded by DEP being underfunded and understaffed.³

The underlying notion behind this legislation that it is unreasonable to require riparian buffers fails to recognize the following:

- Buffers, like landscape constraints and site attributes, are a function of project design.
- Buffers are discussed at pre-application meetings and issues are often resolved before the permit application is submitted.
- When buffers unreasonably affect project purpose, there are exceptions, waivers, and allowable activities in Chapter 102 to provide regulatory relief.
- DEP has issued 49 individual NPDES permits in Monroe County since the Chapter 102 riparian buffer requirements took effect. Of those, 24% were grandfathered and 45% were exempt by regulation; the remaining 31% addressed the buffer requirements through avoidance or reducing impacts and receiving waivers.⁴
- Buffers will affect the development of poorly planned, located, or designed projects because of the project, not because of the buffers. These are typically projects on properties with significant constraints to development such as steep slopes, wetlands, and floodplains.

Some examples of buffer impacts on projects in Monroe County have been circulated throughout the state. The use of these projects to demonstrate the impacts of riparian buffers on projects is inappropriate and out of context.⁵ These examples superimpose the buffers onto projects designed prior to the 2010 riparian buffer requirements. Current projects are designed taking the buffers into consideration, which limits the impacts of buffers on project viability. The conclusion that buffers remove areas from development is no different than the effects of wetlands, ponds, floodways, roadways, and above-ground stormwater facilities. As discussed above, if riparian buffers were optional, additional structural BMPs would have to be constructed to provide for the loss of functions, values, and benefits. Those facilities would add to project costs and, in keeping with this rationale, eliminate additional land area from development.

It is counterintuitive to think that every square inch of a parcel can be developed. It has been stated that this regulation has resulted in a major shift of state policy, which in effect amounts to a taking of property without legislative oversight or approval. This claim of takings is unfounded and unsupported by case law. No further discussion of this issue is warranted.

Regardless of whether applicants meet antidegradation requirements through the use of BMPs or the Commonwealth meets the federal Clean Water Act through its regulations and permitting programs, if we ever reach the point where most of our riparian buffers are developed, our surface waters will be destroyed. Riparian buffers are more than a BMP. They are a landscape feature that cannot be replicated through engineering, and like other natural systems, are more complex and interconnected than we can imagine.

Eliminating the riparian buffer requirement in special protection watersheds will negatively impact the environment, water quality, instream recreational uses and functions, drinking water supplies, the ability to maintain sustainable economies, and permit applicants.

We thank the committee for holding this hearing and attempting to fact-find and for the opportunity to comment on this important issue.

¹For example, the 35-foot buffer recommended by USDA to keep cows out of a stream is not appropriate for Chapter 102 antidegradation compliance for construction activities. While numerous scientific studies support a 300-foot water quality buffer to renovate runoff and maintain instream function, the 150-foot riparian buffer adopted by DEP is science-based and defensible, which is why it was accepted by EPA to meet federal anti-degradation requirements.

²Numerous studies have demonstrated that forest buffers enhance the in-stream processing of pollutants.

³The Chapter 102 riparian buffer requirement is closely tied to project design sequencing, in which designers assume that all stormwater impacts can be avoided or, if not, mitigated through nonstructural BMPs. Structural BMPs are the last consideration. If riparian buffers become optional, the sequencing presumption is eliminated, and more onerous requirements may be placed on applicants to demonstrate compliance with antidegradation requirements. Design sequencing is also suggested in the 2006 PA Stormwater BMP Manual and consistent with local stormwater ordinances in Monroe County.

⁴ As of January 24, 2014, 49 individual NPDES permits have been issued in Monroe County since the revised Chapter 102 regulations, including riparian buffers, took effect. 24% (12 of 49) were existing NPDES permits submitted for renewal which were grandfathered from riparian buffer requirements. 45% (22 of 49) were exempt from riparian buffer requirements under §102.14(d)(1) exceptions. Therefore 69% (34 of 49) NPDES permits did not need to address riparian buffer requirements and

31% (15 of 49) NPDES permits had to address riparian buffer requirements :

- 4 of 15 avoided buffers completely through design.
- 11 of 15 had buffer impacts and requested waivers after reducing impacts through design. All of the 11 waiver requests were granted.

The majority of the NPDES permits that were applied for (45 of 49) either did not need to address the riparian buffer requirements because they qualified for an exemption or grandfathering or they received a waiver. The remaining 4 projects avoided all impacts to the riparian buffers.

⁵We understand how riparian buffers could be considered onerous in a vacuum, however applicants have been designing projects around wetlands and floodplains for decades. In Monroe County, applicants also design around municipal water resource buffers, some of which are more stringent than Chapter 102. More education is needed statewide regarding the importance of riparian buffers and how to design projects with buffers implemented.