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TESTIMONY ON HOUSE BILL 1565

PRESENTED TO THE  
HOUSE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE

BY

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On behalf of the County Commissioners Association of Pennsylvania (CCAP), I want to thank Chairman Miller, Chairman Vitali and members of the House Environmental Resources and Energy Committee for the opportunity to share our comments on House Bill 1565. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

Just a few weeks ago, CCAP unveiled its 2014 priorities during a press conference here at the Capitol. One of those priorities is waterway infrastructure and maintenance, recognizing how critical dams, levees and storm water management are to public health and safety, helping to manage flooding events, assuring water quality, and promoting sustainable land use and community development. Counties and conservation districts are involved in many aspects of waterway planning and management, making important front-line decisions every day.

However, state and federal funding for waterway and storm water projects has dwindled over the years, leaving local governments to shoulder the burden. At the same time, a complex web of laws, regulations and policies has made it increasingly difficult, less efficient and more costly for counties to undertake needed waterway infrastructure projects. Federal and state resource commitments for such projects must be revisited, and counties further encourage an examination of the current interrelationship among the federal, state and local levels of government with a goal of promoting more effective policies and procedures.

Counties believe it is time to undertake a review of laws, regulations and programs managed by state agencies such as the Department of Environmental Protection and federal agencies such as the Army Corps of Engineers to determine whether those standards are still relevant for current situations. Such a review could also serve to resolve conflicting goals, improve coordination, provide uniform application, assist in consolidating or streamlining programs, and identify more cost-effective and technological feasible tools.

CCAP believes such a review would be particularly appropriate with the state's Chapter 102 regulations for erosion and sedimentation control. In 2010, these regulations were amended, in part to include a provision prohibiting earth disturbance activities that otherwise require a permit for storm water discharges within 150 feet of a perennial or intermittent waterway located in an Exceptional Value (EV) or High Quality (HQ) watershed attaining its designated use. In addition, the amendments requires a riparian buffer for earth disturbance activities that otherwise require a permit for storm water discharges within 150 feet of a perennial or intermittent waterway located in an Exceptional Value (EV) or High Quality (HQ) watershed not attaining its designated use. There are some exceptions to these requirements, and DEP may grant waivers for other reasons, though it has been reported that the application of these waivers has been inconsistent.

Of course, not all parts of the state are impacted the same way by these requirements. In Wayne County, 94 percent of the land is classified as being in an HQ or EV watershed. The 150-foot setback requirement for earth disturbance activities affects nearly 72,000 acres of property, approximately 15 percent of the total land area or the equivalent of the entire area of three townships within the county. Analyses have indicated that at least 50 percent of the land is

classified as being in an HQ or EV watershed in 12 other counties, with all but one county (Philadelphia) having at least some small amount of property classified as HQ or EV. In some areas, these watersheds fall in more suburban and developed areas, while in others they are based in more rural locations, such as state forests, or on otherwise preserved land. Further, the mandated prohibition on earth disturbance activities within 150 feet of an HQ or EV waterway does not allow local conditions to be taken into account, such as topography or soil conditions which may naturally prevent runoff of nutrients and sediment into waterways, unless a waiver can be obtained.

As a result of the differences across the commonwealth, it is not surprising that counties are seeing that this one-size-fits-all approach may not necessarily be the most appropriate in every situation. With that in mind, there may be other best management practices that achieve the necessary environmental protections of our HQ and EV waters while allowing more flexibility in land use and community development.

While House Bill 1565 would no longer mandate that a riparian buffer be used or installed under the Clean Streams Law to avoid pollution of the waters of the commonwealth, it would allow their use as an option among best management practices, design standards and alternatives. Similar consideration should also be extended to removing the prohibition of earth disturbance activities within 150 feet of an HQ or EV watershed. Such an approach would allow each case to be evaluated on its own particular factors, so that one or more best management practices that have the same nutrient and sediment removal rates, and thus achieve the goal of protecting water quality, can be selected. This could also give county conservation district staff, who have an important local perspective and strong local geologic and topographic knowledge, an opportunity to offer that information during the evaluation of the conditions surrounding each situation.

We would also note that this approach is consistent with CCAP's policy position on land use planning, which encourages the General Assembly and administration to recognize the role counties play in balancing environmental, infrastructure and development needs. With that said, although CCAP supports the flexibility envisioned by HB 1565, should the legislation be enacted, a partnership between state and local government, as well as other stakeholders, will be critical in moving forward with new regulations or policies. Again, we believe that county conservation districts, which serve as the local environmental link, should be engaged in policy development up front. The districts' local perspective to balancing environmental protection with growth, and their history of responsible and efficient delivery of state environmental programs at the local level, makes them an important partner in program development and implementation.

Counties stand ready to partner with the state to develop laws and regulations that assure protection of the commonwealth's waterways while at the same time offering the flexibility to encourage local land use decisions. I would be happy to discuss these comments further and answer any questions you may have.