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Environmental Quality Board

October 21, 2009

Mr. Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

Re: Proposed Rulemaking – Erosions and Sediment Control and Stormwater Management  
(#7-440), (25 Pa Code Chapter 102)

Dear Mr. Kaufman:

Enclosed are copies of the official verbatim transcripts for the public hearings the Environmental Quality Board recently held in Cranberry Township, Harrisburg, and Allentown on the above referenced proposed rulemaking.

Please contact me at the number provided above or via e-mail at [mtate@state.pa.us](mailto:mtate@state.pa.us) if you have any questions.

Sincerely,

*Michele J. Tate*

Michele Tate  
Regulatory Coordinator

Enclosures



BEFORE THE ENVIRONMENTAL EQUALITY BOARD  
AND DEPARTMENT OF ENVIRONMENTAL PROTECTION

\* \* \* \* \*

IN RE: EROSION AND SEDIMENT CONTROL AND STORMWATER  
MANAGEMENT

PUBLIC HEARING

\* \* \* \* \*

BEFORE: CYNTHIA CARROW, EQB

Kevin Murin, DEP

Glenn Rider, DEP

Margaret Murphy, DEP

HEARING: Tuesday, September 29, 2009

5:10 p.m.

LOCATION: Cranberry Township Municipal Building

2525 Rochester Road

Cranberry Township, PA 16066

WITNESSES: Paul Lyskava, Dave O'Barto, Joe Destro, Tom

Hoffman, Scott Hoffman, Stephanie Simmons,

Todd Sparks, Bill Moul

Reporter: Wendy Blair

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MS. CARROW:

I would like to welcome you to the Environmental Quality Board, EQB, public hearing on the proposed erosion and sediment control and stormwater management regulations. My name is Cynthia Carrow. I am a member of the Environmental Quality Board, representing the Citizens Advisory Council to the DEP. I will officially call this hearing to order at 5:10 p.m.

The purpose of this hearing is to formally accept testimony on the proposed erosion and sediment control and stormwater management regulations. In addition to this hearing, the Environmental Quality Board will hold hearings on the proposed rulemaking in Harrisburg on Thursday, October 1st, 2009, and in Allentown on Monday, October 5th, 2009.

This proposed rulemaking includes amendments to 25 Pa. Code Chapter 102 to enhance and supplement existing erosion and sediment control regulations in order to prevent sediment pollution from entering the surface waters of the Commonwealth during and after various earth disturbance activities.

1 The rulemaking also includes post-construction  
2 stormwater management requirements and best management  
3 practices in order to enhance the stability of  
4 streambeds and banks, resulting in enhanced water  
5 quality protection and more effective long-term  
6 stormwater management.

7           The proposed amendments include  
8 provisions that enhance existing agricultural  
9 stormwater management provisions by including  
10 requirements for animal heavy use areas, clarify  
11 existing requirements for accelerated erosion and  
12 sediment control, incorporate updated federal  
13 requirements, update permit fees, codify post-  
14 construction stormwater management requirements,  
15 require riparian forest buffers for projects located  
16 in proximity to exceptional value waters, and provide  
17 a new permit-by-rule option for low-risk, low-impact  
18 projects that incorporate riparian forest buffers.

19           Since 2007, the Department has undertaken  
20 extensive outreach to discuss and receive input on the  
21 proposed amendments to the Chapter 102 regulations,  
22 including the permit-by-rule and the riparian buffers  
23 provision. These included discussions with the  
24 Pennsylvania Conservation Districts, Pennsylvania  
25 Builders Association, Professional Engineers

1 Association, State Conservation Commission,  
2 Pennsylvania Campaign for Clean Water, the Agriculture  
3 Advisory Board and the Water Resources Advisory  
4 Committee.

5           In order to give everyone an equal  
6 opportunity to comment on this proposal, I'd like to  
7 establish the following ground rules, if you will. I  
8 will first call upon the witnesses who have pre-  
9 registered to testify at this hearing. After hearing  
10 from these witnesses, I will provide any other  
11 interested parties with the opportunity to testify as  
12 time allows. And they, too, will be asked to submit  
13 three copies of their testimony.

14           The testimony is limited to ten minutes,  
15 and I will be very strict about that so we do have  
16 time to hear everyone. Organizations are requested to  
17 designate one witness to present testimony on behalf  
18 of that organization. Each witness is asked to submit  
19 the three written copies that I just referred to to  
20 aid in the transcribing of this hearing. Please hand  
21 me your copy prior to presenting your testimony.

22           Please state your name, address and  
23 affiliation for the record prior to presenting your  
24 testimony. The EQB would appreciate your help by  
25 spelling names and terms that may not be generally



1 familiar so that the transcript can be as accurate as  
2 possible. Because the purpose of a hearing is to  
3 receive comments on the proposal, EQB or DEP staff  
4 present may question the witnesses. However, we  
5 respectfully request that you do not question EQB or  
6 the DEP staff.

7           In addition to or in place of oral  
8 testimony presented at tonight's hearing, interested  
9 persons may also submit written comments to this  
10 proposal. Written comments are viewed the same as  
11 oral testimony. All comment must be received by the  
12 EQB on or before November 30th, 2009. Comments should  
13 be addressed to the Environmental Quality Board, Post  
14 Office Box 8477, Harrisburg, PA, 17105-8477. Comments  
15 may also be e-mailed to RegComments@state.pa.us.

16           All comments received at this hearing as  
17 well as written comments received by November 30th,  
18 2009 will be considered by the EQB and will be  
19 included in a comment response document. This will be  
20 prepared by the Department and reviewed by the EQB  
21 prior to the Board taking final action on this  
22 regulation. Anyone interested in a copy of the  
23 transcript of this hearing may contact the court  
24 reporter here this evening to arrange to purchase a  
25 copy.

1 I would like to now call on the first  
2 witness, Paul Lyskava.

3 MR. LYSKAVA:

4 Very good.

5 MS. CARROW:

6 You're already in position. Thank you.  
7 Please begin.

8 MR. LYSKAVA:

9 Good evening. I am Paul Lyskava, the  
10 executive director of the Pennsylvania Forest Products  
11 Association. We are located in Harrisburg,  
12 Pennsylvania. Thank you very much to the EQB as well  
13 as DEP for the opportunity to have both members of the  
14 public as well as stakeholders comment on these  
15 Chapter 102 proposed rule changes.

16 Our organization represents the forest  
17 products industry everywhere from individual foresters  
18 and timber harvesters up through sawmills, paper  
19 companies and secondary wood product manufacturers,  
20 things like cabinetry and flooring and whatnot. We  
21 are also the host organization for the Sustainable  
22 Forestry Initiative, which is the state's largest  
23 logger and practitioner training program within the  
24 state, something which is required to do timber  
25 harvests on Bureau of Forestry land and many of the

1 large third-party certified lands within the  
2 Commonwealth of Pennsylvania.

3           I guess I would like to start by stating  
4 for the record that we believe and the evidence  
5 suggests that forestry and timber harvesting are not  
6 the primary causes of the state's water quality  
7 programs. The existing Chapter 102 regulations, in  
8 the use of existing harvesting BMPs, which were  
9 established back in the 1990s, and SFI training for  
10 forest practitioners and harvesters have improved our  
11 industry's performance dramatically over the past two  
12 decades as it relates to erosion and sedimentation  
13 impacts.

14           The 2008 Pennsylvania Integrated Water  
15 Quality Monitoring Assessment Report prepared by DEP  
16 in compliance with the federal Clean Water Act  
17 indicates that silviculture and logging roads were  
18 identified as a source of impairment on less than two  
19 tenths of one percent, again, that's two tenths of one  
20 percent, of the state's impaired stream miles. The  
21 leading source of impairment of Pennsylvania streams,  
22 in comparison, are abandoned mine drainage, which is  
23 the cause of 49 percent of impaired stream miles, and  
24 agriculture, which is the source of 46 percent of  
25 impaired stream miles.

1                   In addition, many of the state's existing  
2 EV and HQ streams are located within regions of the  
3 state which we would consider to be the wood basket of  
4 Pennsylvania, those areas which, for decades, have  
5 been the source of timber and working forests to  
6 supply our industry, again, further demonstrating the  
7 minimal impact caused by our working forests. Because  
8 of this evidence, while it is outside the proposed  
9 rulemaking, we would take this opportunity to  
10 encourage EQB and DEP to resist any calls for  
11 reductions in the earth disturbance thresholds which  
12 are in the current regulations at this point in time.

13                   Having that being said, I'm going to  
14 briefly go over a number of our concerns, which we'll  
15 be submitting written testimony with more detailed  
16 language at the appropriate time. Starting off ---  
17 I'm going to rattle these off relatively quickly, but  
18 starting off in Section 102.4, the proposed rulemaking  
19 for the new requirements for E&S plans should be done  
20 in such a way to continue to allow to be met by the  
21 current population of trained forest practitioners  
22 with the least amount of additional cost. And I  
23 believe that that should be the case with those  
24 proposed changes, but we may be suggesting language to  
25 ensure that that is the case.

1           More importantly, I want to comment on  
2 the forested riparian buffer requirements which are  
3 proposed within the chapter, detailed in Section  
4 102.14. And certainly they were put together to  
5 maximize the water quality benefits. But we have some  
6 concerns that there are other ecological benefits  
7 which may be --- which may suffer as a result of that,  
8 that being silviculture and forest health.

9           We believe the proposed forest riparian  
10 buffer requirements could be an impediment to proper  
11 silviculture and will hamper the ability for some  
12 forest landowners to ensure forest health and  
13 productivity on their land. Harvesting restrictions  
14 within buffers, including what is outlined within the  
15 section, can lead to inadequate forest regeneration,  
16 unintended shifts in tree species composition,  
17 inability to properly mitigate the long list of  
18 invasive pests and diseases which threaten our  
19 forests, and safety issues regarding dead and dying  
20 timber. The language within the proposed rulemaking  
21 should be clearer and balanced regarding these  
22 silvicultural needs and allow for additional  
23 utilization of forestry in both the inner and outer  
24 buffers. And we will be offering written comments  
25 regarding that.

1           Additionally, we do have a  
2 recommendation. The proposed rulemaking, while  
3 limited in scope in terms of the number of activities  
4 which will fall under it, will still have an impact on  
5 forest landowners from seeing a return on their  
6 ownership investment in their forest land. For some  
7 landowners, this impact could be rather substantial.  
8 Lost return is not just going to be from lost  
9 development opportunities or lost timber harvesting  
10 opportunities, but also the potential loss of future  
11 revenue from the carbon offset markets, which we  
12 anticipate with climate change legislation on either  
13 the federal or state level. And we will be getting  
14 into this in our written comments as well.

15           Under subsection F of Section 102.14, the  
16 ambiguous language in the proposed rulemaking  
17 regarding the permanent protection of the riparian  
18 buffers, we believe it will result in further  
19 proliferation of arbitrary and even more excessive  
20 municipal forestry ordinances that will make it  
21 difficult for forest landowners to maintain their  
22 acreage as working forests. Municipal ordinances in  
23 certain regions of the state are a huge problem for  
24 conducting proper forestry, and we believe that that  
25 subsection F will lead to a greater proliferation of

1 that. We'll be offering written comments regarding  
2 that.

3           Furthermore, in subsection E(5), we  
4 understand --- which is the requirements for forest  
5 stewardship plans to be reviewed and approved by DCNR.  
6 We understand that DCNR indicates that they currently  
7 do not have the capacity or resources to necessarily  
8 review or approve those plans as called for in the  
9 proposed rulemaking. And this does need to be  
10 addressed.

11           Furthermore, the rulemaking should ensure  
12 that landowners have the discretion in the type of  
13 forest plan being submitted as opposed to a  
14 requirement on utilization of a specific program's  
15 plan. There are a lot of foresters out here that  
16 utilize different programs, including third-party  
17 certification, and those plans should be acceptable  
18 under those provisions.

19           I guess in conclusion, while thankful for  
20 the opportunity to offer comments, we will state that  
21 the proposed rulemaking will impose buffers that are  
22 more restrictive than most hardwood timbering states  
23 in the eastern U.S., more restrictive to a certain  
24 extent than the management practices on some of the  
25 public lands here within the Commonwealth, and more

1 restrictive than existing third-party forest  
2 certification requirements. That includes the Forest  
3 Stewardship Council, a program which is blessed by  
4 groups such as Rainforest Alliance and Greenpeace and  
5 the World Wildlife Fund. And if you're being more  
6 restrictive than those, I think we may need to take a  
7 stronger look at that.

8           In addition, we feel that the proposed  
9 rulemaking will lead to a steady restricting in the  
10 acreage available for sustainable forestry. It's  
11 going to increase costs for timber harvesting and for  
12 my members across the broad scope of our membership.  
13 We feel that this may have the long-term effect of  
14 making Pennsylvania less competitive for both  
15 traditional forest products companies as well as  
16 emerging wood-based alternative energy projects.

17           And we look forward to submitting our  
18 more detailed written comments. This just a bit of a  
19 preview of that. And we look forward also to a  
20 continued dialogue and working closely with the  
21 Department as well EQB on this issue. And thank you  
22 very much.

23           MS. CARROW:

24           Thank you. Next we have Dave O'Barto.  
25 Dave is with the Pennsylvania Council of Professional



1 Forestry.

2 MR. O'BARTO:

3 Good evening. Thank you for letting me  
4 speak tonight. The Pennsylvania Council of  
5 Professional Forestry is comprised of members who are  
6 professional foresters seeking to be licensed in the  
7 State of Pennsylvania as foresters.

8 In regards to the rulemaking, one of the  
9 most important professions with respect to the  
10 protection of streams is forestry. Pennsylvania  
11 foresters are trained and equipped to manage  
12 Pennsylvania forests and watersheds in a manner which  
13 minimizes impact to water quality. Reliance on skills  
14 and judgment of licensed professional foresters should  
15 have priority to the management of the forest buffers  
16 and riparians. The proposed rulemaking definition  
17 concerning licensed professional should be amended  
18 with a statement to the effect that it will include  
19 forester in its application when Pennsylvania  
20 foresters are licensed as registered professionals.

21 Legislation sponsored and to be  
22 introduced by Representative Kerry Benninghoff of the  
23 171st State House District was written and being  
24 circulated for cosponsorship in the State House. The  
25 proposed legislation will be soon introduced in this

1 session of the General Assembly. It should be  
2 recognized that this effort was in progress prior to  
3 the publication of the proposed rulemaking. By the  
4 statements made in the proposed rulemaking as to the  
5 parties consulted in the development of the proposed  
6 rulemaking and adopted by the Environmental Quality  
7 Board, it appears that forestry --- the forestry  
8 profession and foresters may have been  
9 underrepresented in this process.

10                   Our intent is to help improve, promote  
11 and maintain the quality of clean streams and waters.  
12 Foresters best understand the dynamics, value and need  
13 of forest buffers and riparian forests, whether they  
14 are in a development or a large land hold. Therefore,  
15 licensing professional --- licensing Pennsylvania  
16 foresters is a very important ingredient in protecting  
17 water quality in Pennsylvania and practice of forestry  
18 in Pennsylvania. Thank you.

19                   MS. CARROW:

20                   Thank you. Joe Destro.

21                   MR. DESTRO:

22                   My name is Joe Destro. As a licensed  
23 professional land surveyor, professional forester, I  
24 would like to talk briefly on the benefits that  
25 professional forest management can provide to the

1 water management issue.

2                   It seems that forest land is taken for  
3 granted. It seems that the DEP and others believe  
4 that forest lands in Pennsylvania are in a state of  
5 grace, that the water regime is natural and that all  
6 that is needed for these lands are to be left alone  
7 except when impacted by new activity. Every acre of  
8 Pennsylvania forest land is different. Most of the  
9 land has been impacted heavily in the past. Look at  
10 the harvest at the turn of the 20th century. Forest  
11 land is resilient. After a disturbance, growth  
12 resumes. The land seems to heal or recover with  
13 little or no help from man. Is this the best that can  
14 be done?

15                   There's a vast quantity of knowledge of  
16 science that gives us techniques, practices an applied  
17 science that makes up forest watershed management. In  
18 Pennsylvania, the application of this science is  
19 largely not applied, not practiced. Why is that?

20                   For various reasons. Some of them,  
21 resistance by the forest products industry, politics.  
22 In Pennsylvania, foresters are not licensed. The  
23 profession, if you can even call it a profession, has  
24 not risen to the same level as similar professions:  
25 engineers, geologists, land surveyors, that licensing

1 requires. The result is a lack of comprehensive  
2 standards or practices being applied on the ground.  
3 Forest landowners are not knowledgeable about forestry  
4 generally. They don't know what they need or what to  
5 expect. Most of their thoughts are on the timber  
6 resource.

7           The message is simple. It should be  
8 startling. People of Pennsylvania, Department of  
9 Environmental Protection, if you want to get serious  
10 about water issues, if you really want to do something  
11 about waterborne pollution, if you really want to save  
12 the Chesapeake Bay, utilize professional forestry.  
13 Manage the water where it first hits the ground, in  
14 the woods. After all, most of Pennsylvania is forest  
15 land. Licensed foresters, demand of them the  
16 competent practice of watershed management.

17           I ask DEP to support --- no, more than  
18 support. I ask that the DEP be an advocate, demand  
19 that foresters be licensed. There is a bill soon to  
20 be introduced by Representative Kerry Benninghoff to  
21 license foresters. Licensed professional foresters is  
22 the one thing lacking in your whole approach to  
23 watershed management. Help correct this. We need to  
24 talk more. Bring foresters into the picture. Please  
25 contact Pennsylvania Council of Professional

1 Foresters. Thank you.

2 MS. CARROW:

3 Tom Hoffman, Clean Water Association.

4 MR. T. HOFFMAN:

5 Thank you. My name is Tom Hoffman. I am  
6 the western Pennsylvania director for Clean Water  
7 Action. We are a national organization with over a  
8 million members. We are dedicated to building a  
9 grassroots movement to clean up and protect our air  
10 and water.

11 We are a member of the Campaign for Clean  
12 Water. The Campaign was formed in 2002. It has 150  
13 environmental, conservation, sporting and religious  
14 groups from all across Pennsylvania in it. We speak  
15 with one voice for federal and state policies to  
16 protect and restore Pennsylvania's water resources.

17 So we are here tonight to speak about  
18 DEP's proposed regulations on stormwater. The  
19 Campaign is going to be submitting much more detailed  
20 written comments shortly, so I'm just going to hit the  
21 high points tonight.

22 Our rivers and streams are essential to  
23 the character of our region. We're called the Three  
24 Rivers City. They're under great stress now. Whether  
25 it's the fish kills in Dunkard Creek or excessive

1 saltiness in the Mon or raw sewage being dumped into  
2 our rivers during heavy rains, there's no escaping the  
3 fact that we need to be better stewards of our rivers  
4 and streams.

5                   Stormwater runoff is a major contributor  
6 to this stress. And there's a very simple solution  
7 that drastically decreases stormwater runoff: buffers.  
8 So I was having dinner with my kids the other night  
9 and talking about buffers. My daughter says, oh, you  
10 mean like on YouTube? She says, whenever we download  
11 a video from YouTube, there's a short period where it  
12 has to be buffered or else it won't play. So it's a  
13 pretty apt analogy. Any development near one of our  
14 valuable and precious streams has to be held to a  
15 higher standard. You got to have buffers or you can't  
16 play. I was going to do this whole shtick on buffers,  
17 the runoff slayer, but they talked me out of it.

18                   So anyway, Campaign for Clean Water has  
19 developed a policy that needs to be the standard in  
20 Pennsylvania, 100-foot forested buffers on all  
21 streams, 150-foot forested buffers on small headwater  
22 streams and impaired streams, 300-foot forested  
23 buffers on all exceptional value and high-quality  
24 streams. These are the highest value rivers and  
25 streams and require special protection under the law.

1 I would like to point out that many  
2 municipalities across the state have adopted their own  
3 stream buffer ordinances. They have recognized the  
4 importance of buffers in protecting their water  
5 resources and their communities. The state should  
6 follow their example and put in place a statewide  
7 standard on buffers. And Campaign for Clean Water has  
8 all buffers 100 proposal that you can look at.

9 In addition, we're opposed to the new  
10 permit-by-rule proposals. Profit-driven endeavors are  
11 notoriously lousy at self-policing. The Dunkard Creek  
12 incident, I think, is a good example of that.

13 We do applaud the DEP for including the  
14 oil and gas industry in these proposed regulations.  
15 They have been exempt until now. The threat posed to  
16 our environment by drilling for oil in the Marcellus  
17 Shale formation highlights the need to strictly  
18 regulate the oil and gas industry. And it's worthy of  
19 note that New York has declared a moratorium on  
20 Marcellus drilling because of the environmental risks.

21 As I mentioned earlier, the Campaign for  
22 Clean Water will be submitting more extensive public  
23 comments. And thank you for your time.

24 MS. CARROW:

25 Thank you. Next, Scott Hoffman, Trout

1 Unlimited, Chestnut Ridge chapter.

2 MR. S. HOFFMAN:

3 Thank you. Once again, Scott Hoffman,  
4 president of the Chestnut Ridge chapter of Trout  
5 Unlimited, CRTU. We're a grassroots organization  
6 whose mission statement is to protect, restore,  
7 enhance coldwater fisheries in North America.

8 The new permit-by-rule option should be  
9 eliminated. CRTU strongly opposes the permit-by-rule,  
10 especially in special protection watersheds. Special  
11 protection watersheds require extra oversight and  
12 review to ensure that the water quality is protected  
13 and maintained. Those special protections cannot be  
14 ensured through an expedited permit review process.  
15 Rather, DEP and the County Conservation Districts  
16 should be reviewing such permits carefully and  
17 ensuring that the permits require sufficient  
18 protection so that coldwater quality is not degraded.

19 It is absolutely critical for DEP and the  
20 County Conservation District staff to conduct thorough  
21 reviews of detailed and highly technical E&S and  
22 stormwater management plans to ensure that rivers and  
23 streams are protected from erosion and stormwater  
24 runoff. Such review is required by the Clean Water  
25 Act. Moreover, simply because buffers may be required



1 for projects permitted under the permit-by-rule option  
2 does not mean that good stormwater management and  
3 overall site design can be ignored. Buffers of 100  
4 feet or greater are only part of an appropriate  
5 stormwater management plan.

6           Along with buffers, stormwater management  
7 plans must also employ upslope best management  
8 practice, BMPs, that seek to minimize disturbance and  
9 maximize use of existing planted native vegetation and  
10 good infiltrating soils, and treat stormwater runoff  
11 at its source. Without requiring technical review of  
12 such plans, DEP cannot ensure that the development  
13 will employ these necessary stormwater management  
14 practices to adequately control stormwater runoff and  
15 prevent pollution.

16           We are also concerned with the lack of  
17 provisions providing public participation  
18 opportunities. Notice of permit applications and a  
19 minimum 30-day public comment period must be provided.

20           We are concerned about the permit-by-rule  
21 option for large landscape projects. The proposed PBR  
22 would provide for very large construction sites as  
23 long as only 15 acres are being disturbed at a time.  
24 This allows for very large projects to receive  
25 expedited permit approval without adequate technical

1 review of the plans as long as construction work is  
2 phased in 15-acre increments.

3           Forest riparian buffers should be  
4 mandatory for all earth disturbances requiring an  
5 NPDES permit. Forest buffers along our streams  
6 provide a wealth of benefits. They filter pollution,  
7 enhance the ability of streams to process pollutants,  
8 cool streams to offset thermal impacts, reduce  
9 flooding and flood damage, increase property values  
10 and help combat climate change.

11           CRTU supports the science requiring 300-  
12 foot buffers in our EV streams. EV streams are the  
13 highest-quality streams in Pennsylvania, and they need  
14 greater protection, much more than 150-foot buffers  
15 proposed by DEP.

16           CRTU believes DEP should require all  
17 earth disturbances requiring an NPDES permit should  
18 have to implement a riparian buffer. The regulations  
19 should be revised to require as part of the post-  
20 construction stormwater management plan the following:  
21 100-foot forest buffers on all streams, 150-foot  
22 forest buffers on small headwater streams, primary and  
23 secondary order streams and impaired streams,  
24 previously stated 300-foot forested buffers on EV and  
25 high-quality streams, which are our highest-value

1 rivers and streams and require special protection  
2 under the law.

3           We support the requirement for earth  
4 disturbance activities associated with oil and gas to  
5 obtain NPDES stormwater permits. There is no good  
6 reason to treat the oil and gas developers differently  
7 from commercial and residential developers with  
8 respect to E&S control and stormwater permitting.

9           The threshold requiring an E&S permit for  
10 timber harvesting and road maintenance should be  
11 reduced to five acres. The current proposal keeps the  
12 threshold to 25 acres. Timber harvesting and road  
13 maintenance activities as such of a large size can  
14 result in significant earth disturbance and  
15 corresponding potential for accelerated erosion and  
16 sedimentation. Reducing the threshold to projects of  
17 five acres or greater would be more protective of  
18 water quality and would be consistent with  
19 requirements for other regulated activities.

20           And we furthermore support the increase  
21 in fees to cover reviewing the plans and such. Thank  
22 you.

23           MS. CARROW:

24           Thank you. Stephanie Simmons.

25           MS. SIMMONS:

1                   Thank you all. My name is Stephanie  
2 Simmons, S-I-M-M-O-N-S. I live in Pittsburgh,  
3 Pennsylvania, 15229. And I am Sierra Club Water  
4 Chair. I will be forwarding --- just because I  
5 grabbed the wrong folder on behalf of another.

6                   As you've already heard, it seems to be  
7 in consensus that we need greater protections of our  
8 buffers and our sacred waters. And we've seen  
9 recently that these waters can get threatened and the  
10 tables can be turned rather quickly. So it makes  
11 sense to adopt the buffer 100, the buffer 150 for our  
12 headwaters and a buffer 300 for our most precious  
13 streams.

14                   I lived in Somerset County for 20 years.  
15 We used to go to Ogle Township, to Clear Shade Creek  
16 with my daughter and a dog. And it's a sacred place  
17 for everybody that's lived there. And I have parents  
18 and grandparents and great-grandparents that live  
19 there. And what gets lost in our testimony sometimes  
20 is our legacy in Pennsylvania. Our legacy in  
21 Pennsylvania is that we are a state that is green with  
22 forestry and that is water-rich.

23                   Times change. Industries change. And we  
24 must learn to change with them. What worked in the  
25 past may not be appropriate for the future. So simply

1 leaving the buffer to its own accord might have worked  
2 in the past. But with issues of industrial climate  
3 change, temperature changes along the waterways ---  
4 and we can prove that managed buffers can actually  
5 reduce water temperature from four to nine degrees.  
6 That becomes very significant when you start talking  
7 about trout water or bass populations. But what is  
8 management? Management must be something that is  
9 learned, that is maintained and that must have a  
10 serious quality review. And currently we don't have  
11 anything in place to allow for that. We need to put  
12 something in place for that.

13                   We have seen rather recently with  
14 acidification not only in freshwater, but in our  
15 oceans that that may become the number one problem for  
16 water, freshwater and saltwater alike. So we need to  
17 begin to pay better attention and begin to change our  
18 regulations to get ahead of those kinds of disasters.  
19 If we do not, if we do not, we may one day, in the not  
20 very distant future, have waterways with no fish. The  
21 acid quality of our water could resemble that of a  
22 bathtub with a can of coke poured in it because we did  
23 not put in place the proper regulations and  
24 thoughtfulness and lucid science that demands that we  
25 protect our industries, that we protect our fish, but

1 most importantly, that we protect our resources.

2           Our resources in the Commonwealth, our  
3 currency is our water, is our forests, is our air.  
4 Without that, anything we do will fail dismally to  
5 make up for what we failed to do in the first place,  
6 which is protect it. That must be the drop of all  
7 consideration as we move forward.

8           Sierra Club supports the buffer zone  
9 number 150 on headwaters and 300 on our most pristine  
10 streams. And we hope that you will as well. But keep  
11 in mind that the key is learned, holistic forestation.  
12 Mismanagement cannot be allowed to go astray and  
13 parasites be allowed to invade. They must be managed.  
14 Do we have that in place currently? We don't believe  
15 that we do. And we need to begin to make allowances  
16 for that and we need everyone at the table, all  
17 shareholders, so that we can make those determinations  
18 and put regulations in place ahead of a catastrophe.  
19 Thank you.

20           MS. CARROW:

21           Thank you. Todd Sparks, Hancock Forest  
22 Management.

23           MR. SPARKS:

24           Hi. My name is Todd Sparks. I work with  
25 Hancock Forest Management. Hancock Forest Management

1 is a timber investment management organization. In  
2 Pennsylvania we manage 114,000 acres of forest land.  
3 And all of these lands are third-party SFI certified.  
4 And currently we are pursuing third-party FSC  
5 certification.

6           Of course, with 114,000 acres, you know  
7 we have miles of streams and other water bodies on our  
8 land, many of which are exceptional value and high-  
9 quality streams. And to us, protection of the water  
10 quality is of utmost importance along with a lot of  
11 our other natural resources, soil protection, wildlife  
12 management. It all goes together. Water quality  
13 would be just one part of that. But it is of utmost  
14 importance. Right now we believe that the current  
15 Chapter 102 regulations, the existing BMPs, along with  
16 consistent SFI training for the logging forests and  
17 forestry forests, provide good protection for water  
18 quality as they exist now.

19           As far as riparian buffers go, we  
20 incorporate riparian buffers in all of our management  
21 activities at this point. But we are concerned with  
22 the proposed --- with the width of the proposed  
23 buffers. I think it's worth noting the proposed  
24 widths are double those of the Forest Stewardship  
25 Council Appalachian standards. And these standards

1 are widely accepted around the globe, actually, and  
2 supported by many special interest groups,  
3 conservation groups, preservation groups. And right  
4 now, the current standards do not allow any equipment  
5 activity in the buffer zone. And we believe that the  
6 proposed buffer widths would amount to a significant  
7 taking of timber land out of production and a  
8 significant loss of value for forest landowners.

9           I've got a question here that was  
10 addressed in the question and answer period. And my  
11 question is, is there any scientific support for the  
12 proposed buffer width? Well, that was discussed in  
13 the question and answer period. And I appreciate that  
14 that information will be available and I will be  
15 reviewing that because I think it needs to be based on  
16 scientific studies.

17           Permit requirements, I believe, are  
18 satisfactory the way that they are for timber  
19 harvesting activities. Twenty-five (25) acres is  
20 sufficient for the permitting of timber harvesting.  
21 It's been proven that timber harvesting activities  
22 generally do not create more than ten percent of earth  
23 disturbance. And as such, we think that the current  
24 permit regulations for timber harvesting are  
25 reasonable.



1           Now, the truth is that these proposed  
2 changes will have significant economic impact on  
3 forest management activities. These changes will  
4 impede a landowner from exercising their desired  
5 forest management activity. And they threaten to  
6 remove significant acreages from professionally-  
7 managed forestry activities. These regulations are  
8 more restrictive than most other states. And as  
9 mentioned before, they exceed the third-party  
10 certification requirements.

11           We believe this is all quite unnecessary.  
12 The expanded buffer widths, proposed buffer widths are  
13 quite unnecessary since a 2008 report, the  
14 Pennsylvania Integrated Water Quality Monitoring and  
15 Assessment Report prepared by the DEP indicated that  
16 silvicultural activity and logging roads were the  
17 source of less than two tenths of one percent of the  
18 state's impaired stream miles. Thank you. That's all  
19 I have.

20           MS. CARROW:

21           At this time, I believe that we have  
22 covered all of those who pre-registered. I'm sorry?

23           MR. MOUL:

24           I'm sorry. I pre-registered.

25           MS. CARROW:

1 Okay. And your name?

2 MR. MOUL:

3 My name is Bill Moul from the North Area  
4 Environmental Council.

5 MS. CARROW:

6 Okay. Please. I'm sorry. You were not  
7 on my list.

8 MR. MOUL:

9 Thank you. The North Area Environmental  
10 Council is a ---.

11 MR. MURIN:

12 I have a question. Can you please state  
13 your name and affiliation?

14 MR. MOUL:

15 Oh, I'm sorry. My name is Bill Moul.

16 MR. MURIN:

17 Spell it, please.

18 MR. MOUL:

19 M-O-U-L. The organization is the North  
20 Area Environmental Council.

21 MR. MURIN:

22 Thank you.

23 MR. MOUL:

24 NAEC is a 40-year-old all volunteer  
25 corporation dedicated to protection and advancement of

1 the environment in the North Hills of Pittsburgh,  
2 particularly north and west of the Ohio, the  
3 Allegheny, and centered particularly in the North  
4 Hills.

5           Stormwater regulations should not only  
6 prevent stream quality and flooding impact from  
7 becoming worse. They should also require behaviors  
8 that will improve the current situation. Improvement  
9 is a major goal in the new stormwater ordinances  
10 recently enacted in the Pine Creek, Squaw Run, Deer  
11 Creek and Girtys Run municipalities. Stream quality  
12 and flood reduction should also be a goal of DEP  
13 regulations.

14           Riparian buffers are critically important  
15 for controlling input of pollutants into streams and  
16 for protecting stream life from high temperatures and  
17 provide the habitat that is the beginnings of the food  
18 chain for our streams. Buffers for exception value  
19 and high-quality streams should be on the order of 300  
20 feet both sides. It should be on the order of 100  
21 feet both sides for other streams. That said, there  
22 need to be provisions for exceptions to that in more  
23 densely-settled watersheds. There also need to be  
24 tradeoffs depending on slope and soil types. And  
25 there should be an opportunity to trade improvement to

1 an existing buffer in the watershed in return,  
2 perhaps, for reduced requirements in a new  
3 disturbance.

4                   In addition to the buffer, BMPs outside  
5 the buffer should be absolutely required. The  
6 timbering trigger point should be the same as the  
7 five-acre trigger point for other activities. The 15-  
8 acre trigger for one disturbance is not a good idea.  
9 Cumulative impacts are part of what's gotten us to  
10 where we are today. The overall scope of the project  
11 should be the trigger. And cumulative impacts must be  
12 considered.

13                   Performance during construction and post-  
14 construction stormwater BMP operation and maintenance  
15 are critical to continued stream protection. Both  
16 aspects have not always been performed well.  
17 Consideration should be given to having permittees  
18 provide funding for and for developing methods for  
19 local municipalities with Conservation Districts to  
20 monitor effectively during construction and to perform  
21 and administer O&M.

22                   History of compliance may not have the  
23 expected discriminatory power going forward, in part  
24 because what I'll call the hammer of oversight is not  
25 as available with the permit-by-rule regulations.

1 It's not clear to me if we're getting as much for the  
2 permit-by-rule as we're giving away. I confess to not  
3 having studied the exclusions and permissions in  
4 depth. That's something I'll be submitting some  
5 additional comment on.

6 And finally, reduced oversight is not a  
7 good idea. Remember the current financial meltdown.  
8 Oversight keeps everyone honest. Thank you.

9 MS. CARROW:

10 Thank you. Is there anyone at this time  
11 that has not pre-registered that would like to provide  
12 testimony? Please understand, again, that written  
13 testimony is the equivalent of oral testimony, so  
14 please feel free to submit testimony to the  
15 Environmental Quality Board if you should wish to do  
16 so.

17 We will hold off adjourning the meeting  
18 for about 20 minutes just in case we do have someone  
19 who arrives that would like to provide testimony.

20 SHORT BREAK TAKEN

21 MS. CARROW:

22 The official statement is a call for any  
23 additional testimony. Hearing none, on behalf of the  
24 Environmental Quality Board, I hereby adjourn this  
25 hearing at 6:15 p.m. Thank you for your participation

1 in the hearing.

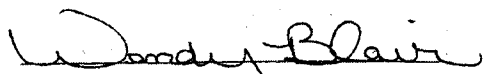
2 \* \* \* \* \*

3 HEARING CONCLUDED AT 6:15 P.M.

4 \* \* \* \* \*

5 CERTIFICATE

6 I hereby certify that the foregoing  
7 proceedings, hearing held before Cynthia Carrow was  
8 reported by me on 09/29/2009 and that I Wendy Blair  
9 read this transcript and that I attest that this  
10 transcript is a true and accurate record of the  
11 proceeding.

12   
13 Court Reporter  
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BEFORE THE ENVIRONMENTAL QUALITY BOARD  
AND DEPARTMENT OF ENVIRONMENTAL PROTECTION

\* \* \* \* \*

IN RE: EROSION AND SEDIMENT CONTROL AND STORMWATER  
MANAGEMENT (#7-440)

PUBLIC HEARING

\* \* \* \* \*

BEFORE: KELLY HEFFNER, Chairman

HEARING: Thursday, October 1, 2009  
5:15 p.m.

LOCATION: Department of Environmental Protection  
909 Elmerton Avenue  
Harrisburg, PA 17110

WITNESSES: Edward Walsh, Richard Martin, Grant  
Gulibon, Robert Fisher, Fred Bohls, Nathan  
Sooy, Alex Day, Marion Bowlan, Fred Bowlan,  
Gilbert Freedman, Harry Campbell

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REPORTER: Jen T. Alves

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OPENING STATEMENT

By Ms. Heffner

4 - 8

TESTIMONY

By Mr. Walsh

8 - 17

By Mr. Martin

18 - 21

By Mr. Gulibon

21 - 31

By Mr. Fisher

31 - 38

By Mr. Bohls

38 - 43

By Mr. Sooy

43 - 46

By Mr. Day

46 - 53

By Ms. Bowlan

53 - 57

By Mr. Bowlan

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By Mr. Freedman

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By Mr. Campbell

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NONE OFFERED

## P R O C E E D I N G S

CHAIR HEFFNER:

I would like to welcome you to the Environmental Quality Board public hearing on the proposed erosion and sediment control and stormwater management regulation. My name is Kelly Heffner. I'm the director of the Policy Office at the Department of Environmental Protection, and I'm representing the Environmental Quality Board at this evening's hearing. I officially call this hearing to order at 5:15 p.m.

The purpose of the hearing is to formally accept testimony on the proposed erosion and sediment control and stormwater management regulations. In addition to this hearing, the Environmental Quality Board held a hearing on the proposed regulations Monday, September 29th in Cranberry Township and will hold a hearing on Monday, October 5th, 2009 in Allentown.

This proposed rule making includes amendments to 25 PA Code Chapter 102 to enhance and supplement existing erosion and sediment control regulations in order to prevent sediment pollution from entering the surface waters of the Commonwealth during and after various earth disturbance activities.

1           The rule making also includes post  
2 construction stormwater management requirements and  
3 best management practices in order to enhance the  
4 stability of streambeds and banks resulting in  
5 enhanced water quality protection and more effective  
6 long-term stormwater management.

7           The proposed amendments include  
8 provisions that enhance existing agricultural  
9 stormwater management provisions by including  
10 requirements for animal heavy use areas, clarify  
11 existing requirements for accelerated erosion and  
12 sediment control, incorporate updated federal  
13 requirements, update permit fees, modify post  
14 construction stormwater management requirements,  
15 require riparian forest buffers for projects located  
16 in proximity to exceptional value waters and provide a  
17 new permit-by-rule option for low risk, low impact  
18 projects that incorporate riparian forest buffers.

19           Since 2007 the Department has undertaken  
20 extensive outreach to discuss and receive input on the  
21 proposed amendments to the Chapter 1 or 2 Regulations,  
22 including the permit-by-rule and the riparian buffer  
23 provisions. These included discussions with the  
24 Pennsylvania Conservation Districts, Pennsylvania  
25 Builder's Association, Professional Engineer's

1 Association, the State Conservation Commission,  
2 Pennsylvania Campaign for Clean Water, Department's  
3 Agricultural Advisory Board and the Department's Water  
4 Resource Advisory Committee, commonly known as RAC.

5           In order to give everyone an equal  
6 opportunity to comment on this proposal, we are  
7 establishing the following ground rules. I will call  
8 upon witnesses who have pre-registered to testify at  
9 this hearing. After hearing from these witnesses, I  
10 will provide any other interested parties with the  
11 opportunity to testify as time allows.

12           Testimony is limited to ten minutes for  
13 each witness. Organizations are requested to  
14 designate one witness to present testimony on its  
15 behalf. Each witness is asked to submit three written  
16 copies of his or her testimony to aid in the  
17 transcribing the hearing. Please hand me or Glen  
18 your copies prior to presenting your testimony.  
19 Please state your name, address and affiliation for  
20 the record prior to presenting your testimony.

21           The Environmental Quality Board would  
22 appreciate any help by spelling names and terms that  
23 may not be generally familiar so that the transcript  
24 can be as accurate as possible.

25           Because the purpose of a hearing is to

1 receive comments on the proposal, Environmental  
2 Quality Board or DEP staff may question witnesses,  
3 however, witnesses may not question the Environmental  
4 Quality Board or DEP staff. In addition to or in  
5 place of oral testimony presented at today's hearing,  
6 interested persons may also submit written comments on  
7 this proposal. All comments must be received by the  
8 Environmental Quality Board on or before November  
9 30th, 2009. Comments should be addressed to the  
10 Environmental Quality Board, P.O. Box 8477,  
11 Harrisburg, 17105-8477.

12           Comments may also be e-mailed to REG,  
13 R-E-G, comments, no space, C-O-M-M-E-N-T-S at  
14 state.pa.us. If you use the e-mail feature, please be  
15 sure to include your name and address. All comments  
16 received at this hearing as well as written comments  
17 received by November 30th will be considered by the  
18 Environmental Quality Board and will be included in a  
19 comment response document which will be prepared by  
20 the Department and reviewed by the Environmental  
21 Quality Board prior to the Board taking its final  
22 action on this regulation.

23           Anyone interested in a copy of the  
24 transcript of this hearing may contact the court  
25 reporter this evening to arrange to purchase a copy.

1 I will now call the first witness. Representative  
2 from McCarthy Engineering Associates. Sir? Oh, yes,  
3 please use the microphone.

4 MR. WALSH:

5 My name is Edward Walsh, W-A-L-S-H. Our  
6 address is 1121 Snyder Road, S-N-Y-D-E-R, West Lawn,  
7 Pennsylvania, 19609. And I am representing McCarthy  
8 Engineering. Anything else? Good afternoon. My name  
9 is Edward Walsh from McCarthy Engineering and I am a  
10 registered professional engineer in the State of  
11 Pennsylvania.

12 At McCarthy Engineering I am responsible  
13 for all aspects of a wide variety of projects, from  
14 single family dwellings to large scale commercial  
15 developments. McCarthy Engineering Associates is a  
16 professional engineering firm based in West Lawn,  
17 Pennsylvania. We handle all types of land development  
18 projects. In addition, we also represent multiple  
19 municipalities in Berks County.

20 The BMP definition has been expanded to  
21 include after disturbance. This modification will  
22 allow the Department or local conservation districts  
23 to go after a party years later when the original  
24 permit and party may or may not still be responsible.

25 The Conservation District definition has

1 been expanded to include a provision to administer and  
2 enforce stormwater management. If the Department  
3 wants local conservation districts to review  
4 stormwater, then steps need to be taken to be the sole  
5 reviewer and remove municipalities from that function.

6 We also question local conservation  
7 districts' staff's ability to soundly and  
8 professionally review stormwater designs. It has been  
9 our experience that very few conservation districts  
10 have staff which fully comprehend or are versed  
11 stormwater, let alone have adequate professional  
12 licensure.

13 We also recommend adding the following  
14 terms to the definitions, avoid, conveyance, guidance,  
15 manage, minimize, mitigate, recommend, sale and  
16 suggested. In the context that they are used in the  
17 regulations, all of these are extremely subjective.  
18 Guidance, recommended and suggested are also used  
19 throughout Department literature and are interpreted  
20 as regulations by Department staff.

21 The terms extent practical and utilize  
22 other measures that minimize and prevent have also  
23 been added throughout the document. This is very  
24 vague and open to interpretation. Who decides when  
25 these have been met based on what criteria? There are

1 many pitfalls with this. A reviewer specifying that  
2 only a certain brand meets the requirements or an  
3 open-ended requirement that a reviewer can say has  
4 never been met.

5           A requirement has been added to, among  
6 other things, reclaim and restore water quality to  
7 waters of the Commonwealth. Who is responsible for  
8 quantifying this requirement? If you have a property  
9 owner with three acres on the side of the Schuylkill  
10 River and he proposes to develop the land, the  
11 Department could justifiably tell him that he will  
12 only receive his permit when he restores the water  
13 quality of the Schuylkill River. While I would like to  
14 think that commonsense would prevail, based on past  
15 experiences, I'm sure it's only a matter of time  
16 before that exact thing is asked.

17           A requirement has been added to plan and  
18 implement measurements. If specific items are  
19 proposed to be measured, they should be enumerated as  
20 part of this regulation. Placing the burden of  
21 completing science projects for the Department should  
22 not be placed on the regulated public. Regarding  
23 thermal impacts, to date there is no widely accepted  
24 methodology to even compute thermal impacts. The  
25 analysis and mitigation requirements and acceptable



1 changes vary significantly, even within the  
2 Department's own regional offices. Specific numerical  
3 requirements should be provided.

4 A statement requiring conservation  
5 districts to consult with the Department has been  
6 added. While we appreciate the additional guidance,  
7 we also have concerns that this will become an excuse  
8 to extend permitting timeframes.

9 The notice of termination acknowledgement  
10 is already greatly abused. We repeatedly see  
11 conservation districts holding the NOT over  
12 developers' heads to get things that are not required,  
13 like installation of additional post construction  
14 BMPs. As written, the Department has no incentive to  
15 issue a NOT. They essentially have someone on the  
16 hook to operate or pay violations for not operating  
17 the BMP until the permit expires. We recommend that a  
18 specific timeframe from this submission of the NOT be  
19 included.

20 The responsibility for the long-term  
21 maintenance of post-construction stormwater has been  
22 an ongoing issue. The majority of municipalities we  
23 work with won't accept dedication of these facilities.  
24 They don't want the maintenance responsibility or the  
25 Department breathing down their neck. So long-term,

1 who is responsible for these? Are lot owners expected  
2 to be responsible for BMPs for a whole development?  
3 If the Department wants to mandate long-term  
4 maintenance, then they also need to provide a  
5 reasonable solution.

6           The term minimize is used throughout the  
7 regulations. Who determines when this is met?  
8 Minimized impervious is no impervious. It is only a  
9 matter of time until staff is using this as another  
10 reason to try to deny permits. We recommend that  
11 numerical numbers be established.

12           Regarding a schedule of inspections, it's  
13 unclear who is intended to perform these inspections  
14 or what the definition of a critical inspection is.  
15 We work with multiple conservation districts that have  
16 already asked for unreasonable inspections on the  
17 developer's dime. Either a definition for critical  
18 inspections should be included or the types and  
19 specific inspections should be enumerated.

20           The documentation requirement for long-  
21 term inspections should also be clarified. Are the  
22 reports intended to be submitted to the Department?  
23 It seems unreasonable to have a homeowner maintain  
24 boxes of documentation. For commercial facilities  
25 records are typically kept off-site which is contrary

1 to all other Department regulations. This needs to be  
2 clarified to prevent future hardships on property  
3 owners. In the event that a commercial management  
4 company is fired or a homeowner's association changes  
5 hands, how is responsibility transferred?

6           The 20 percent reduction for impervious  
7 areas should be stricken from the requirements. This  
8 serves only as a punishment for redeveloping blighted  
9 areas and promoting urban sprawl. Redevelopment is  
10 already more expensive than developing a corn field.  
11 Maintaining this requirement only pushes developers  
12 away from redevelopment of areas like Harrisburg or  
13 Reading.

14           We suggest splitting a post construction  
15 certification into two parts, one for design and one  
16 for inspection. This will allow a municipal engineer  
17 to sign off on the construction side to prevent  
18 unwarranted costs to developers. The Department  
19 should determine how to uniformly require and  
20 implement the water quality standards. As it stands  
21 now if one developer creates ten one acre lots, they  
22 would be required to provide stormwater management,  
23 including long-term O&M and an increased cost to these  
24 lot owners.

25           On the other side of the road, a second

1 developer has a second ten acre parcel and subdivides  
2 it to ten one acre lots but doesn't construct. He  
3 sells all ten lots to individual owners. Since each  
4 lot is under one acre of disturbance, they're  
5 separately owned, these lot owners have no post-  
6 construction stormwater requirements. Two identical  
7 projects on opposites sides of the same road, one's  
8 exempt, one has to comply.

9           Regarding the permit-by-rule, a list of  
10 the exclusions should include numerical values. One  
11 professional's opinion of the acceptable risk of  
12 sinkhole development or land sliding will be different  
13 from another's, both of which will be different from  
14 the Department's. The requirements state that an  
15 operator, if known, should be present for the pre-  
16 submission meeting. Another section allows the  
17 Department to deny the ROC based on the history of the  
18 operator. What happens if the ROC is approved with an  
19 unknown operator and the Department doesn't like said  
20 operator?

21           The limits of eligibility review should  
22 also be clarified. If this is intended to be a  
23 complete review of the project, what is the advantage  
24 to using this process? The designer and owner have  
25 accepted more liability and there is no difference in

1 processing. The application fees should likewise be  
2 less than that for the standard general permit. This  
3 process theoretically reduces the work on the  
4 Department, while the owner's work in liability and  
5 cost have increased. The fee schedule should reflect  
6 that.

7           Regarding funding requirements, the  
8 executive summary states that the revision should not  
9 result in significant increase compliance costs and  
10 further states that there should be a cost savings to  
11 developers and the general public. While we agree  
12 that outdated requirements have been removed, new  
13 requirements have been added. A couple of these items  
14 of increase costs are additional inspections, long-  
15 term O&M monitoring, record keeping, interpretation of  
16 definitions such as restoring water quality, and  
17 measurements during construction.

18           How can the Department justify that there  
19 will be a reduction in costs? An analysis of the true  
20 projected cost should be provided to the public. An  
21 ongoing problem is the disparity between the  
22 Department's own regional offices and likewise the  
23 Department's local conservation district. Each office  
24 has their own sets of rules that they play by. For  
25 example, one conservation district we work with only

1 allows silt socks, no silt fence. The next  
2 conservation district to the north prohibits silt  
3 socks since they aren't in the manual. That's one  
4 small example. As part of these revisions,  
5 consistency needs to be addressed.

6 Another topic that repeatedly arises is  
7 what is the definition of being unable to infiltrate.  
8 Despite having reports from professional geologists  
9 stating not to infiltrate, open sinkholes on sites or  
10 municipalities that do not allow infiltration due to  
11 sinkhole activity, Department staff has repeatedly  
12 told us that we have to infiltrate on specific  
13 projects. This defies professional recommendations  
14 and good engineering practices. The guidelines for  
15 demonstrating that you cannot infiltrate should be  
16 incorporated into these regulations.

17 Going hand-in-hand is the loading rates  
18 for infiltration facilities. Manual arbitrarily uses  
19 8:1. We work with one conservation district that  
20 finds 20:1 acceptable. Another that uses 32:1 and a  
21 third that requires a minimum of 6:1 for a facility.  
22 None of these are based on site specific testing or  
23 soil properties. They are just arbitrary numbers.

24 Standards for professional judgement also  
25 need to be incorporated into the regulations. As

1 previously noted, the professional community is  
2 consistently told to do things because they are in the  
3 manual. These sites are the ones that with failing  
4 facilities because the professional community is told  
5 that they have to warp sites into meeting a general  
6 checklist, not professionally designing them.  
7 Checklist might be the Department's answers to not  
8 having professionally trained and licensed staff  
9 review submissions, however, the checklist and manuals  
10 are also the reason for failing facilities.

11 In conclusion, both my firm and I applaud  
12 the Department's efforts in undertaking the revisions  
13 to the regulations. Prior to the final --- prior to  
14 finalizing the regulations, there are multiple  
15 revisions that need to be completed to remove some of  
16 the guesswork and interpretation. All of the vague  
17 references need to either be removed or numerically  
18 quantified.

19 Thank you for the time and opportunity to  
20 present our recommendations to you. If anyone has any  
21 questions regarding my recommendations, please do not  
22 hesitate to contact me. Good evening.

23 CHAIR HEFFNER:

24 Richard Martin, of the Pennsylvania  
25 Forest Coalition. Thank you very much.

1                   MR. MARTIN:

2                   Good afternoon. I am Richard Martin,  
3 coordinator for the Pennsylvania Forest Coalition.  
4 That's spelled M-A-R-T-I-N, 740 Oak Hill, Boiling  
5 Springs, PA.

6                   When we saw that the proposed Chapter 102  
7 regulations included PBR, we were intrigued. We had  
8 assumed that it would be a very limited option granted  
9 only to the simplest projects and restricted only to  
10 the most trusted of developers, those with a proven  
11 record of professionalism.

12                   The last hour's presentation stated  
13 somewhat broader eligibility requirements. We were  
14 disappointed also to see that the intent of PBR is to  
15 expedite permits for earth disturbance activities,  
16 perhaps to the extent that it violates some parts of  
17 the Clean Water Act and put our waterways at risk.

18                   Will the PBR be the exception or the  
19 norm? Eligibility requirements said it's okay for HQ  
20 watersheds, and we feel that should not be done with  
21 an expedited permit review process.. Your agency's  
22 task is to ensure that permits give adequate  
23 protection to our streams and rivers.

24                   Among our members there were other  
25 concerns, not in any order, and reflects a lot of



1 different views because we have hunters, anglers,  
2 watershed folks, wildlife people, public agencies,  
3 conservation groups, churches. Here's one, we deplore  
4 the lack of opportunities for public participation.  
5 Public notification and a month long comment period  
6 should be provided.

7                   There should be assurance of technical  
8 review of E&S plans and post-construction stormwater  
9 management plans.

10                   We feel that DEP should work with county  
11 conservation district staff to conduct a needed  
12 technical reviews of the E&S and the stormwater  
13 management plans.

14                   We are concerned because PBR would not  
15 guarantee a combination of buffers, a good stormwater  
16 management plan and upslope BMPs. Technical review is  
17 a must. We fear that PBR could be abused by large  
18 developers. By working 15 acres or less at a time  
19 they could receive expedited permit approval for each  
20 phase of a development. We disapprove of any  
21 regulations which could be circumvented. We question  
22 the use of an engineer, a hydrologist or a landscaper  
23 hired by the developer to certify that the plans are  
24 adequate. This seems more like a suggestion by  
25 developers rather than this regulating agency. And we

1 don't feel that's in the best interest of  
2 environmental protection.

3           We know that some E&S and PCSM plans  
4 submitted to DEP by developers are sometimes lacking.  
5 So review by DEP and CCD professionals is a must. We  
6 feel that it's not a good idea to trade PBR for stream  
7 buffers. Riparian buffers have been mandatory for all  
8 earth disturbances, requiring an NPDES permit. And  
9 since streams flow between areas of jurisdiction,  
10 protection of our watersheds should be a concerted  
11 effort among all of the local governments, or better  
12 yet, statewide. And for the best stewardship, a  
13 buffer of at least 300 feet is needed for any  
14 development in EV watersheds.

15           Minimum 100 foot forested buffers are a  
16 key part of any good stormwater management plan. But  
17 because your agency is already stretched thin, we  
18 suggest that the application fees be at a level that  
19 reflects the actual costs associated with reviewing  
20 applications and plans. DEP faces challenges in  
21 implementing the stormwater program given limited  
22 staff and funding, and an increase in fees would help  
23 address those challenges.

24           I'm almost done. Pennsylvania has more  
25 miles of polluted waterways than any other state in

1 the nation. Buffer zones along streams have proven to  
2 protect our waterways, but sadly Pennsylvania has no  
3 statewide stream buffer requirement. Even much  
4 maligned New Jersey has mandatory buffer protections  
5 throughout their state. We urge DEP to set a similar  
6 standard in Pennsylvania and require stream buffers as  
7 BMP to preserve water quality on all streams.  
8 Anything less, including a volunteer buffer program,  
9 is inadequate and ineffectual.

10 So please help DEP adhere to its  
11 longstanding goal of environmental protection. This  
12 is a rare case where we need really more government  
13 supervision, not less.

14 CHAIR HEFFNER:

15 Thank you. Grant Gulibon with  
16 Pennsylvania Builder's Association.

17 MR. GULIBON:

18 Good evening. My name is Grant Gulibon.  
19 My last name is spelled G-U-L-I, B as in Bob, O-N.  
20 I'm a regulatory specialist with the Pennsylvania  
21 Builder's Association located at 600 North 12th  
22 Street, Lemoyne, Pennsylvania, 17043.

23 I appreciate the opportunity to testify  
24 this evening regarding PBA's views on proposed rule  
25 making in Title 25, Chapter 1 and 2, erosion and

1 sediment control and post-construction stormwater  
2 management. A more detailed version of my comments  
3 will be submitted to the EQB prior to the public  
4 comment deadline.

5            Pennsylvania's homebuilders have long  
6 been actively engaged in controlling stormwater runoff  
7 and protecting water quality. Before beginning  
8 construction, homebuilders must develop plans to  
9 control erosion and sedimentation. They must abide by  
10 strict environmental requirements in order to make  
11 sure that runoff from a site does not harm nearby  
12 waterways.

13            In recent years builders have worked to  
14 comply with local ordinances and install additional  
15 controls as the state has placed greater emphasis on  
16 post-construction stormwater management. PBA is also  
17 a founding member of the Pennsylvania Fair Share for  
18 Clean Water Coalition, a diverse group of stakeholders  
19 who have been working over the past several years to  
20 improve the water quality of the Chesapeake Bay and  
21 also water quality statewide through the seeking of  
22 additional funding and policy changes that can help  
23 protect waterways while ensuring that badly needed  
24 economic growth will continue to take place.

25            My comments this evening will address

1 three of the major concerns that PBA has identified  
2 with the proposed regulation. The first is the  
3 inclusion of a mandatory 150 foot riparian forest  
4 buffer requirement for projects in exceptional value,  
5 EV, watersheds. The second deals with features of the  
6 Department's proposed permit-by-rule for low risk or  
7 low impact projects. And the third is a cumulative  
8 negative effect that a number of other provisions in  
9 the proposal will have on the land development process  
10 in Pennsylvania.

11           During the series of outreach  
12 opportunities conducted by the Department as the  
13 proposed Chapter 102 revisions were developed, PBA  
14 made clear to the Department its opposition to any  
15 mandatory statewide buffer requirement. While some  
16 Pennsylvania municipalities have ordinances requiring  
17 buffers for new development, despite the lack of a  
18 state law specifically authorizing such measures,  
19 imposing any type of mandatory buffer requirement  
20 deprives landowners of the use of their property  
21 without compensation.

22           PBA also believes that the imposition of  
23 a buffer requirement, as included in this draft rule  
24 making, also discriminates against properties in EV  
25 watersheds, discriminates against developers as a

1 class and fails to impose similar requirements on  
2 agricultural operations which contribute far more  
3 nutrient sediment pollution to the Pennsylvania  
4 waterways than does new development.

5           While many support mandatory buffers and  
6 attempt to minimize the cost associated with such  
7 proposals, the reality is that significant financial  
8 hardships would be established on the individual  
9 residential level and significant economic impact also  
10 established on the developer level.

11           This is so because buffers impose costs  
12 not only for their installation, operation and  
13 maintenance, but also due to the economic losses  
14 landowners experience when they're denied use of the  
15 land that's taken to establish a buffer.

16           For instance, consider a case in which a  
17 property owner has no access to a lake or riverfront  
18 from lakefront or riverfront property. That use is  
19 going to be taken away from a property owner who may  
20 have purchased that land for just such a reason.

21           Finally, when developable land becomes  
22 artificially scarcer, its price increases, thus  
23 hardening housing affordability and badly needed job  
24 creation. At the same time those new buffers are  
25 established at the erosion and sediment control level,

1 they would not be functioning adequately for years to  
2 come. It takes time for vegetation to mature and  
3 reach its full potential for reducing pollutants.

4 E&S permits will long be closed before  
5 such buffers reach maturity. It is also important to  
6 consider that there likely exists a point in which a  
7 buffer's effectiveness at reducing pollutants begins  
8 to decrease and an increasing width of a buffer beyond  
9 that point imposes costs on homeowners and builders  
10 and exceeds any environmental benefits obtained.

11 Additionally, the project meets all other  
12 E&S and stormwater management requirements. We would  
13 question where the polluted water is coming off of  
14 site that requires a buffer.

15 In sort, the environmental benefits of  
16 riparian buffers must be carefully balanced against  
17 the associated economic costs and we do not believe  
18 that the statewide buffer requirement meets that  
19 standard. We understand that in the case of EV  
20 watersheds the Department's position is that a 150  
21 foot buffer is necessary to protect water quality and  
22 also to meet antidegradation requirements. We would  
23 also appreciate the opportunity to review any legal  
24 justification that the Department may have developed  
25 in support of this position and we would also

1 appreciate the opportunity to explore alternative  
2 methods of meeting the aforementioned requirements for  
3 EV watersheds.

4                   With regard to the proposed permit-by-  
5 rule, PBA believes that the optional permit-by-rule  
6 proposal developed by the Department is an  
7 encouraging, enlightened approach to the issues of  
8 protecting Pennsylvania's waterways and ensuring  
9 economic opportunity. However, we have identified  
10 several issues with the proposal as drafted that  
11 should be addressed in order to ensure that this  
12 option is perceived as viable and workable by a  
13 significant number of project applicants.

14                   First of all, the terms low impact  
15 project and low impact development are not defined in  
16 the proposed Chapter 102. This has the potential to  
17 create a great deal of confusion, as the Department is  
18 often referred to the applicability of a proposed  
19 permit-by-rule to low impact or low risk projects.

20                   What does the term low risk mean? Well,  
21 one could argue that a low risk or low impact project  
22 would not require nearly the level of protection  
23 required under the proposed permit-by-rule. At the  
24 same time, what would happen in a situation in which,  
25 regardless of the definition of a low impact project,



1 that a municipality does not permit such development,  
2 such as in the case when a municipality does not  
3 permit cluster development, when such a project does  
4 not fit with municipal subdivision and land  
5 development ordinances, what happens in such an  
6 instance?

7           At the same time the proposal also  
8 prohibits a person who has, quote, failed and  
9 continues to fail to comply or has shown a lack of  
10 ability or intention to comply with a regulation  
11 permit and schedule of compliance or order issued by  
12 the Department from using the permit-by-rule.

13           While recognizing the intent underlying  
14 this provision, PBA is concerned that it could, for  
15 instance, penalize a developer for the actions of a  
16 subcontractor or another more tangentially related  
17 entity.

18           Additionally, several key terms in the  
19 permit-by-rule section such as registration of  
20 coverage and registering are not defined in the  
21 proposed Chapter 102. Indeed, there are a number of  
22 issues in the proposed regulation concerning  
23 inconsistent or non-existent definitions. For  
24 example, the definition of earth disturbance activity  
25 in the Department's model stormwater management

1 ordinance is different from that found in the proposed  
2 Chapter 102. And several other terms used on multiple  
3 occasions in the proposal are not defined. This has a  
4 potential to create confusion as to which parties are  
5 responsible for which actions under the permit-by-  
6 rule.

7           Finally it appears that the Department  
8 was attempting to bring multiple parties into the  
9 registration of coverage under the permit-by-rule in  
10 order to make every party, be it a builder, developer,  
11 licensed professional or landowner involved with a  
12 project responsible for long-term operation and  
13 maintenance of post-construction stormwater management  
14 best management practices.

15           If this is the case, those parties whose  
16 connection to a project will end once they're given  
17 function is completed need a mechanism to terminate  
18 such responsibility once that connection ceases.

19           PBA further believes that the effect of  
20 this proposed regulation will be to hinder development  
21 and significantly drive up the cost to design and  
22 install projects with a great deal of initial  
23 paperwork for everyone concerned. We also fear that  
24 certain jurisdictions will use this regulation to make  
25 it even more difficult to get necessary approvals to

1 develop land. I'll briefly explain a few specific  
2 concerns we've identified.

3           Regarding the cost of development the  
4 proposed regulation as has been noted previously  
5 increases fees significantly. In the case of a  
6 general NPDES permit, by a thousand percent. The fee  
7 for the proposed permit-by-rule has been raised from  
8 \$500 in the April 8th, 2009 version of this regulation  
9 presented to the State's Water Resources Advisory  
10 Committee to \$2,500 in the current version, which  
11 lessens the incentive for potential applicants to  
12 choose that option.

13           At the same time, the fee for an  
14 individual permit would be twice that of the permit-  
15 by-rule, despite the fact that both require the same  
16 information. Questions also exist as to when the  
17 training and compliance piece of the costs are  
18 properly recovered and there are also municipal costs  
19 that must be considered.

20           At the same time the scope of the  
21 proposed regulations has been expanded beyond its  
22 original intent of addressing erosion and sediment  
23 control and now includes the promotion of the low  
24 impact development. Such requirements could affect  
25 every subdivision and land development ordinance and

1. they're problematic with traditional neighborhood  
2 developments, as many developers are walking away from  
3 such projects due to their costs.

4           Pursuing this objective eliminates  
5 choice, and many municipalities are not doing low  
6 impact development because they see it as conduit to  
7 higher density. The Department needs to guard against  
8 trying to dictate a land use template to sovereign  
9 townships as townships have the ability to do low  
10 impact development if they so choose.

11           Finally, as noted previously, the  
12 regulation must state explicit that builders and  
13 developers will be able to transfer responsibly for  
14 the long-term operation and maintenance of post-  
15 construction stormwater BMPs to another party once the  
16 project is completed.

17           While the proposal continues to require  
18 --- stating that an operation and maintenance of BMPs  
19 shall be the responsibly of the landowner of the  
20 property where the BMPs are located, unless a  
21 different person is approved and waiting by the  
22 Department, instruments must be developed to ensure  
23 that such transfers take place once the builder or  
24 developer has no further connection to a project.

25           In conclusion, PBA believes that given

1 the current uncertain economic climate, it would seem  
2 obvious that this is the worst possible time to add  
3 barriers to desperately needed job creation and  
4 economic growth. We believe that Pennsylvania needs  
5 flexible commonsense environmental policies to provide  
6 maximum benefits at the lowest possible cost to the  
7 State's families, businesses and taxpayers, and we ask  
8 that you consider that standard as you consider this  
9 proposed regulation. Thank you very much again for  
10 the opportunity to testify.

11 CHAIR HEFFNER:

12 Thank you. Robert Fisher of R.J. Fisher  
13 and Associates.

14 MR. FISHER:

15 I don't really have a report. I just  
16 have a couple of exhibits that I wanted to use as part  
17 of my presentation. I'm really doing this all  
18 volunteer time, so I really didn't have a chance to  
19 really put together a formal report this evening.

20 But I do appreciate the Department's  
21 openness in this, their willingness to meet with us to  
22 discuss these various regulations. I've worked on  
23 this. I'm glad to see some of our cohorts from the  
24 Fair Share Coalition here from the Chesapeake Bay  
25 Foundation and from the Conservation District. I'm

1 not quite sure if the Municipal Authority Association  
2 is here.

3           But we --- through the process of the  
4 Chesapeake Bay Trib. Strategy I know that's part of  
5 what precipitates a lot of what we're talking about  
6 tonight. And I've been a proponent of trying to  
7 simplify some of the regulations, some of the  
8 procedures, some of where we focus our time and our  
9 very limited money on specific problems.

10           Part of what I see, I heard a lot about  
11 the fee increase this evening, that a lot of people  
12 were concerned about that. It is a concern, but to me  
13 it's a relatively minor concern in comparison to the  
14 timeframes that were experienced with the permit  
15 reviews and the impacts. If when we implement these  
16 regulations and all of the sudden we're losing density  
17 and we're having to do less dense development, we're  
18 kind of going away from our proper planning techniques  
19 to get higher density on some of these sites.

20           So I see part of the problem, too, is the  
21 NPDES permit is a five year permit. Nowhere in the  
22 regulations is it really addressed, but I know some of  
23 the Department's recent policies is to try to  
24 implement some of the newer regulations on NPDES  
25 permits as they come up for renewal.

1 This is extremely troublesome, especially  
2 on projects that have been designed, you know, maybe  
3 four years ago and we didn't have the infiltration  
4 requirements and some of the other requirements we  
5 have today. We're seeing significant amount of cost,  
6 possibly loss of density of having to lose lots of  
7 units. That's all a developer needs to see is that he  
8 has several million dollars invested in a project  
9 where he thought he had 100 units. Now all of the  
10 sudden becomes 80 units.

11 So again, it's something that contributes  
12 to the cost of housing. Housing is one of the last  
13 things we build in this country. We really --- our  
14 economic development, our economic recession that  
15 we're in, the last three times housing brought us out.  
16 If we continue to pile on more and more regulations to  
17 make it harder for homeownership, it's really going to  
18 significantly impact our economy and remove some of  
19 the opportunities that we have.

20 Some of what --- looking at the options,  
21 and that's something I think the Department has  
22 suggested, that we present some alternative, some  
23 options, how can we address some of these issues. One  
24 of the big things I see is those handouts I gave you  
25 was just a brief sampling of some of the areas along

1 the Susquehanna River where we have farmland that  
2 basically has little or no forested buffer or any  
3 buffer whatsoever. They're plowed right up to the  
4 edge of the stream. Part of the Chesapeake Bay Trib.  
5 Strategy, the areas of nitrogen and phosphorus have  
6 been mapped in this state. Primarily Lancaster, York  
7 and Adams County is where a big chunk of these areas  
8 are.

9           To go up to State College area someplace  
10 where the nitrogen and phosphorus isn't really a  
11 problem and impose onerous stormwater regs and  
12 treatment plant improvements seems to be a waste of  
13 time and money in my estimation when it's very easy to  
14 really look on a Google map and see where the problems  
15 are. I keep my boat down at Long Level and I know I  
16 don't want to go down in the Susquehanna for at least  
17 two to three days after it rains, primarily because of  
18 the runoff that's primarily coming from our farmland.  
19 It's really not hard to see where the problem is,  
20 we've mapped where the nitrogen and phosphorus is.  
21 Let's concentrate our time and trouble on that.

22           Now, how does that fit in with Chapter  
23 102? I think Chapter 102 --- we might have an  
24 opportunity here again coming back to the trading  
25 program which we've worked with Fair Share Coalition



1 with quite extensively, coming up with a simplified  
2 trading program where if a developer can't meet these  
3 regulations, there's an opportunity to contribute into  
4 a fund to allow the Conservation District to use some  
5 of that money to provide forest buffers for these  
6 areas where have been identified for high nitrogen and  
7 phosphorus for areas where they're immediately next to  
8 major stream banks. That way we're really  
9 accomplishing something with the little bit of money  
10 that we do have.

11           The riparian forested buffers, I know it  
12 was stated that it's only required on exceptional  
13 value streams. I read the regs, and I see enough  
14 weasel room in there that I think that could be  
15 interpreted that those forested buffers could be  
16 interpreted to be required every place. So if that's  
17 the intent of the Department, then I think maybe the  
18 wording has to be a little bit stronger to enforce it  
19 if that's the only place that they're required.

20           And maybe we should expand that to  
21 include the areas that have been mapped with high  
22 nitrogen and phosphorus. Even as opposed to an  
23 exceptional value watershed, I think since the areas  
24 of nutrient pollution have been mapped, maybe that's  
25 where the forested buffers should actually be required

1 as opposed to only on exceptional value lands.

2 Part of my fear in looking at those  
3 regulations also is the definition of where it's  
4 required. We think of riparian forested buffers along  
5 the Conodoguinet, along the Yellow Breeches, along the  
6 major stream areas. The way the regulations are  
7 written, it's intermittent, perennial, ponds,  
8 reservoirs. An intermittent stream --- I've actually  
9 been out on a site where I had DEP and the Corp of  
10 Engineers interpret two tire tracks going through a  
11 field as an intermittent stream. And I had to get a  
12 permit to cross a tire track. Now, I take that and I  
13 have to add a 200 foot swab and I have to plant that  
14 with trees, maintain it and make sure I keep the  
15 noxious weeds out of it. It's pretty easy to see how  
16 a development project could very quickly go away and  
17 not be economically feasible with those type of  
18 interpretations.

19 So we talked about forested buffers. I  
20 think we can all agree that yes, forested buffers are  
21 a good idea, but let's implement them where they're  
22 actually going to do some good and where it's not  
23 interpreted down to its every little swale that goes  
24 through a field.

25 The other problem I have is by the time

1 we get done with a development project and we've  
2 installed all of our stormwater requirements, we've  
3 met all our stormwater regs, we have our E&S plan  
4 approved, we have our NPDES permit approved, why do we  
5 need a forested buffer? We've complied with all of  
6 the environmental regulations. At that point the  
7 stormwater that's coming out the other end of that  
8 stormwater pond and has already gone through the  
9 infiltration trenches and stuff is environmentally  
10 treated. So at that point I think you've limited the  
11 need for a riparian forested buffer to a development  
12 site.

13           Again, I think if we come up with a  
14 procedure, possibly in coordination with a trading  
15 program where we can use funds of where you can't meet  
16 all the loading ratios, we heard that, the  
17 interpretation between the loading ratios. I've seen  
18 that variance, too. If you can't meet the  
19 requirements of the Department in your stormwater  
20 regs, but you're still allowed to proceed with your  
21 development if you're willing to pay into a fund to  
22 help the conservation districts and the farmers  
23 install forested buffers, I think we could accomplish  
24 a lot more of our environmental goals and still allow  
25 for reasonable development of land.

1                   So with that, that's pretty much my main  
2 points. Thank you.

3                   CHAIR HEFFNER:

4                   Thank you very much. Next, Greg  
5 Grabowicz, Pennsylvania Trout Unlimited.

6                   MR. BOHLS:

7                   Good afternoon. I am not Greg Grabowicz.  
8 My name is Fred Bohls, B-O-H-L-S, and I'm here  
9 representing the Pennsylvania Council on Trout  
10 Unlimited. We were supposed to have two other people  
11 here today and --- one coming from State College, who  
12 obviously didn't make it, and Greg who has been  
13 enduring abuse from his dentist for the last couple  
14 days and didn't feel up to coming. So at the last  
15 minute here I am, somewhat unprepared, but we'll get  
16 through it.

17                   Trout Unlimited is an organization that's  
18 a conservation group. We represent over 13,000  
19 anglers here throughout the --- and conservationists  
20 throughout the Commonwealth here and we're pleased to  
21 be able to make comment today.

22                   First thing I'd like to talk about is  
23 permit-by-rule, and we think that that option should  
24 be eliminated altogether. We're seeing some problems  
25 already with Marcellus shale permits that have been

1 issued under the permit-by-rule and we don't want  
2 those problems to continue. So it should be --- we  
3 strongly oppose the permit-by-rule, especially in  
4 special protection to watersheds. Special protection  
5 watersheds require extra oversight and review to  
6 ensure that water quality is protected and maintained.  
7 Those special protections cannot ensure --- cannot be  
8 ensured through an expedited permitting review  
9 process. Rather, DEP and county conservation  
10 districts should be reviewing such permits carefully  
11 and ensuring that the permits require sufficient  
12 protections so that the water quality is not degraded.

13           Secondly it's absolutely critical for DEP  
14 and county conservation district staff to conduct  
15 thorough technical reviews of the detailed and highly  
16 technical E&S stormwater management plans to ensure  
17 that rivers and streams are protected from erosion and  
18 stormwater runoff. Such a review is required by the  
19 Clean Water Act. Moreover, simply because buffers may  
20 be required under the permit-by-rule option does not  
21 mean that good stormwater management and overall sight  
22 design can be ignored.

23           Buffers of 100 feet or greater are only  
24 part of an appropriate stormwater management plan.  
25 Along with buffers, stormwater management plans must

1 also employ upslope best management practices that  
2 seek to minimize disturbances, maximize the use of  
3 existing and planted native vegetation and good  
4 infiltrating soils and treat stormwater runoff at the  
5 source. Without required technical review of such  
6 plans, DEP cannot insure that the development will  
7 employ these necessary stormwater management practices  
8 to adequately control stormwater runoff and prevent  
9 pollution.

10                   We're also concerned over the lack of  
11 provisions for providing public participation  
12 opportunities. Those permit applications, at a  
13 minimum 30 day comment period must be provided. And  
14 we are concerned about permit-by-rule options for  
15 large landscape projects that propose PBR would be  
16 available for very large construction sites as long as  
17 only 15 acres are being disturbed at any time. This  
18 allows very large projects to receive expedited permit  
19 approval without adequate technical review of plans as  
20 long as the construction work is phased in 15 acre  
21 increments.

22                   The next area is forestry riparian  
23 buffers should be mandatory for all earth disturbances  
24 requiring NPDES permit. Forest buffers along our  
25 streams provide a wealth of benefits. They filter

1 pollution and enhance the ability of streams to  
2 process pollutants, cool streams to offset thermal  
3 impacts, reducing flooding and flood damage, increase  
4 property values and help combat climate change.

5 PATU supports the science of requiring  
6 300 foot buffers in our EV streams. EV streams are  
7 our highest quality streams in Pennsylvania and need  
8 greater protection, much more than 150 foot buffers  
9 proposed by DEP.

10 We also believe that DEP should require  
11 all earth disturbances requiring an NPDES permit  
12 should have to implement a riparian buffer. The  
13 regulations should be revised to require as part of  
14 the post-construction stormwater management plan 100  
15 foot forest buffers on all streams --- on all streams,  
16 150 foot forest buffers on small headwater streams of  
17 primary and secondary order streams and ephemeral  
18 streams, and 300 foot forest buffers on all  
19 exceptional value and high quality streams which are  
20 our highest value streams and rivers and require  
21 special protection under the law.

22 The next area, we support the requirement  
23 for earth disturbance activities associated with oil  
24 and gas development to obtain NPDES stormwater  
25 permits. The proposed regulations require earth

1 disturbance activities associated with oil and gas  
2 development to obtain NPDES permits for stormwater  
3 discharges associated with construction.

4           We fully support this regulation. As  
5 such, earth disturbance activities can result in  
6 sediment and stormwater pollution during both  
7 construction and post construction phases, just as  
8 with other forms of development. There is no good  
9 reason to treat oil and gas developers differently  
10 from commercial and residential developers with  
11 respect to the erosion of sediment control and  
12 stormwater planning.

13           Next, the threshold for requiring NPDES  
14 for timber harvesting and road maintenance should be  
15 reduced to five acres. The current proposal keeps  
16 this threshold at 25 acres. Timber harvesting and  
17 road maintenance activities of such large scale can  
18 result in significant earth disturbance and  
19 corresponding potential for accelerated erosion and  
20 sedimentation. Reducing the threshold to projects of  
21 five acres or greater would be more protective of  
22 water quality and would be consistent with the  
23 requirements for other regulated activities.

24           And finally, the increase in fees ---  
25 application fees will help cover current costs



1 associated with reviewing applications and plans. We  
2 support this fee application. The fee should be at  
3 levels that can sustain the program. Thank you. I  
4 appreciate it.

5 CHAIR HEFFNER:

6 Make sure she gets your address.

7 MR. BOHLS:

8 Yes. Address is 3519 Aida Drive,  
9 Mechanicsburg, 17050. Now I have one copy. We will  
10 be making more formal copies for formal comments as  
11 well.

12 CHAIR HEFFNER:

13 Next, Nathan Sooy, Clean Water Action. I  
14 apologize if I misstated your last name.

15 MR. SOOY:

16 Sooy is right.

17 CHAIR HEFFNER:

18 Okay.

19 MR. SOOY:

20 My name is Nathan Sooy. My last name is  
21 spelled S-O-O-Y.. And I reside at 360 Franklin Church  
22 Road in Dillsburg, Pennsylvania. I am the Central  
23 Pennsylvania campaign coordinator for Clean Water  
24 Action. We have 150,000 plus members in the State of  
25 Pennsylvania. You may have had your door knocked on

1 by one of our door-to-door canvassers or gotten a  
2 phone call from us.

3           We're also very active in the campaign  
4 for clean water. And what I'm going to be talking  
5 about right now is really supplementing the overall  
6 comments that the campaign for clean water has  
7 previously made.

8           The basic thing I would like to laser  
9 down in to this afternoon is the need to avoid  
10 loopholes. And I'd like to concentrate on the permit-  
11 by-rule situation. It is subject to a lot of  
12 ambiguity. Different gubernatorial administrations  
13 may come to interpret it differently over the years.  
14 And we believe that this new permit-by-rule option  
15 should be eliminated

16           It's not applicable to high quality  
17 watersheds. These watersheds require special  
18 protection. These protections cannot be assured  
19 through an expedited review process. DEP should be  
20 reviewing such permits carefully and individually.

21           Permit-by-rule is also not applicable in  
22 impaired watersheds. The Clean Water Act requires  
23 that DEP not issue permits for new permits in impaired  
24 watersheds that cause or contribute to the impairment  
25 and for watersheds where total maximum daily loads

1 have been approved. NPDES permits are consistent with  
2 the wasteload allocations set forth in the TMDL. This  
3 requires a thorough analysis, not permit-by-rule.

4 We believe that the permit-by-rule would  
5 involve a lack of public participation opportunities.  
6 This is a great exercise of democracy. And that  
7 process would be shortcut by the permit-by-rule  
8 process. There needs to be a 30 day comment period  
9 and it really must be provided.

10 The lack of requirement to conduct a  
11 technical review of erosion and sediment control plans  
12 and post construction stormwater management plans,  
13 like this is a crucial thing. DEP and county  
14 conservation staff need to conduct technical reviews.  
15 Just because buffers may be required for projects  
16 under permit-by-rule does not mean that good  
17 stormwater management and overall site design can be  
18 ignored.

19 Buffers of 100 feet or greater are only  
20 part of an appropriate stormwater management plan.  
21 Upslope best management practices need to be  
22 considered that seek to minimize disturbance,  
23 maximizing the use of existing and planted native  
24 vegetation and good infiltrating soils and treat  
25 stormwater at the source.

1                   Permit-by-rule should not be applicable  
2 to developments that are not near a stream. This is a  
3 big area where there's a lot of opportunity for  
4 loophole activity. There's also a large project  
5 loophole under permit-by-rule. While a permit-by-rule  
6 is billed as being for low risk sites, it would be  
7 available for very large construction sites as long as  
8 only 15 acres are disturbed at a time. A large  
9 project could be permitted by rule of 15 acres at a  
10 time. Thank you very much for your time.

11                   CHAIR HEFFNER:

12                   Thank you, sir. Alex Day, Pennsylvania  
13 Council of Professional Foresters.

14                   MR. DAY:

15                   Good evening. My name's Alex Day. I'm a  
16 retired forester from DCNR and I'm currently president  
17 of the Pennsylvania Council of Professional Foresters.  
18 I live at 111 Flint Court, Bellefonte, Pennsylvania,  
19 ZIP Code 16823.

20                   My comments tonight are going to address  
21 the idea of dealing with forested buffers regarding  
22 the local permitization we're talking about and the  
23 role that licensed Pennsylvania --- or licensed  
24 professional foresters in Pennsylvania could have a  
25 role in.

1                   As a member of the Pennsylvania Council  
2 of Professional Foresters and currently president, I  
3 have a couple comments concerning the proposal and  
4 making an Environmental Quality Board on June 16th,  
5 2009. As professionals who were trained in the  
6 properties of silvaculture, silvaculture with an I,  
7 foresters are trained to protect site productivity no  
8 matter the location, streamside or mountainside.  
9 Proper use of silvacultural methods on forest lands to  
10 come reach an improvement upon the limitation of  
11 natural processes of plants growth.

12                   A forester should work for the good of  
13 the forest as an end, not for the sake of the forest  
14 itself, but ensure it remains a permanent, productive  
15 source of goods and benefits to the landowner and to  
16 society.

17                   Pennsylvania, our name says it all. It  
18 speaks to the quality of forest and the use of proper  
19 silvacultural practices. Requiring licensed foresters  
20 to practice in Pennsylvania would help ensure a  
21 constant flow between water as well as other products  
22 and services of the forest and watersheds.

23                   The topics I just talked about are  
24 extracted from a textbook on Practice of Silvaculture  
25 written by David Smith. He wrote the book that many

1 of foresters in Pennsylvania when they went to Penn  
2 State and it still applies.

3           Now, from our Pennsylvania Council of  
4 Professional Foresters, there are concerns about  
5 buffers. The Pennsylvania Council of Professional  
6 Foresters incorporated the following concerns relative  
7 to proposed rule making and makes the following  
8 suggestions to mitigate issues affecting scientific  
9 forest management practices. It must be recognized  
10 that while timber harvesting is defined as earth  
11 disturbance activity, along with many earth  
12 disturbances activities that change the land's use and  
13 create major concerns for water quality, the  
14 application of scientific forestry does not impair the  
15 forest's ability to provide high quality water.  
16 Scientific forestry natures, enhances and protects the  
17 forest's ability to provide high quality water.

18           Scientific forestry here and after  
19 referred to as forestry does not constitute a land  
20 change. We offer that all timber harvesting be  
21 further defined as intermediate or final cutting to  
22 extract salable trees. Timber harvesting is an  
23 essential tool to and essential to healthy forests.

24           Professional foresters are essential to  
25 the application of forestry. Licensing of

1 professional foresters is essential to maintaining  
2 SYLVANIA, remember part of our name, in Pennsylvania,  
3 or Penn's Woods. In that timber harvesting and  
4 forestry are not necessary synonymous. Forests are  
5 too many times negatively impacted when forestry is  
6 ignored. However, it is a rare occurrence if forestry  
7 is applied without timber harvesting, which is equated  
8 with earth disturbance activity.

9           Legislation and rules and regulations  
10 sometimes become problematic to the natural  
11 progression of forests and modern natural impacts upon  
12 the forest are considered. Flexibility is essential  
13 in applying forestry in nearly every situation in  
14 Pennsylvania forests. Legislation and rules and  
15 regulations too often lack the flexibility that nature  
16 requires and which forestry mimics.

17           Forestry needs to be applied by licensed  
18 professional foresters, Pennsylvania licensed, who use  
19 of objective science-based practices and studies that  
20 directly apply to Pennsylvania forests.

21           At the same time, consistency is needed  
22 to ensure appropriate compliance with legislation and  
23 rules and regulations. Timber harvesting activities  
24 are defined in existing Chapter 102 definitions as  
25 having a much more expansive application to timber

1 harvesting and forestry than the existing Timber  
2 Harvesting Packet, which includes Erosion,  
3 Sedimentation Control Plan for a Timber Harvesting  
4 Operation, number 3930-Forest Management-WM0155,  
5 Revised 7/2004. And the Timber Harvest Operations  
6 Field Guide for Waterways, Wetlands and Erosion  
7 Control presently provides.

8           It is only reasonable to conclude that  
9 these documents will be subject to continuing  
10 increased review and discussion by the regulatory  
11 community. Very simple administrative changes in  
12 these documents and to implementation policy and  
13 guidelines can raise all timber harvesting and thereby  
14 forestry to the permit level. It is presently unclear  
15 to the regulated community that the permit will not be  
16 required for all timber harvesting under the proposed  
17 rule making.

18           Integrating Chapter 102 Regulations into  
19 the stormwater regulations will inevitably result in a  
20 more restrictive level of enforcement, which the  
21 proposed rule making illustrates. It is inappropriate  
22 for anyone to state or believe the proposed rule  
23 making will result in business as usual. The  
24 regulated community should clearly understand that the  
25 proposed rule making is not business as usual. The



1 total possible impacts of the proposed rule making  
2 must be the basis for evaluating impacts on the  
3 regulated community.

4           A positive aspect of the proposed rule  
5 making is that the Commonwealth recognizes that  
6 licensed professionals are an important ingredient in  
7 the protection of Pennsylvania waters. The Forest  
8 Stewardship Program is also cited in the proposed rule  
9 making, and that in itself speaks volumes for forestry  
10 and the significance of foresters.

11           One of the most important professions  
12 with respect to protection of streams, forestry, is  
13 somewhat ignored in the process since foresters have  
14 not yet been licensed in Pennsylvania. Pennsylvania  
15 foresters are trained and equipped to manage  
16 Pennsylvania forests and watersheds in a manner which  
17 mimics --- which minimizes impact on water quality.

18           Reliance on the skills and judgement of  
19 licensed professional foresters should have priority  
20 in the management of forest and forest buffers. The  
21 proposed rule making definition concerning licensed  
22 professionals should be amended with a statement to  
23 the effect that it will include foresters in its  
24 application when Pennsylvania foresters are licensed  
25 as registered professional foresters.

1 Proposed legislation to license  
2 Pennsylvania foresters recognizes the professional  
3 expertise that foresters are trained to provide. The  
4 proposed rule making would be worded to include  
5 foresters in the definition of licensed professionals  
6 when they become licensed.

7 Legislation, sponsored and to be  
8 introduced by Representative Kerry Benninghoff, 171st  
9 State House District, Centre and Mifflin Counties, is  
10 written and being circulated for co-sponsorship in the  
11 State House. The proposed legislation will soon be  
12 introduced in this session of the General Assembly.  
13 It should be recognized that this effort was in  
14 process prior to the publication of proposed rule  
15 making. By the statements made in the proposed rule  
16 making, as to the parties consulted in the development  
17 of the proposed rule making and adopted by the  
18 Environmental Quality Board, it appears that forestry,  
19 the forestry profession, and foresters may have been  
20 under represented in the process. This must be  
21 changed.

22 Our intent is to help improve, promote  
23 and maintain the quality of clean waters and streams.  
24 Foresters best understand the dynamics, value and need  
25 for forest buffs and riparian forests whether they are

1 in a development or a large land holding. Therefore,  
2 licensing Pennsylvania foresters is a very important  
3 ingredient in protecting water quality in Pennsylvania  
4 and to the practice of forestry in Pennsylvania.

5 This is a resolution adopted by the  
6 Council of Professional Foresters on September 25th,  
7 2009. Thank you.

8 CHAIR HEFFNER:

9 Thank you. Next we have Marion and Fred  
10 Bowlan.

11 MS. BOWLAN:

12 Hi. My name is Marion Bowlan. It's  
13 M-A-R-I-O-N, B-O-W-L-A-N. We live at 2467 Shumaker  
14 Road, Manheim, Pennsylvania.

15 MR. BOWLAN:

16 And I'm Fred Bowlan.

17 MS. BOWLAN:

18 This testimony is based on personal  
19 experience with the lack of enforcement of currently  
20 existing clean water and stormwater ordinances. It  
21 describes the current stormwater management issue on  
22 our preserved farm. I grew up on this farm. I  
23 remember the difficulty our family had in farming one  
24 of its hills. So I understand when my father sold a  
25 lot off of that hill in 1992. He could use the money.

1           Even though I was not keen on the idea, I  
2 was too burdened with my own mortgage and children to  
3 say anything. A few years later my mother died and my  
4 father's 55 year interest in farming died with her.  
5 He eventually ended up in a nursing home.

6           The disposition of the farm needed  
7 attention. My husband and I were fortunate to finally  
8 have our home farm selected for preservation. After  
9 figuring and figuring and figuring, we decided to buy  
10 this farm, too. Our idea was that even if all else  
11 failed, we could make sure that it was preserved as a  
12 farm.

13           With our life savings, the preservation  
14 money and a mortgage beyond our retirement, we thought  
15 we could do it. My siblings wanted market price.  
16 What motivated us to take this on was our son saying  
17 he wanted the farm and our realization that this was a  
18 once in a lifetime opportunity to make it happen.

19           We bought the farm in November 2003. My  
20 father died in February 2004, and in December of 2006  
21 we were fortunate enough to have preserved both farms.  
22 In 2008 the third owner of the lot my father sold in  
23 1992 moved in. Our introduction to him took place on  
24 December 14th of that year when we noticed that he was  
25 excavating on our property. Dredged material from a

1 retention basin was deposited on our land and dirt  
2 from our land on this steep west slope was being moved  
3 around in piles.

4           A greatly enlarged pond in excess of 15  
5 feet and that had an inlet and outlet was constructed.  
6 In the process, the lot owner excavated and  
7 compromised a drainage easement recorded in his deed  
8 that straddles the property line. Our repeated  
9 attempts to meet with the lot owner were unsuccessful  
10 until Christmas Eve when he told us he would do what  
11 he wanted and worry about property lines later.

12           Excavation continued during three weeks  
13 of constant rain and no erosion control measures were  
14 installed. We contacted the township on 12/15/08, the  
15 day after we noticed it. They were unaware of any  
16 plans for this property. There was no building permit  
17 or erosion and sediment control plan. We contacted  
18 sediment and erosion control at the county, and they  
19 visited with us and the lot owner on 12/29/08.

20           The township required a building permit  
21 for the garage, but no sediment and erosion control  
22 plans were required by the township or the county  
23 sediment and erosion control. Excavation on our  
24 property alone was in excess of 10,240 square feet.

25           To prove encroachment and document the

1 size of the excavation, we knew we would need to have  
2 the property surveyed. The boundaries were clearly  
3 marked. On 1/23/09 the lot owner excavated a trench  
4 on our property to install a drainpipe from the garage  
5 in clear view of the boundary markers. We again  
6 called the township who assured us they would have him  
7 take it out. The next day the trench was filled and  
8 the ground was frozen. To our knowledge, the only  
9 investigation the township conducted was to ask the  
10 lot owner if he removed the pipe.

11 Our attorney recommended that we have the  
12 Conservation District develop a plan to handle the  
13 water being dumped on our land. The stormwater  
14 flowing onto our property comes from multiple sources.  
15 The neighbor's 40 to 50 acre field across the road  
16 that is connected into a pipe that both --- sorry.  
17 The neighbor's 40 to 50 acre field across the road  
18 that is concentrated into a pipe that then flows  
19 through a stormwater underneath the road and then  
20 diverted into the lot owner's new pond and out through  
21 a pipe directly on to our land.

22 For the record, the lot owner never  
23 sought or obtained our permission to do any of these  
24 things. Our attorney visited the property and said  
25 there is ample case law to back up the fact that

1 stormwater cannot be concentrated onto another  
2 person's property. The response from the Conservation  
3 District was to offer three plans with each plan  
4 entirely on our property and with us paying the cost.

5 We said this was not acceptable. We were  
6 then presented with a plan for a piped waterway that  
7 both we and our attorney believe is designed to  
8 accommodate the lot owner's illegally placed pipe. We  
9 believe that the existing swale if restored and not  
10 piped or diverted could adequately handle runoff.  
11 When we said we did not want the lot owner's pipes on  
12 our property, we were accused of being spiteful.

13 MR. BOWLAN:

14 The lot owner has now graded the drainage  
15 easement to slope so that all stormwater runs onto our  
16 land. He used our topsoil to fill in around his new  
17 garage and left the north and west slopes of our land  
18 that surround his new construction with subsoil and a  
19 constant stream of water from his pond.

20 In spite of presenting the township with  
21 proof of misrepresented setbacks on his building  
22 permit and requests to enforce township's stormwater  
23 ordinances, the township has yet to take any action.  
24 When we complain to the regional office of the  
25 Department of Environmental Protection about the way

1 our concerns were handled, the Conservation District  
2 mixed current 2009 recommendations with our 2005  
3 approved plan, saying we were the bad guys for not  
4 implementing the conservation plan.

5           To clarify, our 2005 approved plan calls  
6 for contour strips, conservation tilling, pesticide  
7 management and a grassed waterway in field number two.  
8 All of these practices were implemented with the  
9 exception of a waterway in 2005. We sought and got  
10 the verbal approval of the conservationist at that  
11 time to do skip plowing. Rather than install the  
12 waterway as suggested in field two, we converted the  
13 entire area to perennial forages that follow the  
14 contour and allow any runoff to flow in a natural  
15 swale to the creek. We have noticed little, if any,  
16 erosion in field two.

17           The field in question is field seven, and  
18 is the one that surrounds the lot and the newly  
19 constructed unpermitted pond. This is the field where  
20 a new piped waterway estimated at a cost of over  
21 \$8,000 is being suggested with the financial burden to  
22 transport other people's stormwater shifted primarily  
23 to us. To reiterate, this field accepts stormwater  
24 drainage from a neighbor's 40 to 50 acre crop field,  
25 that flows through a pipe underneath the road to a



1 jointly owned drainage easement that was re-graded to  
2 slope entirely towards our land and diverts a large  
3 portion of the water to the lot owner's pond that is  
4 then piped and outletted in a concentrated flow onto  
5 our land. We were not consulted, nor have we given  
6 our approval to any of this.

7           The swale that previously existed in this  
8 area has been transformed to a series of pipes that  
9 dumped other people's concentrated stormwater onto our  
10 land. It should be no surprise that this area is  
11 constantly wet. New wet areas since the construction  
12 have surfaced on our land, either because the pond has  
13 no liner and leaks or because the drain pipe from the  
14 new garage remains on our land.

15           Since we did not destroy the swale, did  
16 not pipe other people's stormwater in a concentrated  
17 flow onto our land and have made a good effort to  
18 protect our natural resources, asking us to bear the  
19 financial and legal costs of correcting this problem  
20 is unconscionable. There appears to be no interest in  
21 holding the responsible parties accountable.

22           Because we have asked the township to  
23 enforce the ordinances and called into question the  
24 Conservation District's 2009 suggested plan, we are  
25 both labeled as the problem and told to pay the price

1 to fix it. We're confident that if the responsible  
2 parties removed their concentrated flow of stormwater  
3 from our property, the natural contour of the land was  
4 returned and the area remains in perennial forages,  
5 erosion would be reduced to a minimum.

6 We have a neighbor who is breaking clean  
7 water laws and stormwater ordinances and suffers no  
8 consequences. Why has no one questioned his violation  
9 of state laws and township ordinances in constructing  
10 this pond? In fact, the victims of his actions are  
11 being held responsible for his bad behavior. I guess  
12 it is easier to label us as the bad guy than to  
13 enforce the law.

14 Everyone has commended us on preserving  
15 our farm, but that sentiment rings hollow when a blind  
16 eye is turned to our appeal to help us protect our  
17 farm's natural resources. What would mean much more  
18 and, in fact, be very helpful to us is if current laws  
19 and ordinances were enforced. We'll attach the  
20 applicable ordinances and laws that we believe apply  
21 to this testimony. Thank you very much.

22 CHAIR HEFFNER:

23 Thank you. Next on the list is Gil  
24 Freedman, Conodoguinet Watershed Association.

25 MR. FREEDMAN:

1                    My name is Gilbert M. Freedman,  
2 Conodoguinet Creek Watershed Association, 49 Sample  
3 Bridge Road, Mechanicsburg, Pennsylvania, 17050.

4                    The Conodoguinet Creek Watershed  
5 Association is a private, non-profit citizen's group  
6 dedicated to protecting the watershed and the  
7 Conodoguinet Creek. The creek and its watershed are  
8 located in Cumberland County and encompass about 550  
9 square miles.

10                   One of the major pollutants to the creek  
11 is sediment. And much of this sediment, we believe,  
12 is coming from construction and post-construction  
13 activity or lack of activity. We endorse the  
14 Commonwealth's efforts to tighten the regulation ---  
15 regulations, as we believe that much of the problem is  
16 caused by inadequate regulation at this time.

17                   We also endorse the comments and concerns  
18 of the Campaign for Clean Water and Trout Unlimited,  
19 which go into more specific detail. We're the people  
20 with our feet on the ground or feet in the mud, and  
21 often we see construction sites where cubic yards of  
22 sediment are gone, and of course, they're in the  
23 watershed and on in to Chesapeake Bay.

24                   Many times when we check with the  
25 Conservation District, they confirm that there was a

1 permit issued and that they were policed and inspected  
2 and are in compliance, and I state that, that there  
3 just is inadequate regulation in many cases to protect  
4 the stream and reduce the sediment load therein. That  
5 concludes my comments.

6 CHAIR HEFFNER:

7 Thank you very much. That concludes the  
8 list of presentations of pre-registered witnesses. At  
9 this time I'll ask the audience if there is anyone  
10 else in attendance who would like to present  
11 testimony. Sir? Please provide your name and address  
12 for the record.

13 MR. CAMPBELL:

14 Harry Campbell, senior scientist with the  
15 Chesapeake Bay Foundation. My home address is 140  
16 16th Street in New Cumberland, Pennsylvania, 17070.

17 On behalf of the Chesapeake Bay  
18 Foundation, we respectfully submit the following  
19 testimony regarding today's public hearing. Actually  
20 I forgot to bring up with me my formal comments, so I  
21 will do that momentarily. But CBS is the largest  
22 organization dedicated to the protection and  
23 restoration of the Chesapeake Bay, its tributaries and  
24 its resources. With the support of over 220,000  
25 members, Chesapeake Bay Foundation works to ensure

1 that policy, regulations and legislation are  
2 protective to the quality of the Chesapeake Bay and  
3 Pennsylvania's resources.

4           Stormwater runoff, as we all know, is one  
5 of the largest sources of pollution to Pennsylvania's  
6 rivers and streams, including those rivers and streams  
7 in the Chesapeake Bay. All total, out of 16,000 miles  
8 of impaired streams in the State of Pennsylvania,  
9 4,100 miles, approximately, are attributed to  
10 stormwater runoff problems.

11           Improperly constructed and managed  
12 construction activities obviously impact  
13 Pennsylvania's streams from nutrient sediments and  
14 other pollutants that accelerate streambank erosion,  
15 property loss, public health and welfare and  
16 contribute to the impairment of the Chesapeake Bay.

17           In my comments this evening, we endorse  
18 those submitted by the Campaign for Clean Water as  
19 well as Pennsylvania Trout Unlimited and the  
20 Conodoguinet Watershed Association. But today I'd  
21 like to focus in on the one aspect of this proposal,  
22 and that being the forest riparian buffer requirement.

23           We believe that forest riparian buffers  
24 should be mandatory for all non-agricultural earth  
25 disturbances requiring NPDES permit. Forested buffers

1 on our streams provide a wealth of benefits. They  
2 filter pollution, they enhance the ability of streams  
3 to process pollutants, they cool streams to offset  
4 thermal impacts, reduce flooding and flood damage,  
5 they increase property values and they help combat  
6 climate change.

7           DEP obviously is requiring 100 foot  
8 forest buffers in new development and exceptional  
9 value watersheds only. And in those cases this is not  
10 adequate for buffer requirement and does little to  
11 advance the goal of cleaning up our streams and  
12 meeting our local and regional water quality  
13 requirements.

14           EV streams are our highest quality  
15 streams in Pennsylvania and need greater protection  
16 than 150 foot buffers. Buffers of at least 300 feet  
17 are needed in these situations. Moreover, by limiting  
18 the buffer requirement to only EV streams, the  
19 requirements would apply only to 1.6 percent of  
20 streams in the entire State of Pennsylvania.

21           None of DEP's stated goals for a buffer  
22 requirement is to create new forested buffers along  
23 the streams. However, if buffers are only mandatory  
24 for EV streams, then the potential to create new  
25 buffers only applies to .3 percent of all of

1 Pennsylvania's streams, since most of these EV streams  
2 are already forested.

3           The regulations require that a minimum of  
4 100 foot buffer go on side, both streams, of all  
5 streams and rivers for any new earth disturbance  
6 requiring an NPDES permit, is our opinion. A minimum  
7 100 foot forested buffer is key to any good stormwater  
8 management plan and site development plan for new  
9 development. In fact, forested buffers can be  
10 integrated into post construction stormwater  
11 management plans, thus therefore, reducing the need  
12 for structural best management practices.

13           The in-stream pollutant processing  
14 forested buffers have been proven to provide is often  
15 overlooked. Simply put, forested buffs will greatly  
16 accelerate meeting our mandatory water quality  
17 improvement requirements both locally and regionally,  
18 particularly for the forthcoming mandated Chesapeake  
19 Bay TMDL.

20           The science is clear that a minimum of  
21 100 foot forest buffers are required to maximize the  
22 many benefits that buffers provide, such as reducing  
23 pollution and preventing flooding. Where forested  
24 buffers exist alongside our streams, water quality's  
25 improved. Floodwaters are reduced, wildlife habitat

1 is provided and healthier communities are created.

2 For all new earth disturbance activities  
3 that require an NPDES permit, the regulations should  
4 be revised to require as part of the post-construction  
5 stormwater best management plan 100 foot forest  
6 buffers at all streams, 150 foot forest buffers on  
7 small headwater streams and impaired streams, and  
8 finally 300 foot forest buffers for all exceptional  
9 value and high quality streams, which are our highest  
10 value rivers and streams and require special  
11 protection under the law. Thank you again.

12 CHAIR HEFFNER:

13 Thank you. Anyone else in attendance who  
14 would like to provide testimony? Going once, going  
15 twice, very well. With no other witnesses present, on  
16 behalf of the Environmental Quality Board and with  
17 their thanks for your participation in this public  
18 process, I hereby adjourn this hearing at 6:42 p.m.  
19 Thank you all very much.

20  
21 \* \* \* \* \*

22 MEETING CONCLUDED AT 6:42 P.M.

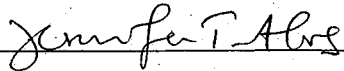
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I hereby certify that the foregoing proceedings, hearing held before Chairperson Heffner was reported by me on 10/01/2009 and that I Jennifer T. Alves read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

  
Court Reporter



BEFORE THE  
ENVIRONMENTAL QUALITY BOARD

\* \* \* \* \*

IN RE: EROSION & SEDIMENT &  
STORMWATER MANAGEMENT

PUBLIC HEARING

\* \* \* \* \*

BEFORE: Wayne E. Gardner, Chair  
HEARING: Monday, October 5, 2009  
5:15 p.m.  
LOCATION: Salisbury Township Municipal Building  
2900 South Pike Avenue  
Allentown, PA 18103

Reporter: Brian O'Hare

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OPENING REMARKS

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TESTIMONY

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NONE OFFERED

## P R O C E E D I N G S

COMMISSIONER GARDNER:

1  
2 -----  
3  
4 Good evening. I'm never sure at five  
5 o'clock whether it's evening or afternoon. Hello  
6 everyone and thank you for coming. I'd like to  
7 welcome you to the Environmental Quality Board's  
8 public hearing of the proposed Erosion and Sediment  
9 Control and Stormwater Management regulations. My  
10 name is Commissioner Wayne E. Gardner. I am a member  
11 of the Environmental Quality Board as the designee of  
12 Mr. James Cawley, Chairman of the Pennsylvania Public  
13 Utility Commission. I officially call this hearing to  
14 order at 5:12 p.m.

15 The purpose of this hearing is to  
16 formally accept testimony on the proposed Erosion and  
17 Sediment Control and Stormwater Management regulation.  
18 In addition to this hearing, the Environmental Quality  
19 Board held hearings on the proposed regulations on  
20 Monday, September 29th, 2009 in Cranberry Township,  
21 and on Thursday, October 1st, 2009 in Harrisburg.

22 This proposed rulemaking includes  
23 amendments to 25 Pa.C. Chapter 102 to enhance and  
24 supplement existing erosion and sediment control  
25 regulations in order to prevent sediment pollution

1 from entering the surface waters of the Commonwealth  
2 during and after various earth disturbance activities.  
3 The rulemaking also includes post construction  
4 stormwater management requirements and best management  
5 practices in order to enhance the stability of stream  
6 beds and banks, resulting in enhanced water quality  
7 protection and more effective long-term stormwater  
8 management.

9           The proposed amendments include  
10 provisions that enhance existing agricultural  
11 stormwater management provisions by including  
12 requirements for animal heavy use areas, clarify  
13 existing requirements for accelerated erosion and  
14 sediment control, incorporate updated federal  
15 requirements, update permit fees, codify post-  
16 construction stormwater management requirements,  
17 require riparian forest buffers for projects located  
18 in proximity to Exceptional Value water, and provide a  
19 new Permit-By-Rule option for low-risk, low impact  
20 projects that incorporate riparian forest buffers.

21           Is everybody still with me?

22           Since 2007, the Department has undertaken  
23 extensive outreach to discuss and receive inputs on  
24 the proposed amendments to the Chapter 102  
25 regulations, including the Permit-By-Rule and the

1 Riparian Buffers provisions. These included  
2 discussions with the Pennsylvania Conservation  
3 Districts, the Pennsylvania Builders Association, the  
4 Professional Engineers Association, the State  
5 Conservation Commission, Pennsylvania Campaign for  
6 Clean Water, the Agriculture Advisory Board and the  
7 Water Resources Advisory Committee.

8           In order to give everyone an equal  
9 opportunity to comment on this proposal, I would like  
10 to establish the following ground rules. I will first  
11 call upon the witnesses who have pre-registered to  
12 testify at this hearing. After hearing from these  
13 witnesses, I will provide any other interested parties  
14 with the opportunity to testify as time allows.

15           Testimony is limited to ten minutes for  
16 each individual. Organizations are requested to  
17 designate one witness to present testimony on its  
18 behalf. Each witness is asked to submit three written  
19 copies of his or her testimony to aid in transcribing  
20 the hearing. Please hand me your copies prior to  
21 presenting your testimony.

22           Please state your name, address and  
23 affiliation for the record prior to presenting your  
24 testimony. The Environmental Quality Board would  
25 appreciate your help by spelling names and terms that



1 may not be generally familiar so that the transcript  
2 can be as accurate as possible.

3           Because the purpose of this hearing is to  
4 receive comments on the proposal, the Environmental  
5 Quality Board or the Department of Environmental  
6 Protection staff may question witnesses. However, the  
7 witnesses may not question the Environmental Quality  
8 Board or the Department of Environmental Protection  
9 staff.

10           In addition to or in place of oral  
11 testimony presented at today's hearing, interested  
12 persons may also submit written comments on this on  
13 this proposal. All comments must be received by the  
14 Environmental Quality Board on or before November 30,  
15 2009. Comments should be addressed to the  
16 Environmental Quality Board, P.O. Box 8477,  
17 Harrisburg, Pennsylvania 17105-8477. Comments may  
18 also be e-mailed to RegComments@state.pa.us. That's  
19 RegComments@state.pa.us.

20           All comments received at this hearing, as  
21 well as written comments received by November 30th,  
22 2009, will be considered by the Environmental Quality  
23 Board and will be included in the Comment/Response  
24 document, which will be prepared by the Department and  
25 reviewed by the Environmental Quality Board prior to

1 the Board taking any final action on this regulation.

2           Anyone interested in a copy of the  
3 transcripts of this hearing may contact the court  
4 reporter here this evening to arrange to purchase a  
5 copy. The court reporter is to my left here speaking  
6 into the cup.

7           So do we have anyone who has signed up to  
8 present at the door, or do we have a list of all of  
9 the presenters?

10           So we have no additional presenters for  
11 the record? In that case, I will call our first  
12 testifier, Ms. Cathy Frankenberg.

13           MS. FRANKENBERG:

14           My name is Cathy Frankenberg.

15           COMMISSIONER GARDNER:

16           Please step to the podium.

17           MS. FRANKENBERG:

18           My name is Cathy Frankenberg. I'm the  
19 community organizer for Clean Water Action in  
20 Bethlehem. We are a national organization with over  
21 one million members concerned about the environment,  
22 public health and the safety of our drinking water.  
23 We are also part of a team of groups and concerned  
24 individuals called the Campaign for Clean Water, which  
25 counts over 150 community organizations, environmental

1 groups, sportsmen's coalitions and religious  
2 communities among its members.

3           Pennsylvania has over 83,000 miles of  
4 rivers and streams. We believe that mandatory buffer  
5 zones are the answer in providing the best protections  
6 for them. Forested buffer zones provide shade to keep  
7 waterways cool for cold water fish, like trout. They  
8 also reduce erosion and runoff. Additionally, buffers  
9 help absorb industrial toxins before they reach our  
10 drinking water and help to protect our communities.  
11 One hundred foot buffers should be applied statewide  
12 across Pennsylvania with better protection going to  
13 more sensitive streams, 150 feet for headwaters and  
14 impaired streams, 300 feet for exceptional value and  
15 high quality streams.

16           This is why Clean Water Action has worked  
17 with communities in the Lehigh Valley like Plainfield  
18 to adopt 100-foot buffer zone regulations in their  
19 township ordinances. Clean Water Action surveyed  
20 municipalities in more than a dozen counties across  
21 Pennsylvania and found that 192 municipalities had  
22 riparian buffer ordinances and over 30 percent of  
23 those ordinances mandated 100 feet minimum.

24           Research has shown that a minimum of 100-  
25 foot buffer zones give the most benefit in terms of

1 protecting against runoff and erosion. We should not  
2 adopt the proposed Permit-By-Rule regulation, but  
3 rather adopt mandatory buffer zones across  
4 Pennsylvania. There are several problems with the  
5 proposed Permit-By-Rule plan. The most troubling is  
6 that it allows for developers to bypass a technical  
7 review by the DEP. We commend the fact that the plan  
8 proposes buffer protections for exceptional value  
9 streams. However, these streams make up less than two  
10 percent of our total waterways and the plan does  
11 nothing to grant better protection to high quality  
12 streams or other impaired waterways.

13           In addition, there is inadequate time for  
14 public comment on proposed EMS and stormwater plans.  
15 The absolute minimum comment period should be no less  
16 than 30 days. The strangest part of the proposed  
17 regulations even allows for developers who do not have  
18 a stream on their property to make use of the loophole  
19 to avoid technical review. And although the plan  
20 claims to only apply to low risk developments, there  
21 is a possibility for it to be used in larger  
22 developments as well, so long as they are developed on  
23 15 acres at a time.

24           As part of any regulation, we should also  
25 state that developers should be required to maintain

1 post-construction stormwater plans and best management  
2 practices and should be monitored closely.  
3 Regulations must apply to oil and gas developers as  
4 well. They should receive no preferential treatment  
5 in the permit review process.

6                   We recognize the difficulties the DEP has  
7 with the budget limitations, and we feel that an  
8 increase in application fees would make it easier to  
9 enforce regulations and thoroughly review permit  
10 applications.

11                   In closing, please consider the statewide  
12 mandatory buffer --- I'm sorry, mandatory application  
13 of forested buffer zones to our waterways rather than  
14 the proposed Permit-By-Rule. Thank you for the  
15 opportunity to address this issue.

16                   COMMISSIONER GARDNER:

17                   Thank you very much. Could we have our  
18 next presenter, Ms. Maxine Bender-Bray?

19                   MS. BENDER-BRAY:

20                   Thank you. If you don't mind, I'll bring  
21 it up around --- I left my cane at home.

22                   COMMISSIONER GARDNER:

23                   That's fine.

24                   MS. BENDER-BRAY:

25                   My name is Maxine Bender-Bray. I'm a

1 resident of Berks County, Pennsylvania. I live along  
2 the Maiden Creek where it flows into the Ontelaunee  
3 Reservoir.

4 COMMISSIONER GARDNER:

5 Excuse me. Are you affiliated with any  
6 organization?

7 MS. BENDER-BRAY:

8 No.

9 COMMISSIONER GARDNER:

10 Okay. Thank you.

11 MS. BENDER-BRAY:

12 I live along the Maiden Creek. It's a  
13 beautiful area. People love to fish it year round,  
14 ice fishing as well as summer, spring. It's also  
15 where the City of Reading gets its drinking water.  
16 It's a beautiful area. That's one point.

17 My second point, I'm a cancer survivor.  
18 At age 45, I was diagnosed with inoperable cancer. I  
19 have no family history. One out of two men in their  
20 lifetime will be diagnosed with cancer. One out of  
21 three women will be diagnosed with cancer in their  
22 lifetime. It's at epidemic levels. When I was  
23 diagnosed with cancer, I asked myself one question.  
24 Why? Why is cancer at epidemic levels? It could be  
25 as simple as the water we drink. It's what brings me

1 here, clean water. And what is the number one  
2 polluter of water? Storm runoff. We do not filter  
3 storm runoff. One of the most important ways to  
4 filter storm runoff is forested riparian buffers. One  
5 of the things we have right now in our waterways are  
6 endocrine disrupters. It's one of the things we've  
7 been seeing. It comes from pesticides and herbicides.  
8 It also comes from cosmetics, from prescriptions, from  
9 all kinds of different places.

10                   Too many of our streams are unevaluated  
11 by the Department of Environmental Protection because  
12 of staff limitations, therefore, we do not have  
13 streams that have any kind of qualification. They're  
14 not labeled. They are not labeled as any kind of  
15 value. They have no label on them whatsoever. So if  
16 we have a Permit-By-Rule auction that's based on  
17 value, these streams will be Permit-By-Rule.  
18 Therefore, I do not believe that Permit-By-Rule should  
19 be an option when we have too many streams that are  
20 --- not even been evaluated.

21                   We also now have a problem where we are  
22 recycling coal ash and we are using it for landfill,  
23 we're using it for road fill, we're using it in  
24 concrete, we're using it also in cement, and it's  
25 coming up as a problem in pollution. It's coming up

1 in a problem in sediment. It's coming up when people  
2 don't properly use their erosion and sediment, when  
3 they're not following through with their proper  
4 erosion and sediment follow-throughs. It's been a  
5 pollution problem in a couple of communities already,  
6 and with this potential Permit-By-Rule, these projects  
7 are --- have had beyond devastating effects in the  
8 communities already.

9           On the watershed where I live, it's not  
10 high quality. The Ontelaunee Reservoir is not  
11 impaired. It would fall under Permit-By-Rule. We  
12 also happen to have the Lehigh Portland Cement Company  
13 sitting right on the Reading watershed, and it is at  
14 risk for any kind of earth movement that that company  
15 would choose to do. Under a Permit-By-Rule, the  
16 Lehigh Portland Cement Company would be able to  
17 Permit-By-Rule, earth move 15 acres at a time without  
18 the public being notified, without the township being  
19 notified, without any kind of hearings, without any of  
20 us knowing anything that would be going on. We're not  
21 allowed to take a canoe out. We're not allowed to  
22 check out what they're doing. We would have no idea  
23 under Permit-By-Rule what's going on. That is not  
24 okay. Thank you.

25

COMMISSIONER GARDNER:



1           Thank you. Our next presenter is Ms.  
2 Caroline Anderson. Ms. Caroline Anderson? Caroline  
3 Anderson, last call. No? Okay. Move us along. Ms.  
4 Janet Keim.

5           MR. HALLS:

6           I'm her associate and I have been trying  
7 to get in touch with her for three days, and I have no  
8 idea where ---.

9           UNIDENTIFIED SPEAKER:

10          She's in Europe.

11          COMMISSIONER GARDNER:

12          Is she? I suspected as much. Okay.  
13 Moving along, Jordan Pysher. Okay. Jordan? Last  
14 call for Jordan. Okay. Ben LePage.

15          MR. LEPAGE:

16          My name is Ben LePage. I'm a senior  
17 project manager with the Environmental Department at  
18 PECO Energy Corporation. PECO appreciates the  
19 opportunity to provide comments to the Department on  
20 the proposed EMS regulations. As a recently certified  
21 ISO 14001 company ---.

22          COMMISSIONER GARDNER:

23          Excuse me. Are you able to hear him  
24 okay?

25          COURT REPORTER:

1                   Could you try speaking to the microphone  
2 just a little more?

3                   MR. LEPAGE:

4                   You need me a little closer?

5                   COURT REPORTER:

6                   Yes, please.

7                   MR. LEPAGE:

8                   As a recently certified ISO 14001  
9 company, an ISO certification means that we have an  
10 environmental management system that is now  
11 internationally recognized and we follow the processes  
12 and procedures with our environmental standards.  
13 PECO's corporate environmental policy states that we  
14 are committed to constantly improving our  
15 environmental performance through providing leadership  
16 in environmental management and by preserving,  
17 restoring and enhancing the environment. At PECO,  
18 full compliance is the minimum and business  
19 initiatives are consistent with environmental  
20 responsibility.

21                   We reviewed the proposed regulations,  
22 pleased to see that PECO already practices most of the  
23 proposed changes to the regulations. As an electrical  
24 utility providing electricity to 1.5 million customers  
25 and natural gas to 460,000 customers, we are obligated

1 to ensure the public has a reliable source of  
2 electricity and gas. Our concerns are centered on the  
3 procedures and processes where we have little to no  
4 control. PECO's electrical activities are coordinated  
5 through PJM Interconnection. PJM is a federally  
6 regulated regional transmission organization that  
7 keeps the electricity supply and demand in balance for  
8 over 51 million people in 13 states by instructing  
9 power producers and distributors such as PECO how much  
10 energy should be generated and by adjusting import and  
11 export transactions.

12           PECO's expansion and enhancement of its  
13 transmission capabilities are often large scale  
14 projects associated with specific outages of power  
15 plants and sections of the national transmission grid.  
16 In most cases, coordination of the construction  
17 permitting required is critical to meet outage  
18 schedules. Delays of any sort add to the difficulties  
19 of meeting these federally mandated outages, and  
20 failure to meet these schedules could result in severe  
21 federal fines as well as potential electrical service  
22 interruptions.

23           The main points of our concerns are  
24 summarized here. One of our concerns first is focus  
25 on the time it's taken to obtain permits and approvals

1 and the delays that we've encountered during the  
2 permitting process. We feel that these regulations  
3 offer the regulatory industries too much latitude on  
4 interpretation and little accountability to process  
5 otherwise simple permit applications. A recent case  
6 in point applies to one of the conservation districts  
7 in our service territory where two identical permit  
8 applications were submitted and assigned to two  
9 separate individuals. One plan was approved in less  
10 than three weeks, the other one took nearly six  
11 months.

12           We strongly endorse mandated agency  
13 review times, tighter language in the regulations to  
14 reduce ambiguity in interpretation of the regulations  
15 and a more streamlined permit plan or application  
16 package. Additionally, permit delays due to  
17 understaffing or lack of prescribed response times at  
18 agency levels associated with state and federal  
19 threatened and endangered species continues to be a  
20 source of contention.

21           We are concerned with the need to provide  
22 significant details of our record drawings of  
23 substations that would --- under these proposed  
24 regulations. The levels of oversight record drawings,  
25 deed notices, for example, add unnecessary cost to a

1 project that will be ultimately passed on to the  
2 ratepayer. These requirements aren't necessary  
3 because when a substation is closed all of the  
4 buildings, all of the equipment and BMPs are removed  
5 and the property is returned as close as possible to  
6 its pre-construction condition prior to sale.

7           Third, development and maintenance of  
8 riparian buffers in exceptional EV watersheds would  
9 significantly be costs that would ultimately be passed  
10 on to the ratepayer because of approximately 1,000  
11 miles of electrical distribution transmission right-  
12 of-ways, and there are currently 16 EV watersheds  
13 located in our service territory. PECO does have a  
14 number of transmission quotas that do cross these EV  
15 watersheds. Labor appropriate requirements that are  
16 associated with reconductoring projects and a  
17 reconductoring project is one where we replace --- the  
18 electrical wires on transmission towers are replaced  
19 or the static wire on the top is replaced with an  
20 optical ground wire which is now part of the smart  
21 grid program.

22           While PECO has adopted the Department's  
23 policy of avoidance of wetlands and streams in these  
24 projects, it is still required to obtain necessary  
25 state and federal wetland permits, as well as a letter

1 of adequacy from the local conservation districts for  
2 an EMS plan. These additional riparian buffer  
3 requirements would add significant debilities to the  
4 project, result in additional costs and be largely  
5 self defeating given that incompatible trees, and that  
6 is trees that are greater than 15 feet tall, must be  
7 removed from the road if they're located or growing  
8 underneath the wires. This would create an  
9 unnecessarily complicated process for what is  
10 otherwise a very simple project that shouldn't  
11 necessarily require permitting.

12                   Finally, PECO is requesting the  
13 opportunity to work with the Department to develop a  
14 soil erosion and sediment control package that meets  
15 the spirit of the proposed regulations, perhaps a  
16 programmatic permit, but provides PECO with some of  
17 the variances in the regulations that help maintain  
18 electrical reliability throughout its service  
19 territory while keeping the otherwise significant  
20 costs needed to implement these changes down. More  
21 importantly, we would like to see a reduction in the  
22 time agencies need to review and approve such plans  
23 while maintaining the company's environmental  
24 responsibility. Thank you.

25                   COMMISSIONER GARDNER:

1 Thank you. Mr. Robert Windelgass?

2 MR. WENDELGASS:

3 Good evening. My name is Bob Wendelgass.  
4 I reside at 33 East Abington Avenue in Philadelphia,  
5 ZIP is 19118. I'm the chair of the Pennsylvania  
6 Campaign for Clean Water. The Campaign for Clean  
7 Water is a coalition of 150 watershed, conservation  
8 and environmental groups from across the state. I  
9 appreciate the opportunity to take a comment on the  
10 draft regulations today.

11 There are a number of areas in the draft  
12 regulations that we believe are improvements to the  
13 existing language in Chapter 102, and I just want to  
14 start by highlighting a couple of them.

15 First of all, we support DEP's proposal  
16 to increase permit fees for stormwater --- for NPDES  
17 permit applications. We believe that permit fees  
18 should be set at a level that covers the processing,  
19 review and enforcement of the permits, especially in  
20 light of the potential for a pretty dramatic cut in  
21 DEP's budget for the current fiscal year.

22 Secondly, we support the proposed  
23 language requiring erosion and sediment control plans  
24 for animal heavy use areas and also requiring  
25 temporary stabilization of construction sites. Open

1 construction sites in animal heavy use areas can both  
2 result in serious impacts on water quality and  
3 activities to reduce EMS erosion and sedimentation  
4 from these sites should be required.

5           Thirdly, although it isn't a change, I  
6 wanted to comment that we support DEP's plan to  
7 require NPDES stormwater permits for earth disturbance  
8 activities associated with oil and gas development.  
9 Earth disturbance activities from oil and gas drilling  
10 can cause serious damage to our streams just like  
11 other forms of development. There's no reason to  
12 treat oil and gas activities differently from other  
13 forms of development, and we're pleased that DEP is  
14 requiring such sites to obtain a stormwater NPDES  
15 permit. With the current gas drilling boom in the  
16 Marcellus Shale region, this protection is more  
17 important than ever.

18           Despite these positive changes, there are  
19 a couple key areas of the proposed draft that our  
20 campaign strongly opposes. We urge DEP to either  
21 remove or revise these sections before moving forward  
22 with the regulation. I want to focus on four of these  
23 in the rest of my comments.

24           First of all, we urge DEP to reduce the  
25 threshold for requiring an EMS permit for timber



1 harvesting and road maintenance to five acres.  
2 There's no reason that we can see to keep the  
3 threshold at 25 acres. Both timber harvesting and  
4 road maintenance activities can result in  
5 significantly accelerated erosion and sedimentation.  
6 Reducing the threshold to require permits for projects  
7 of five acres or more would be consistent with other  
8 regulated activities and afford better protection for  
9 our streams.

10                   Secondly, we encourage DEP to adopt  
11 stronger requirements for long-term operation and  
12 maintenance of post-construction stormwater management  
13 BMPs. The current proposal would leave the property  
14 owner --- let me move this to avoid all those Ps.  
15 There's going to --- plenty in BMP. The current  
16 proposal would leave the property owner on whose  
17 property the BMP is located as the default party  
18 responsible for inspection and maintenance unless some  
19 other party is named. This isn't workable and will  
20 not result in the ongoing inspection and maintenance  
21 that BMPs need to continue functioning effectively.

22                   Quite honestly, the average homeowner  
23 doesn't even know that a BMP exists on their property.  
24 And even if they do, very few of them know how BMPs  
25 function, how they should be maintained or what to

1 look for in inspecting them. We suggest that DEP make  
2 the permittee legally responsible for ensuring long-  
3 term operation and maintenance of the BMPs in their  
4 post-construction stormwater management plan. As part  
5 of that plan, the permittee should be required to  
6 demonstrate that they have made an ongoing, long-term  
7 arrangement for inspection and maintenance of their  
8 BMPs. One option would be for the permit holder to  
9 contract with the county conservation districts to  
10 provide O&M services on a fee for service or with some  
11 other qualified agency or vendor. Proof of such a  
12 contract should be required as part of the post-  
13 construction stormwater management plan application.

14                   Our final two concerns with the Chapter  
15 102 draft are our biggest concerns and I'm going to  
16 focus the rest of my comments on them. First, we  
17 strongly oppose DEP's proposed Permit-By-Rule proposal  
18 and emphatically urge DEP to remove it from its final  
19 regulations. And secondly, while we appreciate that  
20 DEP has included a requirement for 100-foot buffers in  
21 development along EV, exceptional value, streams, this  
22 requirement is not broad enough to afford significant  
23 protection to the state's waterways.

24                   Our campaign has from the very start  
25 opposed DEP's proposed Permit-By-Rule program. We

1 believe such a program violates the Clean Water Act .  
2 because it does not require or provide for the  
3 technical review of EMS and post-construction  
4 stormwater permit applications as is required under  
5 the Act. It's absolutely vital that DEP and the  
6 county conservation districts conduct a thorough  
7 technical review of all EMS and stormwater management  
8 plans. Eliminating such technical review could allow  
9 poorly designed plans to be implemented, causing  
10 flooding of adjacent properties or damaging nearby  
11 streams. Attempting to fix such a problem after  
12 construction is done is at the very least more  
13 expensive and may, in fact, not even be possible.  
14 It's far better and far cheaper to fully review plans  
15 before construction.

16                   We're particularly opposed to the portion  
17 of the proposal that would allow the Permit-By-Rule  
18 program to be used in high quality and impaired  
19 watersheds. High quality waters are among the best in  
20 the state and require special protection to ensure  
21 that water quality is not degraded. This protection  
22 can't be guaranteed without full technical review by  
23 DEP and the conservation district.

24                   Similarly, impaired waters are also  
25 required to be protected against any new discharges

1 that could contribute to the impairment or that are  
2 not consistent with the waste load allocations set  
3 forth in the TMDL. Ensuring that a draft plan meets  
4 these legal requirements can't be done without a full  
5 technical review of the draft.

6           There are many other issues that I don't  
7 have time to cite that we believe make the PBR a bad  
8 policy. The idea that the licensing boards will  
9 somehow begin punishing engineers who submit  
10 substandard stormwater plans when their only  
11 disciplinary actions in recent memory have dealt with  
12 either practicing without a license or dealing drugs  
13 is just unbelievable to us.

14           The absence of provisions for public  
15 participation and comments is also disturbing. We  
16 know of many cases where poor stormwater plans were  
17 significantly improved through the public comment and  
18 participations.

19           The bottom line for us is that the PBR is  
20 a bad idea and should be withdrawn.

21           Finally, let me just talk for a few  
22 minutes about the need for forested stream buffers.  
23 The Campaign for Clean Water has been the leading  
24 proponent of forested stream buffers and has secured  
25 the support of 150 organizations and nearly 50 state

1 legislators for our proposal to require minimum  
2 100-foot forested stream buffers on all streams. We  
3 urge DEP to replace its proposal for 150-foot buffers  
4 on EV streams with our buffers 100 proposal. Forested  
5 stream buffers will provide many important benefits  
6 for our streams and our communities. They filter  
7 pollutants from runoff before it reaches the stream  
8 and reduce the volume and rate of runoff. They  
9 improve in-stream pollution removal. They reduce  
10 stream bank erosion. They enhance habitat for fish  
11 and other aquatic life and they cool our streams.  
12 Buffers also reduce flood damage, they reduce the cost  
13 of stormwater management and protect drinking water  
14 and they increase property values.

15           In short, buffers are a smart, low-cost  
16 solution that will protect the health of our streams  
17 and our communities. They help to safeguard  
18 Pennsylvania's tourism and recreation industry which  
19 provide about \$18 billion in wages to 600,000  
20 Pennsylvanians in 2008 alone. Fishing activities  
21 alone generate \$4.7 billion per year in revenue for  
22 the state and support 43,000 jobs. Adopting a broad  
23 requirement to maintain buffers where the areas along  
24 our rivers and streams are developed will help ensure  
25 that the streams we use for fishing and recreation are

1 clean and that the water we drink is healthy and safe.

2           Buffers are already required in almost  
3 200 municipalities in the state with 63 requiring at  
4 least 100-foot buffers. These ordinances have had no  
5 negative impact on development but they have helped to  
6 improve water quality in our streams. But to have  
7 maximum benefit, the requirement must be a statewide  
8 one. The proposed requirement in the draft  
9 regulations is not sufficient to protect our water  
10 resources from degradation. EV streams are a small  
11 fraction of our state's waterways and many of them are  
12 already --- are located in state parks and forests or  
13 other lands that are already protected. As a result,  
14 less than 1400 stream miles, just 1.7 percent of all  
15 stream miles in the state would be affected by this  
16 new requirement.

17           We urge the state --- we urge DEP to go  
18 beyond the very minimal requirement regarding EV  
19 streams and instead to require 300-foot buffers on all  
20 EV and HQ streams, 150-foot buffers on impaired  
21 streams and 100 foot on all other streams in the  
22 state. Thank you again for the opportunity to comment  
23 today.

24                           COMMISSIONER GARDNER:

25                           Thank you. The next presenter would be

1 Mr. Mark Mitman.

2 MR. MITMAN:

3 Good evening. My name is Mark Mitman,  
4 last name is spelled M-I-T-M-A-N. I'm with --- my  
5 company is the Mitman Group, LLC located at 26 West  
6 Broad Street in Bethlehem, PA, 18017. I'm here  
7 representing the Home Builders Association of Chester  
8 and Delaware Counties, as well as the Home Builders  
9 Association of Bucks/Montgomery Counties and the  
10 Lehigh Valley Builders Association. Each of these  
11 nonprofit trade associations represents homebuilding  
12 professionals, subcontractors, suppliers and housing  
13 related service providers. Their combined membership  
14 totals roughly 1,700 member companies and they are  
15 local affiliate organizations to the Pennsylvania  
16 Builders Association. On behalf of these  
17 organizations, I would like to thank you for the  
18 opportunity to provide comments and suggestions on the  
19 proposed Chapter 102 rulemaking process. And I broke  
20 these down into a couple different sections, and I'll  
21 just kind of go through them one by one.

22 The first deals with NPDES applications,  
23 specifically the fee schedule. Our organizations feel  
24 that the proposal to raise fees for NPDES permits by  
25 1000 percent is excessive. It is our understanding

1 that these new fees would underwrite conservation  
2 district expenses, even though the districts have the  
3 power to set their own fee schedule in addition to the  
4 proposed fee schedule. This is not to imply that the  
5 conservation district should not be sufficiently  
6 compensated for their time and energy in reviewing  
7 submitted plans and inspecting the implementation in  
8 the field.

9                   Regulatory requirements and complexities  
10 have increased over the past several years,  
11 necessitating higher costs of both sides of  
12 submission, however, we do not feel that the fee  
13 should be --- however, we do feel, rather, that the  
14 fee should be reasonably proportional to the actual  
15 costs of purporting services. A \$5,000 fee for an  
16 individual NPDES permit on a small site does not seem  
17 proportional, again, particularly in light of the fact  
18 that the conservation districts will then add several  
19 more thousands of dollars on top of that.

20                   So for example, under the proposed rules,  
21 a small project in Lehigh County proposing to disturb  
22 only five acres would be subjected to the combined  
23 fees of roughly \$13,000 for its initial application.  
24 In many cases, this fee will exceed the cost to  
25 engineer such a small project. We would like to



1 suggest that the proposed rules adopt the approach  
2 taken by most conservation districts, that is to say  
3 the fee schedule should be based upon the size of the  
4 proposed project, either by number of units or acres  
5 disturbed. We would recommend a tiered fee schedule  
6 that ranges up to \$2,500 or \$5,000 for the NPDES  
7 permit based upon project size versus a flat rate for  
8 all projects. A three-acre site should not be charged  
9 the same as a 30-acre site.

10                   Number two, incomplete NOIs. Regarding  
11 incomplete NOI applications --- or incomplete  
12 applications and NOIs, we feel that the limitation of  
13 60 days to complete or revise the application is too  
14 rigid. Applications have increased in complexity and  
15 may take more than 60 days to address any deficiencies  
16 identified. We would recommend increasing the time to  
17 make revisions up to 120 days. Also, we would  
18 recommend that language is added stating that  
19 reasonable requests for extensions by the applicant  
20 will be approved. A slow or depressed housing market  
21 may dictate waiting on a permit and an applicant  
22 shouldn't be punished by having to repay the  
23 application fees if they are proactively staying in  
24 contact with the review agency by filing these  
25 extensions.

1           The next thing I want to talk about was  
2 the Permit-By-Rule proposal. Our organizations are  
3 supportive of any effort to simply and streamline an  
4 already overly complicated and expensive regulatory  
5 review process, and we appreciate the Department's  
6 attempt to create such a process in its proposed  
7 voluntary Permit-By-Rule program for low impact  
8 projects. We feel the Department has incorporated  
9 many additional safety factors to decrease the  
10 likelihood of pollution events occurring at the site,  
11 including in part the aggressive use of riparian  
12 buffers, restrictive criteria on what slope and soil  
13 classifications are eligible, use of an engineer's  
14 professional seal, eliminating the social or economic  
15 justification process and the sole utilization of non-  
16 discharge of BMPs.

17           However, before exploring whether the  
18 program should be expanded to include EV watersheds,  
19 the Department may want to examine ways to accommodate  
20 small such as five acres or less type projects more  
21 readily into the program. So for example, the current  
22 slope and soil criteria disqualify much of the  
23 remaining buildable land in Chester County and  
24 consequently the PBR program will be used  
25 infrequently. By adding a little flexibility to those

1 small, truly low impact sites, the program may see .  
2 greater use.

3           Now, the next section I wanted to address  
4 was the operation and maintenance section. Number  
5 one, in order for the proposed construction stormwater  
6 management BMPs to work as designed, someone  
7 ultimately must take responsibility for the long term  
8 operation and maintenance. Some entities are better  
9 suited for those purposes than others, and depending  
10 upon the locale some entities are more resistant to  
11 accepting those responsibilities than others.

12           Therefore, we believe it's important that  
13 the process include as much flexibility to allow the  
14 landowner to assign that responsibility. In some  
15 cases, it may be a homeowner association. Where an  
16 HOA doesn't exist, it may be the municipality. Where  
17 the municipality resists the responsibility, it may be  
18 the individual homeowner. Each site and situation is  
19 different and should be treated as such.

20           The last section is the section dealing  
21 with riparian buffers. Number one, economic impact.  
22 The economic and financial impact of mandating  
23 riparian buffers will be significant to the regulating  
24 community. Incorporating the requirement for a 150-  
25 foot buffer on each side of EV waters will result in

1 many un-buildable projects.. This becomes particularly  
2 concerning for those projects that have initiated the  
3 process but may not have yet received their EMS  
4 approvals. Over the past two years, many projects  
5 have done the approval process under one set of  
6 regulations and one type of economy and they have been  
7 postponed until the market returns.

8           If these buffers are put in place at that  
9 time when they do return, the lot layout and  
10 configuration for residential projects will, as a  
11 matter of course, need to be changed resulting in  
12 unexpected costs, lost densities and potentially  
13 unviable projects. And I point out that this could be  
14 --- prove to be particularly problematic on compact  
15 redevelopment sites that may now be impossible to  
16 build because of the riparian buffer requirements.

17           The question was posed as to whether the  
18 buffer should be expanded to other streams. I would  
19 point out that if the mandated buffers are expanded to  
20 HQ and non-special protection waterways ---.

21 BRIEF INTERRUPTION

22           MR. MITMAN:

23           If the mandated buffers are expanded to  
24 HQ and non-special protection waterways, essentially  
25 all of Pennsylvania's 83,000 miles of stream, the

1 burden would be profound. Taken to its full  
2 realization, a 100-foot buffer on each side of these  
3 streams would result in the regulatory taking of over  
4 3,000 square miles or a land mass larger than the  
5 combined size of Bucks, Montgomery, Chester, Delaware,  
6 Lehigh, Northampton and Philadelphia Counties.  
7 Furthermore, there seems to be no acknowledgement that  
8 local topography and modern stormwater management  
9 requirements limit the amount of actual runoff  
10 reaching the buffers. It's for these reasons we feel  
11 the more local, hands-on approach of Pennsylvania's  
12 municipalities are better suited for adopting riparian  
13 buffers than a rigid statewide mandate.

14                   Number two, incorporate flexibility.  
15 Assuming that the Commonwealth will adopt some form of  
16 riparian buffers, we would like to offer some  
17 suggestions on ways to add flexibility. Primarily,  
18 the regulations should include the ability to buffer  
19 average. Many modern ordinances include such  
20 provisions. Buffer averaging will allow the applicant  
21 to propose various buffer widths at various points  
22 though they must average to the mandated minimum  
23 widths. This flexibility allows the applicant to  
24 address the unique site conditions and to better  
25 configure the lots within the site plane. Properly

1 designed, there is no additional risk to the  
2 environment.

3           On those sites that simply can't  
4 incorporate buffers, the Department may wish to  
5 consider establishing an appropriate fee that an  
6 applicant would pay into a fund that addressed water  
7 quality improvement upstream. Or allow the applicant  
8 to propose a treatment train that meets the stated  
9 goals of the riparian buffer. Buffers are just one of  
10 many different types of BMPs. If the applicant can  
11 create a treatment trend with BMPs that reach the  
12 identical environmental objective of protecting the  
13 water quality of the receiving stream, the opportunity  
14 to make such a proposal should be available.

15           Number three, buffering requirements.  
16 There's been some confusion within our organizations  
17 as to what streams and in what situations the buffers  
18 would be required.

19           COMMISSIONER GARDNER:

20           Two minutes.

21           MR. MITMAN:

22           For example, the proposed rulemaking  
23 requires riparian buffers if earth disturbance  
24 activity is within an EV watershed. Must the entire  
25 activity fall within the EV watershed to trigger the

1 buffer requirements? What if only a portion is in the  
2 EV watershed? Must the entire project, even the non-  
3 EV portion, then incorporate the buffer requirements?  
4 The proposed rules should make clear that only EV  
5 rivers, streams, et cetera, should be buffered.

6                   How is the applicant expected to address  
7 required buffers that may need to be installed on  
8 another landowner's property? If the stream runs  
9 within 150 feet of a property line, it seems the  
10 expectation is that the applicant will need permission  
11 from the adjacent property owner. In many cases,  
12 gaining this approval would seem unlikely and would  
13 place the entire project in jeopardy.

14                   In general, this provision seems to be  
15 rife with potential problems. The Department should  
16 incorporate more flexibility to the buffer widths  
17 and/or add a waiver process in certain instances.  
18 Thank you for the opportunity to present some of the  
19 concerns with the Chapter 102 rulemaking, as well as  
20 offer some improvements. I'd be happy to field any  
21 questions.

22                   COMMISSIONER GARDNER:

23                   Thank you very much. Our next presenter  
24 will be Mr. Adam Brower.

25                   MR. BROWER:

1                   Good evening. Thank you for the  
2 opportunity to provide testimony this evening. My  
3 name is Adam Brower. I'm with Edward B. Walsh &  
4 Associates at 125 Dowlin Forge Road, Exton, PA 19442.  
5 I'm providing testimony this evening on behalf of  
6 Chester County Engineers Organization and I'm speaking  
7 on Section 102.14, the riparian forest buffer  
8 requirements. As a design engineer, it is my  
9 responsibility and obligation to my client and the  
10 property owner to generate the best design that  
11 incorporates the design parameters created by the  
12 reviewing entities while providing plans that meet the  
13 goals of my client in a cost effective manner. I  
14 design projects for people to live in and where they  
15 work. As people's lives occur at these sites, it is  
16 imperative that the projects are designed with careful  
17 consideration to aesthetics, to how the site functions  
18 and how the development affects neighboring  
19 communities and the environment as that affects all of  
20 us.

21                   During the planning design, the engineer  
22 or planner must be a good steward to the environment  
23 and ensure that the development does not degrade the  
24 environment. To that extent, as a design engineer,  
25 during each site design, I acknowledge each site and



1 propose improvements as unique and may require a  
2 unique design. A rigid requirement with respect to  
3 riparian buffer widths does not allow an engineer to  
4 create the best plans for both the client and the  
5 environment.

6                   Section 102.14(b), which is the  
7 composition, establishes set widths as the minimum to  
8 be provided and incorporated into a project. The  
9 widths vary from 100 feet for all waters to 100 feet  
10 for impaired waters or special protection waters.  
11 Depending on the specific site and the vegetation in  
12 the required buffer, there may be little value gained  
13 by maintaining that existing cover.

14                   Examples of this scenario are when the  
15 buffer consists of a maintained lawn area in  
16 previously developed sites where there is impervious  
17 cover in the buffer area. I note that I've work on  
18 projects with both of these scenarios. The protection  
19 of the set buffer width, as noted in Section 102.14 is  
20 a direct conflict with the ability to restore a flood  
21 plain to the historic cross section.

22                   A restoration of flood plain would  
23 restore the relationship between plants and tree roots  
24 within the water table. This connection is lost when  
25 sediment accumulates in a flood plain over time. This

1 disconnection of the roots over time will create an  
2 area that has less and less vegetation in the buffer  
3 area. At that point, the riparian buffer is not  
4 functioning as intended by these requirements.

5           The DEP best management practices manual  
6 includes the ability for an applicant to restore a  
7 flood plain to the historic cross section. Chapter  
8 102 should not include buffer widths that would  
9 prevent flood plain restoration. Similar to flood  
10 plain restoration, the requirements should include the  
11 ability to disturb the noted riparian buffer areas in  
12 redevelopment projects. This type of project may have  
13 existing impervious and/or contaminated area in the  
14 buffer. These areas should be removed as part of the  
15 redevelopment project.

16           The proposed regulations do not permit  
17 disturbance for this type of activity or project.  
18 Oftentimes, a redevelopment project can be very  
19 challenging, not only in its planning, but also in  
20 making the project viable due to costs associated with  
21 this type of development. The noted buffer, what's  
22 being maintained as undisturbed area that cannot be  
23 developed as part of the site, or even for stormwater  
24 management may render a redevelopment project not  
25 feasible.

1 Under Section (a)4, which is existing  
2 buffer composition, it notes that the buffer must be  
3 predominantly native plants, noxious weeds and  
4 invasive species must be removed or controlled to the  
5 extent possible. This requirement may be cost  
6 prohibitive depending on the acreage of the buffer on  
7 a tract and the density of that vegetation. Note that  
8 buffer width on a property may be 300 feet if the body  
9 of water is in the middle of the tract. If there is  
10 more than one stream, the area may be substantial. I  
11 have worked on several projects where this was, in  
12 fact, the scenario.

13 Complete removal of invasive species at  
14 the site would have required removal of many acres of  
15 vegetation. This type of work seems to be in complete  
16 contrast with DEP regulations including current  
17 Chapter 102 regulation that prohibit disturbance of  
18 areas near streams or wetlands. It would seem to  
19 increase the chance of sediment being discharged to  
20 waters of the U.S. when any type of work is occurring  
21 adjacent to a protected area.

22 This requirement, Section 102.14(a)4,  
23 should be removed. Section 102.14(c)5 and 6 both  
24 require the planting of native trees and shrubs in the  
25 areas of the required riparian buffer where the

1 vegetation is lacking. As noted above, the acreage of  
2 ground that qualifies as riparian buffer may be  
3 substantial.

4           If these areas require the establishment  
5 of vegetation, the cost may be excessive and may make  
6 the development of the tract not feasible. This is in  
7 a sense a taking if it is making a property value  
8 climb substantially.

9           Another scenario is the body of water  
10 requiring a buffer may be located on adjacent property  
11 where a buffer is not being maintained. It would seem  
12 to be of little value to them to require a buffer on  
13 the property to be developed at that limit.

14           I recommend that the buffers allow  
15 discretion to permit a variation in the required  
16 width. This would permit a design to improve a  
17 riparian buffer while integrating it into a site  
18 design. It is appropriate to allow an engineer to  
19 design a system that is better than the existing  
20 buffer.

21           A system could be designed to collect  
22 runoff and treat it to improve the water quality prior  
23 to its discharge to a wetland or buffer. This type of  
24 system would create a treatment train that is an  
25 improved scenario for water treatment. There is no

1 reason that a water quality system could not be  
2 implemented in the open space in the required buffer  
3 zone.

4           The goal of the requirements should be  
5 the treatment of runoff to the extent practical, not  
6 to create a set of rigid parameters for reviewing  
7 efficiency. The proposed requirements are attempting  
8 to achieve a specific goal for specific types of  
9 watersheds. Section 102.14(a)2 notes that a riparian  
10 buffer would be required in other regulations where a  
11 permit is required. This should be eliminated as it  
12 is required under the other requirements and it would  
13 be redundant when provided in Chapter 102. Inclusion  
14 of it in Section 102 may lead to confusion in it being  
15 applied to areas not intended.

16           In summary, Section 102.14 should be  
17 amended to allow discretion in the buffer width to  
18 allow designs that are beneficial. In addition, the  
19 requirements may create an unfair hardship on a  
20 property that due to the cost to implement the  
21 regulations may result in the devaluation in a  
22 property. Section 102.14(a)4, 5 and 6 can lead to  
23 substantial costs to implement, may lead to discharged  
24 sediment, to waters of the Commonwealth and should  
25 therefore be removed. Thank you.

1                   COMMISSIONER GARDNER:

2                   Thank you very much. Our next testifier  
3 is Mr. Donald Oaks.

4                   MR. OAKS:

5                   My name is Donald P. Oaks. I'm a  
6 forestry consultant, a certified forester and a member  
7 of the Association of Consulting Foresters. I'm here  
8 tonight representing the Pennsylvania Council of  
9 Professional Foresters, Incorporated who has the  
10 following concerns relative to the proposed  
11 rulemaking. And my address is 135 Tremont Road, Pine  
12 Grove, PA.

13                   The Pennsylvania Council of Professional  
14 Foresters has the following concerns relative to the  
15 proposed rulemaking and makes the following  
16 suggestions to mitigate issues affecting scientific  
17 forest management practices. It must be recognized  
18 that while timber harvesting is defined as an earth  
19 disturbance activity, along with many earth  
20 disturbance activities that change the land use and  
21 that create major concerns for water quality, the  
22 application of scientific forestry does not impair the  
23 forest's ability to provide high quality water.  
24 Scientific forestry nurtures, enhances and protects  
25 the forest's ability to provide high quality water.

1 Scientific forestry, hereinafter referred to as .  
2 forestry, does not constitute a land use change.

3           We offer that timber harvesting be  
4 further defined as an intermediate or final cutting  
5 that extracts sale for trees in place of the current  
6 definition. Timber harvesting is a tool essential to  
7 forestry and essential to a healthy forest.  
8 Professional foresters are essential to the  
9 application of forestry. Licensing of professional  
10 foresters is essential to maintain the Sylvania in  
11 Pennsylvania, Penn's Woods.

12           Timber harvesting and forestry are not  
13 necessarily synonymous. Forests are too many times  
14 negatively impacted when forestry is ignored, however,  
15 it is a rare occurrence that forestry is applied  
16 without timber harvesting, which is equated with earth  
17 disturbing activity. The legislation and the rules  
18 and regulations sometimes become problematic when the  
19 natural progression of the forest and modern natural  
20 impacts on the forest are considered, many negative.  
21 Flexibility is essential to a fine forestry in nearly  
22 every situation in Pennsylvania forest.

23           Legislation and rules and regulations too  
24 often lack the flexibility that nature requires and  
25 which forestry mimics. Forestry needs to be applied

1 by licensed professional foresters, Pennsylvania  
2 licensed, who use objective science-based practices  
3 and study the --- directly applied to Pennsylvania  
4 forests. At the same time, consistency is needed to  
5 ensure appropriate compliance with the legislation and  
6 the rules and regulations. Timber harvesting  
7 activities are defined in the existing Chapter 102  
8 definitions as having a much more expansive  
9 application to timber harvesting and forestry than the  
10 existing timber harvesting packet, erosion and  
11 sedimentation control plan for a timber harvesting  
12 operation than the timber harvest operations field  
13 guide for waterways, wetlands and erosion control  
14 presently provides.

15                   It is only reasonable to conclude that  
16 these documents will be subject to continuing and  
17 increased review and discussion by the regulatory  
18 community. Very simple administrative changes to  
19 these documents and to implementation policy and  
20 guidelines can raise all timber harvesting and thereby  
21 forestry to the permit level. It is presently unclear  
22 to the regulated community that a permit will not be  
23 required for all timber harvesting under the proposed  
24 rulemaking. Integrating Chapter 102 regulations into  
25 the stormwater management regulations will inevitably



1 result in a more restrictive level of enforcement,  
2 which the proposed rulemaking illustrates.

3           It is not appropriate for anyone to state  
4 or believe that the proposed rulemaking will result in  
5 business as usual. The regulated community should  
6 clearly understand that the proposed rulemaking is not  
7 business as usual. The total possible impacts of the  
8 rulemaking must be the basis for evaluating potential  
9 impacts on the regulated community. A positive aspect  
10 of the proposed rulemaking is that the Commonwealth  
11 recognized that licensed professional are an important  
12 ingredient in the protection of Pennsylvania waters.  
13 The forest stewardship program is also cited in the  
14 proposed rulemaking and that, in and of itself, speaks  
15 volumes for forestry and the significance of  
16 foresters.

17           One of the most important professions  
18 with respect to protection of streams, forestry is  
19 being somewhat ignored in the processes since  
20 foresters have not yet been licensed in Pennsylvania.  
21 Pennsylvania foresters are trained and equipped to  
22 manage Pennsylvania forests and watersheds in a manner  
23 which minimizes impact to water quality. Reliance on  
24 the skills and judgments of licensed professional  
25 foresters should have priority in the management of

1 the forest and forest buffers.

2           The proposed rulemaking definition  
3 concerning licensed professionals should be amended  
4 with a statement to the effect that it will include  
5 foresters in its application when Pennsylvania  
6 foresters are licensed as registered professional  
7 foresters. Proposed legislation to license  
8 Pennsylvania foresters recognizes the professional  
9 expertise that foresters are trained to provide. The  
10 proposed rulemaking should be worded to include  
11 foresters in the definition of licensed foresters when  
12 they become licensed.

13           Legislation sponsored and to be  
14 introduced by Representative Kerry Benninghoff, 171st  
15 State House District, Centre and Mifflin Counties, is  
16 written and is being circulated for further  
17 sponsorship in the State House. The proposed  
18 legislation will soon --- introduced in this session  
19 of the General Assembly. It should be recognized that  
20 this effort was in process prior to the publication of  
21 the proposed rulemaking.

22           By the statements made in the proposed  
23 rulemaking as to the parties consulted in the  
24 development of the proposed rulemaking and adopted by  
25 the Environmental Quality Board, it appears that

1 forestry, the forestry profession, and foresters may  
2 have been underrepresented in the process. This must  
3 be changed.

4                   Our intent is to help improve, promote,  
5 maintain the quality of the clean waters and streams.  
6 Foresters best understood the dynamics, value and need  
7 of forest buffers and riparian forests, whether they  
8 are in a development or a large landholder.  
9 Therefore, licensing Pennsylvania's foresters is a  
10 very important ingredient in protecting water quality  
11 in Pennsylvania and to the practice of forestry in  
12 Pennsylvania. That ends the official stated position  
13 of the Pennsylvania Council of Professional Foresters.  
14 I will add further comments ---

15                   COMMISSIONER GARDNER:

16                   Two minutes.

17                   MR. OAKS:

18                   --- by myself. I will illustrate how  
19 buffer requirements in the proposed rulemaking can  
20 seriously affect the health and diversity of the  
21 forest. I presently manage a 9,000-acre property in  
22 Tunkhannock Township, Monroe County, along exceptional  
23 value water. The area is described by the Nature  
24 Conservancy as one of the last great places on earth.  
25 The mature and maturing forest varies from Allegheny

1 hardwoods, mostly cherry, maple and beech with  
2 components of ash, yellow and black birch, some red  
3 scarlet black and white oak, hemlock, spruce and white  
4 pine.

5                   On the opposite side of Tunkhannock  
6 Creek, the forest is a scrub oak forest that is the  
7 result of a destructive wildfire that was largely the  
8 result of past burnings for huckleberry and blueberry.  
9 If protected from fire, the scrub oak will transition  
10 to a mixed oak, beech, pine forest initially  
11 containing large components of aspen and gray birch.  
12 Left unmanaged, the Allegheny hardwoods are  
13 progressing towards a beech dominated forest. Beech  
14 seedlings survive under shade and the forest floor is  
15 covered with beech regeneration.

16                   The overly large deer herd has very low  
17 forage preference for beech. The mature beech is  
18 infected with beech bark disease, which creates a  
19 condition that causes mature trees to suddenly snap 10  
20 to 12 feet from the ground creating unsafe conditions  
21 for everything in proximity to the beech tree. The  
22 area as described in the buffer regulations is  
23 sometimes Allegheny hardwoods, sometimes hemlock and  
24 sometimes hemlock with fingers of Allegheny hardwoods,  
25 and sometimes scrub oak.

1                   Hemlock is exhibiting the same snap  
2 syndrome as beech, a condition that has not been  
3 clearly addressed in scientific literature. The  
4 simple point to be made is that these buffers cannot  
5 be managed to sustain the forest or to the best  
6 advantage of water quality under the buffer  
7 requirements of the proposed rulemaking and the  
8 riparian forest buffer guidance document recently  
9 published for comments. On other adjoining properties  
10 scrub oak is being managed by prescribed fire for the  
11 purpose of encouraging plants that have been  
12 classified as rare and endangered.

13                   The proposed rulemaking brings prescribed  
14 fire to the floor, and it is a practice that fits into  
15 the definition of timber harvesting activity as a,  
16 quote, or similar civil culture practice. Prescribed  
17 fires practiced on the adjoining property starts with  
18 defining control perimeters, brush hopping the scrub  
19 oak, burning the woody material which removes the  
20 humus layer and encourages plants that respond to the  
21 fire regime which in themselves maintain fire regime.  
22 Prescribed fire is not mentioned in the proposed  
23 rulemaking as requiring an EMS plan or EMS permit, but  
24 it is certainly in a class that will quickly affect  
25 water quality.

1           There's a large body of literature that  
2 deals with fire and water quality. The important  
3 point to consider is the requirement for continuous 60  
4 percent crown enclosure and other regulatory practices  
5 in proposed rulemaking will not maintain a healthy  
6 forest and provide for the sustained production of  
7 high quality water.

8           Relying upon the expertise of licensed  
9 professionals trained to manage the watershed, such as  
10 licensed foresters, is the best path to protecting  
11 high quality water filtered, stored and released by  
12 the forest. Licensed Pennsylvania foresters use their  
13 expertise. Foresters in the main understand the  
14 sensitivity of the stream size and address water  
15 quality issues. The proposed rulemaking needs to be  
16 returned to the table where foresters, particularly  
17 foresters in the private sector, are included in the  
18 discussions.

19                   COMMISSIONER GARDNER:

20                   Thank you, sir.

21                   MR. OAKS:

22                   Thank you.

23                   COMMISSIONER GARDNER:

24                   Our next testifier will be Mr. Scott  
25 Brown.

1                   MR. BROWN:

2                   Good afternoon. I want to thank you for  
3 the opportunity to present my comments today. My name  
4 is Scott Brown. I'm a registered professional civil  
5 engineer in the State of Pennsylvania and an employee  
6 of Pennoni Associates. I have over 28 years of  
7 experience including significant experience in site  
8 design, both residential, commercial and industrial  
9 and specific practical and academic expertise in  
10 hydrologic and hydraulic sciences which includes  
11 stormwater management.

12                   From 2003 to 2006, I participated in ---.

13                   COMMISSIONER GARDNER:

14                   Your address?

15                   MR. BROWN:

16                   Oh, I'm sorry. My address, 2414 General  
17 Potter Highway, Centre Hall, Pennsylvania.

18                   COMMISSIONER GARDNER:

19                   Thank you.

20                   MR. BROWN:

21                   Thank you. I'm sorry.. From 2003 through  
22 2006, I participated actively as a member of the  
23 oversight committee convened to provide input to the  
24 development of the Pennsylvania stormwater BMP manual,  
25 and I'm also participating on the Pennsylvania

1 stormwater manual revision committee, which had its  
2 first meeting on September 9th of this year. While I  
3 understand the need for an update to Section 102 to  
4 better protect surface waters of the Commonwealth and  
5 to maintain compliance with federal programs, and I  
6 appreciate the time and effort that has gone into  
7 development of the proposed rule changes, there are a  
8 number of issues within the rule changes that are of  
9 concern.

10 I will limit my testimony today to a  
11 couple issues which I consider to be the most  
12 significant. I'll start by touching on the cost  
13 impacts resulting from implementation of the proposed  
14 rule change. The section after the rule change  
15 executive summary states that these regulatory  
16 revisions should not result in significant increase  
17 compliance costs for persons proposing or conducting  
18 earth disturbance activities. It further states that  
19 moderate costs may be incurred due to increased permit  
20 application fees, the requirement for licensed  
21 professionals to inspect and oversee the construction  
22 of stormwater BMPs and the preparation of record  
23 drawings and long-term operation and maintenance of  
24 post-construction stormwater management facilities.

25 But then, the summary goes on to state



1 that generally there may be cost savings as a result  
2 of eliminating the outdated and unnecessary  
3 requirements and the emphasis on nonstructural low  
4 impact stormwater management programs. While I agree  
5 that the proposed rulemaking does remove some outdated  
6 requirements, I take exception with the statement that  
7 the increase in application fees, costs associated  
8 with oversight and preparation of record drawings and  
9 long-term operation and maintenance of post-  
10 construction stormwater management facilities will be  
11 minor. A tenfold increase in proposed permit fees is  
12 not minor. Costs associated with professional  
13 oversight in the preparation of record drawings will  
14 also add significantly to development costs. And no  
15 one knows where long-term operation and maintenance  
16 costs will end up.

17 Another cost which is almost always  
18 overlooked, and I'd like to focus a little bit on and  
19 take a few minutes to talk about is the cost of land  
20 and the cost to society of the increased urban sprawl  
21 that will result from these regulations. Similar to  
22 the wetland regulations of the late 1970s and '80s the  
23 post-construction stormwater management requirements  
24 implemented through the NPDES permit requirements put  
25 into effect two years ago require that more land area

1 be dedicated to the control of storm runoff. The  
2 responsible management of runoff volume through  
3 infiltration practices typically involves setting  
4 aside more land area than required by previous peak  
5 grade measures.

6           While I acknowledge that peak grade  
7 measures alone have not and will not provide the level  
8 of mitigation required to adequately protect surface  
9 waters of the Commonwealth, the costs associated with  
10 the additional land needed to develop the same number  
11 of residential units or promotional square footage has  
12 not been considered. Unless local municipalities are  
13 aggressive at altering zoning to increase density to  
14 offset the need for more land, the end product will be  
15 more urban sprawl. And it's not just the cost of the  
16 land, but the cost of energy and other resources  
17 associated with urban sprawl.

18           For all these reasons, the costs  
19 associated with this proposed rulemaking cannot just  
20 be brushed off. Costs will be significant. A  
21 rigorous analysis of the true costs is required or  
22 should be assessed prior to enactment of this rule  
23 change.

24           The second issue that I'd like to focus  
25 on is the proposed codification of the guidance volume

1 control standards contained originally in the  
2 Pennsylvania Stormwater BMP Manual. These proposed  
3 revisions are in Section Eight, Chapter 102 of the  
4 proposed rule changes. The volume control standards  
5 in Chapter Three of the Pennsylvania Stormwater BMP  
6 Manual referred to as CG1 were only intended as  
7 guidance standards.

8           Many of us on the BMP manual oversight  
9 committee would have never agreed to these standards  
10 if they wouldn't have been sold as only a guidance in  
11 nature. As one way to demonstrate that the stream  
12 water quality requirements in Title 25, Chapter 93.4  
13 of the Pennsylvania State Code, the anti-degradation  
14 regulations, these anti-degradation regulations state  
15 that a waterway's use or water quality cannot be  
16 impaired depending on stream classification.

17           The purpose of the volume control  
18 standard, CG1, was to provide an analytic method that  
19 could be used to assess whether a site development met  
20 the anti-degradation regulations, but CG1 was not  
21 intended to rule out other analysis methods that might  
22 also demonstrate a site meets the anti-degradation  
23 requirements.

24           Unfortunately, there was no technical  
25 analysis conducted to establish the level of

1 protection provided by CG1 using real data from  
2 Pennsylvania waterways. In other words, there was no  
3 analysis to support that CG1, in fact, --- or provide  
4 what level of protection. My personal and  
5 professional opinion is that CG1 sets the bar too high  
6 and in many instances may actually pose an increased  
7 risk of economic loss as a result of its application.

8           The Pennsylvania BMP manual speaks to  
9 this issue in chapter seven identifying special  
10 management areas where strict compliance with CG1 may  
11 not be appropriate. These areas include brownfields,  
12 highways and roads, linear projects and limited  
13 right-of-way, karst areas, areas underlined by  
14 limestone or dolomite, mined lands, areas near potable  
15 water supplies, wells or surface supplies and highly  
16 urbanized areas.

17           The fact that application of CG1 may be  
18 problematic in some situations demands that the  
19 analytic anti-degradation standard be flexible,  
20 therefore, it's not appropriate to strictly code this  
21 standard into regulatory language.

22           I would also like to speak to  
23 subparagraph E9 in section eight of chapter ten. This  
24 paragraph suggests that in addition to protecting the  
25 waters of the Commonwealth, post-construction

1 stormwater management plans are to reclaim and restore  
2 the water quality of water and the existing and  
3 designated uses of waters within the Commonwealth.

4           This concept is further supported by  
5 elements of the CG1 analytic standard included in the  
6 proposed regulatory changes in Section 102.8(g).  
7 These proposed rule changes will place the additional  
8 burden of restoring impaired waters on new  
9 development.

10           COMMISSIONER GARDNER:

11           Two minutes.

12           MR. BROWN:

13           I agree that past development practices  
14 are at fault for the impairment of many waterways in  
15 the Commonwealth, however, I don't believe it is  
16 appropriate or economically prudent to place this  
17 burden entirely on the development community.

18           As I said earlier, Pennsylvania is a very  
19 diverse state, diverse in geology, soils, vegetation,  
20 climate, land use and cultural heritage. And within  
21 all this diversity is a beautiful richness of  
22 environmental resources, environmental resources that  
23 need to be protected and maintained for future  
24 generations, but not at the expense of the economic  
25 sustainability needed for future generations of

1 Pennsylvanians.

2           In addition, Pennsylvania's diversity  
3 demands flexibility in regulatory standards. One size  
4 won't fit all. Thank you for your consideration of  
5 these statements.

6           COMMISSIONER GARDNER:

7           Thank you very much. That concludes the  
8 testimony of all of our pre-registered testifiers. Is  
9 there anyone in the room who have testimony that  
10 they'd like to add to the record? Yes, sir? Do you  
11 have copies?

12           MR. MCGUIRE:

13           No, I do not but I will get them to you.

14           COMMISSIONER GARDNER:

15           Are we allowed to maintain this? It says  
16 if ---. Thank you.

17           MR. MCGUIRE:

18           Okay. Thank you.

19           COMMISSIONER GARDNER:

20           Please identify yourself.

21           MR. MCGUIRE:

22           Yes. My name is David McGuire,  
23 M-C-G-U-I-R-E. I live at 223 North 19th Street,  
24 Allentown, 18104. I represent the Lehigh Valley Group  
25 of the Sierra Club. To try to summarize the key

1 points of this complex document, I will first note for  
2 the reasons that many people have brought up,  
3 including the engineers and the forester in  
4 particular, that the Permit-By-Rule option should be  
5 eliminated and other controlling language put in  
6 place.

7                   Number two, that in this document there  
8 is an almost complete failure to recognize the high  
9 quality stream category in that the exceptional value  
10 stream which we've heard tonight several times is a  
11 very small percentage of our waters. It is a fact  
12 that the streams in Pennsylvania, including high  
13 quality streams, have been slowly or rapidly,  
14 depending on the locale, victimized by degradation  
15 rather than preservation or enhancement, which is the  
16 motto in the guidelines on the DEP website.

17                   Next, no EMS permits for disturbances  
18 less than 100 feet from streams with a process for  
19 exceptional cases. That allows for some flexibility  
20 without eliminating the concept of protection for  
21 streams by use of forestry and vegetation. What  
22 strikes me through my personal experience is the  
23 failure of this regulation, draft regulation, and  
24 other regulations of the DEP is to include the banning  
25 of those companies whose experience and record in

1 earth moving has led to violations as validated by  
2 inspection records that show repeated actions of  
3 noncompliance with EMS guidelines as they presently  
4 stand. In other words, people who are serial ---

5 UNIDENTIFIED SPEAKER:

6 Violators.

7 MR. MCGUIRE:

8 --- violators --- I'm trying to get that  
9 right language, thank you, simply are treated as  
10 though they're good to go. They're good to go.  
11 They're called a company. They have certain permits  
12 and they're good to go, but examination of their  
13 records shows repeated violations over any given  
14 project and over a series of projects. Elsewhere,  
15 we'd call them serial violators in a civil sense.  
16 That should be written in there.

17 Next, support requiring earth disturbing  
18 activities applied to the oil and gas component of our  
19 economy is a highly commendable activity and they  
20 should be required to obtain NPDES permits.

21 Next, we also support the increase of  
22 application fees to sustain the enforcement program,  
23 with the recognition that a tiered structure rather  
24 than a one size fits all may well be the better way to  
25 achieve the desirable goals.



1           The next one is things that are not  
2 exactly in the purview of DEP, except that it gets in  
3 line to beg with its bowl at the state legislative  
4 appropriations process, namely these things currently,  
5 in the past and almost certainly to go ahead, would  
6 require adequate funding and staff to oversee and  
7 enforce EMS permits. And I submit that the entire DEP  
8 effort in the last 20 years has been significantly  
9 under-funded, both funding and therefore by staff,  
10 leading to a compliance by non-investigation of  
11 things. This is not the fault of the DEP, per se.

12           Next to last, so that you know I will  
13 stop, the permittee should bear legal responsibility  
14 for ensuring the long-term operation and maintenance  
15 of post-construction storm management BMPs. Across  
16 the valley, which is where we have our major  
17 experience, the failure of the current arrangement  
18 whereby storm management is evaluated, approved,  
19 stamped, everything is done, everybody walks away and  
20 the whole infrastructure of the post-management  
21 stormwater protection simply goes to hell in a hand  
22 basket. Nobody is enforcing it. Nobody checks it and  
23 so on. And again, if you would remove even the  
24 current minimal functions of conservation districts  
25 and certain municipalities and fail to fund them for

1 these things, we'll just have an accelerated  
2 degradation of our streams which is what we are  
3 facing. And if the data over the last 20 years can be  
4 believed, despite the best efforts of legislation and  
5 the regulatory --- the regulators that things aren't  
6 getting better, they're getting worse. More things  
7 get worse than the occasional thing that gets better  
8 for 3,000 linear feet of a stream.

9           Lastly, there is a continuing gap in our  
10 enforcement and analytical efforts in that we fail to  
11 address the cumulative impacts of different actions in  
12 given areas. The current regulations and everything  
13 tend to focus on point sources, even if it's so many  
14 acres or so many linear feet, but the fact is the  
15 cumulative impact of all these things is not being  
16 recognized. This is not unique to our state. Even  
17 the Council on Environmental Quality at the federal  
18 level for the past 20 years, at least when I was  
19 involved in Washington 20 years ago, simply had failed  
20 to grasp the idea of cumulative impact. That is to  
21 say if each person along a stream is tested on putting  
22 a cup of what's called a pollutant, whatever way you  
23 want to define it --- if everybody is allowed to dump  
24 one cup of pollutant in, because that's the reg, you  
25 get the permission to dump the one cup of pollutant

1 in, however, the fact of 10,000 people on each side of  
2 the stream dumping their one cup in is not addressed  
3 in its cumulative impact by our general regulatory  
4 community or our laws and regs. That's why we still  
5 have these problems.

6           Having said that, I'll point out to you  
7 that you are sitting on the northern slope of South  
8 Mountain, the outstanding environmental resource in  
9 the entire Lehigh Valley, and people in this room can  
10 go down and name event after event on this mountain,  
11 on its streams, on its seeps, on its wetlands, that  
12 have allowed continuous degradation of our streams.  
13 I'll just leave that with you to let you know that  
14 there --- it's very personal with some of us, as it is  
15 with those of you whose careers have been dedicated to  
16 the protecting of our environment. Thank you.

17           COMMISSIONER GARDNER:

18           Thank you very much.

19           UNIDENTIFIED SPEAKER:

20           If you have your written comments, we  
21 might be able to make copies.

22           MR. MCGUIRE:

23           I have no written comments today because  
24 I thought it applied only to those who signed up in  
25 advance and I will ---.

1                   COMMISSIONER GARDNER:

2                   Do we have other presenters? Other  
3 presenters? One, two, three, four. One, two, three,  
4 four. We have four presenters, four additional  
5 presenters.

6                   MR. HALLS:

7                   My name is Ben Halls. I live at 3020  
8 Pearl Avenue, Allentown 18103. I'm normally here as  
9 kind of backup for Jan Keim, who is not here, so I'll  
10 try and do my best to imitate Jan Keim. God help you.  
11 I'd like to point out one thing and I'd like to  
12 elaborate on one thing that Dave pointed out, is that  
13 we could probably do a much better job and make  
14 developers much happier if we'd reduce fees, but have  
15 them face the penalty. Have them face the likelihood  
16 of a severe penalty for any infraction. Now, if what  
17 we hear from --- you know, when we contact DEP and say  
18 why haven't you looked at this? We don't have any  
19 staff. You don't have any staff because you're  
20 charging low fees, and you're charging no fines. Some  
21 of the incidents that Dave was alluding to resulted in  
22 nothing, not even a slap on the wrist. This guy just  
23 said I won't do it again and promptly did it again. I  
24 won't do it again. Did it again. But the likelihood  
25 of getting a better business plan for DEP might be

1 fees that cover only the costs, if even that in total,  
2 but collects very healthy fines that supports their  
3 activities of reviewing what happens with the  
4 applicant after he receives his permit to go ahead.  
5 And you know, just a citation which is a little bit  
6 odd, because it's a public agency ---. Lehigh Valley  
7 Authority for 20 years has been dumping sewerage into  
8 the Lehigh, the Little Lehigh Creek, the little Lehigh  
9 stream. They don't do it --- well, all right. I'll  
10 be generous. They don't do it wantonly. It happens,  
11 but it happens because they don't --- they hatched  
12 things without much planning, so we have septic  
13 material that dissolves sewer lines. We have broken  
14 sewer lines. We have high pressure stations which  
15 will not be handled by the downstream lines that are  
16 in place. It's a poorly managed --- it's a cobbled  
17 together system and they are intent now on fixing  
18 problems. And they don't know where the next problem  
19 is going to be, but every problem they have results in  
20 raw sewerage in the Little Lehigh Creek.

21           We have been working for 20, 25 years ---  
22 no, 35 years, trying to get EV status for the Little  
23 Lehigh Creek. We have failed. We have failed  
24 principally because of these discharges into the  
25 stream and uncontrolled development of the Lower

1 Macungie Township. Both of those have silted the  
2 stream so badly that we probably never will achieve EV  
3 status, though for years and years when we were  
4 applying for it we had it. It was there. All you had  
5 to do was say yes, but no one was in the position to  
6 say yes. They didn't have enough staff to review it  
7 properly, so that process took almost 30 years. And  
8 last spring, was it, Dave, when we finally got  
9 notification. Sorry, guys. Your stream is dirtier  
10 than EV. It wasn't, but they didn't --- so think  
11 about changing or destructure and your fines and you  
12 might achieve more with less. Thank you.

13 COMMISSIONER GARDNER:

14 Thank you very much. Our next testifier.

15 MS. ANDERSON:

16 It's Caroline Anderson from Macungie,  
17 Pennsylvania, 2521 Saddlebrook Road, 18062. This will  
18 be brief. Just I'm here to speak against the Permit-  
19 By-Rule.

20 COMMISSIONER GARDNER:

21 Speak closer to the microphone.

22 MS. ANDERSON:

23 I apologize. Okay. Here to speak out  
24 against the Permit-By-Rule given there are no  
25 requirements to conduct a technical review of erosion

1 and sediment control, as well as stormwater management  
2 plans. And also the lack of provisions in providing  
3 public participation opportunities. I suggest public  
4 notice of a minimum 30 day comment period would be  
5 more appropriate. Another issue to be issued is  
6 forest riparian buffers and how important it is that  
7 they are mandated 100 feet on both sides of all  
8 streams, 150 on headwater and impaired streams and 300  
9 feet on exceptional value and high quality streams  
10 would be ideal.

11 Also, construction companies and  
12 permittees should bear the responsibility of post-  
13 construction stormwater management and oil and gas  
14 developers should be included in this as well. And  
15 one more thing is the threshold for erosion and  
16 sediment permits should operate on a smaller scale,  
17 reduce from 25 to 5 acres to ensure water quality.  
18 Okay.

19 COMMISSIONER GARDNER:

20 Thank you very much.

21 MS. ANDERSON:

22 Thank you.

23 OFF RECORD DISCUSSION

24 MR. PYSHER:

25 Hi. My name is Marshall Jordan Pysher

1 and my address is 5221 Chestnut Street, Emmaus, PA  
2 18049.

3 COMMISSIONER GARDNER:

4 You were also signed up.

5 MR. PYSHER:

6 Yes. That would be me.

7 COMMISSIONER GARDNER:

8 Do you have three copies for us?

9 MR. PYSHER:

10 Yes. I've got one right here for you.

11 COMMISSIONER GARDNER:

12 Okay.

13 MR. PYSHER:

14 All right. So I'm here to speak against  
15 the Permit-By-Rule because of the lack of requirements  
16 to review erosion and sediment control plan as well as  
17 a stormwater plan. I want to make buffers mandatory  
18 and the specifics on that I think 100 feet on all  
19 streams, 150 feet for the headstreams and impaired  
20 streams and 300 feet for exceptional value streams and  
21 high quality streams. I also feel developers should  
22 have the responsibility of post-construction  
23 stormwater management BMPs. Oil and gas companies  
24 should not be exempt from these regulations. I also  
25 believe that the threshold for erosion and



1 sedimentation permits should be reduced from 25 acres  
2 to 5 acres for timber harvesting. I think all these  
3 are necessary to protect our natural resources and  
4 it's also urgent. And that's all I have for you.

5 COMMISSIONER GARDNER:

6 Thank you very much. Okay. The next  
7 presenter?

8 MR. WIRTH:

9 Good evening, ladies and gentlemen. I  
10 have no pamphlet or writing. My name is Mark Wirth  
11 and my last name is W-I-R-T-H. I live at 2438 Black  
12 River Road, Bethlehem, Pennsylvania, Lower Saucon  
13 Township. My concern is over the last --- from  
14 approximately 1985 until the present time now after  
15 the I-78 corridor went in through Lower Saucon  
16 Township through --- that came up through from  
17 Philipsburg through parts of the lower part of Lower  
18 Saucon Township, Hellertown and through Upper Saucon  
19 Township and around the side of this mountain, there  
20 has been an enormous amount of sediment that has  
21 dumped off the highway and into Black River Creek.  
22 And in these pictures you can see from uncontrolled  
23 sediment control by certain developers in the area,  
24 the stream along Black River Creek which runs from the  
25 headwaters that run off this mountain that come from

1 East Rock Road from the natural springs that come off  
2 where the channel 30 --- channel 69 TV station is,  
3 those headwaters dump and they eventually end up down  
4 into the Saucon Creek which is a high --- classified  
5 as a high profile stream, trout stream.

6           There is an enormous amount of  
7 sedimentation that converted where the two legs of  
8 Black River Creek converge in the front of my house  
9 which is directly across from --- directly in front of  
10 St. Luke's Hospice and Sanbrook Apartments. In these  
11 pictures that I've taken over the last 20 years,  
12 especially from when Hurricane Ivan and all those  
13 three storms came in in 2005, 2006 and in 2004, it has  
14 caused an enormous amount of sediment.

15           The stream in front of my house, a  
16 section of approximately 200 feet, a section 200 foot  
17 long between two bridges between that entrance into an  
18 apartment complex, the stream used to run straight  
19 from one bridge to the other. It is excessively close  
20 to Black River Creek. I mean, Black River Road was  
21 the state road. Now, that stream has shifted apart.  
22 It's gone from like --- it's moved approximately six  
23 foot where it has dumped probably hundreds of tons of  
24 silt. Then it becomes sod and grass and slowly  
25 creeping to the bottom, to the inside corner of a turn

1 right in front of the apartment complex, there's a  
2 road that's sinking.

3           Also, in that area there from when the  
4 I-78 corridor was put through there, from where Black  
5 River Road intersects with --- Black River Road and  
6 378 intersection intersects from there up to where  
7 three quarters of a mile down 378 South to  
8 approximately where Dr. Feelgood's is or the I-70  
9 overpass, before the I-78 corridor went through there,  
10 a portion of our farm which was approximately nine  
11 acres was taken. And with from Black River Road which  
12 is from there, from Black River Road and 378 down to  
13 the upper part of our property which is approximately  
14 150 yards wide to three quarters of a mile long and  
15 area where the highway went right over a riparian  
16 swamp where there was a pond, bog turtles, numerous  
17 sinkholes in there that I used to play in when we were  
18 kids, which are right above the main --- some of the  
19 main shafts of New Jersey's Zinc Companies mines that  
20 run out through there, which some of my family members  
21 worked in in the past.

22           I'm very concerned also I have spoken  
23 with a man which on October 13th of this month I have  
24 a meeting with Gerald Fry from PennDOT District Five.  
25 Two years ago when I --- there's a box culvert that

1 runs underneath I-78 directly across from Blair's.  
2 John Blair was a Blair Homes, a main developer in this  
3 area that builds big homes. There's a box culvert  
4 that runs underneath I-78. When I was a small child  
5 35 years ago, on the other side of that side of that  
6 stream, there was two large sinkholes that constantly  
7 used to fall in. And two years ago when I --- it was  
8 brought to my attention that 14 acres of the back of  
9 our farm which was we were told that would always be  
10 state wildlife refuge that was owned by the state or  
11 PennDOT, that was leased to a man. He bought that  
12 property.

13                   Well, that brought me to --- me and a lot  
14 of other homeowners were told that that would always  
15 be wildlife refuge. Now it has been stripped  
16 completely down, all the wildlife, the trees have been  
17 cut off, the main drainage swales that come out of  
18 approximately 60 acres of property which had sinkholes  
19 in it, rain runoff, has been dried, almost dried up.  
20 Where the I-78 went over that swamp, the Army Corps of  
21 Engineers had the state recreate a swamp ovetop of  
22 this mine hole that we used to dump garbage into years  
23 and years --- a lot of families in the area, and that  
24 was retrofitted. That was recreated into a swamp.  
25 Now that is being isolated by a certain wealthy

1 landowner that purchased a lot of property along  
2 there. He has blocked one part of --- two --- one  
3 part of the upper part which is the main drainage  
4 swale that drains this South Mountain that I spoke  
5 about, which the man from Sierra Club --- they put a  
6 bank there. And the back part of that has had stone  
7 dumped into it which is the main corridor that feeds  
8 that swamp. That is being blocked now. This man has  
9 stripped out this field. Okay?

10                   And I go back to those things where I was  
11 mentioning those sinkholes. Two years ago I walked  
12 through that box culvert which I used to keep open  
13 because my house is actually surrounded. There's a  
14 stream behind my house and a stream in front of my  
15 house. A hundred yards behind it where the box  
16 culvert runs off it, I used to go in there and remove  
17 tons and tons of silt from the front of that box  
18 culvert where it comes out from underneath I-78  
19 because there's two main drainage swales that come off  
20 I-78 and dump into right at the exit of that box  
21 culvert an enormous amount of --- it becomes like a  
22 whirlpool of water. The water comes from four inches  
23 in the creek to four and a half feet within an hour  
24 sometimes. There's a large swale that --- berm that  
25 we built behind our farm. The engineers from

1 Morrissey let us use some of their heavy equipment  
2 when they put the highway through because they were  
3 told that we weren't allowed to put it there but they  
4 were nice enough to dump dirt there which keeps it  
5 from flooding our property.

6                   Now, three cracks opened up in that box  
7 culvert right in the center of it where those  
8 sinkholes were 35 years ago. This past Christmas a  
9 fourth crack opened up in that box culvert and is  
10 starting to swale. Now, there is intentions I hear  
11 from developers which is a piece of property that is  
12 at the end of this South Mountain which consists of  
13 100-some acres owned by a man named Dave Peeples  
14 (phonetic) who bulldozed the top of that mountain  
15 years ago after the highway went through which runs in  
16 Northampton County, Lehigh County, Salisbury Township,  
17 Upper Saucon Township and Lower Saucon Township. He  
18 bulldozed ten acres of that top of that mountain flat  
19 and put an equestrian riding stable up there without  
20 any permits. And then that was stopped. That  
21 building has sat up there for the last 18 years  
22 unoccupied and that piece of property is in the paper  
23 for sale for a million dollars.

24                   I have good word through people who work  
25 for the sewer authority in Upper Saucon Township that

1 that mountain plan would be to put multi-million homes  
2 on possibly some day. And I can see it coming with  
3 development. That water will get dumped into this  
4 thing. That water also, when Eastern Industries put  
5 their highway --- when the state put the highway  
6 through from where the Northampton and Lehigh County  
7 lines come out through the back and they over --- when  
8 they overpassed 378 South, the state --- Eastern  
9 Industries would not allow the state to dump water  
10 from that overpass from that side of that mountain  
11 that overlooks the Promenade Mall from like three  
12 quarters of a mile past the Lehigh Northampton County  
13 line which looks directly down onto the Promenade.  
14 This Eastern Industries would not allow them to dump  
15 the water into that Promenade Mall where they built  
16 that big complex.

17                   So three quarters of that full side of  
18 that Mountain, that water comes around and dumps into  
19 the box culvert which is pictured in one of those  
20 things there and it comes into the stream which is on  
21 the picture right here. It comes in and dumps right  
22 there. There is the water coming from that box  
23 culvert into the stream. Now, there is another box  
24 --- rain swale that comes in this way you don't see.  
25 I don't have a picture. And then it meets, and this

1 is what is --- this is what has been brought about,  
2 the flooding through the back of my brother's farm by  
3 the root --- Black River Creek being overflowed  
4 sometimes three inches of water coming in and dumping  
5 into my front yard and into my driveway and coming  
6 into my garage right here sometimes when we had Ivan.

7 COMMISSIONER GARDNER:

8 Two minutes.

9 MR. WIRTH:

10 There is a 20-foot sinkhole that opened  
11 up 20 feet off the corner of my garage this past  
12 Christmas and in 1973 when Hurricane Agnes came  
13 through, 50 yards from that directly in line with the  
14 sinkholes that are underneath I-78 there was a 50 foot  
15 sinkhole that came --- that occurred after the waters  
16 went away from Hurricane Agnes. I'm very concerned  
17 because with the Marcellus oil natural gas line that  
18 runs through our area, the extraction process for that  
19 is done with high-pressurized water and that whole  
20 area is filled with limestone. You mix limestone and  
21 water and what happens? Thirty-five (35) years after  
22 --- when they shut that pump down at Eastern  
23 Industries, in 1985, the Saucon Creek dried up for two  
24 and a half months because that pump which was the  
25 largest pump in the world pumped a million gallons of



1 water out of the ground an hour. And when they shut  
2 that down to build I-78 southern corridor through  
3 there, the Saucon Creek dried up for two and a half  
4 months. Now, those mine shafts are filled up and over  
5 35 years those --- that limestone is collapsing and  
6 I'm just concerned with that --- if that box culvert  
7 were to let loose because of the excessive sediment  
8 running into those streams from more building, if that  
9 would collapse it would --- it could very much  
10 collapse our economic highway system right in this  
11 area because that southern corridor is the main artery  
12 up into the north on the east coast here. Thank you  
13 for your time and I just wanted to bring that to  
14 everyone's attention.

15 COMMISSIONER GARDNER:

16 Thank you very much. Are there any final  
17 presenters to testify? Okay. With no further  
18 witnesses present, on behalf of the Environmental  
19 Quality Board I hereby adjourn this meeting at 6:54  
20 p.m. Thank you all for coming.

21

22 \* \* \* \* \*

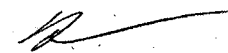
23 HEARING CONCLUDED AT 6:54 P.M.

24 \* \* \* \* \*

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## CERTIFICATE

1  
2 I hereby certify that the foregoing  
3 proceedings, hearing held before Chair Gardner was  
4 reported by me on 10/05/2009 and that I Brian D.  
5 O'Hare read this transcript and that I attest that  
6 this transcript is a true and accurate record of the  
7 proceeding.



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Court Reporter

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