

Common Sense



Foreword

The Pennsylvania Wetlands Protection Coalition (PWPC) is a coalition of private industry, associations and landowners. The more than 40 members of this group represent taxpayers and citizens who live and work within the communities of this state. They are employers providing jobs to millions, and they are businesses that create business for other suppliers and services, all of which contribute greatly to keeping the economy healthy.

The primary purpose of the coalition is to advocate a common sense and rational approach to wetlands preservation to include:

- clear and precise wetland definitions;
- a comprehensive system of mapping and classification;
- an expeditious permitting process; and
- protection of private property rights.

The coalition believes wetlands of exceptional value should be afforded full protection and fully supports any such effort. However, the coalition also believes that the General Assembly is the only body empowered to make and set public policy for all Pennsylvania citizens.

Within this pamphlet, we have categorized by county a series of wetland nonsense stories collected from individuals, organizations, newspapers and governmental testimony. By exposing these facts, it is this coalition's desire to alert legislators and the media to their friends', neighbors' and employers' cry for a common sense legislative solution to wetland preservation.

John Wanner
Chairman
Coalition Steering Committee

Salinda Arthur
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APR Coalition Director

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Littlestown Boro

DER would not entertain any discussion regarding what is truly wetlands and stormwater runoff. There is a cemetery located next to the 75 unit subdivision project. Stormwater crosses the plots unabated, draining into and across the Littlestown site. Wetlands are described as any land that is wet, without any thought of rain water or wetland that was created by standing stormwater. Our economic loss was \$300,000.

...Andrew Spataro

According to attorney Ray Baum, real estate partner with Rose, Schmidt, Hasley and DiSalle, “(DER’s policies) are not being administered in a rational way.”

For example, he said, “The way the regulations are carried out now, an individual could inadvertently create a wetland on his own property and in order to get rid of it, he would have to get a permit from DER at his own expense.”

...Allegheny Business News
March 27, 1991

Mr. Berger does not feel that farmers should be fined for opening drainage ditches or closing up portions of their wet areas with fill for crossovers or farming. Small ponds for fire protection should also be allowed.

"To preserve weeds in the wetlands, they will spread to other areas of the farm, and DER and EPA do not want farmers to use herbicides to control them. My farm and many of my neighbors and my friends' farms have problems with Multiflora roses, thistles and Johnson Grass."

...Ray L. Berger

Cumru Township

I purchased property in 1978. Unaware that wetlands were an issue, the original PUDDING plan (1972) included ponds where wetlands are. We inadvertently created an isolated wetland (0.8 acres) in 1981 by stripping topsoil. In 1987 we redesigned the project to accommodate the major wetland (6 acres), losing over 80 units. U.S. Corps of Engineers accepted our wetland delineation but also insisted on taking jurisdiction over the isolated wetland even though they acknowledged it was not a valuable wetland and didn't care if I filled it. Now I have to deal with the Pennsylvania Department of Environmental Resources (since 1989) who views every wetland as valuable.

My losses exceed \$1,000,000 since 1987 and are increasing at \$10,000/month. We had to redesign 80 percent of the site, including roads, sewers, etc., losing over 80 dwelling units in the process. I even agreed to make the 6-acre wetland into a show place nature preserve to help teach the local children about the value of wetlands.

...Brian R. Schlappieh, President
Heritage Investment Group Ltd.

Altoona

Altoona Enterprises Inc. this year was fined \$10,000 by a federal court and ordered to build 15 acres of wetlands near the Blair County Industrial Park, which is just off Route 220 in Tipton. The action came after the Corps found five companies unknowingly had built on wetlands obtained from the agency in the 190- acre park.

Robert Hallaran, director of industrial development for Altoona Enterprises, said his agency will spend about \$200,000 on the project. He is uncertain how the agency will absorb the costs.

...Johnstown Sunday Tribune-Democrat
December 21, 1990

Troy

A farmer in Troy requested a permit for a pond. "All I got is the runaround." After trying for two years, he is "just plain angry."

"We can't even get answers from these people (EPA). After all, we pay taxes on this land, we use this land for our cattle and to produce food for them. They have to have water!"

...Henry Abma

Solebury Township

The Army Corps of Engineers and DER delayed permitting for one year over a stormwater basin and bridge in the wetlands of the Solebury Townhouse Project.

The guidelines and review timeframes are very unclear for the bureaucratic process. The determination of wetlands differ between DER and the Corps. Clear guidelines need to be established.

...Keith Heigel
Light, Heigel & Associates, Inc.

Sellersville

Sellersville will spend about \$4,000 to remove fill dirt that it placed in a wetland in West Rockhi II during the improvement of the borough's water treatment plan last year.

The borough had to remove the material, the state Department of Environmental Resources decided.

The borough was cited by the DER last year for wetlands violations as the result of grading done for an addition onto the treatment plant, according to Borough Manager Richard D. Coll.

The addition was to satisfy the conditions for a stream discharge permit for the DER.

The DER did not fine the borough for the infraction.

Coll said that he was somewhat disappointed the borough had to remove the fill dirt, which he contends did not make "one iota" of difference in the stream.

The stream is an unnamed tributary to Three Mile Run Creek.

...Doylestown Intelligencer

June 17, 1991

Falls Township

A federal judge in Philadelphia sentenced John Pozsgai to prison and fined him \$202,000 after observing that he, despite warnings, stubbornly persisted in filling in wetlands along West Bridge Street in Falls Township at the Morrisville Borough line.

Pozsgai maintained the wetlands had been used as a dump before he began cleaning the area.

Victoria Khoury, Pozsgai's daughter, is campaigning for legislation that differentiates between wetlands and puts them in various categories. She also supports property being assessed and the owner compensated before any regulatory agency "could stake its claim."

"If this bill had been in place, my father would not have spent one day in jail," she said. "We don't want to see another family go through what ours has gone through."

...Bucks County Courier Times
June 19, 1991

Penn DOT

Spokesmen for the state Department of Transportation said the new regulations have driven up taxpayer costs by \$2.5 million and lengthened the time it will take to build a four-lane Route 220 between Altoona and Tyrone.

Dain Davis, a PennDOT environmental engineer, said the number of projected acres had quadrupled—from 8 to 36 acres over the 500-acre project site—since the regulations went into effect. Penn DOT will build nearly 50 acres of wetlands at a cost of \$50,000 an acre to replace those in the project area, he explained.

Asbury Lee, a PennDOT spokesman, said plans call for the \$100 million-plus project to be completed in 1992.

Both Davis and Lee said wetland rules are likely to pose similar concerns when expansion work on Route 219 between Somerset and Maryland begins.

...Johnstown Sunday Tribune-Democrat
December 2, 1990

Johnstown Industrial Park

Recently, as a result of a study that we had undertaken by Neilan Engineering in the Johnstown Industrial Park, over 30 acres of what used to be available industrial land has been earmarked as wetlands. As a direct result, we now have less than 50 acres available in that park, and our corporation has taken a loss of approximately \$500,000.00.

In addition to this situation in the park, Safety Kleen has to mitigate a wetlands problem, which will result in costs in excess of \$250,000.00 to mitigate a 2.9 acre wetlands problem. The loss of assets to our corporations and dollars being spent by Safety Kleen for a relatively non-productive development seems to me to be a bit outrageous. While we all must be committed to saving the environment, sometimes the rules and regulations developed by the government go too far, and certainly wetlands appear to be an area where relaxing the laws could help. The loss of this land and assets to our corporation will have a direct affect on our ability to retain and create jobs in our two county region.

...Johnstown Area Economic Development Corporation

Westtown Township

Thomas Foster and his wife bought a small 19-acre farm in the later 1970s "before anyone ever heard of the word wetlands. We bought this marshy ground with the intent of restoring it to agricultural use. The federal and state governments considered marsh and swamp to be a nuisance and were giving farmers money to convert wetlands to productive farm ground.

To put it mildly, the 180-degree change of government attitude on wetlands in the last few years has been an unpleasant shock to people like me. In fact, considering the past federal and state policies on wetlands, the DER's regulations under Chapter 105 could be construed as ex post facto, and therefore unlawful."

...Thomas A. Foster

Jordan and Chest Township

Our project is located on a 100-acre mining site, incorporating 10 acres of unreclaimed area with standing high walls and water-filled cuts (machine-made trenches). The cuts not only have old cars and garbage in them but create a real hazard to the young children of the area that swim there.

The DER invited the fish and game people to view the site. They considered all the moist area significant wetlands, but would not give written concerns that could be addressed. The Corps of Engineers representative was contacted. He said the wetlands could be mitigated, and a permit was issued by the Corps for the area with the recommendation that the water-filled cuts did not meet the requirements of a wetland. The Corps of Engineers' permit was sent to DER, and another meeting was scheduled where the fish, game and wildlife people attended. They all gave verbal denial suggestions to DER while in the field, but again no written follow-up was received from fish, game, wildlife or DER. This process was started in 1987, has had pre-permit reviews, but no written follow-up so that we are able to address their concerns.

It is a shame that a valuable reserve of mineral resources will be lost just because of a lack of agreement between government agencies.

The disruption of the project described above resulted in a loss of \$7,000 in local tax revenues, \$8,000 in state tax revenues, \$15,000 in federal tax revenues and \$35,000 in other revenues. This tax loss would be from not only loss of wages that would be generated in the area, but also reclamation and black lung taxes on each ton of coal.

...Roger S. Thurston Hepburnia Coal Co.

Bloomsburg

Ddinar Zeibloff feels that wetlands are policed randomly, and officials sometimes look the other way. "DER has way too much power. Property owners should be reimbursed." Zeibloff has 40 acres under consideration right now. The previous owner did not do anything after the floods of '72 and '76. When Zeibloff bought it in 1984, he put the water back in its boundary. The cost was about \$60,000. He was told by the Game Commission to change it back. He checked with Columbia County for wetlands, but they had no designations. He has movies of the previous owner farming the land before the floods to indicate that it is not wetlands. He has spent \$50,000-\$60,000 in legal fees and on ecologists. Now town supervisors have rezoned the land facing his for an industrial park so that he can't put in any more houses.

...Delmar Zeibloff

Guys Mills

A farmer who retired to northwestern Pennsylvania cleaned out his ditch and was informed by the Fish Commission he was in violation of wetlands.

"Our rights and property are being taken over...not by anybody who has been selected or elected to represent us, but by people who have been hired to work for regulatory agencies such as the DER, the Fish Commission and the Corps of Engineers. These people are making rules and decisions, and yet, they are not accountable to anyone. They threaten us with fines and imprisonment if we do not do what they want. I have already paid a fine to the Pennsylvania Fish Commission. The Corps of Engineers sent me a letter telling me that I could get a civil fine of \$10,000 a day and a criminal fine up to \$25,000 per day plus imprisonment. We are often given contradictory direction by the DER, the Fish Commission and the Corps of Engineers. It makes it very difficult to know what is indeed allowable and which of the roughly seven agencies has jurisdiction over my property. I AM NOT A CRIMINAL. I cleaned out my 50-year-old ditch to improve my pasture. I have done nothing wrong to harm the environment.

I must also advise you that my fellow taxpayers agree with me. On Saturday, August 4, 1990, approximately 200 people gathered at my farm to assist in the filling of my ditch and to protest unfair regulations."

...Carl J. Fritz

Meadville

We are currently working as the excavation contractor for the site preparation of a Wal-Mart store in Meadville. The engineer for the project has worked for Wal-Mart all over the country and told us that without a doubt "Pennsylvania is the most uncooperative place he has ever worked."

...Eric Kent Thomas

Harrisburg

We did not know wetlands were on the property in 1986. We had to get a permit for three lots having a common drive over a stream. It took 14 months to get a permit and increased our project costs by at least \$15,000.

...Mark DiSanto

Upper Chichester Township

This forty-two acre property was purchased as a fully approved subdivision, having been approved by the Township in 1973. Upon applying for stream-crossing permits, we were advised that wetlands approval would be required. It took two years and four months to get the wetlands and stream crossing approved and included a fully redesigned and approved resubdivision due to street and lot line revisions as a result of wetlands compliance. Six lots were lost, and one acre of wetlands mitigation was required in the final approval.

The disruption of the project resulted in a loss of \$15,000/year in local tax revenues, \$18,000/year in state tax revenues and \$36,000/year in federal tax revenues. All of this was to save approximately one acre of what I would call, and it was substantiated by the DER inspectors, very negligible importance wetlands in a close-in, well-built suburb. It was ridiculous.

...David O. Clark
Clark Properties, Inc.

Ron Brace, a supporter of landowner rights, feels legislation "should contain a provision which would require the state to compensate individuals who have been denied the use of their property by way of a permit denial. I believe a permit denial is an inverse condition under these circumstances, and the landowner should be compensated for this 'taking' and for his forced participation in its preservation."

...Ron Brace

A developer obtained a 404 permit for a single home site, which outlined wetland areas, and subsequently sold one-fourth acre home sites for \$20,000. During construction, a concerned citizen called the Pennsylvania DER and asked them to inspect the site. Out of approximately 70 sites, four were found to have wetlands. Three sites still had enough room to construct homes on; one lot was declared a total wetland. The developer had not applied for a state 105 permit and was told not to build on the one lot. The lot in question had not been declared a wetland by the Corps of Engineers. The lot owners had already sold the house they were living in and were in a panic. The builder called the lead enforcement official in Pennsylvania who said there was nothing he could do. The Fish & Wildlife Service said they would not protest the 404 determination but they knew that DER had the property tied up. The developer said he did nothing wrong since he obtained a 404 permit prior to selling the land. The homeowner's only recourse was to sue the builder. In this instance, everyone loses. During the warm summer months, the one-fourth acre lot in the middle of the neighborhood will likely become a \$20,000 baseball diamond.

...Testimony of Congressman Tom Ridge

Millcreek Township

Within the Colony Association subdivision in Millcreek Township, wetlands exist on tracts of approximately 27 acres of land in the middle of a privately owned neighborhood community close to Lake Erie. According to our legislation, they might be valued either Type A, highly valued, or at least Type B, jurisdictional wetlands. On the tract of land, there are 26 home sites, with 16 different owners and a developer who was recently preparing home sites. A call from a concerned citizen went out to federal and state regulators and a cease-and-desist order was issued.

The developer ultimately agreed to a restoration order. Filling the wetlands caused off-site flooding and an overflow of one resident's septic system. The developer successfully went to court to seek a \$1 assessment from the county for the land he owns. The county will ultimately lose local tax revenue from what were previously valuable residential home sites. The other 15 owners of the undeveloped lots will certainly lose the value of their investment, but will likely have to continue to pay local property taxes, being unable to afford to sue the county. Being a small private subdivision, the Colony Association may no longer be able to effectively collect monthly dues from the wetlands property owners, hampering their ability to maintain basic infrastructure in the subdivision. The only recourse the Association would have to collect delinquent dues would be to file useless liens on the lots, which will likely never be sold.

The Colony case is indicative of many problems. First, the Corps of Engineers, at the request of Fish & Wildlife, was called off the case by the EPA, even though the developer cooperated throughout. The subdivision lost the majority of its remaining land, 16 landowners totally lost their investment and the county may lose substantial property tax revenues. The wetlands were protected, as they should have been. A lot of well meaning private citizens were hurt.

...Testimony of Congressman Tom Ridge

Albion

Albion is a rural community of 1,500 that is just beginning to recover from the devastation of a tornado disaster in 1985 which literally sawed the community in half. Recently, funds became available for a much-needed federally subsidized rural housing project. The developer, knowing that "wetlands" were not always what they appeared to be, hired a consultant to locate a site. What transpired was that the developer found that virtually all undeveloped land in this tiny rural community could be classified as wetlands, including a flat grassy field of dandelions adjacent to the local elementary school. My staff toured all of the "ineligible" sites and was dumbfounded at how far afield the process had gone. Fortunately, the housing project will be built on the outskirts of town. However, if the current definition of wetlands remains, Albion has lost nearly every inch of commercial or residential property. All hope for growth in this isolated rural town would be lost.

...Testimony of Congressman Tom Ridge

Millcreek

The Millcreek School District is considering buying other property in southwest Millcreek for its new \$13 million middle school in the event that wetlands regulations prevent it from using a proposed district-owned site. The district had planned to build the school on the 36-acre Brown farm, on the west side of Sterrettania Road. The district owns the property. But a preliminary engineering report indicated that part of the property likely will be designated a protected wetlands under U.S. Environmental Protection Agency regulations.

...Ridgway Record, May 8, 1991

Connellsville

The development of a state highway put water on 72-year-old Alfred Palankey's farm ground 40 years ago. He wanted to fill in the land and had been filling it in when the Fish Commission stopped him. There are cattails growing in his ditches from Agnes, so they won't let him open his ditches. He has spent over \$6,000.

...Alfred Palankey

Chambersburg

We were not able to advise the developer as to the development potential of the land prior to land purchase (as to the extent of wetlands, required permits and project costs). This problem arises due to the maze of regulations we're faced with and the ever-changing policy in which they're enforced.

We were not permitted to touch any areas considered "wet," even for open space, that would be left undisturbed forever. That does not make good sense to me!

The Chapter 105 program increased our project costs by \$40,000-\$50,000. It has altered our site such that redesigns were required (\$20,000) and left 30-40 percent of 200 acres of no value to our client, even though he paid for the property. Being that this was a commercial and residential project, I can only estimate the tax loss to be significant, particularly to the small municipality where we're located.

..Douglas S. Brehem Statler-Brehm Engineers

Nickel Mines Area

Grant Troop crop farms three small farms of about 100 acres in the Nickel Mines area of Lancaster County. He majored in agronomy at Penn State and had worked with the Lancaster County Conservation District and as a part-time farmer for two years before becoming a full-time farmer and a substitute agriculture and science teacher for the county.

In the fall of 1989, Troop decided to refurbish his tile system. The Soil Conservation Service had completed plans that did not designate any wetlands on his property other than a pond. When Troop checked into the necessary steps to refurbish the tile he was astonished. "Sometimes I scratch my head. I went through all the details and tried to do everything the way it was supposed to be done, and then I look around the area and see a backhoe tearing things apart without permits or consideration to anything and nothing ever comes of it. Is it really necessary to go through all the paperwork for a few acres?"

Troop estimates it will take him 15 to 20 years before he sees any profit above the expense it took him to retiling the farm land.

...Grant Troop

Millersville Borough and Manor Township

We strongly believe...the bureaucratic morass of state and federal agencies will cost us in excess of \$500,000 due to lack of coordinated efforts, mingling of different agencies' agendas as it relates to archaeology and a total indifference of agency personnel, towards the economics of land development.

To date, wetland associated work has cost us \$27,440. This figure includes investigation, site redesign, engineering drawings to date and does not include the cost of the wetland mitigation plan (\$8,700 plus revisions required by COE and DER), implementation of the mitigation plan (estimate \$5,000-\$7,500), plant materials (estimate \$8,000-\$10,000), excavation or labor (estimate \$5,000-\$8,000). In fact, since we do not have approval yet, and it appears that the COE will have even more requirements than indicated in our proposed plan, we believe that our costs could escalate to \$65,000 very easily. The total affected area involves approximately 0.22 acres for roads and approximately 1,750 feet of stream bank that was designated as "top of bank" wetlands or approximately 0.201 acres. These figures represent a total cost to mitigate of about \$154,400 per acre.

...Lancaster Land Developer

East Hemp field Industrial Tract, Lancaster

We bought this 27-acre industrial tract in 1984 after checking with local Fina maps, showing no flood plain or wetlands other than a small stream which ran across the tract. When we contacted Rettew's Engineers to start the subdivision, they decided to establish a flood plan on the site plus set aside seven acres of the total property as unsalable, establish detention ponds and leave the area a big loss and convert prior farm ground to a detention basin.

It has taken two and one-half years and is not approved as of April 15, 1991. The land used by engineers has a value of \$100 per acre, or \$700,000. The Chapter 105 program increased our project costs by at least \$75,000. The disruption resulted in a loss of \$60,000 in local tax revenues, \$10,000 in state tax revenues, \$300,000 in federal tax revenues and \$700,000 in other revenues.

...J. Robert Hess

Foster Township

The Army Corps of Engineers has caused a six-month permit delay for the Hickory Hills Property Owners Association relative to the replacement of an intake structure in Pond Creek. The guidelines and review timeframes are very unclear for the regulatory process. The determination of wetlands differ between DER and the Corps. Clear guidelines need to be established.

...Keith Heigel
Light, Heigel & Associates, Inc.
Mountain Top

Mountain Top

We have had an application in the permitting process for six- eight months already. DER keeps wanting more and more information. The process should be completely reviewed and a permit issued within 30 days! Our project lots have been reduced 3:1 and redesigned five times to minimize any wetlands impact.

...Luzerne Cotinty Developer

Mr. Petronzio bought 13.9 acres in Mckean County in 1979, at a time when a permit was only needed for a building if more than 10 acres were involved. He planned to build a hunting camp. There are two lakes on the property, full hemlocks, cherry trees, some wet spots. Mr. Petronzio cleared out the land and laid a slab port. He was originally taken to court because he was allegedly going to build a water well under pressure and a sewage system. Petronzio won the case because there was no proof. Soon after, the Army Corps of Engineers were 'sicked' in him, and his property was declared a wetland.

“If they want to occupy my territory, I think that they should pay for it.”

.. Leo Petronzio

As a civil engineer and land surveyor who was party to the draining of real wetlands, Norman Straub feels his circumstance may be a personal vendetta against him. He wanted to deepen the open-water portion of his pond. The permit sat from March to August before he was turned down. Straub requested a hearing to appeal, then agreed to make another permit application and drop the request for a hearing. Estimates are that he is losing \$15,000-\$30,000 on the six and two-thirds acres if it had a reflecting pond on it. He had cleared up the mess left by loggers; he didn't even hurt the existing trees. "As the pond stands now, if a child fell in, he/she wouldn't be able to get out because of the mud."

Straub was also going to put in a dry hydrant for the township—not drain it, nor fill it, just reduce a hazard. One DER agent told him that if they give him a permit, the floodgates will open. "A lot of wetlands in the area were created by mining. Some are hindrances. Rather than regulate these, they would rather prohibit use altogether."
...Norman Straub

Grove City

In 1983 Thomas Construction started a 50-acre planned residential community in Grove City. All necessary approvals were obtained from local municipalities and DER before they broke ground.

"DER representatives have been on the property over the years for various reasons and have never mentioned the word 'wetland'."

During the permitting process to extend the sewer lines, DER requested a wetlands survey. A hired consultant determined that there were wetlands on the parcel as well as in Woodland Manor. Even though the Manor was approved years ago and there were now 17 families living there, he felt DER would also be interested in that property.

A biologist from the Bureau of Dams and Waterways informed us "that we needed a permit to disturb the wetlands and build

the project. The permit would take at least six months and would probably be denied."

"In Woodland Manor, we violated the law and are subject to civil and criminal charges as well as fines yet to be determined. Three of the lots were determined to be unusable and eight to ten others need permits. None of the wetlands on the property could be touched. If we got a permit to build on the upland portion of a lot, the wetlands on that lot would have to remain untouched. That means the homeowner could not landscape his property or plant grass. One of the three lots that are unusable has been sold. Mr. Buckley advised us to inform that party that they own a wetland and can't touch it.

What was once a \$600,000 asset turned into a \$750,000 liability. We still have a \$150,000 bond posted with the township to finish the installation of the road and utilities. If we finish the road, we will disturb wetlands; if we don't finish the road, the township will take our bond. We are also liable to refund money to four current landowners.

A rough estimate of loss of tax revenues to the area is \$75,000 annually, which doesn't include the loss of jobs or sales to local material suppliers.

The current regulations that are being enforced by DER are sending this state further into financial quicksand. The frustration in dealing with representatives of DER whose only response to a question is, "I don't know, I'll check with Harrisburg," is intolerable. The arrogant, unprofessional manner in which they conduct business is inexcusable."

...Eric Kent Thomas

Buck Hill Falls

At Buck Hill Falls, Buck Hill Falls Associates was denied a permit to reconstruct a dam for a lake that was built in 1909. The permit was denied because the lake was classified as an emerging wetland.

Pocono Mountains

Pocono Mountain School District cannot expand the Tobyhanna Elementary Center because they could not get approval to expand into a catch basin that was constructed to collect water runoff when the school was built. The catch basin has cattail growth and is now considered an emerging wetland.

Lake Naomi

In Lake Naomi there are numerous instances where lots which are surrounded by houses have been classified as wetlands. These decisions do not recognize that the areas are basically built out, and any damage that would occur to wetlands has already been done. In many cases, the lot owners paid big dollars for the lots. Also in Lake Naomi, DER has refused to sign off on the sale of existing homes because they were built in wetlands many years ago, and some sales fell through because of DER's refusal.

Pinecrest

DER has been holding in limbo Pinecrest's sewage discharge permit for discharge into wetlands. Kervin Smith has been holding the request for fifteen months and keeps asking for additional information and refuses to state when DER will be ready to act on the request.

Bartonsville

The Bolus tract on Route 611 in Bartonsville was denied a permit because it was wetlands. The principal reason for denial was animal use of the lands. This decision ignores the fact that the tract is directly opposite a very large truck stop in a built-up commercial area and, therefore, is not used by animals.

Montgomery Township

On or about March 3, 1988, we received a confirmation from the Army Corps of Engineers that our plan was being reviewed and to allow 16 weeks for a determination. We received a memo on or about April 8, 1988, requesting additional information. Please note that the memo implies that with the requested information we would receive an "expedious reply" (sic). We forwarded the requested data on or about April 21, 1988. As of this date, October 20, 1988, we have not received an "expedious reply" (sic).

Our engineer spoke to the gentleman named on the confirmation card about a week ago, and he was told in polite way that our application has not been reviewed as of yet. It has been virtually impossible to get anyone on the phone at the Corps to find out the status of our application. I want to note that we are only in need of a national permit since we are only encroaching upon the wetlands with a sewer line in one small area.

...Joseph M. Dratch

Blain

A dirt farmer for 36 years, Frank Rice feels he is a conservationist. He has practiced strip cropping, diversion terraces and sod waterway establishment. Rice has also installed drain tiles for "practical purposes."

"If left go, unchecked, this has to be the most dramatic thing brought upon the agricultural community by our government."

...Frank E. Rice

Westtown Township

In 1978, we submitted plans to put in athletic fields. There was no problem at the time, so we went ahead and filled about a four-acre area. However, the Fish and Wildlife, Army Corps of Engineers and DER informed us we were in violation of wetlands regulations. We had to apply for an after-the-fact permit which was denied—meaning we had to submit a plan to the DER and Environmental Hearing Board to revert the area back to wetlands. This includes monitoring for three years. We do not know what the cost will be because we haven't done the bidding yet.

The fields were for public use and have since been relocated. Some areas of the original fields were damp, and they are actually returning to that state through their own course. This is an example of unreasonable conditions assessment.

...Westtown Township Board of Supervisors

Because of the broad definition and methodology developed by four federal agencies, spots in the middle of farmed ground as small as one-hundredth of an acre have been identified as a wetland. Other instances show wetlands as being land farmed for generations, drainage ditches, grassed waterways, wooded hills, gullies, fence lines, erosion-control structures, homesites, power poles and other obviously non-wet areas. If common sense were the standard used in identifying wetlands instead of pseudo-science, none of these areas would have been listed as wetland.

Private-property rights granted in the Fifth Amendment are being abridged by government in order to satisfy some politically expedient environmental craving. The government apparently feels that wetlands, even those that have been farmed for more than a hundred years, are now in the public domain. This battle over wetlands has important constitutional, political and economic ramifications. It must not be won by those bent on trampling private-property rights.

...Jim Gay, President Pike County Farm Bureau

Milford

I am very concerned about our loss of rights as provided by the Constitution and Bill of Rights due to the over-zealous activities of the Environmental Protection Agency. I specifically cite Article V - you know, the one about not being deprived of property without due process, etc., etc.?

Here's an example. My husband and his brother are being prosecuted by EPA as criminals. Their crime is building a pond on their own property—property they have owned all of their 40- plus years; property they have taken care of and paid taxes on. They have been indicted for "illegal filling at wetland sites." I'm also concerned that EPA is able to call building a pond a "filling" of a wetland.

Additionally, while EPA (and others) talk about the importance of wetlands, they have never done any testing on site to prove that my husband and his brother have indeed "destroyed" the environment! What happened to "innocent until proven guilty?"

It seems that EPA, with their new-found absolute power, attacks the small businessman. Is this because they know that the resources of the small businessman will be quickly depleted? (Resources here mean mental and physical as well as financial.)

...Carol Walter Ramagosa

Selinsgrove

The total wetland area that affected my project was less than 0.1 acre. In addition, wetlands were not naturally occurring but caused by property owners 20 years ago. All we wanted was to smooth out, grade and plant grass in this area. We submitted our application October 1990. We just now received site inspection on April 10, 1991.

To wait since October 1990 until April 1991 for just a site visit on 0.1 acre of wetlands should signal someone that there is a problem. We're still waiting on our permit.

.. Thomas Gol
Brookside Homes

James Ringler is an eighth-generation farmer. In 1984, after 1.0 purchasing an additional farm, he discovered almost 20 acres that were untillable. Ringler bulldozed, buried rock, leveled ground and installed drainage tile. His expectations were to farm the land and reap a financial gain of approximately \$6,300 per year. The creek that causes flooding during rainy weather was not altered.

"Under current DER proposed regulations, I would not have been able to complete this project even though I pay taxes on the land just like the other land I use for my livelihood. Farming is a way of life for myself and my family. By limiting what we can do on the land as a result of DER wetland regulations, you are hindering myself and my son, who will be the ninth generation of Ringlers to farm our land."

...James Ringler

Somerset Industrial Park, Hidden Valley

More than half of the remaining 100 acres at the Somerset Industrial Park are considered wetlands, eliminating their use for any type of development.

"My wetlands are basically dry, but you don't get down six inches till there is water. If you walk on it, you probably wouldn't realize you're on wetlands. Stiffer regulations are making it tougher to draw private industry to Pennsylvania. We don't have the dollars to lay out for the consultant. If you must hire a consultant, that automatically runs up the price of the property, and you'll lose any competitive edge. Additionally, the time involved in a wetlands study and state environmental review process often is longer than many developers are willing to wait. If I'm in competition with Maryland, they may not have a wetlands problem, and if I have to prove my land is not in a wetlands, I'm going to lose my prospect. The new regulations are a 'can of worms,' typical of what has come down over the years when government initially offers no regulations, then over-regulates with no middle ground."

...Eugene Stayrook, Executive Vice President
Somerset Development Council

Peters Township

Our subdivision plan was approved by the township and the county. The plan was recorded. Two homes were started. The Corps of Engineers approved; the Fish Commission shut us down! One agency doesn't seem to know what the other is doing. I now have a \$60,000 unusable lot, five other lots were made marginal, pay \$40,000/year interest on the land, \$22,000 interest on the development loan, pay tax on land I can't use and pay \$44,000 interest on two homes under construction. It has cost me \$200,000 in engineering and compliance fees and in loss-of-use of the land.

Carroll Township

Montadale Associates purchased a subdivision of 47 lots which, after approximately six years of review, was almost approved. "We requested additional verification from the township engineer, engineering and planning consultants, the township commissioners and supervisors, my personal engineer and legal counsel. DER, PennDOT, the borough and the Planning Commission reviewed the project. Not one governmental agency, not one engineer, ever mentioned wetlands!"

Had Montadale Associates, Inc. known 13 lots were wetlands and the ramifications of developing wetlands: the mitigation process, the delineation process, the dredge removal process and the engineering costs associated with all these processes, they would have known the economics of losing 28 percent of a residential development are utterly insurmountable from the outset. That is not to mention the additional costs incurred by excavating and installing streets, storm sewer, public water, sanitary public sewer, electric underground utility, cable television, street lights and natural gas lines. They still have not received a wetlands permit.

...Montadale Associates, Inc.

Carroll Township

Ohrum Construction's subdivision was thwarted by comments from York County's Planning Commission noting a possible wetland. "Our engineer said, "Don't worry about it." We started to install roadbed on his advice. When we were again told to address our wetland, we had to call the Army Corps personally as our engineer would not do it. The Army Corps made a site inspection and gave us a Cease and Desist Order. They told us to have the roadway removed immediately. That was in 1990. At present, we have about one quarter removed and no funds to do any more." Ohrum Construction has yet to apply for a permit and count their economic losses at approximately \$250,000.

...Ohrum Construction

Conewago Township

Developers Harold Hartlaub and Louis Guthrie currently have a \$40,000 lawsuit against Conewago Township supervisors over what they consider to have been unnecessary delays on the seven-lot subdivision in the Conewago Estates (Phase III) development.

The supervisors are still concerned with possible wetlands in the vicinity of the subdivision and had asked the developers for certification from the U.S. Army Corps of Engineers that the lots do not infringe on wetlands.

That letter was presented to the supervisors, but the letter was inconclusive and referred the matter to the Department of Environmental Resources.

"We stip haven't gotten conclusive information that wetlands will not be disturbed by this subdivision," said Township Manager Edwin Calvert.

...Hanover Evening Sun, June 18, 1991

Northwest Region

If you live in Northwest Pennsylvania and you want to develop land, build a home, add onto a factory, construct a road or try to attract business to your community, you have to do your homework on wetlands first. Wetlands, which comprise an estimated 500,000 acres or 2 percent of the state, serve important uses environmentally, from filtering pollutants from water, serving as habitats for endangered species and recharging ground water. Wetlands generally include swamps, bogs and marshes.

Under Pennsylvania's proposed wetlands regulations, about 70 percent of the Northwest counties could be declared wetlands, so we are greatly impacted by the decisions surrounding their protection. And these decisions have a tremendous affect on our economy, because if an area is designated as a wetland, it cannot be developed. Herein lies the problem. Pennsylvania does not have a state law designed to protect wetlands.

There is no clear language on the books that tell us what we can and can't do to protect wetlands and protect the property owner. DER is making decisions based on proposed regulations that have not been formally adopted.

As I told the Secretary of Environmental Resources, decisions are being made based on proposed regulations. DER is operating a program that the General Assembly has never funded. We have never put money into the budget nor said DER should run the wetlands program. We have never passed a law, never debated the issue. The current system of identifying wetlands and restricting development is very unfair.

More than 80 percent of the state's wetlands are owned by private landowners. Many of these people, especially farmers and developers, are being told they can't use their land.

Perhaps the greatest area of controversy deals with manmade wetlands, artificially created and temporary wetlands. For example, if a factory owner dumps extra dirt and rock behind his factory and we get heavy rains, water gets trapped. When the owner decides to add on to his facility, he is told it is a wetland and he can't do it. In addition, enforcement is not consistent, there are not enough consultants to answer questions and concern, the permitting process is lengthy and difficult.

I support the protection of valuable wetlands, but we must find a better balance between such protections and the development that is so critical to the economic stability of the state's regions.

...Senator John Peterson

Knowing that solutions exist makes it all the more frustrating to develop a mining and reclamation plan for creating wetlands only to have an area deleted or the entire permit denied to protect a cattail marsh. Added to this frustration are the liabilities imposed by reclamation standards which most often delay or prevent bond releases."

The following are examples:

- Twenty-four acres of abandoned mine lands with water accumulations in old strip mine pits. 11:C. and PGC said the area could not be mined (215,000 tons).
- 50 feet x 50 feet wetland created by intersection of township road and old drill road which the mine operator blocked with an earthen barrier. PGC determined this to be a significant wetland and prohibited removal of the barrier. Did allow a reduction of buffer zone from 300 feet to 100 feet (3,100 tons).
- Seven acres with a 300-foot buffer zone. A railroad grade, constructed in the early 1900s and now abandoned, has impounded water. The PGC has determined this to be an important wetland requiring a 300- foot buffer zone. No coal may be removed but support facilities (roads, ditches, etc.) may cross the buffer zone. 40,0(X) tons of coal lost.
- Twelve acres in five glaciated depressions on high ground which created five small wetlands. Permits were obtained to convert one area (3.7 acres) to a sedimentation control basin and to mine through four others (8.5 acres). This involved the Corps of Engineers, EPA, DER, PFC and PGC. In order to satisfy all, the mitigation included construction of twelve acres of deep open-water wetlands, fourteen acres of shallow open-water wetlands, and over twenty acres of wildlife habitat plantings. Engineering costs alone amounted to approximately \$40,000. Construction costs were not determined. Surveys of the area by three qualified ecologists plus a review by the Western Pennsylvania Conservancy concluded there were no endangered species and no unique values. These wetland areas are no different than hundreds of similar wetlands found in glaciated areas.

...Pennsylvania Coal Association

The regulations are actually a condemnation of a landowner's rights with absolutely no compensation, nor logical explanation. That's totally unfair to farmers and other landowners."

...Keith Eckel, President
Pennsylvania Farmers Association

Pennsylvania Wetlands Protection Coalition
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