

SENATE OF PENNSYLVANIA
INFORMATIONAL HEARING
CHESAPEAKE BAY TRIBUTARY STRATEGY

JOINT MEETING OF
THE COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY
AND THE COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS

TRANSCRIPT OF PROCEEDINGS

Before : SENATOR MARY JO WHITE, Co-Chairman
: SENATOR MICHAEL L. WAUGH,
Co-Chairman
: SENATOR EDWIN B. ERICKSON
: SENATOR RAPHAEL J. MUSTO
: SENATOR BOB REGOLA
: SENATOR PATRICIA VANCE

Date : September 20, 2005, 9:30 a.m.

By : Vicki L. Fox, RMR, Reporter-Notary

Place : East Wing, Room 8E
Main Capitol
Harrisburg, Pennsylvania

2

1

I N D E X

2	Witnesses	Page
3		
4	1. Honorable Katherine McGinty, Secretary, Pennsylvania Department of Environmental 5 Protection	5
6	2. Mr. Joel Rotz, State Government Relations Pennsylvania Farm Bureau	48
7	3. Mr. Walt Peechatka, Executive Vice-Pres. 8 PennAg Industries Association	54
9	4. Mr. Jim Adams, The Ag Coalition	58
10	5. Mr. John Brosious, Deputy Director Pennsylvania Municipal Authorities 11 Association	67
12	6. Mr. Matt Ehrhart, PA Executive Director Chesapeake Bay Foundation	87
13	7. Ms. Marel Raub, Pennsylvania Director 14 PA Delegation to the Chesapeake Bay Foundation	99
15	8. Ms. Ann Swanson, Exec. Director for the 16 Tri-State Commission Chesapeake Bay Foundation	106

17	9.	Hearing Sept 20' 05 Transcript.txt Mr. Robert J. Fisher, Pres, RJ Fisher & Associates	111
18		Mr. Keith Ashley, Assistant Director Governmental Affairs	
19		Pennsylvania Builders Association	
20	10.	Ms. Susan Marquart, Executive Director PA Association of Conservation Districts, Inc.	118
21			
22			
23			
24			
25			

1 SENATOR WHITE: I would like to call this meeting
2 to order. This is a joint meeting of the Committee on
3 Environmental Resources and Energy and Senator Waugh's
4 Committee on Agriculture and Rural Affairs.

5 We are here this morning for an informational
6 hearing on the Commonwealth's Chesapeake Bay Tributary
7 Strategies. We have a lot of concerns about costs,
8 benefits, exactly what is going to happen here, what the
9 long term implications are.

10 There are a great many questions and concerns so
11 we thought this was a good opportunity to get it out and
12 hear and discuss it and see where we are heading with
13 this.

14 We would ask please that all the witnesses please
15 try to keep their testimony to about ten minutes. We
16 will have to get back to session. So we are trying to
17 keep a tight timeline here if we can.

18 With that said, Senator Waugh, do you have any
19 opening remarks?

20 SENATOR WAUGH: Sure. Thank you, Senator White.
21 Good morning, everybody. Welcome to this joint hearing.
22 There's a lot of information to be given this morning.

23 As Senator White indicated, the reason for this
24 hearing is to try to address some of the questions that
25 not just Chair White and I have heard, but I think all

1 members have heard regarding what does a Tributary
2 Strategy Plan really entail and how could it affect in
3 particular the agricultural community and municipal

5 So what we are going to try to do today as you can
6 see by the agenda is answer some of those questions, or
7 certainly at least have an opportunity to address or
8 respond to some of the questions. I think most everyone
9 in the room has heard them. I am hopeful when we leave
10 today, we will make things at least a little more clear.
11 I am sure that we will probably raise a few more
12 questions, and we shall then proceed.

13 One other housekeeping note, if you all please, we
14 would appreciate it if you would turn your cellphones
15 and Blackberry's off. Not just for our comfort, but
16 also it interrupts the PCN coverage, and they appreciate
17 that for their sound system.

18 With that, if you are ready, Mary Jo, we will go
19 ahead and call the first witness. Would you like to?

20 SENATOR WHITE: Go ahead.

21 SENATOR WAUGH: You do it. I would like to pass
22 it to the Environmental Committee Chair, but I am
23 honored to be able to introduce to you the Honorable
24 Kathleen McGinty, Secretary of DEP. And whenever you
25 are ready, Madam Secretary, you certainly may proceed.

5

1 SECRETARY MCGINTY: Good morning.

2 SENATOR WHITE: Good morning.

3 SECRETARY MCGINTY: Thank you. Thank you,
4 Chairman, Chairwoman and members of the Committee for
5 this timely hearing, and also I think an important
6 coming together of the Environmental Committee and the
7 Agricultural Committee, very much at issue at front and
8 center when we talk about the clean water in this
9 context.

10 First of all, let me address what the tributary
11 strategy is and equally importantly what that tributary
12 strategy is not, and then to outline what it is that the
13 Commonwealth is embarking upon in order to meet water
14 quality standards in our own watersheds.

15 So first, what the tributary strategy is. It is a
16 menu of measures, any of which if taken would be
17 generative of nutrient or sediment reductions.

18 What the tributary strategy is not is a menu of

19 mandates. The tributary strategy is expensive for two
20 reasons. First and foremost, we wanted to catalog the
21 variety of activities in the watersheds that either are
22 or will be taken that do generate nutrient or sediment
23 reductions so that we can get credit for those
24 reductions against our obligations as laid out through
25 the EPA Chesapeake Bay Program.

6

1 A very important point because to date, there have
2 been substantial investments that the Commonwealth has
3 made that have not typically been recognized as counting
4 towards the water quality obligations that we have in
5 the Chesapeake Program.

6 To name one, the Dirt and Gravel Road Program,
7 obviously significant in reducing sedimentation, but to
8 date until the tributary strategy was put together not
9 included among those measures that would count against
10 our obligation. So job one was to get that complete
11 menu together so that if we do it, it is recognized, and
12 we get credit.

13 The second reason for putting the comprehensive
14 trib. strategies together was to engage individuals,
15 watershed groups in our own watershed teams and
16 Conservation Districts at a local level to be able to
17 identify some of the most cost effective things that we
18 could do to reduce nutrients or sediments.

19 So to step back, the tributary strategy is a menu
20 of measures that are important in terms of water
21 quality. It is not a menu of mandates.

22 What is the mandatory part of the water quality
23 strategy that we are proceeding with? It essentially
24 has two pieces. On the point source side -- and I will
25 come back to that -- and on the nonpoint source side.

7

1 Point sources are things like sewage treatment
2 plants or industrial discharge or industrial facilities
3 that have effluent discharges associated with them. Our
4 strategy in that regard essentially amounts to
5 introducing into the operating permits for those plants

6 new nutrient limits.

7 We could go through the numbers as you would like.
8 Essentially those limits are based on capturing the
9 proportionate contribution to the challenge represented
10 by those point sources and affixing values so that the
11 nutrient reductions that are achieved by those point
12 sources are commensurate with the contribution.

13 Specifically, point sources contribute 22 percent
14 of the phosphorus emissions into these watersheds, and
15 our point source strategy would call on them then to
16 reduce phosphorus by 22 percent.

17 Similarly, a nitrogen point sources contribute
18 14 percent, and the strategy would have them reduced by
19 14 percent. That is the point source strategy.

20 As it relates to nonpoint sources, members of the
21 Committee can speak to this as well as we can, the heart
22 of our nonpoint source strategy essentially is the newly
23 legislated ACRE initiative. Farms will be required to
24 do as they are required under ACRE. Namely, have a
25 nutrient management plan and to have the appropriate

8

1 setbacks or buffers.

2 That is all that is required from the mandatory
3 point of view. There is nothing new in this plan as a
4 consequence of Chesapeake issues that are additive in a
5 mandatory fashion to the ACRE program.

6 The third part of our strategy -- point source,
7 nonpoint source -- the third part is an innovation of
8 which Pennsylvania should be proud, and that is nutrient
9 trading. We will be the first state in the nation to
10 have a full blown nutrient trading program.

11 What that means is that we are importing from the
12 air quality context into water quality context the
13 ability for regulated entities to use market mechanisms
14 so that they can most cost effectively achieve their
15 emissions obligation.

16 What that would mean is that a sewage treatment
17 plant in meeting its new obligatory limits could do so
18 either through technology at the plant or, for example,
19 by partnering with a farmer for a farmer to institute

20 practices that are equally reducing of nutrient or
21 sediment loads. Point source, nonpoint source, trading.

22 The final cornerstone of our plan is financial
23 resources and financing mechanisms. Here to, to just
24 thank and congratulate this committee and the
25 legislature, Growing Greener Two is an essential piece

9

1 of the financial resources that will contribute to our
2 success in meeting these goals, as is the new PennWorks
3 program. And with Ann Swanson and certainly Senator
4 Waugh's leadership in the Chesapeake Bay Commission
5 here, I really want to underscore and thank you for your
6 leadership in seeing to it that we will secure resources
7 for putting together a very effective strategy to enable
8 us to secure resources from the 2007 Farm Bill to add to
9 the efforts that we have launched at the state level.

10 All told in 2004, the state and federal government
11 mobilized in Pennsylvania about \$75 million towards the
12 meeting of these goals. And that is exclusive of the
13 new PENNVEST and PennWorks monies that you put into law
14 and that PENNVEST announced just last week.

15 Chairman and members of the committee, that
16 concludes my testimony. I guess the last point that I
17 would make is that today, what we are doing is embarking
18 really just in the next chapter of a story that started
19 20 years ago and focus on water quality in the
20 Susquehanna, Potomac watersheds, and then specifically
21 in terms of the landmark agreement that Governor Ridge
22 is rightly credited for for bringing into place in 2000.

23 This is the next chapter in that story, and we are
24 encouraged by the insights and partnership that has come
25 to table to enable us to get this far. Thank you, Madam

10

1 Chairman, Mr. Chairman, members of the Committee.

2 SENATOR WHITE: Thank you, Madam Secretary. I
3 have a question that really goes to the heart of this.

4 Why has DEP chosen to implement the strategy
5 without any legislative guidance and without any
6 regulatory input?

7 SECRETARY MCGINTY: The regulatory basis for these
8 measures on the nonpoint source side as I referenced
9 does specifically derive from legislative directive in
10 the ACRE program.

11 On the point source side, we are implementing
12 federal directives from the federal Clean Water Act. In
13 2003, new water quality standards were established by US
14 EPA. And under current state law and state regulations,
15 we are required then to implement those new standards
16 into our clean streams and other water quality programs.

17 SENATOR WHITE: I can think of many federal
18 mandates, particularly in the transportation area
19 whatever, where the federal government requires us to do
20 something, and we pass legislation to do it.

21 I have a big concern that I think this is pushing
22 out the edges, if you will, of administrative authority,
23 particularly with the huge amounts of money involved
24 with no legislative input whatsoever.

25 SECRETARY MCGINTY: Madam Chair --

11

1 SENATOR WHITE: State legislative input.

2 SECRETARY MCGINTY: This is not at all different
3 from the variety of new water quality standards that we
4 face from the federal level.

5 I will give you another example on the drinking
6 water side. As it relates to drinking water, the
7 standard for arsenic in drinking water has been changed
8 at the federal level so that it is I think ten
9 micrograms per liter.

10 It is incumbent on the state of Pennsylvania
11 automatically to incorporate those new standards in our
12 program, and it will be incumbent upon drinking water
13 systems starting in January to have those measures in
14 place. This is not different in that regard.

15 SENATOR WHITE: Well, I can see where a specific
16 standard such as that, that this passes through by means
17 of the state having been delegated the administration of
18 a federal program. I think this is going well beyond
19 this.

20 One of the things that concerns me is assuming the
21 decisions rendered by the DEP on new permit limits that

22 are going to result from this program are appealable, I
23 am just wondering if there is any risk that these might
24 be overturned because there is no legislation or
25 implementing regulations that you can tie them to.

12

1 SECRETARY MCGINTY: Well, that is where -- in fact
2 where those numbers and standards come from is through
3 the implementation of the Clean Water Act. Again in
4 2003, EPA changed the water quality standards that it is
5 incumbent upon us to meet.

6 EPA then embarked on a modeling exercise to
7 suballocate the emission reduction obligation among the
8 contributing states to the Chesapeake Bay watershed.
9 Pennsylvania received from EPA, our budget beyond which
10 we cannot go, and then further suballocated that budget
11 to the 13 watersheds in Pennsylvania that are
12 contributory to our downstream water into the
13 Chesapeake.

14 So there is nothing in this that is invented by
15 the Department. This is the application of the Federal
16 Clean Water Act with standards and numbers that also
17 derive from EPA analysis and EPA directive to us.

18 SENATOR WHITE: Well, we will see. I have a
19 question also about the \$250 million bond issue that the
20 voters approved for water and sewer infrastructure.

21 I saw a press release from the Governor announcing
22 that he had created a program with PENNVEST. We won't
23 quibble here, I believe the legislature created the
24 program, if you will, certainly put the bond issue out
25 there for the voters to vote on.

13

1 My understanding is that 50 million of that 250
2 million is going to be diverted for this Chesapeake Bay
3 tributary strategy; is that correct?

4 SECRETARY MCGINTY: The legislation itself -- that
5 is not correct. The legislation itself though does
6 identify nitrogen and phosphorus reductions as priority
7 uses for the money that the voters approved the
8 legislature legislated.

9 The PENNVEST action last week was to put in place
10 that 50 million dollar program with the applications,
11 etcetera that would be necessary to access it.

12 SENATOR WHITE: How much of that 50 million is
13 going to be dedicated to Chesapeake Bay tributary
14 strategy?

15 SECRETARY MCGINTY: Just as is typical with every
16 other PENNVEST program, it is a first come first serve
17 program. And any facility that meets whatever other
18 requirements are there will be able to apply for and
19 access those grant monies.

20 SENATOR WHITE: So no particular amount of that
21 has been dedicated for that particular initiative?

22 SECRETARY MCGINTY: There has not been a sub
23 earmarking of that money. I would say, however, that my
24 expectation would be that facilities in the Chesapeake
25 watershed, if you will, the Susquehanna and Potomac

14

1 watersheds would be most interested in that money since
2 they are the ones that face the nutrient reduction
3 obligations.

4 Sewage treatment plants outside of the
5 Susquehanna and Potomac watersheds are not summarily
6 subject to nitrogen and phosphorus reduction.

7 SENATOR WHITE: Are those people going to receive
8 any priority by virtue of that requirement?

9 SECRETARY MCGINTY: Not that I am aware of, but I
10 am saying my expectation is that those are the
11 facilities that have this very much in mind. Many of
12 them have already stepped forward and begun to implement
13 nutrient reduction measures.

14 They are the ones who have been awaiting this 50
15 million dollar pot of grant money, and I expect will act
16 with most alacrity in trying to access it.

17 SENATOR WHITE: So you can assure me that
18 treatment facilities outside the Chesapeake Bay
19 watershed will not be negatively impacted by this
20 program?

21 SECRETARY MCGINTY: I don't see anything in the
22 efforts that -- or the application procedures that

23 PENNVEST has put together that would lead to that
24 result. But I also would say again that I would not
25 expect that those facilities would be first interested

15

1 in nitrogen and phosphorus reductions as, for example,
2 they might be in upgrades to meet their combined sewage
3 overflow problem, for example.

4 SENATOR WHITE: Which is a problem everywhere.

5 SECRETARY MCGINTY: It is a problem everywhere.

6 In fact, Pennsylvania has the distinction of more
7 combined sewage overflows of any other state in the
8 nation.

9 SENATOR WHITE: You can see where I am heading.
10 My concern is I do not want to see this Chesapeake Bay
11 tributary strategy divert money from the 250 million
12 dollar bond issue that was approved by all the voters of
13 the state to be dedicated to a program or strategy that
14 was created after the bond issue was approved and
15 probably was not in the minds of people who voted for it
16 and the people who put it on the ballot.

17 SECRETARY MCGINTY: First of all, I understand.
18 Second, I do want to just underscore again while there
19 is no express limitation in anything that PENNVEST is
20 doing that would lead to that result, I would imagine
21 that sewage treatment facilities outside of these
22 watersheds would have other priorities that they would
23 be seeking PENNVEST dollars for, and that the likely
24 consequence is that it will be sewage treatment
25 facilities in the Susquehanna and Potomac that most

16

1 readily will be looking for the nitrogen and phosphorus
2 reduction grants.

3 SENATOR WHITE: Thank you, Madam Secretary.

4 SENATOR WAUGH: How about if we have members ask
5 questions?

6 SENATOR VANCE: Thank you, Chairmans both. I just
7 have one quick specific question. Our office has gotten
8 conflicting opinions about this grant money.

9 We have been told on the one hand that there is no

10 economic criteria at this time to apply, and it is first
11 come, first serve. And on the other hand we are being
12 told, but there's other qualifications.

13 I am asking what they are, and we have been unable
14 to ascertain what they are. And I wonder if you could
15 now or supply us later with exactly what the criteria
16 is.

17 SECRETARY MCGINTY: Thanks, Senator. And I will
18 respond for the record. Typically, grant monies from
19 PENNVEST do have income criteria associated with them.
20 But as the Chairwoman noted, this money that we are
21 talking about is new, and it comes as a result of the
22 economic development and stimulus plan that all of you
23 legislated.

24 And so whether those criteria apply to this pot of
25 money as they do to other PENNVEST grant monies, I do

17

1 not know. I would be happy to find the answer for you
2 and get back to you today.

3 SENATOR VANCE: If there are other qualifications,
4 and apparently there are, I would really very much like
5 to know exactly what they are.

6 And if it is true that it is first come, first
7 serve, because we are hearing on the other hand that is
8 not true, I noticed in your testimony you referenced
9 that, I am just trying to get a clarification.

10 SECRETARY MCGINTY: Sure, Senator. Thank you. I
11 will follow up.

12 SENATOR WHITE: Senator Erickson?

13 SENATOR ERICKSON: Thank you, good morning, Madam
14 Secretary.

15 SECRETARY MCGINTY: Good morning.

16 SENATOR ERICKSON: Good to see you this morning.
17 You referenced point source, and I believe you said
18 22 percent of the phosphorus loading, 24 percent of the
19 nitrogen loading is coming from point source. That
20 obviously leaves a sizeable deposition from elsewhere.

21 Can you talk a little bit, if you will, please,
22 about deposition from the air and also then that
23 relative to the transport issue? And is there anything
24 that we can do to push that ahead to try to get some

25 control of that?

18

1 Because it affects not just the Chesapeake Bay,
2 but it impacts our ability to put businesses in place as
3 well as a number of other things.

4 MR. MCGINTY: Right. Thank you, Senator, very
5 much. I did use a shorthand on the nonpoint source
6 side. There are three major components. I referenced
7 agriculture and the ACRE Program. The two others have
8 to do with urban storm water. That is another element
9 of the plan. And the third is the one that you
10 referenced which has to do with air deposition.

11 The challenging news is watershed wide, air
12 deposition represents about a third of the nitrogen
13 contribution to the Bay. Having said that, the good
14 news is that at least part of that for the first time
15 ever is captured in the Chesapeake Bay Plan, and
16 specifically US EPA undertook an obligation to be
17 responsible for a certain percentage of the overall
18 nitrogen deposition as a consequence of putting in place
19 what is referred to as the CAIR Rule or the Clean Air
20 Interstate Rule.

21 And so to a certain extent, Pennsylvania and the
22 other watershed states' burden has been reduced by the
23 amount of nitrogen reduction expected through the CAIR
24 Program.

25 Having said that, and to welcome your question and

19

1 the initiative I think implicit in it, there still is
2 much to be done in terms of air deposition. And we are
3 trying to work with US EPA to close some of the
4 loopholes upwind of Pennsylvania, if you will.

5 SENATOR ERICKSON: Good luck.

6 SECRETARY MCGINTY: I have not been successful to
7 date in our efforts to do that, including a visit to
8 Washington last week to try to pursue a strategy like
9 that.

10 I think that there are other things we can do with
11 small sources of nitrogen, with auto emissions, etcetera

12 that I would be happy to visit with you and see if there
13 is a comprehensive plan we could put together.

14 SENATOR ERICKSON: Thank you.

15 SECRETARY MCGINTY: Thank you.

16 SENATOR WHITE: Senator Musto?

17 SENATOR MUSTO: Thank you. Madam Secretary, you
18 had mentioned point source contributes 22 percent of
19 phosphorus and new levels or limits will be a reduction
20 of 22 percent. Is this possible to achieve, and what is
21 actually is the timetable?

22 SECRETARY MCGINTY: The timetable is that all
23 point sources need to have measures in place to achieve
24 the new nutrient reductions within three years of
25 receiving those new limits or at the latest by 2010.

20

1 The reason for the 2010 date is as a consequence
2 of the legal calendar that US EPA is operating pursuant
3 to. There is a court ordered schedule in place such
4 that those measures need to be instituted watershed wide
5 by 2010.

6 In terms of whether or not it is -- how we can
7 achieve those numbers, a couple of things that are
8 important. The universe of point sources that we are
9 talking about is about 190 facilities in the Susquehanna
10 and Potomac watersheds.

11 Some 20 percent of the sewage treatment facilities
12 already meet the numbers that we are talking about here.
13 They already are at or below the eight milligrams per
14 liter of nitrogen or the one milligram per liter of the
15 phosphorus.

16 For the others, we estimate on average -- or I
17 guess the proper term is a mean average of
18 \$190,000,000.00 for them fully to meet the new nutrient
19 limits that we have talked about here.

20 Now the only other item I would say relative to
21 that number is that it is exclusive of the cost savings
22 that could be achieved through trading. And instead it
23 represents a capital investment number which some
24 facilities may not have to invest in if they avail
25 themselves of other nutrient reduction options,

1 including but not limited to trading.

2 SENATOR MUSTO: Is the trading program up and
3 running?

4 SECRETARY McGINTY: The trading program is now up
5 and running. It is more of a manual program than we
6 anticipate and hope we will have in about 18 months.

7 There is a website that is already up and running
8 on our website on which nutrient trades can be
9 registered, best management practices that are to be
10 taken can be registered and banked for a future possible
11 trade.

12 Attached to my testimony, you will see what we are
13 referring to as our interim final general trading
14 policy, as well as a very specific and detailed policy
15 Appendix A that lays out exactly how this will work in
16 the Chesapeake.

17 We are putting this out for 45 days of final
18 comment, and it will be published officially in the
19 register on October first.

20 SENATOR MUSTO: Madam Secretary, it is estimated
21 it will cost \$190 million?

22 SECRETARY McGINTY: For the point sources, yes,
23 mean average cost.

24 SENATOR MUSTO: And at the same time, you had
25 stated it is not a mandate?

22

1 SECRETARY McGINTY: No. The nutrient reductions
2 on the point source are mandates, as is the ACRE Program
3 for agricultural operations are mandates, as are the air
4 emission reductions that Senator Erickson referred to.
5 Those are mandates.

6 The distinction I was making was between that
7 limited suite of mandatory measures as compared to the
8 comprehensive itemization of measures that is included
9 in the Trib. Strategy document.

10 SENATOR MUSTO: So the mandate is coming from the
11 federal government?

12 SECRETARY McGINTY: The numbers that we have to

13 meet have been established by US EPA as a result of the
14 Court order to have measures in place by 2010 that could
15 remove the impairments from the Chesapeake and all of
16 its tributaries.

17 Those aggregate numbers then again through US EPA
18 modeling were sub aggregated, and Pennsylvania received
19 what our nutrient budget would be.

20 SENATOR MUSTO: I see an unfunded mandate coming
21 out of the federal government. I don't know how we
22 could possibly come up with \$190 million here in the
23 state level to meet a federal mandate.

24 SECRETARY MCGINTY: First of all, I would never
25 disagree that more money at the federal level would be

23

1 helpful. And in fact in this day and age if we could at
2 least maintain the revolving funds that have been
3 established for clean water and drinking water
4 infrastructure, we would be ahead of the game.

5 Unfortunately what we have seen in the last
6 several years is that those programs have been cut. And
7 that has been unprecedented, that we would cut funds to
8 clean water infrastructure. Last year alone, it was
9 more than an 11, 12 percent cut that we saw. That is
10 terrible for our environment and for our economy and for
11 public health, and I hope that that will turn around.

12 I do again want to acknowledge Senator Waugh's
13 leadership in the Federal Farm Bill and our opportunity
14 to increase our slice of the pie in that forum.

15 SENATOR MUSTO: In the final analysis, the big
16 question is will rates be raised on the local level?
17 And that is on everyone's mind, Madam Secretary.

18 SECRETARY MCGINTY: And I would not say that it is
19 irrational or illogical to think that that may be a
20 consequence at least for some treatment facilities.

21 As I said, 20 percent of the facilities in
22 question are already meeting the limits that we are
23 talking about. Eighty percent are not. And the degree
24 to which they need to invest in capital upgrades is
25 related to many things -- when was the last time the

24

1 plant was upgraded, etcetera.

2 But if it is a plant that needs serious upgrades,
3 then this is not different than any other such
4 investment. It will involve a combination of rates of
5 PENNVEST, of grants and loans, just as in any other
6 infrastructure upgrade.

7 SENATOR MUSTO: Very well. Thank you very much.

8 SENATOR WHITE: Just to follow up on cost. The
9 \$190 million, the capital investment that you mentioned,
10 that is only for point source?

11 SECRETARY MCGINTY: That is the point source
12 number, yes.

13 SENATOR WHITE: What is the total price tag on
14 this strategy?

15 SECRETARY MCGINTY: Again, our two pieces -- the
16 main pieces of the strategy are the 190 million -- or
17 the nutrient limits we have talked about for the point
18 sources and the ACRE Program for the nonpoint sources.

19 So the 190 million we can calculate for the point
20 sources. And I have asked my staff to work with the
21 legislative staff to see what numbers, if any, may have
22 been generated around the ACRE legislation so that we
23 can get our arms around those costs as well.

24 SENATOR WHITE: So you don't know the answer at
25 this point?

25

1 SECRETARY MCGINTY: I don't know the answer, but I
2 imagine some calculations were done in the consideration
3 of the ACRE legislation.

4 SENATOR WHITE: That is interesting because I
5 voted for the ACRE legislation. I am going to have to
6 go back and look at the fiscal amount. But I do not
7 recall there being a large dollar amount attached to
8 that initiative. And yet, it sounds to me from your
9 testimony as if there is. I assume a fiscal note on the
10 bill will explain that.

11 SECRETARY MCGINTY: I will look at that as well.
12 I didn't reference numbers with regard to the ACRE
13 portion of the program. The numbers that I have
14 referenced have to do with the point sources and the new

15 nutrient limits that will be incorporated in their
16 permit.

17 SENATOR WHITE: So it is your testimony that we
18 are looking at programs that will cost \$190 million for
19 those, coincidentally, 190 facilities, minus the 20
20 percent that are already meeting the limitations?

21 SECRETARY MCGINTY: That is a mean average of what
22 we expect the capital upgrades would cost for those
23 point sources that are now subject to the new nutrient
24 limits and their permits.

25 SENATOR WHITE: Thank you.

26

1 SENATOR WAUGH: Senator Regola?

2 SENATOR REGOLA: Good morning, Madam Secretary.

3 SECRETARY MCGINTY: Good morning.

4 SENATOR REGOLA: A few brief questions. Number
5 one, have or when will existing facilities be notified
6 of the new requirements?

7 SECRETARY MCGINTY: All of the facilities have
8 been notified of a requirement to begin monitoring their
9 discharges.

10 In addition to that, all facilities have been
11 notified that they should start a planning exercise
12 premised on the eight milligram per liter requirements
13 for nitrogen and one milligram per liter for phosphorus.

14 The third piece of this would kick in as each
15 facility's permit comes up for renewal. So in terms of
16 those numbers all of the significant dischargers will
17 face, for those numbers to become real legal
18 obligations, that will happen when their what is
19 referred to as NPDES permit comes up for renewal.

20 There already are several, a handful for whom
21 their permits have come up for renewal in the past month
22 or so, and those new limits are being incorporated into
23 their operating permits.

24 SENATOR REGOLA: Thank you. And will there be
25 fines or moratoriums placed on the municipalities that

27

1 do not meet the requirements.

2 SECRETARY MCGINTY: They are mandatory
3 obligations. So either through upgrades at the plant,
4 or things like land application, or things like process
5 changes, or finally through trading on a yearly basis,
6 the books have to be balanced. They will only be able
7 to be emitting net the total nitrogen and total
8 phosphorus that is allowed in their operating permit.

9 SENATOR REGOLA: My biggest concern is if whatever
10 that money may be on a first come, first serve basis,
11 will be there enough money to go around? A lot of these
12 municipalities have a hard time obtaining money. And if
13 they can't get the grants, then they are really going to
14 have to raise the rates to try to achieve this goal.

15 SECRETARY MCGINTY: And again, Senator, I would
16 not sit here and tell you that is not going to happen
17 and let me tell you a happy story. This is an
18 obligation we have to undertake. It does not come free.
19 What.

20 I can say to you is two things. We have tried our
21 best to find cost effective strategies, including the
22 trading option -- which I will tell you that we face
23 some strong resistance by other states in the Chesapeake
24 watershed. They didn't like the idea at all.

25 We still, without speaking too much out of school,

28

1 have some issues that we are working with US EPA on
2 this. I will raise one of them.

3 My friend Walt Peechatka here and the Farm Bureau
4 have been helpful because there is an effort by some to
5 say any measure taking that has public money in it -- so
6 you do a sewage upgrade and it has got PENNVEST money
7 in it or a farmer does a BMP and it has got Grow Greener
8 money in it, that would be disqualifying because you
9 couldn't count that in a trading program.

10 We have been pushing back on that pretty hard, and
11 we have had some satisfaction on that at a senior level
12 at EPA, but it hasn't been written in stone yet. We
13 have tried our best to be cost effective.

14 The second thing I also want to remind the
15 committee of is yes, we have an obligation derivative

16 from the Federal Clean Water Act related to the
17 Chesapeake Bay, but many of these measures are required
18 anyway either because we have very unsafe and very
19 unhealthy drinking water in some parts of the state that
20 are involved here.

21 Lancaster County, for example, you can't drink the
22 water because of the high nitrate levels. We have three
23 water systems right now in the Commonwealth that cannot
24 operate without importing water from somewhere else
25 because of the threat of blue baby syndrome. This is

29

1 about our health and well-being as much as it is meeting
2 a mandatory obligation because of the Chesapeake Bay.

3 SENATOR REGOLA: Thank you.

4 SENATOR WHITE: I just have one last question on
5 cost. Patrick pointed out to me that there is an
6 attachment to the testimony that is going to be given
7 later by the Pennsylvania Municipal Authorities
8 Association that puts a much different cost on these
9 efforts than what you have portrayed to us.

10 Specifically, they show point sources costing
11 \$376 million and agriculture being \$592 million. Those
12 are huge difference from the \$190 million that we heard,
13 and I suspect huge difference from what I am going to
14 see on a fiscal note to the ACRE Bill.

15 I would ask you if you can explain those
16 differences now, or if you would agree to provide the
17 committee with a written critique, if you will, of the
18 testimony of the Municipal Authorities Association
19 giving us this very, very different cost picture.

20 SECRETARY MCGINTY: Again, we will look to the
21 fiscal note for the ACRE Bill and see what the
22 legislature considers to be the price tag associated
23 with ACRE.

24 As it relates to the point source side, the
25 Municipal Authorities Association is not making that

30

1 number up. That is a number that was produced by US
2 EPA. It is not based on an analysis of Pennsylvania

3 facilities. It is a Chesapeake Bay wide number assuming
4 capital upgrades at all facilities within the Chesapeake
5 Bay watershed and then dividing by the number of states
6 essentially in the watershed.

7 It doesn't look at, for example, the 20 percent of
8 facilities that are already meeting our number. It
9 doesn't take account of the possibility of trading. It
10 doesn't take account of non capital process changes that
11 at least at some Pennsylvania facilities would be
12 sufficient to meet the numbers that we have articulated.

13 That is why those numbers are different. They are
14 generic numbers. They are not specific for
15 Pennsylvania.

16 SENATOR WHITE: So they are Chesapeake Bay partner
17 wide numbers, not Pennsylvania specific?

18 SECRETARY MCGINTY: They are not a bottom up
19 analysis of what facilities in Pennsylvania would have
20 to do.

21 SENATOR WHITE: So you are standing by your \$190
22 million?

23 SECRETARY MCGINTY: I am standing by that. It
24 comes by a facility by facility analysis.

25 SENATOR WHITE: Which is still big money by the

31

1 way.

2 SECRETARY MCGINTY: This is not pocket change at
3 all. This is serious investment and very worthy of the
4 kind of attention you are giving to this issue here, but
5 the other numbers are not specific to what we can expect
6 in Pennsylvania.

7 SENATOR WHITE: Senator Waugh?

8 SENATOR WAUGH: Thank you, Senator White. Madam
9 Secretary, I have just a couple of questions. First of
10 all, I think the point has been made certainly on the
11 potential cost to municipal authorities translated to
12 the taxpayers, people who pay the sewer bills, and I
13 concur with those concerns and questions.

14 Also the point has been made in your testimony and
15 from others that the nonpoint source, in particular the
16 agriculture community has a pretty significant number
17 that they will be looking at.

18 There are a lot of hopes expressed. There are a
19 good number of unknowns expressed. I would like to play
20 the Devil's Advocate if I may for just a second because
21 in the real world 2010 is not that far off. In the
22 governmental world of finance and project completion, it
23 is a heartbeat. We are five years away.

24 What if? The Farm Bill is a long shot. Thank you
25 for the compliments. We have been working hard. But it

32

1 is a long shot. You know that as well as I do. And
2 grants and loans, etcetera in today's budget and here in
3 our state, and I am sure in next year's budget are going
4 to be difficult.

5 What happens? We go into this thing. We proceed
6 under the assumption that everything will work. 190
7 million will come in. The Ag. Bill will come in. What
8 if they don't? Has there been thought given to how we,
9 the state, is to work within the Bay program, but more
10 importantly within the federal requirements to get
11 through this without impacting the community as much as
12 we might have to?

13 SECRETARY McGINTY: Two things. First, written
14 into the Chesapeake Bay Plan and set of activities is a
15 2007 review where a multitude of jurisdictions will be
16 called upon to make an assessment of where they are in
17 implementing measures, where they are in securing
18 financial resources for those measures, and how these
19 things are adding up to achieve the reductions that are
20 required. That will be a helpful time to step back and
21 do a comprehensive assessment.

22 The second thing I would just say -- and this may
23 also be relevant to Senator Regola's question of a
24 moment ago -- which is let's take your scenario or at
25 least where you were beginning to point and you have got

33

1 a sewage treatment facility that has this new nutrient
2 limits, that they have begun in earnest to meet those
3 new nutrient limits either through capital investments
4 or through partnerships and something goes wrong.

5 China continues its economic boom so the steel to
6 build the facility hasn't been available or the price of
7 it has doubled, etcetera. As in every such experience
8 or when that happens, we look at that, and we are
9 willing and almost in all cases able to take that into
10 account as to whether or not that facility would be
11 considered in noncompliance.

12 Our strategy, for example, envisions that if there
13 is due diligence towards meeting the requirements but
14 they are not completely finalized, that an alternate
15 compliance schedule could be put in place with the
16 Court's blessing for that facility. So we understand
17 that things like that happen.

18 The other thing that I do want to say -- because
19 this has been very important to the sewage treatment
20 facilities and they have asked us about this. A
21 question arises if you are a sewage treatment operator
22 and you decide the most cost effective thing for me to
23 do is at least in part to partner with a farmer and to
24 pay for that farmer, for example, to do a riparian
25 buffer, to plant trees along the stream, and then we

34

1 wind up with our own God forbid Hurricane Katrina or
2 something, what happens? Is the sewage treatment plant
3 left holding the bag because the BMP didn't work and now
4 they have haven't achieved the nutrient reductions that
5 were required?

6 I just want to take this question to say we will
7 step in. And the way our trading program has been
8 devised, the Commonwealth then would make the
9 environment whole, if you will, and will hold harmless
10 the sewage treatment plant operator. As long as he or
11 she acquired those BMP reductions in good faith, then
12 they can count on those credits being available to them
13 to meet their legal obligation.

14 SENATOR WAUGH: Thank you. Another finance
15 question. It appears to me based on what you have told
16 us so far that the conservation districts in our
17 community are going to be involved, especially the
18 nonpoint source component.

19 Rewind to last year's budget presentation by the
20 Governor. And if I recall correctly, there was a
21 significant reduction that many of us went to bat for to
22 try to get back up to par, at least a hold harmless
23 position if I recall correctly.

24 What do you foresee for the coming year in terms
25 of budget announcements given that there is a

35

1 significant amount of work that is going to involve our
2 conservation?

3 SECRETARY MCGINTY: Senator, you are really
4 walking me into dangerous terrain anticipating the
5 budget.

6 SENATOR WAUGH: Just thought I would ask.

7 SECRETARY MCGINTY: I would, first of all, need to
8 remind myself specifically what the numbers were with
9 regard to the Conservation Districts. I do know that
10 their account was puffed by the Legislature which was
11 helpful.

12 But some of the measures that we had put in place
13 as I recall didn't represent absolute reductions. They
14 represented various programs that had come to
15 completion, etcetera.

16 We always aim to meet what is the policy objective
17 laid out with regard to the Districts, which is we would
18 meet up to 50 percent of their attributable costs to the
19 work they do for us. And we will continue to aim to do
20 that.

21 I want to pick up a note from George Wolf here.
22 The idea for the Conservation Districts in this
23 trading --

24 SENATOR WAUGH: Be sure you are right. He is
25 standing back there.

36

1 SECRETARY MCGINTY: He will correct me, I am sure,
2 if I am wrong. Is that this could be a revenue
3 opportunity for them because there will be a need to
4 potentially aggregate some of the credits and some of
5 the nutrient reductions, and maybe for the Districts to

6 earn a fee for helping to match trading partners almost
7 acting as a broker for those credits.

8 SENATOR WAUGH: These are all good concepts. But
9 it just seems like since I have been here, the
10 Conservation Districts always start up in the budget
11 season with a hit. And I am just hopeful as we move
12 into this, understanding the role that they are going to
13 play, there will be a sensitivity to that.

14 Now more specifically on the nonpoint agriculture
15 area, just to break it down in simple terms, what can
16 the farmer who has fields along an impaired stream
17 realistically expect in terms of requirements placed on
18 them?

19 For example, if he is farming right up along the
20 stream today within manageability distance, is he
21 suddenly going to have to move his entire operation back
22 100 or 200 or 500 feet? And that doesn't sound like
23 much. I know when we think about clean streams, we say
24 well, that's not such a big deal. If it is a couple of
25 miles along a stream that is being farmed, it's a lot of

37

1 bushels. And it is a big deal, and it has an impact.

2 Can you just very quickly answer that?

3 SECRETARY MCGINTY: The answer is no. No farmer
4 that is not otherwise subject to those requirements
5 would become subject pursuant to this policy.

6 If a farmer is a KOK or importing farm as defined
7 if the ACRE legislation, that farmer would need to
8 implement the nutrient management plan and the setbacks
9 or buffers prescribed in ACRE. If the farmer is not a
10 KOK or importing farmer as defined in that legislation,
11 there is nothing here that would convert that farm into
12 a regulated farm.

13 If that farmer sees economic advantage in
14 participating in the trading program but isn't otherwise
15 subject to ACRE, the farmer would have to opt into ACRE
16 and then be able to a participant in the trading
17 program.

18 But there is no requirement that any farm that
19 isn't otherwise required do anything as a consequence of
20 this plan.

21 SENATOR WAUGH: What is the plan or what actions
22 have been taken at this point to inform the farm
23 community? Because I think there are a lot of -- just
24 as with the municipal organizations, in the ag.
25 community, there appears to be an awful lot of questions

38

1 about that.

2 What has been done to educate, or what is going to
3 be done to help educate?

4 SECRETARY MCGINTY: Thank you. We have engaged in
5 extensive outreach, including a summit meeting just last
6 week with point and not point sources. We will continue
7 along those lines.

8 We have been working with PMAA and the Farm Bureau
9 and Penn Ag to begin to develop materials or letters or
10 things that they can distribute to their members.
11 Having said that, I do want to acknowledge what is at
12 the heart of many of your questions.

13 I mean you are rightly reaching for what are the
14 real numbers here, what are the real dollars signs?
15 There has been everything from the dollar signs of --
16 Senator, you mentioned the larger dollar signs on point
17 sources. Nobody is making those up. Those are numbers
18 that have been generated somehow and by somebody
19 attributable to these actions overall.

20 There is a much bigger number. Senator, you know
21 there is a number of eight billion dollars that has been
22 associated here. So that rightly has people concerned.
23 What are we talking about? And I think that is
24 unfortunate.

25 Those numbers do attach to actions that maybe will

39

1 or won't be taken, that may be mandated or won't be
2 mandated by a universe of issues and requirements.

3 They are not though the numbers that attach to
4 what we have to do specifically to meet the Chesapeake
5 water quality criteria. Those are the numbers that I
6 emphasized, the 190 and whatever appropriately attaches
7 to ACRE.

8 But I want to acknowledge and respect the
9 confusion that is out there. And frankly as I prepared
10 for these hearings and made my way through the myriad of
11 documents that EPA has produced, we have produced,
12 others have produced, there's lots of big numbers
13 floating around and lots of confusion.

14 I guess that is my way of acknowledging that,
15 being willing to do whatever we need to do to be more
16 clear about what we are requiring and not requiring, and
17 I guess welcoming this hearing as a further chance to do
18 that.

19 SENATOR WAUGH: Specifically on the ag. either
20 education or implementation, how is the Department of
21 Agriculture engaged? It appears to me there hasn't been
22 a lot of exchange. I may be wrong. I am just giving
23 you my perspective.

24 SECRETARY MCGINTY: In terms of the basic
25 requirements, again referring back to ACRE, that was

40

1 something that was very closely put together between DEP
2 and Agriculture.

3 SENATOR WAUGH: And I congratulate you on that.

4 SECRETARY MCGINTY: Thank you very much. In
5 addition to that in term of the trading program, yes,
6 that is something that Secretary Wolf has personally
7 taken a strong interest in.

8 There has been a Commodity Marketing Committee set
9 up at the Farm Bureau to begin to understand these
10 credits as marketable commodities. There has been a
11 huge investment, actually even legal staff at Penn State
12 and elsewhere brought onboard by Penn Ag and Farm Bureau
13 to understand how contracts are made with credits and
14 things like that. So there has been a lot of
15 cross-fertilization if you will.

16 SENATOR WAUGH: Great. I will just leave that one
17 for the record.

18 SECRETARY MCGINTY: You are not going to refer to
19 manure; are you?

20 SENATOR WAUGH: For the record, while we are
21 talking about the Department of Agriculture, for the

22 members, they are not testifying today, but they have
23 submitted testimony so it is I assume on table there.
24 We have it in our packets.

25 Not to drag this on, we appreciate your presence

41

1 and your patience, Madame Secretary, I do have one last
2 sort of set of questions. Rather than individually, I
3 am going to roll them together and ask for a response.

4 It has to do with the trading program. A lot has
5 been made of it. And certainly, it is an interesting
6 program conceptually, and we acknowledge the fact that
7 it is cutting edge, if you will. We hope to be the
8 first state to engage in this type of program.

9 I guess I am a little curious as to whether you
10 think this is something that should have legislative
11 action as opposed to doing it internally through the
12 process that you have taken. I want an honest answer on
13 that, whether we should be doing it legislatively.

14 SECRETARY MCGINTY: My answer would be that we
15 want to make sure that the program is available in a
16 timely fashion for those who really have an obligation
17 right now today to begin putting their compliance plan
18 together.

19 So I would say if legislation could be in keeping
20 with the need to have clarity in rules of the road out
21 there now in real time -- and remember, some of these
22 permit limits have already been instituted. There are
23 facilities that now have a clock ticking to put their
24 strategy together.

25 So I guess that would be my biggest concern is

42

1 that facilities are not left uncertain in the interim as
2 to what the rules of the road would be.

3 SENATOR WAUGH: My concern would be because it is
4 administrative or even regulatory, that they would also
5 likewise -- it may take a little longer -- but they
6 would be left with some uncertainty. And often times,
7 legislative activity or statutory requirements give
8 people a little more certainty. Not always, but

Hearing Sept 20' 05 Transcript.txt
9 sometimes. That's where my concern is there.

10 And finally, whether it is the trading program or
11 just the reduction calculations, what considerations
12 have been given to things such as alternative energy
13 technologies and the more recent legacy sediment
14 announcements?

15 They are all very interesting to me. And how does
16 that play into this program? I mean we understand cover
17 crops. And we understand the other BMP'S and such. But
18 how do those new -- the term I will use -- technologies
19 play into the calculations?

20 SECRETARY MCGINTY: The way I think they play into
21 the calculations is that they would be analyzed through
22 the Chesapeake Bay model. We don't get to make up the
23 numbers. That is I think good because it gives
24 everybody certainty that if they take a certain action,
25 US EPA will recognize it.

43

1 The particular action is analyzed through the
2 Chesapeake Bay model. It is assessed for the total
3 likely nutrient and/or sediment reduction that that
4 initiative can achieve.

5 There are then discount ratios associated with
6 that. So, for example, the very same activity if it
7 happened a hundred yards from the receiving stream as
8 opposed to a hundred miles from the receiving stream
9 would get more credit in the former instance than in the
10 latter. Because there is natural -- so that is how it
11 works.

12 Each BMP is analyzed by the program. It is
13 refined through the model and a specific number
14 associated with it that would be creditable and
15 recognized by US EPA.

16 SENATOR WAUGH: I have to ask this one very
17 specific on legacy sediments. Am I correct in stating
18 that the legacy sediment mitigation is not currently
19 recognized?

20 SECRETARY MCGINTY: That will still have to be
21 refined through EPA's model. We do not have a final
22 analysis of it. But part of the reason for a
23 comprehensive tributary strategy is so that we can be

24 feeding those things into the process and getting them
25 recognized.

44

1 SENATOR WAUGH: I am not trying to drive you into
2 a corner. I am just asking for a response. Some
3 experts that I have heard estimate that up to two-thirds
4 of sediment pollution could be reduced by a legacy
5 sediment mitigation program.

6 Could you give a response? Do you concur with
7 that? Do you feel that that is accurate, or do you want
8 to do a little more study?

9 SECRETARY MCGINTY: The honest answer I can give
10 is I do not know, and I would have to study.

11 SENATOR WAUGH: I am very interested in that sort
12 of thing. I hope the Department takes a serious look at
13 that and analyzes it.

14 I don't know if it is the answer or not. I will
15 tell you that two-third reduction is big, really big.

16 SECRETARY MCGINTY: Our whole Bureau has already
17 sat down with people from F&M on that issue.

18 SENATOR WAUGH: Thank you. Any other questions?

19 SENATOR WHITE: I just have two wrap up comments I
20 suppose. I have two big concerns with this. Obviously,
21 the cost is one. Where is this \$190 million going to
22 come from? And specifically, I do not want to see that
23 250 million dollar bond issue that the voters approved
24 diverted to pay for a specific program for a specific
25 piece of the state when the needs for water and sewer

45

1 infrastructure are statewide.

2 I think when the voters approved that, they were
3 not approving money for the Chesapeake Bay tributary
4 strategy, no matter how laudable such a strategy might
5 be.

6 There is a question of equity there. And 50
7 million out of the 250 million is a significant amount
8 of money. I recognize you have said first come, first
9 serve. But I think I already heard you say logically
10 the first people in are going to be the ones who have

11 the mandate, and those are the people in the Chesapeake
12 Bay. So just a cautionary note, we are going to be
13 watching this very closely.

14 SECRETARY MCGINTY: Can I just follow up on this
15 quickly to say I may not have stated it clearly enough
16 either. First of all, I understand and I appreciate
17 your concern, and I agree that this needs to be
18 equitably invested.

19 The 50 million itself, to be clear, even it is not
20 earmarked just for nutrient nitrogen, phosphorus
21 reductions. It is grant money that is available either
22 for nitrogen, phosphorus or the other kinds of upgrades
23 that you are referring to that have nothing to do with
24 nitrogen and phosphorus.

25 It is just on the nitrogen and phosphorus issue,

46

1 those would be most interested are those that are
2 subject to the limits.

3 The other thing that didn't come up and I'll just
4 mention it in my testimony, many of you have either
5 called me or sent me letters of constituents with
6 concerns about on lot sewage systems. Nothing in this
7 strategy puts new restrictions or requirements on on lot
8 systems.

9 In the trading program, however, we would allow a
10 point source to hook an on lot system up to a public
11 system and receive credit for that. But just so you
12 know, there is nothing new or mandatory restricting the
13 use of on lot systems in this initiative.

14 SENATOR WHITE: Don't the EPA numbers again that
15 are systemwide show 1.6 billion dollars in cost to get
16 septic systems in compliance with this strategy?

17 SECRETARY MCGINTY: It would not be a number to
18 get in compliance because there are no requirements or
19 compliance needs as it relates to on lot systems. There
20 aren't new regulations that come out of this that are
21 relevant to or being imposed on on lot systems for which
22 the price tag that you mentioned would appropriately be
23 associated.

24 SENATOR WHITE: Do you know where that septic

1 SECRETARY MCGINTY: I would have to get back into
2 the specific derivation, but again, it is similar to the
3 eight billion dollar numbers. There are values that
4 have been associated with the whole universe of
5 activities that could be taken that reduce nutrients.

6 On lot systems are among those things that if
7 hooked up to a public system would be generative of
8 nutrient reductions. If you wholesale hooked up on lot
9 systems to public systems, it may cost that number. But
10 nobody is required to do that in order to meet the
11 obligations that we face here. Okay? Thank you.

12 SENATOR WHITE: Thank you. Any other questions?
13 Thank you, Madame Secretary.

14 Testifying next is a panel from the agricultural
15 organizations.

16 SENATOR WAUGH: Gentlemen, we would like to
17 welcome you. If we could we would like to move things
18 right along.

19 Knowing that the folks involved in agriculture are
20 always early risers and right on time and hard working
21 in achieving their goals, our goal is to get back on
22 time. We felt that the Secretary deserved whatever
23 questions members had.

24 We would like to ask if you guys could help us get
25 back to the 10:15 time frame so we can get out of here

1 when we're scheduled. So just putting a little pressure
2 on you.

3 Joel, do you want to begin? Mr. Rotz from the
4 Farm Bureau.

5 MR. ROTZ: Under those pressured circumstances, I
6 will point out to you, you have rather lengthy testimony
7 in front of you. I will not be attempting to read that.

8 SENATOR WAUGH: Thank you.

9 MR. ROTZ: I will certainly do the best I can to
10 hit the high points. I do want to point out very
11 clearly I am not only testifying on behalf of the

12 Pennsylvania Farm Bureau, but also with the consensus of
13 opinion on the part of the Pennsylvania State Grange.
14 Brenda Shambaugh is with me here today, as well as our
15 own environmental specialist at the Farm Bureau Andrea
16 Sharretts.

17 Before I get into the direct comments on the Trib.
18 Strategy, I do think it is important to take a minute to
19 highlight what you may or may not be aware of. And that
20 is all that agriculture has done in recent years along
21 the lines of environmental regulation, both mandatory
22 and voluntary.

23 I think you all recognize that Pennsylvania, of
24 course, had the first nutrient management law in the
25 nation. And as a result of that law, we have nearly

49

1 nine hundred farms required to develop nutrient
2 management plans and another thousand who have
3 voluntarily complied.

4 In 2004, we had the revisions of both the Nutrient
5 Management Act and the Concentrated Animal Feeding
6 Operation Regulations. These revisions led to enhanced
7 environmental protection on farmland. However more
8 often than not, these protections come with a high price
9 tag for farmers.

10 Pennsylvania is one of the first states to require
11 farmers to use phosphorus indexing in creating their
12 nutrient management plans. This, too, brings additional
13 costs to farmers.

14 Commercial Manure Hauler Legislation was passed
15 less year. It closed what has been commonly called the
16 export loophole requiring farmers that are importing
17 manure from those concentrated animal operations to
18 adopt the same practices as those that are mandatory on
19 the concentrated animal operations, as well as
20 recordkeeping and that type of thing.

21 Of course, as has been often mentioned already
22 this morning, Act 38 signed by the Governor, passed by
23 the Legislature. And indeed, we are grateful to both
24 the Governor and the Legislature for the legislation.
25 But along with that legislative resolution to our local

50

1 ordinance concerns came more regulations for
2 agriculture. Again, Act 38 requires CAFO's and CAO's
3 and all farms importing CAFO or CAO manure to implement
4 a hundred foot setback or a 35 foot vegetative buffer
5 from manure applications from streams, as well as to
6 implement best management practices for odor in its
7 operation.

8 And the Act did establish an Agriculturally
9 Impaired Streams Workgroup to further educate and expand
10 outreach efforts for farmers to help them understand the
11 linkage between farm management practices and water
12 quality. Our.

13 Our point is this: So much has transpired
14 recently to bring further regulation on agriculture.
15 And additional regulation means additional cost to an
16 industry that has little opportunity to pass those
17 additional costs along.

18 You can look at today's commodity prices. Whether
19 you are talking about milk, corn, you name it, those
20 prices are pretty much the same as they were 20, 25
21 years ago.

22 When you look at some of those others who are
23 impacted by the goals for nutrient and sediment
24 reduction in the Tributary Strategy, you can hardly make
25 the same claim. I think we all recognize how the cost

51

1 of housing has increased, as well as I am quite certain
2 a lot increase in public sewer rates and those types of
3 things. Obviously, there is a much easier way to pass
4 along those costs to consumers through those folks.

5 I guess the larger question is what will be the
6 pay back of all those additional regulation on
7 agriculture? Of course, that is largely unknown because
8 we have only begun to implement the most recent laws and
9 regulations. It will be some time until we have the
10 ability to measure any impacts on the tributaries to the
11 Bay from the measures that are now being taken.

12 Meanwhile, the Department has moved aggressively
13 forward with the Tributary Strategy which identifies

14 best management practice goals for agriculture to meet,
15 but may not be in some cases realistic to achieve.

16 I am not here today to trash the Tributary
17 Strategy that has been developed, but to inform the
18 committees of some of our ongoing concerns which include
19 realistic goals for implementation of best management
20 practices, a workable nutrient and sediment trading
21 program, encouraging best management practices that help
22 farmers farm better rather than reducing production and
23 accounting for the legacy sediment stream bank erosion
24 impacts.

25 Pennsylvania agriculture has been at the table

52

1 throughout the Tributary Strategies development to give
2 input and to work for voluntary means to achieve water
3 quality. The agriculture community supports the concept
4 of nutrient and sediment trading program, but as we say
5 the devil is always in the details.

6 The specifics of how this program is implemented
7 will determine its success or failure. We would
8 encourage the Department to work with the Conservation
9 Commission and the Conservation Districts to help assure
10 some level of success in implementing the nutrient
11 management trading program to assure the agricultural
12 practices promoted through the program are practical to
13 the farmer and provide a real benefit to the
14 environment.

15 I would plead to the Committee that additional
16 state resources must be directed toward the Districts to
17 help administer not only nutrient trading, but also to
18 host the new regulations mentioned earlier in my
19 statement.

20 In implementing the nutrient and sediment trading
21 program, the state must help farmers farm better. What
22 we would like to see is enhanced funding for
23 conservation tillage and no till systems, cover crops.

24 Beyond these field management practices, we would
25 like to see funding targeted towards improving diet and

53

1 feed adjustments that would allow farmers to reduce the
2 nutrient concentration of both livestock and poultry
3 feed by improving its digestibility.

4 We would also like to see resources targeted
5 toward helping farmers to improve animal waste and
6 pasture management systems.

7 In closing, I would like to call to both
8 Committees' attention to the issue of legacy sediment to
9 which Senator Waugh addressed earlier. This is one not
10 to be overlooked in implementing Pennsylvania's
11 Tributary Strategy.

12 Franklin and Marshall indicates that land clearing
13 and many years of poor ag. practices on the part of our
14 forefathers have led to sediment accumulation stored up
15 behind old mill dams that range anywhere from a few to
16 20 feet thick on top of original floodplains.

17 As times and land uses have changed, these dams
18 have been removed or fallen into disrepair causing the
19 streams to cut down through the sediment carrying with
20 it nutrients and sediment downstream to the Bay.

21 Recent studies though show that 50 -- I want to
22 emphasize this -- 50 to 90 percent, which is a heck of a
23 wide range -- 50 to 90 percent of the sediment load
24 generated in the watershed is not coming from overland
25 flow as previously thought, but from stream channelled

54

1 banks themselves.

2 Sediment also carries with it nutrients, both
3 nitrogen and phosphorus. Legacy sediment and stream
4 bank erosion need to be factored into the assessment of
5 the attainability of nutrient and sediment limiting
6 goals for the Bay. Otherwise, agriculture could be
7 doomed to failure in a strategy due to the sins of the
8 past rather than the current best management practices
9 utilized by today's farmers.

10 With that, I will pass the mike over to Mr.
11 Peechatka.

12 SENATOR WAUGH: Mr. Peechatka.

13 MR. PEECHATKA: Good morning, Madam Chairman,
14 Mr. Chairman, members of the Committee, Penn Ag

15 appreciates the opportunity to make a few comments today
16 about the Tributary Strategy and the nutrient trading
17 policy.

18 Penn Ag has followed the development of the
19 Chesapeake Bay Program now for several decades. And
20 during that time, we have seen the screws tighten on
21 Pennsylvania agriculture as the environmental programs
22 were implemented. We have also seen the goals change
23 for the Chesapeake Bay program.

24 Before I address the specific purpose of this
25 Committee's meeting this morning, I want to acknowledge

55

1 the efforts of these two committees -- the members of
2 these two committees and the State Senate and the
3 members of the House that supported the ACRE legislation
4 earlier this year.

5 That legislation was long overdue and was much
6 needed because prior to this year, Pennsylvania
7 agriculture had to deal with the problems of local
8 government ordinances that were trying to restrict
9 Pennsylvania agriculture. I want to acknowledge on
10 behalf of Penn Ag's 650 member businesses the support of
11 the Pennsylvania legislature and the Governor's Office
12 for enacting this important legislation because we can
13 now address the environmental and conservation programs
14 with that problem properly addressed.

15 Regarding the Bay cleanup efforts, and
16 specifically the Tributary Strategy, I want to first
17 acknowledge the efforts of the Department of
18 Environmental Protection in attempting to fulfill the
19 Commonwealth's obligation under the Chesapeake Bay
20 Agreement.

21 DEP has been in the forefront on this issue for
22 many years, and their task is not an easy one. In
23 recent years, we have found the agency and Secretary
24 McGinty to be very forthright in their efforts to
25 implement the many programs for which they are

56

1 responsi ble.

2 They have reached out to the agricultural
3 community without fail. They have formed stakeholder
4 groups and other mechanisms to help the agency formulate
5 a plan of action.

6 As a matter of fact, they have been so proactive,
7 there are times when we have difficulty trying to attend
8 all of the meetings and stakeholder group sessions that
9 they have to solicit input from the agricultural
10 community.

11 But this is a positive as far as Penn Ag is
12 concerned because without this opportunity for input,
13 the agricultural community is not at the table when
14 regulations and policies are developed.

15 On the Strategy itself, the agricultural community
16 again finds itself in the cross hairs of a clean up
17 effort. The strategy indicates that agriculture is the
18 source of 49 percent of the nitrogen that ultimately
19 ends up in the Bay. While that may seem to be an
20 indication that agriculture is ignoring its
21 environmental responsibility, I submit that that is not
22 the case.

23 When one considers the fact that the nitrogen
24 source from agriculture is coming from millions of acres
25 of crop and pastureland, the amount from any one acre of

57

1 land is very small. It is also extremely difficult for
2 farmers to deal with the vagaries of the weather when
3 they apply manure or commercial fertilizer and then have
4 to encounter a five-year or ten-year storm event, those
5 nutrients can move offsite.

6 We recognize, however, that when the amounts
7 coming from one acre of land are multiplied a few
8 million times, that agriculture as a whole may be a
9 significant source.

10 We believe that the point sources of nutrients,
11 while collectively not as significant as agriculture
12 source, are far easier to address because they are end
13 of pipe issues. They are easy to identify, and clean up
14 may be costly. But these sources have a way to pay for
15 clean up by increasing the fees for the people that use
16 those systems. The same thing is true for the urban

17 sources of sediment and nutrients.

18 But in the case of agriculture, costs must be
19 borne by the farmer, and they cannot be passed onto the
20 consumer. So I draw that parallel and comparison for
21 your consideration.

22 As Joel Rotz already said, commodity costs are
23 essentially the same today. Milk prices are the same as
24 they have been for the last several decades, and egg
25 prices are the same as they were 50 years ago. So

58

1 farmers have not been able to adjust those costs because
2 they are in a global economy.

3 Now lest we be accused of not accepting our full
4 responsibility, let me assure you that the companies
5 that Penn Ag represents are attempting to meet all
6 environmental requirements. They are installing state
7 of the art conservation and environmental programs.
8 They are on the cutting edge and will continue to push
9 the environmental bar higher and higher.

10 But the agricultural community is not just
11 composed of large companies with the capital to
12 implement those kinds of programs. There are 50,000
13 smaller farms that have to bear part of this
14 responsibility as well. And therein lies the challenge.

15 In 50 years, we have lost half of our farms in
16 this state. And if we move forward with additional
17 restrictions on agriculture that they must absorb, we
18 must be prepared as a Commonwealth to have fewer farms
19 in this state.

20 Penn Ag appreciates the opportunity to offer these
21 comments.

22 SENATOR WAUGH: Thank you, Mr. Peechatka. And
23 finally, Mr. Adams from the Ag Coalition.

24 MR. ADAMS: Thank you. I would like to thank both
25 committees for the opportunity today. And Senator

59

1 Waugh, I do like a challenge, but having less than one
2 minute, I am not sure I am going to be able to follow
3 through with that.

4 SENATOR WAUGH: Do the best you can. Thank you.

5 MR. ADAMS: My name is Jim Adams. I am the
6 President and Chief Operating Officer of Wengers Feed
7 Mill. That is a 60-year old agri business firm that
8 operates in generally the Central Pennsylvania area.

9 But today I am representing the Ag Coalition. The
10 Coalition represents numerous agri businesses that
11 provide an infrastructure for family farmers to produce
12 wholesome, uniform and economical food products for
13 regional, national and international consumers.

14 Our businesses involve feed production, animal and
15 animal product production, agricultural buildings and
16 equipment, agricultural financial services and other
17 allied farm services.

18 We are also a group of agriculturists who are
19 committed to being good neighbors by following all
20 applicable laws and regulations and by protecting the
21 environment. Our members have the required permits
22 which often cost thousand of dollars to build and
23 operate their facilities. Many of their buildings
24 employ the latest technology to mitigate impacts to the
25 environment and provide multiple layers of protection.

60

1 They also have an excellent record of reporting problem
2 incidents in a timely manner to the proper authorities.

3 I have submitted my testimony for the record, and
4 I am just going to highlight a few of the points.

5 We do clearly recognize our responsibilities to
6 the communities around us, and we do want to be part of
7 the solution to the nutrients entering the Chesapeake
8 Bay. As you, Senator White, we have the same concern
9 that the Department strategy doesn't expand into the
10 regulation of issues that would be more appropriately
11 addressed through legislation. We have that concern.

12 As Mr. Rotz had mentioned, the ag. industry has
13 tried to introduce a number of technologies to improve
14 the amount of nutrients leaving their farms and going
15 into the streams. Our company alone has incorporated
16 the phytase enzymes into both poultry and swine feed.

17 As I looked through the Strategy document, I do

18 not see where the Department has given credit for the
19 phytase enzyme being in there specifically for the last
20 three to four years. So I think that should be
21 reexamined.

22 We are also interested in alternative uses for
23 manure, including manure to energy initiatives. The
24 simple transporting of manure from concentrated
25 animal areas to other regions is becoming cost

61

1 prohibitive as fuel prices increase. In addition, the
2 surrounding Bay states have subsidized their manure
3 transport which has allowed excess nutrients from their
4 industries to enter Pennsylvania and to further
5 complicate our farmer's efforts.

6 Just on the mileage, when we had the Environmental
7 Quality Boards' Ruling May a year ago and we went more
8 to a phosphorus based nutrient management planning, that
9 about tripled the amount of land that you needed to
10 spread the same amount of manure on.

11 Now when you have the fuel increases, we have gone
12 from approximately a 25-mile radius to haul your manure
13 and it's dropped down to about 15, that is not a linear
14 decrease. If you go back to your high school math and
15 you look at the areas of circles, that is about a
16 two-thirds reduction in the land area that you can now
17 find the same manure. So you have the phosphorus
18 increasing the land mass and the fuel decreasing the
19 amount of distance that you can go.

20 We are also interested in a fair and equitable
21 nutrient trading policy, one that is based on positive
22 incentives and not mandates as was mentioned here today.
23 One of our members alone has a million pounds of
24 nitrogen that is available. So anyone that is
25 interested in that trading, just contact me, and we will

62

1 put you in touch with them.

2 There is good news though. I was just at the
3 Chesapeake Bay last week. It looks pretty good. I know
4 we can dismiss that without proper scientific analysis,

5 but it is a jewel of the East Coast, and we are
6 interested in keeping that a good recreation area, a
7 good commercial fishing area and just a beautiful place
8 to look at.

9 The nutrients flowing into the Chesapeake Bay have
10 decreased since the initiation of the original
11 Chesapeake Bay Agreement. However, the cap goal
12 initiated by the agreement continues to put even greater
13 pressure on Pennsylvania agriculture.

14 The low hanging fruit has already been picked.
15 And anything new that comes is going to be at the high
16 edge of the return curve. So our return on investment
17 is going to result in less results for the farmers, or
18 the state agencies, and as you mentioned for the
19 taxpayers.

20 If you look at just one of the numbers in the
21 Strategy, from 1985, the origination of the Bay
22 Agreement to 2002, which is a 17-year period,
23 agriculture did reduce their nitrogen and phosphorus.
24 Now the goal that has been set before us is three times
25 that high, and it is not 17 years. It is now a five

63

1 year period.

2 I think that may be unrealistic, and we would like
3 more study to be done to be sure those goals can be met
4 in a timely manner. And if not, possibly just give
5 recognition of the progress that is being made and
6 redevelop the plan so that it is more realistic.

7 We also are proud of Pennsylvania for leading the
8 pay in the environmental area. It is great to be first
9 in creating sound environmental policy, but we can't
10 afford to be first in eliminating farm or stifling the
11 farming economy.

12 I would like to thank you again for the
13 opportunity to be here today. I am open for any
14 questions.

15 SENATOR WAUGH: Thank you very much, gentlemen. I
16 would like to recognize the efforts of our farming
17 community in Pennsylvania represented by all four of
18 you, including Brenda of the Grange and the significant
19 contributions that the farm community has made not only

20 in policy development and being in support of the
21 development of policy that sometimes has financial
22 impact, but also on the ground, out in the field. We
23 certainly recognize that, and we appreciate your
24 comments today.

25 Are there any questions?

64

1 SENATOR WHITE: I just have one. Mr. Rotz, in
2 your submitted testimony when you state the December,
3 2004 Pennsylvania Tributary Strategy listed as a goal
4 the retirement of over 260,000 acres of agricultural
5 land, I didn't hear anyone mention that today.

6 And with agriculture being the number one industry
7 in Pennsylvania, I have to say retirement of 260,000
8 acres of farmland is of some concern to me.

9 How is that being done under the Strategy, and
10 what do you see the impact of that as being?

11 MR. ROTZ: Thank you for raising the question and
12 noticing the figure. I didn't take the time to bring
13 that out in my brief report.

14 That is certainly what I was referencing when I
15 said we want initiatives, best management practices that
16 help farmers farm better rather than just taking the
17 land out of production.

18 SENATOR WHITE: Is that specifically in the
19 Strategy, that 260,000 acres are going to be taken out
20 of production?

21 MR. ROTZ: That is a goal. That is one of the
22 goals we question how realistic is it. You ask how can
23 that be done? It is currently being done under programs
24 such as Conservation Reserve Enhancement Program which
25 you probably heard some stir about across the state.

65

1 These are financial incentives to take farmland out of
2 production. Certainly a program like CREP, which the
3 Farm Bureau supports, in its proper context, there's
4 reasons to have land taken out of production.

5 However, what we are seeing in the programs like
6 CREP is entire farms being taken out of production

7 rather than a floodplain or some highly erodible soils.
8 Those are our concerns.

9 And your question is right on the mark, what is
10 implication to agriculture? Obviously, we're destroying
11 the infrastructure of agriculture as we eat away at the
12 land base. The land disappears; the farmers disappear.
13 The supporting industries disappear. And we are talking
14 about the leading -- at least a leading industry of the
15 state here.

16 SENATOR WHITE: Thank you.

17 SENATOR WAUGH: Senator Musto, you have a
18 question?

19 SENATOR MUSTO: No.

20 SENATOR WAUGH: I have one question very quickly,
21 legacy sediment. I think all of you -- at least two of
22 you mentioned legacy sediment. How do you see the
23 agricultural community participating in a mission to
24 mitigate legacy sediment, be a legacy sediment issue?

25 I am not trying to stump you. There are literally

66

1 hundreds of thousands of tons of sediment if we were to
2 engage in a program like that that have to be put in
3 place and stabilized somewhere. So that's my hint. How
4 do you see that?

5 MR. ROTZ: It's a good question. And I think from
6 what I understand, the jury is still out on what you can
7 do. There's a lot of talk also in the Tributary
8 Strategy of forested buffers and that type of thing.

9 My understanding is the reality is you can put
10 forested buffers into some of these what we consider
11 floodplains which are really just legacy sediment, have
12 a Katrina, and you are going to wipe out the forested
13 buffer as well as all the topsoil.

14 I guess to me it raises a question maybe we are
15 better off topping off that kind of land and keeping a
16 good cover crop on it rather than planting trees which
17 are not so good at holding down the topsoil. It holds
18 soil in general, but your topsoil is not being held.

19 SENATOR WAUGH: Have any of your organizations --
20 I know this is all new stuff -- explored or maybe I

21 would even suggest you may want to take a look at
22 exploring as discussions about legacy sediments
23 continue, I believe they will.

24 What sort of cost, what sort of logistical support
25 would be needed to relocate those soils to an area that

67

1 would become another productive area for agricultural
2 purposes? Do you see what I am driving at?

3 MR. ROTZ: Right.

4 SENATOR WAUGH: I know you don't have an answer
5 today.

6 MR. ROTZ: Obviously, at an extremely high cost.

7 SENATOR WHITE: You are talking dredging
8 essentially?

9 SENATOR WAUGH: It wouldn't necessarily be
10 dredging, but earth moving would be involved. It would
11 be an interesting -- I think that the ag. community has
12 a role in that part if we continue to discuss it.

13 There are some who say this could really be a
14 profit center because of the richness of those soils
15 that are located most times on a farm in an area that
16 maybe today isn't being farmed or is viewed as more of a
17 buffer area. That is all.

18 I don't want to waste time. That is all open for
19 discussion, but it is an interesting discussion.
20 Anything else? Thank you, gentlemen for being here. We
21 appreciate your input very much.

22 SENATOR WHITE: The next witness who will testify
23 er is Mr. John Brosious of the Pennsylvania Municipal
24 Authorities Association.

25 MR. BROSI OUS: Good morning, Madam Chair, Chairman

68

1 Waugh, Senator Vance, Senator Musto. I am here to speak
2 on behalf of many of the publicly owned treatment plants
3 that will be impacted by the Bay Tributary Strategy. At
4 this point, that is 166 of the 191 sewage treatment
5 plants that have been identified.

6 I would like to note we have been meeting
7 regularly with DEP since February. Those meetings have

8 been informative and productive, yet many questions
9 remain unanswered, and many issues need to be clarified.

10 In fact, just last week we had two meetings with
11 DEP and the impacted entities; one on the general
12 strategy and the second on the trading program. We
13 welcome these opportunities to continue to engage all
14 stakeholders to find solutions that make us all partners
15 in this effort.

16 We all recognize that the Bay needs help.
17 Historically, one of our most productive estuaries, the
18 Bay in recent decades has seen a serious decline in its
19 aquatic environment from years of pollution,
20 over-harvesting, accumulation of sediment and nutrients
21 and loss of habitats. The precipitous decline of fish
22 species and blue crabs symbolize this deterioration.
23 However, it is the lowly oyster and the population of
24 the oyster, which much like the canary in the mine, has
25 become the prime symbol of the deterioration of the Bay.

69

1 Oyster populations are at one percent of their historic
2 level, one percent.

3 I would like to raise a fundamental question
4 relative to the Strategy, and it begs a larger public
5 policy question. Are we investing billions of public
6 and private dollars in the best manner to provide the
7 greatest environmental benefit to the Bay?

8 A lot of discussion was held previously,
9 particularly with the Secretary, on the numbers and
10 where the numbers come from. And not to appear to be
11 like Ross Perot up here and show you charts and graphs
12 and say I couldn't make this up, but in fact, the
13 numbers are right from DEP's own Tributary Strategy.
14 And that is one of the things I would like to draw to
15 you attention.

16 We happen to have the blue backed cover of the
17 Strategy. You can also get it off the DEP website.
18 What I have attached to the testimony is several pages
19 from that Strategy.

20 The first one you will notice is this particular
21 one has three pie charts on the right side and a number
22 of numbers -- sorry -- on the left side. This

23 represents the cumulative amount of contribution from
24 all of the entities that has been estimated to cause
25 nutrient and sediment accumulation in the Susquehanna

70

1 Basin and the Potomac Basin and eventually the Bay.

2 The first pie chart shows nitrogen. It goes then
3 to phosphorus and sediment. You will note there that on
4 page fifteen of the Strategy, it says that point sources
5 provide 11 percent of the nitrogen level. It also shows
6 that we provide 18 percent of the phosphorus level.
7 Those numbers changed a little bit when Secretary
8 McGinty gave them recently.

9 I would like to point out also the amount of
10 phosphorus listed for point sources as 630,000 pounds on
11 this particular page. When you go to page 28 of this
12 Strategy, it says that point sources will be able to
13 take out 750,000 pounds of phosphorus, more than were
14 even listed as contributing.

15 A second pie chart that PMAA developed is this
16 one. It is a single pie chart. What we have done is
17 take the cost that had been listed in the Strategy.
18 These costs appear on page 29 in narrative fashion. We
19 also used some data from page fifteen and from page 119.

20 This shows a little bit different picture than the
21 previous pie charts. You will see that some of the
22 least contributors have the larger cost to remove
23 nutrients. They would be respectively what is known as
24 mixed opener developed, which is essentially your urban
25 BMP's for stormwater and open space for 5.6 billion

71

1 dollars.

2 Additionally, you have septic systems. They are
3 only four percent of the nitrogen contribution. Their
4 reduction would cost over 1.6 billion dollars.

5 You will see agriculture and point sources here
6 also. The point source numbers, we have a note
7 underneath that. The number of 376 million that Senator
8 White referred to earlier, this is right from the last
9 page I will talk to in a minute. It also reflects a

10 number generated based on 2000, the year 2000 figures,
11 and applied to at the time 124 sewage plants that were
12 originally included in this document.

13 We have added the inflation rate over a five-year
14 period taken from the Engineering News Record which is
15 17 percent, and estimate that those 124 plants would now
16 be up to 500 million. Again, just using the number that
17 is in the Strategy.

18 Interestingly enough, that number has now risen to
19 191. And I would submit to you that 191 plants and a
20 190 million dollar estimate is \$1 million per plant to
21 do nutrient and phosphorus reduction. And that simply
22 is not true. And that goes against many of the numbers
23 we have generated.

24 I will briefly note some of those just as a point
25 of reference to the City of the Williamsport, 26 million

72

1 to reach the first level of nutrient reduction; Derry
2 Township here in Dauphin County, 5.5 million; Harrisburg
3 Authority, a minimum of 40 million; Eastern Snyder
4 County, 3.5 million; Mifflinburg Municipal Authority, 6
5 million; and University Area Joint Authority in Centre
6 County, 6.2 million.

7 Those six plants combined at the low end -- and
8 that is only getting to the first level of treatment --
9 are \$81 million. There's 155 more plants that get added
10 to that cost figure.

11 The last thing I would like to hold up, it is also
12 attached to our testimony is page 119. It is the very
13 last page of the Strategy. These are the numbers -- the
14 estimates I would say that apply to all of the impacted
15 entities and their respective units of reduction of
16 nutrients and sediments and those costs.

17 You will see they are listed out there going both
18 vertically and horizontally. There are subtotals. I
19 would like to draw your attention though if you go
20 across the top to capital cost to the last column, you
21 will see that that cost is 8.2 billion dollars. If you
22 go across that page, you will see payment on capital
23 costs or debt service and annual operation and

24 maintenance, those costs added together add another 1.3
25 billion dollars to that 8.2 billion dollar figure.

73

1 We have heard a lot of talk about what it costs to
2 remove nutrients. Some of the numbers that we have
3 seen, Agriculture can remove a pound of nitrogen for
4 about \$10; although that number can be as high as \$21
5 per pound or possibly as low as \$4.

6 Conversely, a sewage treatment plant might pay
7 \$90.00 per pound initially, but after the equipment is
8 installed and running, we would see that number dropping
9 to as low as \$8 per pound.

10 Another number that we have particular difficulty
11 with is the 20/10 flow number. That is the number that
12 all sewage treatment plants will be given by DEP. That
13 is the number that we need to use when we make our
14 calculations for the amount of nutrients that we will be
15 reducing.

16 To date, we have not had a clarification on the
17 exact way or formula that number has been put together
18 by the Department. That number is very critical because
19 it is also tied to the amount of cost we will have to
20 invest at each plant whether we are at the level of
21 eight milligrams per liter and one for nitrogen or
22 phosphorus, or we have to drop even lower.

23 Additionally, any new sewage treatment plant will
24 get what is called a zero discharge. Because the way
25 the strategy caps the amount that we are putting as a

74

1 contributor, any new plant will be above and beyond that
2 cap. So there will be zero discharge accredited to
3 them. This is not technologically feasible. It would
4 cause significant economic development implications, and
5 it forces the community into an expensive alternate
6 treatment or into a trading program.

7 The nutrient trading program, we have had several
8 meetings with the Department. Right now, it appears
9 that will come out as a draft interim policy and be
10 posted in the Bulletin in the next few weeks. That will

1 sewer plants. And the Virginia Legislature committed to
2 finding a new funding source for long term Bay related
3 activities.

4 I would also like to mention on behalf of the
5 other local government associations representing the
6 counties, cities, the boroughs and townships of the
7 first and second class, a few concerns that they also
8 have with the Strategy.

9 Number one, the storm water management piece falls
10 largely on their shoulders. Counties from a planning
11 perspective, the municipalities from an implementation
12 perspective. That cost as you saw in this Strategy is
13 estimated at over five billion dollars.

14 Additionally, the municipalities may run their own
15 sewage treatment plants. They are not all run by
16 authorities. In fact, out of 161, only about 55 are run
17 by authorities. So they would be responsible for the
18 reductions at their sewage plants also.

19 And finally, this would be mostly for the
20 townships of the second class, the septic system
21 denitrification program which is listed on both page 29
22 in the narrative and 119 in the table could potentially
23 impact 288,000 citizens at a cost of over a billion
24 dollars. And that would fall mainly on the shoulders of
25 the townships of the second class.

1 To get to my last two points, public input, we had
2 a lot of discussion about the amount of public input or
3 possibly the lack of public input. We feel it is very
4 important that all of the impacted entities have an open
5 discussion on what is in the Strategy, and that this
6 include the legislature, DEP and EPA.

7 The Strategy was put out earlier this year as a
8 strategy. It was not put out as a formal regulatory
9 document that would have a comment and response period
10 for the Department. With the exception of this hearing
11 today in front of the legislature, it has not been given
12 a formal public hearing in front of the legislature to

13 discuss the issues that many of us raise that we feel
14 are inherent in the Strategy.

15 The potential total cost of this Strategy to
16 communities and citizens in Central Pennsylvania alone
17 in the next five years is equivalent to one-third of the
18 annual state budget. The eastern part of the state and
19 the western part of the state are not impacted the way
20 the central part of the state is with the Chesapeake Bay
21 Strategy.

22 Finally, a requested action. We would ask that
23 DEP hold implementation of the Strategy until the
24 following occur: A cost benefit analysis that fully
25 depicts all cost impacts and environmental benefits, a

78

1 pursuit of alternatives and options not previously
2 considered, detailed cost and funding scenarios, a
3 general public acceptance of the Strategy, initiation
4 and operation of a viable trading program, enactment of
5 pertinent regulatory requirements and the development of
6 an enforcement strategy should that be necessary.

7 Finally, I would like to end with the opportunity
8 to engage all stakeholders to find solutions that make
9 us all partners to this effort should continue and take
10 place to ensure that the greatest environmental benefit
11 with the wisest investment of money to achieve our goal,
12 the restoration of the health of the Bay. Thank you
13 very much.

14 SENATOR WAUGH: Thank you, Mr. Brosious. Are
15 there any questions?

16 SENATOR WHITE: A question on these numbers. The
17 numbers aren't matching up. The Secretary told us that
18 the capital cost of this project was \$190 million. As
19 you point out, there are 190 facilities impacted -- or I
20 believe she said 20 percent of which are currently
21 meeting the standards.

22 So you are right. The math under that comes out
23 to just roughly a little over a million dollars per
24 plant, but the numbers you gave us were significantly
25 greater than that.

79

1 And the numbers on this table -- I thought I
2 understood the Secretary when I asked her about the
3 discrepancy to say that the numbers on the pie chart
4 that I was referencing were for the entire tributary
5 strategy. So I thought she meant this was all of the
6 states' money in the pot, not just the Pennsylvania
7 piece.

8 MR. BROSI OUS: Actually, Senator, that is titled
9 cost to Pennsylvania. That is Pennsylvania Tributary
10 Strategy Cost Table.

11 SENATOR WHITE: That is the Pennsylvania cost?

12 MR. BROSI OUS: These are the estimated
13 Pennsylvania costs. These are costs for the impacted
14 entities as laid out in the Strategy.

15 SENATOR WHITE: You are telling me that those
16 capital costs will exceed \$190 million?

17 MR. BROSI OUS: We have a difference of opinion
18 with the Department on the cost to sewage treatment
19 plants. A month ago, we were told they were
20 \$280 million, even with the addition of 44 new plants.

21 That number last week we were told is down to 190
22 million. We simply began with the number that was in
23 the Strategy, 376, put the rate of inflation on there
24 keeping that at the 124 plants initially listed in here,
25 and came up with a minimum cost of 500 million.

80

1 That minimum cost is the minimum amount of effort
2 required at each plant. That would be eight milligram
3 per liter nitrogen, one phosphorus.

4 Many of those sewage treatment plants when they
5 get their 20/10 flow will have those numbers decreased.
6 Because once they hit that flow number, they are locked
7 into a poundage figure.

8 So in order to keep that poundage figure on an
9 annual basis, they will have to reduce treatment from a
10 level of eight to possibly six or five or even lower.
11 And we would see that those costs significantly
12 increased as the amount of treatment increases to keep
13 that poundage level.

14 SENATOR WHITE: I am also concerned about you said
15 to me that new plants are getting a near zero discharge
16 permit?

17 MR. BROSI OUS: The way the strategy is set up
18 because we are not really sure what new plants might
19 add, they are not accounted for in the capload right
20 now.

21 If you were to build a new sewage treatment plant,
22 you would be responsible somehow to come up with a way
23 that you would have a net zero discharge of nitrogen and
24 phosphorus absent the credit you would get for taking
25 septic systems offline. Whatever credit you would get

81

1 for removing septic systems and hooking them up, that
2 would be deducted from that -- or added to it I should
3 say. But essentially, you would then be forced to
4 either come up with some alternative technology such as
5 spray irrigation or drip irrigation or immediately go to
6 a trading situation to offset those credits by
7 purchasing them somewhere else.

8 SENATOR WHITE: I see. Thank you.

9 SENATOR WAUGH: Senator Musto?

10 SENATOR MUSTO: Your last statement is addressing
11 the new plants; am I correct?

12 MR. BROSI OUS: Yes, Senator.

13 SENATOR MUSTO: The Pennsylvania Tributary
14 Strategy Cost Table at eight billion dollars, I do not
15 see CSO's considered here in this table. Am I correct
16 or incorrect?

17 MR. BROSI OUS: It is our understanding that the
18 application of CSO to your number of the sewage
19 treatment plant, that number will also be subtracted.

20 In other words, if you are capped at say a
21 thousand pounds per year at your sewage treatment plant
22 and you are also a CSO plant where during your wet
23 weather, you would have to estimate the amount of
24 nitrogen and phosphorus going into the watershed during
25 those wet weather periods, and that would have to be

82

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Senator, as you are aware the Wyoming Valley Sanitary Authority met with you. I see they are listed in DEP's testimony as one of them that meet the requirements as you recall from that conversation, they indeed meet the April one requirement. They meet them about six months out of the year.

They do not meet them in the winter, and they do not meet them in times of heavy flow. So while that 20 percent number that the Secretary mentioned may at times meet the criteria, I do not believe that we would stand by that 20 percent number.

As an example, another authority in the Senator's District, Mountaintop Authority also was on the list as meeting it. That was until they were told to remove their break point chlorination process where they were at eight milligrams per liter for nitrogen. That number has a little bit of fluctuation in it also.

SENATOR MUSTO: Certainly in some areas, nutrient reduction cannot be addressed actually without correcting CSO's. Is there a way to arrive at what percentage CSO's contribute to the nutrient levels?

MR. BROSI OUS: I do not have that figure. Perhaps the Department or the Bay Commissioner or EPA might have the answer to that. I don't.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

SENATOR MUSTO: You talked about the treatment technologies earlier. What sort of treatment technologies will your members have to use to build to meet the new nutrient reduction levels?

MR. BROSI OUS: The technologies are a little bit different for the two products that we would have to remove. If we look at phosphorus first, phosphorus is a little bit easier for sewage treatment plants to neutralize and remove because that is for the most part a chemical reaction.

By chemical treatment of the effluent, we can precipitate the phosphorus and remove it. That is not as costly unless you have a lot of phosphorus.

On the other hand, nitrogen is more of a physical reaction. That takes time in settling tanks and

16 chambers. And usually, it requires more expensive
17 solutions such as building more tanks, adding more
18 treatment facilities or taking away existing capacity in
19 the plant that you have now.

20 So you would be giving up capacity in order to
21 enhance the removal of nitrogen. That is a little bit
22 more expensive proposition for us.

23 SENATOR MUSTO: How would the sewage treatment
24 plant achieve their goal by reducing the nutrient
25 levels? I am talking about finance.

84

1 MR. BROSI OUS: Short of any funding that might be
2 available through PENNVEST in either grants or loans,
3 that 50 million dollars would go pretty quickly. The
4 estimated sewage needs in Pennsylvania -- and this is a
5 2000 figure -- is 8.1 billion dollars. I think most of
6 you are familiar. We testified before about some of
7 that.

8 There is a drinking water need also that is tied
9 to some of that PENNVEST money. It is not exclusively
10 for sewer. It is not exclusively for nutrient reduction
11 entities. It is not exclusively for the central part of
12 the state.

13 Absent that, our only recourse is either, one, to
14 enter into a trading program where perhaps we might be
15 able to buy credits from agricultural interests at a
16 lower rate and offset our requirements that way. Or
17 two, to actually capitalize the cost and pass those
18 costs on through increased rates to the consumer.

19 SENATOR MUSTO: So you feel your members will
20 participate in the trading program?

21 MR. BROSI OUS: I would like to get Jim Adams'
22 number because if he has a million to sell of nitrogen,
23 we've probably got some plants who would be interested
24 in buying that.

25 SENATOR MUSTO: But you are not totally sure what

85

1 the trading program will be?

2 MR. BROSI OUS: At this point in time, we have had

3 significant and lengthy discussions with the Department.
4 We have had two meetings. They have gone five hours
5 apiece. A great amount of useful information has been
6 exchanged. A lot of ideas have been put on the table.

7 I think the thing that concerns us is that a
8 document will come out that is very skeletal at this
9 point, and that we are kind of making up the rules as we
10 go along.

11 We were very heartened to hear the Secretary say
12 that if we indeed engage in trading and perhaps the
13 responsible party on the other one falls down on their
14 part of the agreement, the plant or whoever, who put the
15 money up to begin the trade would not be held
16 responsible, but that DEP would ensure that those
17 credits came from elsewhere or that they were enforced.

18 There are a lot of those issues out there right
19 now. The downside though is we have seen sewage
20 treatment plants this summer already get permit limits.
21 They are not only the 166 that are on the list as
22 significant. We have seen several nonsignificant.
23 These would be less than 400,000 gallons a day.

24 Some plants with as little as 20 and 30,000
25 gallons a day have received limits for nitrogen and

86

1 phosphorus. They never received a letter that the
2 significant guys received saying you are going to get
3 monitored reports. You are going to get limits. We are
4 going to be working with you.

5 There is already a need for some communities to
6 entertain the idea of trading or with a three-year time
7 frame staring them in the face to start their design and
8 financing and construction so that this is accomplished
9 in the three-year time period under their permit.

10 SENATOR MUSTO: Thank you.

11 SENATOR WHITE: Do we now know how the cost of a
12 credit is going to be determined?

13 MR. BROSIUS: I would say we do not know that,
14 but perhaps that would be something better answered by
15 the Department. I will say the cost of a credit will
16 probably differ depending on where that credit

17
18
19
20
21
22
23
24
25

For removal of a credit, a credit is a credit whether you remove a credit of nitrogen in Williamsport or Harrisburg. But the trading of a credit because Williamsport is so far away from the eventual source, the Chesapeake Bay, their credit may not be worth the same. So in other words, it would be two credits of their removal would equal one credit down in the southern part. That is a detail I believe needs to be

87

1

worked out yet.

2

SENATOR WHITE: It certainly needs to be one that seems to be worked out. Thank you, Mr. Brosious.

4

I want to thank the witnesses for getting us close to back on schedule in response to Senator Waugh's request.

6

7

I would like to give the stenographer a five minute break here. We will resume promptly in five minutes. Thank you.

9

10

(A recess was taken.)

11

AFTER RECESS

12

SENATOR WHITE: We will resume the hearing.

13

Senator Waugh was called to his office, but will return.

14

Our next witness is Matthew J. Ehrhart,

15

Pennsylvania Executive Director of the Chesapeake Bay Foundation. Welcome.

16

17

MR. EHRHART: Thank you. Madam Chair, members of the committee, I appreciate the opportunity to be here today on behalf of CBF and our 140,000 members. We have been at this a long time. We are glad to have this forum and be able to discuss it with the committees.

21

22

Over 2347 miles of Pennsylvania rivers and streams, and nearly the entire Chesapeake Bay are listed on the Federal Clean Water Act 303(d) list impaired by excess nitrogen and phosphorus from sewer plants, farms,

24

25

88

1

urban runoff and other sources. In recent summers, the

2

Bay has experienced record "dead zones" where up to

3

40 percent of the volume of the Bay has been devoid of

4 life supporting oxygen. And Mr. Brosious made so much
5 of the resources question that I will skim them in the
6 interests of time.

7 In order to address these problems caused by the
8 excess nutrients, the Bay watershed states, Washington,
9 D.C. and EPA entered into the Chesapeake 2000 Agreement
10 with the goal of removing the Bay from the 303(d) by
11 2010.

12 To this end, Pennsylvania has committed to reduce
13 its nitrogen and phosphorus contributions to the Bay by
14 approximately 35 percent by 2010. Pennsylvania has then
15 drafted a Tributary Strategy setting forth a plan for
16 how these commitments would be met.

17 And I'll take the opportunity to address some of
18 the main components of this strategy and CBF's thoughts
19 about them.

20 Wastewater treatment facilities are the second
21 largest source of excess nitrogen and phosphorus in the
22 Bay watershed. EPA estimates that Pennsylvania sewage
23 treatment plants and industrial waste dischargers
24 discharged almost 16 million pounds of total nitrogen
25 and 1.7 million pounds of total phosphorus to the

89

1 Susquehanna and Potomac Rivers in 2003.

2 The Tributary Strategy provides that DEP will
3 incorporate load limits for total nitrogen and total
4 phosphorus and discharge permits of all significant
5 dischargers. Implementation became effective on
6 August 29th of 2005 with the final revisions to
7 Maryland's Water Quality Standards for the Chesapeake
8 Bay.

9 Enforceable permits limits are required under the
10 Federal Clean Water Act for any discharge of pollutants
11 that cause or contribute to the impairment of downstream
12 waters. In this sense, the requirement for a sewage
13 treatment plant to substantially reduce nutrients in the
14 wastewater effluent is a Clean Water Act issue and no
15 longer totally a Tributary Strategy issue.

16 CBF initially advocated for a limited technology
17 requirement, thereby maximizing the nutrient load of
18 reductions from STPs. As the discussion evolved, CBF

19 accepted the compromise approach proposed by DEP in the
20 Trib. Strategy. And the reductions proposed are
21 proportional with the load produced by the facilities.
22 We felt that that was equitable.

23 CBF joined with PMAA to advocate for the passage
24 of the Water and Wastewater Infrastructure Bond Act with
25 a view that wastewater treatment plants needed

90

1 substantial additional funds to add NRTs to their
2 facilities. We have had some discussion about the Act.
3 I won't belabor it any further.

4 I also want to note with respect to point sources
5 that DEP, as you have heard, is in the final stages of
6 developing the nutrient trading guidance that will allow
7 wastewater treatment plants that overperform and farmers
8 that exceed threshold requirements to generate credits
9 that they can trade to underperforming plants. Although
10 some key technical details of the policy are still under
11 discussion, the basic premise of allowing economic
12 efficiencies to guide cost-effective treatment
13 strategies is a good one.

14 The proposed Pennsylvania nutrient trading program
15 is poised to be a national leader and will set the bar
16 for all such efforts. There are about forty or fifty
17 other trading programs in the nation, and this has by
18 far the most comprehensive and thoughtful framework.

19 As noted earlier, agriculture has made tremendous
20 strides over the past decades, and I in no way want to
21 minimize all the effort and work that has been done.
22 That said, the nutrient runoff from farms and other ag.
23 operations is still the largest cause of pollution in
24 the Pennsylvania State watershed and accounts for about
25 49 percent of the nitrogen and 63 percent of the

91

1 phosphorus load.

2 The runoff is also the largest source of nutrient
3 impairment to Pennsylvania and streams affecting
4 thousands of miles of water. To ensure clean, healthy
5 rivers and streams and abundant fish and wildlife, we

6 must preserve our farmland, keep our farmers farming and
7 manage our agricultural land in an environmentally safe
8 fashion.

9 Over the last 12-months, CBF, the Chesapeake Bay
10 Commission and EPA's Chesapeake Bay Program have all
11 published documents on the implementation of ag.
12 related portions of the Strategy. And all those
13 documents essentially come to the same conclusions.

14 There are a handful of very cost effective
15 practices that are key to solving the problem.
16 Implementing traditional and enhanced nutrient
17 management, conservation plans (which are already
18 required, but often go unimplemented), precision
19 feeding, cover crops, conservation tillage and
20 alternative uses for manure will dramatically reduce the
21 scope of the.

22 DEP has asked all County Conservation Districts in
23 the Bay watershed to develop county-level implementation
24 plans that prioritize district efforts to implement the
25 most cost effective strategies. This is an excellent

92

1 decision in that the Districts have the expertise and
2 relationships with landowners to make those changes
3 happen. Indeed, the desired changes may only be
4 achieved in working with the Districts. However, we are
5 asking the right people to do the right thing without
6 giving them the resources to do so.

7 The Tributary Strategy based on the ballpark
8 numbers that we have discussed before fails to state
9 where the 592 million in ag. funding will come from
10 leaving the Conservation Districts struggling with how
11 to achieve the goals that have been given to them.

12 We believe that the nutrient reductions that are
13 needed can only be accomplished with significant
14 increases in both state and federal funding and the
15 cooperation of Pennsylvania's producers.

16 Pennsylvania farmers are under a host of
17 increasing economic pressures. They receive less than
18 half as much per unit of reduction as they did in the
19 1950's. Land prices, equipment prices, property taxes

Hearing Sept 20' 05 Transcript.txt
20 and inheritance taxes have all outstripped inflation.
21 Their demand is inelastic.

22 With no way to influence the price they are paid
23 for their products, many simply are not in the financial
24 position to protect water quality in the public interest
25 and remain economically viable.

93

1 Producers know what is needed; we need to supply
2 them with the resources to do the job. Without these
3 resources, agriculture could eventually be pushed out of
4 the watershed leaving us to deal with the larger and
5 more costly impacts of sprawl development.

6 Chairman Waugh and Senator Wenger have introduced
7 the Farmers First Agenda. If enacted, it will preserve
8 more farmland, create economic relief to help keep
9 farming profitable and provide financial and technical
10 assistance to farmers for conservation practices.

11 An important piece of the Agenda that is of
12 particular significance to CBF is that manure disposal
13 alternative proviso. We believe that a multi million
14 dollar annual state investment is necessary to help
15 capitalize new alternative manure facilities that have
16 the necessary scale to deal with the problems.

17 CBF is equally involved with discussions leading
18 up to the 2007 Federal Farm Bill. We are working with
19 groups from around the nation and the region, including
20 the Bay Commission, to help Pennsylvania and other
21 states in the Bay watershed receive their fair share of
22 farm bill funds.

23 Farmers in our region only receive one to three
24 cents of federal agricultural funding for every dollar
25 of production. The national average is double that at

94

1 six cents per dollar with some states, such as North
2 Dakota, receiving up to five times as much as
3 Pennsylvania farmers.

4 These funds need to be reallocated so that
5 Pennsylvania and the entire region have an equitable
6 share of our federal farm bill dollars. And it will be

7 critical that all of us in Pennsylvania work together
8 with our federal delegation to help make this happen.

9 I would like briefly address stormwater as one of
10 the other key components that have been brought up here
11 today. Urban runoff accounts for about seven percent of
12 the nitrogen and five percent of the phosphorus
13 delivered to the Bay from the Commonwealth. The
14 retrofits needed to implement the BMPs set forth in the
15 Tributary Strategy to address urban runoff is estimated
16 to cost 5.6 billion. Those are the big round numbers
17 that are Pennsylvania numbers but generated from
18 averages across the entire watershed.

19 In obtaining these nutrient reductions from the
20 implementation of these practices is physically
21 difficult. It is very expensive, and it poses a
22 tremendous obstacle to full implementation of the
23 Strategy.

24 The integration of tributary strategy
25 implementation with Act 167 and NPDES Phase II

95

1 permitting, including MS4s, will facilitate the most
2 cost effective implementation. New discussions about
3 legacy sediment and reattaching tributary watersheds to
4 effective floodplains may provide new, more cost
5 effective solutions to addressing stormwater, sediment
6 and nutrients in concert throughout the watershed.

7 I just want to conclude by saying that we have
8 been working on this for a long time, and I know there
9 has been some impatience on the part of our organization
10 in the past. I do have to say that within the past two
11 to three months, the partners have been working together
12 to try to find creative solutions as never before. But
13 what it comes down to ultimately I think is questions
14 about where the funding is going to come from.

15 So I want to thank you for the opportunity to be
16 here and testify, I will be glad to answer any questions
17 that you have.

18 SENATOR WAUGH: Thank you, Matt. I appreciate
19 your testimony. Any questions?

20 SENATOR WHITE: I have just a couple. Obviously
21 what we are talking about here, this is all about

22 resources. I am very concerned that without any
23 legislative involvement, it appears to me that
24 significant, significant resources have been put on the
25 table here and committed, resources that we may or may

96

1 not have.

2 Has anyone done a cost benefit analysis of any of
3 these proposals to the best of your knowledge?

4 Let me be more specific. We are looking at a
5 situation where urban runoff in our testimony accounts
6 for seven percent of the nitrogen and about five percent
7 of the phosphorus, but the cost of dealing with that is
8 5.6 billion dollars.

9 Now is that game worth the candle, and has anybody
10 looked at all of these things, looking at the size of
11 the contribution to the pollution relative to the cost
12 of dealing with that piece of it?

13 MR. EHRHART: I think a significant amount of
14 analysis has been done which has led folks to the ag.
15 point source reductions which are so cost effective and
16 the wastewater treatment plant upgrades, with all these
17 unanswered questions about how to achieve, let alone pay
18 for some of the stormwater issues put off until later in
19 the hopes that some of the lack of precision in the
20 model may be that we get closer to our goals than we
21 thought with the more cost effective strategies.

22 I think it is fair to say unfortunately that these
23 issues have not been ranked against a lot of other
24 environmental concerns.

25 SENATOR WHITE: Which is very important.

97

1 MR. EHRHART: And needs to be ranked and
2 evaluated. I would say that a number of people have
3 made this point that much of this work particularly on
4 the nonpoint source work that needs to be done is of
5 tremendous benefit to Pennsylvanians, to the rivers and
6 streams of Pennsylvania, the recreational fishing
7 industry. There is value here that far exceeds simply
8 the Bay issues at the table.

9 SENATOR WHITE: They are difficult to quantify. I
10 thought I heard someone say there is a review date at
11 some point. Is there any possibility? I mean if these
12 goals are simply not achievable within the available
13 resources, what happens then?

14 MR. EHRHART: There is a 2007 review of the
15 Tributary Strategies and the implementation of those
16 strategies. And as the Secretary noted, there are some
17 key distinct points of this that are mandatory in one
18 format or another.

19 But the vast majority of the reductions discussed
20 in the Tributary Strategy are voluntary and through 2010
21 will continue to be voluntary. At which point if our
22 goals are not met, a TMBL process for the entire Bay
23 region may be instituted. And I don't think anybody has
24 a good handle on exactly what that is going to be. It
25 may depend quite a bit on what happens between now and

98

1 then.

2 SENATOR WHITE: Thank you.

3 SENATOR WAUGH: Just to answer your one part of
4 your question, Senator White, to the extent that all of
5 the best management practices under the Bay program -- I
6 don't know if BMP is the right term. How many are
7 there, 30 something?

8 MR. EHRHART: The list is more than that with the
9 urban.

10 SENATOR WAUGH: 34 practices under the program
11 that are acceptable were analyzed by the Chesapeake Bay
12 Commission, and I will ask Ann to give you an update on
13 that. We do have a cost benefit analysis performed.
14 Matt, thanks a lot for being here. Thank you.

15 SENATOR WHITE: Thank you.

16 SENATOR WAUGH: That brings us to our next
17 presenter Marel Raub -- two ladies that I have the
18 pleasure -- outside of the work in General Assembly, I
19 have the pleasure of working with on a nearly daily
20 basis. I have the honor of serving as the Chairman of
21 the Chesapeake Bay Commission this year.

22 Marel Raub is the Pennsylvania Director. She will

Hearing Sept 20' 05 Transcript.txt
23 be making a presentation. And with her today is Ann
24 Swanson who is the Executive Director for the Tri-State
25 Commission.

99

1 And Marel, I will ask you to get us back on time.
2 You have two minutes.

3 MS. RAUB: Thank you. Good morning, Mr. Chairman
4 and Madam Chairwoman. Thank you for the opportunity to
5 testify here today.

6 A lot of what has been included in my prepared
7 comment has already been covered by previous speakers
8 this morning, so I am not sure I will stick to two
9 minutes, but it will be a lot shorter in time.

10 I designed my prepared testimony around the
11 questions that we as a delegation have received over the
12 past few months regarding the Tributary Strategy and
13 that the members of the delegation have fielded during
14 that time.

15 SENATOR WAUGH: Could I stop you for thing? The
16 Pennsylvania Delegation for the Commission is myself and
17 Senator Wenger from the Senate, House members
18 Representative Hershey, Representative Fairchild and
19 Representative Sutton. Public Commission members are
20 George Wolff, who was here earlier, and Secretary
21 McGinty. Actually Deputy Secretary Myers also graces us
22 with her presence.

23 MS. RAUB: That list is included in the outlined
24 presentation that you have as well. The Commission is a
25 tri-state legislative commission. So in addition to the

100

1 delegation for Pennsylvania, there is a delegation from
2 the state legislature in Virginia and the state
3 legislature in Maryland.

4 The purpose of the Commission is to inform the
5 state legislatures on matters of Bay wide and tributary
6 concerns. We get several questions specifically
7 regarding the tributary strategies. First of all, what
8 are the tributary strategies, why were they created,
9 what is a Commission, what is its role within the Bay

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

The Commission is a signatory to the Chesapeake Bay Agreement, the latest version being the Chesapeake Bay 2000 Agreement. The other Bay program partners which are signatories to the agreements are the Governors of Pennsylvania, Maryland and Virginia, the Mayor of the District of Columbia and the administrator of the US EPA.

Again, in your outline, you have a brief history of the Bay Agreements. 1983, the first agreement, formed the partnership that is the Chesapeake Bay Program. It laid the groundwork for initial nutrient reduction which became the initiative for the phosphate detergent ban.

Subsequently in 1987, there was an actual numerical reduction, a goal of 40 percent reduction

101

loads to the Bay. In 1992, there were amendments to that 1987 Agreement to continue that goal beyond the initial goal of the year 2000.

Subsequent to 1992, over 90 percent of the Bay waters had been listed as impaired under the Federal Clean Water Act triggering authority to develop total maximum daily loads which has been already talked about today.

The Chesapeake 2000 Agreement then addressed the total maximum daily load requirement bringing the partners to agreement to implement programs that would remove the Bay from that impaired water list which brings us to the Tributary Strategies.

By the time the Chesapeake 2000 Agreement was adopted, research and technology had developed to the point where nutrient loads could be targeted to specific areas of the Bay. And the Bay could be divided by designated uses, whether that be shallow water vegetative habitat, open water fisheries habitat, deep water habitat. And you will see also in your paragraph a description of those different segments of the Bay itself. So that there is not one across the board goal for the Bay, but that it is targeted to different designated uses within the Bay itself and therefore the

25 contributions of different tributaries to those specific

102

1 segments.

2 You will also see in your Power Point that the
3 Susquehanna -- the Susquehanna watershed is not only a
4 large part of the Chesapeake Bay watershed itself, but
5 that it is the significant contributor to the water in
6 the Upper Bay. Over 90 percent I believe of the water
7 -- of the fresh water entering the Upper Bay comes from
8 the Susquehanna.

9 Over 50 percent of the fresh water contribution to
10 the Bay in its entirety comes from the Susquehanna. So
11 when it comes to the specific habitats in the Upper Bay,
12 submerged aquatic vegetation and fisheries habitat in
13 the Upper Bay, the Susquehanna is a significant
14 contributor.

15 That's where we get to the Tributary Strategies
16 which allocate the loads based on what the effect of
17 that tributary is on the Bay.

18 You will also see in your Power Point that in
19 addition to the Bay program partners Maryland, Virginia
20 and Pennsylvania themselves, Delaware, New York and West
21 Virginia have also committed themselves through a
22 memorandum of understanding to the goals of Chesapeake
23 2000. And in addition to Maryland, Virginia, New York
24 Delaware and West Virginia, the headwater states are
25 also going through the process of developing and

103

1 implementing tributary strategies. So this is not an
2 effort that Pennsylvania is undertaking on their own.

3 We have heard a lot today about the cost of this
4 initiative and cost effectiveness of certain practices.
5 And last year, the Chesapeake Bay Commission did
6 undertake a cost effective analysis of all the approved
7 best management practices available.

8 And this publication which is referenced in
9 prepared testimony -- and I do have hard copies here
10 today -- outlines the top six most cost effective
11 practices when it comes to cost per pound reduced.

12 And those six practices are upgrades to wastewater
13 treatment plants and then five agricultural practices
14 cover crops, conservation tillage, traditional nutrient
15 management, enhanced nutrient manage and then animal
16 diet and feed adjustments.

17 Not only are these cost effective from a cost per
18 pound reduced standpoint, but also from the number of
19 pounds that can be reduced by full implementation of
20 these most cost effective practices.

21 It is estimated that 80.4 million pounds out of a
22 total of 103 million pounds of nitrogen can be reduced,
23 4.99 million out of 6.7 million pounds of phosphorus can
24 be reduced and 100 percent of the sediment reductions
25 can be achieved by full implementation of these cost

104

1 effective practices. That is 78 percent of the
2 nitrogen, 74 percent of the phosphorus and again
3 100 percent of the sediment.

4 As far as funding for these practices, you have
5 heard today about the Farm Bill initiative that the
6 Commission is currently working on. Opportunities in
7 the 2007 Farm Bill provide an opportunity for federal
8 money -- additional federal money to come into the
9 Chesapeake states to leverage current state money and
10 private money that is going towards these practices.

11 The delegation is also supportive when it comes to
12 point sources of a nutrient trading program that is a
13 market based program, and that is beneficial to both the
14 trader and the tradee.

15 Basically in conclusion, the Delegation supports
16 the use of the Tributary Strategies focusing on a local
17 level, how it can best meet our nutrient and sediment
18 goals, focusing on the most cost effective practices.

19 These cost effective practices in all cases might
20 not get us one hundred percent of the way there, but by
21 spending a small fraction of the dollars, they can get
22 us a great majority of the way there.

23 And we finally want to emphasize that all efforts
24 to improve the waters of the Bay will improve our local
25 streams and rivers here in Pennsylvania as well. So

1 thank you.

2 Ann and I are available to answer any questions
3 that you might have.

4 SENATOR WAUGH: Any questions?

5 SENATOR WHITE: I just have a comment. I will
6 look at your report with great interest. I am glad you
7 have done that.

8 Cost per pound is an interesting measure. If you
9 look at the cost, if this program were 100 percent
10 implemented with regard to agriculture and our
11 wastewater treatment plants, the total removed is only
12 12 percent.

13 So I still have a hard time deciding that these
14 huge costs -- I guess 12 percent is better than a poke
15 in the eye with a sharp stick, but it is a long, long
16 way from being there. And that does concern me about
17 cost benefit in a larger viewpoint.

18 MS. RAUB: Where is your 12 percent number?

19 SENATOR WHITE: I am looking at a graph here that
20 says that agriculture is 49 percent of the nitrates,
21 63 percent of the phosphorus, 72 percent of the sediment
22 for 7.2 percent. And it shows point sources at 11
23 percent of the nitrogen, 18 percent of the phosphorus,
24 and none of the sediment for 4.6 percent.

25 If my math is correct adding those two up takes

106

1 you to just under 12 percent.

2 MS. SWANSON: If I could speak to this, I would
3 have to look at the numbers that you were looking at.
4 But what I can tell you is that in the Chesapeake Bay
5 watershed, and also in Pennsylvania, the lion's share of
6 the pollutant load comes from agriculture and from point
7 sources. Obviously being Pennsylvania, your big share
8 comes from agriculture.

9 If you were to implement the best management
10 practices to their maximum potential that are contained
11 in this report, you would be able to capture -- and
12 specific to Pennsylvania, I would have to do the numbers

13 later -- but Bay wide, it is 75 percent of the nitrogen,
14 roughly three-quarters of the phosphorus and a hundred
15 percent of the sediment. So it is not 12 percent.

16 And the most amazing thing is that you could do it
17 for about a quarter of the price. So I think at the end
18 of the day when you look at all these numbers -- and I
19 will tell you, you are justified to be annoyed as you
20 look at these numbers and see that they are constantly
21 shifting, because in fact they are.

22 And we have our brains wrapped around these
23 numbers. I can tell you each night, it is twisted
24 because there's so many different numbers.

25 But the point is this: That it is prohibitively

107

1 expensive. But yet if we want clean waters in
2 Pennsylvania, and if we want a productive estuary
3 downstream, then we have to take additional strides.

4 So the question is then where we do take our first
5 steps? Point sources give you the clearest investment.
6 You get it out of the pipe, you've got it. You've got
7 it out of the pipe. So from a technological point of
8 view, it is a phenomenal investment.

9 The other big investment is in agriculture because
10 quite honestly, a BMP on agricultural land, the best
11 management practices, costs a fraction of developed
12 land. Developed land is outrageously expensive per
13 pound. It can be two, three and even four hundred
14 dollars per pound compared to say an agricultural
15 practice which could be \$4 a pound or a point source
16 which could be \$90 a pound.

17 So what is before this General Assembly and every
18 General Assembly that I staff in the watershed is where
19 do we make our best investment? Where do we move first?
20 Because we don't like the water quality that we have
21 now, and we can improve it.

22 Will we ever get to a hundred percent, to the 175
23 million pounds that should be in the Bay for nitrogen?
24 I don't know. But I do know this, if I had to lose a
25 hundred pounds and I lost 70, people would say I was

108

1 looking really good. And so would the Bay. And so
2 would your rivers.

3 SENATOR WHITE: You make some excellent points. I
4 am concerned about the health of the Chesapeake Bay.
5 But I have to point out that none of my constituents
6 live there. We are a big state with water quality
7 problems in all of our watersheds. So it does become a
8 question of fair allocation of a state with limited
9 resources.

10 I note that you are relying rather heavily, as is
11 everyone and very hopefully, on this trading program.
12 But one of the witnesses -- and I think it might have
13 been -- I can't remember which witness pointed out that
14 there are something like forty trading programs
15 nationally, and there have only been a handful of
16 trades.

17 We are really putting a lot of our trust in a
18 relatively uncertain basket here.

19 MS. SWANSON: That is why I am not so sure that is
20 your best basket. There are other practices that are
21 better.

22 Let me also say something. The Chesapeake Bay
23 happens to be what brings us together, and certainly it
24 is my employer. But I would say that there is no
25 practice that we are discussing here that isn't the best

109

1 choice for Pennsylvania. They are fine practices for
2 Pennsylvania water.

3 And if you do it at all -- the Bay is about your
4 geography. But you should do it for your local waters.
5 And your local waters will respond.

6 One of the best things about nitrogen, which I
7 know Senator Waugh has learned from the scientist who
8 addressed us, is that nitrogen is a perfect solution to
9 deal with in politics. And the reason is because it has
10 no memory.

11 This means you get the nitrogen out, and you can
12 see response in a very short period of time, within a
13 year. Some of the other pollutants, they lag on
14 forever, which is certainly not in a political time

15 frame at all. Let alone anybody's time frame.

16 And so I would really encourage you that these
17 choices are about your own rivers. They should be.

18 SENATOR WAUGH: Just to add, one of the things
19 that I am proud of the Commission for having done --
20 and it really started under the direction of
21 Representative Fairchild -- was, one, to analyze the
22 actual cost, and then, two, to follow up on that with
23 this report that was done last year. We just wanted to
24 know buck for buck where do we get the biggest bang.
25 All the numbers and everything aside, that is what this

110

1 report shows.

2 And no matter how much -- I know it is a lot of
3 money. I guess what we are struggling the most with is
4 whichever direction we go, where are we going to come up
5 with that. That is the challenge now. We are trying to
6 get something done on a bill or financed.

7 SENATOR WHITE: Good luck.

8 SENATOR WAUGH: Thank you. Mary Jo also mentioned
9 something that is more obvious to me all the time. And
10 that is that in the area that you represent, people
11 don't have a clue about the Chesapeake Bay. And the
12 further upstream we go, the more difficult it is to
13 explain and to frankly make the case. Because there are
14 folks upstream that have a lot of other important things
15 to deal with.

16 So I think that is one of the elements also. We
17 need to help educate -- one, get the money; two, help
18 get the questions answered; and three, don't make it so
19 cumbersome that it infringes --

20 MS. SWANSON: Thank you.

21 MS. RAUB: Thank you.

22 SENATOR WHITE: You will leave us a few of those
23 please. Thank you.

24 SENATOR WAUGH: Next is the Pennsylvania Builders
25 Association, and you are starting at your stop time.

111

1 You only have two minutes. Honestly come 12:30, we have

2 to be finished. So we have Pennsylvania Builders with
3 two individuals listed Mr. Fisher and Mr. Ashley, and
4 then we have the finally the Conservation Districts. I
5 would ask both groups -- all three presenters, if you
6 could, begin now to condense and give us a very quick
7 overview because at 12:30, we are going to wrap it up.

8 MR. FISHER: Thank you very much. I am here to
9 testify today on behalf of the Home Builders
10 Association, as a member of the association and chairman
11 of the Pennsylvania Builders Association Chesapeake Bay
12 Tributary task force. I am principal of R. J. Fisher &
13 Associates, an engineering and surveying firm. I am
14 also a registered professional land surveyor and a
15 professional engineer with a degree in water resources
16 engineering.

17 As a member of the building industry, I welcome
18 the opportunity to share our views regarding policies
19 that will shape the future of two areas of paramount
20 importance: the economic and environmental future of
21 Pennsylvania.

22 We join the State Department of Environmental
23 Protection in support of policies that preserve and
24 protect the state's environmental resources. At the
25 same time, we recognize that what happens in the 33

112

1 county area that forms the Chesapeake Bay watershed
2 affects the economic growth of all of Pennsylvania.

3 I am here today to share our industry's concern
4 with the Trib. Strategy because the policy impairs the
5 Commonwealth's ability to sustain the fragile balance
6 needed for growth and development -- the economic life
7 of Pennsylvania.

8 The policy fails to maximize the return for
9 dollars spent on the problems. It would just like to
10 agree with a lot of what we heard earlier today with the
11 Farm Bureau and the Municipal Authorities Association.
12 I think generally we share a lot of those same
13 sentiments.

14 Our main focus here is what it really does to the
15 building industry and the economic viability of

16
17
18
19
20
21
22
23
24
25

As it was presented, the Chesapeake Bay Trib. Strategy will force Pennsylvanians to build new homes and businesses elsewhere. The strategy will smother Pennsylvania's Smart Growth initiative, choke nearly every possible addition of workforce housing and vex every municipal authority with astronomical costs that will oppress homeowners with staggering sewer bills. It will cost Pennsylvania jobs.

The Trib. Strategy aims to reduce nitrogen and

113

1
2
3
4
5
6
7
8
9
10

phosphorus by regulating municipal sewage treatment plants - arguably already the most regulated source of nutrients already.

Under the Trib. Strategy, new wastewater treatment facilities will be required to release no nitrogen and phosphorus content. This policy would halt the addition of any new sewage treatment facilities given the technology to remove all of the nutrients from wastewater makes any sewage treatment plan unfeasible.

11
12
13
14
15

Many of the existing facilities were designed and financed with the capacity to serve for the future growth of homes and businesses when they opened. Many of them are already getting near or close to the limits of what their nutrients discharged from the wastewater is.

16
17
18
19
20
21
22

While they were designed to accommodate the higher levels of sewage input, the policy leaves them unable to allow new homes or businesses to connect to the sewage lines. Many would have to retrofit their facilities with costly technology. Passed onto customers, the flood of upgrades will sock homeowners with an indirect tax increase paid through sewer fees.

23
24
25

We are already seeing this in a lot of our local municipalities that have been notified by DEP, and they are coming up with what are we going to do, how are we

114

1
2

supposed to accept new homes into this.
So with that, we see a strategy that would choke

3 all types of development and building projects in the 33
4 counties by adding even more regulation of the sewerage
5 systems -- one source that is already very regulated.

6 As the Tributary Strategy trims nutrients that
7 flow into the Chesapeake Bay, it ignores the need of the
8 Commonwealth in attracting people to live in its
9 communities with business opportunities, new jobs,
10 growth. To make matters worse, the policy actually
11 encourages sprawl.

12 Pennsylvania's Smart Growth initiative calls for
13 building within existing communities, including dense,
14 affordable housing developments. In some areas, wise
15 community leaders planned for community expansion in the
16 municipal sewerage systems ready for new lines. Yet
17 these systems can't handle any more businesses or homes
18 with the tightened limits proposed by the Trib.
19 Strategy.

20 More than 16,000 homes were built in 2002 in the
21 33 counties with the Chesapeake Bay Trib. Strategy, and
22 the average cost of the homes is \$97,000.00. With a
23 policy that stymies growth through its burdens on
24 sewerage systems, a loss of half of those homes equates
25 to an investment loss of more than \$600 million.

115

1 That's \$600 million or three billion in five years
2 that could have been invested in Pennsylvania to the
3 hundreds of businesses, builders, roofers, excavators,
4 appliance salespeople, surveyors, landscapers and
5 plumbers -- it's the loss of livelihood.

6 The Chesapeake Bay Tributary Strategy identifies
7 agriculture as the primary source for nitrogen and
8 phosphorus entering the watershed. The proposed policy
9 with its \$8.2 billion total price tag -- and that is
10 from DEP's publication -- hits point sources, including
11 municipal sewerage systems, with far more than its fair
12 share.

13 Point sources proved the easiest source of
14 nitrogen and phosphorus to measure and regulate in the
15 half century since we began to understand the problems
16 excessive nutrients cause. These point sources already
17 do a good job of reducing nutrients. It is the one area

18 that is regulated that seems so easy for DEP to control.

19 Some of the other possibilities that exist is
20 obviously increasing some of the buffer zones and other
21 things that the policy has in there. I think those are
22 good ideas. I think some of the other experts could
23 suggest more cost effective strategy for some farming
24 operations with that.

25 We agree with some of the Farm Bureaus and

116

1 Pennsylvania Municipal Authorities Association as far as
2 different tax on that.

3 We suggest shifting some of the monies from mixed
4 open and developed land use maybe over to ag. to help
5 the ag. community with some of the problems that they
6 have.

7 And we concur with some of the Senator's
8 suggestion on further research of the legacy sediment.
9 That seems to be a pretty major issue that could get us
10 a pretty good bang for our buck if we got into this.

11 The trading scheme, we feel that is built on
12 pretty shaky ground. The ability to trade credits is
13 key to the strategy. However, it flaws are glaring.
14 The plan was drawn up without a lot of outside input.
15 How can communities be expected to make decisions with
16 their new permit limitations on that when they really
17 don't know how these systems are supposed to work? And
18 I think we need some more study on how exactly they
19 whole trading program is about to happen.

20 With that, I think our recommendation for the
21 Strategy would be to place a six-month moratorium on the
22 implementation of the Strategy.

23 The questions that we raise on the Tributary
24 Strategy clearly show that more study from outside the
25 Department of Environmental Protection is needed to

117

1 explore economic and other implications.

2 We need to reevaluate the Strategy and assign
3 costs in proportion to the amount of pollutants coming
4 from specific land use types and their cost

5 effectiveness. The cost benefit analysis that was
6 previously referred to.

7 We have to remove the zero nutrient discharge
8 requirements on new wastewater treatment facilities and
9 other point source dischargers because these
10 requirements are almost impossible to meet with the
11 existing technology and will be exceedingly expensive.

12 We have to provide for growth in existing systems.
13 I mean what we are talking about is limiting the
14 discharge, but not providing any room for any growth in
15 Pennsylvania.

16 In conclusion, the Pennsylvania Builders
17 Association believes the Chesapeake Bay Strategy
18 jeopardizes the economic future of the Commonwealth by
19 overregulation of a relatively minor source of nutrients
20 entering the Bay.

21 We hope that you will take the six months to a
22 year to reevaluate the impact the policy will have and
23 ultimately shift some of the burden in funding to other
24 sources which may be a little bit more cost effective.
25 Thank you very much.

118

1 SENATOR WAUGH: Thank you, Mr. Fisher and
2 Mr. Ashley. I never thought I would hear a Pennsylvania
3 builder ask for a six-month moratorium. Just kidding.

4 MR. FISHER: In effect, we are starting to get
5 moratoriums because municipalities are seeing this and
6 saying we don't know what to do with new planning
7 modules. They don't know what to do about approving
8 planning modules.

9 SENATOR WAUGH: Understood. Senator White, do you
10 have any questions?

11 SENATOR WHITE: No.

12 SENATOR WAUGH: I have no further questions. We
13 are also, as you can tell, trying to hit that 12:30
14 mark, too. Thank you very much. We appreciate your
15 time.

16 MR. FISHER: Thank you.

17 SENATOR WAUGH: Finally, Ms. Marquart. The
18 pressure is on, but we did split that last twenty

Hearing Sept 20' 05 Transcript.txt
19 minutes in ten each. You have ten minutes.

20 MS. MARQUART: Thank you very much. Thank you for
21 inviting us to provide --

22 SENATOR WAUGH: Could somebody change her name
23 tag?

24 MS. MARQUART: There's a few points that I would
25 like to make in the minutes remaining today before you

119

1 have to end.

2 First of all, I would like to point out that
3 Conservation Districts have a very long history with the
4 Chesapeake Bay Program.

5 In 1983 when the Program originally began, it was
6 originally created as a agricultural nonpoint source
7 pollution abatement program. At that time, Conservation
8 Districts were chosen as the legal entity that was
9 really the logical choice to implement the program since
10 they had delivery mechanisms already in place in every
11 county in Pennsylvania, which included the Chesapeake
12 Bay watershed. And Conservation Districts have worked
13 with the state for the past 12 years to implement the
14 program.

15 Through the years, we relied on four different
16 programs to implement the program. Those programs
17 consisted of the planning assistance, financial
18 assistance, educational assistance and technical
19 assistance. Funding for these aspects of the program
20 come from the implementation grant from EPA and is
21 matched by state dollars.

22 The PACD always believes that the Chesapeake Bay
23 Program was a bottom-up approach. It was delivered
24 locally by the Conservation Districts who worked one on
25 one with farmers to help them develop conservation plans

120

1 and implement BMP's on their farms using the financial
2 assistance program.

3 Conversely when we look at the new Chesapeake Bay
4 Tributary Strategy, we feel that that has been created
5 using a top down approach. The Strategy was created

6 originally developed by the 13 watershed teams in the
7 DEP regional offices. They used the Chesapeake Bay
8 Program model to calculate nutrient sediment loads to
9 streams and identify BMP's that would reduce the
10 nonpoint source pollutants going into the streams.

11 And although Conservation Districts have been
12 implementing the program for 20 years, they weren't
13 asked to come to the table on that initial development
14 process. So our Conservation Districts identified a
15 number of concerns with the Strategy, and we really feel
16 that had the Districts been consulted at the very
17 beginning in the preparation of the Strategy, that maybe
18 some of these problems could have been resolved before
19 we got to the point that we are today.

20 One of the other issues I want to bring out is
21 part of the new strategy. The Conservation Districts
22 were informed by DEP that there would be a change to the
23 way the funds were allocated under the financial
24 assistance program.

25 Conservation Districts were asked to voluntarily

121

1 develop a county plan on how they would implement the
2 Tributary Strategy in their counties. There was some
3 guidance given by DEP, but not a lot of specifics.

4 That is outlined in the Strategy on page 38. It
5 talks about Districts putting together plans where they
6 could propose alternate priorities and action plans to
7 meet the needs in their county. But ultimately, the DEP
8 Regional Offices made the recommendations on how those
9 BMP funds would be allocated to each county based on
10 those plans.

11 This process of using the county implementation
12 plans as the basis for allocation is not consistent with
13 the current statement of policy for the Financial
14 Assistance Program. And Districts felt that DEP really
15 didn't include them or consult them in the process of
16 changing the allocation method.

17 If this is to be the way that the funds are
18 allocated in the future, we would ask that DEP go
19 through the formal process of revising that statement of
20 policy for the Financial Assistance Program so that we

21 have a better understanding of how those funds will be
22 allocated.

23 But in the end, only \$879,500.00 was available
24 this year under the Financial Assistance Program to help
25 farmers implement BMP's. Overall, funding under the

122

1 Financial Assistance Program has decreased over the past
2 six years from about 1.5 million in the year 2000 to
3 \$879,500.00 this year.

4 Given that the estimated cost to implement the
5 agricultural BMP'S in the Strategy is 592 million,
6 obviously the amount of financial assistance that is
7 being provided is not enough to meet the goals of the
8 program.

9 It was also mentioned in the Strategy that funding
10 could be obtained from other state and local programs to
11 implement the Strategy. Our position is that shifting
12 funds from statewide programs such as Growing Greener to
13 target the Chesapeake Bay could impact counties outside
14 of the Bay and leave them unable to address their
15 environmental concerns.

16 The last point I would like to make is regarding
17 the Technical Assistance Program. We currently have 49
18 technicians, engineers and engineering assistants
19 working in the Bay program in Conservation Districts.
20 These individuals work one on one with farmers. They
21 educate them and help them to implement the BMP's in
22 their conservation plans.

23 The Districts feel that this is probably the most
24 important element of the existing program since without
25 the people to help and to obtain funds and send people

123

1 in the right directions, that a lot of the work wouldn't
2 be able to be done.

3 Funding for the technical assistance program has
4 remained fairly consistent over the past six years.
5 However, because of rising employment costs now, the
6 number of technical positions available to go out and
7 work with farmers has decreased.

8 DEP has also informed the Conservation Districts
9 that funding for the engineers and engineering
10 assistants will be eliminated in the future. We oppose
11 the elimination of funding for the engineers and
12 engineering technicians in the program.

13 Although, the Chesapeake Bay Tributary Strategy
14 targets many new nonstructural practices such as
15 conservation tillage and no-till, engineering is still
16 necessary to design structural BMP's that are included
17 in farm conservation and nutrient management plans.

18 Without engineering assistance available through
19 the Conservation Districts, farmers are faced with two
20 choices. They can pay for engineering assistance
21 through private consultants, or they could try to seek
22 assistance from federal agencies such as NRCS, who are
23 already overtaxed with dealing with the farm bill
24 practices.

25 Thank you very much. I just want to say in

124

1 closing, the Districts are not opposed to change, but
2 they would like to be actually involved in all phases of
3 the programs that they deliver in the development and
4 evaluation and changes that take place.

5 SENATOR WAUGH: Thank you, Mrs. Marquart.

6 SENATOR WHITE: Just one thing. Where is that
7 funding for those engineers? Where does that appear in
8 the budget? Is it a line item under the Chesapeake Bay
9 Commission?

10 MS. MARQUART: That appears in the DEP budget under
11 the Chesapeake Bay Program as part of the match for the
12 implementation program.

13 SENATOR WHITE: You were told that that funding
14 for engineers and engineer assistants is being
15 eliminated in next year's budget?

16 MS. MARQUART: Yeah. They said it was to the end
17 of this current fiscal year. June 6, '06 was all that
18 was guaranteed. The funding would be shifted to other
19 aspects of the program.

20 SENATOR WHITE: It seems to me with what did we
21 hear --it was 34 BMP proposals out there, best

Hearing Sept 20' 05 Transcript.txt
22 management practices, and with the bulk of these
23 pollutants being attributable to agriculture that we
24 very much should keep that engineering assistance out
25 there to explain and implement these BMP's in the

125

1 farming community.

2 I am puzzled as to why. I am sorry I didn't hear
3 this before the Secretary. I could have asked her. But
4 believe me, I will ask her. Thank you very much. Your
5 testimony was excellent.

6 SENATOR WAUGH: I just have a comment, and this
7 will be a closing comment. I appreciate everyone's
8 willingness to help us get to twelve-thirty, which it is
9 now.

10 I think you summed up what I heard today, and I am
11 not sure at this point quite honestly what our response
12 should be. But your testimony says this: After DEP's
13 Central Office approved the Strategy, it was released to
14 the public. Conservation Districts have implemented the
15 State's program for 20 years, and they were not asked to
16 participate in the process of developing a new Strategy.
17 They were invited after the fact to respond to the
18 Strategy when it was released to the public.

19 I think that kind of sums up the concerns that
20 many have, and also the finance of it. So where we go
21 from here, Senator White, I don't know. But I do
22 believe we had a good hearing today.

23 Ms. Marquart, thank you for your participation.
24 Thank you all for attending.

25 SENATOR WHITE: Thank you, and for keeping us on

126

1 time.

2 SENATOR WAUGH: We will now close this joint
3 hearing.

4 (The proceedings was concluded at 12:30 p.m.)

5

6

7

8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

127

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me on the within proceedings, and that this copy is
4 a correct transcript of the same.

5
6
7
8
9

Vicki L. Fox, RMR
Registered Merit Reporter

10
11
12
13
14
15

16 The foregoing certification does not apply to any
17 reproduction of the same by any means unless under the direct
control and/or supervision of the certifying reporter.

18
19
20
21
22
23

24

25