

To: Pennsylvania House Environmental Resources & Energy committee

From: Harry L. Campbell, Pennsylvania Executive Director, Chesapeake Bay Foundation;
John Walliser, Vice President, Legal & Government Affairs, Pennsylvania Environmental Council;
Ronald Ramsey, Senior Policy Advisor, The Nature Conservancy, Pennsylvania Chapter;
Cynthia Carrow, Vice President, Government and Community Relations, Western Pennsylvania Conservancy

Date: September 14, 2014

Re: House Bill 1565 (P.N. 2114) and Proposed Amendment A09397

On behalf of the Chesapeake Bay Foundation ("CBF"), the Pennsylvania Environmental Council ("PEC"), the Pennsylvania Chapter of The Nature Conservancy ("TNC") and the Western Pennsylvania Conservancy ("WPC") we respectfully submit the following comments regarding House Bill 1565 (P.N. 2114) and the proposed amendment (A09397) by Chairman Miller.

Collectively, our organizations understand the importance of the Chapter 102 forested riparian buffer requirement in waterways designated as high quality ("HQ") or exceptional value ("EV") and value its role in protecting many of Pennsylvania's most treasured streams. As such, we find House Bill 1565 ("H.B. 1565") troubling in its present form and would like to clarify with you the intent of the current law and identify our concerns with the proposed bill. In addition, although we appreciate Chairman's Miller's intent to improve this legislation with the proposed amendment, our organizations do not believe that A09397 adequately addresses our concerns with regard to the protection of local water quality in the Commonwealth's rivers and streams.

The Chapter 102 regulation helps to protect Pennsylvania's most pristine and ecologically sensitive streams. The Department of Environmental Protection ("the Department") classifies these streams as high quality ("HQ") and exceptional value ("EV") based on specific water quality criteria. A large and growing number of scientific studies have shown that buffers greater than 100 feet or more prevent pollution from entering streams, reduce pollution already in streams, prevent flooding, protect human health and welfare, and improve property values. Thus, the 150-foot riparian buffer requirement is a vital mechanism in preventing stream degradation, improving local economies, and improving the quality of life in the areas covered by this provision.

Dealing with stormwater is a complicated and expensive issue for many urban communities. Hundreds of towns across the Commonwealth deal with stormwater issues every time it rains. According to the Susquehanna River Basin Commission, the Susquehanna River Basin is one of the most flood-prone watersheds in the nation with annual damages in excess of \$150 million due to flooding. More than 80 percent of the basin's 1,400 plus municipalities have areas that are flood prone. Increasing development pressures and impermeable surfaces further exacerbate the issue. This is where proactive planning and green infrastructure, like streamside buffers, can greatly assist communities in dealing with stormwater problems.

A riparian buffer can help to prevent property damage and the expense of flooding; dramatically reduce stormwater management costs; help keep pristine streams clean; reduce the cost of treating water for potable uses; and in general, promote and sustain healthier communities. The simple act of planting a

new, or maintaining an existing, forested riparian buffer allows stormwater runoff to soak into the ground when it rains, instead of rushing directly into our streams. Water is purified by plants, trees, and soil, and is released more slowly into the stream, thereby preventing pollution, erosion, and flood damage.

There are many threats to HQ/EV streams, most of which deal with developmental pressures. The riparian buffer requirement, found in Section 102.14 of Title 25 of the Pennsylvania Code, states that when earth disturbance activities require a permit under Chapter 102, persons seeking a permit "...may not conduct earth disturbance activities within 150 feet of a perennial or intermittent river stream, or creek, or lake, pond or reservoir when the project site is located in an exceptional value (EV) or high quality (HQ) watershed..." 25 Pa. Code §102.14. First, it is important to note that the 150 foot buffer requirement is required along HQ/EV streams. These streams have already been designated by the Department as the "best of the best," and therefore provide the citizens of the Commonwealth with a unique and valuable resource.

Notably, the buffer requirement is only triggered by the need for an NPDES permit and therefore does not apply to any existing landowners and their current land use, but only in a new development context. It is also important to note that subsection (d) of Section 102.14 provides a long list of exceptions to the buffer requirement. These exceptions include: a project site located greater than 150 feet from a named waterbody; activities involving less than one (1) acres of earth disturbance; activities when a permit is not required under Chapter 102; activities where the permit was acquired before November 19, 2010; road maintenance activities; repair and maintenance of existing pipelines and utilities; oil, gas, timber harvesting or mining activities; single family homes not part of a larger common plan or development; and activities authorized by a Department permit under another Chapter or title. (See 25 Pa Code §102.14(d).) This requirement can be further exempted by applying for a waiver from the Department. According to the testimony of Kelly Heffner, Deputy Secretary for Water Management at DEP, stated at her January 29, 2014 testimony before the House Environmental Resources and Energy Committee ("EREC") DEP could not identify an instance where a waiver was denied.

H.B. 1565 eliminates the existing requirement of a riparian buffer or forested riparian buffer for new developments requiring an NPDES permit in an HQ/EV watershed. Instead, the bill provides that buffers "may be used as a choice" among other alternatives. The legislation is silent regarding the process for evaluating the suitability and/or effectiveness of the option selected. If DEP no longer has the authority to require buffers, even where doing so is necessary to protect water quality, the Commonwealth will lose an essential tool in its ongoing efforts to keep our streams clean.

We are mindful that a "one size fits all" approach may not always be appropriate. Benefits associated with buffers can be site specific, and circumstances at the project scale may create both opportunities and constraints. The availability of DEP's waiver process acknowledges this possibility. In contrast, H.B. 1565 removes the foundational and indispensable requirements for forest riparian buffers, to the detriment of water quality in Pennsylvania's most pristine rivers and streams.

Unfortunately, Chairman Miller's proposed amendment A09397, does not correct this fundamental flaw. It should be noted that no stormwater Best Management Practice ("BMP") can replicate the water quality benefits of forested riparian buffers. The water quality improvements derived from buffers can be lost rapidly once the buffer is degraded or destroyed, and it can take decades for the off-site creation of a "new" or replacement buffer to provide comparable benefits, if even possible. Because page 2, line

1 of HB 2114 remains (...“forested buffers shall **not** be required under this section.” *emphasis added.*), creation of an offset program fails to adequately address the potential water quality impacts associated with loss of the buffer requirement in EV/HQ waters. In addition, we remain concerned about the mechanics of the offset process envisioned by the amendment, most notably, the manner in which net environmental effects would be assessed and compared and the project-level impacts on the riparian buffer area, along with the continuity and integrity in HQ/EV watersheds. We also have questions regarding the potential scope of the broad abrogation language contained in the amendment.

Given the innumerable societal and ecological benefits, along with the ability to obtain a waiver, our organizations respectfully request that you vote no on H.B. 1565 (P.N. 2114) and the proposed amendment A09397.

CBF, PEC, TNC and WPC thank you for your time and attention to this matter. We would appreciate an opportunity to further discuss with you the details of the forest riparian buffer requirement and would be happy to explore a less intrusive solution to any concerns with the current Chapter 102 requirements. Please feel free to consider our organizations as a valuable resource on this matter.