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Review of the Operation and Structure of County Conservation Districts

June 2005

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Summary and Recommendations

County conservation districts were originally established as a reaction to the “dust bowl” of the 1930s and the increased acreage tilled for agriculture production. Pennsylvania enacted a conservation district law in 1945 enabling county governments to form conservation districts. The State Conservation Commission, also created in 1945, oversees Pennsylvania’s 66 county conservation districts.¹ In FY 2004-05, state and federal funds to the districts (excluding pass-throughs) totaled approximately \$15 million; districts also receive substantial funding from county governments and, in some cases, private sources.

The State Conservation Commission, a Commission of the Department of Environmental Protection, Is Housed Within the Department of Agriculture, With a Chair That Rotates Between the Two Departments

Originally established as a board and then as a commission in the Department of Agriculture (PDA), the State Conservation Commission (SCC) is now a departmental administrative commission in the Department of Environmental Protection (DEP). The commission is an 11-member body that provides oversight and support to the state’s 66 county conservation districts to implement conservation programs.

The 1995 legislation that created the Department of Environmental Protection had a significant effect on the operation of the commission. Act 1995-18 rotated the chairmanship annually between the Secretary of Environmental Protection and the Secretary of Agriculture (prior to this the chair was the Secretary of Environmental Resources) and authorized the commission to hire an independent executive secretary. The act further required both the PDA and DEP to designate an office and staff to assist with programs adopted by the commission that primarily involve production agriculture and the protection of surface and ground water. Concomitant with these changes, the decision was made to physically house the commission at the Department of Agriculture.

The bifurcated nature of the commission--a DEP commission housed within the Department of Agriculture and chaired by the Secretary of Agriculture every other year--was done intentionally to better integrate agricultural concerns into a commission that was becoming increasingly involved in programs under the then Department of Environmental Resources. The 1995 changes appear to have been successful in that respect, with most observers indicating that a renewed emphasis has been placed on district agricultural programs.

¹Philadelphia is the only county that did not establish a conservation district.

This structure, however, has created or exacerbated other concerns:

A rotating conservation commission chair could potentially be problematic. Under Act 1995-18, the chair of the commission rotates annually between the Secretary of Agriculture and the Secretary of Environmental Protection. This arrangement helps ensure both departments remain actively involved with the commission and currently appears to be working well, in part because of the good relationship that exists between the two current Secretaries. However, conflicts between the priorities of the two departments are possible in future years, and could potentially lead to disruptive policy shifts as the commission leadership alternates from year to year.

Policy direction from three different state agencies creates a cumbersome system. The commission has only six staff members, who are supplemented in administering conservation district programs with staff from both the Department of Agriculture and the Department of Environmental Protection. Both the commission and DEP staff are responsible for general oversight of the districts, although all three (commission, PDA, and DEP) are involved in administering specific district programs. (See the Exhibit below.) As a consequence, no central locus exists for the Commonwealth's conservation efforts for either the conservation districts or landowners, which can result in districts receiving policy direction from three different agencies and confusion on the part of landowners and municipalities as to the roles and responsibilities of the various agencies.

Key District Programs and Their Related State Agency	
<p style="text-align: center;"><u><i>Department of Environmental Protection</i></u></p> <p>Abandoned Mine Reclamation Biosolids Chesapeake Bay Program Chesapeake Bay Financial Assistance Funding Program Environmental Education Erosion and Sedimentation (including NPDES) Storm Water Management Watershed Management (including Growing Greener) Waterway (stream encroachments) and Wetlands Protection West Nile Virus</p> <p style="text-align: center;"><u><i>State Conservation Commission</i></u></p> <p>Dirt and Gravel Road Maintenance Program Nutrient Management Program</p> <p style="text-align: center;"><u><i>Department of Community and Economic Development</i></u></p> <p>Floodplain Management</p> <p>Source: Developed by LB&FC staff.</p>	<p style="text-align: center;"><u><i>Department of Agriculture</i></u></p> <p>Agricultural Conservation Technician Agricultural Land Preservation Agriculture Ombudsman Program</p> <p style="text-align: center;"><u><i>Department of Conservation and Natural Resources</i></u></p> <p>Forest Management Parks and Public Land Management</p>

Commission funding and reporting requirements are complex. For many years, conservation districts were funded primarily by the Commonwealth through one appropriation, known as the Conservation District Fund Allocation Program (CDFAP), from the Department of Environmental Protection. The commission was physically moved to the Department of Agriculture in 1995; and in 1999, the General Assembly initiated a CDFAP appropriation to the Department of Agriculture, creating two separate CDFAP appropriations for the same conservation district system. The districts submit separate invoices to the two departments, each of which has somewhat different procedures. In addition, the commission receives separate appropriations for the Nutrient Management and Dirt and Gravel Roads programs. Many districts also participate in the Growing Greener Program, a grant program with its own set of administrative requirements. These and other district funding sources, several of which are relatively small, create significant accounting and reporting burdens for the districts.

Several district managers have suggested that the districts receive “block grants” rather than being required to have individual contracts for each program. These managers see this as a way to simplify the administrative procedures and to allow conservation districts to direct the available funds to meet the greatest needs in their counties. As one district manager expressed it, “A block grant of money instead of money tied to specific programs would allow us the flexibility to accomplish resource conservation more efficiently.” This approach, however, would require the cooperation and consent of multiple state agencies, and depending on the funding streams, would require changes in the programs’ enabling legislation.

The Department of Conservation and Natural Resources (DCNR) and the Department of Community and Economic Development (DCED) are not formally represented on the commission. Prior to 1995, the Secretary of Environmental Resources was chair of the commission. When DER split into the Department of Environmental Protection and the Department of Conservation and Natural Resources, the commission lost the formal ties it had with the Commonwealth’s state parks and state forests. The Department of Community and Economic Development has never been formally represented on the commission, even though it provides funds to local and county government for sound land use planning and to develop flood plan management ordinances. A DCNR representative often attends commission meetings, but as an observer, not as a voting member.

Conservation Districts Are County-Based Local Agencies and Vary Widely From County to County

Conservation districts vary widely in their relationship with county government, the types of programs they undertake, and, within limits, how they choose to implement and administer the programs. We found:

Conservation districts are created at the option of county government. The Conservation District Law, 3 P.S. §853, authorizes the creation of county conservation districts (CCD) by the county governing body by adoption of a resolution. CCDs, therefore, are a county option and are not specifically an agency of county government, although their employees may be county employees. Districts are governed by a board (typically seven members) appointed by the county commissioners. Many (17) conservation districts have entered into Memoranda of Understanding with their county governments in an attempt to better define and institutionalize the county/district relationship.

County financial support varies widely. Based on our survey responses, we estimate that, on average, districts receive about 34 percent of their total funding from their counties. This includes both direct and indirect (in-kind) support. Variation in county support, however, is great. Direct county financial support in 2004 ranged from no dollars in some counties to \$763,000 in Westmoreland County. Many districts are very concerned that as other priorities compete for county funds it will become increasingly difficult to even maintain their current level of county support.

Conservation district employees may, or may not, be county employees. Conservation districts employ about 500 employees. Half of the districts (52 percent) reported that their employees were county employees, 42 percent reported that their staffs were employed directly by the district, with the remaining districts having complements that include both county and district employees. In two-thirds of districts with county employees, the manager reports to the county commissioners or some other county government official in addition to the district board.

Sixty-eight percent of the districts reported they follow county government personnel policies (such as hiring, vacation, and sick leave), including six districts that do not have county employees. Sixty percent of the districts use the county for their payroll functions, and almost half use county personnel services other than payroll.

Conservation districts have flexibility in the programs they choose to undertake, considered a key asset of the system. Districts are free to choose to undertake the programs that are most important to their counties. All 66 districts have entered into delegation agreements with DEP to implement the Erosion and Sediment Control Program (E&S), 62 have been delegated responsibilities for processing National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges, 65 participate in the Dirt and Gravel Roads program, and 60 participate in the Nutrient Management Program. Participation in other programs varies widely, with 38 participating in the Chesapeake Bay Program, 30 in the Chapter 105 program, and 19 in the Biosolids program, as some examples. Statutory programs (such as E&S, Nutrient Management, and Chapter 105 waterway encroachment) that districts decline to accept become the responsibility of the administering state department.

Conservation districts have historically played a relatively minor role in local land and water use management decisions, but this is changing in some areas. Most counties have planning commissions that develop comprehensive plans for land use and development, and conservation districts have typically not been strong actors in this process. One of the most involved districts appears to be Monroe County, where conservation district staff works directly with county planning commission staff to engage municipal officials in coordinating pertinent ordinances. Conservation districts could apply for DCED LUPTAP (Land Use Planning and Technical Assistance Program) grants to support the development of land use management plans and ordinances that may include water use management, but none appear to have done so to date. DCED also carries out technical assistance for local government officials and administers a variety of related training courses. Both of these DCED activities could benefit from greater involvement by conservation districts, particularly as relates to land and water conservation planning and management.

Conservation districts take different approaches when setting Erosion and Sediment Control Plan fees. For many districts, reviewing and approving E&S plans and inspecting plan sites comprise about half of the district's staff efforts. Districts receive some funds from DEP to support these efforts with, on average, 32 percent of the costs being covered by plan review fees. We found that 56 districts charge some type of fees for E&S control plan reviews. Thirteen districts charge a base fee, 14 charge fees for first revisions, 27 for additional revisions, and 2 charge for re-certification. The amount charged also varies considerably. For example, fees for a 50-acre commercial site are under \$1,000 in eight districts, over \$4,000 in seven districts, and between \$1,000 and \$4,000 in the remaining districts. The SCC has established a policy that districts are to charge no more than the program's unreimbursed costs, but there is little guidance to districts for how to calculate unreimbursed costs.

Conservation districts have considerable discretion in their review, monitoring, and enforcement of E&S plans. Although districts are to follow the DEP manual when reviewing E&S plans, districts are able to exercise considerable discretion in implementing the Department's regulations and guidelines. This discretion was demonstrated in 2004 when the Department undertook a review of three adjoining counties in south central Pennsylvania. In two of the counties, one or more deficiency letter was found in approximately 46 percent of the files reviewed, whereas in the third county, 87 percent of the files reviewed contained one or more deficiency letters.

Although ten districts have been delegated certain limited E&S enforcement authority, in most districts, the DEP regional office is the enforcement agency. Yet, DEP enforcement practices appear to vary from region to region. In 2003, three DEP regions averaged fewer than three enforcement actions per 1,000 inspections, whereas the southeast DEP region averaged about 13 penalty actions per 1,000 E&S inspections. Although this suggests the strongest enforcement activities are in

the southeast region, DEP relies primarily on voluntary compliance, and certain districts may be able to obtain such compliance more easily than others. Several districts also informed us that they have traditionally allowed greater leeway to farmers than developers in requiring and monitoring E&S plans.

Conservation Districts Conduct Important Work But Are Facing Funding Problems

We found virtually unanimous consent among state agencies, county commissioners, farm organizations, as well as building developers that the conservation districts play a vital role in protecting the Commonwealth's environment, most notably in working to control sediment in streams and rivers and in educating farmers and others on environmental best management practices. In particular, the districts serve as a liaison agency between farmers, landowners, and developers and state regulatory agencies such as DEP.

Despite their importance, many districts are struggling for funds. The primary, and most flexible, source of district funding is the Conservation District Fund Allocation Program, which totaled \$5.21 million in FY 2004-05. These funds are intended to cover 50 percent of a district manager's salary and benefits (up to a maximum of \$27,000), 50 percent of a district's first technician (up to a maximum of \$16,500), 50 percent of a district's second technician (up to a maximum of \$9,000), and certain administrative expenses. We found that in FY 2004-05, the CDFAP was only sufficient to cover, on average, 43 percent of the district managers' actual salary and benefits and 38 percent and 24 percent, respectively, of the first and second technicians' actual salaries and benefits. District managers often cited low salary and uncertain funding as a reason for high staff turnover, particularly for these technical positions.

State funding is no longer available for the Chapter 105 program, the program governing waterway obstructions and encroachments. Funding for this program, which totaled \$250,000 in FY 2001-02, was completely discontinued at the end of FY 2001-02. The districts see this as an important program for their counties, and 30 districts have continued in their delegation agreement with DEP to administer this program despite the lack of funding. In those districts that have opted out of the program, the DEP regional office is to assume responsibility.

DEP discontinued funding another program, the biosolids program, in December 2004, and some districts report that they will no longer inspect fields sprayed with biosolids. Funding for this program totaled \$535,700 in FY 2003-04. As with the Chapter 105 program, when districts drop their biosolids programs, DEP regional offices are to assume responsibility. Major concerns exist, however, over the ability of the DEP regional offices to carry out these additional activities. Districts are also concerned about future funding for the Growing Greener Program, which now funds many watershed specialists and district projects.

Conservation districts also have significant reporting requirements to their funding agencies, which increase costs for the districts. An exhibit in the report lists over 70 potential reports districts could be required to file during the year, depending on the districts' programs.

Recent Commonwealth Conservation Initiatives May Impact Conservation District Programming

Berks County Pilot Program. DEP and Berks County Conservation District are jointly involved in a pilot project to modify phasing and sequencing construction activities to minimize environmental damage. In particular, the pilot entails incorporating the soil and erosion plan with the contract bid documents and requiring the contractor to be involved in the design of the final E&S control plan.

Stormwater Management. DEP is in the process of creating a new manual for stormwater management that will change many aspects of the Commonwealth's approach to managing stormwater. Conservation districts are currently involved in issuing stormwater permits for new construction projects, but nonconstruction stormwater activities (e.g., runoff from fields and existing roadways) is primarily a municipal responsibility. Districts anticipate the revised manual may call for them to be more active participants in managing stormwater in these nonconstruction areas.

Department of Transportation (PENNDOT). PENNDOT and DEP plan to amend an existing MOU used to expedite E&S reviews for PENNDOT construction projects. The new MOU would use federal transportation funds (80 percent federal/20 percent state) to hire six DEP engineers to conduct E&S reviews pertaining to some or all PENNDOT projects. While intended to improve the efficiency of PENNDOT-related E&S plan review, this will also help to relieve district workloads, especially in that districts were not permitted to charge fees for reviewing PENNDOT projects.

Agriculture, Communities and Rural Environment (A.C.R.E.) The A.C.R.E. initiative would strengthen the water quality requirements for CAFOs (Concentrated Animal Feeding Operations), CAOs (Concentrated Animal Operations), and manure-importing farms and make Pennsylvania among the first states to require odor mitigation. It creates an Agriculture Review Board and an Office of Ordinance Review within the State Conservation Commission to issue adjudications on municipal ordinances that may impact production agriculture. The exact role of the conservation districts in this initiative is unclear, but presumably they would be a local resource that could be available to investigate complaints or otherwise work with the Office of Ordinance Review. The current negotiated version of the initiative is being drafted and is expected to be introduced in June 2005.

Recommendations

1. **The General Assembly should consider including the Secretaries of DCNR and DCED as members of the State Conservation Commission.** The commission currently consists of nine voting members. Adding the Secretary of the Department of Conservation and Natural Resources and the Secretary of the Department of Community and Economic Development would expand the commission to 11 voting members, still a manageable size. Adding DCNR to the commission would help integrate the 2.5 million acres of state parks and forests into the commission's programs. Adding DCED to the commission would strengthen what would appear to be natural, and increasingly important, ties between these two organizations, both of which have land and water use management responsibilities.
2. **The Departments of Agriculture and Environmental Protection, with the Commission, should explore ideas for better integrating the administration of Commonwealth conservation efforts.** The Commonwealth's land and water conservation and protection efforts are fragmented between the State Conservation Commission, the Department of Agriculture, the Department of Environmental Protection, and the Department of Community and Economic Development. Although it may not be practical or desirable to consolidate all these programs into one department, we recommend consideration be given to creating an ongoing staff-level working group with representatives from the various departments to identify how to better coordinate and integrate the Commonwealth's conservation efforts. Such an effort could, at least initially, be led by the Core Partnership, an existing coordinating body with representation from most of the key actors. The Partnership meetings could be chaired by pertinent deputy secretaries from the various departments and used to address interagency concerns and improve the administration of the conservation district system.
3. **With regard to conservation district funding, we recommend:**
 - a. ***The General Assembly appropriate one CDFAP appropriation directly to the State Conservation Commission.*** Currently, the General Assembly makes two CDFAP appropriations, one to the Department of Environmental Protection and one to the Department of Agriculture. Districts must then submit separate invoices to each department. This process appears unnecessarily cumbersome, especially given the practice of distributing portions of the CDFAP appropriation to specific program areas, which further reduces commission and district flexibility over these funds.
 - b. ***The General Assembly strive to meet the Commission's policy for CDFAP funding of the conservation districts.*** Although we did not document the specific savings, it appears highly likely that the

conservation districts can provide services at significantly less cost than if the programs were administered directly by Commonwealth employees, which is what would happen if the districts close or withdraw from the state-mandated programs. Funding the conservation districts' managers and first and second technicians at 50 percent of actual costs would have required an additional appropriation of approximately \$1 million in FY 2004-05. Alternatively, a portion of these new funds could be set aside and allocated as a block grant to districts with particular needs that cannot be met through any other source of funds.

- c. ***The Bureau of Financial Management consider ways to allow districts to receive advanced funding and not be required to lapse unused funds at the end of the fiscal year.*** Receiving at least a portion of their CDFAP allocation at the beginning of the fiscal year would help the districts with their cash flow management, as would allowing districts to retain unspent funds rather than being required to lapse them back to the Commonwealth. Several other county-affiliated agencies, such as Single County Authorities (drug and alcohol programs) and Area Agencies on Aging, receive state funding in advance and are not required to lapse funds. We also recommend districts contact the appropriate state comptrollers office to initiate electronic deposits to speed fund transfers.
- d. ***The Commission consider alternative funding sources for the Nutrient Management Program.*** The Nutrient Management Fund is being quickly depleted and, according to a commission official, is projected to be in deficit by June 30, 2007. Currently, conservation districts do not charge farmers fees for reviewing their nutrient management plans, in part out of concern that such fees would discourage voluntary cooperation. However, once the fund is depleted, the General Fund appropriation will have to increase by about \$2 million (from \$3.3 million to \$5.3 million) to maintain current program efforts unless alternative funds can be found.
- e. ***Districts consider applying for LUPTAP grants.*** The Department of Community and Economic Development provides Land Use Planning and Technical Assistance Program grants to public agencies to develop and implement local land use plans and policies. Conservation districts would appear to qualify for such grants to support multi-municipal or multi-county planning efforts.

4. District reporting requirements should be streamlined and standardized.

It is particularly difficult to assess the monetary and in-kind contributions county governments are making to the districts. This information is important for the State Conservation Commission to be able to assess the financial health of the districts, both as a group and individually. Accurate cost accounting information is also important because districts can charge

fees to review Erosion and Sediment Control plans up to the unreimbursed amount to operate the program. This information may become increasingly important as the districts raise fees to offset the loss of other revenue. Finally, districts are reimbursed on a cost-incurred basis, so accurate and uniform cost information is important to ensure the reimbursements are proper.

We also recommend DEP accelerate, or at least maintain on schedule, the eGovernment initiative to improve the efficiency and remove redundancy in conservation district reporting to the Commonwealth. This initiative, currently planned for completion in 2010, should also help standardize district financial reporting.

5. **The State Conservation Commission should streamline the local district board appointment process.** The process districts must use when filling vacant board positions is cumbersome and time-consuming. We recommend the SCC eliminate the requirement that districts notify the commission when vacancies occur and no longer require other information regarding nominee names and nominating organizations. Instead, we recommend the SCC provide blanket approval to key organizations to be qualified nominating organizations in all districts throughout the state and provide a mechanism for districts to petition the commission to include other organizations as qualified nominating organizations for their specific districts. We also recommend the General Assembly amend the Conservation District Law to allow nominating organizations to nominate one individual to fill a district board vacancy, not two as currently required.
6. **The Department of Environmental Protection should:**
 - a. ***Work with districts to help them establish fair and appropriate E&S plan review fees.*** We found the amount and structure of district fee schedules vary widely. Greater uniformity in the fee would promote a sense of fairness from district to district and could be a source of new revenue for districts whose fees are now well below average.
 - b. ***Develop a training program to certify E&S plan review and inspection personnel.*** Some of the inconsistency that occurs between districts in their E&S plan review and inspection activities might be moderated if the personnel involved in these activities received uniform training. District staffs involved in the Department of Agriculture's Nutrient Management program undergo such a training program and are then certified as nutrient management specialists.
 - c. ***Improve standardization of DEP regional offices, particularly as regards E&S enforcement activities and actions.*** In 1993, DEP "decentralized" the E&S program, meaning DEP responsibility for administering the pro-

program was moved from the Headquarters office in Harrisburg to the six DEP regional offices. While offering some advantages, decentralization has also led to some confusion and differing priorities and procedures from region to region.

- d. ***Undertake a staff analysis of the regional field representatives that serve conservation districts.*** Key vacancies at the regional level have exacerbated certain problems at the DEP field representative level, including classification and other grievances. These issues can affect the conservation districts, as they work closely with the regional field staff in implementing the DEP-delegated programs. DEP is currently in the process of developing a re-organization plan to address some of these issues.
- e. ***Allow conservation districts to charge general permit fees for the Chapter 105 waterways encroachment program.*** Under existing DEP regulations, such fees are not permitted. The introduction of reasonable fees, especially given the termination of previous Commonwealth funding, would provide needed financial support to the conservation districts in administering the program. DEP reports that it has been considering such an initiative.
- f. ***Assess the adequacy of current training efforts regarding the Chesapeake Bay program.*** Conservation district managers expressed significant concern about the adequacy and focus of the training DEP provides for the Chesapeake Bay program. Much of the concern appears to center on the need for more advanced training for district staff that have already received basic training. These concerns may also, in part, reflect uncertainty about recent changes in direction of this program that have not yet been fully conveyed to the districts.

7. The pertinent Commonwealth agencies should provide program review information to the State Conservation Commission. These agencies conduct periodic visits and evaluations of the conservation districts' Erosion and Sediment Pollution Control and National Pollutant Discharge Elimination System programs, among others. We recommend summary information of these reviews be provided to the commission, the body with statutory responsibility for overseeing district operations, so that it can be made part of the public record.

I. Introduction

In September 2005, the Legislative Budget and Finance Committee officers directed staff to conduct a review of the County Conservation Districts (CCDs) and the authority and capacity of the conservation district staff. This review focused on the roles and functions of the conservation districts and their staffs, including their role in managing county land and water resources and development projects; how the districts are funded; what oversight the State Conservation Commission, the Departments of Environmental Protection and Agriculture provide to the districts; and how the function and authority of the Conservation Districts could be enhanced to better serve counties in managing the land and water resources.

Study Objectives

1. Determine the current roles and functions of the CCDs and conservation staff, including their role in managing county land and water resources and development projects.
2. Determine how CCDs are funded, including the adequacy of the various federal, state, and county dollars and fee and fine revenues.
3. Determine the oversight and direction the state provides through the State Conservation Commission, the Department of Agriculture, and the Department of Environmental Protection.
4. Determine whether the function and authority of the CCDs could be enhanced to better serve counties in managing their land and water resources.

Methodology

To conduct this review, we undertook a number of activities, including the following:

- Reviewed applicable federal and state statutes and regulations.
- Met with the State Conservation Commission, the Departments of Environmental Protection, Agriculture, Conservation and Natural Resources, Community and Economic Development, and PENNDOT.
- Administered questionnaires to county conservation districts, county township supervisors associations, key stakeholders, county planning commissions, and PENNDOT district executives.
- Gathered and analyzed data from the State Conservation Commission and agencies on program activities, including monitoring and enforcement.

- Analyzed appropriations, allocations, and other fiscal information.
- Identified and assessed the nature and extent of state agency oversight and monitoring of conservation districts and their programs.
- Conducted field visits to twelve counties to acquire first-hand information from pertinent local officials.
- Contacted national organizations and other states to determine how other states administer conservation district programs.
- Solicited comments and opinions from pertinent House and Senate committee members and from associations and stakeholders.

We did not conduct a performance evaluation of individual districts or programs. Additionally, we did not review every program for which the districts provide services.

Acknowledgements

We thank the State Conservation Commission, especially its Executive Secretary Karl Brown, and the Departments of Environmental Protection and Agriculture, especially Deputy Secretaries Cathleen Myers, Michael Sherman, and Russell Redding and their staff for the excellent cooperation and assistance afforded us during this review. We also thank PENNDOT, DCED, and DCNR officials for their support and assistance. Additionally, we would like to acknowledge the assistance provided by the many conservation district managers and staff we visited or contacted either directly or through questionnaires. We also acknowledge the various stakeholders and other interested persons who worked with us to identify key issues and concerns and provided data for this study, especially the Pennsylvania Association of Conservation Districts, Susan Marquart, Executive Director, and the Pennsylvania State Association of Township Supervisors.

Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as an indication that the Committee or its individual members necessarily concur with the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.

II. Pennsylvania Conservation District Law and Operations

County conservation districts were originally established as a reaction to the “dust bowl” of the 1930s and the increased acreage tilled for agriculture production. The federal government recognized a need for better soil and water conservation and that only active voluntary support from landowners would guarantee the success of conservation work on private land. As a result, states enacted laws to create conservation districts to address these needs. In 1945, Pennsylvania enacted a conservation district law creating a State Conservation Commission (SCC) and enabling county governments to form conservation districts. There are 66 county conservation districts in Pennsylvania.¹

State Conservation Commission

Originally established as a board and then as a commission in the Department of Agriculture (PDA), the SCC is now a departmental administrative commission in the Department of Environmental Protection (DEP).² The commission is an 11-member body that provides oversight and support to the state’s 66 county conservation districts implementing conservation programs.

As defined by the Conservation District Law, 3 P.S. §849 *et seq.*, commission members include the Secretary of PDA, the Secretary of DEP, the Dean of the Pennsylvania State University College of Agricultural Sciences, and four active farmers and two non-farmer members appointed by the Governor with the advice and consent of a majority of the Senate. Appointed members serve four-year terms.

The SCC also includes two non-voting associate members: the state conservationist of the Pennsylvania Office of the USDA Natural Resources Conservation Service and the director of the Pennsylvania State University Cooperative Extension Service. A representative from the Department of Conservation and Natural Resources (DCNR) frequently attends meetings, but DCNR does not have a seat on the commission.

In addition to overseeing the county conservation districts, the commission administers and enforces the Pennsylvania Nutrient Management Act program through state staff and county conservation districts, oversees and supports the conservation districts in implementing the state Dirt and Gravel Roads Maintenance Program (a pollution prevention program), and funds several leadership development and public outreach and education programs.

¹Philadelphia is the only county that did not establish a conservation district.

²Formerly the Department of Environmental Resources.

As provided in the Administrative Code, 71 P.S. §183, departmental commissions are to exercise their powers and perform their duties independently of the heads or other officers of the departments with which they are affiliated. In matters involving the expenditure of funds, however, the commissions are subject and responsible to the departments.

1995 Change to the Conservation District Law

In 1995, the legislation that split the responsibilities of the Department of Environmental Resources between the newly created Department of Conservation and Natural Resources and the renamed Department of Environmental Protection had a significant effect on the operation of the commission. Act 1995-18:

1. rotates the chairmanship annually between the Secretary of Environmental Protection and the Secretary of Agriculture (prior to this the chair was the Secretary of Environmental Resources);
2. authorizes the commission to hire an independent executive secretary to staff the commission;
3. requires the PDA to designate an office and staff within the Department to assist with development, implementation, and enforcement of programs adopted by the commission that solely affect production agriculture (prior to this, only the Department of Environmental Resources was required to provide staff);
4. requires the DEP to designate an office and staff within DEP to assist in the development, implementation, and enforcement of programs adopted by the commission and intended, in whole or part, to protect surface or ground water; and
5. designates the commission to take enforcement action under the Nutrient Management Act, requires the DEP to assist in enforcement of violations of the Clean Streams Law, and requires the PDA to assist in enforcement of all other actions.

These changes were intended to reestablish the autonomy of the commission and add balance between its involvement in DEP and PDA programs. The commission also moved its offices to the PDA building, but its designation as a departmental commission of DEP remained unchanged. Please see Appendix A for pending bills that relate to the commission or conservation districts.

County Conservation Districts

The Conservation District Law, 3 P.S. §853, authorizes the creation of county conservation districts (CCDs) by the county governing body by adoption of a resolution. A CCD is “a public body corporate and politic exercising public powers of the commonwealth as an agency thereof.” Many authorities created by state law are similarly defined entities. For example, urban redevelopment authorities and housing authorities are defined in the same terms. The courts have interpreted this language to create a local authority, rather than a Commonwealth agency, for purposes of the courts’ jurisdiction. A CCD is not, therefore, specifically an agency

of county government although, as discussed later, its employees may be county employees.

The county governing body appoints a seven-person board of directors for the district consisting of one member of the county governing body appointed annually, no less than two nor more than four farmers serving four-year terms and no less than two nor more than four non-farmer members of the public serving four-year terms.³

The districts and directors are authorized to:

1. employ personnel;
2. cooperate or enter into agreements with or furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in carrying on erosion control and prevention operations;
3. assist and advise owners and occupiers of land in developing and/or implementing plans for storm water management, soil erosion control, tillage practices;
4. assist county and municipal governments in subdivision and land development reviews, and developing and implementing storm water management plans and programs;
5. conduct educational programs related to soil and water conservation;
6. accept with the SCC's approval, any authority delegated by municipal or county governments, the Commonwealth or federal government; and
7. charge fees for services but not for services provided to the Commonwealth or its agencies.

The act further authorizes districts to cooperate with each other and Commonwealth and other governmental agencies charged with the administration of public lands to cooperate with the districts. DEP is also specifically authorized to delegate its regulatory and enforcement functions under the Clean Streams Law, Flood Plain Management Act, and Dam Safety and Encroachments Act, among others.

Statutorily-created programs may be delegated to the districts by state (or federal) agencies. Delegation agreements set forth the level of responsibility of the district for the program. These agreements also provide protection for the district for actions taken under the agreement in the form of legal representation and state acceptance of liability. Discretionary programs may be accepted through contracts. These contracted programs do not include the same level of legal protection afforded the districts under the delegated programs.

Counties are authorized to appropriate funds to the districts, and the Commonwealth is authorized to fund the activities of the SCC in administering the act.

³The governing body may request the SCC approve a change in the number of board members to no less than five and not greater than nine.

A district may be discontinued by a resolution of the county governing body upon approval of the SCC.

County Conservation District Programs

Exhibit 1 identifies key programs and the related state agency primarily responsible for their oversight and operation. Appendix B lists the penalties for violations of certain of these programs. Certain districts are also involved with evaluations/outreach efforts as well as other specific programs tailored to their district. (Please also see Chapter IV.B and Appendix C. Please see Chapter V for a description of and issues related to certain selected programs.)

Exhibit 1

Key District Programs and their Related State Agency

Department of Environmental Protection

Abandoned Mine Reclamation
Biosolids
Chesapeake Bay Program
Chesapeake Bay Financial Assistance Funding Program
Environmental Education
Erosion and Sedimentation (including NPDES)
Storm Water Management
Watershed Management (including Growing Greener)
Waterway (stream encroachments) and Wetlands Protection
West Nile Virus

Department of Agriculture

Agricultural Conservation Technician
Agricultural Land Preservation
Agriculture Ombudsman Program

State Conservation Commission

Dirt and Gravel Road Maintenance Program
Nutrient Management Program

Department of Conservation and Natural Resources

Forest Management
Parks and Public Land Management

Department of Community and Economic Development

Floodplain Management

Source: Developed by LB&FC staff.

Funding Sources and Financial Information About Conservation District Programs⁴

State funding for conservation district programs derives from the state General Fund through the Departments of Environmental Protection and Agriculture

⁴Please see individual discussions in Chapters III, IV, and V for issues and concerns about funding sources, levels, and administration.

(and indirectly the State Conservation Commission), the Motor License Fund, the Nutrient Management Fund, and several DEP environmental funds. Districts also receive funding from the federal and local governments.

For FY 2004-05, eight programs provided \$14.8 million in state funds to the conservation districts, a 9.4 percent increase over FY 2002-03. See Table 1. Additionally, DEP funded \$1.2 million in Chesapeake Bay Best Management Practices pass throughs (meaning funds that “pass through” the districts but are distributed to farmers or other recipients), PDA funded \$2.9 million in Nutrient Management financial assistance pass throughs and service contracts, and the Department of Conservation and Natural Resources allocated \$1 million for Dirt and Gravel Roads through their forest districts. PDA also allocated \$356,000 in the Conservation District Fund Allocation Program (CDFAP) special project monies through CDFAP to districts for ombudsman services, leadership development, and ACT training.⁵

Thus, 66 conservation districts⁶ received over \$20 million in state and federal support to implement these programs. Additionally, DEP and PDA personnel provide support to the SCC and the conservation districts. DEP reported spending \$4.6 million in direct support services and program coordination and assistance to districts. PDA reported spending \$688,000 in support of the SCC and districts. Therefore, total state and federal effort to support conservation districts, including direct state department efforts, is approximately \$24.5 million: \$19.3 million from DEP, and \$5.2 million from PDA.⁷ The specific funding sources are described below.

Nutrient Management Program

The Nutrient Management Fund was created under the authority of Act 1993-6 to, in part, fund loans and grants for the implementation of nutrient management plans by agricultural operations. It also funds state staff, education efforts, delegation agreements, research, and contracts. The State Conservation Commission administers the program through its staff in cooperation with PDA and DEP and through conservation districts that have received approved delegated authority. (See VI.B)

PDA supports the Nutrient Management Program by providing staff resources to carry out financial assistance programs,⁸ including Nutrient Management Plan Implementation grants and the Plan Development Incentives

⁵Actual expended was \$275,000.

⁶Although not a conservation district, Philadelphia received \$32,000 toward a watershed specialist's salary and benefits.

⁷This amount excludes \$2.3 million in Chesapeake Bay appropriations that DEP expends directly on Chesapeake Bay activities, including technical services to conservation district staff.

⁸Pass through funding.

Table 1

**DEP and PDA Funding to Conservation Districts
(FY 2004-05)**

District	Nutrient Management ^a	Chesapeake Bay ^b	Biosolids ^a	Watershed Specialist ^a	ACT ^c	Farmland Preservation ^c	Dirt & Gravel Roads ^d	CDFAP ^e	Total ^f	% District
Adams.....	\$ 66,250	\$ 49,257	\$ 3,350	\$ 32,000	\$ 22,020	\$ 4,500	\$ 15,000	\$ 60,600	\$ 252,977	1.71%
Allegheny.....	14,350	0	0	29,075	17,336	9,000	0	59,679	129,440	0.87
Armstrong.....	14,350	0	1,250	32,000	19,148	9,000	113,965	60,600	250,313	1.69
Beaver.....	27,600	0	2,150	32,000	0	0	15,000	60,600	137,350	0.93
Bedford.....	51,900	88,000	3,850	32,000	19,148	4,500	40,379	57,500	297,277	2.01
Berks.....	103,800	50,535	7,050	32,000	20,584	4,500	15,000	60,600	294,069	1.99
Blair.....	27,600	31,950	2,850	32,000	8,913	9,000	20,337	58,338	190,988	1.29
Bradford.....	66,250	151,558	2,800	32,000	17,190	9,000	317,892	60,600	657,290	4.44
Bucks.....	14,350	0	0	32,000	19,148	4,500	18,988	60,600	149,586	1.01
Butler.....	27,600	0	1,250	32,000	0	9,000	31,296	60,600	161,746	1.09
Cambria.....	14,350	48,324	2,150	52,950	21,745	9,000	15,000	59,744	223,262	1.51
Cameron.....	1,500	0	1,250	31,500	0	0	33,530	23,315	91,095	0.62
Carbon.....	0	0	0	0	0	4,500	24,902	60,600	90,002	0.61
Centre.....	27,600	50,535	0	32,000	20,585	0	33,665	60,600	224,985	1.52
Chester.....	93,900	44,915	2,750	32,000	19,148	4,500	17,989	60,600	275,802	1.86
Claron.....	14,350	0	1,250	20,000	0	0	63,749	42,922	142,271	0.96
Clearfield.....	14,350	35,515	2,150	32,000	0	0	66,812	55,877	206,704	1.40
Clinton.....	14,350	75,837	0	32,000	0	4,500	22,705	57,556	206,948	1.40
Columbia.....	14,350	44,228	1,250	32,000	0	9,000	78,634	56,887	236,349	1.60
Crawford.....	27,600	0	1,250	32,000	21,014	0	144,012	57,529	283,405	1.91
Cumberland.....	66,250	94,535	9,650	32,000	0	4,500	15,000	60,600	282,535	1.91
Dauphin.....	51,900	166,930	3,900	32,000	19,148	9,000	23,096	60,600	366,574	2.48
Delaware.....	0	0	0	32,000	0	9,000	0	60,600	101,600	0.69
Elk.....	0	0	0	30,100	0	0	25,083	29,767	84,950	0.57
Erie.....	27,600	0	2,550	32,000	0	4,500	56,078	60,600	183,328	1.24
Fayette.....	27,600	0	2,150	32,000	16,456	4,500	32,614	56,048	171,368	1.16
Forest.....	0	0	1,250	0	0	0	21,560	50,485	73,295	0.50
Franklin.....	93,900	40,551	5,150	24,226	0	4,500	15,000	59,022	242,349	1.64
Fulton.....	27,600	27,300	2,700	32,000	17,881	9,000	30,014	52,105	198,600	1.34
Greene.....	14,350	0	0	32,000	20,584	0	37,974	58,306	163,214	1.10
Huntingdon.....	27,600	41,398	3,200	31,669	6,000	9,000	69,655	48,852	237,375	1.60
Indiana.....	27,600	0	4,150	32,000	20,584	9,000	89,211	53,494	236,039	1.59
Jefferson.....	14,350	0	1,250	32,000	19,148	0	43,832	60,600	171,180	1.16
Juniata.....	79,500	31,881	3,000	31,718	18,587	9,000	35,957	57,205	266,848	1.80
Lackawanna.....	14,350	103,420	2,150	32,000	5,230	9,000	28,620	60,527	255,297	1.72
Lancaster.....	273,850	251,145	12,050	32,000	20,584	4,500	16,803	60,600	671,532	4.54

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Table 1 (Continued)

District	Nutrient Management ^a	Chesapeake Bay ^b	Biosolids ^a	Watershed Specialist ^a	ACI ^c	Farmland Preservation ^c	Dirt & Gravel Roads ^d	CDFAP ^e	Total ^f	% District
Lawrence	\$ 14,350	\$ 0	\$ 1,250	\$ 32,000	\$ 19,148	\$ 4,500	\$ 15,000	\$ 60,600	\$ 146,848	0.99%
Lebanon	131,400	46,520	6,450	32,000	20,146	9,000	15,000	60,600	321,116	2.17
Lehigh	14,350	0	3,500	32,000	19,148	9,000	26,876	60,600	165,474	1.12
Luzerne	14,350	33,686	0	32,000	0	4,500	24,939	59,062	168,537	1.14
Lycoming	14,350	44,915	1,250	0	0	9,000	82,447	60,600	212,562	1.44
McKean	14,350	0	0	0	0	0	22,037	32,556	68,943	0.47
Mercer	27,600	0	1,250	21,000	0	0	47,839	60,600	158,289	1.07
Mifflin	42,000	37,191	2,300	32,000	0	9,000	20,993	50,528	194,012	1.31
Monroe	0	0	0	32,000	20,584	0	0	60,600	113,184	0.76
Montgomery	14,350	0	0	32,000	19,148	4,500	15,000	60,600	145,598	0.98
Montour	14,350	24,726	2,150	20,875	0	9,000	17,934	48,531	137,566	0.93
Northampton	14,350	0	3,100	32,000	12,960	9,000	0	60,600	132,010	0.89
Northumberland	42,000	30,986	3,050	32,000	0	9,000	47,440	52,671	217,147	1.47
Perry	51,900	42,375	2,750	32,000	19,148	9,000	41,792	60,600	259,565	1.75
Philadelphia	0	0	0	32,000	0	0	0	0	32,000	0.22
Pike	0	0	0	32,000	0	0	57,154	60,600	149,754	1.01
Potter	14,350	32,273	2,150	31,398	13,551	9,000	137,711	43,463	283,896	1.92
Schuykill	14,350	58,145	2,600	32,000	17,947	9,000	50,192	60,600	244,834	1.65
Snyder	79,500	35,895	2,150	30,250	18,264	9,000	28,609	37,742	241,410	1.63
Somerset	27,600	31,153	0	32,000	18,245	9,000	33,378	59,239	210,615	1.42
Sullivan	1,500	0	1,250	31,526	16,487	9,000	71,759	46,380	177,902	1.20
Susquehanna	27,600	55,885	1,250	32,000	19,148	4,500	124,909	60,168	325,460	2.20
Tioga	27,600	0	2,300	32,000	18,289	4,500	317,859	57,355	459,903	3.11
Union	51,900	75,120	2,150	28,640	13,182	9,000	25,709	60,501	266,202	1.80
Venango	14,350	0	2,150	32,000	0	0	78,955	59,091	186,546	1.26
Warren	14,350	0	1,250	32,000	18,633	0	212,513	58,449	337,195	2.28
Washington	42,000	0	0	32,000	22,020	4,500	78,494	60,600	239,614	1.62
Wayne	14,350	0	0	27,071	15,086	4,500	112,763	60,600	234,370	1.58
Westmoreland	27,600	0	0	32,000	20,584	4,500	27,062	60,600	172,346	1.16
Wyoming	14,350	37,714	1,250	32,000	0	4,500	60,757	56,425	206,996	1.40
York	79,500	81,450	1,250	32,000	20,584	4,500	103,527	60,600	383,411	2.59
Total FY 2004-05	\$ 2,243,450	\$ 2,095,849	\$ 136,550	\$ 1,977,996	\$ 752,483	\$ 351,000	\$ 3,528,000	\$ 3,715,919	\$ 14,801,247	100.00%
Total FY 2003-04	\$ 1,648,961	\$ 2,203,036	\$ 535,700	\$ 1,833,666	\$ 644,482	\$ 219,000	\$ 3,528,003	\$ 3,243,791	\$ 13,856,639	
Total FY 2002-03	\$ 1,577,070	\$ 1,932,465	\$ 528,000	\$ 1,743,900	\$ 615,859	\$ 278,410	\$ 3,518,745	\$ 3,337,287	\$ 13,531,736	

^aDepartment of Environmental Protection funding; it does not include \$2.9 million PDA funding for Nutrient Management financial assistance pass throughs and service contracts.
^bDEP funding which does not include \$1.2 million cost share BMP pass through to landowners. ^cDepartment of Agriculture funding. ^dDEP funding from the Motor License Fund, which is mostly pass through monies for approved projects to improve water quality. A district may use up to 15 percent of its allocation for training and administrative expenses.
^eDEP funding for district manager and technicians cost share and administrative assistance (\$3,550,000) plus \$150,000 from PDA to augment district manager funding; it does not include \$356,000 for PDA funding of special projects.
Source: Developed by LB&FC staff from DEP provided data. ^fExcludes \$2.1 million in Growing Greener grants to districts.

Program. Additional PDA expenditures from the fund are for contracts that provide education, research, engineering services, manure hauler certification, and salaries/benefits for the SCC Nutrient Management staff. DEP provides staffing resources to administer funding to 60 delegated districts for the salaries and benefits of nutrient management specialists who assist the SCC in the local administration of the program.

In recent fiscal years, the Nutrient Management Fund has received a \$3,280,000 transfer from the General Fund. The SCC has overall administrative responsibility for the fund. Based on a workload analysis by the SCC staff, the SCC determines how much each district should receive, and DEP staff then assist by disbursing the funds. From FY 1999-00 through FY 2004-05, disbursements from the fund increased 270 percent even though receipts have remained constant.⁹ As a consequence, the fund balance declined 58 percent from FY 1999-00 to FY 2004-05. Various stakeholders have noted the declining balance, which is estimated to be \$1.4 million as of June 30, 2006, and fully depleted by June 30, 2007, as a concern for the future. Depleting the fund, especially given the implementation of new regulatory requirements, will create additional challenges for the SCC to consider. (See Table 2.)

Chesapeake Bay Program

The Chesapeake Bay Program funds two programs. The Chesapeake Bay Technical Assistance Funding Program allocates state and federal dollars to conservation districts to employ Chesapeake Bay technicians who assist in developing and installing best management practices (BMPs) on farms. It also provides funding for engineers/engineering technicians to address structural agricultural conservation practices. For FY 2004-05, \$2.1 million (state funding except \$150,000 federal funds) was allocated to support such positions in 34 districts, an 8.5 percent increase over FY 2002-03.

The other Bay program, the Financial Assistance Program, allocates funds to conservation district landowners for BMPs to reduce non-point pollution to the Chesapeake Bay. In FY 2004-05, the SCC approved allocations of \$1.2 million in federal funding to implement BMPs on a cost-share basis with landowners.

Biosolids

Biosolids are nutrient-rich organic materials derived from wastewater solids (sewage sludge and residential septage) that have been stabilized, meet specific processing and quality criteria and are suitable for land application. Services provided by districts include education and outreach to the public, municipalities, and industry; review of farm conservation plans and erosion and sediment control plans prior to the land application site being approved; and complaint investigation and

⁹Fund revenues come from state and federal appropriations; interest; loan repayments; gifts and contributions; and fees, fines and judgments assessed for violations of the Nutrient Management Act.

Table 2

Nutrient Management Fund
Statement of Cash Receipts and Disbursements
(\$000)

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06 (Est.)	FY 2006-07 (Est.)	% Change FY 1999-00 to FY 2006-07
Cash Balance, Beginning	\$4,734	\$ 7,260	\$ 9,654	\$ 6,960	\$4,981	\$3,639	\$3,055	\$1,408	-70.3%
Receipts:									
Transfer from General Fund.	3,280	3,280	3,280	3,280	3,280	3,280	3,280	3,280	0.0
Interest.....	387	576	356	121	124	350	350	350	-9.6
Fines	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>8</u>	<u>1</u>	<u>1</u>	<u>1</u>	
Total Receipts.....	\$3,667	\$ 3,857	\$ 3,636	\$ 3,402	\$3,412	\$3,631	\$3,631	\$3,631	-1.0
Total Funds Available	\$8,401	\$11,117	\$13,290	\$10,362	\$8,393	\$7,270	\$6,686	\$5,039	-40.0
Disbursements:									
Agriculture.....	422	573	5,219	4,136	3,354	2,316	2,978	3,086	631.3
Environmental Protection	<u>719</u>	<u>890</u>	<u>1,111</u>	<u>1,245</u>	<u>1,400</u>	<u>1,900</u>	<u>2,300</u>	<u>2,500</u>	247.7
Total Disbursements.....	\$1,141	\$ 1,463	\$ 6,330	\$ 5,381	\$4,754	\$4,216	\$5,278	5,586	389.6
Cash Balance, Ending	\$7,260	\$ 9,654	\$ 6,960	\$ 4,981	\$3,639	\$3,055	\$1,408	(\$547)	-107.5%

Source: Governor's Executive Budget and the Department of Agriculture.

site inspection after a site has been approved. For FY 2004-05, DEP allocated \$136,550 in state funds to support such services in 19 delegated districts, a 74.1 percent decrease over FY 2002-03. Because of limited funds, the department only funded districts through December 2004.

Watershed Restoration and Protection

Supported by the Growing Greener Initiative through the Environmental Stewardship Fund, DEP funds Watershed Specialists in conservation districts (including Philadelphia) to provide technical assistance for watershed organization development and to develop projects that improve the quality and quantity of the Commonwealth's surface and groundwater resources. For FY 2004-05, DEP allocated \$2.0 million in state funds to support such services in 63 districts, a 13.4 percent increase over the three-year period since FY 2002-03.

Additionally, DEP has awarded Growing Greener grants to help local conservation organizations finance continuing efforts to protect and clean up watersheds. Thirty-one CCDs have been awarded approximately \$1.4 million (25 percent) of this grant. Districts use these funds themselves or pass the money to other organizations to undertake a variety of environmental improvement projects, including stream restoration, assessment of stormwater facilities, and implementing farm environmental management plans.

DCNR also uses Growing Greener funds through its Community Conservation Partnership grant program. For example, Rivers Grants are available to counties, municipalities, and intermunicipal authorities to conserve and enhance river resources, and to develop river conservation plans. Community grants can be used for conservation purposes and for technical assistance for studies and site development planning. Grants range from \$5,000 to \$130,000 per project. DCNR reports that nearly \$700,000 in grant awards have been made for 19 projects to conservation districts.

Agricultural Conservation Technician (ACT)

Districts receive PDA funding for staff to provide support services for production agriculture, including assisting farmers with compliance with applicable laws; assisting with the development, review, and approval of nutrient management and conservation plans; conducting outreach and education; and assisting in delivering funding programs to help farmers implement plans and meet applicable requirements. For FY 2004-05, PDA allocated \$760,839 to support such services in 43 districts, a 23.5 percent increase over FY 2002-03.¹⁰

¹⁰FY 2004-05 data has been updated from the totals shown in Table 1.

Farmland Preservation Support Program

In those counties that have adopted Farmland Preservation programs, conservation districts may receive PDA special project funding to support local efforts. Funding provides administrative support, conservation planning, and other technical support to the county Farmland Preservation Program. For FY 2004-05, PDA allocated \$351,000 in state funds to support such services in 50 districts, a 26.1 percent increase over FY 2002-03.

Dirt and Gravel Road Pollution Prevention Program

This State Conservation Commission program, implemented with the assistance of DEP staff, funds environmentally sound maintenance of unpaved roadway sections that have been identified as sources of dust and sediment pollution. Its statute established dedicated, non-lapsing annual funding of \$4 million from the Motor License Fund to DEP to provide money and training to local communities for local road maintenance, especially to halt and prevent pollution of water and air.¹¹ Local road maintenance entities propose projects that must then be approved by the county conservation district board of directors. DEP provided such pass through funding to 62 districts in FY 2004-05. Funds must be spent or committed to projects within two years of their allocation.

Conservation District Fund Allocation Program (CDFAP)

The State Conservation Commission, DEP, and PDA propose funding allocations for the conservation districts to employ conservation district managers and technical staff, administrative assistance, and funding for special projects. The funding priority is: conservation district manager, administrative assistance, first technician, second technician, and special projects. CDFAP technician funds are targeted primarily to support districts in implementing DEP's Chapter 102 programs: the Erosion and Sediment Control Program (E&S) and the National Pollutant Discharge Elimination System Stormwater Permit Program. See Exhibit 2.

Pennsylvania's cost share program for conservation district staff (district managers and E&S control technicians) started in 1967 with an initial allocation of \$15,000. State funding increased slowly for the first 15 years of the program and then grew at a more rapid rate as districts increased their administration of programs on behalf of the Commonwealth. The CDFAP appropriation for district staff¹² increased to \$3,700,000 (\$3,550,000 through DEP and an additional \$150,000 through PDA for district manager funding) in FY 2004-05.

¹¹The MLF also provides annual funding of \$1 million to DCNR for improvements to dirt and gravel roads in the state parks and forests.

¹²Includes \$534,600 administrative assistance funding.

**Summary of Conservation District Fund Allocation
Program (CDFAP) Statement of Policy**

Conservation District Manager Cost Share Program. State funds are solely for the employment of conservation district managers. The commission will pay no more than 50 percent of the total cost of employment (salary and benefits).^a Local sources pay the balance.^b The district applies annually for funding. Upon commission approval, the district is notified of the amount available for cost sharing. The basis for computing the new fiscal year allocation is the district manager's salary for the previous July 1- June 30 fiscal year.

The district submits a report of district manager activities and accomplishments and files claims indicating applicable costs of employment no later than 15 days after the end of the quarter. The commission is to process cost sharing claims within 15 working days after receipt of the claim and quarterly report.

Administrative Assistance Funding Program. The districts use allocated state and federal funds to finance administrative expenses approved by the commission. It will fund the following costs directly related to administration of the district's program:

- Direct mileage to district meetings or other official business.
- Publishing the annual report, bonding, and liability or errors and omissions insurance.
- Postage, legal fees, and expenses related to keeping full and accurate district records.
- Salary and salary-related expenses for specific programs delegated to the district by the DEP, when the commission specifically approves payment.

The district applies annually and receives a grant from the commission if funding is available for the fiscal year. Level 3 districts can be reimbursed up to an additional \$1,000 for administrative expenses. The district files reimbursement claims semi-annually, no later than 15 days after December 31 and June 30. The commission is to process claims within 15 working days after receipt of the claim. Each district files a report within 15 days of June 30 stating how it used the funds. Funds not used for the purpose authorized are deducted from the following year's grant to the district.

Technical Assistance Cost Share Program. Funds are solely for the employment of conservation district technicians. Annually, the commission determines the maximum amount of reimbursement. The percentage of cost share^c is based on the level of responsibilities assumed in the Erosion and Sediment Pollution Control Program as specified in the delegation agreement: (1) Level 1 - 35 percent; (2) Level 2 - 50 percent; and (3) Level 3 - 65 percent. Non-state funds pay the balance.^d

The district applies annually for funding. Upon commission approval, the district is notified of the amount available for cost sharing. The allocation may be prorated if sufficient funds are not available. The basis for computing the new fiscal year allocation is the district technician's salary for the previous July 1- June 30 fiscal year. The commission determines which technical personnel will receive cost share.

Exhibit 2 (Continued)

The district submits a report of district technician activities and accomplishments and files claims indicating applicable costs of employment (salary and benefits) no later than 15 days after the end of the quarter. The commission is to process cost sharing claims within 15 working days after receipt of the claim and quarterly report.

Special Projects Funding Program. The commission may allocate to districts state, federal, or other funds to reimburse districts for a portion of their costs to carry out special projects approved by the commission. The commission reviews district project proposals and ranks them based on its guidelines. Projects containing objectives consistent with current priorities of the commission may receive higher priority for funding and may be cost shared at a higher rate.

The commission approves the amount of funds available for special projects, and state funding is not assured beyond one year. Although, the commission may require a project sponsor to provide a portion of funding, such as matching funds or in-kind services, it may provide up to 100 percent cost share for special projects. Funds may be reallocated at any time if a project cannot be completed or is abandoned. Districts submit claims no later than 15 days after the end of the quarter. The commission is to process claims within 15 working days of receipt. All project elements must be completed to receive final payment.

^aThe commission may increase the cost share rate up to 65 percent for one year for a district that increases the employment of a part-time district manager to full time.

^bThe state or federal government may provide funds for district manager work devoted to a special program of the state or federal government in addition to funding provided by the commission, but the combined funding may not be more than 100 percent of the cost of employment.

^cThe commission may increase the cost share rate up to 65 percent for one year for a district initially employing a technician under this program. The commission may increase the cost share rate and allocation up to an additional 10 percent if a district's employee has been certified as an E&S control technician, Level 2, by the National Institute for Certification in Engineering Technologies or is a registered engineer with a minimum of two years experience in E&S control.

^dThe state or federal government may provide funds for district technician work devoted to a special program of the state or federal government in addition to funding provided by the commission, but the combined funding may not be more than 100 percent of the cost of employment.

Source: Conservation District Fund Allocation Program Statement of Policy.

In addition to its contribution to the district managers' salaries and benefits, PDA allocates CDFAP monies to the districts for special projects. Including special projects, the total CDFAP appropriation for FY 2004-05 is \$5,210,000.¹³ See Table 3. The Governor's Executive Budget for FY 2005-06 requests a decrease in the CDFAP appropriation, returning to the FY 2003-04 level of \$4.31 million.

Chapter 105

About 30 conservation districts currently have opted for delegated responsibility to implement Chapter 105 water obstructions and encroachment activities. The Chapter 105 program, which refers to the Waterways Encroachment Program regulations, reviews water-related activities to protect and conserve Pennsylvania's water and wetland resources. Responsibilities delegated to the districts may include receiving and investigating complaints, verifying compliance/noncompliance, and referring noncompliance sites to DEP for resolution. DEP regulations preclude districts from collecting fees for issuing general permits under this program.

DEP initially funded the program through the Clean Water Fund from FY 1991-92 through FY 1995-96.¹⁴ From FY 1996-97 through FY 2000-01 funding was provided through the CDFAP.¹⁵ DEP funding for the program ended in FY 2001-02 with \$150,000 provided by the Clean Water Fund and \$100,000 provided by the Dams and Encroachments Fund. Average funding to each district had been approximately \$4,100 per year. In total, 47 counties had received funding, and 41-43 counties received funding every year during the period. See Appendix D.

U.S. Natural Resources Conservation Service¹⁶

Formed in 1935, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) assists owners of America's private land with conserving, maintaining, and improving their soil, water, and other natural resources. It provides technical and financial (cost share) assistance. Most activities are performed with local partners, such as the conservation districts. Originally, the NRCS staff provided technical assistance to private landowners through the invitation of the conservation districts. Since 1985, the federal farm programs that provide cost share to farmers has grown, and farmers no longer need to go through the conservation districts for aid. District staff often refer farmers to NRCS.

NRCS has four technical centers in the Commonwealth and a total staff of 250 in all its Pennsylvania offices. NRCS has passed through \$600,000 over three years to the Pennsylvania Association of Conservation Districts (PACD), the

¹³The PA Association of Conservation Districts requested FY 2004-05 allocations of \$8.7 million (\$6.6 million from DEP and \$2.1 million from PDA).

¹⁴There was no funding in FY 1992-93 and FY 1993-94.

¹⁵FY 2000-01 funding included \$150,000 from the Clean Water Fund.

¹⁶Also related to conservation district programming, the EPA provides approximately \$1.2 million to implement Chesapeake Bay BMPs on a cost-share basis with the landowners.

Table 3

Conservation District Fund Allocation Program Annual Allocations
(\$000)

Position/Program Funded	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	% Change FY 2000-01 to FY 2004-05
Department of Environmental Protection:						
District Manager Cost Share.....	\$1,224.7	\$1,235.0	\$1,268.5	\$1,268.5	\$1,510.0	23%
Resource Conservationist (technician) Cost Share.....	1,486.5	1,495.0	1,482.4	1,482.4	1,505.4	1
Administrative Assistance ^a	349.1	370.0	349.1	349.1	534.6	53
Administration of Chapter 105 Responsibilities.....	<u>39.7</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	100
Subtotal	\$3,100.0	\$3,100.0	\$3,100.0	\$3,100.0	\$3,550.0	15%
PA Department of Agriculture:						
Agricultural Conservation Tech./Engineer Cost Share ^a	\$600.0	\$600.0	\$591.0	\$622.0	\$760.8	27%
Boot Camp for Agricultural Conservation Training	0	0	0	38.0	40.0	
Ombudsman Services for Districts and Agricultural Producers	125.0	185.0	185.0	100.0	131.8	5
District Manager Funding Augmentation.....	125.0	125.0	125.0	125.0	285.4	128
Farmland Preservation Program Support.....	200.0	200.0	209.0	225.0	351.0	75
Leadership Development	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>91.0</u>	-9
Subtotal	\$1,150.0	\$1,210.0	\$1,210.0	\$1,210.0	\$1,660.0	44%
State Total	\$4,250.0	\$4,310.0	\$4,310.0	\$4,310.0	\$5,210.0	23%

^aAdministration of Chapter 105 funding is included in Administrative Assistance beginning in FY 2001-02.

Source: Development by LB&FC staff from information provided by PACD.

statewide association for conservation districts, to provide engineering technicians housed at conservation district offices to develop comprehensive nutrient management plans.

The Congressional earmark for Pennsylvania's Chesapeake Bay Program in FFY 2004 is \$1.4 million. The purpose of the earmark is to increase NRCS technical assistance capacity to implement Best Management Practices within the 41 county area contributing to the state's portion of the watershed. A variety of Farm Bill programs will also be utilized to meet the basic objectives and to implement BMPs. Currently, NRCS is providing \$740,000 in additional funding to the Lancaster, Chester, Susquehanna, Berks, and Lebanon conservation districts to further enable them to provide technical assistance in support of the Chesapeake Bay Program.

County Conservation District Program Emphases

We asked the 66 conservation districts to estimate the percentage of their efforts in specific program areas. Statewide, the 65 districts that responded to our request report that almost 38 percent of their effort is related to urban/suburban programs, just over 46 percent of their effort addresses rural/agricultural programs and 8 percent is forestry related. An additional 8 percent focuses on other areas including environmental education, watershed restoration/protection, stream restoration, and park management.

As shown in Table 4, 27 districts report spending 50 percent or more of their efforts on rural/agricultural programs, 18 report spending 50 percent or more of their efforts on urban/suburban programs, while 4 indicate they divide their efforts equally between rural and urban programs. Only 1 district (Warren) reported spending 50 percent or more of its effort on forestry related programs.

We sent a questionnaire to state agencies, environmental and farming associations, and the Home Builders Association to understand their perspective on conservation district programs and services. Appendix E presents some of the comments we received. In general, the comments we received were positive, especially with regard to the districts' ability to work with the local community and the agricultural community, in particular. Criticism often centered on inadequate funding to meet program and staffing needs.

Conservation District Systems in Other States

In many states, the State Conservation Committee has been established within an existing state agency.¹⁷ For example, in Ohio the State Conservation

¹⁷In 1936, the U.S. Department of Agriculture published a model law, "Standard State Soil Conservation Districts Law," which was intended to serve as a guide to the states in establishing conservation districts. Based on this model law, all 50 states have established local Soil and Water Conservation Districts and a statewide governing board.

Table 4

Program Effort by District

County	Urban/		Rural/ Agriculture	Forestry Related	Other	County		Urban/ Suburban	Rural/ Agriculture	Forestry Related	Other
	Suburban	34%				33%	0%				
Adams.....	50	25	33	0	25 ^b	Lackawanna.....	40	60	5	15%	
Allegheny.....	15	35	35	20	30 ^c	Lancaster.....	40	40	10	10	
Armstrong.....	60	25	25	10	5	Lawrence.....	39	60	1		
Beaver.....	25	70	70	5		Lebanon.....	60	38	2		
Bedford.....	37	60	60	3		Lehigh.....	70	20	5	5	
Berks.....	45	43	43	2	10	Luzerne.....	40	40	5	5	
Blair.....	10	85	85	5		Lycoming.....	30	30	30	10	
Bradford.....	70	20	20	5		McKean.....	50	45	5		
Bucks.....	50	29	29	1	20	Mercer.....	29	50	1	20	
Butler.....	0	1	1	30	70 ^{d,e}	Mifflin.....	45	10	5	40 ^b	
Cambria.....	10	45	45	1	44 ^{b,c,f}	Monroe.....	90	6	2	2	
Cameron.....	94	5	5	1		Montgomery.....	75	25			
Carbon.....	60	30	30	10		Montour.....	90	9	1		
Centre.....	50	50	50	15	10	Northampton.....	17	75	3	5	
Chester.....	5	70	70	10		Northumberland.....	15	80	5		
Clarion.....	40	50	50	15		Perry.....	50	20	10	20	
Clearfield.....	40	45	45	15		Pike.....	80	80	20		
Clinton.....	40	40	40	10	10	Potter.....	10	68	1	21	
Columbia.....	25	70	70	5		Schuylkill.....	30	60	10		
Crawford.....	50	50	50	5		Snyder.....	15	80	5		
Cumberland.....	90	5	45	5		Somerset.....	30	100	10		
Dauphin.....	40	40	40	10		Sullivan.....	30	60	20		
Delaware.....	70	15	15	10	20	Susquehanna.....	30	50	20		
Elk.....	10	75	75	5	10	Tioga.....	30	60	10		
Erie.....	50	50	50	10		Union.....	45	45	10		
Fayette.....	1	99	99	10		Venango.....	20	30	50		
Franklin.....	20	70	70	10		Warren.....	50	50	20		
Fulton.....	25	65	65	10		Washington.....	25	55	20		
Greene.....	30	65	65	10	5	Wayne.....	60	25	15	10	
Huntingdon.....	85	85	85	10	5	Westmoreland.....	20	40	10	30 ^b	
Indiana.....	3	70	70	7	20	Wyoming.....	55	43	2		
Jefferson.....						York.....	37.7%	46.4%	8.0%	7.9%	
Juniata.....						State Average ...					

^aDetail not provided. ^bEnvironmental Education. ^cWatershed Restoration/Protection. ^dStream Restoration. ^eDirt and Gravel Roads. ^fPark Management, Mineral Assessment, Stormwater Management, Co-op Agency Assistance.
 Source: Developed by LB&FC staff.

Committee is in the Department of Natural Resources, and in New York the State Conservation Committee is in the Department of Agriculture and Markets. A few states, such as Arkansas and Alabama, have independent conservation committees.

The membership of each state's committee is established in statute and often includes farmers or representatives of statewide agricultural organizations such as the grange or the farm bureau federation, representatives from the state conservation districts association, landowners who are not farmers, and representatives of urban areas. Officials of state departments such as agriculture or natural resources are often included as ex-officio members or advisors.

Local district boards may be filled by a local election process, appointment, or a combination of appointment and election. According to the National Association of Conservation Districts (NACD), 20 states have elected local boards, 15 have appointed boards, and 15 have some combination of elected and appointed boards. For example, in North Carolina the local board is usually comprised of 3 elected and 2 appointed members.

According to an NACD official, the North Central and Midwest regions tend to have the consistently strongest environmental programs, and Pennsylvania is one of the most active nationwide.

Conservation districts in other states vary in their staffing and funding methods. For example, in Ohio, Soil & Water Conservation District staff are employees of the district. The conservation districts derive their funding from county, township, and municipal appropriations, matched by state dollars through the Department of Natural Resources. In addition to state appropriated funds, the legislature reportedly is expected to enact a 25 cents tipping fee on construction and demolition waste to provide additional dedicated funding to the districts.

In New York, conservation district staff typically are county employees. The state Soil and Water Conservation Committee monitors the district programs with funding from the Department of Agriculture and Markets. According to an official of the committee, the state and local districts coordinate their efforts as spelled out in memoranda of understanding with the districts. The districts are involved with land use conservation and planning through farmland protection, community and environmental management, and agriculture and the environment programs. The 58 districts receive about \$7 million in county funds and \$1.86 million in state funds through CDFAP reimbursement and \$2 million (real estate mortgage taxes) from the Department of Environmental Conservation. Districts also earn income through sales and fees.

III. Conservation Districts' Relationship to County Government

A. Conservation Districts' Relationship to County Government Varies Across the Commonwealth

The county governing body, usually county commissioners, appoints the conservation district board members who serve as the board of directors for the district. The board includes a member of the county governing body, appointed annually, as well as farmer and non-farmer members who are appointed for four-year terms. (See Chapter V.B for a discussion of the appointing process.) The county governing body may also provide funding or specific services to the district. Several districts, for example, have offices in county buildings that are paid for by the county. Many districts also receive direct funding from the county government.

Administrative Integration With County Government

There is significant variation in the extent and nature of county government involvement with conservation districts and their programs. Some districts are closely aligned to their county government, while others function largely independently. Such variation can have impact on conservation district programming. It also can affect its administrative efficiency. For example, because of their knowledge of the abilities and available district resources, several counties have asked the districts to act as their West Nile Virus Surveillance Program coordinator, a program the district boards may not have chosen to implement had the county not requested them to do so. Administratively, some districts interview and hire their own employees, while others may interview candidates, but must forward pertinent information about the selected candidate to a county salary board. Once approved by the salary board, the candidate's name is then forwarded to the county commissioners for approval.

County Employees and Hiring, Firing, and Promotion. Just over half of the districts (52 percent) reported that their district's employees were county employees; a smaller percentage (42 percent) told us that their staffs were employed by the district, and the remaining districts have complements that include both county and district employees. In two-thirds of those districts with county employees, the manager reports to the county commissioners or some other county government official in addition to the district board.

Sixty-eight (68) percent of the districts indicated on our questionnaire that they follow county government personnel policies (such as hiring, vacation, and sick leave), including 6 of these 44 districts that do not have county employees. Sixty

percent of the districts use the county for their payroll functions, and almost half use county personnel services other than payroll. Other support and services districts receive from the counties include legal or controller support and information technology service. Districts with county employees generally follow county personnel policies regarding salary and benefits but may not necessarily follow county purchasing guidelines.

Other Services. Over half of the districts indicated that the county provides them with office space. In some cases, offices are provided rent-free. In other cases, districts pay at or below market rates for use of a county facility. A few districts own and work out of their own buildings. Similarly, districts either own their own vehicles or use county vehicles--the Dauphin Conservation District, for example, has both. Other services counties may provide to their districts include telephones and copiers, insurance coverage, audit services, and legal services.

Variation in County Financial Support

The Commonwealth does not collect information on county financial support of the districts, nor has it developed standardized information or report formatting for districts to use in measuring county support. Therefore, it was difficult for us to determine with confidence county funding levels.

More than one district told us that they were fortunate to receive an appropriation from the county to assist in meeting operating expenses. Twenty-three percent of the districts reported getting financial assistance from the county as an annual appropriation/administrative budget or for a grant for staff salaries.

Direct and Indirect Financial Support.¹ The 48 districts responding to a follow-up questionnaire reported averaging 34 percent of their total funding of operations from their counties. This includes direct cash and indirect support of positions. These districts reported a 13 percent increase in county funding of operations from CY 2002 to CY 2004. Some counties provide no direct funding. In those counties that provided direct support, county financial support in 2004 ranged from \$8,700 in Northampton County to \$763,000 in Westmoreland County. Most of the counties providing small amounts of financial support are small, rural counties.

The Lehigh District Manager provided us with a comparison of county contributions per resident for 13 counties in 2003. The county contributions ranged from 14 percent to 52 percent of the districts' budgets. The cost per resident ranged from \$.09 to \$1.68. See Table 5. The manager also noted that although county funding to the Lehigh Conservation District increased from \$74,766 in 1997 to \$113,346 in 2003, the percent of the district's budget funded by the county decreased from 31 percent to 18 percent during the period. For example, in 2004, the Lehigh District gave the county the \$38,500 in Conservation District Fund Allocation Program (CDFAP) monies it received for Erosion and Sediment Control Program (E&S)

¹As discussed above, the counties also vary in the level of financial support for other services.

services. The district was then asked to contribute an additional \$30,000 to the county to help compensate for other services they provide to the district.

As one manager noted on our questionnaire, county commissioners are not obligated to assist conservation districts financially, and with the counties facing increased mandated program responsibilities, district budgets are easy to cut.

The Beaver Conservation District Manager reported that under their memorandum of understanding (MOU) with the county, the district employees were county employees, their benefits were county benefits, and their facility was county-owned. The district did not pay for the utilities or use of the facility. The CDFAP cost share money received from the state agencies went to the county to reimburse for personnel costs. Recently, however, the county commissioners opted to separate the district from the county, effective January 1, 2005. The district moved in February 2005 to a facility it built on a farm in a mitigated wetland area. Beaver County has agreed to provide an annual \$280,000 payment to the district, paid quarterly, which does not fully cover payroll expenses, which had previously been fully paid by the county.

Table 5

Conservation Districts' County Contribution Comparison

<u>County</u>	<u>Population^a</u>	<u>2003 District Budget</u>	<u>County Contribution</u>	<u>% of District Budget</u>	<u>Cost/Resident</u>
Berks.....	373,638	\$ 750,000	\$250,000	33%	\$.67
Bucks	597,635	640,000	125,000	20	.21
Chester	433,501	1,300,000	250,000	19	.58
Dauphin	251,798	992,441	336,330	34	1.34
Delaware ^{b,c}	550,864	207,500	51,000	25	.09
Erie.....	280,843	300,000	58,000	19	.21
Lancaster	470,658	1,223,000	181,000	15	.38
Lehigh	312,090	611,805	113,346	19	.36
Luzerne	319,250	454,000	65,000	14	.20
Montgomery.....	750,097	399,000	206,000	52	.27
Northampton ^d	267,066	283,300	108,000	38	.40
Westmoreland....	369,993	1,500,000	620,000	41	1.68
York ^b	381,751	600,000	130,000	22	.34

^a2000 census.

^b2002 budget.

^cCounty also provides office space, vehicles, and insurance.

^dCounty also provides office space.

Source: Lehigh Conservation District.

District Managers' Comments About Financial Relationship With County.

Many district manager responses to our questionnaire mentioned resource constraints and uncertainties about operations due to inconsistent and decreased funding from their counties. Additional comments are shown in Exhibit 3 below.

Exhibit 3

District Manager Comments About Financial Relationship With County

- We are not a state mandated program and therefore are at risk of losing county support dollars when county money gets tight. (And county budgets always seem to be very tight in our region.)
- County council reluctant to approve additional staff without long-term funding.
- If state funding is cut it is unlikely that I will be able to get any additional county funding in the near future.
- Uncertainty. We have no solid base of funding upon which we can build. Although we have excellent support from our county, not every district is so fortunate. State programs administered by districts rely on a financial base provided by individual counties. Across the state, county government is stressed and significant cuts have been made in district funding in some counties. If these county conservation districts fail to effectively administer programs, state government may need to look for other avenues for program administration thereby adversely impacting all districts.
- Assembling adequate local funds to fully utilize state cost-share dollars [is a significant problem].
- Little county support.
- District operating independently of county government [is a significant problem].
- County budget cutbacks affect staff and reduce capacity to complete goals and objectives in strategic plan.
- A huge burden on our county governments to continue the services we supply to local residents, especially the programs we handle for the state.
- The district is fortunate to also receive an annual appropriation from the county to assist in meeting operating expenses. We would be hard-pressed to maintain the program participation and level of service we provide if the county support were reduced significantly.
- County commissioners are not obligated to assist conservation districts financially and with the counties being saddled with more and more mandated program responsibilities – district budgets are easy to cut – that could be a problem if county government doesn't recognize what a great investment districts are. Local and county government just doesn't seem to have any vision of what the future holds.

Source: LB&FC questionnaire to conservation district managers.

Visibility of Conservation Districts and Their Programs Varies Among County and Local Organizations

For the Leadership Development effort, the Department of Environmental Protection (DEP) has developed a tool to assist the districts in marketing their programs and services to county government and other funding organizations. In response to our questionnaire, district managers indicated that they believe they have a better than good relationship with their county commissioners and a good relationship with the municipal governments in their county. On a scale of 1 (poor) to 4 (excellent), the average response was 3.31 regarding the relationship with county commissioners and 2.98 regarding the districts' relationship with municipal governments.

The Monroe County Conservation District is an example of a district that has "institutionalized" itself within a county. District employees are all county

government employees, and in addition to overseeing district operations, the manager sits on the county's economic development advisory board, is chairman of the litter and beautification committee, is part of the Monroe County 20/20--a "think tank" for county planning initiatives, and more. Over the years, the district has successfully integrated itself into all aspects of the county, has developed a solid reputation, and has maintained a high degree of visibility.

From its beginning, the Westmoreland County Conservation District involved county residents and various interested organizations in determining the direction of the district and selecting the programs and services it would provide. As a result, the district has a good relationship with municipal governments, has a very visible presence in the county, and receives strong support from the county commissioners. In fact, the district has been written into the county's first comprehensive plan for many projects and policies.

Districts have found other ways to integrate with other county functions. For example, several districts provide administrative support to their county agricultural land preservation boards; several districts have been delegated responsibility from the county to monitor for West Nile Virus; at least one of the districts operates a county park; and another district is directly involved with solid waste enforcement. According to a U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) official, districts with strong farmland preservation programs often interact well with local organizations.

Other districts, however, have struggled in their relationship with the county. A number of district managers stressed to us the importance of county commission involvement in conservation districts operations. In one county, a team of newly elected commissioners, faced with financial constraints and reportedly unfamiliar with conservation district programming, reduced the district staff from five to two positions in a cost savings move. Ultimately, the district manager was successful in having two of these three positions reinstated. Such was accomplished by his meeting with the commissioners and clarifying the district's roles, responsibilities, and how the district reimburses the county for the salaries of the positions that had been eliminated.

The Commonwealth encourages districts to inform the public of activities and policies and to gain public input and support for those activities and policies. Both staff and directors are encouraged to look for opportunities to present the district's image and goals, using different types of media to get the message across to different audiences and making public outreach the overarching policy of all district programs and activities. Several districts, at one time or another, have written conservation columns for local newspapers. Districts have also used local radio spots to inform the public about conservation topics as well as to identify district programs. Several districts also have their own logos. These logos appear on correspondence and on the districts' web sites, and they establish a visual brand that allows the

public, other agencies, organizations, and government officials to easily identify the district.

The Pennsylvania Conservation Partnership, comprised of representatives from the State Conservation Commission (SCC), the Pennsylvania Association of Conservation Districts (PACD), DEP, NRCS, Penn State University Cooperative Extension, DEP field representatives, district directors, and district managers, as discussed in Chapter IV.A, also recognizes the importance of a vital district image and has put together an initiative entitled *Crafting a "Go-To" District Image* as part of their "Building for Tomorrow" Leadership Development Program. DEP field representatives presented this initiative and provided written materials to district managers and directors at the PACD regional meetings during 2004 and 2005, illustrating approaches districts could and are using to inform county commissioners or other entities of their activities.

Existing Memoranda of Understanding Between Conservation Districts and Counties

Government agencies often use a Memorandum of Understanding (MOU) to clarify expectations and responsibilities when engaged in an effort that involves more than one agency. The MOU may, for example, delineate specific responsibilities for staff assignment or funding. As discussed in Chapter IV.A, DEP and the SCC have an MOU that includes their responsibilities under the Nutrient Management Act. Similarly, an MOU can be used by the CCDs with their county commissioners, or other governing body, to delineate the relationship between the county government and the district. The MOU is intended to "institutionalize" the relationship between the two and provide a framework for that relationship throughout changes in personnel in the county government or the district.

Approximately one-quarter (17) of the 66 county conservation districts currently have an MOU with their county government. Two additional districts have developed MOUs with their counties; one is under review and the other has been submitted to the county commissioners but has not been signed.² DEP, the SCC, and the PACD all encourage districts to have MOUs with their counties to avoid misunderstandings about their responsibilities for district activities. In general, an MOU is a non-binding document that spells out the responsibilities of the parties to facilitate cooperation and avoid misunderstandings.

To facilitate the use of MOUs between the districts and counties, the PACD, through the Leadership Development effort, has developed a draft agreement that has been presented by DEP regional representatives at regional meetings with the

²The district managers indicated that they sometimes have experienced delays in getting MOUs finalized and that county administrations sometimes perceive such MOUs as restricting the flexibility they may exercise over district programs.

districts. Specifically, the use of MOUs was discussed at the winter 2005 regional meetings. This draft agreement lists various options that can be included under the general topic areas of:³

- Articles of agreement
- Personnel matters including management, employment of staff, benefits, and performance reviews
- Financial matters, bonding, audits and fees including budget submissions, payment of bills, and financial reporting
- Office facilities including who provides and pays for the facilities
- Vehicles including who provides and pays for their use
- Equipment and supplies
- Telephones and computers
- Postage
- Legal support including enforcement actions for delegated programs, routine district programs, and contracted programs
- Insurance
- Additional terms, nondiscrimination provision, and modification and review

We reviewed four of the 17 district/county MOUs and found that three generally included the provisions listed above, although the actual content of the provisions differs. For example, in two of the MOUs, district staff are carried on the county payroll, whereas in the other two, the district is fully responsible for its staff. In all four cases, however, the county audits the districts' accounts. Each provides for a review of the MOU every five years. None of the agreements specify the level of funding to be provided by the county.

The benefit of an MOU is exemplified by an experience in the Wyoming District. When certain vacancies occurred, the county commissioners sought to fill them on their own. The MOU was used by the district manager to support his authority to hire the necessary staff without the commissioners involvement. The MOU included provisions concerning these types of employment matters.

An MOU, however, is not legally enforceable, and therefore either party may choose to not continue complying with its terms. For example, as discussed earlier in this section, the Beaver County Conservation District had an MOU with the Beaver County commissioners that included many of the provisions described above. However, in 2004, the Beaver County commissioners separated the district staff from their status as county employees and stopped all services otherwise provided by the county to the district.

We discussed the need for MOUs with the district managers in several of the districts we visited. One did not think an MOU was necessary because his district has a good working relationship with the county. He also noted that additional

³The districts are encouraged to review the draft document and determine which topics and options under those topics pertain to their district and tailor the agreement to their needs.

funding from the county was not needed due to the district's fee income. In another district where the manager did not think an MOU was necessary, the district manager explained that the district had already integrated itself well into key aspects of the county government. In this district, the manager sits on several county-wide boards and commissions.

Two districts we visited do not have MOUs with their county governments and indicated that they would prefer to have an MOU. Both noted as a benefit of an MOU the continuity of the relationship when county administrations change. One also noted that drastic changes in the services provided by the county would be less likely with an MOU.

III.B. Conservation Districts' Involvement in Land and Water Use Management With Other Local Agencies Varies

Statutes define zoning and county planning agencies and their relationship to other agencies and land use. Primarily among these are the Conservation District Law and the Municipalities Planning Code. Both seek, to some extent, to involve various actors in the process to ensure expertise and interests are considered.

Conservation District Law

The Conservation District Law, 3 P.S. §849 *et seq.*, contains several specific provisions relating to land use and land use planning. One of the key responsibilities of the State Conservation Commission is to secure the cooperation and assistance of any governmental agency and to be the agency through which government aid in land and water management and conservation of related resources can be extended on private lands. Specifically, the conservation districts are authorized to assist and advise county and municipal governments in subdivision and land development reviews; developing and implementing storm water management plans and programs; and in administering programs for flood control, floodplain management, water use, water management and water pollution control, and other natural resource concerns. As discussed later, their involvement with counties and municipalities in this area varies.

Pennsylvania Municipalities Planning Code

The Pennsylvania Municipalities Planning Code establishes mechanisms for land use and land use planning. First, the act grants authority to counties and municipalities to create planning agencies. Planning agencies have the responsibility, at the request of the governing body, to prepare the comprehensive plan for municipal development. The planning agency, at the request of the governing body, may also be involved in developing zoning ordinances, land development regulations, and building and housing codes and preparing and presenting a water survey to the municipal governing body, among other responsibilities.

The code also provides that zoning ordinances should reflect the policy goals of the community development objectives. Specifically, when municipalities are developing zoning ordinances, they are to consider the provisions of the Nutrient Management Act and the Agricultural Area Security Law, among others. The zoning ordinances must work to preserve prime agriculture and farmland considering the topography, soil type and classification, and present use.

Importantly, the code promotes intergovernmental cooperative planning in zoning and land use. Municipalities are to cooperate to protect Pennsylvania's agricultural land, to ensure that water systems are efficiently constructed, and to

develop lands appropriately. Counties and municipalities are to work together in developing and implementing comprehensive plans for the whole county or areas within counties. In developing these plans, a public participation process must be employed to ensure that all governing bodies, municipal authorities, and other entities, whether public or private, have input into the plan.

Variation in District Involvement in Land and Water Use Management

Various public and private actors are involved in water and land use planning and management at the local and county level. Most counties have planning commissions that develop comprehensive plans for land use and development. Eleven of the 57 conservation districts responding to this question indicated someone from their district sat on the county planning commission. Township zoning boards, planning commissions, and related Smart Growth organizations, as well as private conservancies and other groups, are also key actors. There is, however, significant variation throughout the Commonwealth in the nature and extent of conservation district involvement in these local development and decision-making processes.

Monroe County, for example, is integrally involved and collaborates with other local entities in overall watershed land use and management. Monroe County conservation district staff work directly with county planning commission staff in developing model ordinances for various erosion and sediment, stormwater management, and related sprawl control programs and regulatory activities. As a result, all 43 municipalities in the county have adopted similar ordinances, according to the Monroe County District Manager. The conservation district is a lead actor in the local decision-making process and has been referenced as a national prototype on stormwater, watershed, land use management, and development.

By contrast, in many counties, the conservation districts appear to have relatively little involvement in land and water use planning and management. A number of stakeholders spoke to us about the desirability of greater involvement of conservation district board members and staff in land use management. Selected examples of district managers comments included:

- We need better coordination with county planning commissions and municipal land use ordinances.
- The conservation district needs to take an active role in the countywide planning for urban/residential/recreational/and rural communities. Open space, greenways, rails to trails are areas where the county needs to expand resources to make this an important component in long-range planning.
- Conservation districts have experienced growth in both size and technical knowledge that has prepared them to serve as valuable resource management agencies for both their individual counties and the state.

- Local government should be required to include conservation districts in planning stages of municipal and county land use/development initiatives.

The Pennsylvania State Association of Township Supervisors commented that they would like to have improved collaboration and function integration with conservation districts. Overall, persons we spoke with commented favorably about an enhanced conservation district role in this area.

County Planning Commission Comments

To further evaluate the relationship between county planning commissions and the county conservation districts, we sent questionnaires to the 64 county planning commissions in Pennsylvania. Of these, 35 responded to our questionnaire.

Overall, the responses indicate a good relationship exists between county planning commissions and the county conservation districts. Sixteen of the 35 responding commissions indicated a very good or excellent relationship, citing cooperation and teamwork between the two entities. An additional 14 commissions indicated that they have a working relationship and share information and assistance as needed. Only four commissions indicated that there was a weak or limited relationship, citing a lack of coordination and limited involvement.

In 85 percent of the responding counties, a conservation district board member or manager sits on the county planning commission. Almost 63 percent of the counties have a specifically designated liaison between the county planning commission and the county conservation district. Almost 66 percent of the planning commissions indicate that they coordinate and work with their county conservation district often, while 34 percent sometimes coordinate with the conservation district.

We also asked the county planning commissions to identify strengths and weaknesses of the county conservation districts. The most common strength cited was the knowledge and expertise of the conservation district staff and the willingness of the staff to work with the county and municipal officials. Other strengths include the education efforts of the conservation district and contacts within the local communities. The major weaknesses identified by respondents were lack of funding and lack of staff/employee turnover. When asked if there is unnecessary overlap and duplication between conservation district programs and any other governmental entities, 66 percent of the county planning commissions said no. Fourteen percent were not sure or did not answer the question.

Related comments from planning commissions about conservation districts (CDs) in land use planning and management included:

- Too focused on helping the agricultural community and not looking at holistic approach to land and water resources.

- State has been looking to have districts included in addressing land development issues, which can create internal conflicts between agencies.
- There is a degree of overlap between CDs and the multitude of federal, state, and quasi-governmental entities that oversee regulations and conservation programs. There needs to be better integration of the CDs into Erosion & Sediment planning and National Pollutant Discharge Elimination System (NPDES) permitting as it relates to land development plan approvals. Existing system is fragmented whereby the planning commission is responsible for one part and the district for another portion of the review.
- I believe there is a growing pattern towards CDs and county planning commissions overlapping and duplicating efforts in land use related issues related to education and development of various plans. However, there remains a division between what county planning staff can offer as technical assistance versus CD staff. I believe that both have distinct knowledge and experience that can offset one another and provide seamless services to municipal governments and their citizens. Working closely together, instead of opposite ends of the spectrum will strengthen community development and natural resource management initiatives.
- Conservation districts are unique and have the potential to work with local communities to build capacity, educate and disseminate new ways of working on and solving the most pressing issues of loss of topsoil, climate change, stream stability, and flooding.

Commonwealth Programs/Activities to Plan and Manage Land Use With Local Entities

The Commonwealth works with county planning commissions and other local governments, largely through the Department of Community and Economic Development (DCED). DCED efforts include Smart Growth initiatives, the Land Use Planning and Technical Assistance Program (LUPTAP), and funding municipal efforts to develop floodplain management ordinances. As described elsewhere in this report, the Department of Environmental Protection also plays a role, especially as regards stormwater management and watershed policies, including the Chesapeake Bay Program.

Smart Growth. In 1999, the Governor's Land Use Executive Order 1999-1 identified land use as one of Pennsylvania's pressing environmental priorities. The order designates the Governor's Center for Local Government Services, part of DCED, as the state entity responsible for land use monitoring and assistance. The center promotes sound land use through outreach activities, education and training, technical assistance, financial assistance, and state agency coordination. It serves as an information source for local government, developers, and citizens interested in land use planning.

The center established an Interagency Team on Land Use, comprised of policy directors and top management from major state agencies, to provide guidance,

technical support, and coordination of policy and programs as they relate to land use. The interagency team was directed to review and adjust all state agency program policies that may have an impact on sound land use and to ensure that state programs do not conflict; the team has been reconstituted under Executive Order 2004-9.

The Commonwealth's land use objectives, as defined in Executive Order 1999-1, are soundly planned growth; farmland and open space preservation; development in areas that have been previously developed or in locally designated growth areas; regional cooperation; preservation of private property rights; understanding the environmental, economic, and social health impacts of land use decisions; preservation of the economic and social vitality of Pennsylvania's communities; and infrastructure maintenance and improvements that are consistent with sound land use practices.

Maryland's Smart Growth Initiative established a multi-agency sub-cabinet that seeks to develop long-term solutions to the complicated issues of economic growth, community revitalization, and resource conservation. The mission of Maryland's Office of Smart Growth is to coordinate the efforts of state agencies, work with developers and local officials to bring smart growth projects to fruition, and educate and inform the public.

Land Use Planning and Technical Assistance Program. The Land Use Planning and Technical Assistance Program, coordinated by the Center for Local Government Services in the Department of Community and Economic Development, provides financial assistance to help local and county government officials develop and implement local land use policies. Funding from LUPTAP is intended to develop and strengthen community planning and implementation efforts. Grants may be used to prepare or update comprehensive community development plans, develop advisory guidelines, ordinances, official maps, and land development regulations or other related activities. Applicants are required to provide at least a 50 percent match, consisting of cash or in-kind services. The contracts are generally for a two-to three-year period.

LUPTAP encourages cooperation in land use decisions by giving priority to applications that involve multi-municipal efforts. Such efforts may include a combination of township, borough, city, and/or county governments or a county-wide effort. According to DCED officials, some county conservation district projects could qualify for LUPTAP grants as multi-municipality or county-wide programs. However, no county conservation district has yet applied for a grant under this program.

In FY 2001-02, LUPTAP grants totaling over \$2.8 million were awarded for 68 projects throughout the state. Fifty-one of these projects included multiple municipalities, while only 17 were for projects initiated by a single municipality. Grant amounts ranged from \$6,000 for updating zoning ordinances in Bellevue, Allegheny

County to \$200,000 to assist with six regional comprehensive plans and an update to the Lycoming County comprehensive plan.

Floodplain Management. DCED also administers the Pennsylvania Floodplain Management Program through contracts with the conservation districts. This program requires all flood-prone municipalities to participate in the National Flood Insurance Program. Municipalities must enact local floodplain management regulations which, at a minimum, comply with state and federal requirements.

DCED Local Training. DCED is in a position to carry out training and support to municipalities and other officials regarding conservation district programs and their pertinence to local governments. For example, the Governor's Center provides training for local government officials in areas such as general government administration, finance, community planning and zoning, and community and economic development. These courses provide local officials current information on new laws and legislative requirements and enhance their ability to govern effectively. Additionally, the Center established the Pennsylvania Construction Codes Academy with the support of the Department of Labor and Industry.

Advantages of an Enhanced Relationship With DCED. Our conversations with DCED and other pertinent officials suggest an interest and willingness for stronger ties between DCED and conservation district programming. Certain discussions between commission and DCED staff were underway on this topic as of April 2005, especially as regards land and watershed planning and management. In particular, SCC and DCED officials are discussing the possibility of creating "municipal government liaison" positions in certain districts to liaison with counties and municipalities, perhaps similar to the DEP watershed coordinators who provide technical expertise to county and local officials. DEP has funded watershed coordinators in certain conservation districts out of Growing Greener funds in recent years. Fifty-five districts have created such positions whose responsibilities include facilitating and providing expertise to county and local officials.¹

Several stakeholders, including the Pennsylvania State Association of Homebuilders and the Pennsylvania State Association of Township Supervisors (PSATS), commented to us during this review that conservation district coordination and collaboration with local officials could be improved. Other discussions in this report address this issue. DCED's leadership, technical assistance, and training capacities would create opportunities for further development of conservation districts in conjunction with other local programs and activities. Further integration with PSATS activities, especially through its Productivity Center, for example, is an additional avenue that could be pursued.

¹One district manager commented to us about this initiative: "Growing Greener helped us do so much for the citizens and resource base in our county. We really need to have this program continued. Watershed specialists are a very integral part of what we do now and having one has helped our district and community address watershed issues much better than we have ever been able to before. If this position is not continued through Growing Greener, it should be picked up."

IV. The State Conservation Commission Has Only Limited Authority Over Conservation District Programs

A. Although State Statute Charges the State Conservation Commission With General System Development and Support, the Commission Has Relatively Limited Capacity to Do So

The State Conservation Commission (SCC) has undergone three organization changes since 1945. Exhibit 4 depicts the SCC's characteristics through the years.

From 1945 to 1970, the SCC was a departmental administrative entity of the Pennsylvania Department of Agriculture (PDA), housed in the Department of Agriculture and chaired by the Secretary of Agriculture. District programming was almost entirely rural/agrarian in nature and worked to educate farmers in best practices.

From 1970 to 1995, the SCC was a departmental administrative entity of the Department of Environmental Resources (DER) and was chaired by the Secretary of DER. The breadth and scope of environmentally related programs grew throughout the period, in part as a result of federal initiatives and mandates. The commission essentially functioned as a bureau in DER and, subsequently, the Department of Environmental Protection (DEP).

From 1995 to the present, the SCC has continued as a departmental administrative entity in DEP, but by statute its chairmanship has rotated annually between the Secretaries of Agriculture and Environmental Protection. The SCC offices were also physically moved to the Department of Agriculture. DEP has continued to provide many of the system support activities, and funds the Dirt and Gravel Roads position. PDA funds the Commission staff as well as provides other administrative services.

The SCC oversees the functional activities of the conservation districts by establishing administrative policies, certifying nominating organizations and the directors nominated, certifying cooperating organizations, and, as part of the Conservation Partnership, encouraging and funding the professional development of district directors, managers, and staff.¹ The SCC also administers the Dirt & Gravel Road and Nutrient Management programs through delegation agreements with the districts and allocates Conservation District Fund Allocation Program (CDFAP) and special projects (Agricultural Conservation Technician [ACT], Ombudsman, and Leadership Development) funding to the districts. Major responsibilities of the conservation districts by the DEP and PDA and the Pennsylvania Association of Conservation Districts (PACD) are discussed below.

¹Representatives from SCC, PACD, DEP, NRCS, PSU Cooperative Extension, DEP field representatives, district directors, and district managers form the Pennsylvania Conservation Partnership and provide oversight of the Leadership Development Program.

State Conservation Commission Membership Through the Years

Member	Act 1945-217	Act 1963-315	Act 1967-382	Act 1972-361	Act 1984-221	Act 1986-39	Current Membership
Secretary of Environmental Resources				X (Chair)	X (Chair)	X (Chair)	X ^a
Secretary of Forests & Waters	X	X	X				
Secretary of Agriculture	X (Chair)	X (Chair)	X (Chair)	X	X	X	X ^a
Dean, College of Agriculture, PSU	X	X	X	X ^d	X	X	X
Farmer	X ^b	X ^b	X ^c	X ^d	X ^d	X ^e	X ^e
Farmer	X ^b	X ^b	X ^c	X ^d	X ^d	X ^e	X ^e
Farmer	X ^b	X ^b	X ^c	X ^d	X ^d	X ^e	X ^e
Farmer	X ^b	X ^b	X ^c	X ^d	X ^d	X ^e	X ^e
Public			X ^f (Urban)	X ^f (Urban)	X ^f (Urban)	X ^g (Non-Farmer)	X ^f (Non-Farmer)
Public			X ^f (Urban)	X ^f (Urban)	X ^f (Urban)	X ^g (Non-Farmer)	X ^f (Non-Farmer)
State Conservationist, Soil Conservation Service, USDA ^h			X	X	X	X	X
PSU Member ^h			X (Home Economics Extension Director)	X (Home Economics Extension Director)	X (Associate Director Cooperative Extension Service)	X (Associate Director Cooperative Extension Service)	X (Associate Director Cooperative Extension Service)

^aAct 1995-18 provided that the chair is to rotate on an annual basis.

^bAppointed by Governor from a list of six nominees submitted by the PA State Council of Farm Organizations.

^cAppointed by Governor from a list of eight nominees submitted by the PA State Council of Farm Organizations.

^dAppointed by the Governor from a list of eight nominees submitted by the PA State Council of Farm Organizations and the PA State Association of Conservation District Directors. Each association must nominate one candidate for each farmer vacancy.

^eAppointed by the Governor with the advice and consent of a majority of the Senate. The Governor is to consider nominees submitted by the PA State Council of Farm Organizations and the PA Association of Conservation District Directors. Each association must nominate one candidate for each vacancy.

^fAppointed by the Governor.

^gAppointed by the Governor with the advice and consent of a majority of the Senate.

^hAssociate, non-voting.

Source: Developed by LB&FC staff from a review of legislation.

Department of Agriculture Role²

The PDA is responsible for administrative oversight and monitoring of delegated or contracted agricultural programs implemented by the county conservation districts. These responsibilities include, for example, funding district ACT positions and participating in the ACT Boot Camp training program, cost-share funding of the district's primary administrative support for the Farmland Preservation Program, funding the Ombudsman program, and providing technical support as well as funding from the Nutrient Management Fund.

The Department further supports the SCC and the districts by providing office space and funding from its general government operations budget to help fund the SCC Executive Secretary and his support staff. PDA participates on the review teams that evaluate district performance under their delegation agreements with the commission to administer the Nutrient Management program. The Conservation and Agricultural Technology Division of PDA's Bureau of Plant Industry monitors and coordinates the training, certification, and continuing education of Nutrient Management Specialists. The division also assists the commission and the districts with the preparation, review, implementation, and cost-sharing of the Nutrient Management Plans. In total, PDA estimates it spent about \$3.5 million (in addition to the CDFAP appropriation) to fund related departmental positions and activities.

Department of Environmental Protection Role²

DEP is responsible for administrative oversight and monitoring of programs for which delegation agreements or contracts have been signed with county conservation districts (CCDs). Under the Conservation District Law, DEP is authorized to delegate its regulatory and enforcement functions under the Clean Streams Law and its regulations, the Surface Mining and Reclamation Act, the Flood Plain Management Act and its regulations, and the Dam Safety and Encroachments Act and its regulations to the districts. DEP is to monitor and supervise the activities of each district conducted pursuant to a delegation agreement.

The largest of these programs are the Erosion & Sediment Control Program (E&S) and the National Pollutant Discharge Elimination System (NPDES) Permit Program. These programs, which are addressed in detail in Chapter VI.A, primarily focus on urban and suburban commercial and residential development projects. According to information provided by CCDs in their questionnaire responses, approximately 27 percent of their staff time and \$5.3 million in salaries and other costs in CY 2004 were directed toward meeting their delegated responsibilities for these programs. Similarly, CCDs participating in the Chesapeake Bay Program reported that 13 percent of their staff's time and \$2 million dollars in salaries and

²As discussed later in this section, both departments support the Leadership Development program.

other program costs were spent in meeting the requirements of the Chesapeake Bay contract signed with the Department.

For these programs, as well as the Water Obstructions and Encroachment Program (Chapter 105) and the Biosolids Programs, the Department is responsible for ensuring that the CCDs are adhering to their delegated or contracted responsibilities and are doing so in a satisfactory manner.³ Central office DEP engineers and support staff from the regions regularly evaluate individual districts to determine the adequacy of programs and competency of their staff. The SCC has no direct administrative responsibility for these programs, although program changes are discussed with SCC staff, who are then responsible for keeping commission members informed.

DEP also provides support to districts by funding 15 positions in the Department's six regional offices. The staff in these positions support the CCDs in specific programs, as well as provide general administrative oversight and support to the districts.⁴ District managers, their staff, and district boards use the DEP staff as resources to explain and interpret policies and practices. DEP engineering staff are also available to districts who have technical questions about a program, e.g., whether a construction site has implemented Best Management Practices (BMPs) that are sufficient to control sediment runoff and pollution. Administrative oversight and training programs are coordinated by DEP from Harrisburg and function as another area of support for CCDs (in different programs). The Department also provides staff to support non-agricultural SCC programs. These are DEP staff who are tasked to work directly with the SCC and its staff to ensure that programs are being administered effectively and that available funds are being spent on appropriate tasks. In total, DEP estimates it spent about \$15.8 million (in addition to the CDFAP appropriation) to fund related departmental positions and activities.

Role of the Pennsylvania Association of Conservation Districts

The Pennsylvania Association of Conservation Districts (PACD) also plays an active role with the conservation districts. The PACD is a non-profit organization that supports and promotes Pennsylvania's conservation districts and their programs. PACD acts as the collective voice for the 66 conservation districts and provides advocacy, education, technical assistance, training, and program coordination and facilitation to districts and their constituents. The PACD works with private organizations, business and industry partners, and many state and federal agencies. (See Appendix F for an overview of PACD programs and funding.)

³No federal or state dollars are currently directed to the Water Obstructions and Encroachment Program or the Biosolids Program. Consequently, many CCDs which in the past participated in these programs withdrew. As of March 2005, 30 CCDs continue to participate in the Water Obstructions and Encroachment Program and 19 CCDs continue to participate in the Biosolids Program.

⁴This excludes staff assigned to compliance/enforcement activities.

The PACD is more than an advocacy organization in that it provides the districts with administrative services for several state and federal conservation programs.⁵ Its services include coordinating district training programs, contracting with landowners, and making individual payments to landowners and conservation districts for the following programs:

- Plan Development Incentives Program
- Conservation Reserve Enhancement Program
- Forest Land Enhancement Program
- Agricultural Conservation Training
- Stream ReLeaf Program

The PACD also provides the districts with educational mini-grants, workshops and training, publications, marketing activities, lobbying activities, regional and state-wide meetings, leadership development, and website information.

Additionally, the PACD Engineering Assistance Program, developed in 2001 as a service to districts and other entities needing engineering assistance to complete watershed-related projects, receives state grant funding from Growing Greener and federal grant funding from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). Services offered include: inventory and evaluation, surveys, soil investigation, design, quality assurance, technical reviews, training, and watershed assessment.

Memoranda of Understanding Between the State Conservation Commission and Other State Agencies

The state agencies responsible for the various conservation district programs entered into several memoranda of understanding (MOU) to delineate their specific responsibilities to each other in the administration of the programs. These MOUs set the overall structure and facilitate the state agencies' interaction with the state commission in general and as regards specific programs. These are discussed briefly below:

State Conservation Commission Memorandum of Understanding With the Department of Environmental Protection. An MOU, entered into in April 2001 for a period of five years, delineates the responsibilities of the SCC and DEP in carrying out programs and activities under the various statutes. In general, the MOU

⁵In FY 2004-05, PACD's budget was approximately \$6.4 million. Its non-restricted revenues for operational costs and lobbying efforts of \$113,000 included income generated from district dues, interest, rental income, and miscellaneous revenues. Its semi-restricted revenues of \$804,000 are generated from grants and contracts for the delivery of educational projects/services, engineering assistance, and cost-share administration. Current grants and contracts include Chesapeake Bay Education Grant, 319 Nonpoint Pollution Education Grant, Engineering Technical Assistance Program, Plan Development Incentives Program (PDIP), Conservation Reserve Enhancement Program (CREP), Forest Land Enhancement Program (FLEP), ACT Training, and Stream ReLeaf Program. The PACD's restricted revenues of \$5.5 million are related to grant and contractual activities involving cost-share and administrative payments made directly to other parties, such as landowners or conservation districts.

reiterates each agency's responsibility under certain statutes and provides in an addendum to the MOU the core DEP responsibilities for its central office and regional offices in such areas as legal services, IT assistance, and training. A second addendum describes DEP's responsibility to support the Nutrient Management Program.

State Conservation Commission MOU With the Department of Agriculture.

An MOU entered into in 1996 delineates the responsibilities of the SCC and PDA in carrying out programs and activities under the various statutes. For example, PDA agrees to pay the administrative expenses and salary of the SCC's executive secretary. An addendum to the MOU identifies specific agency activities related to the Nutrient Management Program. These include, for example, PDA formulating regulations and policy for the program, acting as an ombudsman in reviewing a CCD's handling of the program when a farmer is aggrieved, and supporting the SCC in all enforcement activities not resulting from violations of the Clean Streams Law.

State Conservation Commission Interagency Grant Agreement With the Department of Agriculture. The SCC and the PDA entered into an interagency grant agreement in 2003 as a mechanism to transfer PDA funds to the CCDs. The agreement is necessary because the General Assembly appropriates funds to the PDA for the CCDs, but the PDA has no statutory authority through which the funds may be directly transferred to the districts. The agreement grants the funds to the SCC for distribution to the districts as set forth in the Conservation District Fund Allocation Program policy statement. The policy statement establishes four programs for which funds may be allocated to the districts: the Conservation District Manager Cost Share Program; Administrative Assistance Funding Program; Technical Assistance Cost Share Program; and Special Projects Funding Program.

State Conservation Commission, Department of Transportation (PENNDOT), and County Conservation Districts. A Letter of Understanding (LOU) replaced an MOU between these parties in 2002. Each district is a party to its own LOU. The LOU covers E&S activities from the project planning and design stages through construction and regular annual maintenance stages. Its intent is to establish the framework for improved cooperation and communications between the CCDs and PENNDOT at the county level. This includes, for example, the PENNDOT county maintenance office meeting at least once with the CCD in the spring of each year to review proposed maintenance activities which involve earth disturbance.

Efforts to Improve Commonwealth Communication and Coordination

Because both the SCC and the county conservation districts are so dependent on the Department of Agriculture and the DEP for funding and technical and policy direction, they have relatively little ability to independently effect program changes.

In short, the commission needs the cooperation of both departments to bring about changes at the district level.

A core partnership, consisting of representatives from SCC, DEP, PDA, PACD, and NRCS, at least partially addresses this issue. It meets every two to three weeks to resolve administration and coordination issues as they arise. Exhibit 5 describes an important initiative and activities that have been jointly developed by staff from the several agencies, although DEP staff are the primary agents for working with the districts and supervising the activities involved in this initiative.

Although the current commission structure compels dialog among the key actors, and therefore can be seen as positive, multiple lines of authority inevitably create a degree of uncertainty and inefficiency. Although the districts have come to understand how the SCC/PDA/DEP basic framework operates, a number of district managers we spoke to indicated that responding to a single agency would be easier.

Sufficiency of DEP Regional Office Staff Resources Assigned to Conservation Districts. DEP has eight conservation field representatives who work on a daily basis to promote and develop the capabilities of CCDs and their programs through the six DEP regional offices. Formerly, these positions had been located in DEP's central office.⁶ They assist in organizing and developing district activities. Examples of their duties include:

- Attending district meetings and advising board members on program development, budget planning, and the availability of technical assistance.
- Providing training to district board members, district managers, and their staff in the objectives, operations, policies, and procedures of a total conservation program.
- Consulting with county commissioners and other local organizations in order to promote the local conservation district.
- Participating in examinations of watersheds to assess development and flood prevention needs.
- Representing the SCC before the organizations noted earlier, as well as landowners in the conservation district.
- Preparing reports on district activities and giving lectures to urban and rural groups on the benefits of conservation practices.

Their role is to assist district staff and develop board capacity when necessary. They offer suggestions at board meetings, recommend changes to district staff, and consult with boards.

⁶One of these positions, a Conservation Program Specialist I position, has been vacant since April 2004. This Specialist was charged to work with the four suburban counties surrounding Philadelphia. As of April 2005 the position remained unfilled, because of the lack of a qualified applicant on the Civil Service list for this position, according to Department staff. It is expected to be filled in the near future.

Conservation District Leadership Development Program

One key activity initiated by the Commonwealth is the "Building for Tomorrow" Leadership Development Program, which was started "to equip conservation districts with the communication, leadership, and development skills essential for the delivery of a professional and effective conservation district program." This is funded by and has the support of the SCC. Its component parts are:

Building for Tomorrow. Building for Tomorrow is a joint effort of the SCC, DEP, and PACD to develop tools and training products aimed at enhancing the leadership and professional development of the districts. Representatives from SCC, PACD, DEP, NRCS, PSU Cooperative Extension, DEP field representatives, district directors and district managers form the Pennsylvania Conservation Partnership that provides oversight for this initiative. DEP's Division of Conservation District and Nutrient Management provides staff support and the PDA has funded this venture through its special project funding since 2000.

The Partnership has developed training opportunities that include annual district management summits, annual district staff conferences, presentations at the PACD regional director meetings, and a variety of workshops covering topics such as strategic planning, financial and personnel management, and working with the media. At a recent regional directors' meeting, for example, a DEP field representative provided an overview of how to market a district (Crafting a "Go-To" District Image) and an employee management seminar was held in April to discuss state and federal employment laws, fair labor standards act revisions, analyzing job descriptions, among others.

Fifty conservation districts attended strategic planning seminars held in 2001. As a result of the interest shown by the districts in developing or revising strategic plans, the SCC specifically allocated funds for planning grants to the Leadership Development Program from funds provided by PDA. Twenty-two grants were awarded for the completion and distribution of strategic business plans.

The Partnership has developed several resources that are maintained in each district's office: a director's handbook, director recruitment and orientation videotape, a financial management handbook, a personnel management handbook, a videotape on effective district meetings and parliamentary procedure, a catalog of sample operational policies for districts, and others. The Partnership also maintains a lending library for district boards and staff. Included as part of the Directors' Handbook, this contains suggestions on how to conduct monthly board meetings, a list of due dates for forms and reports, reminders to send out press releases or contact commissioners/legislators, contact information, and budget planning and long range planning worksheets.

New Director Manual. The Handbook for Pennsylvania's Conservation District Directors is intended as a practical reference guide to district directors and their staffs. Contained in the handbook is a description of the powers, duties, functions, and responsibilities of a conservation district and an overview of director responsibilities.

Team Visits. A team visit involves a team of district managers, directors, and DEP staff spending two days in a district office interviewing staff, directors, and local officials and reviewing files. These visits are only made at the invitation of the district and are not a formal evaluation of the district. The team prepares a summary report for the board and staff that identifies areas where the district is performing well and also those areas where there are opportunities for improvement. The report addresses four themes: effective board functioning, effective interoffice functioning, effective political relationships, and effective client/community relationships.

Since the start of this project in 2000, 40 districts have opted to have team visits. According to the SCC's Executive Secretary, eight visits had been budgeted for 2005, and as of May, nearly all had been scheduled. He actively and publicly encourages districts to take advantage of the team visits.

Source: Developed by LB&FC staff.

These field representatives reported that, because of the growth of conservation district activities, they have to make choices of how much support they are able to offer a particular county. These field representatives work with both DEP regional office staff, DEP central office staff under two different deputes, Department of Agriculture staff, and SCC staff. They expressed to us their frustration in having to relate to so many different persons and reported that such a setup often creates inefficiencies for them in carrying out their work.

DEP is reorganizing its regional offices, which will result in changes to the administrative and reporting relationships for these positions.⁷ The field representatives all expressed concern to us that the reorganization, which is scheduled for July 2005, will further dilute their effectiveness and oversight of the CCDs.⁸

Council of Farm Organizations Proposal. The Council of Farm Organizations, a public nonprofit consortium of farm organizations, has proposed to restructure the current commission believing that a lack of direct control over staff resources has eroded the commission's ability to monitor the activities of conservation districts and its ability to be the delivery mechanism for land and water programs to private landowners.⁹ In spring 2005, the Council distributed a written position paper to the General Assembly as part of its annual budget document. The council points out that to fulfill its obligations, the commission must be given the resources to do so--specifically those resources that had previously been part of the SCC (Bureau of Soil and Water Conservation) complement prior to 1995.

The council proposes: an independent commission or a departmental commission within a designated state agency that provides all of the support required for the commission to carry out its responsibilities; that positions formally assigned to the SCC/Bureau of Soil and Water Conservation in DER become the administrative responsibility of the SCC, including central office and the field representative and program specialist positions assigned to DEP regional offices; that positions created since 1995 by PDA for the Nutrient Management Certification Program be

⁷Six of the field representatives are Pay Grade 6 and the current conservation program specialist position is Pay Grade 7. Currently, three of the field representatives have ongoing grievances with the Office of Administration and are requesting to be reclassified to a higher pay grade. They believe they are doing work that is generally considered management and note that the job description for their position is 15 years old. In 1999, DEP had undertaken a systematic review of the duties and responsibilities of the field representative positions. Reportedly, no action resulted from the review. The field representatives would like DEP to establish a Job Evaluation Committee to once again review their duties.

⁸According to DEP management the reorganization of the regional offices has been approved and will be implemented over the next several months. The basic reason for the reorganization, according to DEP, is that it will put more resources to address water pollution through focusing more effort on controlling non-source (generally runoff) pollution. The reorganization will include the existing Soils and Waterways Section and a new Assessment and Planning Section. This is intended to provide more visibility and a stronger voice in getting financial and other types of support. It is also considered to be a way to improve coordination between the regions and the counties, as well as a better and more focused use of resources. The Conservation Field Representatives will be assigned to the new Assessment and Planning Section.

⁹The Council of Farm Organizations represents the spectrum of agriculture in Pennsylvania, including farm production, education, business services, and the delivery of finished goods to the consumer.

transferred to the commission; and that positions created by DEP and PDA since 1995 with conservation district and district programs position responsibilities also be transferred. Anticipated results of the recommendations include: a more effective commission with an improved ability to direct, implement, and monitor district programs and the commission's executive secretary having the responsibility for supervising the personnel in DEP that are currently servicing district programs and the activities of the commission.

IV.B. Recent Commonwealth Initiatives May Impact Conservation District Programming

As of April 2005, several Commonwealth initiatives or pilot projects were underway that may affect conservation districts and the State Conservation Commission.¹ PENNDOT's Erosion and Sediment Control Program initiative is meant to relieve district staff from having to approve plans and inspect construction sites by hiring additional Department of Environmental Protection staff to perform the work. If expanded statewide, the Berks County erosion and sedimentation pilot should speed up the review process and eliminate some of the district's paperwork requirements. New federal and state stormwater management requirements may also affect district workload. The Agriculture Ombudsman program, which has been successfully piloted, is now being expanded to several new districts. Finally, the Agriculture, Communities and Rural Environment (A.C.R.E.) initiative, underway between DEP and the Department of Agriculture, may impact the SCC's duties and responsibilities.

E&S Initiatives

PENNDOT Construction Projects. The memorandum of understanding PENNDOT has with DEP to expedite the transportation project development process is expected to be revised to include six additional engineering positions to conduct the Chapter 105 water obstructions and encroachments permit reviews (bridges, culverts, and other transportation infrastructure located within regulated waters). Those projects also require E&S plan reviews and these six new engineers will ensure compliance with NPDES and Chapter 102 concurrent with the Chapter 105 work, thus moving some of the workload currently performed by the districts. The current MOU provides for funds available under the federal Transportation Equity Act for the 21st Century (TEA-21) to be used to fund DEP staff, specifically biologists, to meet the review time limits in the act. Funding is 80 percent federal and 20 percent state, for a total of \$438,000.

PENNDOT district executives responding to our questionnaire expressed certain concerns over district E&S reviews, particularly inexperienced staff, lack of standardization in plan reviews, and insufficient knowledge of PENNDOT procedures.

¹In a major development, the General Assembly passed and the Governor signed on April 13, 2005, the Growing Greener Environmental Stewardship and Watershed Protection Enhancement Authorization Act. The act called for a question to be placed on the ballot for the 2005 Municipal Primary seeking permission for the Commonwealth to incur up to \$625 million of debt for maintenance and protection of the environment, open space and farmland preservation, watershed protection, abandoned mine reclamation, acid mine drainage remediation, and other environmental initiatives. The outcome of this initiative, which the voters approved, will likely impact environmental program service delivery by the conservation districts.

The six DEP engineering positions under the amended MOU will ensure that federally funded PENNDOT projects meet the requirements of Chapters 105 and 102 and the National Pollutant Discharge Elimination System (NPDES) during the project development process rather than having to wait for conservation district permit reviews at the end of the project development.

The engineers will work in the six DEP regions. PENNDOT will prioritize the projects and lower priority projects will continue to be processed through the conservation districts. Under the MOU, PENNDOT² will have the ability to share the DEP resources as needed and available.

The addition of six engineers³ will increase the annual funding to nearly \$1 million, split 80 percent federal highway dollars and 20 percent state. In late March 2005, PENNDOT's Project Management Committee approved the initiative, and the details were being negotiated between PENNDOT and DEP.

DEP and PENNDOT districts hope the MOU will improve timeliness and efficiency of the review process. This amended MOU should also benefit conservation districts by reducing the amount of time district staff spend on PENNDOT reviews, for which districts cannot charge fees.

Berks County Pilot E&S Project Initiative. DEP and the Berks County Conservation District are jointly involved in a pilot project to better control erosion and sediment runoff. The pilot advocates a team approach in the development and implementation of E&S plans involving regulatory agencies, developers, engineers, contractors, and lending and bonding institutions. The initiative incorporates a fundamental change to the current process by requiring that a generalized soil and erosion plan be made part of the contract bid documents and requiring the contractor to be involved in the design of the final control plan.

The pilot, in which the Berks County Conservation District has agreed to participate, would include:

- Conducting a pre-application review meeting with the applicant and the plan designer where the Notice of Intent (NOI) and the conceptual E&S plan, including the project work zones and Post Construction Stormwater Management plan, could be reviewed and a letter of adequacy issued.
- The developer or applicant putting the conceptual plan in the bid documents and selecting a contractor. This would require the bidding contractors to establish the phases within each work zone including the sequence, methods, and

²Project tasks could include: environmental and engineering analysis, guidance, and review; training of PENNDOT employees on DEP regulations and policies related to transportation projects; development of performance measures; review of E&S control plans; and review of stormwater management plans.

³The six new positions represent transfers from PENNDOT's excess complement to DEP's.

scheduling in each phase, along with a separate soil erosion and sediment control plan for each phase.

- The district conducting a final permit application and E&S plan review meeting with the applicant, the earthmoving contractor, and the plan designer. The final E&S Control Plan and a review fee would be submitted at this time. At the conclusion of the meeting, the NPDES permit is issued or denied, and the E&S Control Plan is determined to be adequate or inadequate.

The pilot is meant to address two issues. First, it should eliminate the need for detailed, lengthy, and multiple review letters between the district and the applicant. Second, it will engage the expertise and knowledge of the earthmoving contractor in the design of the plan. The pilot was initiated in the spring of 2005 in Berks County. If successful, it could be expanded to other counties in the fall.

Stormwater Management

DEP is in the process of creating a new manual for stormwater management. This manual is one of the key elements of the approach to managing stormwater that includes the state's Act 167 stormwater management planning program for watersheds, NPDES Phase II for Municipality Separate Stormwater Sewer System (MS4) municipalities, and the NPDES construction permits program. Although nonconstruction stormwater activities are primarily the responsibility of the municipalities, districts anticipate that they may be asked to participate in the program.

DEP is the National Pollutant Discharge Elimination System permitting authority for Pennsylvania and has promulgated regulations to implement the stormwater management program. These regulations establish the general requirement that persons proposing or conducting earth disturbance activities must develop, implement, and maintain Best Management Practices to minimize the potential for accelerated erosion and sedimentation. DEP and the county conservation districts are authorized to enforce these stormwater requirements as pertains to construction projects.⁴ The conservation districts are not, however, responsible for stormwater control in "nonconstruction projects" areas, such as runoff from fields and existing streets and pavements, which is currently a municipal responsibility.

DEP is creating a new Stormwater BMP Manual that is currently in draft form. DEP contracted with a consultant to help in drafting the manual, convened 12 meetings around the state with various interested parties, and received comments on the draft. DEP, along with its contractor, is currently reviewing the comments. DEP will then prepare and publish the manual for public review and

⁴Conservation districts currently participate in expanded stormwater management planning, and in some counties play a key role, with particular focus on Special Protection Waters.

comment before finalizing it as a DEP guidance manual. DEP anticipates that this formal process will begin in late summer (July or August).

Their BMP Manual is part of a broader effort by DEP to develop a new stormwater management policy and program that will improve the way stormwater is managed across the state. Particular focus is placed on technical management solutions that can be applied in conjunction with new land development and, perhaps even more importantly, in conjunction with in-fill development and re-development in already urbanized areas. What additional role, if any, the conservation districts will have in this new approach is unclear, but some have speculated that the district may have enhanced responsibilities, particularly for stormwater control in non-construction areas. DEP has indicated that if the districts are involved in increased stormwater management, it would be through voluntary delegation agreements.

Agriculture Ombudsman Program

Ombudsman services were designated in Act 1995-18 as a function that the Department of Agriculture would provide to districts implementing commission programs affecting production agriculture. The Agriculture Ombudsman Program began as a three-county (Berks, Chester, Lancaster) pilot project designed to assist conservation districts with managing numerous inquiries from the general public and providing information services concerning nutrient management, farm siting, farm production expansions, and related issues. Oversight of the pilot project is provided by the three districts, the SCC, PDA, and other parties as approved by the SCC. Lancaster County's conservation district is the host district, but upon request, Ombudsman services are provided statewide.

Funding for the program is out of the Special Projects allotment of the PDA CDFAP appropriation. The program was expanded in 2005 and now includes an Ombudsman in Blair County to cover Blair, Huntingdon, Cambria, Somerset, and Bedford Counties.

During the first three years of the pilot, the Ombudsman reviewed and commented on zoning ordinances; conducted numerous educational sessions with municipal officials, including agricultural symposiums and farm-related odor workshops; and will sponsor a conference this summer to discuss odors and regulated air emissions. During the first two months of 2005, the Blair County Ombudsman attended district board meetings, a Resource Conservation and Development Council (RC&D) meeting, and the PACD South Central Regional Directors' meeting; assisted Blair County complete its Bay Tributary Strategy; and secured approval of a composting demonstration project from the Blair County Commissioners.

The Agriculture, Communities and Rural Environment Initiative

This initiative would strengthen the water quality requirements for Concentrated Animal Feeding Operations (CAFOs), Concentrated Animal Operations (CAOs), and manure-importing farms and make Pennsylvania among the first states to require odor mitigation. It also creates an Agriculture Review Board and an Office of Ordinance Review within the SCC to issue adjudications on municipal ordinances that may impact production agriculture. The current negotiated version of the initiative is being drafted and is planned to be introduced in spring 2005. Over \$13 million in new and existing resources has been proposed to fund this initiative. The A.C.R.E. components include:

Agriculture Review Board. A.C.R.E. creates a five-member review board (the Secretaries of Agriculture, Environmental Protection, and Community and Economic Development; the Dean of the College of Agricultural Sciences at Penn State University; and a gubernatorial appointee) that would conduct mediation and outreach activities, conduct administrative hearings, and rule on the legality of certain local ordinances affecting agriculture. Any farmer may file application for review by the board, and any township may request review of a proposed ordinance to make sure the ordinance does not supercede state law. Review Board decisions could then be appealed to Commonwealth Court.

Nutrient Management Act. A.C.R.E. revises the Nutrient Management Act's regulations to include enhanced exporting requirements on CAOs, CAFOs, and voluntary farm operations; requires nutrient management plans to include a phosphorus index analysis; requires an Erosion and Sedimentation Control Plan for plowed and tilled lands (or a conservation plan) on operations prior to nutrient management plan approval; adds horse operations and other non-production livestock operations to the CAO definition; and increases requirements for winter manure applications and on field-stacked manure.

Concentrated Animal Feeding Operation Regulations. A.C.R.E. revises CAFO regulations to reflect the EPA's new animal number thresholds for defining a CAFO. Further amendments include requiring operations that generate dry litter to also be considered a CAFO; requiring a 100-foot manure application setback from surface water year-round for all CAFO manure; requiring new manure storages built for swine, veal, and poultry operations to be designed and sized to address a 100-year flood event; and requiring new manure storages over a designated volume to have a DEP Water Quality Part II permit prior to construction.

To guard against the threat of pollution from runoff, farms importing manure from CAOs or CAFOs must have signed agreements and nutrient balance sheets documenting application rates, maintain accurate records, and have the same manure application setbacks and buffers as the farm that produced the manure.

Best Management Practices for Odor. CAFOs and CAOs will be required to implement best management practices related to construction and farm operations to avoid or mitigate odor problems. An Agricultural Air Quality Task Force would examine data, review the specific causes of air emission problems related to agriculture, and suggest further measures to reduce this potential concern.

Improve Agriculturally Impaired Waterways. The state would analyze and begin to take action on water quality problems in all “agriculturally impaired” waterways. Water quality assessments document almost 4,000 miles of streams that do not meet designated standards as a result of nutrient and sediment releases from agricultural operations.

Role of State Conservation Commission. The SCC is perceived as an independent entity and has been proposed to house the Office of Ordinance Review. The commission currently oversees the Nutrient Management Program.

Role of Conservation Districts. The county conservation districts are considered a resource that understands local issues and local actors. The plan anticipates the districts would be available to investigate complaints and perhaps to regulate portions of the initiative. The districts role in A.C.R.E. also includes increased resources and responsibilities for agricultural E&S and Manure Management compliance.

IV.C. The State Conservation Commission Does Not Include Representatives From the Departments of Conservation and Natural Resources or Community and Economic Development

Membership on the State Conservation Commission includes the secretaries of the Departments of Environmental Protection and Agriculture but does not include the Secretaries of the Departments of Conservation and Natural Resources (DCNR) or Community and Economic Development (DCED). A representative of DCNR attends the commission meetings in a non-voting capacity. The potential benefit of DCED being on the commission has become more apparent as land use and development becomes more of an issue for the SCC and the districts.

In addition to the secretaries of PDA and DEP, the commission's 11 members include the dean of the Pennsylvania State University College of Agricultural Sciences, and 4 active farmers and 2 non-farmer members appointed by the Governor with the advice and consent of a majority of the state Senate. Appointed members serve four-year terms. The SCC also includes two non-voting associate members: the state conservationist of the Pennsylvania office of the USDA Natural Resources Conservation Service and the director of the Pennsylvania State University Cooperative Extension Services.

Department of Conservation and Natural Resources

Prior to 1995, by statute, the Secretary of Environmental Resources was the chairman of the commission. In 1995, the legislation that segregated the responsibilities of the Department of Environmental Resources between the newly created DCNR and the renamed DEP changed the chairmanship of the commission to rotate annually between the Secretary of Environmental Protection and the Secretary of Agriculture. The Secretary of DCNR was not made a member of the commission.

DCNR is directly involved in the Dirt and Gravel Road Program in Pennsylvania's state parks. In addition, its Bureau of Forestry is involved in local conservation programs, especially as regards erosion and sediment control and dirt and gravel roads applications on state land. DCNR's overall mission includes administering grant and technical assistance programs that benefit rivers conservation, trails and greenways, local recreation, regional heritage conservation, and environmental education programs across Pennsylvania. DCNR is also involved in administering a wide range of "Growing Greener" activities.

Virtually all the state and local officials with whom we discussed this matter, including Deputy Secretaries of Agriculture, DEP, DCNR, and the Chairman and

Executive Secretary of the SCC, indicated that including DCNR as a voting member of the commission would be appropriate and beneficial to both the commission and the conservation districts. The Pennsylvania Association of Conservation Districts also reported support for such a statutory adjustment.

Department of Community and Economic Development

As discussed in Chapter III.B, opportunities exist for further DCED participation in conservation district activities, especially as regards their relationships with municipal planning, zoning, and elected officials. In particular, DCED's Governor's Center for Local Government Services, which functions as the one-stop shop for all Pennsylvania local governments, acts as the principal advocate for local governments and provides various services and training to local officials and municipal employees. Through Executive Order 1999-1, the Center is also responsible for land use planning assistance.

Additionally, DCED administers the floodplain management program, one of the conservation district contracted programs. This program requires all flood-prone municipalities to participate in the National Flood Insurance Program and enact local floodplain management regulations. It also administers the Land Use Planning and Technical Assistance Program (LUPTAP), which could provide funding for districts involved in multi-jurisdiction land use planning efforts.

The various state and municipal officials we contacted, including the Secretaries of Agriculture and DEP (Chairman of the SCC), Executive Secretary of the SCC, and the Deputy Secretary and Director of DCED's Governor's Center for Local Government Services indicated that including DCED as a member of the commission could be beneficial to the Commonwealth's land use planning and management efforts. Numerous conservation district managers and the Pennsylvania State Association of Township Supervisors also reported support for such a statutory adjustment.

V. Specific Conservation District Administrative Issues

A. Inadequacies and Restrictions in Conservation District Funding

The General Assembly appropriates funds annually to support districts through the Conservation District Fund Allocation Program (CDFAP), the Nutrient Management, Chesapeake Bay, Watershed Specialists, and Dirt and Gravel Roads programs. Districts that agree to manage the Biosolids and Chapter 105 programs now receive no financial support from the Commonwealth for these programs.

Adequacy of CDFAP Allocations

The CDFAP provides conservation districts with funds for conservation district managers, administrative funding assistance, technical staff, and funds for special projects, in that order of priority. In the early years, the CDFAP allocation, the districts' oldest and most consistent source of funding, was essentially the sole source of funds for district operations. Conservation district programs and operations are now much more complex, and districts receive funding from various state and federal sources.

Table 6 below shows the total CDFAP allocation per staff (statewide) from FY 2000-01 through FY 2004-05. Even with a substantial increase in FY 2004-05, the allocation per staff has decreased 15 percent since FY 2000-01.

Table 6

CDFAP Appropriation Per Conservation Staff			
<u>Fiscal Year</u>	<u>Appropriation</u>	<u># of Staff</u>	<u>Appropriation/Staff</u>
2000-01.....	\$4,250,000	358	\$11,872
2001-02.....	4,310,000	463	9,309
2002-03.....	4,310,000	497	8,672
2003-04.....	4,310,000	503	8,569
2004-05.....	5,210,000	518	10,058
2005-06 (Budgeted).....	4,310,000	NA	NA

Source: Developed by LB&FC staff from data provided by DEP.

In return for conservation district assistance on state programs, the State Conservation Commission (SCC) has adopted a goal of providing a 50 percent cost share, with specified salary/benefit ceilings, for district staff working on state programs.

For FY 2004-05, the SCC approved an increase in the 50 percent cost share for a district manager from \$22,000 to a maximum of \$27,000 per manager. Administrative assistance grants to districts, also intended to support district operations (see Chapter II), increased from \$5,290 to \$8,100. The commission maintained the

cost share for a district's first technician at a maximum of \$16,500 and at a maximum of \$9,000 for a district's second technician.¹ All 66 districts received administrative assistance as well as support for the 66 district managers. Sixty-three districts received support for 1st technicians, and 56 received state support for 2nd technicians in FY 2004-05.² In most cases, however, the CDFAP funds do not pay for the full 50 percent of staff costs (salary and benefits) for the manager or technician³ positions, even at the capped level.

Exhibit 6 shows the gap between district managers' and technicians' salaries and benefits funded through the CDFAP appropriation compared to actual costs. The state funding gap (based on actual salary costs) in FY 1996-97 was \$450,700. By FY 2003-04, it was \$1.4 million, but decreased to \$1.1 million in FY 2004-05 due to the increased appropriation.

Those districts responding to the LB&FC staff survey question reported that 67 percent of district managers, 82 percent of 1st technicians, and 98 percent of 2nd technicians were reimbursed at less than 50 percent of actual cost for salaries and benefits in FY 2004-05.

The lowest district manager cost share was in Erie County (23 percent); the lowest 1st technician cost share was in Snyder County (10 percent); and the lowest 2nd technician cost share was in Perry County (5 percent). In FY 2004-05, the average district manager, 1st technician, and 2nd technician cost share was 43 percent, 38 percent, and 24 percent, respectively.

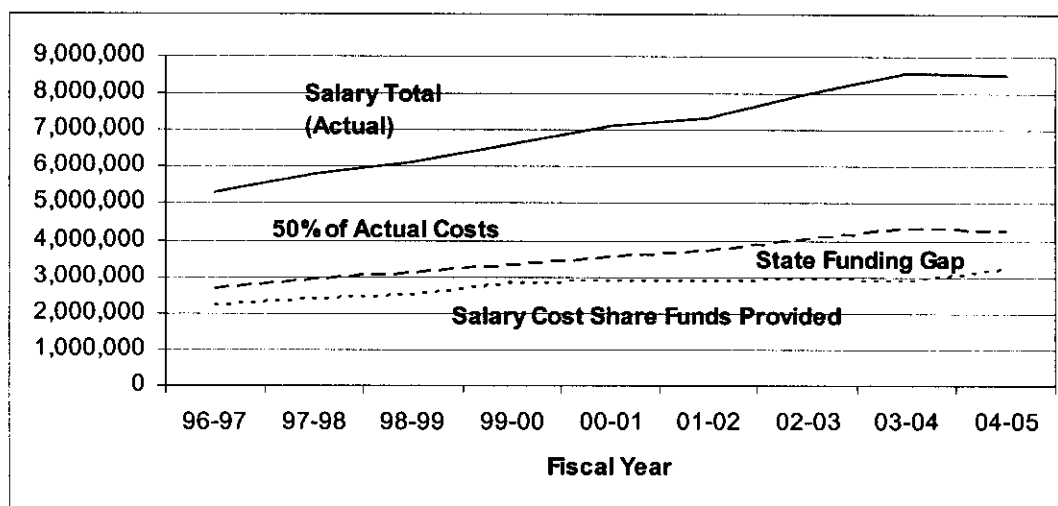
According to a Pennsylvania Association of Conservation Districts (PACD) analysis provided to LB&FC staff, 48 percent of the district managers, 87 percent of the 1st technicians, and 95 percent of the 2nd technicians received less than 50 percent cost share in FY 2004-05. Fully funding these positions at the 50 percent level in FY 2005-06 would require an allocation from the Department of Environmental Protection (DEP) of \$4.7 million, an increase of \$1.15 million from DEP's

¹CDFAP only provides reimbursement for the 1st and 2nd technicians.

²Districts annually submit to DEP the previous year's salary and benefits of their district managers and technicians. DEP calculates 50 percent for each district manager's salary/benefits and adds 4 percent to adjust for inflation. This is the maximum amount the manager could receive if there were enough funds. Because the median district manager salary/benefits (50 percent) in FY 2004-05 is \$27,000, DEP designated this as the new maximum payment. The allocating process is similar for technicians. From its total allocation DEP subtracts the funding for district managers and technicians. The remaining amount is for administrative assistance, which is divided equally among the 66 districts. DEP has developed a database tool that allows commission members to see easily how the allocated amounts would change as the cap changes.

³The percentage of cost share for technicians is based on the level of responsibilities assumed in the Erosion and Sediment Pollution Control Program as specified in the delegation agreement: (1) Level I - 35 percent; (2) Level II - 50 percent; and (3) Level III - 65 percent.

District Manager/Technician Cost Share Funding



Source: Developed by LB&FC staff from information provided by DEP.

\$3.55 million 2004-05 CDFAP appropriation.⁴ The analysis also showed that many districts have more than two E&S technicians--some have as many as seven--and that the state match does not support any of the salaries and benefits for these positions.

District Programs Without State Funding Support

Chapter 105. With the inception of Chapter 105 funding (see Chapter II) in FY 1991-92, approximately 41-43 districts annually assumed 105 responsibilities through delegation agreements with DEP. See Appendix D. There has never been, however, a consistent, dedicated source of funding for the 105 program. Since FY 2001-02, DEP no longer provided funding for this program. Previously, the Clean Water Fund, CDFAP, or the Dams and Encroachments Fund had been used to fund districts to implement the Chapter 105 program. Consequently, the number of districts willing to enter into a delegation agreement with DEP dropped to 30. These districts now receive no state funding for this program and must absorb the cost of the program out of their own budgets. Where districts cease Chapter 105

⁴Additionally, PACD requested the following funding from DEP: (1) 50 percent funding for 30 new technicians; (2) additional funding for administrative assistance since districts report spending \$1 million more than they were allocated; (3) state reimbursement to districts for a portion of overhead associated with CDFAP since no overhead is currently reimbursed; and (4) increased district director/staff training and leadership development. The total funding request from DEP is \$6.9 million. For FY 2005-06 PACD requested a \$2.4 million allocation from PDA for augmentation to the conservation district manager at 50 percent cost share, increased conservation technician support at 50 percent cost share, increased funding for special projects, and increased administrative assistance support. Allocations requested from DEP and PDA total \$9.3 million.

delegation activities, the DEP regional offices are to assume the responsibilities for the program.

According to PACD officials, districts perform Chapter 105 work even though the money is not available because they consider it to be an important program, and the county commissioners and developers prefer working with the local districts rather than with DEP regional staff. One district manager noted that, de facto, fees charged for the Erosion and Sediment Control Program (E&S) subsidize the Chapter 105 Program.

Biosolids. A number of districts continue to offer biosolid services to farmers even though DEP withdrew funding effective December 2004. For example, the Lancaster District has decided to remain in the delegated biosolids program at least one more year and then plans to reevaluate its participation. It did so, in part, because it receives some indemnification protection through DEP by continuing to participate. It has, however, revised its delegation agreement with DEP effective January 2005 to indicate that it would spend no more than \$10,000 in staff time on the program. The district now responds to complaints about farms or fields where biosolids have been applied and occasionally will monitor on a random basis. If a participating farmer is not following its conservation plan, the district may recommend to the DEP regional staff that the farm be removed from the approved list to which biosolids may be applied.

As of March 2005, a total of 19 conservation districts continue to accept biosolids delegation from DEP even though program funding was eliminated. Table 7 shows how the level of funding provided to conservation districts has decreased over the last three fiscal years. Previously, 49 districts participated in the program through a signed delegation agreement.

Table 7

**Biosolids Funding Provided to Conservation Districts
Which Established Delegation Agreements With DEP***

<u>Fiscal Year</u>	<u>Biosolids Allocations</u>
2002-03	\$528,000
2003-04	535,700
2004-05	136,550

*Since December 2004, funding no longer is provided to conservation districts for this program.

Source: Developed by LB&FC staff from information provided by the Department of Environmental Protection.

All 65 district managers responding to our questionnaire listed funding as a concern; 61 considered it one of the top three district problems. See Exhibit 7 for some of their comments.

District Manager Funding Concerns

- We are growing program responsibilities faster than we are growing funding resources, so employees are habitually overworked. Our employees are also underpaid, making frequent turnover a problem, especially considering the complexity of some of the programs we handle. Most of the time program funding does not cover the entire cost of doing the program. State programs can ebb and flow – we hire people, train them, and operate a program that people come to depend on, and then that program may be cut. We have no dedicated funding source.
- There is no advocate for districts in the state. Although the SCC, DEP, PDA, and NRCS all seem to appreciate what we do, each of these entities is struggling with their own funding issues. The SCC should be our greatest advocate.
- Insufficient funding provided by the Commonwealth to cover staff salaries/benefits for the administration of delegated program, when compared to private sector.
- Conservation districts accept delegation authority of state programs then funding disappears to fully implement programs (examples--Chapter 105 and Biosolids programs).
- Funding sources that account for all district costs of employee not just salaries/benefits.
- Since we have to rely on grants to operate, we are spread very thin in order to carry out the project. We usually only keep 2 percent of administration—but we need it.
- Lack of a dedicated, efficient funding stream. Incredible bureaucracy caused by multiple stagnant funding streams and increased mandates.
- Flat level funding of the CDFAP; dependence on grants, program reimbursements and other soft funding; pressure at county level to reduce county support of conservation districts.
- Lack of funding to hire an educator; lack of funding to install BMPs for CBP; NRCS is very busy with their own programs to assist the district.
- Lack of dedicated CD funding; increased overhead expenses (ex. employee costs, hospitalization).
- Increasing expectations with decreasing resources.
- Flat lined or reduced funding (state), e.g., (1) CDFAP Flat lined 5 years before 2004/5 slight increase; (2) Biosolids Funding--eliminated 2005; (3) Chapter 105 Funding – eliminated several years ago; (4) decrease in CBP cost/share dollars--ongoing; and (5) Repetitive Loss Program--eliminated several years ago.
- Not knowing what level of funding we will have on a yearly basis.
- CDs are faced with applying for too many grants to be able to run their programming.
- The district is forced to have position vacancies because program funding does not fully cover salary and benefits costs for staff. There is a lack of stability in funding from year to year.
- New endeavors could not be undertaken without increased funding and increased office space.
- We basically have to spend so much time trying to find other funds through special projects or other programs to cover costs to keep our employees. Managers then become grant administrators with more time wrapped up just administering more programs and grants.
- Conservation districts have turned programs back to the state because funding evaporated.
- We have had trouble making payroll in the past.
- We currently administered the Chapter 105 program for DEP free of charge to benefit the citizens of the county but it does cost the district time and money.
- Insufficient funding from programs and from local sources to be able to pay program technicians enough to encourage them to make a career with the conservation district.

Source: Developed by LB&FC staff from conservation district manager questionnaire responses.

V. B. Cumbersome District Board Appointment Process and Composition

The Conservation District Law, 3 P.S. §854, establishes the method and requirements for appointments to the county conservation district boards. Once a county establishes a conservation district, a board of seven members is appointed by the county governing body.¹ This board is to consist of one member of the county governing body, not more than four nor less than two farmers, and no more than four nor less than two members of the public who are not farmers.² The farmer and public members are to be selected from a list containing at least double the number of directors to be appointed. The statute requires that the list be submitted by organizations within the county designated by the State Conservation Commission as appointing authorities.

To implement these requirements, the SCC has developed a written policy for organizations to be designated appointing authorities. The policy requires an organization to complete the commission's "Petition to be Designated a Nominating Organization" and forward it to their county conservation district. The county district board then makes a formal recommendation on the petition and forwards it to the SCC. The commission takes formal action to either approve or disapprove the specific petition.

Under this policy, an organization is eligible for approval as a "nominating organization" if either of the following criteria is met: (1) the organization is countywide by title or nature or (2) the organization represents the interests of a designated region and at least 30 percent of the organization's membership resides within the county. In the case of multi-county organizations, the commission has the authority to approve, with adequate justification, an organization that does not meet this criteria if the district so requests.

Neither state statute nor the commission's policies address how an organization is to be made aware of its nominating authority with respect to conservation district boards. The SCC has developed information about the nominating process, including suggestions for reviewing and updating the list of nominating organizations, and distributed it to the chief clerks of Pennsylvania's counties.

¹A district and its county governing body can request permission from the State Conservation Commission to approve a greater or lesser number of members due to unusual or extenuating circumstances. The number of members may be no less than five nor more than nine. The composition of the board shall be approved by the State Conservation Commission.

²Farmer and public non-farmer members serve four year terms and until a successor has been appointed. The director appointed from the governing body is appointed annually by the governing body.

Additionally, commission policy requires conservation districts to report annually to the commission certain information about district board member positions needing to be filled. For example, the counties are to report the nominating organization, the nominee names, and whether the appointment is to fill a public or farmer position vacancy. The commission has developed a form for the counties to use. (See Appendix G.) The SCC Executive Secretary advised us that commission staff review the information as a verification process. (For example, whether the farmer nominee meets the requirements of a farmer under SCC policy.) The executive secretary reported that, although there are a few counties that do not fully comply with this procedure, most supply such information.

Variation in District Involvement

The districts vary in their approaches and activities with respect to district board member nominations. In some districts, the managers report being actively involved in working with both nominating organizations and county chief clerks. In certain other districts, the managers reported not knowing which nominating organizations are active or which organizations nominated their existing board members.

The districts also generally do not appear to be proactive in identifying and contacting organizations to inform them of their ability to nominate individuals to the district boards as provided for in state statute. One organization, the Pennsylvania State Association of Township Supervisors, expressed a specific interest in having stronger representation on local boards for township supervisors. Our analysis shows that township associations are nominating organizations in fewer than half (31 of 66) of the districts.

Each year the SCC provides the districts with information on the status of their board member terms and related nominating organizations information. Additionally, we observed that the nomination organization process was addressed at the January to March 2005 Pennsylvania Association of Conservation Districts regional meetings held around the Commonwealth. The SCC executive secretary emphasized in his presentation at these forums that active and informed county nominating organizations are the backbone of the nominating process for conservation districts. The secretary suggested a few key questions for districts to ask themselves in this area:

- Does your county currently have at least 12 active and diverse nominating organizations?
- Do you have current contact information for each of these nominating organizations?
- Have you added any new nominating organization in the last three years?
- Have you added more nominating organizations to your list in the last three years than you have removed?

- Does your district regularly provide nominating organizations with copies of key district publications (newsletters, annual reports, goals and objectives)?
- Are certain members of your board or staff assigned to communicate with specific nominating organizations on a regular basis (i.e., attend their meetings) and report on district programs and activities?
- Have you invited nominating organizations to your board meeting and provided them the opportunity to report on key activities, issues, and needs?
- Do you meet at least annually with all of your nominating organizations (invite them all to breakfast, lunch or dinner) to discuss district programs and activities, anticipated board vacancies that will need to be filled, and the type and quality of persons that would complement your current board?
- Do your county commissioners regularly receive two or more eligible nominations for each vacancy to be filled on your board?
- Do you offer each nominating organization an opportunity to recommend an associate director to serve on your district board each year?

Analysis of Active Nominating Organizations

To analyze the extent and types of various stakeholder group involvements with the district board member nominating process, we obtained information identifying the nominating organizations currently active throughout the state and found that almost 50 percent of the 741 nominating organizations statewide are related to agriculture. (See Table 8.) Another 10 percent of these organizations are government related, almost 8 percent are sportsmen's organizations, and over 5 percent are conservation organizations. Other organizations represented in the nominating process include the League of Women Voters, builders' associations, the board of realtors, and county bar associations, among others.

We also attempted to determine the characteristics of board composition in several districts. As discussed above, by state statute, district boards may have from two to four farmer members. We found, however, that in several districts where urban/suburban programs are the strong focus of district activities (70 percent or more), farmer members comprise four out of seven members. For example, Montgomery County reports that only 10 percent of its activities relate to rural/agricultural related activities, but four of seven of its members are farmers. Similarly, Carbon County reports that 5 percent of its focus is on rural/agricultural actions, but three of its seven board directors represent farms. The Erie County District reported that four of the seven directors are farmers, but only 15 percent of its efforts are focused on rural/agricultural activities.

Table 8

Conservation District Directors' Nominating Organizations

<u>Organization</u>	<u># of Counties</u>
Pennsylvania Grange.....	59
Agricultural Extension.....	45
Farmers Associations.....	41
Federation of Sportsmen.....	39
USDA Ag. Stabilization and Conservation Service ..	34
Holstein Club.....	32
Association of Township Officials.....	31
Farm Bureau Coop Association	23
League of Women Voters.....	23
Farm Service Agency.....	19
Watershed Associations.....	19
Dairy Herd Improvement Association.....	17
Sheep and Wool Growers Coop Association	15
Trout Unlimited	15
County Planning and Zone Commission.....	14
Builders Associations	13
Chamber of Commerce	13
Conservancies.....	12
Artificial Breeders	11
County Fair Associations.....	11
Audubon Society	10
All Others.....	<u>245</u>
Total.....	741

Source: Developed by LB&FC staff from information provided by the State Conservation Commission.

V.C. District Fiscal Management/Cash Flow Issues and Concerns

State and federal funds are generally provided to the conservation districts on a reimbursement basis, causing cash flow problems in many of the districts. Additionally, districts may not carry forward unexpended funds since they lapse back to the Commonwealth at the end of the fiscal year. These and other fiscal management issues are discussed below.

State and Federal Funds Are Generally Reimbursed After Costs Are Incurred

The Conservation District Fund Allocation Program (CDFAP) appropriation is used to reimburse the districts for costs already incurred. This can result in cash flow problems for the conservation districts. The State Conservation Commission's Statement of Policy requires the districts to file quarterly claims indicating the cost of district manager and technician employment for the period. The district is also to submit a report of activities and accomplishments resulting from the employment of these persons. Reimbursement, based on invoices submitted, often takes eight weeks, according to Pennsylvania Department of Agriculture (PDA) officials.

Several district managers indicated they would prefer monthly or quarterly advances from the state. Although the Department of Environmental Protection officials report that the Comptroller's Office has not approved advanced funding, the Comptroller's Office told us that neither DEP nor PDA has submitted a written request for such a change. The Commonwealth's general policy, however, is to fund on a reimbursement basis. Management Directive 305.20 states that exception requests are to be submitted to the agency comptroller in writing and provides for the comptroller to approve such requests. Some conservation district programs do receive funds in advance, such as the Dirt and Gravel Roads Program, which receives a 50 percent advance. This requires a grant agreement whereby the grantee may receive no more than 50 percent at any given time.

Single County Authorities, charged to administer drug and alcohol programs, and county Area Agencies on Aging are also considered grantees under Management Directive 305.20, and they receive monthly advances for the services they provide through the Departments of Health and Aging. They receive one-twelfth of the total grant, or the amount of their estimated expenditures, within 15 days of the beginning of the month.

Additionally, district managers report that they prefer receiving funds electronically rather than the current system of paper checks. According to the Comptroller's Office, it encourages automated checking accounts, and funds can be

deposited electronically if districts indicate this method of payment on their invoices.

District managers responding to our questionnaire provided the following comments as regards the current reimbursement system:

- [District Manager] went without pay for a month to meet payroll costs due to waiting for the reimbursement. We now have a line of credit.
- [At least several districts] use county monies until reimbursed.
- Funding restrictions [allow] no flexibility.
- Reimbursement for program administration is not timely.
- Upfront working capital would help some of us who are the most strapped for funds and would be a big improvement over reimbursements. This is especially true of pass-through funds.
- Allow state support funds to be provided up front as working capital (opposed to reimbursement basis) to ease the burden on district budget. Allow state support funds to be offered as block grants (such as administrative assistance funds) opposed to cost-share, to provide more flexibility in district budgeting in cases where local match cannot be achieved.
- Processing for reimbursement has been cumbersome and time consuming. Every delegation, grant, or program we participate in requires separate request for reimbursement. The time taken to receive the funds after the request has caused an extreme financial burden and problem to districts. This process needs to be streamlined.

Unexpended Allocation to Districts Must Lapse Back to the Commonwealth

We also found that both DEP and PDA fund district programs, but DEP's method of allocation is more flexible. DEP's entire CDFAP appropriation is encumbered at the beginning of the fiscal year. DEP, thus, is able to reallocate within its appropriation throughout the fiscal year, providing conservation districts with a certain degree of additional flexibility.

PDA's appropriation is more specifically encumbered; its CDFAP appropriation is allocated to special projects, such as Farmland Preservation, Leadership Development, and Agricultural Conservation Technician (ACT) cost share. Each project category is encumbered separately, and funds cannot be readily moved between project categories. Actual expenditures determine the districts' reimbursements. The only flexibility in the PDA encumbrancing system occurs each January when the SCC sends a letter to the districts requesting release of unused funds to the SCC so that other districts can use them. Thus, DEP is less likely to have monies lapse at the end of the fiscal year due to its reallocation process throughout the year.

Most Districts Have Their Own Financial Accounts, But in Some Counties, Federal and State Monies Are Deposited Directly Into County General Government Operations Accounts.

As with other aspects of conservation district operations, districts vary in the procedures they use to manage their funds. Forty-seven of 58 (81 percent) district managers responding to our questionnaire stated that conservation district monies from the state and federal governments are deposited directly into the conservation district accounts. The remaining 11 districts (19 percent) deposit state and federal funds in county General Fund accounts or a combination of county and district accounts. District/county agreements determine where dollars are deposited, according to the SCC executive secretary.

District managers whose funds are deposited in county district accounts commented that their funds are transferred to the county as reimbursement for program salaries and benefits; typically employees in such districts are county employees. Where state and federal monies are deposited directly into county general government accounts, districts have less control over the dollars. One district manager noted, for example, that their county uses his district monies for its own cash flow management purposes.

Districts Maintain and Report Information About County Direct and Indirect Financial Support Differently, Precluding a Comparison of Counties' Support to Conservation Districts

Neither the commission, PDA, nor DEP has developed written guidance to the conservation districts on what costs to include and how to report their expenditures. This has created inconsistency in conservation district financial reporting systems. According to the SCC executive secretary, districts are required to follow Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. However, districts may or may not, for example, report county in-kind contributions, such as vehicles received and gratis or below market rental of facilities.

Districts send their audited financial statements to DEP, which reviews them on an exception basis only. Consistent and comparable reporting of costs would enable DEP to determine the extent to which, for example, E&S plan review fees cover costs. Consistent reporting of non-cash revenues from counties would more clearly state county financial support and provide a better indication of each district's financial status.

V.D. Burdensome and Inefficient Reporting Requirements

Together, the various Commonwealth and related agencies¹ annually require as many as 70 reports and requests for information from conservation districts. These include program quarterly activity reports, reimbursement claims, and funding requests. Exhibit 8 lists the various reports the Commonwealth requires from the conservation districts. Such reporting requirements create a burden on the districts. According to the executive director of the Pennsylvania Association of Conservation Districts, the Commonwealth needs to streamline the paperwork required for district reimbursement, much of which is redundant. Several managers we visited reported overall that districts spent about one-third of their time on administration.

Concern was also expressed that much of the paperwork required for the National Pollutant Discharge Elimination System (NPDES) permit is unnecessary; in particular, the DEP requirement for three copies of a submitted plan. One district manager cited this as a particular waste of paperwork because a high percentage of the initial submissions are returned for changes. This district has decided to only require three copies of the final, approved plan. The Department of Environmental Protection requires the district to keep this information for three years after project completion, at which time it is then sent to DEP.² Comments received from district managers regarding paperwork requirements are shown on Exhibit 9.

eGovernment Initiative. DEP contracted with a consultant in 2001 to examine the business processes for conservation district reporting and invoicing. According to the consultant's report, the conservation district reporting process is labor intensive and requires duplicative information among programs. Districts maintain separate records for each program in a variety of formats. In addition to Commonwealth reporting criteria, many districts report program information to local municipalities or counties.

The consultant recommended a web-based application that allows for an online repository of working data, eliminating the need for multiple electronic and hard copy logs, spreadsheets, and databases. It recommended combining data required among programs to minimize time spent reporting as well as synchronizing reporting dates.

DEP initiated the first phase of its conservation district eGovernment project in September 2003 with the July through September quarterly reports for the Conservation District Fund Allocation Program and Biosolids program. The eGovernment project has been offered to, but not required of, all districts. As of December 31, 2004, 45 districts report to the Commonwealth through eGovernment for these programs.

¹DEP, PDA, DCED, and SCC plus PACD, PA Envirothon, and the Pennsylvania State University.

²DEP reported that in 2002, the Department proposed to streamline the Phase II permit to make it a one page registration. This change would have reduced the paper and administrative workload in the NPDES permit programs. Because some districts have had some concerns, DEP chose to continue the existing longer registration form.

Exhibit 8

Conservation District Reporting Requirements

Due Date	Application/Claim/Report
January 15	ACT Quarterly Reimbursements Claim (Oct-Dec)
	Application for CDFAP Reimbursement (Oct-Dec)
	CBP-5 – Cost Verification Form (Oct-Dec)
	CBP-23 – CBP Expenditures Report (Oct-Dec)
	CBP-31 – Request for CBP Funds Other Than FAFP
	CBP-32 – CBP Quarterly Reports (Oct-Dec)
	CBP-35 – Regional Conservation District Engineer Quarterly Report (Oct-Dec)
	CDFAP – Employee Quarterly Activity Reports (Oct-Dec)
	Chapter 102/105 Quarterly Reports (Oct-Dec)
	Dirt & Gravel Road Program Annual Summary Report
	FLP Quarterly Reimbursement Claim (Oct-Dec)
	PDIP Quarterly Report (Oct-Dec)
	Watershed Specialist Quarterly Claim and Activity Report (Oct-Dec) ¹
January 25	Nutrient Management Quarterly Report and Reimbursement Request (Oct-Dec)
January 31	Financial Report (Previous CY)/Budget (Current CY) Goals and Objectives Teamsheets
February 15	CBP-21 – CBP Funding Request Form (Apr-Jun)
March 15	Envirothon Preregistration Form and Fee
March 31	Annual Report
April 15	ACT Quarterly Reimbursements Claim (Jan-Mar)
	Application for CDFAP Reimbursement (Jan-Mar)
	CBP-5 – Cost Verification Form (Jan-Mar)
	CBP-23 – CBP Expenditures Report (Jan-Mar)
	CBP-32 – CBP Quarterly Reports (Jan-Mar)
	CBP-35 – Regional Conservation District Engineer Quarterly Report (Jan-Mar)
	CDFAP Employee Quarterly Activity Reports (Jan-Mar)
	Chapter 102/105 Quarterly Reports (Jan-Mar)
	FLP Quarterly Reimbursement Claim (Jan-Mar)
	PDIP Quarterly Report (Jan-Mar)
	Watershed Specialist Quarterly Claim and Activity Report (Jan-Mar) ¹
April 25	Nutrient Management Quarterly Report and Reimbursement Request (Jan-Mar)
May 15	CBP-21 – CBP Funding Request Form (Jul-Sept)
	State Envirothon Registration Form
June 1	M.K. Goddard Award Nominations
June 30	PACD Award Nominations
July 1	CDFAP Application for New FY Funding

Exhibit 8 (Continued)

Due Date	Application/Claim/Report
July 15	ACT Quarterly Reimbursements Claim (Apr-June)
	Application for CDFAP Reimbursement (Apr-June)
	CBP-5 – Cost Verification Form (Apr-June)
	CBP-23 – CBP Expenditures Report (Apr-June)
	CBP 32 – CBP Quarterly Reports (Apr-June)
	CBP-35 – Regional Conservation District Engineer Quarterly Report (Apr-June)
	CDFAP Employee Quarterly Activity Reports (Apr-June)
	Chapter 102/105 Quarterly Reports (Apr-June)
	FLP Quarterly Reimbursement Claim (Apr-June)
	PDIP Quarterly Report (Apr-June)
	Watershed Specialist Quarterly Claim and Activity Report (Apr-June) ¹
July 31	CDFAP – Administrative Assistance Financial Report
August 15	CBP-21 – CBP Funding Request Form (Oct-Dec)
September 15	Deadline to Request Extension of 10/1 Audit Deadline
October 1	District Financial Audit Report
October 15	ACT Quarterly Reimbursements (July-Sept)
	Application for CDFAP Reimbursement (July-Sept)
	CBP-5 – Cost Verification Form (July-Sept)
	CBP-23 – CBP Expenditures Report (July-Sept)
	CBP-32 – CBP Quarterly Reports (July-Sept)
	CBP-35 – Regional Conservation District Engineer Quarterly Report (July-Sept)
	CDFAP Employee Quarterly Activity Reports (July-Sept)
	Chapter 102/105 Quarterly Reports (July-Sept)
	FLP Quarterly Reimbursement Claim (July-Sept)
	PDIP Quarterly Report (July-Sept)
	Watershed Specialist Quarterly Claim and Activity Report (July-Sept) ¹
October 25	Nutrient Management Quarterly Report and Reimbursement Request (July-Sept)
November 15	CBP-21 – CBP Funding Request Form (Jan-Mar)
December 1	Director Nominations From County Government
December 31	Nutrient Management Act Level 1 & 2 Delegation Proposal and Budget (SCC-Approved Rates From October Meeting)
As Needed	Dirt & Gravel Road Program Request for Replenishment of Working Capital Advance
As Needed	Floodplain CAV-CAC Activity Report
30 Days Prior	Items for State Conservation Commission Agenda

¹Some CDs submit monthly.

Source: DEP 2005 Conservation District Program and Budget Book.

District Manager Reporting Concerns

- Administrative paperwork is overwhelming, time consuming, and inefficient. Technical staff ends up having to apply for grants to get money to install BMPs. A better use of their time would be to do the technical work they were hired to do. The administrative burden is so cumbersome that it often outweighs the value of the project or activity (ex. – Growing Greener Grants.) CDFAP and ACT are relatively simple funding programs. The CBP, West Nile Virus, and Watershed Specialist Programs require much more paperwork and are far more burdensome.
- A serious amount of time wasted looking for fiscal resources; accounting for these finances via increased audit and written reporting criteria rather than having a presence in the field helping landowners protect resources.
- Processing for reimbursement has been cumbersome and time consuming. Every delegation, grant or program we participate in requires a separate request for reimbursement. The time taken to receive the funds after the request has caused an extreme financial burden and problem to districts. This process needs to be streamlined.
- As you see from this questionnaire's financial figures, bookkeeping is a thing of the past and need for proper accounting is taking over not just for the balancing of figures but to ensure compliance with a different set of rules and financial reporting for each different program and also the higher audit standards with which we are required to abide. Standardize the way each district calculates the costs of employees/benefits when submitting for reimbursement to the state or other agencies to eliminate inconsistencies when comparing the same reporting categories with individual county reports. Synchronize, with cooperating agencies (NRCS, FSA, etc.), program deadlines for Best Management Practices funding so that the farmer/landowner may utilize all of the programs to implement crucial nutrient management, erosion, water quality, etc., practices to maximize the environmental benefits.

Source: Developed by LB&FC staff from Conservation District Manager questionnaire responses.

Districts have suggested two improvements in the eGovernment project. First, districts would like the capability to print copies of approved invoices and reports whenever needed. DEP plans to address the concern this year. Second, regarding CDFAP activity report, districts would like to increase the number of file upload slots needed for reimbursement for the manager and two technicians. DEP plans to increase the slots from three to nine.

According to DEP officials, Phase II implementation of quarterly invoicing and reporting forms for Chesapeake Bay, Nutrient Management, and Farm Land Preservation programs will begin September 30, 2005; the remainder of the forms for Phase II have a planned implementation date of June 30, 2006. Phase III implementation is scheduled for July 2006 through 2010, dependent on funding. It could include the Agricultural Conservation Technician, Dirt and Gravel Roads, Floodplain Monitoring, Growing Greener-Watershed Specialists, Federal Clean Water, and Coastal Zone Management programs. Plans include eventually interfacing eGovernment with the Commonwealth's ImaginePA payment and accounting system.

VI. Selected Specific Programs, Discussions, and Issues

A. Erosion and Sediment Control and NPDES Programs

For most county conservation districts, the Erosion and Sediment Control Program (E&S, also known as Chapter 102) and the National Pollutant Discharge Elimination System Permit (NPDES, also known as Chapter 92) programs require significant staff time and resources. District managers estimate that on average over the last three years (2002 through 2004), approximately 26 percent of staff time has been dedicated to these programs at a cost of approximately \$5 million each year statewide. In 2004, some districts reported devoting as much as 75 percent or more of total staff time to these programs. It is anticipated that the need for additional staff and greater funding will continue to grow as development pressures increase in many districts.

Program Overview and Purpose

Program Requirements

Sixty-six conservation districts have been delegated responsibilities for the Department of Environmental Protection's (DEP) E&S Control Program. Districts administer the program through a signed delegation agreement with DEP's Bureau of Watershed Management. Under this program, administrative and inspection authority is delegated to districts at three different levels, as described later in this section. Districts review and approve E&S control plans for certain earthmoving sites to minimize the amount of sediment leaving the site. Site inspections may then be conducted by district staff to ensure the plans are implemented as approved, that erosion and sediment pollution controls are installed correctly, and the approved construction sequence is followed by the workers on site.¹

In addition to E&S, 62 county conservation districts (CCDs) are delegated responsibilities for processing National Pollutant Discharge Elimination System permits for stormwater discharges associated with construction activities. This program requires any earthmoving activities disturbing more than five acres over the life of the project to obtain a permit. Earthmoving activities disturbing between one to five acres with a point source discharge require a permit in accordance with Phase II.² Effective December 2002, DEP integrated the federal Phase II NPDES requirements into the existing Pennsylvania Phase I NPDES permit for stormwater discharges associated with construction activities. Under the requirements of the

¹As described in Chapter II, E&S is funded through the CDFAP appropriation and fees.

²An important distinction between Phase I and II is that the small construction activities only require permit coverage when the activity disturbs one to less than five acres and will result in a point discharge to surface waters within the Commonwealth.

NPDES program, these earthmoving activities must have an approved erosion control plan. Permits are not issued until the plan is in compliance with the program regulations, 25 Pa. Code Chapter 102, promulgated under the Clean Streams Law. Municipalities can require projects with fewer than five acres of disturbance with no point source discharge to undergo a CCD review.

The E&S and NPDES programs were established pursuant to the Clean Streams Law, 35 P.S. §691.1 *et seq.*, which in turn was established pursuant to requirements set forth by the U.S. Environmental Protection Agency in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, and the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1204 *et seq.*

County/State/Other Agency Roles and Responsibilities

DEP is responsible for administering and enforcing the department's Chapter 102 regulations, the Pennsylvania Clean Streams Law, and the NPDES construction permit program. The department, through formal written agreements, delegates to county conservation districts the responsibility to review erosion and sediment control plans, process and authorize NPDES permits, conduct training, perform site inspections, respond to complaints, and in some cases, conduct compliance and enforcement activities.³

Under the delegation agreements, the department is to provide training to conservation districts, answer administrative and technical questions, and undertake periodic evaluations to determine how well individual districts are implementing requirements of the program.

Conservation districts' responsibilities include providing information about erosion and sediment control; accepting, reviewing, and approving applications and permits; and undertaking on-site inspections to help ensure the approved plans are followed.

The State Conservation Commission (SCC) has no direct involvement in overseeing county conservation districts' management of E&S plan reviews or the NPDES permit approval process. DEP, with the approval of the SCC, decides how the state funds available for these programs should be allocated. Current funding priorities include paying for a portion of the salaries of the district manager and technicians, administrative assistance, and supporting special projects.

Plan Reviews/Inspections Levels. Exhibit 10 shows when a written E&S plan or NPDES construction permit must be obtained before a building project can go forward. Appendix H provides information on plan requirements.

³Phase I and II NPDES Construction General Permits and Individual Permits are processed for four counties (Cameron, Clarion, Forest, and McKean) by DEP's regional offices.

Exhibit 10

Erosion & Sediment Control (CH. 102) and NPDES Phase II Requirements for Construction Activities

<u>Disturbed Area</u>	<u>Written E&S Plan^a</u>	<u>E&S Plan Approved</u>	<u>NPDES Construction Permit</u>	<u>PCSMP^a Required to Be Submitted</u>	<u>PCSMP^b Review Required</u>
0-5,000 Sq. Ft	Not required unless in other DEP permit requirement (i.e., Ch. 105)	Not required but may be a municipal requirement	No	Not required but may be a municipal requirement	Not required but may be a municipal requirement
5,000 Sq. Ft to < 1 acre	Yes	Not required but may be a municipal requirement	No	Not required but may be a municipal requirement	Not required but may be a municipal requirement
1 to < 5 acres w/o point source to surface waters	Yes	Not required but may be a municipal requirement	No	Not required but may be a municipal requirement	Not required but may be a municipal requirement
1 to < 5 acres with point source to surface waters	Yes	District discretion	Yes	Yes	Individual: Yes General: No ^c
5 or more acres	Yes	Required	Yes	Yes	Individual: Yes General: No ^c

^aOne district reduced the minimum amount of earth disturbance that requires an E&S permit from 5,000 square feet to 1,000 square feet. It does not inspect these sites unless there is a complaint or there is proof that the disturbance has resulted in discharges into a stream.

^bPost Construction Stormwater Management Plan.

^cDEP may require a review on a case-by-case basis.

Source: Developed by the LB&FC staff from materials obtained from conservation districts and DEP.

Table 9 shows the number of plan reviews undertaken by each district for the past three years. Between 2001 and 2003, the number of initial plan reviews increased 41 percent, and the number of follow-up plan reviews increased 35 percent.

Of the 63 districts for which initial plan reviews could be tracked between 2001 and 2003:

- 9 increased plan reviews 101 percent to 318 percent
- 14 increased plan reviews 51 percent to 100 percent
- 24 increased plan reviews 1 percent to 50 percent
- 16 had no increase or actually decreased

The number of on-site inspections in the E&S and NPDES programs also increased between 2001 and 2003. In 2001, there were 9,419 inspections at 6,445 sites. By 2003, the number of inspections increased to 14,792 at 9,096 sites, an increase of 57 percent in site inspections and 41 percent in number of sites visited.

Table 9

Chapter 102 Delegated Plan Review Activities, by District*

County	<u>2001</u>		<u>2002</u>		<u>2003</u>		Percent Change in the Number of Initial Plan Reviews
	Initial Plan Reviews	Follow-up Plan Reviews	Initial Plan Reviews	Follow-up Plan Reviews	Initial Plan Reviews	Follow-up Plan Reviews	
Adams	54	0	138	9	117	39	117%
Allegheny	704	343	416	263	470	513	-33
Armstrong	75	44	110	53	75	32	0
Beaver	64	28	59	22	69	50	8
Bedford	30	0	47	0	44	17	47
Berks	374	238	751	752	999	479	167
Blair	74	38	77	44	97	44	31
Bradford	33	7	37	15	29	5	-12
Bucks	168	62	565	162	702	227	318
Butler	74	70	102	90	129	72	74
Cambria	104	36	98	40	66	31	-37
Cameron	0	0	0	0	0	0	0
Carbon	81	29	186	77	155	47	91
Centre	150	48	165	43	187	56	25
Chester	335	261	355	260	307	192	-8
Clarion	12	185	55	130	9	0	-25
Clearfield	60	46	88	56	83	79	38
Clinton	294	31	329	41	364	173	24
Columbia	30	37	60	48	62	55	107
Crawford	64	0	128	0	122	0	91
Cumberland	182	78	147	70	143	86	-21
Dauphin	120	72	182	138	154	144	28
Delaware	91	160	138	168	146	222	60
Elk	27	8	32	6	42	19	56
Erie	157	79	196	99	198	68	26
Fayette	40	0	79	1,027	122	17	205
Forest	0	0	0	0	0	0	NA
Franklin	118	0	162	1	171	44	45
Fulton	8	6	8	18	18	11	125
Greene	28	0	39	0	31	12	11
Huntingdon	27	0	25	8	45	27	67
Indiana	78	7	138	24	135	26	73
Jefferson	13	4	31	13	31	26	138
Juniata	11	7	8	9	10	8	-9
Lackawanna	78	91	123	130	114	129	46
Lancaster	273	216	512	371	452	320	66
Lawrence	38	21	57	22	70	36	84

Table 9 (Continued)

County	<u>2001</u>		<u>2002</u>		<u>2003</u>		Percent Change in the Number of Initial Plan Reviews
	Initial Plan Reviews	Follow-up Plan Reviews	Initial Plan Reviews	Follow-up Plan Reviews	Initial Plan Reviews	Follow-up Plan Reviews	
Lebanon	85	51	101	68	104	62	22
Lehigh	190	108	214	139	199	112	5
Luzerne	100	20	163	45	139	97	39
Lycoming	48	5	45	7	47	14	-2
McKean	15	0	0	0	0	0	NA
Mercer	69	51	83	58	70	54	1
Mifflin	13	10	17	21	22	18	69
Monroe	203	244	231	207	236	306	16
Montgomery	302	474	313	481	332	508	10
Montour	124	4	161	0	202	1	63
Northampton	NA	NA	199	166	185	207	NA
Northumberland	44	2	43	5	42	12	-5
Perry	48	15	52	12	58	10	21
Pike	74	53	126	74	121	60	64
Potter	40	32	69	14	35	14	-13
Schuylkill	161	36	154	33	123	35	-24
Snyder	11	2	10	3	19	6	73
Somerset	39	6	65	8	47	8	21
Sullivan	11	0	5	0	3	1	-73
Susquehanna	28	14	32	18	35	46	25
Tioga	49	18	124	39	142	47	190
Union	31	0	31	2	39	7	26
Venango	22	8	27	7	22	11	0
Warren	30	303	43	80	99	23	230
Washington	110	61	120	151	167	144	52
Wayne	71	75	84	59	72	37	1
Westmoreland	147	12	249	15	204	41	39
Wyoming	18	13	5	5	12	12	-33
York	<u>207</u>	<u>156</u>	<u>233</u>	<u>187</u>	<u>251</u>	<u>237</u>	21
Total	6,359	4,025	8,642	6,113	8,995	5,436	41%

*The numbers reported represent all plan reviews for E&S. However, many of them are unrelated to the NPDES permit requirement. Not all projects requiring an E&S plan require an NPDES permit. Many municipalities require an E&S plan approval for activities that do not rise to the level of a NPDES permit. This also occurs in other DEP programs such as the E&S plan approval requirements found within Chapter 105 General Permit conditions. Agricultural Conservation Plans is another program area that requires plan approvals, but they are exempt from NPDES permitting.

Source: Data compiled from DEP's annual reports for the Chapter 102, Erosion & Sediment Control Program.

Conservation District Fee Policy.⁴ According to the SCC policy, fee schedules should be equitable and may reflect the district's full cost of providing E&S and NPDES services, but not services provided that are paid for through other funding. These guidelines are quite broad, and we found that plan review fees charged for commercial sites vary widely from district to district.

The SCC requires that districts adopt fee schedules that detail the amounts charged. Districts do not need the SCC approval to charge fees but must provide the SCC with copies of their policy, schedule, and any revisions. Since April 2004, commission policy requires districts to report annually to the SCC on the amount of revenue generated from E&S fees. The policy prohibits districts from charging fees for plan reviews not otherwise required by DEP or the municipality but which districts otherwise may require.

E&S Enforcement Authority

Although all but four delegated districts review E&S plans and investigate E&S complaints, most have only limited enforcement authority under the E&S/NPDES program. The districts' responsibility for enforcement under the E&S/NPDES program is based upon the level of delegation the district has accepted in its delegation agreement.

Under the E&S/NPDES Program, districts may accept the following levels of delegation responsibility:

- Level 1: The district provides education and outreach services on the E&S Program and NPDES; no enforcement activities.
- Level 2: In addition to Level 1 activities, the district receives and addresses E&S and NPDES complaints; receives, reviews and processes all permit application forms; performs plan reviews under agreements with municipalities and other governmental agencies; and receives, processes and acknowledges co-permittee/transferee application forms; receives, processes and conducts site inspection for notices of termination forms; and responds to complaints.
- Level 3: In addition to Level 1 and 2 activities, the district prepares, commences and executes summary proceedings; issues notices of violation; schedules and conducts administrative enforcement conferences; seeks civil penalties and available remedies through consent assessments or consent adjudications and related actions as set forth in the DEP Program Compliance and Enforcement Manual; retains its own legal counsel for certain activities; and uses DEP counsel for delegated programs.

⁴The commission policy applies to all fees, but this discussion focuses on E&S and related Chapter 105 fees. The other key fee districts charge relates to nutrient management. Districts may charge a fee for developing or reviewing a nutrient management plan, provided the district does not charge a fee for services provided through state reimbursed hours. Fees collected must be forwarded to the state Nutrient Management Fund.

Currently, four districts are Level 1, 52 are Level 2, and 10 are Level 3. Only the ten Level 3 districts are directly involved in negotiating civil assessments or initiating summary or misdemeanor criminal actions. Summary and misdemeanor criminal actions require the involvement of the county district attorney.⁵ The DEP regional office for the district is otherwise responsible for all enforcement actions in Level 1 and 2 districts and for imposing civil penalties or pursuing more severe criminal actions in Level 3 districts.

DEP Compliance Assistance and Enforcement Manual

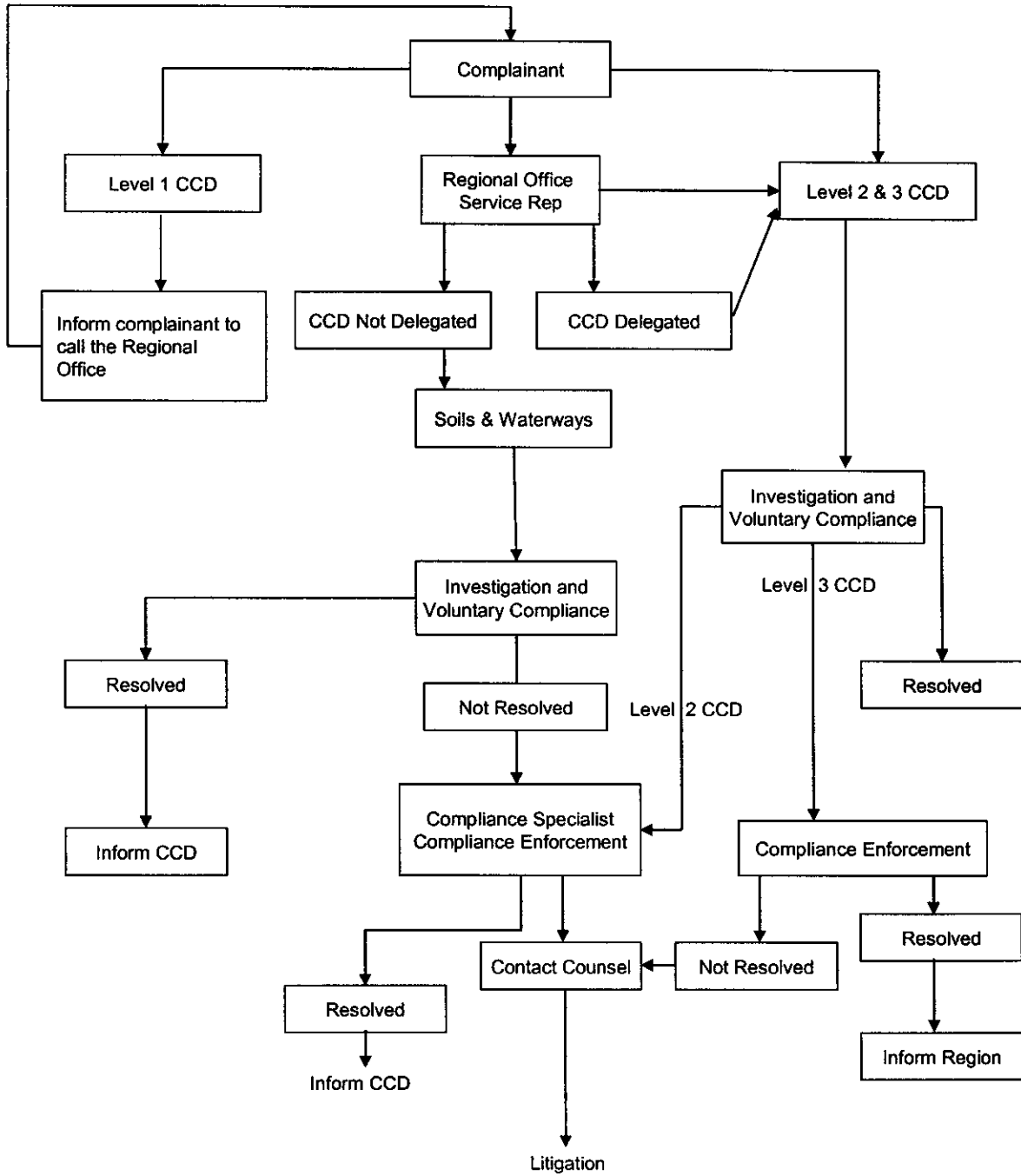
DEP's Compliance Assistance and Enforcement Manual states that "the goal of enforcement will be to help ensure either current or future compliance."⁶ It discusses the agency's prevailing concept as "voluntary compliance," with most initial compliance efforts being directed at correcting program violations through voluntary efforts. Exhibit 11 shows a flow chart of the complaint investigation and resolution process. As the flow chart shows, Level 1 districts refer complaints to the DEP regional office, and Level 3 districts are the only districts directly involved in compliance enforcement.

The manual describes the recommended procedures to be followed when an inspection identifies violations at the inspection site. The inspection may be the result of a complaint or the district's periodic review. Based on the questionnaire responses we received from district managers, about half of their inspections are initiated as a result of a complaint. The process also provides for follow-up inspections to determine whether problems have been corrected. If the problem is not corrected, Level 3 districts may send a notice of violation (NOV) requesting an administrative/enforcement conference. Level 2 districts are to refer the case to the DEP regional office. Generally, at least three inspections will occur before an enforcement action is taken, unless direct pollution is occurring or a site is operating without a required permit. In those cases, the district could seek a compliance order from the DEP regional office to shut down the site.

⁵In 2003, six criminal actions were pursued.

⁶This manual is currently under revision to comply with the new DEP compliance and enforcement policy as addressed in the policy on Standards and Guidelines for Identifying, Tracking and Resolving Violations issued by the DEP Policy Office in April 2004. All DEP programs were directed to incorporate these standards in their internal guidance documents.

Chapter 102 Complaint Flow Chart



Source: DEP Compliance Assistance and Enforcement Manual.

If a penalty is pursued, an administrative conference is held to review the violation. Either the district (if it has Level 3 delegation authority) or the DEP regional office then negotiates the consent assessment for a civil penalty. These penalties are not appealable. When a consent assessment or other voluntary settlement cannot be negotiated, the case may be pursued by the regional office and through the Environmental Hearing Board (EHB). Decisions of the EHB may be appealed to Commonwealth Court. Although statewide statistics are not available, we were informed that the vast majority of cases are resolved prior to going to the EHB.⁷

As shown on Tables 10, 11, and 12, relatively few violations result in an enforcement action. According to district staff, the vast majority of violations are corrected between the initial and follow-up inspections. As shown on Tables 10 and 11, in 2003 only 86 penalty actions were taken by the regional offices and 50 penalty actions by the Level 3 delegation districts. Table 12 shows that in that same year 14,792 inspections were conducted.

Penalty Assessments

All penalties, including civil assessments, are deposited into the Commonwealth's Clean Water Fund. The district involved in the action does not retain funds received from penalties or civil assessments paid. In some cases, the penalty assessment will include an additional portion to reimburse the district for its actual and documented activities in the particular case.⁸ The Southwest Regional DEP Office has a settlement procedure wherein it typically reimburses conservation districts 40 percent of a penalty. This approach, however, is not consistent with the policies of the Compliance Assistance and Enforcement Manual regarding reimbursement to the districts and may result in using funds due the Clean Water Fund.⁹

As shown on Tables 10 and 11, in 2003 districts assessed total penalties of \$195,875, and the DEP regional offices assessed total penalties of \$958,778. An average penalty assessment cannot be given since the penalty actions cited above include enforcement actions other than penalty assessments (e.g., an order to shut down a site). These tables also show that 28 Level 1 and Level 2 districts and one Level 3 district had no penalty actions recorded in the last three years.

Penalty assessments are based on the civil penalties authorized by the Clean Streams Law. DEP's Compliance and Enforcement Manual provides guidance to the district and regional offices on how to apply the requirements of the law. In determining the amount of a civil penalty, the law requires DEP to consider the willfulness of the violation, damage or injury to the waters of the Commonwealth or

⁷DEP could not provide the number of cases that proceeded to the EHB in 2001, 2002, and 2003.

⁸Bucks County's Conservation District has established a \$150 fee for administrative conferences.

⁹DEP reports that as of May 2005, the practice of using a percentage of the penalty to calculate costs has been discontinued.

Table 10

**Chapter 102 and Chapter 92 Enforcement
DEP Regional Office Actions Erosion & Sediment Control Program**

Region	County ^a	CY 2001		CY 2002		CY 2003	
		Total Penalty Actions ^b	Total Penalty Assessed ^c	Total Penalty Actions ^b	Total Penalty Assessed ^c	Total Penalty Actions ^b	Total Penalty Assessed ^c
NCRO	Centre ^d	1	\$ 500	2	\$ 2,000	2	\$ 26,000
	Clearfield	1	4,800	1	1,500	0	0
	Lycoming	1	750	0	0	0	0
	Montour	1	500	0	0	0	0
	Sullivan	0	0	0	0	1	1,800
	Tioga	1	17,000	0	0	0	0
NERO	Carbon	1	\$ 300	0	\$ 0	0	\$ 0
	Lackawanna	1	10,575	0	0	1	4,580
	Lehigh ^d	2	8,750	0	0	0	0
	Monroe ^d	2	4,000	4	13,500	1	30,600
	Pike	1	4,000	0	0	0	0
	Wayne	1	288,228	0	0	1	143,225
NWRO	Butler	2	\$ 3,000	0	\$ 0	0	\$ 0
	Elk	0	0	0	0	1	450
	Lawrence	1	2,200	0	0	0	0
	McKean	1	1,500	3	3,000	0	0
	Venango	0	0	0	0	1	500
SCRO	Adams	3	\$ 13,850	1	\$ 4,300	5	\$ 17,800
	Bedford ^d	0	0	1	3,000	0	0
	Berks ^d	1	5,250	0	0	0	0
	Cumberland ^d	1	3,800	0	0	0	0
	Dauphin	1	7,000	0	0	3	10,775
	Mifflin	0	0	0	0	2	20,250
	Perry	0	0	0	0	1	8,000
	York	5	23,250	13	213,944	14	258,256
SERO	Chester	12	\$ 52,500	16	\$ 99,625	21	\$161,750
	Delaware	7	36,250	10	46,000	3	14,500
	Montgomery	18	117,850	14	94,950	14	112,992
SWRO	Allegheny	5	\$ 51,550	5	\$ 35,750	4	\$ 56,250
	Armstrong ^d	0	0	0	0	1	3,600
	Beaver	0	0	0	0	1	5,200
	Fayette	0	0	0	0	1	6,500
	Somerset	0	0	0	0	1	750
	Washington	4	31,500	0	0	4	38,000
	Westmoreland	3	37,350	2	24,350	3	37,000
Totals		77	\$726,253	72	\$541,919	86	\$958,778

^aNo actions were recorded for Blair, Bradford, Cambria, Cameron, Clarion, Clinton, Columbia, Crawford, Erie, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Lebanon, Jefferson, Juniata, Luzerne, Mercer, Northumberland, Potter, Schuylkill, Snyder, Susquehanna, Union, Warren, and Wyoming for these years.

^bPenalty actions may include actions other than penalty assessments, e.g., a Notice of Violation (NOV), and, therefore, may not correlate with the penalties assessed. Penalty actions include both civil and criminal actions.

^cReflects penalty as of date of assessment. Funds may have been collected in a different year.

^dRegional offices are responsible for enforcement in districts with level 3 delegation authority when the enforcement action exceeds the delegation authority for voluntary civil assessments or summary or misdemeanor criminal actions.

Source: Data compiled from DEP's eFACTS database system for all regions except SERO and supplemented with information from the program summary reports for 2001, 2002, and 2003. SERO data compiled from regionally maintained database.

Table 11

**Chapter 102 and Chapter 92 Enforcement
Level III Delegated Conservation Districts
Erosion & Sediment Control Program**

Region	County	CY 2001		CY 2002		CY 2003	
		Total Penalty Actions ^a	Total Penalty Assessed ^b	Total Penalty Actions ^a	Total Penalty Assessed ^b	Total Penalty Actions ^a	Total Penalty Assessed ^b
NCRO	Centre	2	\$ 1,800	3	\$ 2,500	1	\$ 1,000
	Lehigh	4	\$ 4,000	0	\$ 0	0	\$ 0
NERO	Monroe	0	0	3	13,500	1	30,600
	Northampton	0	0	0	0	0	0
NWRO	None						
	Bedford	1	\$ 2,800	2	\$ 2,700	0	\$ 0
	Berks	7	16,250	9	23,050	13	56,350
SCRO	Cumberland	0	0	4	15,220	1	2,000
	Lancaster	0	0	1	12,800	0	0
SERO	Bucks	1	\$ 1,000	5	\$ 46,608	32	\$101,775
SWRO	Armstrong	0	\$ 0	1	\$ 500	2	\$ 4,150
Totals		15	\$25,850	28	\$116,878	50	\$195,875

^aPenalty actions may include actions other than penalty assessments, e.g., a Notice of Violation (NOV), and, therefore, may not correlate with the penalties assessed. Penalty actions include both civil and criminal actions.

^bReflects penalty as of date of assessment. Funds may have been collected in a different year.

Source: Data compiled by DEP using conservation district quarterly reports from 2001, 2002, and 2003.

Table 12

Chapter 102 Delegated Compliance/Enforcement Activities, by District

District (By Region)	Delegation Level	Complaints Received ^a			Total Inspections ^b		
		2001	2002	2003	2001	2002	2003
NCRO							
Bradford	2	3	0	9	27	48	71
Cameron	1	0	0	2	0	0	0
Centre	3	47	87	69	173	337	361
Clearfield	2	26	82	79	27	174	139
Clinton	2	36	35	39	257	275	219
Columbia	2	0	14	12	26	136	146
Lycoming	2	21	28	26	58	60	42
Montour	2	0	2	9	0	112	107
Northumberland	2	2	12	7	7	11	20
Potter	2	9	12	4	22	67	6
Snyder	2	10	7	8	27	34	22
Sullivan	2	4	4	1	9	25	11
Tioga	2	6	8	21	33	50	57
Union	2	15	24	21	214	204	111
Regional Totals		179	315	307	880	1,533	1,312
NERO							
Carbon	2	22	33	42	317	601	570
Lackawanna	2	10	11	13	135	137	139
Lehigh	3	81	60	59	148	121	160
Luzerne	2	25	18	39	103	105	125
Monroe	3	51	67	112	219	332	353
Northampton	3	NA	60	67	NA	176	144
Pike	2	32	90	45	314	423	458
Schuylkill	2	31	37	37	69	60	59
Susquehanna	2	15	16	38	37	53	64
Wayne	2	26	42	58	63	80	167
Wyoming	2	19	27	26	27	63	46
Regional Totals		312	461	536	1,432	2,151	2,285
NWRO							
Butler	2	19	36	57	33	36	40
Clarion	1	0	14	0	0	51	0
Crawford	2	27	17	19	29	35	161
Elk	2	7	12	5	13	34	47
Erie	2	36	38	41	122	137	170
Forest	1	0	0	0	0	0	0
Jefferson	2	1	2	8	40	20	58
Lawrence	2	5	7	10	53	34	35
McKean	1	0	0	0	0	7	7
Mercer	2	7	13	10	31	35	9
Venango	2	4	5	1	20	27	27
Warren	2	10	14	18	33	33	41
Regional Totals		116	158	169	374	449	595

Table 12 (Continued)

District (By Region)	Delegation Level	Complaints Received ^a			Total Inspections ^b		
		2001	2002	2003	2001	2002	2003
SCRO							
Adams	2	11	35	56	90	93	284
Bedford	3	14	3	35	16	12	43
Berks	3	63	125	122	379	662	470
Blair	2	17	23	26	41	40	65
Cumberland	3	25	47	43	201	236	234
Dauphin	2	12	23	47	474	363	385
Franklin	2	2	9	0	370	405	354
Fulton	2	7	3	3	28	30	6
Huntingdon	2	30	11	25	45	12	37
Juniata	2	3	5	1	13	10	30
Lancaster	3	74	77	91	688	814	693
Lebanon	2	19	20	31	168	171	241
Mifflin	2	8	14	10	33	57	123
Perry	2	22	29	22	110	180	93
York	2	<u>96</u>	<u>227</u>	<u>295</u>	<u>685</u>	<u>1,051</u>	<u>1,314</u>
Regional Totals		403	651	807	3,341	4,136	4,372
SERO							
Bucks	3	41	105	148	356	1,109	1,761
Chester	2	149	65	130	741	905	1,523
Delaware	2	34	36	35	403	404	268
Montgomery	2	81	40	40	675	1,109	1,056
Philadelphia	NA	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
Regional Totals		305	246	353	2,175	3,527	4,608
SWRO							
Allegheny	2	88	97	123	414	346	543
Armstrong	3	27	14	13	85	84	76
Beaver	2	99	60	55	181	156	161
Cambria	2	22	13	16	34	54	69
Fayette	2	18	73	143	20	88	116
Greene	2	14	11	30	35	13	30
Indiana	2	4	16	25	32	52	72
Somerset	2	14	18	18	62	28	69
Washington	2	32	28	78	189	281	207
Westmoreland	2	<u>80</u>	<u>17</u>	<u>40</u>	<u>165</u>	<u>975</u>	<u>277</u>
Regional Totals		<u>398</u>	<u>347</u>	<u>541</u>	<u>1,217</u>	<u>2,077</u>	<u>1,620</u>
State Totals		1,713	2,178	2,713	9,419	13,873	14,792

^aNumber of complaints within the district's delegated programs that were received and investigated.

^bTotal number of inspections conducted including follow-up inspections to achieve voluntary compliance.

Source: DEP Bureau of Watershed Management, Division of Waterways, Wetlands and Erosion Control Program Summaries for 2001, 2002, and 2003.

their uses, cost of restoration, and other relevant factors. The law authorizes a civil penalty of up to \$10,000 a day for each violation and a criminal penalty of up to \$50,000 for each violation and up to two years in prison.¹⁰ Please see Appendix B.

Program Controls and Monitoring

State Program Review Results

As part of the delegation agreements DEP has with the districts, the department periodically reviews the activities of individual districts in meeting their contracted responsibilities. Specifically, DEP central office and regional office staff conduct program evaluations of the E&S and NPDES programs once every three years.

LB&FC staff reviewed evaluation reports from 25 different conservation districts. Of those reviewed, 19 of the districts are delegated Level 2 and 6 are delegated Level 3 for the Chapter 102 (E&S) and NPDES programs. In the majority of cases, conservation districts were meeting or exceeding those responsibilities assigned to them through the delegation agreement. Our review of key activities indicates:

- 24 districts were acknowledging receipt of permit applications within 20 days of receipt.
- 24 districts were depositing their filing fees in their District Clean Water Fund account within 10 days.
- 24 districts were submitting quarterly activity reports to DEP in a timely fashion.
- All 25 districts were found to have the technical capability to review E&S plans and NPDES permit applications.
- 24 districts were meeting the time frames established for plan reviews.
- 17 districts were performing plan reviews according to all rules, regulations, policies, and procedures established for the program. For the remaining districts, DEP suggested that six districts include one or more additional steps in their review process. Two districts were advised of their deficiencies and follow-up evaluation visits were conducted by DEP. The two districts were found to have corrected the deficiencies during these subsequent visits.
- 24 districts were responding to complaints within 10 days.
- 23 districts were conducting on-site inspections in accordance with all rules, regulations, policies, and procedures established for the program.

Oversight of conservation districts is also achieved through the quarterly reports required of each district, visits and telephone contacts made by DEP regional office field representatives and DEP area engineers, complaint and enforcement actions undertaken by DEP regional office compliance specialists, and requests for Conservation District Fund Allocation Program (CDFAP) funding reimbursements submitted by districts to the department.

¹⁰Criminal penalties start at \$100 for each offense.

Training

State to District. DEP provides training to conservation districts on E&S and NPDES rules, regulations, and other program requirements. Formal training opportunities exist throughout the year and may be held in Harrisburg or another central location. DEP engineering staff also provide informal training for individual districts that need to have new E&S technical staff trained. This may involve a DEP engineer spending one day a week for an extended period at that district assisting the new employee in interpreting and recognizing deficiencies in E&S plan applications and NPDES permit applications. There is no requirement to complete a basic training course before a district staff person begins reviewing E&S plans, and the E&S program does not have a mandated certification program for E&S technicians similar to that required for the Nutrient Management Program staff.¹¹ Training events for E&S include the following:

Annual training events:

- Annual three-day update training on administrative and technical topics.
- Basic and intermediate training on administrative and technical issues, including permit processing, plan reviews, inspections, complaint response, and other related topics. Two administrative and two technical sessions are held each year; each of the sessions are held in the eastern and western halves of the Commonwealth.

Other training:

- Small group/one on one specialized training to fit the needs of district staff.
- Specialized training on revised procedures and new initiatives. This training utilizes the existing roundtable meetings with districts in each of the department's regional office areas.
- Professional development training.
- Training requested/co-sponsored by the Pennsylvania Association of Conservation Districts (PACD) or State Conservation Commission.

Conservation districts provided us with feedback on the adequacy and relevance of E&S pollution control training. Exhibit 12 presents the results of the districts' responses. The overwhelming majority indicate that there are sufficient training opportunities available if a district chooses to participate. However, 45

¹¹The National Institute for Certification in Engineering Technologies (NICET), a non-profit division of the National Society of Professional Engineers offers engineering technician certification in erosion and sediment control. The certification program requires that individuals who write plans, as well as individuals who review plans, be certified. Individuals interested in becoming certified must pass a written test that covers subjects such as knowledge of soils, the erosion process, small watershed hydrology, construction practices, construction inspections, and field investigation reports. The cost for the exam is \$180. In FY 2004-05, twenty districts had at least one manager or E&S Technician who was certified. This is a decrease from FY 1997-98 when 24 districts had staff with certification. FY 1997-98 was also the last year that the SCC provided additional CDFAP funds, up to an additional 10 percent, if a district employee was certified as an erosion and sediment control technician, Level II, by NICET.

percent of the 62 district managers responding indicate that training does not meet their expectations.

Exhibit 12

Conservation Districts Responses Regarding the Relevancy of Training Provided by DEP on E&S Pollution Control*

	<u>Yes</u>	<u>Percent</u>	<u>No</u>	<u>Percent</u>
Are There Sufficient Training Opportunities for This Program.....	55	89%	7	11%
Does State Agency Training Meet Your Expectations	34	55	28	45

*Sixty-two conservation districts responded to these two questions.

Source: Developed from questionnaire responses received from conservation districts managers.

Many districts provided responses to us regarding the adequacy of DEP training. Appendix I presents a selection of these comments. We identified several areas of concern district managers had with DEP-sponsored training. Managers, especially in the more rural counties, are concerned with the costs associated with sending staff to training events. They suggest training be held in more regions, not just in Harrisburg or State College. Managers also see the need for different levels of training opportunities for new staff versus experienced staff. Training as currently configured appears to offer experienced staff only limited benefit. Additional training appears needed on post-construction stormwater management. Managers also expressed frustration that DEP central office staff and DEP regional office staff do not appear to be speaking with one voice regarding the interpretation of regulations or how districts are to handle various technical or administrative problems.

In discussions with DEP officials on this topic, DEP staff noted that 83 percent of respondents to training evaluations in 2003 and 94 percent in 2004 indicated on their evaluation surveys that they found training E&S sessions beneficial. (Conservation district staff who attend DEP sponsored training are generally E&S technicians, not district managers.) DEP staff also indicated to us that, in the areas of localized technical training and group and individual assistance to conservation district staff, they made 632 visits statewide over the past two years. DEP regional staff also provided telephone, e-mail, and other technical assistance on a project-by-project basis.

District to Stakeholders. Between 2001 and 2003, the county conservation districts reported that over 40,000 training participants attended 921 workshops and seminars on erosion and sediment control and NPDES permit requirements. Participants included consulting engineers, developers, municipal officials, and other interested professionals. Staff from DEP provided technical assistance at these trainings when requested. Exhibit 13 provides a breakdown by year of these training activities. County conservation staff also provided direct technical assistance to the general public. As shown in Exhibit 13, districts responded to approximately 128,000 questions about some aspect of the erosion and sediment

control plan or the NPDES permit. Technical assistance ranged from telephone inquiries from consultants and citizens to conducting permit preapplication meetings with design engineers.

Exhibit 13

**Training and Technical Assistance Provided by
County Conservation Districts**

<u>Year</u>	<u>Training Events</u>	<u>Training Participants</u>	<u>Technical Assistance</u>
2001	247	14,225	39,032
2002	334	10,927	45,906
2003	<u>340</u>	<u>15,076</u>	<u>43,362</u>
Total	921	40,228	128,300

Source: Department of Environmental Protection program summaries.

Concerns/Opportunities for Improvement

1. Inconsistencies among districts in reviewing E&S plans. Developers and other business people who submit E&S plans and NPDES permit applications for review and approval expressed concern that the review process varies from district to district. Issues cited include variation in the competency of staff, the willingness to be flexible, and differences in the documentation districts require before reviewing or approving an application.

District managers are aware of such complaints, but report that their primary responsibility is to ensure that the approved plans meet minimum erosion and sediment control standards. They also note that all districts follow the DEP *Erosion and Sediment Control Program Manual* and are periodically evaluated by DEP.

The Department's Administrative Manual identifies specific time frames for how long an E&S plan and NPDES permit review is to take. Districts are to:

- Conduct administrative completeness reviews for all NPDES permits and E&S permits within 20 calendar days of receipt.
- Conduct initial technical E&S plan reviews for General NPDES permits within 30 calendar days after the 20 calendar day administrative time frame lapses. Total processing time for a General NPDES permit without deficiencies is 50 calendar days.
- Conduct a second technical E&S plan review, where necessary, within 30 calendar days from receipt of E&S plan resubmittal.
- Conduct initial technical E&S plan reviews for NPDES Individual permits and E&S control permits within 66 calendar days after the 20 calendar day

administrative time frame lapses. Total processing time for an Individual NPDES permit without deficiencies is 86 calendar days.

- Conduct a second technical E&S plan review, where necessary, within 32 calendar days of receipt of E&S plan resubmittal.

As discussed earlier (page 70), our review of DEP district reports indicates that districts, by and large, are meeting plan review requirement time frames. For example, all but one of the 25 districts reviewed were meeting the time frames established for plan reviews, and 23 districts were found to be conducting on-site inspections in accordance with all rules, regulations, policies, and procedures.

DEP's *Erosion and Sediment Control Program Manual* is also available to individuals and businesses engaged in earth disturbance activities. The manual explains how applicants can prepare plans that comply with Chapter 102 regulations.

Managers note that the interpretation of whether a plan meets the requirements will differ somewhat from district to district because each CCD has its own staff and board of directors. DEP officials recognize there is certain variation in districts' E&S plan review approaches. In their opinion, some districts may simply "drill down too tightly," and others maintain a higher level review. This generates concerns that they have attempted to address through training and other forums with district personnel. DEP reports that certain district officials, in explaining variations in their approach, point out that they are trying to protect the environment through the appropriate application of DEP regulations and policies.

DEP does not routinely assess the level of consistency between counties in how they review E&S plans and NPDES permits. In 2004, however, the Department undertook a review of three adjoining counties in southcentral Pennsylvania. The purpose of the survey was to identify the types of E&S plan deficiencies most frequently found during E&S plan reviews. The Department plans to use the information to develop more effective training programs for engineers and development consultants.

The results of the survey indicate some of the variations that exist in the plan review process. In two counties, at least one deficiency letter was found in approximately 46 percent of the files reviewed. In the third county, at least one deficiency letter was found in 87 percent of the files reviewed. In addition, 16 percent of the files reviewed in the third county contained more than one deficiency letter, while only 4 percent of the files for the first two counties contained more than one deficiency letter. Table 13 shows the results of the DEP review.

Table 13

**Percent of Files With at Least One of
the Indicated Deficiencies Noted**

<u>Deficiency</u>	<u>County One</u>	<u>County Two</u>	<u>County Three</u>
Sequencing.....	25%	24%	59%
Plan Details	20	18	39
Calculations	7	10	25
Soil Information.....	4	13	32
Ch. 105 Issues.....	9	6	17
Silt Fence.....	12	12	33
Sediment Basin	4	5	38
Sediment Trap	3	2	14
Channels	9	4	20

Source: Developed by LB&FC staff from survey data provided by DEP.

2. County conservation district enforcement activities for erosion and sediment vary among districts and DEP regional offices. As noted earlier, the involvement of districts in enforcement efforts varies in part due to the level of delegated authority the district has accepted, with the majority of enforcement actions initiated by the DEP regional offices. The system requires a judgment of the field inspector, district or regional, as to whether the controls at a site are in compliance with the requirements for that site. Inspectors can also use their discretion in determining whether to continue seeking voluntary compliance or to pursue an enforcement action. These types of concerns are addressed through the compliance manual and training.

It appears from Tables 10, 11, and 12, presented earlier in this section, that the higher numbers of total penalty actions and penalties assessed are generally in those districts with the higher numbers of complaints and inspections. To determine the variation in DEP regional enforcement activity, we conducted two analyses of penalty actions taken—one in relation to the number of inspections completed and one in relation to the number of plans reviewed. Penalty actions include, for example, voluntary assessment of civil penalties, orders, other civil penalties, and criminal actions. Table 14 shows that, while statewide about eight penalty actions occur per 1,000 E&S inspections, there is substantial variation among the DEP regions on this measure. The table shows that in 2003, three DEP regions averaged fewer than three penalty actions per 1,000 inspections, two averaged nine penalty actions per 1,000 inspections, and one averaged 13 penalty actions per 1,000 inspections. The southeast DEP region had the highest ratio of penalty actions, about 13 penalty actions per 1,000 E&S inspections. Although this suggests the strongest enforcement activities are in the southeast region, DEP's policy is voluntary compliance, and certain districts may be able to obtain voluntary compliance more easily than others.

Table 14

**DEP Regional Office Actions
Erosion and Sedimentation Program
(Penalty Actions Per 1,000 Inspections)**

DEP Regional Office	2001 Ratio of Actions Per Inspection	2002 Ratio of Actions Per Inspection	2003 Ratio of Actions Per Inspection
NCRO Average	6	1	1
NERO Average.....	4	0	1
NWRO Average.....	11	7	2
SCRO Average.....	4	6	9
SERO Average.....	20	17	13
SWRO Average.....	11	4	9
Statewide Average	10	7	8

Source: Developed by LBFC staff from information on enforcement actions provided by DEP.

As regards penalty actions in relation to plans reviewed, Table 15 shows that, while statewide about 14 penalty actions occur per 1,000 E&S plan reviews, there is again variation among DEP regions. The table shows that, in 2003 three DEP regions averaged fewer than four penalty actions per 1,000 plans reviewed, one (southwest) averaged 11 penalty actions per 1,000 plans reviewed, one (southcentral) averaged 24 penalty actions per 1,000 plans reviewed, and one (southeast) averaged 48 enforcement actions per 1,000 plans reviewed. These statistics are difficult to interpret, however, because the DEP regional office is generally responsible for penalty actions whereas conservation districts are responsible for plan reviews. DEP officials also noted that the districts determine whether to forward a matter to the regional office for enforcement activity.

Various conservation district users and involved stakeholders expressed concern about the variation in E&S enforcement activities. Some suggested that counties are generally too quick to issue violations rather than resolve problems. They pointed out that it can be easier to pay fines than to abide by the districts' requirements in implementing E&S controls. One commenter said that while CCDs use a standard violation form, even minor issues are sometimes checked off as a "violation to the waters of the Commonwealth." District manager responses about weaknesses in enforcement by regional offices often cite DEP's reluctance to follow through with enforcement and too much variation and inconsistency among DEP regional offices enforcement actions.

Table 15

DEP Regional Office Actions
Erosion and Sedimentation Program
(Penalty Actions Per 1,000 Plans Reviewed)

DEP Regional Office	2001 Ratio of Actions Per Review	2002 Ratio of Actions Per Review	2003 Ratio of Actions Per Review
NCRO Average	5	1	1
NERO Average	7	0	3
NWRO Average	8	4	1
SCRO Average	12	14	24
SERO Average.....	51	50	48
SWRO Average.....	9	6	11
Statewide Average	15	11	14

Source: Developed by LBFC staff from information on enforcement actions provided by DEP.

A number of district managers, planning commissions, PENNDOT district executives, and interested organizations also referenced staff turnover in the field inspector position in both the districts and the regions as causing enforcement difficulties and inconsistencies. Staff turnover reportedly exacerbates the difficulty of maintaining consistency, since turnover results in staff always “learning the job.”

3. District plan review fees vary, and the Commonwealth has not developed standards for districts to use in determining related costs. We reviewed the 2004 fee schedules districts submit to DEP. We found that 56 districts charge some type of fees for E&S control plan reviews. Thirteen districts charge base fees, 14 charge fees for first revisions, 27 for additional revisions, and 2 charge for re-certification. Additionally, some districts charge fees when reviewing plans related to highway projects, utilities, roadway construction, timber harvesting, and other miscellaneous plans.

Although some districts charge a flat fee for small acre projects, generally residential development fees are per acre or per lot unit; commercial/industrial development fees are typically per acre charges. Appendices J and K compare fee charges for base fees, residential development fees for less than one acre, 5-10 acres, and 70 or more acres, and commercial/industrial development fees for one-half acre or less, 20 to less than 25 acres, and 100 or more acres.

Fees for a 50-acre commercial site in eight districts¹² are under \$1,000, seven¹³ are over \$4,000, and 38 range between \$1,000 and \$4,000. Fees are typically higher in the southeast region. Ranges within regions are wide. (See Table 16.)

Table 16

**Average/Range Per Region for a Review Fee
of a 50-Acre Commercial Site**

<u>Region</u>	<u>Average</u>	<u>Range</u>
Northeast.....	\$1,809	\$ 600 - \$ 4,420
Northcentral.....	1,831	500 - 8,822
Northwest	2,181	1,000 - 4,020
Southeast	5,817	1,250 - 15,500
Southcentral	2,080	1,000 - 5,000
Southwest.....	1,868	700 - 3,750

Source: DEP data.

Fees for a one-acre or lot residential site in six districts¹⁴ are under \$50, 12¹⁵ are over \$125, and 37 range between \$50 and \$125. (See Table 17.)

Table 17

**Average/Range Per Region for a Review Fee
of One Acre or Lot Residential Site**

<u>Region</u>	<u>Average</u>	<u>Range</u>
Northeast.....	\$ 88	\$50 - \$215
Northcentral.....	90	0 - 325
Northwest	91	50 - 200
Southeast	87	25 - 150
Southcentral	109	40 - 330
Southwest.....	147	50 - 450

Source: DEP data.

Chester Conservation District reports that it considers other surrounding districts when establishing fees. It recently compared Chester's fees with five other counties. (See Table 18.) As a result, the district decided to increase its fees by 30

¹²Bradford, Clearfield, Fayette, Indiana, Potter, Snyder, Tioga, and Wyoming.

¹³Adams, Bucks, Butler, Chester, Columbia, Lehigh, and Northampton.

¹⁴Bucks, Clearfield, Franklin, Indiana, Snyder, and Tioga.

¹⁵Adams, Allegheny, Berks, Cambria, Centre, Chester, Columbia, Erie, Lawrence, Northumberland, Washington, and Wayne.

Table 18

**Comparison of E&S Review Fee
Charges for Six Local Conservation Districts***

	Residential Site – Construction of 50 Houses on 40 Acres					
	<u>Chester</u>	<u>Berks</u>	<u>Bucks</u>	<u>Delaware</u>	<u>Lehigh</u>	<u>Montgomery</u>
Original Fee	<u>\$1,950</u>	\$1,350	\$2,270	<u>\$1,000</u>	\$2,360	<u>\$950</u>
Add'l Fee>25 Acres			525 15@ \$35> 25 acres			
Revision Fee		405 <u>@30%</u>	454 <u>@20%</u>		354 <u>@15%</u>	
Total Fee	\$1,950	\$1,755	\$3,249	\$1,000	\$2,714	\$950
	Industrial Site - Construction on 10 Acres Disturbed					
	<u>Chester</u>	<u>Berks</u>	<u>Bucks</u>	<u>Delaware</u>	<u>Lehigh</u>	<u>Montgomery</u>
Original Fee	<u>\$2,600</u>	\$1,080	\$2,270	<u>\$525</u>	\$1,880	<u>\$1,000</u>
Revision Fee		324 <u>@30%</u>	454 <u>@20%</u>		282 <u>@15%</u>	
Total Fee	\$2,600	\$1,404	\$2,724	\$525	\$2,162	\$1,000

*All fees are based on two reviews of the site.

Source: Developed by LB&FC staff from data provided by Chester Conservation District.

percent, effective January 2005.¹⁶ It also found that several surrounding counties charge a fee for each review, unlike Chester which did not have an additional charge for a second review.

The fees in Delaware and Montgomery Conservation Districts are considerably lower than in some of the surrounding districts. The Montgomery District Manager reports that his district is not reviewing its fees at this time because it has sufficient revenues.

Nearly all district managers responding to our questionnaire listed “cost to operate the program” and “consistency with surrounding counties” as the criteria used to establish application and review fees. According to one district manager, “We establish the total cost of operating the program and then deduct the amount of state assistance and permit fees. We then look at our average plan and establish the necessary plan review fees that will cover the costs.”

¹⁶In the example below this represents an increase from \$1,500 to \$1,950 for residential construction of 26-50 units and an increase from \$2,000 to \$2,600 for commercial construction on greater than five acres and up to ten acres.

Another district manager stated:

The fee schedule is intended to help offset costs associated with our administration of the E&S Program. We get \$25,500 from the state. In 2004, we generated about \$111,000 from E&S review fees and NPDES permit fees. It costs approximately \$175,000-\$200,000 per year to administer the program. These figures do not account for the costs/revenues associated with the agricultural E&S program. Every year program costs continue to grow due to increased programmatic requirements, increased health insurance costs, etc. Our fee schedule is and needs to be in line with nearby and adjoining counties. We are losing money administering this program for the state.

According to the SCC's policy for conservation district fees for services, fee schedules should be "equitable" and may reflect the district's full cost of providing services not reimbursed by the program. Fees often do not cover costs and not only vary from district to district, but also vary within regions. Although DEP encourages districts to collect an appropriate amount of fees to allow them to adequately provide oversight and assistance and provides some fee guidance, it has not developed any standard cost guidance for the districts.

The 65 respondents to our questionnaire report that, on average, 32 percent of the costs for their E&S/NPDES activities are covered by fees. Costs covered by fees ranged from zero to 100 percent. Seventy-eight percent of the respondents stated that their district retained all the fees received. Those districts that reported not keeping all fees kept an average of 28 percent, with the remainder going to the county for reimbursement of salaries and benefits of district staff.

Suggestions for Changes to Fee Structure

Higher Fees. Due to state budget constraints, DEP has encouraged districts to collect an appropriate fee to allow them to adequately provide oversight and assistance. Several DEP and district officials indicated to us that they do not believe that current fees are a problem for most contractors since it is a relatively small amount of developers' overall costs, and a developer's primary concern is to get and keep the project moving. Builder and developer stakeholders did not list the level of E&S fees as a major concern; rather, they most often cite variation in fees from one district to another, timeliness of plan review, and enforcement variation as their most important concerns. Some have suggested a sliding scale fee based on company, not project, size.

District managers spoke with us about charging fees. The Franklin District doubled fees because of its closeness to Maryland and the resulting explosion of development. Lehigh, Beaver, and Lackawanna Districts have lost some or all of their

county funding and are making it up through fees. The Lancaster County Comptroller requested that the district double its fees so that the county does not have to provide the district with more money. Increased fees to developers generally are passed on to the buyer. In the Lehigh District, E&S fees are the only local source of income for the district. All employees are to track the time that they spend on E&S activities so that the district can justify E&S charges. Beginning January 2005, fees increased 10 percent. In 2004, Lehigh's fees jumped 50 percent from 2003.

Other Agencies. Conservation districts cannot charge fees to state agencies due to a prohibition in the Conservation District Law. According to the PACD executive director, this can cause problems because of the increased workload resulting from major highway projects as these projects can take up an inordinate amount of time. Districts want to work closer with the Department of Transportation (PENNDOT) and hopefully get some financial support so that these project reviews can be completed faster for the benefit of the state agency and the conservation district, which has work apart from the highway project. The PACD executive director pointed out that PENNDOT funded a county conservation district staff person to work on a Route 322 project. (See also Chapter IV.B regarding a new initiative to transfer PENNDOT E&S work to DEP.)

Chapter 105. Chapter 105 regulations (the Waterways Obstruction and Encroachment Program) prohibit charging fees for general permits. General permits were designed to provide a no-cost approach for individuals involved with minor projects as an incentive to achieve compliance with the regulations. Since DEP no longer funds the program, it is currently considering whether to allow/establish fees for the program, which would require amending Subchapter L of the Chapter 105 regulations. At regional roundtables with district managers and regional DEP personnel, suggestions were made to charge fees for Chapter 105 general permits and perhaps administrative and technical reviews.

District staff expressed the need to recover some of the costs they incur to help people fill out the necessary paperwork, provide technical assistance, and perform on-site inspections. One district manager stated that it can cost the district \$35 just to copy all the information necessary for the application to the Army Corps of Engineers or U.S. Fish and Wildlife Service. The district staff we spoke to thought permit fees, if charged, should be based on the scope of the projects.

Department officials note that many districts have expanded the original intent of the general permit process to include site visits and technical assistance to applicants. The time they commit to the review, site visits, technical assistance in completing registrations for applicants, and registering general permits is much more than the delegation agreement requires. Districts routinely assist people in compiling the information and completing the registration forms, or assisting with the project design. Such assistance requires more time than originally contem-

plated by DEP. Although DEP encourages districts to only do the required items in the delegation agreement to better manage their workload and time commitments, many districts believe that the additional work is necessary or significant environmental degradation will occur.

The technical assistance districts provide is not subject to the regulatory restriction on charging a Chapter 105 permit-processing fee. In a 2003 letter, the department clarified that,

. . . while fees for Chapter 105 general permit processing are restricted by Chapter 105, the Conservation District Law does allow districts to set fees for many activities and services. If, for instance, the district staff is actually filling out the registration forms, designing projects, conducting site assessments or other similar consulting activities associated with Chapter 105 permits, those services are beyond a determination of applicability of a general permit. Accordingly, a fee could be charged provided the fee structure is consistent with the requirements of the Conservation District Law.

Districts have generally been opposed to charging these fees out of concern it might discourage people from complying with the regulatory requirements. Appendix D of this report provides additional information on the Chapter 105 program.

4. While stakeholders expressed concern that some conservation districts take longer than others to review E&S plans, we found that the districts generally appear to meet DEP timeliness standards for review activities. Earlier, we noted that DEP's reviews of districts have found that in most cases districts were meeting the time requirements established in the delegation agreement for reviewing E&S plans and NPDES permit applications. In visits and interviews with 11 districts, the manager reported that technical reviews were taking an average of 30 days to complete. This time frame, however, does not include administrative review time or those instances where additional information was needed before the district could complete its review, and concerns continue, especially from individuals and businesses involved in construction and development, that plan reviews are too cumbersome and take too long.

DEP staff recognize the frustration with the length of time it takes for builders, developers, and individuals to get approved plans back from CCDs. Department staff point out, however, that according to their evaluations of districts, administrative reviews and technical plan reviews are being completed within the time frames established for these activities. A second point they made is that any building project must obtain the approval of the appropriate borough, township, or city offices and officials responsible for conforming to required zoning and building restrictions. Depending on the complexity of the project, and particularly for larger projects that are controversial and generate citizen opposition, significant time can

be added to the approval process. The length of time local governments take to review and approve a project is not within the scope or control of the CCDs.¹⁷ In Section IV.B of this report we discuss a pilot project that, if successful, would potentially streamline and shorten the approval process for development projects.

5. Conservation districts vary in staff resources they assign to E&S program efforts. Although neither the SCC nor DEP track staff turnover, the delegation agreement between DEP and individual districts requires the district to notify the Department when there is a change in the personnel employed for delegated program responsibilities. The Department may suspend the delegation agreement until sufficient, qualified, and trained personnel have been hired or retained. During the suspension period, the district is not to be compensated for the program. According to DEP staff, there was only one instance where a district's delegation agreement was suspended, and that was a mutual decision between the district and DEP. In another instance, a district voluntarily dropped from a Level 3 delegated county to a Level 2 delegated county. Under Level 2, the county had fewer responsibilities. Additionally, the Department revoked the delegation agreement with one county for failure to comply with the agreement.

To determine the relative effort of district staff in implementing erosion and sediment control programs, we gathered information from the districts on staff they reported to be assigned to the erosion and sediment control program and compared it to the number of E&S plans reviewed and field inspections conducted per district.

For the 58 districts reporting this data, the statewide average is 79 plan reviews conducted per year per full-time staffer. The districts vary from in excess of 100 plan reviews per staff person (13 districts) to fewer than 50 plans reviewed per staff (28 districts). While readers are cautioned in comparing specific districts one to another, and this analysis relies on non-verified data, the data suggests significant variation in the number of plan reviews conducted per staff assigned to the E&S function.

While that data is not exact in that we had to use information from different recent years, the analysis pertaining to inspections per staff shows that the statewide average number of staff assigned the E&S and NPDES programs is 1.9 full-time equivalent staff persons, and the average number of inspections per district statewide is 224. This indicates that statewide E&S/NPDES personnel conducted 118 inspections per year per staff person. However, some districts conducted two to three hundred inspections per full-time staff person, while others conducted only 20 to 30 such inspections per full-time staff. About one-third of the districts (23)

¹⁷Because the purpose of this audit was to focus on CCDs and their programs, we did not attempt to measure what effect local building and zoning ordinances might have on the ability of a particular project to move forward.

undertook over 100 inspections per staffer, whereas 20 districts carried out fewer than 50 inspections per staffer.

District managers, especially in areas of the state with large urban populations, report that they see a need to increase their E&S/NPDES inspection staff. In some counties, district boards have addressed this by increasing fees. With increased fees, higher income is generated which allows the district to hire additional inspection staff. Managers also note that the number of inspections may vary between counties because of the level of experience of staff. More experienced staff can complete an inspection faster than a new staff person.

6. E&S oversight of farms may need to be enhanced. According to DEP regulations, agricultural plowing or tilling activities are exempt from NPDES permit requirements, but still require the development of an E&S plan, which specifies the implementation and maintenance of best management practices. We were told farmers can meet the requirement by developing and implementing an NRCS-required conservation plan. If, however, that farmer builds a structure, such as a barn or silo, an E&S plan and NPDES permit, depending on the amount of land disturbed, is still required to be submitted to the CCD for review.

Data was not available from DEP, the Department of Agriculture (PDA), or the SCC on the number of E&S plan reviews approved or NPDES permits issued specifically to farmers. However, district managers told us that, in general, they receive few E&S applications from farmers and that they normally only investigate whether a farm has filed a required E&S plan if they receive a complaint about the farming practices or a pollution event occurs at the farm. Several developers indicated that they believe they are regulated and monitored more closely than farms, and at least one county informed us that they generally do not undertake E&S activities if they pertain to farms. A manager in another district noted that his board has determined that E&S plan reviews are not applicable to farmland.

VI.B. Nutrient Management Program

The Nutrient Management Act (NMA), Act 1993-6, established the Nutrient Management Program to minimize the impact of agricultural operations and nutrients on surface and ground water and to increase farm profitability through proper nutrient management. In addition to this program, two pilot projects are underway in Lancaster County; one with a goal of reducing agricultural nitrogen use by 30 percent or more and the other with a goal of improving water quality in the Conestoga River Watershed through a “market-based” approach to funding best management practices to reduce nutrient pollution.

Program Overview and Purpose

The Nutrient Management Program sets nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations that generate or utilize animal manure. The program also provides technical and financial assistance for nutrient management and alternative uses of animal manure, including a manure marketing and distribution program. The State Conservation Commission, in conjunction with the Cooperative Extension Service of the Pennsylvania State University, the Department of Agriculture, USDA NRCS, and conservation districts, provides outreach to the agricultural community on the proper utilization and management of nutrients on farms to prevent the pollution of surface and ground water.

The Nutrient Management Program became effective in 1997 and establishes nutrient management planning requirements for concentrated animal operations (CAOs)¹ and for concentrated animal feeding operations (CAFOs). Plans must be developed and reviewed by certified specialists under regulations published by the SCC after consultation with the Department of Agriculture, the Department of Environmental Protection, and the Nutrient Management Advisory Board.² The act authorizes the SCC to delegate administration or enforcement authority (or both) for the program to the county conservation districts.

¹CAOs are those agricultural operations where the animal density exceeds two AEU's (Animal Equivalent Units) per acre on an annualized basis. One AEU is 1,000 pounds live weight of livestock or poultry. CAFOs are animal feeding operations that have more than 1,000 AEU's, CAOs with 301 to 1,000 AEU's, or an animal feeding operation with a discharge to surface waters.

²The Nutrient Management Advisory Board is appointed by the Chairman of the SCC and approved by two-thirds of the members. The 15-person board consists of five active commercial farm owners or operators, one veterinary nutrition specialist, one representative each from the feed industry, and the fertilizer industry, one representative of commercial agricultural lenders, one representative of local government, one representative of academia who is an agronomist or plant science faculty member of a Pennsylvania college or university, one hydrologist, two citizen members who are not farmers, and one environmental representative. All board members must have sufficient knowledge, experience, or familiarity with agronomic or nutrient management practices and must be residents of the Commonwealth.

In June 2000, the SCC adopted an "Enforcement Strategy" policy for the districts to use in enforcing the NMA. The SCC also issued "NMA Enforcement Efforts" to the districts as administrative guidance to clarify their role in SCC enforcement activities. Civil penalties are established at not more than \$500 for the first day for each offense and \$100 for each additional day of a continuing violation. The factors used to guide the determination of the penalty include, but are not limited to: the gravity of the violation, potential harm to the public, and the willfulness of the violation. Orders or other administrative enforcement actions may also be implemented by the SCC. All SCC enforcement actions may be appealed within 30 days to the Environmental Hearing Board.

The Commission approved proposed revisions to the act's regulations in September 2003.³ These proposed regulations were published for comment in August 2004. In November 2004, the commission staff closed the comment portion of the regulatory review process and has begun to prepare a draft response to the comments. A draft revision of the initial regulatory proposal should be available for review by the commissioners in July, with a final package ready for consideration in the fall of 2005. According to SCC officials, current Nutrient Management Regulations conflict with some items in the present version of U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) Nutrient Management Standard (590 Standard), and part of the revision effort is to align the two standards so that farmers involved with both NRCS and the Commission do not have to develop two different documents for one operation. Concurrently, DEP is revising its manure management and CAFO regulations.

County/State/Other Agency Roles and Responsibilities

Conservation districts encourage the participation of agricultural operations within their county as well as provide information to the public related to the Nutrient Management Program. Districts also assist the commission in administering financial assistance programs to support farmers in developing and implementing nutrient management plans. Districts provide technical assistance in accordance with commission guidelines and consistent with the Pennsylvania Soil and Water Conservation Technical Guide. They also perform status reviews to assess implementation efforts once plans are approved on the following: CAOs, financial assistance recipients, and volunteer animal operations. Districts also investigate complaints and other instances of noncompliance. Currently, 60 of the state's 66

³The initial revisions included expanding the definition of CAOs; requiring the use of the phosphorous index to limit the application of manure and other nutrients; requiring nutrient management plans to include: a verification that an erosion and sediment plan or a current conservation plan exists for the operation; signed agreements between CAOs and manure importing operators, commercial haulers, applicators, and brokers approved by the SCC; changes to manure testing, application, and storage; expanding eligibility for Plan Development Incentive Program (PDIP) grants; and requiring written site-specific emergency response plans in the event of a discharge, leak, or spill.

conservation districts participate in the program. Carbon, Delaware, Elk, Forest, Monroe, and Pike districts do not participate.

The SCC staff provides technical oversight and training as well as financial assistance to the districts for the duties and responsibilities described in their delegation agreements. The staff also processes the enforcement actions districts forward to the commission. The SCC provides the districts with informational materials to inform the public and to assist local municipalities in coordinating local nutrient management efforts. The SCC is responsible for duties required by the act and not delegated to the districts.

Other Agency Involvement.⁴ The Secretary of Agriculture has designated an office and staff within the department to coordinate and assist in implementing and enforcing programs adopted by the SCC. The department's primary role is to support the SCC in its efforts and to support the county conservation districts in the Nutrient Management Program by administering financial assistance programs at the state level (grants to farmers--not to the district) and staff assistance in administering the Nutrient Management Specialist certification program. The Secretary of Environmental Protection has also assigned an office and staff within the department to provide support to the SCC in the administration of the Nutrient Management Act and the development, implementation, and enforcement of programs intended to protect surface or ground water. In particular, DEP administers the SCC's delegation agreements with conservation districts to carry out the program at the local level.

Plan Reviews/Inspections Levels. Between 1997 and March 2004, districts identified 827 concentrated animal operations (CAOs and, 1,138 VAOs⁵ voluntary animal operations) and now estimate about 500 horse operations will be added to their supervision when the act's revised regulations are implemented. CAOs are inspected annually, and plan implementation grant recipients are inspected biannually.

Districts have processed over 1,450 Plan Development Incentives Program (PDIP) applications as of December 31, 2004. Approximately 54,000 acres (for CAOs) and 321,000 acres (for volunteer operations) have been approved for PDIP funding. Twenty-six percent of all applications for plan assistance are from poultry operations, 42 percent from dairy, 13 percent from swine operations, and 19 percent from beef and other operations. The Pennsylvania Association of Conservation Districts (PACD) has processed 1,112 PDIP cost share payments totaling \$539,288 as of the end of December 2004, for an average cost share of \$485 per plan.

⁴The PACD also processes and delivers PDIP cost share payments to farmers.

⁵Voluntary nutrient management plans developed on other agricultural operations and submitted to the commission or delegated conservation district for approval under the act.

The Nutrient Management Plan Implementation Grant Program has received 421 applications for funding up to and including the October 2004 application period. To date, 285 applications were approved for grant funding totaling over \$14.89 million. Over 251 projects have been completed with disbursements of grant funds totaling \$12.06 million. The majority of these projects are waste management systems, including manure storages; barnyard management projects; and heavy use area protections systems.

Staffing Levels. The SCC has five positions overseeing the Nutrient Management Program: one manager and four Conservation Program Specialists. The PDA Bureau of Plant Industry has five positions assigned to the Nutrient Management Program (nearly full time) (four Conservation Program Specialists and an Administrative Assistant), paid through PDA's Nutrient Management General Fund Appropriation. Additionally, DEP has assigned two staff persons (50 percent time) to the Nutrient Management Program. And, as part of its NPDES responsibilities under the Federal Clean Water Act, DEP estimates they have three FTEs (full-time equivalents) issuing CAFO permits and two FTEs enforcing them.

Funding. The Nutrient Management Fund is a special non-lapsing fund. Fines, fees, judgments, and interest collected by the districts are paid into the Nutrient Management Fund at the end of each quarter. All money placed in the fund and the interest it accrues is appropriated to the commission on a continuing basis to meet the requirements of the act. The commission provides, to the extent funds are available, financial assistance in the form of loans, loan guarantees, and grants for the implementation of nutrient management plans. The PDIP, for example, provides funds to finance a portion of the costs associated with developing plans for agricultural operations planning under the act (75 percent or up to \$1,500) and administrative expenses of delegated districts associated with the implementation of PDIP.

Complaints/Enforcement

An existing CAO that has not submitted a nutrient management plan is in violation of the NMA, and therefore subject to an enforcement action. Likewise, CAOs not properly implementing their approved plans are subject to enforcement action.

If a district's efforts to work cooperatively with the CAO do not produce compliance, then the district notifies the commission so that it can take enforcement action. The commission also may initiate enforcement actions on operations found to be in violation of the NMA independent of a notice from a district. Sites that are in violation of other regulatory requirements, such as those established by the Clean Streams Law, are referred to DEP.

If an operator is fully and properly implementing an approved plan, it is to be considered as a mitigating factor in any civil action for penalties or damages. A voluntary plan submitted to and approved by the district or the commission would also be eligible for this limited liability.

To date, 25 enforcement cases, from 16 different counties, have been referred to the commission. The SCC has taken an enforcement action on 22⁶ of these cases and assessed operators over \$95,000 in civil penalties. See Exhibit 14.

Exhibit 14

**Nutrient Management Act Enforcement Actions
December 1998 – January 2005**

<u>Year</u>	<u>Cases Referred to SCC</u>	<u>Civil Penalty Assessed</u>	<u>Civil Penalty Received</u>	<u>Orders Assessed</u>	<u>Orders Implemented</u>
1998	1	\$ 0	\$ 0	1	1
1999	1	285	285	0	0
2000	5	4,160	1,000 (1-open)	5	4 (1-open)
2001	1	100	100	1	1
2002	1	565	565	1	1
2003	7	28,375	9,755 (1-open)	7	5 (1-open)
2004	<u>9</u>	<u>58,840</u>	<u>3,512</u> (3-open)	<u>5</u>	<u>3</u> (3-open)
Total.....	25	\$95,375	\$18,267	21	15 (5-open)

(# -open) – indicates cases that are open or have not been satisfied

Open Cases - In 2000, the operator was assessed and has left the state. The open case in 2003 is one where the operator was taken to Commonwealth Court and the Judge ruled in the commission's favor, but operator has still not complied with the entire order. The 2004 open cases include one case where a Consent Order has not been reached with an operator and the commission just recently issued the other two orders and penalties.

Source: State Conservation Commission.

Program Controls and Monitoring

Staff from the SCC, DEP, and PDA conduct evaluations of the Nutrient Management Program in at least four districts annually. From 1998 through September 2004, 28 county conservation districts programs (and the 12 associate districts that share Nutrient Management Program resources) were evaluated. The results of these evaluations are provided to district directors and staff. DEP and SCC staff work with district staff to improve any deficiencies that are found, and a follow-up of the program is conducted after six months. In the reports we sampled, the deficiencies noted were primarily the need to accelerate and complete CAO status reviews, increase CAO and VAO site visits, and to better track plan implementations.

⁶The commission did not take enforcement action on three cases either due to the district rescinding their action or lack of evidence to pursue an enforcement action.

Districts also provide quarterly reports to the commission that summarize activities performed during the report period. These reports contain such information as the number of educational efforts completed, the number of CAO or volunteer plans and plan amendments received, the number of complaints received, the status of complaint investigations, and the number of PDIP applications processed. The information from these reports is entered, in part, into DEP's database and is shared with the SCC upon request.

Extent and Nature of Training

The Nutrient Management Certification Program, administered by PDA, certifies specialists to prepare and/or review nutrient management plans to determine compliance with the requirements of the NMA. Applicants must attend training sessions, pass a written examination, and, depending on type of certification applied for, need to prepare or review plans before final certification is awarded. Certified specialists must also complete between six and ten hours of continuing education every three years to maintain their certifications.⁷

According to PDA, as of March 2005, 296 persons enrolled in the Nutrient Management Certification training have achieved final certification, and 99 persons are currently provisionally certified and are in various stages of meeting the final certification requirements.

Individual Specialists (write their own plans).....	146 final certified
Commercial Specialists (only write plans).....	52 final certified
Commercial/Public Specialists (write/review plans) ...	63 final certified
Public Specialists (only review plans)	<u>35</u> final certified
Total	296 Specialists

District managers responding to our questionnaire overwhelmingly felt that there were sufficient Nutrient Management training opportunities (95 percent) and that the training offered meets their expectations (94 percent). The 2005 Nutrient Management Certification Training Calendar lists over 20 course offerings through mid-August and an additional eight continuing education courses in February alone.

Concerns/Opportunities for Improvement

1. Responsibilities for the Nutrient Management Program are divided among the SCC, DEP, and PDA, which can create uncertainty as to whom conservation districts need to contact to receive direction and supervision. Several agencies are responsible for implementing the Nutrient Management Program. The

⁷At its March 2005 meeting, the SCC approved a new three-year education contract with Penn State and NRCS for a total of \$420,670. The contract continues the current education and outreach effort and expands it to include in-field phosphorous management and conservation practices.

SCC establishes administrative and enforcement policies, allocates funding to districts under delegation, and determines appropriate penalties for violations of the act. DEP provides a variety of data collection and delegation agreement support services. It also issues the NPDES permits to CAFOs and enforces violations of the Clean Streams Law. The Department of Agriculture provides technical guidance and is responsible for Nutrient Management Specialist training and certifications. The federal Natural Resource Conservation Service also provides contracted training and technical field support to help farmers implement best management practices.

Neither districts nor farmers have one single point of contact that is able to respond to all of their needs. PDA has observed confusion even at the district level as to which agency to call. Several of the district managers we spoke to also noted that this division of responsibilities creates a certain level of inefficiency in administering the program.

2. *Certain stakeholders have concerns about the effectiveness of the Nutrient Management Act.* Citizens for Pennsylvania's Future (PennFuture), a state-wide public interest organization, reviewed "factory farming"⁸ in Pennsylvania to determine how the regulatory system was working to protect the environment and public health. The organization issued a report in 2003 and a second report in 2004.

According to these reports, the state's environmental laws and regulations have not kept pace with the shift to a vertically integrated industry and industrialized livestock production methods. The reports state that the NMA is compromised by structural weaknesses, uneven implementation, and weak oversight and enforcement. In particular, the reports noted that 59 percent of the livestock operations in Lancaster County with nutrient management plans, despite "intense" efforts by the conservation district, were noncompliant.

PennFuture writes that nutrient management planning requirements and restrictions for manure spreading can be circumvented by exporting manure to other farms or distribution through brokers. The program does not limit the amount of manure generated and/or disposed of in impaired or special protection watersheds. Similarly, the winter spreading of manure on frozen fields is discouraged, but not prohibited. Act 2004-49, with its emphasis on manure broker/hauler certification and manure transfer recordkeeping, should begin to address these concerns. The SCC also states that it is being more aggressive in its efforts to convince other states to limit export of manure to Pennsylvania.

Another concern is that nutrient management plans have not balanced phosphorous loading against the capacity of the soil to assimilate it or crops to use it. In

⁸A "factory farm" was defined as a concentrated animal feeding operation (CAFO) that is required to obtain a federal water pollution control permit (CAFO NPDES) from DEP.

2004, the Environmental Hearing Board ruled that nutrient management plans must now account for phosphorous, and the SCC subsequently issued an interim policy requiring that nutrient management plans expressly address phosphorous, in addition to nitrogen, to satisfy the requirements of the act. This issue is further addressed by the proposed changes to the nutrient management regulations that are currently under review.

The reports further recommended increasing the number of inspections and allowing local governments to retain the authority to enact ordinances regarding these farm operations. The fact that the Nutrient Management Act supercedes local authority is also a concern expressed by the Pennsylvania State Association of Township Supervisors.

A representative from the Pennsylvania Farm Bureau reviewed the program files in Lancaster County and determined that many of the compliance violations noted in the PennFuture reports were technical recordkeeping in nature and not substantive. The Bureau also noted that there has been steady improvement from those farms cited in the reports. PDA told us that the Nutrient Management Program has had difficulty in the past with farmers who did not want to keep the necessary records, but that this situation has improved in recent years.

3. The Nutrient Management Fund is projected to be depleted during FY 2006-07. As discussed in Chapter II, the Nutrient Management Fund has received an annual \$3.28 million transfer from the General Fund in recent years, and while disbursements have increased, receipts have remained constant.⁹ As a consequence, the fund balance has declined 58 percent from FY 1999-00 to FY 2004-05. Stakeholders have noted the declining balance, estimated to be \$1.4 million as of June 30, 2006, as a concern for the future, especially given the forthcoming certification requirements for manure haulers and the proposed new regulations expected to be effective in 2005-06 (PDA projects the fund will be depleted during FY 2006-07).¹⁰ The resulting additional oversight and responsibilities are likely to further boost funding needs. PACD, for example, has called for an increase in the transfer from \$3.28 million to \$5 million to begin to address fund balance concerns.

At the beginning of the program, at least two districts asked the commission if they would be permitted to charge a fee to review nutrient management plans. The commission responded that under Act 1993-6, any fees collected by the district would go to the fund and could not be retained at the county level to defray program costs. According to the commission's executive secretary, the SCC was also concerned that requiring producers to pay for plan reviews (in addition to paying to have a plan written) would affect their ability to participate in the program and

⁹Fund revenues come from state and federal appropriations; interest; loan repayments; gifts and contributions; and fees, fines, and judgments assessed for violations of the Nutrient Management Act.

¹⁰The Governor's Executive Budget Request 2005-06 projects the fund will be depleted by the end of FY 2005-06.

that the number of volunteer operations with plans exceeds the number of CAOs. Currently, no district charges a fee to review a nutrient management plan.

4. While not directly involving the Lancaster County Conservation District, Lancaster County is involved in a Nutrient Management pilot project to reduce agricultural nitrogen use and a related project intended to improve water quality.

The Center for Conservation Incentives (part of the Washington DC-based Environmental Defense) is conducting a pilot project with farmers in Lancaster County with a goal of reducing agricultural nitrogen use by 30 percent or more. The project is looking at economically viable tools for farmers to address water quality and nutrient use efficiency and to improve the distribution of nutrients within the county. Lancaster was selected because of its proximity to and impact on the Chesapeake Bay. Thirty-seven (37) farms were provided with tools to measure nitrogen in the spring and in the fall (PreSidedress nitrate and cornstalk nitrate tests respectively) at no cost. Data was collected by the farmers but is being maintained as confidential (i.e., is not being reported to regulatory agencies). The data allows farmers to measure the nitrogen content of their land and to voluntarily make adjustments to their operations. This year, with the help of the Natural Resource Conservation Service and money from the Environmental Quality Incentives Program, the number of Lancaster County farms in the pilot will double.

A related project, the Conestoga River Watershed Nutrient Trading Pilot, is also aimed at helping to protect the Chesapeake Bay. The pilot, for which the Pennsylvania Environmental Council (PEC) is acting as project manager, is being funded by a \$1 million grant from the NRCS. The grant allows the creation of a market-based "reverse auction" process to acquire nutrient pollution reductions.¹¹ The NutrientNet website will help the farmer determine the cost estimate for implementing a best management practice (BMP) and potentially how many pounds of nutrient reductions could be expected. The farmer then submits a bid for funding. PEC, through a NutrientNet web site, will rank the bids according to nutrient reductions anticipated. Beginning in the summer of 2005 and the winter of 2006, PEC will make monetary awards to successful farmers for the installation of the BMPs, and funding will be directed toward the most cost-effective reductions.

¹¹The reverse auction process stretches limited conservation dollars by allowing the market to set a price for establishing Best Management Practices on farms. The reverse auction process addresses a number of critical resource concerns, including reducing nutrient losses; soil erosion and quality; greenhouse gases; increasing carbon sequestration; and providing riparian buffers and natural stream and wetland restoration.

VI.C. Chesapeake Bay Program

Thirty-five percent of the Chesapeake Bay watershed lies within Pennsylvania. Approximately half of Pennsylvania is in the Chesapeake Bay watershed itself. Although Pennsylvania does not border the Chesapeake Bay, the state is the largest single source of nutrient pollution to the Chesapeake, according to Bay Program estimates. Pennsylvania has made a commitment to reduce the level of pollutants, especially nitrogen and phosphorus, that runoff into streams and get carried to the Chesapeake Bay. This commitment is to be realized in part by working with landowners to identify steps that can be taken to reduce pollution runoff from farms.

Program Overview and Purpose

In 1983, Pennsylvania entered into an agreement with Maryland, Virginia, the District of Columbia, the U.S. Environmental Protection Agency (EPA), and the Chesapeake Bay Commission to restore the Chesapeake Bay. According to a DEP report, for several decades, the Bay ecosystem declined because of excess nutrients, sediment, toxic pollutant releases, loss of aquatic habitat, and over-harvesting. Of these, excess nutrients--particularly nitrogen and phosphorus--became the major area of focus for achieving improvements to the Bay ecosystem. A second agreement was signed in 1987. This agreement established new leadership in the Chesapeake Executive Council, including the governors of Pennsylvania, Maryland, and Virginia, as well as the mayor of the District of Columbia. In the 1987 agreement, the Bay partners mutually agreed to a goal of reducing controllable nutrient loads to the Bay by 40 percent by the year 2000. Pennsylvania was successful in meeting the 2000 phosphorus goal but fell short of the 2000 nitrogen goal.

In 1996, Pennsylvania updated its nutrient reduction strategy to reach the year 2000 goal, which resulted in a shift from viewing the goal as a 40 percent reduction in controllable nutrient loads to a goal of maintaining or "capping," the nutrient loads at the levels remaining after the 40 percent goal was achieved. In June 2000, the Chesapeake Executive Council signed the Chesapeake 2000 Agreement, which established new and far-reaching commitments to guide the Bay partners in their efforts to restore and protect the Bay's watershed and its tributaries.¹ In January 2005, DEP unveiled Pennsylvania's new Chesapeake Bay Tributary Strategy, which is the state's official plan to meet the Chesapeake 2000 Agreement goals for sediment and nutrient reduction in the Chesapeake Bay Watershed. Because of limited funding, the strategy emphasizes funding activities and best management practices (BMPs) that have the greatest potential to meet tributary pollution

¹It outlines 93 commitments detailing protection and restoration goals critical to the health of the Bay watershed.

reduction goals. Most persons we contacted indicated that Pennsylvania has made strong commitments to the federal government to address these issues and that the newly developed strategy requires aggressive implementation and action.

Program Requirements

The goal of the program is to reduce nutrient and sediment runoff from farms in the Chesapeake Bay Watershed. This is accomplished through the use of BMPs. BMPs include collecting and storing manure in a manure pit, collecting and diverting barn roof runoff from feedlots, installing water diversions, installing livestock exclusionary fencing, and other conservation practices.

The districts actively seek farmers to participate in the program and individually work with them to design the proper BMPs for their operation. All BMPs must be designed and constructed in compliance with Natural Resource Conservation Service standards and specifications. Additionally, farmers that receive funding must have a Nutrient Management Plan and have implemented a Conservation Plan.

The Chesapeake Bay Program is part of the federal Clean Water Act, 33 U.S.C. §1251 *et seq.*, specifically §1267. In Pennsylvania, the policy statement is published at 25 Pa. Code §83.101 *et seq.* under the authority of the Conservation District Law, 3 P.S. 849 *et seq.*

County/State/Other Agency Roles and Responsibilities

The Chesapeake Bay Program provides technical assistance to agricultural landowners to implement BMPs for the reduction of erosion and proper application of nutrients. Farmers in the Chesapeake Bay drainage area are entitled to an 80 percent cost share for the installation of BMPs, with a limit of \$30,000 per farm.² The State Conservation Commission approves a series of BMPs that are available to landowners to control erosion and nutrient runoff. To participate, landowners must agree to implement a comprehensive Nutrient Management Program to address critical problems.³ The landowner must also agree to maintain the BMPs installed for their effective service life, usually a ten-year period.⁴

The EPA allocates funding for the program to the participating states as a matching grant to supplement funds provided by the state. The Department of

²Conservation districts are allowed to set their own cost share rate and consequently landowners may be required to pay more than 20 percent of the costs.

³A Nutrient Management Program is a system of BMPs to prevent the pollution of surface and ground waters by addressing the most critical farm nutrient problems through measures to manage fertilizers and animal wastes and to reduce soil erosion.

⁴Landowners interested in participating in the program contact their local CCD for assistance. District staff will assist the landowner in completing a preliminary assessment. Eligible applicants are then prioritized by the district for service.

Environmental Protection, in cooperation with the SCC, allocates the money to the 38 participating conservation districts to employ technical personnel to accomplish program activities. The funding supports 43 Bay technicians, seven engineers, and three engineering assistants within the conservation districts. DEP personnel assist conservation technicians with training and oversight.

Program Data and Activities by District

Farms with current contracts are subject to compliance inspections. Compliance inspections are the responsibility of the CCDs and are completed through periodic reviews of program documents, landowner records, field inspection of BMPs, and landowner/operator interviews. Approximately 10 percent of the eligible farms are inspected each year, with a limit of 10 farms per county. To ensure that a greater number of farms are inspected, the locations are selected randomly with a minimum of three years between inspections. Landowners are notified of deficiencies and the corrective action they must take to remedy the problem. According to DEP staff, in general, the districts have been successful in obtaining voluntary compliance by the landowner. DEP staff, however, does not keep an enforcement action data file on non-compliance by participating landowners.

According to DEP, since the program's inception, CCDs have been allocated about \$37.6 million, of which over \$33.5 million was spent on BMPs through December 2002. As of December 31, 2002, approximately 2,685 landowners have signed documents indicating interest in joining the program, and 1,574 have signed legal agreements to implement a Nutrient Management Program. In its semi-annual progress report to the EPA, DEP noted that between July 1, 2004, and December 31, 2004, the following, in part, was accomplished by CCDs and the Department:

- Six DEP regional office staffs provided technical and administrative assistance to CCDs.
- DEP staff tracked program accomplishments, conducted routine inspections of BMPs, and monitored funding needs.
- Water samples were collected monthly from 56 sampling sites to measure sediment reduction.
- Completed approximately 100 nutrient management plans with over \$700,000 in state cost share dollars spent.
- Completed 25 manure storage design plans for landowners.
- Conservation district staff continues to work with landowners to implement BMPs. Waste storage structures, heavy use area protection, barnyard runoff control, and roof runoff management were the most utilized BMPs. A total of \$1 million was spent for actual in ground BMPs.

Program Controls and Monitoring

The evaluations of CCDs' implementation of the Chesapeake Bay Program (CBP) were undertaken by DEP central office prior to 2004. Beginning in 2004, they are now being completed by DEP regional office staff. Six Chesapeake Bay field representatives are now in the regional offices.

To ensure that program guidelines and administrative requirements are being met, DEP evaluates the performance of individual conservation districts. The most recent evaluations undertaken of 36 districts found that the large majority are meeting or exceeding their requirements. Five districts exceed requirements; 22 met the requirements; 7 needed minor improvements which they were able to rectify; and 2 were found to be unsatisfactory. Follow-up visits were made to districts whose programs were found to be unsatisfactory, and DEP worked with these districts to ensure that the necessary changes were made to bring these programs back into compliance. The CBP regional field representative is responsible for re-evaluating the district. If the district fails to make the necessary improvements, it could lose a portion of its CBP funding.

Concerns/Opportunities for Improvement

County conservation district managers are concerned that funding for the program will continue to decline, even as the new Chesapeake Bay Tributary Strategy is adopted. Training and enforcing landowner adherence are also concerns.

1. Full Implementation of the Chesapeake Bay Tributary Strategy Is Dependent on Sufficient Funding. Conservation districts expressed concern to us about whether they will be equal partners in implementing the goals of the Chesapeake Bay Strategy given the funding limitations the program is currently experiencing. They expressed to us that they do not receive sufficient funding to support the necessary staff effort and fund critical BMP projects. Comments from one district manager whose CBP was ranked as satisfactory nonetheless indicated that the state is cutting back on the funding they provide for the program and that the allocation process is a problem, especially in the cost share area and how they spilt up the funds.

Department staff is aware of the funding needs, but note that they have not been able to acquire additional funds from the federal government. Pennsylvania receives approximately \$2.2 million from the EPA to implement BMPs in the state. The Commonwealth matches this funding and provides additional funding (\$811,000 in FY 2004-05) as well, creating a total state/federal effort to the program of approximately \$5.6 million. However, it is estimated that there are approximately \$8.2 billion worth of projects in Pennsylvania alone that need to be undertaken to fully correct the pollution problems that affect the Chesapeake Bay.

A Growing Greener II bond initiative of \$625 million dollars over four years was approved on May 17, 2005, part of which is planned to be used to help clean up the state's 83,161 miles of rivers and streams. Many of these waterways are located in the Chesapeake Bay Tributary, and improvements in those rivers and streams would also benefit the Chesapeake Bay and help Pennsylvania meet its Tributary strategy goals, which are targeted to be met by 2010.

2. While the majority of district managers report satisfaction with the Chesapeake Bay Program training provided by DEP, a significant minority expressed concern over the training being offered. In their questionnaire responses, 37 districts participating in the Chesapeake Bay Program reported on the sufficiency and adequacy of training offered to them by state agencies. Exhibit 15 shows that approximately 65 percent of the managers responding believe there are sufficient training opportunities for their staff to learn about changes to the program. A somewhat smaller number (57 percent) reported that the training offered meets their expectations.

Exhibit 15

Sufficiency of Training in the Chesapeake Bay Program

<u>Questions Regarding the CBP</u>	<u>Yes</u>	<u>No</u>
Are There Sufficient Training Opportunities in the Chesapeake Bay Program?.....	24	13
Does Training Provided by State Agencies in the Chesapeake Bay Program Meet Expectations?.....	21	16

Source: Developed by LB&FC staff from CCD managers' questionnaire.

Exhibit 16 presents some of the comments from the district managers.

According to DEP officials, there is no annual training provided to districts on program administration and implementation. If training is needed because of new staff in a district or because the program evaluations have uncovered a deficiency, such training would normally be offered on an individual basis. According to DEP officials, when the program began in 1986, there were numerous opportunities for training because the program was new. DEP believes there is now less need for such training because the program has a track record, and districts are generally able to understand how the Department expects them to administer the program in their county.

**Specific Comments by Conservation District Managers
About the Adequacy of Chesapeake Bay Training**

- Our Bay Technician has been here two years and has never had training on program administration, record keeping, tracking BMPs, or fiscal/contract management.
- The Chesapeake Bay Program training became almost non-existent in the last several years. This leads to confusion between and within counties as staff turnover occurs.
- There have been limited formalized trainings provided.
- Some training is provided by NRCS or non-state agencies.
- Chesapeake Bay Program hasn't organized a statewide meeting for several years. No training sessions are conducted for new or existing staff.
- The technical training available for technicians to understand their field work in relation to planning and installing BMPs is adequate. The area that is weak is getting consistent answers as to what rules the program is planning by for the year from a program administration standpoint.
- Training rarely offered, the manual is outdated, oversight/direction by state in constant flux.
- There has been no Chesapeake Bay training for years and the Bay Administration Manual is not up-to-date.
- No training opportunities offered. Administration updates are offered.
- The Chesapeake Bay Program originally had excellent management and training. As of the last several years – training and program management has declined in quality significantly.

Source: Comments provided by Conservation District Managers.

VI.D. Dirt and Gravel Road Maintenance Program

The Pennsylvania State Conservation Commission's Dirt and Gravel Road Pollution Prevention Program provides training and funding to local road-owning entities to mitigate stream pollution originating from dirt and gravel roads. Of the over 25,000 miles of unpaved public roads in Pennsylvania, segments where road runoff enters a stream comprising approximately 4,110 miles have been identified by conservation districts as pollution sites.

Program Overview and Purpose

The program stresses the use of site-specific, long-term solutions to prevent pollution and requires environmentally sensitive maintenance of unpaved roads. ("Chip-sealing" or paving is not a funded activity.)

The commission helps provide local governments and other eligible entities with a dedicated funding mechanism for safe, efficient, and environmentally sound maintenance of sections of dirt and gravel roads that have been identified as sources of dust and sediment pollution. The commission provides training to road crews on techniques of dirt and gravel road maintenance that minimize negative environmental impacts and conducts demonstrations of new and innovative techniques to assist in training road crews and educating the general public.

The program and its annual \$5 million set-aside apportionment for "environmentally sound maintenance" were enacted into law in April 1997 as Section 9106 of Pennsylvania's Vehicle Code. The Department of Conservation and Natural Resources (DCNR) receives \$1 million for the maintenance and mitigation of dust and sediment pollution from forestry roads. The remaining \$4 million is apportioned to the SCC.

County/State/Other Agency Roles and Responsibilities

The SCC administers the statewide program, apportions funding to conservation districts once a year, and provides administrative and project guidance to the districts. The SCC also reports annually to the Legislature on program status. Funding allocations to the districts are based on verified need using the pollution sites identified by the districts. DEP handles administrative matters of the SCC for the Dirt and Gravel Road Maintenance Program. The SCC in cooperation with DEP's comptroller determines the financial procedures to be followed.

Participation in the program is voluntary for both districts and municipalities. Sixty-five of Pennsylvania's conservation districts use their annual allocation

to administer the program at the county level through delegation agreements with the SCC. With the help of a local four-member Quality Assurance Board (QAB), the districts' role in the program includes:

- working directly with local road owning entities, usually townships, to develop work plans for projects to correct verified pollution problems on unpaved roads;
- assisting with the logistics of project work whenever possible;
- keeping track of projects in their county;
- developing a prioritization ranking of incoming applications and deciding which projects to fund each year;
- conducting project inspections after site work is completed; and
- submitting an annual program summary to the SCC.

In most cases, local municipalities such as townships and boroughs are the end beneficiary of the program. Of the 2,567 municipalities in Pennsylvania, 1,047 have identified dirt and gravel road worksites. Each municipality (or other program participant) must complete a two-day "Environmentally Sensitive Maintenance of Dirt and Gravel Roads" (ESM) training to be eligible for funding. This training explains basic environmental principles and introduces new techniques and ideas in unpaved road maintenance. Each participating municipality works with its conservation district to develop plans for identified sites, submits grant applications to the district, carries out project work according to a contracted workplan, and receives program funding via the agreement with the district. In most cases, municipal officials are the ones who actually complete the project work, although some prefer to contract it out.

State Agency Applicants. DCNR's Bureau of Forestry administers more than 2,500 miles of dirt and gravel roads. It receives a direct allocation of \$1,000,000 per year under the program and is eligible to compete for additional funding through conservation district grants. The Bureau of State Parks is also eligible for program funding on a project-by-project basis through the local county conservation district. PENNDOT owns about 650 miles of dirt and gravel roads and is also eligible to apply for funding for these roads through the conservation districts.

Roads owned by the Pennsylvania Game Commission are eligible for funding from the districts, provided personnel have attended ESM training. Pennsylvania Fish and Boat Commission road ownership is minor except for access roads and boat launches.

Program Data and Activities by District

Funds are annually apportioned to the SCC and administered in a non-lapsing, nontransferable account restricted to the maintenance and improvement of dirt and gravel roads. Allocation to districts is based on a formula that uses four

indices: total pollution sites, Trout Unlimited hotspots, total unpaved county roads, and limestone price leveling.

Each district's QAB prepares an annual budget for the program, consistent with the spending authorizations as determined by the commission. The district may utilize up to 10 percent of the total apportioned funds received from the commission for administrative costs, limited to actual documented costs. The district maintains a separate accounting of the funds received under the program.

Grants awarded to successful applicants may provide advance payments to aid with project cash flow and complete project work on a timely basis. Five percent of the funding may be used by the districts for education and training and the remaining monies used for approved projects. Funds are transferred to the districts under a five-year contract that permits the SCC to transfer funds without initiating annual contracts or contract amendments. Funds must be spent or committed to projects within two years of their allocation. Failure to do so may result in no future allocation of funds to the district--as is the case for FY 2005-06: four districts will not receive allocations.

From the program's inception through January 15, 2005, 1,492 projects, for a total of 728 miles, have been completed at a cost of \$19,081,000, or an average of \$12,789 per project. Eighty-one percent of the funding has been for materials, 14 percent for equipment, and 5 percent labor. In-kind contributions were \$6,696,000, of which 16 percent was for materials, 43 percent for equipment, and 37 percent for labor. In-kind contributions were about 35 cents for every dollar spent. As of April 2005, an additional \$4,679,000 was committed to 236 partially completed projects.

A cumulative total of \$28,131,000 has been allocated to the districts since the program began: \$23,007,000 for completed projects, \$4,679,000 committed for ongoing projects, \$1,580,000 (5.6 percent) spent on administration, and \$408,000 (1.4 percent) spent for education. Projects have been completed in 65 counties and have involved 485 municipalities.

Program Controls and Monitoring

State Program Reviews Results. Quality Assurance/Quality Control (QA/QC) evaluations are conducted of the district programs. The QA/QC group consists of representatives from the Center, the SCC, DEP, and Trout Unlimited. Eight districts were evaluated in 2003, 11 in 2004, and 10 evaluations are scheduled for 2005. The evaluation report may include suggestions or a remedial action plan to correct noted program deficiencies. Failure to implement a remedial action plan in a timely manner could result in sanctions by the SCC including, but not

limited to, reducing or eliminating funding for a period of time, terminating the district's contracted agreement, or other actions deemed acceptable.

Overall, programs are meeting expectations. Only one program has not met expectations in all three categories. The other six programs that did not meet expectations in one category have been given a remedial action plan and are/have improved their performance.

Ongoing Oversight Processes. Project performance reports are a part of the annual summary report that provides information about all projects within a county.

Extent and Nature of Training. The Commonwealth provides various technical oversight and training to the districts and the districts provide specific training to stakeholders, primarily township personnel.

The commission provides technical oversight and training to the participating districts through a contract with the Center for Dirt and Gravel Road Studies. The Center for Dirt and Gravel Road Studies (CDGRS) was created in 2000 and is located on Penn State's University Park Campus. The SCC contracts with the Center to provide services to both the SCC and the districts including: delivering eligibility training for program participants, providing technical assistance to districts on specific projects, conducting field days where specific maintenance techniques are demonstrated, maintaining the customized Geographic Information System (GIS) used by districts to track projects, compiling an annual summary report, creating reference material for distribution to conservation districts and program participants, providing a general help desk, conducting an annual workshop, and assisting in the planning and implementation strategies for the future. District managers have suggested that the training for field operations be offered more frequently and that program administration training be offered.

Since 1998, the two-day ESM training program has been delivered 123 times by Center staff. These sessions have reached over 3,500 attendees, the majority of which have been second class township personnel. The center further reports that over 400 district representatives have also participated. There is no charge for this training.

At its January 2005 meeting, the SCC approved a policy requiring the person or persons responsible for administering the Dirt and Gravel Road Maintenance Program in the county conservation districts and at least one of the two members of the QAB who represent the district to have attended ESM training within the past five calendar years. This policy also requires that at least one person representing the entity that has applied for funds from the program to have also attended ESM training within the past five calendar years. This policy is effective January 1,

2006. According to the Center, more than 480 townships will be affected by this policy.

Concerns/Opportunities for Improvement

Officials estimate that, at current funding levels, it will take 50 years to address all currently identified sites. District managers have identified many advantages of this program: it protects and has had a positive effect on the resource, it educates municipal officials, and it builds positive relationships with cooperators and with townships. Funding is, however, a source of concern as many managers have indicated that there is much interest in the program, but not enough money. One manager noted that his \$22,000 allocation does not begin to approach the district's \$100,000 in project applications. The Center for Dirt & Gravel Road Studies at Penn State estimates that at current funding levels it will take 50 years to address all currently identified sites. Doubling funding to \$8 million annually reduces that time to 25 years, and tripling funding to \$12 million should allow all identified projects to be completed in 10 to 12 years.

VII. Appendices

APPENDIX A

Pending Legislation Relating to Conservation Districts

(As of May 4, 2005)

House Bill 2: Provides for the submission of a question to the electorate authorizing incurring of indebtedness for the maintenance and protection of the environment, open space and farmland preservation, watershed protection, abandoned mine reclamation, acid mine drainage remediation and other environmental initiatives (Growing Greener Environmental Stewardship and Watershed Protection Enhancement Authorization Act; enacted April 13, 2005; Act 2005-1)

House Bill 3: Authorizes the DCNR to make grants to conservation districts for open space preservation and land use planning.

House Bill 88: Enables certain counties and municipalities to develop comprehensive watershed storm water plans and to regulate storm water within designated watershed boundaries; imposing duties and conferring powers on the Department of Environmental Protection, the Environmental Quality Board, counties and municipalities; and providing for financing and for waiver of use of certain grant or loan funds.

House Bill 260: Provides for the submission of a question to the electorate authorizing incurring indebtedness of \$800,000,000 for environmental initiatives, natural resource conservation, agricultural land preservation and community revitalization (Growing Greener Bond Act).

House Bill 1045: Amends the First Class Township Code to allow township supervisors to impose a tax up to three mills to construct and maintain stormwater management facilities in the township.

House Bill 1046: Amends the Second Class Township Code to allow township supervisors to impose a tax up to three mills to construct and maintain stormwater management facilities in the township.

House Bill 1047: Amends the Borough Code to allow borough councils to impose a tax up to three mills to construct and maintain stormwater management facilities in the borough.

House Bill 1341: Amends the Nutrient Management Act to define commercial poultry producer and to provide for a manure transportation pilot project.

Senate Bill 37: Amends the Tax Reform Code of 1971 to provide for a storm water overflow tax credit.

Senate Bill 291: Amends the Pennsylvania Municipalities Planning Code to provide watershed zoning cooperation among adjoining municipalities.

Senate Bill 410: Creates the Pennsylvania Center for Environmental Education; involves conservation districts in environmental education in our schools and provides grants for such educational opportunities.

Source: Development by LB&FC staff from a review of legislative proposals.

APPENDIX B

Penalties for Selected Programs

<u>Program</u>	<u>Authority</u>	<u>Criminal</u>	<u>Civil</u>	<u>Enforcement Orders</u>	<u>Enforcement Responsibility</u>
Chapter 102/NPDES: Erosion and Sediment Control	The Clean Streams Law, 35 P. S. §691.1 <u>et seq.</u> ^a	<ul style="list-style-type: none"> - \$100-\$10,000 for each separate offense; summary offense. - \$2,500-\$25,000 up to one year in prison or both for willful or negligent violation; 3rd degree misdemeanor. - \$2,500 - \$50,000 for each separate offense, up to 2 years in prison, or both, each day constitutes separate offense for willful or negligent violation or negligent violation within 2 years of misdemeanor; 2nd degree misdemeanor. 	<p>Up to \$10,000 per day per violation.^b</p> <p>Department to consider:</p> <ul style="list-style-type: none"> (1) willfulness of violation; (2) damage or injury to the waters of the Commonwealth or their uses; (3) cost of restoration; and (4) other relevant factors. 	Orders modifying, suspending, or revoking permits and orders requiring persons or municipalities to cease operations of an establishment which has a discharge which is in violation of any provision of the act.	District/DEPC
Chapter 105 Program: Waterways Encroachment	Established under the Dam Safety and Encroachments Act, 32 P. S. §693.1 <u>et seq.</u>	<ul style="list-style-type: none"> - \$100-\$1,000 for each separate offense, and in default of payment imprisonment up to 60 days; summary offense. - \$500 - \$5,000 for each separate offense or imprisonment up to one year if violation is within 2 years of summary offense; 3rd degree misdemeanor. 	<p>Up to \$10,000 plus \$500 per day of continued violation. The Board shall consider: (1) willfulness of violation; (2) damage or injury to the stream regimen and downstream areas of the Commonwealth; (3) cost of restoration; (4) cost to the Commonwealth of enforcing the provisions of the act against such person; and (5) other relevant factors.</p>	Include orders modifying, suspending, or revoking permits and orders requiring persons to cease any activity which is in violation of the act. Person who fails to comply with order may be adjudged in contempt and shall assess penalties of \$100 - \$10,000 per violation plus \$500 for each continuing day of violation.	DEP

Appendix B (Continued)

<u>Program</u>	<u>Authority</u>	<u>Criminal</u>	<u>Civil</u>	<u>Enforcement Orders</u>	<u>Enforcement Responsibility</u>
Nutrient Management	Nutrient Management Act, 3 P.S. §1701 <u>et seq.</u>		Up to \$500 for the first day of each offense and \$100 for each additional day of a continuing violation. Factors to be considered include: (1) gravity of violation; (2) potential harm to the public; (3) potential effect on environment; (4) willfulness of violation; (5) previous violations; and (6) economic benefit to violator for failure to comply with the act. ^d	May issue enforcement orders.	State Conservation Commission

^aImplements requirements set forth by the U.S. Environmental Protection Agency in accordance with the "Federal Water Pollution Control Act," 33 U.S.C. §1251 et seq., and the "Surface Mining Control and Reclamation Act of 1977," 30 U.S.C. §1201 et seq.

^bDifferent provisions are applicable to violations that are connected to mining. In those cases, an appeal requires the proposed penalty to be placed in escrow. If the violation leads to a cessation order, a civil penalty is assessed. If the violation involves failure to correct, a violation for which a cessation order, other abatement order or notice of violation has been issued, a civil penalty, of not less than \$750 shall be assessed for each day the violation continues beyond the prescribed period of correction.

^cDistricts with Level 3 delegation authority have authority for bringing summary and misdemeanor actions and negotiating voluntary civil assessments. All other enforcement activities are conducted by DEP.

^dIf the problem results from conditions, activities, or practices that are being or have been implemented in accordance with a NMP developed and approved pursuant to the act and regulations and is being or has been fully implemented and maintained, the owner or operator of the agricultural operation shall be exempt from the imposition of penalties under the act.

Source: LB&FC staff review of the Clean Streams Law, 35 P.S. §691.1 et seq., Dam Safety and Encroachments Act, 32 P.S. §693.1 et seq., and the Nutrient Management Act, 3 P.S. §1701 et seq.

APPENDIX C

Overview Information About Other Selected Conservation District Programs*

Water Obstructions and Encroachment Program

Program Intent and Goal. The Chapter 105 permitting program, established by the Dam Safety and Encroachment Act, is administered by the DEP Bureau of Watershed Management and the six regional DEP Soils and Waterways Sections. County Conservation Districts also provide education and permitting information and similar written material to the general public. Many Conservation Districts are also delegated the authority to register and acknowledge the use of general permits. Activities and structures in or near a regulated stream or its adjacent floodway are administered by this program. A regulated stream is any channel with defined bed and banks that can convey water. It can be natural or man made, perennial or intermittent.

Some municipalities have flood insurance studies and maps prepared by the Federal Emergency Management Agency (FEMA) which indicate the floodway boundary for some streams. In the absence of such a study, the floodway shall be considered to extend 50 feet landward from the top of each stream bank. In most cases, a permit is required before starting any activity which changes, expands, or diminishes the course, current, or cross-section of a stream, floodway, or body of water. Typical activities that are commonly permitted include driveway culverts, highway bridges, utility line stream crossings, and stream bank stabilization projects.

Objectives of the Department in administering the Dam Safety and Encroachment Act are to assure proper planning, design, construction, maintenance, and monitoring of water obstructions and encroachments in order to prevent unreasonable influence with water flow and to protect navigation; to protect the natural resources, environmental rights, and values secured by the Pennsylvania Constitution; and to conserve and protect the ecology, natural regimen, and carrying capacity of the streams and watercourses of the Commonwealth.

As Defined by Delegation Agreement or Contract. Under Section 17 of the Dam Safety Encroachments Act, the Department may by agreement delegate to a county conservation district or other county agency one or more of its regulatory functions to permit, inspect, and monitor designated categories of dams, water obstructions, and encroachments and to enforce this act and regulations adopted hereunder relating to such designated categories. Any county conservation district or other agency acting pursuant to a delegation agreement shall have the same powers and duties otherwise vested in the Department to implement this act, to the extent delegated by the agreement.

Program Data and Activities: Plan Reviews/Inspections Levels: General Permits were created for activities or structures that do not pose a significant threat to flooding or the environment. A General Permit is a pre-approved set of conditions, construction limits, dimensions, and other criteria which apply to many common types of projects. If the work that an applicant is proposing meets all of the conditions of the General Permit, then the applicant need only register his/her intent to use the General Permit, and receive acknowledgement after review from the Conservation District. The conditions of each permit are included in Part One and Part Two of the permit.

Thirty County Conservation Districts are delegated by DEP to review and acknowledge General Permits that meet the conditions of the permit. Thirty-six other districts have chosen not to participate in the program, one reason being that the Department offers no financial support for this program. Persons seeking permits in these counties are required to seek such permits from the appropriate DEP regional office.

Appendix C (Continued)

The DEP has developed general permits to cover categories of activities that can be adequately regulated utilizing standardized specifications and conditions. Each contains special conditions that must be met by the applicant. Applicants may not begin construction until they receive written acknowledgement from the DEP or one of the delegated Conservation Districts. This acknowledgement registers the applicants intent to perform the work according to the conditions in the specific general permit. On the following page is a listing and a brief description of the general 105 permits available through Conservation Districts.

Most activities that need a DEP General Permit are also regulated by the Federal Government, through the U.S. Army Corps of Engineers. In most cases, the Conservation District will include the Pennsylvania State Programmatic General Permit PASPGP-2 with the General Permit Acknowledgement, which gives the project Federal Authorization. The Conservation District will review the project to determine if it exceeds the conditions of PASPGP-2. If it does, it forwards a copy of the application to the U.S. Army Corps of Engineers for an individual review. If this happens, the applicant will receive separate permit authorization from the Corps. In either case, the applicant need only submit their permit application to the Conservation District, who will notify them of the status of their Federal Authorization.

Individual and Small Project Permits are permits that are outside the conditions set forth in the General Permit. Generally these projects have either a greater public safety or environmental impact and are reviewed by DEP environmental specialists and engineers. The application forms for this permit should be submitted to a DEP regional office waterways section. DEP will review these submissions and are responsible for issuing the permits. In most cases an Erosion and Sediment Control plan approval is needed as part of the application. The County Conservation District would review the plan and issue approval after the submission has been determined to be adequate.

In calendar year 2003, the DEP processed 721 Chapter 105 water obstruction and encroachment individual permit applications. A total of 639 (89 percent) were approved, of which 153 specifically authorized activities to permanently or temporarily impact (fill or excavate) wetlands. The Department's Soil and Waterways Sections acknowledged 1,976 general permit registrations. The Department acknowledges general permit registrations where there is no county conservation district delegation agreement. The 30 conservation districts that continue to participate in the program through a delegation agreement performed the following services in 2003:

- Sponsored 74 training events which were attended by 2,089 participants.
- Responded to 8,278 requests for technical assistance.
- Acknowledged 1,659 general permits.
- Investigated 465 complaints related to Chapter 105 violations.
- Inspected 712 sites where permits were issued.
- Undertook a total of 906 Chapter 105 inspections.
- Referred 87 violations to DEP.
- Districts estimated they spent approximately \$349,288 to administer the program and enforce permit requirements.

Appendix C (Continued)

List of General Chapter 105 Permits	
Permit	Purpose
GP-1 Fish Habitat Enhancement Structures	For the installation of fish habitat structures that have been approved by the PA Fish & Boat Commission.
GP-2 Small Docks & Boat Launching Ramps	Authorizes the installation of pile-supported and floating docks on lakes.
GP-3 Bank Rehabilitation, Bank Stabilization, & Gravel Bar Removal	Authorizes projects that involve bank stabilization or gravel bar removal on/in streams.
GP-4 Intake & Outfall Structures	Used for projects such as the installation of a dry fire hydrant or a "clean water" drainpipe outfall.
GP-5 Utility Line Stream Crossings	Used when crossings or ramps are installed for agricultural purposes.
GP-6 Agricultural Crossings & Ramps	Applies to any utility line (gas, oil, sewer or water) that crosses under or over a stream or wetlands.
GP-7 Minor Road Crossings	Used when establishing a permanent road (not a parking lot) crossing through a wetland or stream using a bridge or culvert or clean fill material.
GP-8 Temporary Road Crossings	Used to establish a temporary culvert or bridge crossing
GP-9 Agricultural Activities	Authorizes agricultural activities (grassed waterways, terraces, diversions, waste storage facilities, spring development or minor drainage) that encroach into streams or their flood ways.
GP-10 Abandoned Mine Reclamation	Applies to any encroachment that is part of mine reclamation.
GP-11 Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments	The maintenance, testing, repair, rehabilitation or replacement of existing currently serviceable, water obstructions or encroachments, including bridges and culverts owned by railroad companies.
GP-15 Private Residential Construction in Wetlands	Authorizes the filling of limited non-tidal wetland areas for the construction of a single family home on a lot purchased by the permittee prior to November 22, 1991.
Source: Developed by LB&FC staff from a review of Chapter 105 requirements.	

Biosolids Program

Program Intent and Goal. Biosolids are nutrient-rich organic materials derived from wastewater solids (sewage sludge and residential septage) that have been stabilized, meet specific processing and quality criteria, and are suitable for land application. Raw sewage sludge, in order to be considered biosolids suitable for agricultural land application, must meet strict quality standards for pollutants and pathogens. All other biosolids must be disposed in a landfill or incinerator.¹

Biosolids can be recycled in agricultural use, mine reclamation, forestry, and composting. Agricultural use of biosolids meeting strict quality criteria and application rates has been shown to produce significant improvements in crop growth and yield. The use of biosolids can also reduce the farmer's production costs and replenishes organic matter that has depleted over time. Biosolids have been used successfully at mine sites to establish vegetation. The plant nutrient availability regenerates a soil layer. This is important when reclamation for abandoned mine sites where there is very little or no topsoil. In the forest industry, biosolids have been found to promote rapid timber growth, allowing quicker and more

Appendix C (Continued)

efficient harvesting of trees. In addition, biosolids may be composted and sold or distributed for use on lawns and home gardens.

DEP and Conservation Districts. Biosolids are regulated by the DEP. To land apply biosolids, the generator of the biosolids (usually a municipal wastewater treatment facility or septage hauler) must obtain a general permit from the DEP. The Conservation District has traditionally been the local contact for any questions, concerns, or complaints regarding the safe transport and application of Biosolids. To encourage Conservation District participation, the Department developed a delegation agreement which set forth both the districts' and the Department's responsibility in the Biosolids area. If a county conservation district chooses not to participate in the program, the DEP Regional Office in which that county is located is responsible for administering the program. Until December 2004, counties which signed a delegation agreement with the Department received a small amount of funding to help defray the costs of the program. Funding was discontinued in December 2004. Only 19 of 66 CCDs (29 percent) maintain a delegation agreement for this program.

District's responsibilities under the delegation agreement include:

- Assisting DEP by providing information and written material to the general public, the regulated community, and the agricultural community concerning the land application of biosolids.
- Responding to complaints regarding the land application of biosolids and conducting one site inspection a year for each land application site.
- Performing field checks to ensure the farm conservation plan or erosion and sedimentation control plan is implemented.
- Reviewing farm conservation plans and erosion and sedimentation control plans to ensure Chapter 102 compliance.
- Setting up and maintaining at least two biosolids educational displays a year. Conduct or participate in at least one biosolids education workshop a year.
- Assisting local municipalities in evaluating suitable land application sites for biosolids.
- Assisting in the development and implementation of a farm conservation plan if requested or referring the request to the Natural Resource Conservation Service (NRCS).
- Assisting landowners, haulers, generators, etc., in determining or reviewing the agronomic rate for application of biosolids.
- Immediately referring all complaints to the DEP Regional Office.

Enforcement. The Department does not track individual complaint responses by conservation districts. The Department receives approximately 30 complaints related to biosolids on an annual basis. After investigation, less than half actually involve some type of biosolid violation.

The Department tracks inspections of biosolids application sites. Presented below is data on the number of inspections undertaken by conservation districts of sites on which treated biosolids were applied. With a 61 percent drop in the number of conservation districts participating in the delegation agreement, the number of inspections is expected to drop.

Appendix C (Continued)

Inspections of Biosolid Application Sites by Conservation Districts	
<u>Fiscal Year</u>	<u>Number of County Biosolid Inspections</u>
2001-02	498
2002-03	518
2003-04	499
Three Year Average	505

Source: Developed by the LB&FC from information provided by the Department of Environmental Protection.

Abandoned Mine Reclamation

Abandoned mine drainage is reportedly the number one nonpoint source pollutant impacting Pennsylvania's waters. The districts work with the Western and Eastern Pennsylvania Coalitions for Abandoned Mine Reclamation and with other partners to address abandoned mine drainage. Through the Federal Section 319 Clean Water Program, several districts have focused efforts on the passive treatment of abandoned coalmine discharges and stabilized, re-graded and planted coal refuse piles. Additional district efforts have involved characterizing the water quality of specific old mining discharges and recommending and implementing a treatment system. Districts contract with the DEP for this program.

Agricultural Conservation Technician (ACT)

The program's conservation technicians help state farmers develop and implement soil and water conservation best management practices. These positions supplement existing technical assistance provided through the Chesapeake Bay Program and USDA Natural Resources Conservation Service (NRCS) personnel. In 2003, the SCC was able to cost-share (50 percent) of the salary expenses for 37 trained technicians in 40 participating districts from its Special Projects portion of CDFAP. The SCC also provides funds to the districts to cost-share the expense of BMP design and installation. ACT employee training (Boot Camp) occurs during weeklong resident sessions at Fort Indiantown Gap. The training is done in cooperation with the PDA, DEP, NRCS, and PACD. Level II training (employees with one to three years experience) emphasizes agronomy and engineering technical assistance. There is also a two-day supplemental training that focuses on crop management and tillage. Districts contract with SCC for this program.

Envirothon

More than 40 states and 9 Canadian provinces have initiated Envirothon contests based on the "Envirolympics" program originally developed in 1979 by Pennsylvania's conservation districts. This is a major environmental education effort on behalf of the districts and is a good marketing tool for the districts. The program emphasizes the importance of environmental sensitivity while stressing a need to achieve a social, ecologic, and economic balance in life. At competitions, students are challenged to use teamwork to develop creative solutions to environmental problems in the areas of aquatics, forestry, soils, wildlife, and a current environmental issue. Students test their knowledge under the supervision of environmental professionals including foresters, aquatic biologists, and soil scientists. DEP, DCNR, PGC, PF&BC, and the USDA NRCS provide technical expertise.

In 1988, a national competition - the *Canon Envirothon* - was established. PF&BC and the PGC provide grant money to send the Pennsylvania team to the Canon Envirothon competition. At the March

Appendix C (Continued)

15, 2005, meeting of the SCC, the Commission approved the creation of a scholarship for winning participants in Pennsylvania's Envirothon.

Floodplain Monitoring

The districts and DCED have been collaborating on the Floodplain Monitoring Project since March 1997. The main goal of the program is to work with local municipalities to monitor development in their floodplains and insure that ordinances in place adhere to the requirements of the National Flood Insurance Program (NFIP). Eight districts in the Susquehanna Valley participated in the pilot project phase. In the pilot phase, over 135 communities benefited from the contacts and visits from the districts through training, review and updating of ordinances and maps, and other education and information. Municipal reviews are scheduled once every five years.

The success of the pilot led DCED to offer the program to additional districts. In 1999, 19 additional districts entered the program, expanding the program throughout the Commonwealth to include the approximate 2,400 municipalities that are eligible to participate. The pilot districts helped present training to new districts and developed new training sessions for realtors and bankers. Several pilot districts have mentored districts that are new to the program and this has surmounted a manpower shortage in DCED, allowed pilot districts to increase their institutional capacity, and strengthened working relationships between districts.

Watershed Protection

Districts have the responsibility of assisting with determining the necessary and desirable watershed projects to abate severe flood damage, provide additional recreational opportunities, meet future industrial and residential water supply needs, and improve wildlife habitats. The districts support the stewardship efforts of watershed groups, landowners, and all interested individuals. They help organize and initiate watershed groups throughout the county and once established, provide technical assistance to these groups. The districts also provide technical support on water resources to municipalities, schools, civic groups, and citizens. About 80 percent of a District's Watershed Specialist position is funded by the DEP up to a maximum of \$32,000 a year.

The goals of the program include protecting the quantity and quality of groundwater and surface water resources; preventing non-point pollution from entering streams and waterways; and preserving the integrity of the counties' special protection waters. The districts promote the installation of riparian buffers along streams and waterways; the use of impervious surfaces (green roofs, vegetation and green space, permeable pavements, etc.); the maintenance of on-lot septic systems; water conservation and stormwater management practices (rain barrels, rain gardens); and abandoned mine reclamation.

West Nile Encephalitis Monitoring

In 18 counties, conservation district staff act as County Coordinators for the West Nile Virus Surveillance Program. The program was given to the county commissioners by the DEP and, in at least 18 counties; the commissioners selected the districts as being the most appropriate agency to implement the program. The West Nile virus is transmitted by mosquitoes and the County Coordinators work closely with DEP regional biologists to monitor and control mosquito populations.

Coastal Zone Management

This is a DEP program that originated with the U.S. National Oceanic and Atmospheric Administration (NOAA) and it was developed to protect and improve coastal zones. A coastal zone is defined as where land meets sea and that is at Lake Erie and the Delaware Estuary. Seven districts and Philadelphia received grants in 2004 to implement and track Coastal Nonpoint Pollution Program measures.

Appendix C (Continued)

Conservation Resource Enhancement Program

The Conservation Reserve Enhancement Program or CREP is a joint, state-federal land retirement conservation program that began with a goal of enrolling 100,000 acres of highly erodible cropland and marginal pastureland in conservation cover plantings in 2000. The Pennsylvania CREP was developed to protect the Chesapeake Bay from the effects of excessive nutrient and sediment loading due to agricultural runoff. The 100,000 acres is less than 3 percent of the farmland in the original 20 participating counties.

This voluntary program uses financial incentives to encourage farmers and ranchers to enroll in contracts of 10 to 15 years in duration to remove lands from agricultural production. The program is results-oriented, and requires states to establish measurable objectives and conduct annual monitoring to measure progress toward implementation of those objectives. It is flexible, within existing legal constraints, and can be adapted to meet local conditions on the ground. It is authorized pursuant to the 1996 Federal Agriculture Improvement and Reform Act.

Land considered for the program must have been owned or operated by the applicant for the previous 12 months and must have been planted in crops 2 of the last 5 years and be physically and legally capable of being planted in a normal manner. Any cropland or marginal pasture within 180 feet of a stream or highly erodible cropland outside of 180 feet of a stream may be eligible. In addition, buffer practices, such as contour buffer strips, grassed waterways, and wetlands may be enrolled on any cropland. Farmers and landowners must agree to maintain grass, shrubs, or trees for the life of the contract – 10-15 years. No forage or trees may be harvested and no maintenance mowing is permitted during the primary nesting season of April 1- July 15.

CREP rental rates vary by county, paying annual rental rates of \$56 to over \$200 an acre for land placed in conservation cover. Additionally, there is an annual maintenance payment and, depending on the practice, one-time bonus payments may also be included.

Those agencies and organizations involved with the CREP include: USDA Farm Services Agency, Natural Resources Conservation Service (NRCS), PA Department of Agriculture, PA Department of Environmental Protection, PA Game Commission, PA Fish and Boat Commission, PA Department of Conservation and Natural Resources, PA Association of Conservation Districts, State Conservation Commission, Ducks Unlimited, The Chesapeake Bay Foundation, Center for Rural PA, Pheasants Forever, the Governor's Sportsman Advisory Council, PA Farm Bureau, and Penn State University.

In August 2003, USDA Secretary Veneman, announced a \$200 million expansion to the Pennsylvania CREP bringing the total funding for the program since its inception in 2000 to \$410 million and adding 23 additional counties and 100,000 more acres. With over 71,000 acres planted to conservation practices, Pennsylvania's program was touted as an effective private lands conservation program. Of the \$200 million for the expansion, USDA will contribute \$129 million and Pennsylvania the remaining \$71 million. Reportedly, the Pennsylvania CREP to date has successfully prevented 1.1 million tons of sediment from entering the Chesapeake Bay and also reduced entry of over 1 million pounds of nitrogen and phosphorous.

In 2004, the program was expanded again to include 16 counties² in the Ohio River Basin in western Pennsylvania. This \$146 million expansion included \$99 million from USDA and \$47 million from Pennsylvania and it targets another 65,000 acres. In August 2004, \$5 million Growing Greener funds were made available to pay farmers for eligible costs under the state's CREP.

USDA provides a lump sum grant to PACD who, in turn, writes checks to the farmers participating in the CREP (there is a state match from DEP for BMPs). As of August 2004, CREP had infused \$36 million in federal money into Pennsylvania's agricultural economy. DEP has contributed \$14 million from Growing Greener to more than 3,500 farms and 94,000 acres through CREP.

*This appendix includes specific additional information about CCD programs not otherwise addressed in this report.

¹Department of Environmental Protection Fact Sheet "Common Questions About Biosolids," May 2004

²Bucks, Delaware, Lehigh, Monroe, Montgomery, Northampton, and Pike conservation districts are not included in the state's CREP.

APPENDIX D

Chapter 105 Funding (FY 1991-02 Through FY 2004-05)*

District ^a	<u>FY 1991-92</u>	<u>FY 1994-95</u>	<u>FY 1995-96</u>	<u>FY 1996-97</u>	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>Total</u>
Adams	\$ 0	\$ 4,000	\$ 4,000	\$ 4,486	\$ 4,000	\$ 3,493	\$ 4,000	\$ 4,539	\$ 5,833	\$ 34,351
Bedford	0	2,500	4,000	4,486	4,000	3,493	4,000	5,064	6,493	34,036
Berks	2,500	4,000	4,000	4,486	4,000	3,493	4,000	5,964	8,963	41,406
Bradford	2,500	4,000	4,000	4,486	4,000	3,493	4,000	7,189	10,033	43,701
Bucks	2,500	4,000	4,000	4,486	4,000	0	0	0	0	18,986
Butler	0	4,000	4,000	4,486	4,000	3,493	4,000	4,239	5,853	34,071
Cambria	2,500	4,000	4,000	4,486	4,000	3,493	4,000	4,139	6,123	36,741
Centre	2,500	4,000	4,000	4,486	4,000	3,493	4,000	5,839	6,283	38,601
Clearfield	0	2,500	4,000	4,486	4,000	3,493	1,750	0	0	20,229
Clinton	2,500	4,000	4,000	4,486	4,000	3,493	4,000	4,789	6,533	37,801
Columbia	0	2,500	4,000	4,486	4,000	3,493	4,000	4,739	6,323	33,541
Crawford	0	4,000	4,000	4,486	4,000	3,493	4,000	6,439	7,003	37,421
Cumberland	0	4,000	4,000	4,486	4,000	3,493	4,000	4,289	5,153	33,421
Dauphin	0	4,000	4,000	4,486	4,000	3,493	4,000	4,789	5,723	34,491
Delaware	2,500	1,250	2,500	2,500	2,500	2,183	2,500	5,009	6,963	27,905
Elk	0	4,000	4,000	4,486	4,000	3,493	4,000	3,514	4,963	32,456
Erie	2,500	4,000	4,000	4,486	4,000	3,493	4,000	7,064	8,823	42,366
Fayette	0	2,500	0	0	0	0	0	0	0	2,500
Franklin	2,500	4,000	4,000	4,486	4,000	3,493	4,000	4,264	982	31,725
Fulton	0	2,500	4,000	4,486	4,000	3,493	4,000	4,289	5,123	31,891
Greene	0	0	0	2,500	2,500	2,183	2,500	3,089	3,083	15,855
Huntingdon	0	2,500	4,000	4,486	4,000	3,493	4,000	4,089	6,213	32,781
Indiana	0	2,500	4,000	4,486	4,000	3,493	4,000	4,814	6,663	33,956
Jefferson	0	2,500	4,000	4,486	4,000	3,493	4,000	4,139	5,473	32,091
Juniata	0	2,500	4,000	4,486	4,000	3,493	4,000	3,564	4,683	30,726
Lancaster	0	2,500	4,000	4,486	4,000	3,493	4,000	7,464	8,883	38,826
Luzerne	0	0	0	2,986	4,000	0	0	0	0	6,986
McKean	0	2,500	0	0	0	0	0	0	0	2,500
Mercer	0	4,000	4,000	4,486	4,000	3,493	4,000	5,014	7,653	36,646

Appendix D (Continued)

District ^a	FY 1991-92	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	Total
Mifflin	\$ 0	\$ 4,000	\$ 4,000	\$ 4,486	\$ 4,000	\$ 3,493	\$ 4,000	\$ 3,339	\$ 5,493	\$ 32,811
Monroe	2,500	4,000	4,000	4,486	4,000	3,493	4,000	6,014	7,263	39,756
Montour	0	4,000	4,000	4,486	4,000	3,493	4,000	2,664	3,493	30,136
Northumberland..	0	0	0	0	0	0	4,000	2,539	4,723	11,262
Perry	0	2,500	4,000	4,486	4,000	3,493	1,800	0	0	20,279
Pike	0	4,000	4,000	4,486	4,000	3,493	4,000	5,689	6,923	36,591
Potter	0	2,500	4,000	4,486	4,000	3,493	4,000	4,089	6,243	32,811
Snyder	0	4,000	4,000	4,486	4,000	3,493	4,000	4,814	6,923	35,716
Sullivan	0	2,500	4,000	4,486	4,000	3,493	4,000	3,489	4,013	29,981
Susquehanna	0	2,500	4,000	4,486	4,000	3,493	4,000	4,064	7,113	33,656
Tioga.....	0	4,000	4,000	4,486	4,000	3,493	4,000	3,939	8,213	36,131
Union	2,500	4,000	4,000	4,486	4,000	3,493	4,000	3,014	4,693	34,186
Venango	0	4,000	4,000	4,486	4,000	3,493	4,000	3,689	2,462	30,130
Warren.....	0	0	0	4,486	4,000	3,493	4,000	5,039	7,723	28,741
Washington.....	2,500	0	2,500	2,500	2,500	2,183	2,500	2,834	4,832	22,349
Wayne	0	0	0	0	0	0	3,000	2,514	4,953	10,467
Westmoreland	0	2,500	4,000	4,486	4,000	3,493	4,000	7,239	9,783	39,501
Wyoming.....	0	4,000	4,000	4,486	4,000	3,493	4,000	4,939	5,333	34,251
Total.....	\$30,000	\$137,250	\$157,000	\$185,432	\$167,500	\$139,287	\$162,050	\$188,239	\$250,000	\$1,416,758

^aDistricts received no funding allocations in FY 1992-93, FY 1993-94, and FY 2002-03 through FY 2004-05.

^bThe following districts received no Chapter 105 funding: Allegheny, Armstrong, Beaver, Blair, Cameron, Carbon, Chester, Clarion, Forest, Lackawanna, Lawrence, Lebanon, Lehigh, Lycoming, Montgomery, Northampton, Schuylkill, Somerset, and York.

Source: Developed by LB&FC staff from DEP provided data.

APPENDIX E

Stakeholder Comments on Strengths and Weaknesses of the Conservation Districts

Strengths of the Conservation Districts

They are the hands-on group who works with the farming community. They are non-threatening and respected.

Professional staff with diverse environmental, educational, scientific, engineering and human resource backgrounds whose mission is to protect, restore, reclaim, educate, and preserve the environment.

The ability to work effective with other levels of government (state, federal, local and regional) as well as to work directly with local interests, including private landowners, local governments, local conservation organizations and others.

Provide valuable expertise about issues that are relatively unfamiliar to many people, i.e. stormwater management, non-point source pollution, erosion, water quality. This information is readily available and accessible through the conservation districts; otherwise expensive or difficult to obtain through private engineering firms, consultants or the state. In addition, the expertise is regionally specific. I have had experience with three different county offices, and the personnel in each have been highly qualified and professional.

They keep contractors and builders "on their toes."

Concerned for the environment and construction related impacts.

District Manager is very knowledgeable and fair in his dealings with the builder/developer community. He is also open to hear concerns, criticism regarding the district.

Excellent understanding and knowledge of technical aspects of conservation practices.

Serve the public at the local level in a courteous and professional manner, in a timely fashion with minimal delays.

Their ability to serve as an implementation vehicle at the county level for the administration of various state programs/initiatives and to carry out these programs/initiatives in a cost-effective manner.

Follow up with all site inspections and meetings in a consistent written format.

District directors and technicians understand the realities farmers face and work that knowledge into their implementation.

Exist as a nonpartisan resource for local constituents with conservation needs.

They are usually trusted by local individuals.

Usually are fairly practical about which BMPs are implemented and their limitations.

Willingness of field inspectors to work with developers and contractors.

The ability to address problems created by private concerns and not just problems of the farm community.

The competence/capability of conservation district staff (staff capability among Pennsylvania's conservation districts is the envy of the districts in many other states) and the involvement of members of the community as board members in a volunteer capacity.

There is overlap but it is not unnecessary. Often conservation districts are the first agency contacted when a local problem arises and they establish the necessary partnerships with county governments, legislators, and agency officials.

I believe there is plenty of work to be done, and the conservation districts have a specialized niche that allows them to work without duplication.

They are a great connection to the agricultural community. Watershed specialists are great tools and some staff are very good.

Appendix E (Continued)

Weaknesses of the Conservation Districts

Some have limited regulatory interest and/or responsibility.

The lack of uniform staff capability throughout the Commonwealth

Inadequate funding to meet program and staffing needs.

They respond efficiently to complaints and problems, but perhaps could prevent more of the problems if they had more staff. They might also be able to spend more time on education.

Lack of enforcement powers.

They tend to work on agricultural issues so much that other areas (e.g., technical assistance to local governments gets left behind.)

In some instances, lack of experience or tolerance for difficult sites.

Low funding can lead to manpower shortages, therefore, longer review times.

District staff fail to review plans and process permits in a timely fashion.

Do not have full understanding of site construction constraints in relation to E&S sequence.

Individuals with bias have been appointed to some district boards thereby minimizing the boards effectiveness.

The reluctance/unwillingness of some districts to “wear the black hat” (assume responsibility for enforcement/compliance functions).

Their lack of responsibility to plans that do not succeed, even when they are implemented properly.

Difference in structure and quality between different district offices.

Inconsistencies exist between the various districts and their programs.

In some instances they have exhibited superiority complexes and refuse to be flexible.

Each Conservation District has their own specialty personnel and across the state they aren't uniform.

Too many programs has led to districts that have a lot of responsibilities, but lack of depth.

In some instances, they promote the us vs. them mentality and are unwilling to strategically resolve problems.

Inspections and reviews can be influenced by a personal agenda of the District Director or individual inspectors.

They have two kinds of employees. One is the lifers who are there with a specific agenda to preserve land. The other is young and uninformed and who usually leave within 1 to 2 year. They are not very helpful when issues arise.

The homebuilding industry application fees account for over 60 percent of the conservation employee salary budget. However, the cost I believe associated with this is much less. This disproportion could improve if they asked the farming community to pay more of their fair share of fees in putting together plans related to tilling, manure storage, fertilization methods, etc.

Their general unwillingness to help developers reasonably maintain and implement storm water management controls. We have made a point to give their staff our site personnel cell phone numbers to increase communication if they see a problem on our sites, however, they never use them. They zip in to do their inspections and then several days later send a compliance notice.

They do not follow their timelines. Usually, you can expect to get paperwork and permits weeks after they are promised.

Source: Comments provided by state agencies, environmental and farming associations, and private contractors which work with conservation districts on a daily basis.

APPENDIX F

Pennsylvania Association of Conservation Districts, Inc., Overview of Programs and Funding

Mission and Purpose

The Pennsylvania Association of Conservation Districts, Inc. (PACD) is a non-profit organization that supports, enhances, and promotes Pennsylvania's Conservation Districts and their programs. Conservation Districts work to enhance and promote locally led conservation efforts that support the wise use of the state's natural resources. The PACD primarily serves as the collective voice for Pennsylvania's 66 county Conservation Districts and provides advocacy, education, technical assistance, training, program coordination and facilitation to Conservation Districts and their constituents. The PACD works side-by-side with private organizations, business and industry partners, and many federal and state agencies.

PACD Programs

PACD Member Services

The PACD provides services that support, enhance and promote conservation districts such as:

- Representing conservation districts on state and federal committees and organizations;
- Developing and maintaining effective working relationships with partner agencies and organizations;
- Seeking increased funding and program support through government relations and lobbying at both the state and national levels;
- Providing tools and guides such as *Legislative Connection* to help conservation districts develop effective working relationships with their legislators;
- Hosting an annual awards program and poster contest;
- Free use of electronic communication tools such as e-mail and listserves;
- Maintaining an information filled, up-to-date web site;
- Participating in the continuing effort to enhance leadership development among its members;
- Publishing *News and Notes* to keep members informed on issues concerning conservation districts and PACD activities;
- Coordinating PACD's Committees;
- Coordinating regional and statewide Association meetings; and
- Printing and selling the BMP Handbook for Developing Areas.

PACD Educational Assistance

Through its educational grants, PACD is able to offer a number of products and services to its member conservation districts. In general, these educational products and services include:

- Educational mini-grants program;
- Workshops and training;
- Print materials such as fact sheets and other publications;

Appendix F (Continued)

- Exhibit materials
- Website access to educational resources;
- Marketing activities that promote natural resource protection; and
- Video lending library.

PACD Engineering Assistance Program

The PACD Engineering Assistance Program was developed in 2001 as a service to conservation districts, watershed organizations and other entities that needed engineering assistance to complete watershed-related projects. With the assistance of state grant funds from Growing Greener and federal grant funds from the USDA Natural Resources Conservation Service, the PACD is able to offer the following engineering services throughout the state:

- Inventory and Evaluation;
- Topographic Survey;
- Soils Investigation;
- Design and Specifications;
- Construction Quality Assurance;
- Technical Reviews;
- Training; and
- Watershed Assessment.

Administrative Services

The PACD provides administrative services for state and federal conservation programs to provide additional financial support for the Association. These services involve coordinating training programs, contracting with landowners, and making individual payments to land owners and conservation districts for the following programs;

- Plan Development Incentives Program (PDIP);
- Conservation Reserve Enhancement Program (CREP);
- Forest Land Enhancement Program (FLEP);
- Agricultural Conservation Training; and
- Stream ReLeaf Program.

PACD Funding

The PACD's financial activities involve three sources of funding that are categorized as non-restricted, semi-restricted, or restricted funds:

PACD's non-restricted revenues include income generated from conservation district dues, interest on PACD non-restricted funds, rental income from the PACD building and other miscellaneous income such as sales.

PACD non-restricted expenses reflect activities of the Association that can only be supported by non-restricted incomes, such as lobbying efforts, and its direct operational costs including staff wages and benefits, overhead, travel, supplies and meetings. For fiscal year 2004-2005, the PACD's non-restricted budget totaled \$113,347.

Appendix F (Continued)

PACD's semi-restricted revenues and expenses are generated from grants and contracts the association has secured to support its Mission. PACD's grant and contract activities involve delivery of educational products/services, engineering assistance and cost-share administration. PACD's current grants and contracts include the Chesapeake Bay Education Grant, 319 Nonpoint Pollution Education Grant, PACD Engineering Technical Assistance Program, Plan Development Incentives Program (PDIP), Conservation Reserve Enhancement Program (CREP), Forest Land Enhancement Program (FLEP), Agricultural Conservation Training, and Stream ReLeaf Program.

Semi-restricted finances are not reflected in the PACD's general operating budget. PACD is compensated for its semi-restricted activities on a reimbursement basis. For the fiscal year 2004-2005, PACD's semi-restricted budget totaled \$803,558.

PACD's restricted revenues and expenses are related to the association's grant and contractual activities involving cost-share and administrative payments that are made directly to other parties, such as land owners or conservation districts. For fiscal year 2004-2005, PACD's restricted budget totaled \$5,496,000.

March 2005

APPENDIX G

Conservation District Director Nomination Procedures Checklist and Appointment Submissions Form

State Conservation Commission
(717)787-8821/FAX (717)705-3778



2301 North Cameron St., Room 407
Harrisburg, PA 17110-9408

Conservation District Director Nomination Procedures Checklist and Appointment Submissions Form

Conservation districts are concerned with many important environmental issues. Appointing capable directors who represent the diversity found in the county they serve depends on active, involved nominating organizations. In an endeavor to enhance the conservation district director nominations submitted to county governments each year, the State Conservation Commission is attempting to track the involvement of approved nominating organizations across the state.

<u>Suggested Deadline</u>	<u>(check)</u>	<u>Activity</u>
September 15 th	<input type="checkbox"/>	Letter requesting nominations sent to county nominating organizations include: cover letter (State Conservation Commission sample provided) "Pennsylvania's Conservation District Directors" brochure nominee questionnaire position description
November 1 st	<input type="checkbox"/>	Nominee submission deadline for nominating organizations -nominees submitted to the county governing body for appointment of district directors
December 1 st	<input type="checkbox"/>	Tentative director appointments made by the county governing body
	<input type="checkbox"/>	Tentative director appointments submitted to the State Conservation Commission for concurrence
	<input type="checkbox"/>	Copy of appointment submissions form sent to Field Representative**

.....
The State Conservation Commission is attempting to track the activity and involvement of approved nominating organizations across the state. Please provide the information about your nominating organizations' involvement requested on page two of this form and return it when notifying the State Conservation Commission of your county's director appointment selections.

Page two of this form should be completed and submitted to the State Conservation Commission by December 1st. If, within 15 business days after notifying the Commission of their appointments, the county board (i.e. county commissioners or county council) does not receive notification that a prospective director does not qualify, the appointments shall become final. A copy should also be mailed or FAXed to the Conservation District Field Representative listed below.

Send completed forms to:
State Conservation Commission
2301 North Cameron Street, Rm 407
Harrisburg, PA 17110-9408
Phone: 717-787-8821; FAX: 717-705-3778

Copy:
William Zett, Field Representative
DEP Altoona Area Office
301 Fairway Drive
Altoona, PA 16602
(phone: 814-946-7307; FAX: 814-949-7938)

Appendix G (Continued)

County Conservation District Director Appointments and Nominating Organization Activity for Calendar Year

Please provide the following information about your nominating organizations' involvement for the current year:

- 1. Number of nominating organizations solicited for nominees:
2. Number of nominating organizations submitting nominees:
3. Total number of farmer director nominees submitted:
4. Total number of public director nominees submitted:
5. Please list any nominating organizations found to be defunct:

Conservation District Director Nominations Received by the County (attach addtl sheets, if necessary)
nominating organization nominee for farmer or public director?

DIRECTOR APPOINTMENTS FOR THE FOUR-YEAR TERM OF JANUARY 1, TO DECEMBER 31,

FARMER DIRECTOR APPOINTEE(s):

PUBLIC DIRECTOR APPOINTEE(s) (if applicable):

COUNTY COMMISSIONER DIRECTOR APPOINTEE FOR ONE-YEAR TERM

(Jan. 1, to Dec. 31,):

Chief Clerk's Signature: Date:

This form should be completed and submitted to the State Conservation Commission by December 1st. If, within 15 days after notifying the Commission of their appointments, the county board does not receive notification that a prospective director does not qualify, the appointments shall become final. Please send a copy of this form to your conservation district's Field Representative and retain a copy for your files.

Would you be interested in being able to submit this information electronically using the State Conservation Commission's Internet website? Yes No

APPENDIX H

Factors Included in E&S Plans and NPDES Permit Applications

- The existing topographic features of the project area.
- The types, depths, slope, locations, and limitations of the soils.
- The characteristics of the earth disturbance activity, including the past, present, and proposed land uses, and proposed alterations.
- The amount of runoff from the project area.
- The location of waters of the Commonwealth, which may receive runoff within or from the project site.
- A written depiction of the location and type of perimeter and on site Best Management Practices (BMPs) used before, during, and after the earth disturbance activity.
- A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during, and after earth disturbance activities.
- Supporting calculations and plan drawings.
- A maintenance program, which provides for inspection of BMPs on a weekly basis and after each measurable precipitation event, including the repair of the BMPs to ensure effective and efficient operation.
- Procedures which ensure that the proper measures for recycling or disposal of materials associated with or from the project site will be undertaken in accordance with the regulations.

If the CD determines the plan is insufficient, it may return it to the applicant for additional information. When resubmitting the plan, an additional fee may be charged by the CD. Similarly, if an earth disturbance project meets the minimum requirements necessary for a NPDES permit, the applicant submits paperwork to the CD for review. Plans submitted address:

- Notice of Intent form.
- Complete Erosion and Sediment Control Plans.
- Permit filing fee of \$250 payable to the county's Clean Water Fund.
- Location Map.
- Act 14 Notifications to County Commissioners & municipal officials.
- Proof of receipt of County & Municipal notification.
- Completed PNDI Search form.
- Post-construction Stormwater Management Plan.
- Completed application for erosion and sediment control review.
- Erosion and Sediment Control plan review fee.

Operators of earthmoving activities which meet any one of the exceptions for general permits must obtain an individual NPDES permit. An individual permit application must be submitted, reviewed and approved before earthmoving activities begin. Applications must include an E&S plan which will be reviewed by the district. The district will make a recommendation on permit issuance or denial to DEP's regional office. The final permit decision will be made by the DEP Regional Office. Individual NPDES permit fees are \$500, with money going into the county's Clean Water Fund.

APPENDIX I

Specific Comments by Conservation District Managers About the Adequacy of E&S Pollution Control Training Provided by DEP

I. Cost and Location of Training

- In the past training was conducted regionally to ensure a high level of attendance and in small workgroups that provided individual attention and oversight.
- Need additional training on a more local level for "small groups" on specific local needs.
- Simply not enough regional opportunities and finances limit opportunities to attend conferences and workshops.
- Regional trainings would cut down on travel costs for most participants.
- Training costs are becoming an item that needs addressed with dedicated funding.
- Districts must consider the level of training and support that will be offered before agreeing to commit to assist in a program. Where adequate training and support is not expected, the districts' quality of service is compromised.
- Many of the contracted/delegated programs have little or no funding available to support staff development.
- Locations should vary. Regional training is preferred to always traveling to Harrisburg or State College.
- Training opportunities for most programs are good, but the distance we have to travel is too far.
- Offer training opportunities more central to the state to accommodate western counties travel.

II. Need for Separate Training for New and Experienced Staff

- Training combines new employees with experienced employees. Not all districts have new employees.
- DEP currently provides one annual training session for all E&S Technicians regardless of time of service.
- The annual multi-day training in State College may be beneficial to new inexperienced technicians but is of little value to the experienced employee. Issues presented are sometimes not well thought out prior to the training, resulting in confusion.
- Training is geared to entry level. Need advanced training, but very difficult to offer due to DEP regions variance.
- New employees need to be trained as soon as possible when hired. Single day training session is not sufficient.
- The E&S technician position does not pay well, so there is usually a high turnover. There is a need for frequent, in depth training for new people. The trainings should be staged so that it is clear what level of ability they are for. An agreed-upon Individual Development Plan should clearly state what training requirements for the job are, and efforts should be made to provide that training in appropriate stages. Trainings should be clearly geared toward specific levels of expertise.
- It would be beneficial to establish concentrated training for new employees on a quarterly or semi-annual basis.
- With high turnover at districts, much more "beginner" training might be useful.

III. Training Needs to be More Technical

- Recent trainings have been vague and non-technical. Previously, a DEP engineer planned and delivered specific courses designed to produce technicians who know the law, the proper procedures for carrying out their delegated responsibilities, and were schooled in various engineering practices well enough to be able to read and interpret civil engineer's E&S control plans with a high level of competency. That kind of training needs to be done again.
- Annual E&S training was more intense and meaningful in the past years.
- More technical training should be offered on program changes to improve on the consistency of districts.
- Don't dwell on regulations; we need to know the correct interpretation – we can read the regulations anytime.

Appendix I (Continued)

- Annual 102/105 trainings have been poor at best; the individual training for 102 review works.
- Training and meetings need to be worthwhile. It appears they are being held, just to hold them.
- Training should be condensed and/or more specialized rather than generic in nature.
- Technicians working in two disciplines often have training in each area scheduled for the same time in different locations. Need more small group and hands-on technical training.
- Training should be thorough and consistent; annual training (1 week) for each program; staff certification by DEP.
- - Our technical staff members receive very good E&S technical help from a DEP Central Office staff member who conducts particularly effective small group and individual sessions for new staff members.

IV. Post Construction Stormwater Management (PCSM) Training is Needed

- PCSM training has become an issue since the implementation of NPDES Phase II. Clear direction, training and reference materials are slow in coming, which is leading to much frustration at the district and the permittee level.
- For NPDES Phase II, no significant opportunities for PCSM training offered for CD personnel; must administer program without complete knowledge of BMP's, options, etc.
- Districts need basic training regarding technical components of PCSM plans.
- PCSM is relatively new to us. There seems to be a lot of training needed yet.
- The PCSM section of the Phase II NPDES permits is a new requirement and more training needs to be provided for District staff on engineering. Possibly a planned technical certification program should be developed

V. DEP Central Office and DEP Regional Office Not on the Same Page

- There is often a difference of opinion between DEP Central Office and Regional Office. We get different answers from each office. No firm stand taken by Central Office on many issues.
- The quality of the training has steadily declined since the Department reorganization that resulted in many functions of the program being sent to the Region Offices. Obvious disconnect between central office and the regions. This has occurred concurrently with an increase in program complexity, responsibilities and expected results.
- Training usually raises more questions. DEP central office usually unprepared to answer questions, or gives conflicting information.
- If state personnel do not interpret the regulations in the same way, they need not argue about it in front of district employees.
- Too many times DEP creates or crafts policy and guidance in front of a group they are supposed to be training.

VI. There is a Lack of Focus and Organization in Training Offered by DEP

- Many complaints from our employees regarding poor state training in E&S/NPDES.
- Annual E&S/NPDES administrative training lacks focus and meaning, especially for veteran staff.
- E&S training tends to be disorganized, ineffective and a waste of time.
- On the whole training is offered to staff but occasionally there have been sessions where time has been wasted with no new information given.
- Significant amount of time is wasted on minor changes and updates which could be simply addressed with a letter and the updated manual pages.
- It would be helpful to be involved in the planning process to assure the training is valuable and time and cost beneficial. A training committee of cooperating agency personnel and district staff could be formed to ensure training quality, efficiency, and cost effectiveness.

Source: Comments provided by Conservation District Managers.

APPENDIX J

Conservation District Residential Fee Schedule*

Conservation District	Base Fee	Residential Development Fees Lot-Units/Acre		
		.022-0.99	5-10	70+
Adams	NA	\$200	\$500+(\$70/acre)	\$2,000+\$60/acre
Allegheny	NA	\$175	\$635	71-74.9 \$1,450; 75-99.9 \$1,600; 100+ \$1,725+\$6/acre
Armstrong	\$25	No Charge	\$25/acre+NPDES Permit Fee	\$25/acre+NPDES Permit Fee
Beaver	\$20/acre	No Charge	\$400	51-100, \$1,000; 101-300 \$1,500; 300+, \$1,500+\$20/lot
Bedford	\$100 (>=/>3 lots)	No Charge	\$20/acre	\$20/acre
Berks	NA	\$90	\$450	\$1,620+\$18/lot
Blair	\$100 (>=/>3 lots)	\$25/acre	\$25/acre	\$25/acre
Bradford	\$100	\$10/lot	\$10/lot	\$10/lot
Bucks	NA	\$100	\$300	\$300
Butler	NA	\$50	\$250	\$700; 99+, \$700+\$15/unit
Cambria	NA	\$100	\$300	\$25/acre
Carbon	NA	n/a	\$630	\$1,910+\$30/lot
Centre	\$300	\$25/acre	\$25/acre	\$25/acre
Chester	NA	\$150	\$600	\$2,000+\$50/lot
Clearfield	\$40	No Charge	\$15/acre	\$15/acre
Columbia	NA	\$50	\$60+\$20/lot	\$225 + \$10/lot
Crawford	NA	\$50	\$150	\$1,500; 101+, \$1,500+\$10/acre
Cumberland	NA	\$75	\$75+\$25/lot	\$75+\$25/lot; 101+, \$1,100+\$15/lot
Dauphin	NA	NA	\$100+(total lots-1 lot)x\$25	\$700+(Total lots-25 lots)x\$20
Delaware	NA	\$100	\$425; 10, \$525	\$1,250; 75-99.9 \$1,500; 100+, \$1,500+\$10/acre
Erie	NA	\$200	6+, \$250+\$25/unit	\$500 + \$20/unit; >101 units, \$1,500+\$15/unit
Fayette	NA	\$50	\$200	70-74.9, \$800; 75+, \$900+\$15/acre
Franklin	NA	\$40	\$40+\$25/lot	\$40+\$25/lot
Fulton	\$30	\$20	\$20/acre	\$20/acre
Greene	NA	\$55	\$165	71-74.9 \$770; 75-99.9 \$880; 100+, \$900+\$5/acre
Huntingdon	\$100	No Charge	\$25/acre	\$25/acre
Indiana	NA	\$15	\$15/acre	\$15/acre

Appendix J (Continued)

Conservation District	Base Fee	Residential Development Fees Lot-Units/Acre		
		.022-0.99	5-10	70+
Jefferson	NA	\$50	\$100; 5.1-10, \$200	\$750+\$25/acre
Juniata	NA	\$25	\$25+\$25/acre	\$25+\$25/acre
Lackawanna	NA	\$60	\$325	\$1,000+\$30/lot
Lancaster	NA	\$90	\$65/lot	\$1,625+(# of lots-25)x \$40
Lawrence	NA	\$30	\$250; 10, \$300	\$1,250; 100+, \$1,250+\$10/acre
Lebanon	NA	\$80	\$80/Lot-Unit	\$550+(\$25xlots/units)
Lehigh	NA	\$100	\$800	\$2,820+\$32/lot
Luzerne	NA	\$50	\$375	51-70, \$1,300; 101-300, \$1,600+\$10/lot
Lycoming	NA	\$75	\$75+ \$40/lot	\$75+ \$40/lot
Mercer	NA	\$50	\$225; 10, \$325	\$600+\$12/acre
Mifflin	\$50	\$20	\$20/acre	\$20/acre
Monroe	NA	\$75	\$375	\$1,125; 101-300, \$1,875; 301+, \$1,875+\$15/lot
Montgomery	NA	\$75	\$190; 6+, \$375	\$1,250+\$15/unit over 100
Montour	NA	\$50	\$50/unit	\$50/unit
Northhampton	NA	\$100	\$830	\$2,520+\$30/lot
Northumberland	NA	\$75	\$335; 10, \$440	\$1,070+\$5/acre
Perry	NA	\$50	\$50+\$35/acre	\$925+\$15/acre
Pike	NA	\$100	\$100/acre	\$100+\$25/acre
Potter	\$50	No Charge	\$1/acre	\$1/acre
Schuylkill	NA	\$50	\$400	\$1,250+\$15/unit
Snyder	NA	No Charge	\$100; 7-8.9, \$125; 9-10, \$150	\$16/acre
Tioga	\$50/lot	No Charge	\$1/acre	\$1/acre
Venango	NA	\$25	\$150	\$600+\$10/acre
Warren	NA	\$25	\$150; 10, \$200	\$1,000+\$10/acre
Washington	NA	\$450	\$750-\$1,300	70.1-80, \$2,200; 80.1-100, \$2,300; 100+, \$2,400+\$20/acre
Wayne	\$200	\$15/lot unit	\$15/lot unit	\$15/lot unit
Westmoreland	NA	\$100	\$325; 10, \$430	\$1,765; 75-99.9, \$2,015; 100+, \$2,650+\$15/acre
Wyoming	NA	\$50	\$50+\$5/acre; 10, \$75+\$5/acre	\$350+\$5/acre
York	NA	\$100	\$100+\$50/unit; 6+, \$250+\$50/unit	\$500+\$15/unit; 101+, \$1,500+\$10/unit

*The following districts have no fee schedule: Cameron, Clarion, Clinton, Elk, Forest, McKean, Somerset, Sullivan, Susquehanna, and Union. Thirteen districts charge fees for development other than residential/commercial/industrial; 14 districts charge fees for 1st revision; 27 districts charge for additional revisions; two charge for re-certification.

Source: Developed by LB&FC staff from DEP provided data.

APPENDIX K

Conservation District Commercial Fee Schedule*

Conservation District	Base Fee	Commercial-Industrial Fee Rate/Acre		
		0.01-0.50	20.0-24.99	100.00 & Over
Adams	NA	\$200	\$500+(\$70/acre)	\$2,000+(\$60/acre)
Allegheny	NA	\$175	\$865	\$1,725+ \$6/acre
Armstrong	\$25	No Charge	\$25/acre+NPDES Permit Fee	\$25/acre+NPDES Permit Fee
Beaver	\$20/acre	\$200	\$800+\$20/sq.ft.	\$800+\$20/sq.ft.
Bedford	\$200	\$30/acre	\$30/acre	\$30/acre
Berks	NA	\$270	\$1,620	\$1,620+\$18/acre
Blair	\$200	\$30/acre	\$30/acre	\$30/acre
Bradford	\$100	No Charge	\$10/acre	\$10/acre
Bucks	NA	\$420	\$2,270	\$2,270+ \$35/acre
Butler	NA	\$250	\$1,500+ \$150/acre	\$1,500+\$150/acre
Cambria	NA	\$100	\$25/acre	\$25/acre
Carbon	NA	\$370	\$2,270	\$2,270 + \$30/acre
Centre	\$300	\$25/acre	\$25/acre	\$25/acre
Chester	NA	\$750	\$3,000 + \$250/acre	\$3,000 + \$250/acre
Clearfield	\$40	No Charge	\$15/acre	\$15/acre
Columbia	NA	\$150	\$110+\$0.004 per sq. ft.	\$110+\$0.004 per sq. ft.
Crawford	NA	\$50	\$300	\$1,500+\$15/acre
Cumberland	NA	\$200	\$200+ \$30/acre	\$200+ \$30/acre
Dauphin	NA	\$250	6+, \$550+(Total acres-5 acres)x\$50	26+, \$1,550+(Total acres-25 acres)x\$25
Delaware	NA	\$200	\$625; 22-24.9 \$725	\$1,500 + \$10/acre
Erie	NA	\$250	\$500 + \$50/acre	\$1,500+\$25/acre; >100 acres, \$3,000 +\$15/acre
Fayette	NA	\$50	\$400	\$900 + \$15/acre
Franklin	NA	\$200	20, \$50/acre; 21+ \$25/acre	\$25/acre
Fulton	\$30	\$20	\$20/acre	\$20/acre
Greene	NA	\$55	\$330	\$900+ \$5/acre
Huntingdon	\$200	\$30	\$30/acre	\$30/acre
Indiana	NA	\$15	\$15/acre	\$15/acre
Jefferson	NA	\$50	20, \$400; 20.1-24.9, \$500	\$750 + \$25/acre
Juniata	NA	\$125	\$125+\$25/acre	\$125+\$25/acre
Lackawanna	NA	\$250	\$1,500	\$1,500+\$30/acre
Lancaster	NA	\$225	\$1,125	\$1,500+\$20/acre
Lawrence	NA	\$30	\$400	\$1,250+\$10/acre
Lebanon	NA	\$500	\$1,150 +(\$25 x total area)	\$1,150+(\$25 x total area)
Lehigh	NA	\$480	\$2,820	\$2,820+ \$32/acre
Luzerne	NA	\$275	NA	NA

Appendix K (Continued)

Conservation District	Base Fee	Commercial-Industrial Fee Rate/Acre		
		0.01-0.50	20.0-24.99	100.00 & Over
Lycoming	NA	\$200	\$800	\$950+\$15/acre
Mercer	NA	\$50	\$375	\$600+\$12/acre
Mifflin	\$150	\$25	\$25/acre	\$25/acre
Monroe	NA	\$225	\$1,125	\$1,500+\$15/acre
Montgomery	NA	\$250	\$1,500+\$20/acre	\$1,500+\$20/acre
Montour	NA	\$200	\$800	\$950+\$15/acre
Northampton	NA	\$420	\$2,520	\$2,520+\$30/acre
Northumberland	NA	\$75	\$650	\$1,070+\$5/acre
Perry	NA	\$50	\$50+\$35/acre	\$925+\$15/acre
Pike	NA	\$100	\$100/acre	\$100+\$25/acre
Potter	\$50	No Charge	\$10/acre	\$10/acre
Schuylkill	NA	\$250	\$2,000	\$2,000+\$20/acre
Snyder	NA	No Charge	\$16/acre	\$16/acre
Tioga	\$50	No Charge	\$10/acre	\$10/acre
Venango	NA	\$25	\$300	\$600+\$10/acre
Warren	NA	\$25	\$400	\$1,000+\$10/acre
Washington	NA	\$450	\$1,500; 20.1-24.99, \$1,600	\$2,400+\$20/acre
Wayne	\$100	No Charge	\$75/acre	\$75/acre
Westmoreland	NA	\$100	\$650	\$2,645+\$15/acre
Wyoming	NA	\$50	\$75+\$5/acre	\$350+\$5/acre
York	NA	\$250	\$500+\$50/acre	101+, \$3,000+\$15/acre

*The following districts have no fee schedule: Cameron, Clarion, Clinton, Elk, Forest, McKean, Somerset, Sullivan, Susquehanna, and Union. Thirteen districts charge fees for development other than residential/commercial/industrial; 14 districts charge fees for 1st revision; 27 districts charge for additional revisions; two charge for re-certification.

Source: Developed by LB&FC staff from DEP provided data.

APPENDIX L

Response to This Report

RECEIVED JUN 01 2005

Commonwealth of Pennsylvania



**DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
DENNIS C WOLFF**

June 1, 2005

Phillip R. Durgin
Executive Director
Legislative Budget & Finance Committee
400 Finance Building
P O Box 8737
Harrisburg PA 17105-8737

Dear Mr. Durgin:

Our agencies appreciate the time and effort the Legislative Budget and Finance Committee and staff have put into this review of the operation and structure of County Conservation Districts and their programs. We have reviewed each of the six recommendations of the Legislative Budget and Finance Committee and our comments on each are attached to this letter.

In Pennsylvania, the interrelationship of the State Conservation Commission, state agencies and county conservation districts is admittedly complex. This is in part due to the growing number and the wide variety of state programs and funding offered for district participation. While the Committee stated that our conservation program efforts are "fragmented" between various state entities, the inter-departmental structure of the Commission fosters cooperation, balance and diversity in the administration of programs that involve conservation districts.

Some districts and other entities have indicated that our current structure and the oversight of various programs are difficult to understand and that the multiple lines of authority inevitably create a degree of uncertainty and inefficiency. The Commission and the agencies are committed to exploring opportunities to better coordinate and integrate the Commonwealth's conservation efforts and to improve support services and oversight of conservation districts.

The diversity of state programs and funds for conservation districts is a "two-edged" sword. These funds enable districts to undertake important programs and activities, but also require specific deliverables, reports and related paperwork. Although a "block grant" approach was suggested, the variety of state funding sources and specific obligations of each source make block grants difficult to implement under current funding authorities. We continue to improve administrative procedures by standardizing forms and computerizing reports and invoices.

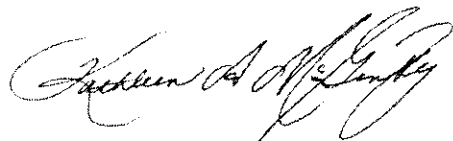
As state agencies, we value conservation districts as effective partners in delivering programs to the local level. Districts reflect the diversity of Pennsylvania's communities and provide citizens with local access to conservation programs, services and information. Their local leadership supports a level of trust that is essential in effectively delivering conservation and non-point source pollution control programs that often require citizens and landowners to make land management and lifestyle changes to help improve the environment and their local communities.

The value of districts as a local service delivery network is best maintained by balancing local funding sources with appropriate state funding sources. The greater the amount and share of state funding in district budgets, the less influence local leadership has in the direction of districts' programs and activities. As district programs become less grounded in local values and priorities, they begin to lose their connection with local interests. State programs and district funding plans should include county and other local funding sources such as fees, sales revenues and local government reimbursements for services and assistance.

The state is an important and growing source of funding for districts. In 1975, state funding represented 19% of conservation districts' operating budgets. In 2005, state funding represented 66% of districts' budgets. Funding levels for state conservation and environmental programs are determined annually by the General Assembly through the state budget process and are subject to changing needs and priorities. All programs are offered to districts for voluntary participation and should include funding plans that fairly compensate districts for their services. Each district should evaluate program opportunities and decide participation based on the value to their county and the fairness of the offer for that district. For example, the 105 and Biosolids programs are currently available to districts with no state financial support. District participation in these programs should only be considered where there is sufficient county value placed on this participation to support funding from local sources.

We would like to thank the Legislative Budget and Finance Committee for undertaking this review. We appreciate the professionalism and objectivity of the Committee staff in working on this project. The report will help to advance important initiatives to enhance the effectiveness of conservation districts in meeting community needs and delivering important state programs to the citizens of our Commonwealth.

Sincerely,



Kathleen A. McGinty
Secretary, Department of Environmental Protection



Dennis C. Wolff
Secretary, Department of Agriculture

Attachment

Comments on Recommendations: Legislative Budget and Finance Committee Report

Recommendation #1 - State Conservation Commission Structure

This recommendation is to add DCED and DCNR to the State Conservation Commission. DCED and DCNR would be welcome additions to the SCC. This action would support conservation districts expanding roles in parks and forest management and help solidify their relationships with local governments. In particular, the addition of DCED would help encourage greater conservation districts involvement in land use issues.

Recommendation #2 – Better Administrative Integration of Commonwealth Conservation Efforts

This recommendation encourages PDA, DEP and the SCC to explore ideas for better integrating the administration of Commonwealth conservation efforts and recommends consideration of a staff-level working group of the various agencies to better coordinate and integrate the Commonwealth's conservation activities. The recommendation recognizes that it may not be practical or desirable to consolidate all conservation programs into one department.

The Commission and the agencies agree that there is a continual need to identify opportunities to better coordinate and integrate these efforts. We appreciate the LB&FC's recognition of the unique, but functional structure that currently supports Pennsylvania's conservation program. It is recognized that some districts and other entities have indicated that our current structure and the oversight of various programs is difficult to understand; and that the multiple lines of authority inevitably create a degree of uncertainty and inefficiency. We are committed to exploring opportunities to better coordinate and integrate the Commonwealth's conservation efforts and to improve the delivery of support services and oversight of conservation districts through a variety of tools. Since 1996, we have developed and maintained inter-agency Memorandums of Understanding (MOUs) that define coordination and support services between SCC, PDA and DEP. These MOUs are currently being updated to reflect current needs.

Recommendation # 3 - Conservation District Funding

Recommendation #3a recommends a single Conservation District Fund Allocation Program (CDFAP) line item appropriation to the SCC, rather than the current two line items in DEP and PDA budgets. Currently, the Legislature appropriates CDFAP to both PDA and DEP. These two different appropriations encourage balanced programs, as DEP, PDA and SCC work together to develop programs that involve and support conservation districts. Both agencies utilize the Commission's CDFAP Statement of Policy, but with slightly different funding emphasis.

Recommendation #3b recommends that the General Assembly strive to meet the Commission's policy for CDFAP funding of conservation districts. The Commission, the agencies and others recognize that conservation districts believe that additional funding needs exist within the CDFAP. The Commission's goal is to fund up to 50% of the cost of district managers and

technicians costs. These state funds primarily cover salary and benefit related costs. There is not an automatic or annual adjustment for cost of living or inflation. The key is to work to manage revenues and costs over time.

This recommendation also suggests that a portion of the CDFAP be delivered as a block grant to districts. As noted in the report, CDFAP is currently a flexible source of funding for conservation districts. In addition, 3c below recognizes, and we agree, that creating a system of advanced payment could also greatly increase the flexibility of the CDFAP for managers' cost-share and administrative assistance.

Recommendation #3c recommends that the Bureau of Financial Management consider ways to allow districts to receive advanced funding and not be required to lapse unused funds. We concur with this recommendation and will work with the Governor's Budget Office, and other appropriate entities such as the DEP Bureau of Fiscal Management, the PDA Bureau of Administrative Services and our Comptroller to implement advance payments for conservation districts. In addition, we will work towards establishing non-lapsing funding for conservation districts through the legislative budget process.

Recommendation #3d recommends the State Conservation Commission to consider alternate funding sources for the Nutrient Management Program. The Commission has recently evaluated our expenditures and commitments under the Nutrient Management Program Fund. In the last two years, our program manager has worked diligently to balance growing program needs with available resources. Where possible, program cuts (i.e. reduced grants) have been implemented to help maintain a viable fund balance. Budget increases are anticipated in the next fiscal year for Commission staffing (2 positions added) and for conservation district program responsibilities. We will continue to look for ways to stretch existing funding sources, despite increasing program activities and responsibilities.

Recommendation #3e recommends that Conservation Districts consider applying for Land Use Planning and Technical Assistance Program (LUPTAP) grants. Conservation districts' active role with Chapter 102 plans and NPDES Stormwater permits provides them with a unique perspective on land use development. In addition, their interactions with municipalities on flood plain monitoring activities and in the Dirt and Gravel Road Program continue to grow. Proactive involvement in land use planning is a natural fit for districts and we believe they can perform a valuable role in this increasing important process. LUPTAP grants are just one possible source of funding for these types of activities and programs.

Recommendation #4 - Streamline Reporting Requirements

This recommendation recommends that district reporting requirements be streamlined and standardized. DEP, PDA and SCC continue to work to streamline and standardize reporting requirements for conservation districts. We have begun efforts through the eGovernment and Fee Policy initiatives to more accurately capture cost information from districts. We will continue this to better assess the contributions of state, county and federal funding sources to more accurately gauge the financial health of districts. Our agencies appreciated the recognition of the eGovernment initiative. This project is driving more standardization of data, forms and

reports. It will convert a paper system to electronic reporting and invoicing for districts and provide better management tools for state programs and districts. Phase 1 of this project addressed CDFAP funds, the significant funding source for district operations, and was successfully implemented in September 2003. Currently 45 districts take advantage of this streamlined reporting system and have reported significant improvements in the time it takes to receive CDFAP reimbursements.

Phase 2 of this project began in January 2005 and includes the most critical agriculture-related programs that make up the major remaining reporting obligations for districts. We have begun the planning/software development for the Chesapeake Bay, Nutrient Management Act, Farmland Preservation, and Agricultural Conservation Technician Programs. Completion and implementation of this Phase is projected for 2006. The remaining phase of the project will follow and include the Dirt and Gravel Road and Watershed Specialist efforts. Implementation of the entire eGovernment project is currently scheduled for completion in 2010. If additional funds are provided, this schedule will be expedited.

Recommendation #5 – SCC should streamline the local district board appointment process

The process that the Commission currently utilizes to monitor and oversee the appointment of conservation district board members is based on the legal requirements contained in Sections 6 and 7 of the Conservation District Law (Act 217 of 1945). These sections include requirements that dictate the composition of the boards, terms of office, and the need for a county based list of eligible nominees that contains at least double the number of directors to be appointed at any one time. The Commission will be reviewing its current process within the next six months to determine if our policy can be simplified and or streamlined under the current requirements of the law. The LBFC recommends that we include a statewide blanket approval for certain organizations and this will be considered during this process. Other recommended changes will require amendments to the law. Given the expanding nature of district programs and the controversial nature of certain new program functions, the Commission believes that it is important that it continue to play an active role in assuring that conservation district board members are appointed in a timely fashion and in a manner consistent with state law.

Recommendation #6 - DEP Staff Support

Recommendation 6a recommends that DEP work with districts to establish fair and appropriate E&S plan review fees. Conservation districts have not raised this issue to DEP. DEP has undertaken a comprehensive review of fees charged through its programs. The objective is to establish fees that are fair and more appropriately reflect the costs of the services they cover. This includes those charged by conservation districts. In general, current fees fall short of covering the costs of program implementation. In addition, the recently adopted SCC policy on fees requires districts to provide fee information to the SCC and will allow for close review and oversight of district fees.

Recommendation 6b recommends that DEP develop a training program to certify E&S plan review and inspection personnel. E&S training programs are currently offered every year. One statewide training and several regional training events are offered every year. Certification of

E&S plan reviewers and preparers is under consideration in the current update of Chapter 102 regulations. Legislative revisions may be necessary to support this initiative.

Recommendation 6c recommends improved standardization of DEP regional offices, particularly E&S enforcement activities and actions. Standardized procedures is something that DEP agrees is necessary to implement statewide regulatory programs. This issue is not new or different from issues raised in other DEP programs. The benefits and challenges of decentralized permitting and enforcement in all regulatory programs are similar and we will continue to strive for consistent, statewide implementation of regulatory programs.

DEP water programs are undergoing a reorganization to focus greater attention on watershed management and nonpoint sources of pollution. An objective of this reorganization is to improve support for conservation districts and their programs. There will be a shift in complement to increase the regional resources that provide these services. DEP has recently increased, and plans to further expand, compliance and enforcement support available to districts through the regional offices.

The upcoming DEP reorganization will improve the relationships between DEP and conservation districts by organizing most of the programs and staff that impact districts into a single management unit in each regional office. The reorganization has been approved and will be implemented over the next several months. It creates a new watershed Management Program in the DEP regional offices on the same level as the other major programs located in the regions. The Program will include two Sections: the existing Soils and Waterways Section and a new Assessment and Planning Section. Increased resources and improved coordination of various nonpoint source programs will help support local commitments and efforts from conservation districts, residents and watershed groups to restore our watersheds and improve and protect water quality. The Conservation District Field Representatives will be assigned to the new Assessment and Planning Section.

Recommendation 6d recommends an analysis of the position classification of the Conservation District Field Representatives that serve conservation districts. A comprehensive staff classification and analysis, that includes the Conservation District Field Representative positions, will be undertaken by DEP. Civil Service lists used for conservation district field representative and other conservation district support positions are being updated and will be used to fill the key vacancies identified. A key vacancy in the Southeast Regional Office will be filled in July 2005.

Recommendation 6e recommends that CDs be allowed to charge permit fees for Chapter 105 program activities. Chapter 105 revisions are currently being developed. The issue of review fees has been raised and will be addressed in the regulatory process.

Recommendation 6f calls for an assessment of current training efforts regarding the Chesapeake Bay Program. As noted in the recommendation, much of the concerns regarding the Chesapeake Bay Program come from very recent and very fundamental changes made by DEP in the program stemming from changes in recently signed multi-state interstate 2010 Chesapeake Bay Agreement. DEP is redirecting the focus of the program to the new Tributary Strategy and county-developed implementation plans. As these program changes evolve, DEP will develop

and provide additional training, guidance materials and policy direction to aid districts in preparing and implementing county-level plans to address locally driven results.

Recommendation 7 – Program Review Information

Recommendation 7 recommends that program review information be provided to the State Conservation Commission. All state entities (DEP, PDA, SCC, etc.) that delegate specific program duties to conservation districts are required to monitor and supervise the activities of each district conducted pursuant to the agreement. As such, DEP and other state entities conduct periodic reviews of conservation district programs. DEP has periodically presented evaluation information to the SCC, but a more formal and routine reporting mechanism may be appropriate and warranted. DEP and PDA will provide summary information on all reviews conducted by DEP of conservation districts to the State Conservation Commission.