



To: Committee on Environmental Resources and Energy

From: Maya K. van Rossum, the Delaware Riverkeeper
Joanne Kilgour, Chapter Director, Sierra Club PA Chapter
Michael Roles, Program Organizer, Clean Water Action

Date: September 11, 2014

Re: House Bill No. 1565 and Proposed Amendment 93

We ask you to please oppose both House Bill No. 1565, including as proposed for amendment by Representative Miller in Amendment 93. Both options, together or alone, diminish the quality of protection given to our Special Protection Waters if enacted.

Forested riparian buffers provide benefits to streams that cannot be replaced by other best management options. 150 foot vegetated buffers do not just prevent pollution from entering a stream, which can be done by other best management practices, but it provides other ecological benefits that other best management practices cannot and do not provide. So allowing the selection of another management option ends up, in total, reducing the ecological and water quality benefits that an exceptional value/high quality stream would otherwise get. For example, riparian forest buffers:

- reduce erosion, stream downcutting, and stream meandering that itself can become a source of sediment pollution and degradation to a stream;
- provide the necessary level of shading to protect streams from thermal pollution and known impacts associated with high UltraViolet light levels;
- increase the amount and quality of the instream aquatic ecosystem that can actually break down and remove pollution from a water way thereby removing pollution, not just preventing it;
- promote wider stream channels with large amounts of instream woody debris which delays the downstream movement of flood waters and helps to reduce flood peaks and their impact on downstream communities and ensures structures aren't built too close to the stream.

Allowing development too close to a stream is not just a source of pollution but it removes the healthy ecological structure necessary to support the healthiest of streams.

Another more specific way to exemplify the difference between mandating buffer protection or allowing other management options is to think about a specific option and how it differs from a buffer. For example, while a detention basin with a water quality forebay might be argued to provide water quality benefits, it cannot and will not provide the shading, protection from erosion, enhancement of instream ecosystem services, optimization of channel width, reduction in flood flows, and mitigation of downstream flood damage provided by a riparian forest buffer.

Miller Amendment 93 allows the developer the choice to pick other management options that deny streams these benefits.

Miller Amendment 93 only requires two-to-one or one-to-one offsets for development projects that disturb greater than one acre, thereby creating a loophole for smaller projects, and also allowing developers to find less desirable trade offs for their buffer requirement. And there is not enough definition around the word offset to ensure it mandates a comparable level of protection that would be had under existing 102 requirements.

Miller Amendment 93 offset requirement only applies to 100 feet of the buffer area, not the 150-foot requirement currently included in Chapter 102. As a result developers are actually given an incentive to avoid use of the buffer option and to instead use another option as it allows them to actually do less of a buffer even given the offset mandate. Given that the offset mandate only applies to the actual areas of disturbance it means that the offset mandate is unlikely to ever result in a 150 foot buffer elsewhere in the watershed unless the developer disturbs every inch up to the creek the offset ratio would always add up to something less than a 150 foot buffer currently required in Chapter 102 (i.e. the 2 to 1 ratio only applies to the 50 feet next to the creek, and the 1 to 1 ratio applies to the next 50 to 100 feet, if every inch is disturbed then you come up with a 150 foot mandate required elsewhere, but if any of the depth or width of the buffer is not disturbed the calculation would result in less.) And so, only in those instances when every inch of a 100 foot buffer is disturbed will the end result be a 150 foot buffer mandate elsewhere in the watershed, anything short of that in depth or width of disturbance means less than the current 150 foot buffer mandate will ever be required. And so the net affect is less buffers than Chapter 102 currently provides.

The proposed mitigation measure in the Miller Amendment 93 would allow a buffer to be established on land that: (1) is not currently under intensive use and therefore is already providing many or most buffer functions; (2) being in the same drainage, is already under Chapter 102 protection; and (3) may have no upslope source of nutrients or sediments that require buffering. It would therefore “mitigate” a real and present degradation of water quality with a substitute whose benefit may be only marginal and realized only decades in the future.

Miller Amendment 93 allows developers to avoid the best development practice of building away from our streams and rivers – we should be encouraging developers to embrace best development practices so it makes our job of protecting streams easier as we move forward in time, not require more creative thinking, regulation and oversight.

The Miller Amendment reference to the PA Stormwater BMP Manual section 6.7.1 is confusing to the say the least as there is no clarity on how cost would figure into the offsetting mandates described or why the provision in the BMP manual was referenced.

All in all, these legislative proposals, Bill 1565 and Amendment 93, are once again about finding loopholes developers can walk through rather than training them to use best development practices for the protection of streams and communities.