

Testimony of John Stefanko  
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Before the Pennsylvania Senate Transportation Committee  
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Chairman Rafferty, Chairman Sabatina, and members of the committee, thank you for the opportunity to submit testimony regarding Innovative Transportation Project Delivery and share feedback on the draft legislation (D02342). We would also like to offer suggestions that the Department believes are needed to improve timely delivery for the citizens of the Commonwealth. As we have testified previously before this committee, the Department understands the significance of transportation infrastructure projects in enhancing public safety and a sustainable economy in the Commonwealth.

This understanding is reflected by the long-standing relationship between the Department and PennDOT designed to expedite transportation projects. The agencies formed a formal partnership under a Memorandum of Understanding (MOU) that is intended to guarantee that PennDOT road and bridge projects get the highest priority for permit application review at the Department. Under that MOU, the Department has 13 staff dedicated to environmental permit review for transportation projects. In Fiscal Year 2015-2016, those staff reviewed a total of 751 applications, for an average of approximately 58 applications each.

As we have previously testified, a Department engineer and biologist in each of the six regional offices maintain an increased level of involvement during program planning and transportation project development in order to facilitate the permitting process. During permit review, PennDOT projects receive priority review by these dedicated staff, while ensuring protection of the Commonwealth's water resources.

The dedicated transportation staff strives to provide cooperation and quick responses to questions raised during the planning and permitting processes, rather than requiring a

formal application submission. This service aids PennDOT in maintaining its schedules and is only available because of the relationships that have been built between the PennDOT Districts and the dedicated Department staff as well as the fact that both entities have missions that place the focus of our work on the citizens of Pennsylvania and the environment.

This service is helpful to the Department in streamlining its review. Often, potential adverse environmental impacts are discussed in pre-application meetings. These impacts must be considered prior to and for proper project design and permit application submittals. Adequately addressing these impacts reduces the number of technical deficiencies found in applications and leads to more timely reviews. Data show that Department's permit reviewers are performing well under the terms of the MOU. The Department's dedicated staff continually partner with PennDOT staff to ensure that submitted applications can be reviewed in a timely manner.

The average review time for permits by this staff is 45 days for applications free from deficiencies. That number increases to 63 days for applications with only one deficiency, but increases to 94 days when there are two deficiencies. By working collaboratively with PennDOT, the Department has sought to reduce delays resulting from technical deficiencies.

During our review of permit applications, Department staff follows a standard process for receiving, prioritizing, accepting, reviewing, denying, and approving applications for permits or other authorizations. Applicants are to submit complete, technically adequate applications that address all applicable regulatory and statutory requirements. Through its review of a permit application, the Department must ensure that the project does not adversely affect air, water or natural, scenic, historic or cultural resources. Ensuring that there are no adverse impacts is a regulatory, statutory and constitutional obligation, including Article 1, Section 27 of the Pennsylvania Constitution.

Applications that are deficient – that is, applications that do not meet all of the regulatory requirements for completeness and technical content – require inquiries to and additional information from the applicant, and as a result, take longer to review. Where additional submissions are required, the back and forth can add considerable time to the review process. It is important to note, however, that as long as the Department has been tracking this metric, no permit delay has caused PennDOT to miss a contract let date.

While the most significant cause of permit review delays is deficient applications, Department staffing levels also play a role. The number of applications reviewed by the Department T21 staff has continued to rise over the years, while the number of dedicated staff has not increased.

Additionally, the public private partnership (P3) contract agreement between PennDOT and Plenary Walsh Keystone Partners (PWKP), under which PWKP will replace 558 aging bridges in just three years, has generated a large number of permit applications in a short period of time. No additional positions were provided to the Department to prioritize these permit reviews. Due to the tight timeline for review of these bridge projects many of the applications do not contain final designs, which causes the Department to have to work with the applicant to determine which type of modifications are needed for a revised submission or what type of public notice may be required. The applications have not been submitted based on the original scheduling, which causes the Department to move other applications in the queue in order to avoid PennDOT construction delays.

The draft legislation (D02342) proposes a solution to these challenges faced by the Department in the form of contracting some of the Department's review work to third party consultants. Third party evaluation of permit applications is not a new idea being proposed for Department permit authorizations. This suggestion has been evaluated in the past and has resulted in a number of changes implemented by the Department to make the permit process flow more smoothly, including the PennDOT MOU discussed

previously. This solution has and continues to work well. The MOU and arrangement have led to other process improvements, including collaborative investments in upgrades to electronic permit applications and transmittal of data that will bolster these successes going forward.

There are a number of issues that are of significant concern related to third party review of Department permit applications, not the least of which is the statutory requirements that require the Department to make its own independent determination when taking a permit action. This means that even if a third party concludes that an application complies with all technical and legal requirements, the Department would have to perform its own review of the permit application and third party reviewer's work prior to issuing the permit. The Commonwealth has a number of applicable statutory obligations and a constitutional duty to administer its programs. Any time saved by contracting to third parties would result in some time savings but no cost savings to the Commonwealth.

There is also the possibility that a permit action may be appealed. If the third party reviewer were to be responsible for the technical review of the permit, they would also be responsible to defend the action before the Environmental Hearing Board and perhaps Commonwealth Court on appeal. The third party reviewer would charge the Commonwealth for this additional work to defend the action. Commonwealth attorneys can represent the Commonwealth, but where a third party reviewer is involved, legal representation issues become blurred, likely increasing legal costs of defense. The Commonwealth could potentially be liable for its costs, the third party's legal costs and appellants' attorney fees should there be an adverse decision before an adjudicating body. Would the third party consultant be responsible for these costs in these circumstances? The proposed legislation does not address these significant issues.

There is also a potential challenge with the quality of review that can be expected from a third party reviewer. As stated, one of the issues that has been documented repeatedly by the Department is the frequency of incomplete and technically inadequate

permit applications submitted to the Department. Given this data, it raises concerns with third parties performing adequate technical reviews of the same documentation. Significantly, the Commonwealth is not able to transfer its constitutional obligations to a third party contractor. Only the Commonwealth has constitutional obligations to the public and our natural environment. Absent direct supervisory oversight and Commonwealth parallel review, the quality of review and application of constitutional, statutory and regulatory requirements is difficult to control. Sufficient QA/QC requires time and personnel, likely eliminating any cost benefits and time savings assumed by the third party review structure. There is also reason to be concerned with potential conflicts of interest and ethics with third party contractors.

The proposed bill would require training of third party reviewers by the Department. This is also viewed as a great concern. The Department has made staff training a priority. This is a complex and time consuming activity. It will take a great deal of time, effort and energy to insure that the third party reviewers are properly trained and understand Department regulations and guidance. The Department's permitting obligations serve many sectors, the transportation sector being one. The Department's review staff must be responsive to all applicants and training third parties will further remove them from their duties, adding to permit backlogs indefinitely as training is an ongoing obligation. This time effort and energy would be better spent by enhancing Department staff capabilities to deliver training to both Department and County Conservation District staff.

The Department is aware of the concerns underlying the legislative proposal and has been taking serious and meaningful steps to address the concerns and improve the system. One of the program areas of most concern, erosion and sediment control and post construction stormwater management (Chapter 102 related) activities, within the Department has been reassigned to the Bureau of Clean Water. The Department is currently holding listening sessions for the public, including private sector consultants, and will be taking action on many of the ideas gathered during those sessions. We anticipate that a large number of necessary changes will be rolled out in 2017.

Mr. Chairman, in your recent memorandum inviting the Department's participation in this hearing, you asked that we provide solutions to what we see as the challenges to delivering environmental permitting expeditiously for these important transportation infrastructure projects. Our proposed solutions to the challenges we have identified are few and simple.

First, given the costs and associated risks with third party permit application reviews outlined above, the Department believes that public funds would be more efficiently used to increase the number of Department staff who review permit applications for these types of projects.

And second, the quality of permit applications must be improved. It is proven that this shortens review times. The Department is actively developing methods to assist applicants in preparing good applications.

Thank you for this opportunity to provide Department's perspective and recommendations today. This concludes my testimony.