

**PACD North East Region Meeting
DEP Northeast Regional Office, Wilkes-Barre, PA
October 12, 2018**

Carbon • Lackawanna • Luzerne • Monroe • Pike • Schuylkill • Susquehanna • Wayne • Wyoming

On behalf of the PACD North East Region, you are cordially invited to attend the PACD North East Region Meeting on **Friday, October 12, 2018**, at the DEP Northeast Regional Office at 2 Public Square, 2nd Floor, Wilkes-Barre, PA 18701.

A charge of \$10.00 will cover lunch. So that we know how many to expect, **please RSVP no later than Tuesday, October 2, 2018**, to Chris Ingulli with the Pike County Conservation District at cingulli@pikepa.org or 570.226.8220. Checks should be made payable to the Pike County Conservation District and mailed to:

Chris Ingulli
Pike County Conservation District
556 Route 402
Hawley, PA 18428

Please note the 10:00 a.m. start time.

If you have any questions about the meeting, please feel free to contact me at 570.872.5162 or thecreativepumpkin@gmail.com. I look forward to seeing you there.

Sincerely,

Kelly Stagen

Kelly Stagen
North East Region Director



PACD North East Region Meeting
DEP Northeast Regional Office, Wilkes-Barre, PA
October 12, 2018

Agenda

- 10:00 AM Welcome and Introductions – Kelly Stagen, Region Director
- 10:10 AM Set Date for Next Meeting
- 10:15 AM Approval of Minutes from the Previous Meeting
- 10:20 AM PACD Business and Report – Brenda Shambaugh, Executive Director
Topics will include a legislative update, a leadership development update, third party reviews, e-Permitting for Chapters 102 and 105, regional grant applications, a conservation district marketing toolkit, and the PACD budget.
- 11:20 AM Regional Information Sharing
Each district is asked to highlight three items.
- Noon Working Lunch and Partner Reports
- PA State Conservation Commission
 - PA Department of Environmental Protection
 - USDA Natural Resources Conservation Service
- 1:00 PM Meeting Concludes





BILL SUMMARY

<u>COMMITTEE:</u>	State Government	<u>DATE:</u>	5/1/18
<u>PRIME SPONSOR:</u>	Rothman	<u>BILL NO.:</u>	HB 1959
<u>PREPARED BY:</u>	Glendon King	<u>PRINTER'S NO.:</u>	3464
		<u>PHONE NO.:</u>	0-6319

A. **SYNOPSIS:**

Reforms the administration of permits by state agencies by creating accountability and transparency.

B. **BILL SUMMARY:**

HB 1959 establishes the Permit Administration Act.

Initial Permit Review:

All state agencies which administer permits in the Commonwealth shall conduct an initial review of the agency's permit decisions and "permit decision delays" for the previous calendar year. State agencies shall submit a report to the General Assembly of the agency's findings within 60 days after the bill's effective date.

"Permit decision delay" is defined as the failure of a state agency to issue a permit decision:

- Within the time period specified by statute or regulation; or
- 30 days after the submission of the permit application if no time period is specified in statute or regulation.

Permit Compilation:

State agencies shall compile and make available on their websites a complete list of all permits which the agency administers within 90 days of the bill's effective date. The list shall include, but not be limited to the following information:

- The program under which each permit is issued.
- The statutory and regulatory authority for each permit.
- The time frame within which a state agency must issue each permit.
- The average time frame within which a permit is actually issued.

The list shall be transmitted to LRB for publication in the *PA Bulletin*.

Application Tracking System:

State agencies which issue permits shall establish secure tracking systems on the agency's website within 180 days of the bill's effective date for applicants to track the status of permit applications.

The tracking system shall include all of the following:

- The processing time for each permit.
- The dates with each stage of the permit review process.
- The estimated time remaining for each incomplete phase of the review process.
- The identity and contact information for the agency employee assigned to answer questions about the applications process.

Deficient Applications:

If an agency finds an application to be incomplete or technically deficient, it shall notify the applicant in writing or electronically, and in clear language readily understandable by a layperson, of the following:

- The statute or regulations that requires a correction within the application.
- The reasons why the application is not in conformance with that statute or regulation.
- The correction or additional information needed for issuance of the permit.

Expiration and Change Notice:

State agencies shall notify permit holders in writing of the following:

- The expiration date of a permit 60 days before it expires.
- Changes to statute or regulations which may affect the permit.
- A change in permit fees.

Permit Validity:

Permits issued prior to the effective date of a statute or regulation altering the requirements for the permit shall remain valid under the provisions by which the permit was granted unless otherwise agreed to by all parties.

Third-Party Review:

Within 180 days of the effective date of the program, a state agency shall establish a program to review permit decision delays and resolve issues causing these delays.

An agency shall contract with a third-party professional to administer this program. Payments to a third-party professional shall consist of the remittance of any fees collected by the agency from applicants whose applications are subject to permit decision delay.

An agency shall immediately after establishing the program refer all applications subject to permit decision delay to a third-party professional for review. A permit application that becomes subject to delay after the establishment of the program shall be submitted to a third-party

professional for review no later than three business days after the application becomes subject to delay.

After a third-party professional reviews all applications subject to delay, and resolves all issues causing the delay, the professional shall transmit the application to the agency for issuance of the permit.

Annual Report:

By January 31 of each year, state agencies shall submit a report to the General Assembly which contains the following information about permits from the preceding calendar year:

- The number of permit applications received.
- The number of applications reviewed by the agency that received a decision without being referred to a third-party professional.
- The average time frame for permit decisions by the agency on applications that received a decision without being referred to a third-party professional.
- The number of applications reviewed by third-party professionals.
- The average time frame for contracted third-party professionals to complete an application review.
- The number of state agency employees reviewing permit applications and the number of applications each employee reviewed.

Construction:

Nothing in this act shall be construed to limit or otherwise alter an agency's authority to revoke a permit for failure to comply with the laws of the Commonwealth.

Exception:

This act shall not apply to certifications, licenses, or permits issued by the PA Game Commission.

Effective Date: 60 days

C. CURRENT LAW:

Many permits have existing timelines by which an agency must reach a decision regarding approval or denial of an application, as established in statute, regulation, or agency policy.

Additionally, some information regarding permits and applications can be found online on agency websites, but there is no comprehensive statutory requirement for transparency regarding all permitting requirements.

Executive Order No. 2012-11 permitted DEP to establish by policy the Permit Decision Guarantee Program. Some of the contents of this order were codified as 4 Pa. Code Ch. 7a, Subch. H.

The final policy released by DEP, entitled the Policy for Implementing the DEP Permit Review Process and Permit Decision Guarantee, discusses the stages through which an application will proceed, and the time that various types of permits will take to process. The policy notes that the permit decision guarantee is the “guarantee from the Department that a permit application will be reviewed as expeditiously as possible with the ... timeframe, which is applicable only to those complete, technically adequate applications that address all applicable ... requirements.”

August 6, 2018

The Honorable Patrick McDonnell
Secretary of Environmental Protection
Rachael Carson Building
400 Market Street
P. O. Box 2063
Harrisburg, PA 17105

Dear Secretary McDonnell,

As you know there was quite a bit of discussion on the new ePermitting reporting system for Chapter 105 general permits at our Joint Annual Conference in Lancaster last July. Of course, the goal of the new reporting system is to streamline the permit review and approval process which is something we all strive to achieve. As I mentioned at the SCC meeting, PACD has been collecting comments from conservation districts for DEP to consider as the department moves forward with the new process. Below are a list of those remarks.

Most districts are concerned about the timeframe for implementation of the ePermitting system especially since the training webinar will only be a few weeks prior to the new system's activation. We recommend a comprehensive training system similar to the DGLVR, training where several webinars were conducted along with one-on-one training, before the kick-off of the new program.

One of the universal comments from conservation districts is that a large number of their clients do not have the capability to file electronically. Many conservation districts work closely with the Amish community who do not have electronic capabilities. Additionally, many rural areas of the Commonwealth do not have internet access and elderly farmers cannot navigate electronic forms without assistance. The concern is that applicants would either not get a permit for their planned activity, would have to hire an outside consultant, or the district would fill out the electronic application for the applicant and then approve the same application. The districts' fear is not allowing for hard copy paper applications will lead to a decline in general permit requests.

On a related note, there are a number of procedural questions related to hard copies.

1. Will hard copies of the application still need to be sent to USACE for PASPGP5 coordination or will there be electronic coordination with USACE for reporting activities?
2. Will plans, PNDI receipts, etc. be able to be uploaded into the ePermitting system?



3. Will the system be able to talk to ICIS and eFacts?
4. Printing CAD drawings is not only expensive, but most printing equipment cannot print these documents. Many districts will need to upgrade their printing capabilities, which will take time and money. Will the conservation district need to keep hard copies of these documents on file?
5. How will modifications, renewals, and inspection reporting of the permits be handled?
6. How will the applicant receive their permit and will the partnering agencies, the engineer, the Army Corps., the Fish and Boat Commission and/or municipality be electronically copied?
7. Will the system be able to detect entries in the required fields that will kick the proposed activity out of a specific general permit and alert the applicant that they are ineligible for that permit? Ideally, the system should be able to check entries such as standard drawings/site plan/location maps to make sure they are correct.
8. When districts assist applicants, how will they access the system? Will there be one main login, or will each person reviewing and acknowledging permits be required to have a separate login?
9. How secure is the ePermitting process? Unfortunately, in today's world, information security is always a concern. In the event of stolen identities, who would be liable?

Another universal concern relates to E&S plans associated with the Chapter 105 application.

1. What will the procedure be for counties where DEP reviews the 105 permit, but districts review the Chapter 102 permit applications? In these instances, how will districts collect Chapter 102 fees related to Chapter 105 permits?
2. Will the Chapter 105 permit issuance be delayed until the district reviews and approves the associated E&S plan?
3. In the event of an application that is technically deficient, what procedure should conservation districts use to correct the concerns?
4. Additionally, will an approved Chapter 102 plan be required for all Chapter 105 approvals?

Many districts add a cover sheet to accompany the information sent to potential clients. How would the district add that cover letter to the ePermitting application? We also recommend that DEP development informational and instructional handouts to accompany the permit application, which could be added to the application.

A number of non-delegated districts for Chapter 105 need guidance on handling clients who contact them for assistance.

1. Should they refer the client to DEP?
2. If assistance is needed, is there a mechanism to charge fees for that assistance?



3. What will the approval procedure be if a Chapter 105 permit is part of an NPDES permit?
4. How will the district be notified when a client submits a general permit application and what fee will need to be collected for the permits?

A few questions arose surrounding payment to conservation districts.

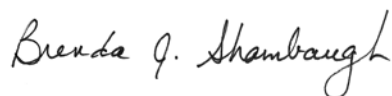
1. Will districts be reimbursed on a monthly or quarterly basis?
2. Will districts be provided with all payment information required to satisfy their annual independent audits?

A related concern is the credit card fee from permit applications and why are districts required to pay for credit card fees associated with the permit application submission. We recommend that DEP consider adding a surcharge to cover the credit card fee so districts do not lose this revenue, especially since the current program does not fully cover district costs. Another alternative would be to devise a system allowing credit card and electronic payment costs to be part of the application fee, alleviating the need for districts to accept credit card or electronic check transactions. Since districts anticipate landowners coming into their offices for assistance with filing their permits online, we also recommend the option of districts charging an additional administration fee for the processing of these permits.

Finally, districts will need direction on how Right To Know reviews should be processed for electronic submissions.

Mr. Secretary, PACD certainly appreciates your consideration of the thoughts listed above and **we request a meeting with a few districts and PACD in the near future** to discuss the proposed ePermitting procedure before the new system is implemented. We believe this meeting will be beneficial for implementing a new electronic application process that is both practical and efficient. Thank you for your consideration.

Sincerely,



Brenda J. Shambaugh
Executive Director



September 5, 2018

Ms. Brenda Shambaugh
Executive Director
Pennsylvania Association of Conservation Districts
25 North Front Street
Harrisburg, PA 17101

RE: e-permitting for Chapter 105 General Permits

Dear Ms. Shambaugh:

Thank you for your recent letter identifying the areas of concern and suggestions for the Department of Environmental Protection's (DEP's) consideration regarding the Chapter 105 General Permit e-permitting (e-permitting) system.

The following responses are being provided to address the conservation districts' concerns regarding the e-permitting system. In addition, DEP has developed a frequently asked questions (FAQs) document for the more specific questions or comments, to further assist conservation districts in the implementation of this permit processing system. The FAQ document is enclosed.

This e-permitting system has been designed to handle all aspects of the Chapter 105 General Permit (GP) process including registrations, as well as minor and major modifications. This effort does not include a process for conducting or recording inspections electronically. The projected "go-live" date for the e-permitting of Chapter 105 General Permits is September 19, 2018. As part of this effort, a selection of Chapter 105 conservation districts will be invited for testing the Chapter 105 e-permitting system prior to the "go-live" date.

On September 27, 2018, training will be offered just after the "go-live" date so that it can utilize actual Chapter 105 GP registrations received by conservation districts and DEP staff. The timing of this training will also ensure that the process will be fresh in the mind of the reviewer. DEP is also planning to conduct training through webinars that will assist both DEP and delegated conservation district staff users, as well as the regulated community, on the use of the e-permitting system. DEP looks forward to further discussions with you regarding the training provided by the Dirt and Gravel Road Program and its potential application to this e-permitting effort.

DEP understands that not everyone has immediate access of applying for Chapter 105 General Permit registrations electronically. Other venues are available for the public to obtain internet access for using the e-permitting system, such as public libraries or DEP regional offices. Conservation district offices could also play an important role if they choose to. Prospective

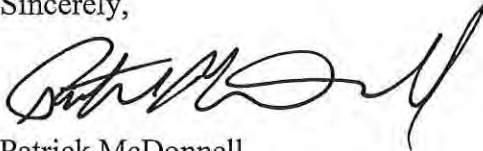
Secretary

applicants may also hire professional consultant companies, as many applicants currently utilize professionals for these services. Although there may be a minor fraction of prospective applicants that elect to conduct activities without a permit, DEP does not excuse them from complying with the Chapter 105 regulatory requirements. Overall, DEP anticipates that the regulated community, along with DEP and delegated conservation district staff, will find that the e-permitting process will improve application quality, reduce permit review timeframes, and will help us to eliminate permit backlogs.

Regarding procedural questions, DEP will provide answers during training and in the FAQs. It is important to note that the e-permitting system was developed based on the current procedures for the Chapter 105 General Permit process, including coordination with other agencies, so no procedural changes are anticipated. The e-permitting system is expected to exceed the level of service conservation districts and the regulated community experience under the current paper-based system.

If there are any additional questions or concerns, please contact Kenneth Murin, Sidney Freyermuth or Roger Adams, in DEP's Bureau of Waterways Engineering and Wetlands, by telephone at 717.787.3411.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick McDonnell', written in a cursive style.

Patrick McDonnell
Secretary

Enclosure

bcc: Sidney Freyermuth, Section Chief, Division of Wetlands, Encroachment & Training
Ken Murin, Chief, Division of Wetlands, Encroachment & Training
Roger Adams, Acting Bureau Director, BWEW
Jennifer Orr, Director, Compacts and Commissions Office, OWP
Fred Fiscus, Environmental Group Planning
Tim Schaeffer, Deputy Secretary, OWP
Ramez Ziadeh, Acting Executive Deputy Secretary, Programs
Darrin Bodner, Acting Executive Deputy Secretary, Administrative Management

CHAPTER 105 GENERAL PERMIT E-PERMITTING FREQUENTLY ASKED QUESTIONS (FAQs)

Background Questions

1. Will applicants for Chapter 105 General Permits only have the capability of filing the registration electronically, or will they be able to file a paper registration?
 - Registrations for Chapter 105 General Permits may only be filed electronically after the e-permitting system goes live on September 19, 2018. No paper registrations will be accepted after that date.
2. How will Right-to-Know reviews be processed for electronic submissions?
 - Submission of Chapter 105 permit registrations electronically through the e-permitting system does not have any effect on the review of Right-to-Know requests. The Department expects that fewer Right-to-Know requests may result, since the public has access to permit application information, correspondence, agency information and permit decision documentation.
3. Will conservation districts be reimbursed on a monthly or quarterly basis?
 - Monthly
4. Will conservation districts be provided with all payment information required to satisfy their annual independent audits?
 - The Department will establish the necessary invoicing and payment documentation that will fulfill the needs of most auditors. This documentation will be similar to other reimbursements that conservation districts currently receive.
5. Why are credit card fees associated with the permit application process being deducted from the application fees being reimbursed to the conservation districts?
 - Credit card, Telecheck, and other bank fees are normal costs associated with conducting business electronically. These fees are expected to result in minor adjustments in the registration fees that conservation districts would receive via a paper application. However, there are significant cost savings anticipated from the elimination of printing, mailing, filing, reporting, and storage needs, since all transactions and communications will be conducted and maintained electronically.
6. The Department should consider adding a surcharge or considering payment costs to be part of the application fee.
 - The Department has considered both options; however, neither could be pursued without a rulemaking change.

Procedural Questions

1. How should non-delegated Chapter 105 conservation districts handle clients who contact them for assistance?
 - a. Should they refer the client to the Department?
 - The conservation district may refer the client to the Department or refer the client to a professional consultant. The conservation district may aid applicants if they have the knowledge and experience necessary to provide such assistance.
 - b. If assistance is needed, is there a mechanism to charge fees for that assistance?
 - Fees established by conservation districts for providing assistance must be consistent with the Conservation District Law and the policies established by the State Conservation Commission.
 - c. What will be the approval procedure if a Chapter 105 general permit is part of an NPDES permit?
 - Using the Chapter 105 general electronic permit application system does not alter current procedures for coordination of permits.
 - d. How will the conservation district be notified when a client submits a general permit application, and what fees will need to be collected for the permits?

- An email notification will be provided by the e-permitting system to the appropriate conservation district. Chapter 105 registration fees should be calculated using the Chapter 105 fee calculation worksheet to determine the appropriate fee. Fees will be submitted electronically at the time of the application submission.
2. Will hard copies of the application still need to be sent to USACE for PASPGP5 coordination or will there be electronic coordination with the USACE for reporting activities?
 - An email notification will be provided to the appropriate USACE/Corps District Office. The notification will provide a link to all the information the Corps reviewer needs to determine if the permit registration requires a “reporting action” to the Corps as outlined in the PASPGP-5 Standard Operating Procedures.
 3. Will plans, PNDI receipts, etc., be able to be uploaded into the e-permitting system?
 - Yes, all application file information will be uploaded and available for viewing in the system.
 4. Will the system be able to talk with ICIS and eFACTS?
 - The ICIS system is an EPA database management tool for NPDES permitting, so it is not applicable for Chapter 105 General Permit registration processing. The system has been designed to populate data fields in the Department’s eFACTS database system. In addition, eFACTS will automatically assign permit numbers for all applications. The system will eliminate the need for Chapter 105 quarterly reporting to the Department.
 5. Printing CAD drawings is not only expensive, but most printing equipment cannot print these documents. Many districts will need to upgrade their capabilities, which will take time and money. Will the conservation districts need to keep hard copies of these documents on file?
 - The e-permitting system is designed so that all documents, including plans, will not be required to be printed. Since all documents will be electronically stored and available for future access, it will not be necessary to maintain hard copies.
 6. Will the system be able to detect entries in the required fields that will kick the proposed activity out of a specific GP and alert the applicant that they are ineligible for that specific permit?
 - Yes. e-permitting includes validation or requirement questions that will be required to be answered. When an applicant answers candidly, they cannot submit the GP registration when the proposed project, structure, or activity is ineligible for that GP coverage. The applicant will also be informed of the ineligibility.
 7. Will e-permitting be able to check things such as special drawings/site plan/location maps to make sure they are correct?
 - No. The e-permitting system will only be able to detect if a required attachment has been provided. The person conducting the review will determine the quality of the submission.
 8. When revisions are needed how will they be submitted?
 - Revisions to applications will be provided through the e-permitting system.
 9. If an applicant is completing a GP1 will the e-permitting system prevent them from submitting the permit until they have received PA Fish and Boat approval?
 - Yes. The letter from the PA Fish and Boat Commission must be uploaded for the application to be submitted.
 10. How will modifications, renewals, and inspection reporting of the permits be handled?
 - Minor and major modifications will be handled through the e-permitting system. Chapter 105 General Permits are not renewed, so this functionality is not provided in the system. Inspection reports are not part of the e-permitting system at this time but could be a future enhancement. Paper copies of inspection reports could be scanned and uploaded with the permit file information. Chapter 105 delegated conservation districts need to document site conditions only when responding to a complaint. Conservation districts do not conduct routine inspections.
 11. How will the applicant receive their permit and will the partnering agencies, the engineer, the Army Corps, the Fish and Boat and/or municipality be electronically copied?
 - The applicant will be provided an email notification with a link to the permit information. The appropriate resource agencies/municipalities will be electronically copied.

12. Will the system be able to detect entries in the required fields that will kick the proposed activity out of a specific general permit and alert the applicant that they are ineligible for that permit? Ideally the system should be able to check entries such as standard drawings/site plan/location maps to make sure they are correct.
 - The Chapter 105 General Permit e-permitting system provides for some of the typical conditions that would make activities ineligible for certain general permits such as special protection waters, threatened and endangered species, etc. The Department agrees that additional functionality to evaluate the quality of submissions would be beneficial; however, that functionality would be considered in future enhancements to the system.
13. When districts assist applicants, how will they access the system? Will there be one main login or will each person reviewing and acknowledging permits be required to have a separate login?
 - Any user (applicant or reviewer) of the system must first register as a user before accessing the system. If assisting an applicant, the district would help the person submitting the application to register. During the registration, the user creates a user name and password and obtains permission to submit applications prior to submission of an application. Once registered, the user will access the system through the internet, and login to the web-based permit application system.
14. How secure is the e-permitting process? Unfortunately, in today's world information security is always a concern. In the event of stolen identities, who would be liable?
 - The system is maintained within the Department's firewall, so the information is secure. The Department does not expect stolen identities due to the security of the system. Proposed applicants that will use the system must go through a two-tiered process of being approved as a user. Also, much of information received associated with the permit application is open for public review and will be available/accessible to the public via the e-permitting system. When the applicant provides the payment information for an application, the system utilizes a separate payment system to ensure a secure transaction. This credit card/bank information is not publicly available, and security regarding this payment information is provided by the banking institutions used by the Commonwealth in supporting this application system.
15. What will the procedure be for counties where DEP reviews the 105-general permit, but districts review the Chapter 102 permit applications? In these instances, how will districts collect Chapter 102 related fees related to Chapter 105 permits?
 - The procedures will not change because of the Chapter 105 GP e-permitting process. Conservation districts will continue to receive Chapter 102 permit paper applications. Also, Chapter 102 fee collection will not be affected.
16. Will the Chapter 105 permit issuance be delayed until the district reviews and approves the associated Erosion & Sedimentation (E&S) Plan?
 - No. The e-permitting process does not change any existing procedures.
17. In the event of an application that is technically deficient, what procedure should conservation districts use to correct the concerns?
 - The e-permitting system includes a process to identify and communicate technical deficiencies back to an applicant.
18. Will an approved Chapter 102 plan be required for all Chapter 105 approvals?
 - E&S plan approval is required for all Chapter 105 general permits to be valid, however E&S plans do not need to be approved simultaneously with the Chapter 105 authorization (except GP-11).

MEMORANDUM:

TO: PACD Regions
FROM: PACD NE Region

This summer has seen wide-spread damage and property loss due to severe storms and micro-bursts across the state. These storms have been unique in that the intensity of the storms has been more focused; pockets of destruction were more common making it more difficult to declare an entire area or watershed a disaster area. This trend also highlighted faulty planning and repairs from previous storms, as many “band-aides” were ripped off causing more damage. The NE managers have agreed that this is one of the greater threats to our waterways and could have a significant impact on municipal and state spending in the future. Band-aide fixes that were installed as temporary measures have not been replaced or upgraded, and are often viewed as solutions to the problem instead of realizing that they are only masking the symptoms.

We propose sourcing funding for a region wide educational program to highlight some of these band-aides, illustrate the before and after storm conditions (showing damages and quantifying costs), and work to propose permanent solutions to the issue. We realize that many citizens and municipal leaders may be unaware that fixes proposed in the 50’s and 60’s are actually poor solutions. Channelizing, hard-armoring, and dam installation have all been shown to be less effective and more costly than proper stormwater planning and using natural systems when possible. That is why we feel that the first step needs to be a robust and interactive educational program that could take place throughout the region, highlighting the need to work across political boundaries on a watershed scale.

Phase II would be a regional committee made up of district staff and partner agency reps to evaluate sites and watersheds and recommend solutions. This committee would operate in the best interest of the region, not just the county they work for. The highest priority projects would be identified and letters of support could be drafted for grant opportunities. This committee could also serve as a stronger voice to local legislators in addressing regional flooding issues.