



Edward J. Coar
Director

Wayne County
Planning Commission
925 Court Street
Honesdale, PA. 18431

Phone: (570) 253-5970 ext.4060 • Fax: (570) 253-5432

BOARD MEMBERS

Kuni Holbert, *Chairman*
Alfred K. Bucconear
Mark S. Davis
Richard B. Henry
Alan J. Highhouse
Daniel A. Liptak
Donald E. Olsommer
Peter R. Ridd
William F. Troop

April 2, 2013

Thomas Starosta
Dept. of Environmental Protection
Bureau of Point & Non-Point Source Management
Division of Planning & Permits
PO Box 8774
Harrisburg PA 17105-8774

RE: DEP Document # 385-2208-001 – New Sewage Regulations pertaining to On-lot sewage, nitrate protection, etc. in High Quality and Exceptional Value Watersheds

Dear Mr. Starosta,

At the Wayne County Planning Commission's April 2, 2013 meeting, the board voted to send this letter opposing DEP's Document # 385-2208-001 entitled "*Sewage Facilities Planning Module Review for On-lot Sewage Systems Proposed in High Quality and Exceptional Value Watersheds*".

We have always been good stewards of our water. Because we have been, we are now being penalized for our good stewardship. Our past efforts along with current state regulations demonstrate that all is working well and water quality is improving. It would appear to us that the commonwealth's obsession with new regulatory guidance would be better served in areas where there are continued water quality problems and a demonstrated need for more oversight.

The proposed regulatory guidance is an overreach, it lacks due process and it lacks a demonstration of need, and disproportionately punishes Wayne County for having clean water. To support this we offer the following:

- 1) The source for all this concern from DEP is found in an Environmental Hearing Board (EHB) decision involving the Pine Creek Valley Watershed Association and DEP in Berks County. For DEP to react with such new regulatory guidance is an extreme overreach. The EHB's decision was very narrow. The following show how narrow the decision was and how it would be inappropriate to stretch DEP's regulatory reach.
 - a) The decision only mentions EV watersheds. It did not include HQ watersheds.
 - b) The decision found the site to contain "...wetlands on a substantial portion of the site which are part of an EV watershed..." This was an indication that the

decision was limited to sites with substantial wetlands. Not all sites will contain substantial wetlands on them.

- c) The decision also found "...testing of the Association's expert...provided an adequate basis...to investigate..." There has been no testing in Wayne County to demonstrate similar concerns that would justify DEP's new regulatory guidance.
- 2) DEP states in the disclaimer "*The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements*". Absent the disclaimer, everything else in the guidance is clearly new requirements or regulations. By slipping the disclaimer in this document, and calling this "*guidance*", is nothing more than a deliberate attempt on the part of DEP to avoid due process required of new regulations.
- 3) DEP has admitted that the water quality in Wayne County has been improving over the last several decades. If water quality has been improving, that is an indication that current regulations are working. If current regulations are working, there is no need for additional regulations. It is unsettling that a narrow EHB case provokes individuals in DEP to create, what are in effect, new regulations with little or no independent review or oversight whatsoever. This DEP decision would broadly increase DEP's regulatory control and deters growth severely in just a few counties that happen to have so much of their non-public land area classified by DEP as special protection watersheds.
- 4) There has been no research completed that demonstrates that there is a nitrate problem in Wayne County from on-lot sewage systems. New regulations or new guidance, call it whatever you wish, should not be imposed when there has not been a demonstrated need.
- 5) Over 93% of Wayne County is classified by DEP as either High Quality or Exceptional Value Watersheds. Additionally, over 93% of those special protection watersheds in Wayne County are on private land. The new regulations will affect Wayne County disproportionately. A map of the Commonwealth (copy attached) and the location of HQ and EV streams show how in Wayne County these regulations affect predominately private property owners whereas in other parts of Pennsylvania the regulations more generally affect publically owned lands. This demonstrates that the new regulations have a greater taking of private property rights in Wayne County than in other counties of Pennsylvania.
- 6) The new regulatory guidance is not cost effective. Currently, the cost of an on-lot sewage system is approximately \$15,000. The new regulatory guidance will create unknown increased costs for larger lot sizes and riparian and forest riparian buffers. With the addition of just a permeable reactive barrier (DEP estimate of \$5,000 to \$15,000) and/or a denitrifying on-lot technology (DEP estimate \$3,500 to \$7,000) (manufacture's estimate \$9,500) it is obvious the new regulatory guidance will make home construction cost prohibitive to many. Is the goal of the DEP to make development so cost prohibitive that it discourages or, in many cases, would completely eliminate any prospects of economic development?

- 7) Heretofore, the permitting process was based on soil conditions and how capable the soils at the proposed site of the sewage system were in treating effluent. Under the new regulations, or guidance, the main criteria in the permitting process is a classification of the watershed as either HQ or EV. A particular type of soil is not going to treat sewage any differently whether or not it is found in one of these special protection watersheds. A sewage system in a Wellsboro soil, a Morris soil, or a Lordstown soil will not perform any better, or any worse, in a watershed classified as a CWF (*Cold Water Fishes*), WWF (*Warm Water Fishes*), MF (*Migratory Fishes*), HQ (*High Quality*), or EV (*Exceptional Value Waters*). New regulatory guidance based on watershed classification will do nothing in regards to how well the soil at the site will treat sewage. It's the soil type, not the watershed classification.

The new regulatory guidance unjustly targets northeastern Pennsylvania and Wayne County in particular. They are not based on science, but rather on an environmental label assigned to a watershed where the water is of the highest quality and current regulations obviously are working. Therefore, we request the proposed new regulatory guidance be abandoned. Any regulations applied to sewage systems should not be fabricated on such hollow reasoning as being based on watershed classification or a narrowly constructed EHB decision.

Sincerely,



Kuni Holbert, Chairman
Wayne County Planning Commission

enclosure

cc: Governor Tom Corbett
Senator Lisa Baker
Representative Sandra Major
Representative Michael Peifer
Representative Frank Farina