

Borough of Prompton

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April 11, 2013

Thomas Starosta
Department of Environmental Protection
Bureau of Point and Non-Point Source Management
Division of Planning and Permits
P. O. Box 8774
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RE: Document Number 385-2208-001

Dear Mr. Starosta:

We officially oppose the draft policy guidance regarding onlot sewage systems in HQ/EV watersheds. This policy would strip landowner rights for questionable environmental benefits. We strongly urge you to abandon this policy and continue with the existing procedures that have proven more than adequate.

This policy is clearly an overreaction to the decision of the Environmental Hearing Board (EHB) in *Pine Creek Valley Watershed Assoc. v. DEP*, Docket No. 2009-168-L (November 10, 2011). For a number of reasons, that case is a poor justification for this policy.

In that case, the EHB required the landowners to provide proof that their development would not affect the water quality in any way. The problem is that no such proof exists. There exists no meaningful consensus in the scientific community on the quantitative effectiveness of ANY non-point source control Best Management Practices (BMP).

The only real consensus in the scientific community is that **nonpoint source control systems are better than point source discharge systems**. Implementing costly and burdensome restrictions on nonpoint source control systems (such as septic tanks) is the wrong approach. It will almost certainly lead to the unintended consequence of proliferation of point source discharge systems (such as sewage authorities). The net effect of this policy could very well be a reduction in water quality.

Another reason the *Pine Creek* case should not be used as a basis for policy changes is that the decision was not based on the relative merits of the science involved. Both sides presented scientific evidence to support their positions. The judges freely admitted they were not qualified to evaluate the science on its face. Rather, their decision was based almost entirely on the testimony and credibility of the expert witnesses. In fact, the case would have had a different outcome if the Department's and landowners' experts had offered an opinion that was more "coherent, cohesive, objective, persuasive, and well grounded in the relevant facts of the case."

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The *Pine Creek* case did address some of the BMPs proposed in your guidance. Riparian buffers and riparian forest buffers comprise a substantial portion of your Total Protection Factor decision model. However, the EHB was less than convinced of the science that would back up such claims. On page 16 of the board's decision they wrote,

"There also is no evidence of record to credibly support Sigouin's assertion that denominating a non-wetland area as 'riparian buffer' magically renders it a denitrification zone. We very recently and in great detail upheld the Department's conclusion that very little denitrification occurs in non-wetland environments."

Your Total Protection Factor decision model gives the impression that de-nitrification can be modeled in a meaningful, one-size-fits-all way. This is patently false and utterly ridiculous. The EHB actually chides your Department for this approach on page 38 of the board's decision stating,

"One of the major problems with the Department's case is its near total reliance on unproven modeling in lieu of field study."

DEP has limited authority for regulation of nonpoint source control systems. The only explicit authority comes from PA Code §93.4c.(b)(2),

"Nonpoint source control. The Department will assure that cost-effective and reasonable best management practices for nonpoint source control are achieved."

To meet that standard the BMPs must be both reasonable and cost-effective. We have shown already that the BMPs are of dubious value and hence, unreasonable. The BMPs are also not cost-effective. A landowner with a 2.5 acre lot with a dry creek bed would need to spend \$8,500 to \$22,000 in additional technology to meet the department's arbitrary protection factor. While \$22,000 may not seem like much money to those in the state capital, it will have an immediate and profound impact on the economy in areas like ours.

We recognize the inherent difficulty in measuring the effectiveness of control measures for nonpoint discharges. It would be nice if such a complex problem could be boiled down to a simple equation, but that is not realistic. The only meaningful and reasonable approach is to evaluate each permit application on its own merits.

Please abandon this misguided policy. It will do more harm than good for both Prompton Borough and the Commonwealth of Pennsylvania.

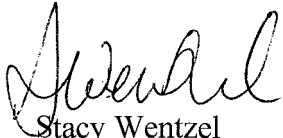
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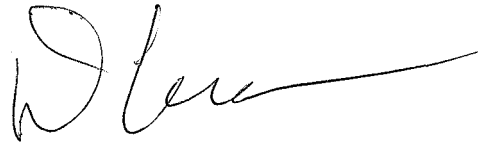
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Respectfully submitted,



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Mayor
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CC:

Governor Tom Corbett

Senator Lisa Baker

Representative Mike Peifer