

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

PENN TOWNSHIP : Clean Streams Law
Butler County : Sewage Facilities Act

ORDER

NOW, this 9th day of August, 2000, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") has determined the following FINDINGS and enters the following ORDER:

FINDINGS

- A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. (1965) 1535, *as amended*, 35 P.S. §§750.1-750.20a ("Sewage Facilities Act"), the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§691.1-691.1001 ("Clean Streams Law"), Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §510-17 ("Administrative Code"), and the regulations promulgated thereunder (hereinafter "Regulations").
- B. Penn Township ("Penn") is a municipality located in Butler County, organized and existing under the laws of the Commonwealth, which maintains a mailing, address of 157 East Airport Road, Butler, PA 16002.
- C. Under Section 5 of the Sewage Facilities Act, 35 P.S. §750.5, every municipality must maintain an Official Plan which, among, other things, provides for the safe and sanitary treatment of sewage now and in the future.
- D. Sewage disposal in the northwest portion of Penn is accomplished primarily by "individual on lot sewage systems" as defined in Section 7 1.1 of the Regulations, 25 Pa. Code §71.1.

E. On April 6, 1971, Penn adopted an Official Plan ("1971 Official Plan"). The 1971 Official Plan was contained within a report prepared by Butler County entitled "Updating the Butler County Master Plan and the County Sewage Disposal and Water Supply Plan." The 1971 Official Plan addressed existing and future sewage needs in the northwest portion of Penn, as delineated in Exhibit A, which is attached hereto and incorporated by reference.

F. On March 5, 1974, Penn adopted an "Update Revision of the 1971 Official Plan", as defined in Section 2 of the Sewage Facilities Act, 35 P.S. §750.2, entitled "Water Quality Management Plan for Central Butler County -- Interim Plan" ("1974 Update"). The 1974 Update also addressed sewage needs in the northwest portion of Penn, as delineated in Exhibit B, which is attached hereto and incorporated by reference.

G. Penn attempted to implement the 1974 Update by designing a sewerage system to serve the northwest portion of the township and obtaining a Water Quality Management ("WQM") Permit from the Department on January 26, 1977. The proposed area to be seweraged is delineated in Exhibit C, which is attached hereto and incorporated by reference.

H. On or about February 22, 1977, a citizen's advocate group appealed the issuance of WQM Permit No. 107540 1. In settlement of this appeal, the Department, Penn, and the citizen's advocate group entered into a Consent Order and Agreement which required Penn to assess its sewage needs before proceeding with the construction of the sewerage system.

I. As required by the Consent Order and Agreement in 1973, Penn authorized a detailed assessment of on lot sewage disposal needs in the northwest portion of the township ("1978 Needs Survey"). The 1978 Needs Survey results are contained in a June, 1978 report entitled, "Penn Township Sewerage Project -- Documentation of Sewerage Needs." The report indicated that the rate of malfunctioning on lot sewage systems in the study area is approximately 33%. This report also indicated that due to these malfunctions, sewage was discharged to the surface of the ground in

violation of Section 14 of the Sewage Facilities Act, 35 P.S. §750.14, or into "waters of the Commonwealth" as defined in Section 1 of the Clean Streams Law, 35 P.S. §69 1. 1.

J. In the absence of guaranteed funding, Penn refused to proceed with further planning to address its sewage disposal needs.

K. In 1989, local residents proposed that Penn again address the sewage problems in the northwest portion of the Township, and the Penn Township Sewer Study Committee ("Committee") was established with Penn's endorsement.

L. In 1992, the Committee authorized a new survey of on lot sewage disposal needs. The report that resulted, dated November/December 1992, shows a malfunction rate of 35% for on lot sewage systems in the Three Degree Road area. This area is delineated in the map attached hereto as Exhibit D, which is incorporated by reference. Lesser malfunction rates were obtained for the remaining portions of the study area. This report also indicated that due to these malfunctions, sewage was discharged to the surface of the ground in violation of Section 14 of the Sewage Facilities Act, 35 P.S. §750.14, or into "waters of the Commonwealth" as defined in Section 1 of the Clean Streams Law, 35 P. S. §69 1. 1.

M. On November 1, 1994, the Committee produced another Update Revision of the Official Plan (" 1994 Update"). The 1994 Update proposed construction of a vacuum sewer systems to serve the Three Degree Road area and a sewage treatment plant to be constructed at McBride near the former site of the Penn Township Municipal Building (See Exhibit D), The 1994 Update contained a schedule by which the remaining areas of sewage disposal need in the northwest portion of the Township would be addressed on a phased basis.

N. Penn adopted the 1994 Update on November 1, 1994, and the Department approved the 1994 Update on January 24, 1995.

O. The 1994 Update contains an implementation, schedule by which construction of the Three Degree Road sewer system and McBride treatment plant would be completed by February 28,

1997. An updated revision of the Official Plan for the remaining study areas was to be submitted to the Department by September 1, 1993.

P. Subsequent to the Department's approval of the 1994 Update, Penn hired a consultant to reevaluate the 1994 Update's recommendations.

Q. From 1994 to the present, Penn has evaluated several alternative methods of addressing the sewage disposal needs of the northwest portion of Penn. The new alternatives consist mainly of the division of the sewage disposal needs area into smaller service areas. However, none of the alternatives have been adopted as an update revision to Penn's Official Plan.

R. Section 5 of the Sewage Facilities Act, 35 P.S. §750.5, requires that every Official Plan provide for adequate sewage treatment facilities to prevent the discharge of untreated or inadequately treated sewage or other waste into any waters.

S. Section 7 1.1 1 of the Regulations, 25 Pa. Code §7 1.1 1, requires municipalities to develop and implement comprehensive official plans which provide for existing and future sewage disposal needs.

T. Section 71.12 of the Regulations, 25 Pa. Code §71.12, requires municipalities to review and revise their official plans whenever the municipality or the Department determines that the plan is inadequate to meet the existing or future needs of the municipality or portion thereof.

U. Section 201 of the Clean Streams Law, 35 P.S. §691.20 1, requires that no person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, any sewage into any waters of the Commonwealth unless authorized.

V. Section 202 of the Clean Streams Law, 35 P. S. §691.202, requires that no municipality shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of the Commonwealth, without a permit from the Department.

W. Section 14 of the Sewage Facilities Act, 35 P.S. §750.14, states that the discharge of untreated or partially treated sewage to the surface of the ground or into waters of the Commonwealth constitutes a nuisance.

X. Because Penn has not yet Implemented the 1994 Update and has also failed to adopt an alternative plan, on lot sewage disposal problems continue to be unabated, allowing the discharge of sewage to the surface of the ground and waters of the Commonwealth.

Y. Penn's failure to implement an official plan which provides for adequate sewage treatment facilities as described above constitutes a violation of Section 5(d)(3) of the Sewage Facilities Act, 35 P.S. §750.5(d)(3), and Section 7 1.1 1 of the Regulations, 25 Pa. Code §7 1.1 1.

Z. The discharge of inadequately treated and untreated sewage as described in Paragraphs I, L and X above, constitute violations of Section 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§691.201, 691.202, and 691.401, statutory nuisances pursuant to Section 601 of the Clean Streams Law, 35 P.S. §691.601, and Section 14 of the Sewage Facilities Act, 35 P.S. §750.14, unlawful conduct pursuant to Section 601 of the Clean Streams Law, 35 P. S. §691.61 1, and subject Penn to civil penalty liability pursuant to Section 605 of the Clean Streams Law, 35 P.S. §691.605, and Section 13(a) of the Sewage Facilities Act, 35 P.S. §750.13(a).

AA. The violations described in Paragraph Y constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P. S. §691.611, and statutory nuisances under Section 601 of the Clean Streams Law, 35 P. S. §691.601, and Section 14 of the Sewage Facilities Act, 35 P. S. §750.14, and subject the Township to civil penalty liability under Section 605 of the Clean Streams Law, 35 P. S. §691.605, and Section 13(a) of the Sewage Facilities Act, 35 P. S. §750. 13(a).

Order

NOW, TFEEREFOPE, pursuant to Section 5, 203, and 610 of the Clean Streams Law, 35 P. S. § 691,5, 691.203, and 691.610, Section 5 and 10 of the Sewage Facilities Act, 35 P. S. §§750.5 and 750.10; and Section 1917-A of the Administrative Code, the Department hereby ORDERS:

1. Penn shall prepare and submit to the Department an Update Revision of the Official Plan for the northwest portion of the Township, at a minimum, as shown in the map attached hereto as Exhibit E, and incorporated by reference, in accordance with Section 71.21 of the Regulations, 25 Pa. Code §71.21. The Update Revision shall evaluate public sewerage facilities alternatives, on-lot sewage management alternatives as provided in 25 Pa. Code §§71.71-71.75, or a combination of public sewers and on lot sewage management alternatives. Specifically, Penn shall satisfy the following:

a. By October 31, 2000, Penn shall submit an administratively and technically complete Task Activity Report ("TAR") consistent with the requirements of 25 Pa. Code §71.21 for review and approval by the Department.

b. By October 31, 2001, Penn shall submit a full and complete Official Plan Update Revision based on the Department approved TAR as referenced in Paragraph 1 (a) above and consistent with the requirements of 25 Pa. Code §71.31. The Official Plan Update Revision shall identify the specific technical and administrative alternative(s) that Penn will implement to address the existing and future sewage disposal needs of Penn Township as delineated in Exhibit E, and all technical, administrative, financial, and legal issues necessary to implement the Official Plan Update Revision.

2. The Official Plan Update Revision shall contain a schedule by which implementation of the Update Revision shall be immediately upon Departmental approval. Full implementation shall be completed no later than four years after the date of this Order.

3. The following restrictions on development, contained in Sections 71.32(f) and 72.23 of the Regulations, 25 Pa. Code §§71.32(f) and 72.23, are in effect for the area delineated in Exhibit E and until the Department approves the Update Revision referenced above:

a. Limitations on on lot permit issuance by Penn Township; and

b. Prohibition on permit issuances under Section 5 of the Clean Streams Law, 35 P.S. §691.5, by the Department.

4. Following approval of the Official Plan Update Revision by the Department, Penn shall immediately begin implementation of the Official Plan Update Revision. Penn shall complete the implementation of the revised Official Plan Update Revision in accordance with the implementation schedule contained in the Update Revision.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 3457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION..

David E. Milhous, P.E.
Regional Manager
Water Management