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August 22, 2013

NOTICE TO:

Hon. Gina McCarthy, Administrator, U.S. EPA;
Shawn M. Garvin, Regional Administrator, U.S. EPA, Region III;
Hon. Eric H. Holder, Jr., Attorney General of the United States;
Hon. E. Christopher Abruzzo, Acting Secretary, Pennsylvania Department of
Environmental Protection;
Kelly Heffner, Deputy Secretary for Water Management, Pennsylvania Department of
Environmental Protection; and,
Hon. Kathleen Kane, Attorney General of Pennsylvania.

RE: Sixty (60) Day Notice of Intent to file a civil action pursuant to the Citizen Suit
provisions of the Federal Water Pollution Control Act (Clean Water Act),
33 U.S.C. 1365 (a)(2) against the Administrator of the U.S. EPA

Dear Sirs:

On behalf of the Pine Creek Valley Water Association., the Raymond Proffitt Foundation and the Delaware Riverkeeper Network, I am serving you with a Sixty (60) Day Notice of Intent to file a civil action pursuant to the Citizen Suit provision of the Federal Water Pollution Control Act, 33 U.S.C. 1365 (a)(2), for failure to perform non-discretionary acts or duties under 33 U.S.C. 1313, and its Regulations.

Pennsylvania has adopted state standards that will allow degradation of its waterways in clear violation of Pennsylvania's EPA approved antidegradation policy found at 25 Pa. Code 93.4a. On July 2, 2013, the governor of Pennsylvania signed Act 41 into law and it goes into effect immediately. This new law amends the Sewage Facilities Act, 35 P.S. 750.1, et seq. and, in essence, says that on-lot sewage systems that are in compliance with the Sewage Facilities Act and its regulations automatically satisfy the state's antidegradation regulations. See Exhibit A for a complete copy of the Act. This amendment contradicts existing language in the Sewage Facilities regulations which require that on-lot septic plan revisions be reviewed by the Department to insure they are consistent with antidegradation regulations. 25 Pa. Code 71.21 (a)(5)(i)(E). It was passed by the Legislature, without any opportunity for public participation. Findings from the cases listed below demonstrate that, at a minimum, nitrates from on-lot septic systems have the ability to degrade the water quality of exceptional value streams.

This new law came about, and is in opposition to, findings by the state Environmental Hearing Board in a case involving the adverse effect of nitrates from on-lot septic systems on an adjacent Exceptional Value (Tier III) watershed in District Township, Pennsylvania. One of the

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findings from that case is the following: “[T]he method of sewage treatment septic systems [on-lot] that was selected pursuant to the alternatives analysis required by 25 Pa. Code 71.52 at the Fredericksville site is not consistent with the antidegradation requirements of 25 Pa. Code Chapter 93.” *Pine Creek Valley Watershed Assn. v. DEP*, EHB Docket No. 2009-168-L (Adjudication issued November 10, 2011) 2011 WL 5825826, slip op. at 40. An earlier EHB case held that DEP agreed that it was required to review all on-lot approvals pursuant to an antidegradation analysis. See, *Lipton, et al. v. DEP*, 2008 EHB 223, 2008 WL 2260029. This case also said that the antidegradation laws include protection from non-point sources. *Lipton*, 2008 EHB at 229-33.

Federal Regulations (40 CFR 131.6) promulgated pursuant to 33 U.S.C. 1313, require all states to include an antidegradation policy consistent with 40 CFR 131.12 in the water quality standards submitted to the EPA for review. Additionally, 33 U.S.C. 1313 (c)(2)(A) and 40 CFR 131.20 (c) require the State to submit “any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard.” 40 CFR 131.5 requires the EPA to disapprove the state water quality standards and promulgate federal standards if state standards have not adopted water uses that are consistent with the requirements of the Clean Water Act; do not protect the designated water uses; have not adopted criteria that protect those water uses; are not based upon appropriate technical and scientific data and analyses; and, do not meet the minimum water quality standards consistent with 40 CFR 131.6.

EPA must review Act 41 because this law bars the use of parts of the EPA approved antidegradation policy for Pennsylvania. The enforcement of this law will prevent the Pennsylvania DEP from protecting its high quality and exceptional value streams from nitrate and other sewage contamination generated by on-lot sewage systems. Such action nullifies parts of the EPA approved antidegradation policy as if Pennsylvania had directly removed such protection from its antidegradation regulations. Review is mandatory regardless of formal submission.

The EPA also is in violation of the federal Administrative Procedure Act if it fails to disapprove Act 41, since it is required by law to do so.

RELIEF REQUESTED

The below named parties give the EPA 60 days from receipt of this notice to do the following:

1. Review Act 41 for compliance with Pennsylvania’s EPA approved antidegradation policy;
2. Disapprove Act 41 because it is not in compliance with Pennsylvania’s EPA approved

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antidegradation policy; and,

3. Promulgate new standards for Pennsylvania that specifically override Act 41 and declare that said Act is not enforceable.

PARTIES GIVING NOTICE

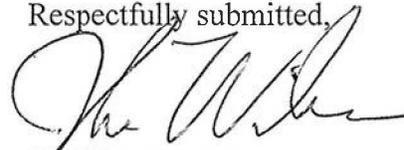
1. Pine Creek Valley Watershed Association, c/o Ingrid Morning, 220 Long Lane, Oley PA 19547 (610) 987-6582;

2. Raymond Proffitt Foundation, c/o Joseph Turner, P.O. Box 723, Langhorne, PA 19047-0723 (215) 945-1329; and,

3. Delaware Riverkeeper Network, c/o Maya van Rossum, the Delaware Riverkeeper, 925 Canal Street, Suite 3701, Bristol, PA 19007 (215) 369-1188. (represented by Nick Patton, Esq.)

All communications should be directed to John Wilmer, Esq., 21 Paxon Hollow Road, Media, PA 19063 or at (610) 565-2736, or at jwilmer@ix.netcom.com.

Respectfully submitted,



JOHN WILMER

Attorney for the Pine Creek Valley Water Assn., and the Raymond Proffitt Foundation

cc: Christopher Day, Esq. U.S. EPA, Region III

EXHIBIT A

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1325 Session of
2013

INTRODUCED BY MALONEY, PICKETT, MAJOR, PEIFER, MACKENZIE, MOUL,
R. BROWN, BAKER, EVERETT, HEFFLEY, CAUSER, KNOWLES, MILLARD
AND SCAVELLO, MAY 6, 2013

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 6, 2013

AN ACT

1 Amending the act of January 24, 1966 (1965 P.L.1535, No.537),
2 entitled, as amended, "An act providing for the planning and
3 regulation of community sewage systems and individual sewage
4 systems; requiring municipalities to submit plans for systems
5 in their jurisdiction; authorizing grants; requiring permits
6 for persons installing such systems; requiring disclosure
7 statements in certain land sale contracts; authorizing the
8 Department of Environmental Resources to adopt and administer
9 rules, regulations, standards and procedures; creating an
10 advisory committee; providing remedies and prescribing
11 penalties," further providing for definitions, for official
12 plans and for permits.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 2 of the act of January 24, 1966 (1965
16 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities
17 Act, is amended by adding definitions to read:

18 Section 2. Definitions.--As used in this act:

19 * * *

20 "Community on-lot sewage system" means a system of piping,
21 tanks or other facilities serving two or more lots and
22 collecting, treating and disposing of sewage into a soil

1 absorption area or retaining tank located on one or more of the
2 lots or at another site.

3 * * *

4 "Individual on-lot sewage system" means an individual sewage
5 system which uses a system of piping, tanks or other facilities
6 for collecting, treating and disposing of sewage into a soil
7 absorption area or spray field or by retention in a retaining
8 tank.

9 * * *

10 Section 2. Section 5(e) of the act is amended by adding a
11 paragraph to read:

12 Section 5. Official Plans.--* * *

13 (e) * * *

14 (4) For official plans and official plan revisions for
15 individual on-lot sewage systems and community on-lot sewage
16 systems, the use of such systems when designed and approved in
17 accordance with the requirements of this act and the regulations
18 promulgated under this act satisfies the antidegradation
19 requirements of the act of June 22, 1937 (P.L.1987, No.394),
20 known as "The Clean Streams Law," and the regulations
21 promulgated under that act.

22 * * *

23 Section 3. Section 7 of the act is amended by adding a
24 subsection to read:

25 Section 7. Permits.--* * *

26 (a.3) For permits for individual on-lot sewage systems and
27 community on-lot sewage systems, the use of such systems when
28 designed and approved in accordance with the requirements of
29 this act and the regulations promulgated under this act
30 satisfies the antidegradation requirements of the act of June

1 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law,"
2 and the regulations promulgated under that act.
3 Section 4. This act shall take effect immediately.
