



**Home Builders Association**  
of Chester & Delaware Counties  
1502 McDaniel Drive • West Chester, PA 19380  
610-692-7733 • FAX: 610-692-974 • www.builderpa.com

## **MEMORANDUM**

**To:** Legislative Action Committee

**From:** Mark S. Mitman

**Date:** April 3, 2008

**Subj:** Pickering Creek Upgrade Petition

### Situation

In January 2005, Green Valleys Association submitted a petition to the Commonwealth of Pennsylvania Environmental Quality Board to upgrade the Pickering Creek Watershed and associated tributaries in Chester County from their existing designation of High Quality, Trout Stocking Fisheries to a new designation of Exceptional Value.

In April 2005, the EQB accepted the petition for further evaluation. The PA Department of Environmental Protection has been subsequently assessing the watershed and is evaluating data in connection with the petition. DEP is nearing the release of its draft report and recommendations to the EQB.

### Discussion & Impact

Because the watershed is currently designated as HQ, almost all projects and activities in the watershed have already been undergoing more rigorous permit reviews and meeting more stringent requirements. Consequently, upgrading from HQ to EV will not impose nearly as dramatic new requirements on an applicant as changing from a non-special protection to a special protection watershed would.

Agencies will continue to require individual versus general NPDES permits and require the incorporation of special protection E&S BMPs. A re-designation will not impact existing municipal MS4 requirements nor will it have any impact on any existing sewage facilities.

The essential difference between the protections afforded to HQ and EV waters are (1) a reduction in water quality is permitted in HQ waters if there is a social or economic

MORE...



**Home Builders Association**  
of Chester & Delaware Counties  
1502 McDaniel Drive • West Chester, PA 19380  
610-692-7733 • FAX: 610-692-974 • www.builderpa.com

PAGE 2

justification, and (2) EV waters and some of their associated wetlands receive additional protections from disturbance & encroachment. The water quality of HQ waters must be maintained, with one exception, but the quality of EV waters must be maintained and protected, without qualification.

Such a regulatory change will undoubtedly restrict the land development community's ability to function in many areas. They include:

**Storm water management:** The "social or economic justification" exemption to the anti-degradation review for storm water management will be eliminated. With respect to a proposed discharge to an EV water, if no viable non-discharge alternatives exist and if pollution prevention technologies will not maintain and protect the existing quality of receiving waters, DEP must deny the requested permit or approval.

**Wetlands:** Proposed encroachments into wetlands located in the floodplain will be subject to more stringent requirements and possible new permitting requirements. DEP will not issue a permit for encroachment to an EV water unless the applicant demonstrates that the project will not have an adverse impact on public natural resources.

**Waste water:** While sewage facilities can continue to operate under current conditions and renew their permits without incurring new requirements, if a system is expanded or increases its discharges, it will be subject to more stringent requirements.

### Support/Opposition to Petition

Currently there are 108 co-petitioners requesting an upgrade to EV status. Led by Green Valleys Association, they include, in part, many environmental organizations, local & county government bodies, individual citizens and the Chester County state legislative delegation.

Interestingly, there were three municipalities initially opposed to the re-designation. Those municipalities included: West Pikeland, Uwchlan & Upper Uwchlan. Apparently, they have secured legal representation for their position.

If West Pikeland's issues were any indicator, municipal concerns focused on (perceived) new regulatory requirements impacting swimming in the stream, bridge construction, failing septic systems, and possible wastewater treatment facilities construction.

MORE...



**Home Builders Association**  
of Chester & Delaware Counties  
1502 McDaniel Drive • West Chester, PA 19380  
610-692-7733 • FAX: 610-692-974 • www.builderpa.com

PAGE 3

However, following election of a new board of supervisors, West Pikeland has since reversed itself and is now in support of the petition.

### Research Studies Conducted

Chapter 93 regulations define an EV water as a surface water that meets one or more of several conditions set forth in the regulations. The determining condition for Pickering's proposed upgrade rests on whether it has adequate number and a good diversity of benthic macro invertebrates as compared to a reference stream in the same river basin.

DEP has completed its sampling and is evaluating that data in connection with the petition. DEP used the Rapid Bio-assessment Protocol, which essentially is a series of grab samples along the stream within a confined period. Their report is not yet available. However, it appears that their testing may not justify an upgrade to EV status.

Complaints against the study focus on the narrow test window at a time of year not conducive to sampling for macro invertebrates.

Petitioners have conducted their own studies to justify the upgrade. Notably, the Stroud Water Research Center used the Macro-Invertebrate Aggregated Index for Streams methodology to assess the stream. The study examined 19 sites along the stream on an annual basis over an eleven-year period. Needless to say, their study supports the upgrade. In fact, Stroud maintains that its data indicates that not only should Pickering be EV, but that it is actually scored better than several local streams (French Creek) already designated EV.

A study conducted by The PA Western Conservancy and a report issued by the Schuylkill Action Network also rank the Pickering Creek as high priority for protection.

### Stream Re-designation Process

Chapter 93 regulations contain procedures whereby citizens of Pennsylvania may petition for re-designation of a stream (or stream segment) to HQ or EV.

DEP conducts an assessment of the water body and accepts any available technical data.

MORE...



**Home Builders Association**  
of Chester & Delaware Counties  
1502 McDaniel Drive • West Chester, PA 19380  
610-692-7733 • FAX: 610-692-974 • [www.builderpa.com](http://www.builderpa.com)

PAGE 4

DEP develops a draft stream evaluation report based on its assessment of the stream and any other data it may have received. The report includes a recommendation on re-designation.

Any recommendations to re-designate the water body are forwarded to the EQB in the form of proposed rule making. If adopted by the EQB, the proposed rule making is published in the Pennsylvania Bulletin with a public comment period followed by final rule making procedures (IRRC reviews, etc) and ultimate re-designation of the water body.

#### Possible Course of Action for HBA

- (1) Conduct and submit additional testing results to DEP supporting their data that the stream does not meet threshold requirement warranting an upgrade.
- (2) Coordinate with the (two? remaining) municipalities opposing the petition to upgrade including possible legal activities.
- (3) If DEP recommends EV re-designation, offer comments during the public comment phase outlining the economic implications to the home building community.

###