



**LEAGUE OF WOMEN VOTERS®  
OF PENNSYLVANIA**

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**Public Comment  
League of Women Voters of Pennsylvania  
To the  
Citizens Advisory Council  
Of the  
Department of Environmental Protection  
February 18, 2014**

Good morning. I am Bonita Hoke, Executive Director of the League of Women Voters of Pennsylvania for whom I am speaking. Like many of you at this table, members of the League have long been concerned about restoring and protecting the waters of our Commonwealth. We thus would like to speak about the Chesapeake Bay Watershed Agreement and the on-lot sewage disposal system planning,

The Chesapeake Bay Program is a partnership that needs to be upheld along with the science and restoration efforts that support it. With the Susquehanna River providing half of the fresh water to the Bay, we encourage the DEP to do all within its power to not only restore its waters but also protect its exceptional value and high quality streams. The science behind the Clean Streams Law is not in dispute. However, the League questions the lack of oversight provided by the Department to the Susquehanna River Basin Commission (SRBC) for withdrawal permits from our special protection waters. For example, the March 6<sup>th</sup> Business Meeting agenda includes the withdrawal of water from exceptional value Lycoming Creek.<sup>1</sup> Such approval may be granted without regard to the potential degradation or cumulative impact of other withdrawals from the same creek. Cessation of withdrawals and limits during drought conditions are the minimum provided to all streams and may not be enough to prevent degradation in Special Protection waters or protect the Bay downstream. Six million people depend on the Susquehanna for drinking water and the millions who depend economically on the health of Chesapeake Bay.

In addition to withdrawals, the League is concerned with what is being released into the watershed from a variety of industrial and agricultural sources. Others have come before this group to share their concerns about the health of the Susquehanna. We are aware that chemicals, such as crude MCHM that leaked into the waters of West Virginia, are also used in Pennsylvania. However, MCHM is only one of the 64,000 chemicals that predate the 1976 Toxic Substances Control Act

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<sup>1</sup> See <http://www.srbc.net/pubinfo/projectapplications.htm>

(TSCA) with no requirements to prove whether or not they are safe.<sup>2</sup> Without full disclosure of chemicals and their safety provided by agricultural and industrial enterprises within our Commonwealth, the Susquehanna Basin is at increasing risk. We encourage this council to support greater protection from toxic contamination for the sake of public health and the environment in concert with the SRBC.

On-lot sewage disposal sounds like a great idea. In fact, there is an event later this week in Philadelphia entitled *Constructed Wetlands for On-site Wastewater Treatment*.<sup>3</sup> However, the devil is in the details, and that highly important detail is nitrogen, a pollutant increasingly found in our waters of Pennsylvania and throughout the nation.<sup>4</sup> Nitrate-nitrogen is not removed by conventional on-lot septic systems, but is passed along virtually unchanged to groundwater and surface water. Once in a stream, nitrates are not significantly removed and thus wind up in our tidal estuaries. In fact, the United States Environmental Protection Agency (USEPA) has concluded that conventional on-lot systems are not capable of protecting the Chesapeake Bay from nitrates that lead to non-compliance with water quality goals.<sup>5</sup> Nitrates in the Delaware Bay are also of concern.<sup>6</sup>

With the passage of Act 41 of 2013 that amended the Sewage Facilities Act (Act 537 of 1966) the DEP has reduced its protection to our high quality and exceptional value waters. It supersedes the review of on-lot residential sewage systems in Special Protection waters under the Clean Streams Law.<sup>7</sup> In fact, DEP has abandoned its proposed draft technical guidance for on-lot systems in these watersheds.<sup>8</sup> This is particularly problematic since, prior to Act 41 of 2013, the Department's repeated failure to review conventional septic systems in a Special Protection watershed was found to be unlawful.<sup>9</sup> Given what Dennis Whitaker, DEP Chief Counsel, shared last month at the CAC meeting, provisions of Act 41 may also be examined for its constitutionality.<sup>10</sup> Further, Act 41 further appears to interfere with the State's ability to comply with a court order to prevent

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<sup>2</sup> See <http://thinkprogress.org/climate/2014/02/09/3196981/chemical-spill-timeline/>

<sup>3</sup> See <http://www.awra-pmas.memberlodge.org/>

<sup>4</sup> US EPA (Environmental Protection Agency). 2013. *National rivers and streams assessment 2008-2009: a collaborative survey* [draft]. Office of Wetlands, Oceans, and Watersheds, Office of Research and Development. Washington DC. EPA/841/D-13/001. 124 p  
Carlisle, D.M., M.R. Meador, T.M. Short, C.M. Tate, M.E. Gurtz, W.L. Bryant, J.A. Falcone, and M.D. Woodside. 2013. *The quality of our nation's waters—ecological health in the nation's streams, 1993-2005*. U.S. Geological Survey Circular 1391. 120 p.

<sup>5</sup> US EPA. 2013. *A model program for onsite management in the Chesapeake Bay watershed* [final technical assistance manual, June]. Office of Wastewater Management. N.P. 100 p.

<sup>6</sup> Kreeger, D., B. Tudor, J. Sharp, S. S. Kilham, D. Soeder, M. Maxwell-Doyle, J. Kraeuter, D. Frizzera, J. Hameedi, and C. Collier. 2006. *White paper on the status and needs of science in the Delaware Estuary*. Report #06-01. Partnership of the Delaware Estuary. Wilmington DE. 72 p.

<sup>7</sup> Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1 - 750.20) and Clean Streams Law (35 P.S. §§ 691.1 - 691.1001).

<sup>8</sup> [http://files.dep.state.pa.us/PublicParticipation/Citizens%20Advisory%20Council/CACPortalFiles/Meetings/2013\\_07/July%202013%20CAC%20report.pdf](http://files.dep.state.pa.us/PublicParticipation/Citizens%20Advisory%20Council/CACPortalFiles/Meetings/2013_07/July%202013%20CAC%20report.pdf)

<sup>9</sup> *Pine Creek Valley Watershed Association, Inc., versus Commonwealth of Pennsylvania, Department of Environmental Protection; District Township Supervisors, Permittee; Jeffrey Lipton, Louise Moyer, Brian Moyer, Jacqueline Moyer, Richard Hobbs, Douglas Litchert, and Danielle Litchert, Intervenor*. 2011. EHB Docket No. 2009-168-L. Adjudication issued 10 November. 42 p.

<sup>10</sup> *Robinson Township et al. versus Commonwealth of Pennsylvania et al.*, 19 December 2013

degradation of our best streams under provisions of the federal Clean Water Act.<sup>11</sup>

While restoration is important, the League urges the Department to be proactive in protecting our waters. Regulations and/or incentives must be put into place to encourage developers to supplement on-lot systems and to pass on these costs of to future homeowners. For example, supplemental provisions, such as those under the Clean Water Act, need to be added to Acts 41 and 537. These are necessary to provide for court discretion in awarding expert and attorney fees to successful plaintiffs seeking enforcement. Taxpayers are continuing to pay the increasing costs of development – be it residential, agricultural or industrial – with the long-term costs of degraded water.

As trustees of our right to clean water, we are hopeful that the Department will prioritize its efforts to safeguard our most precious resource. Thank you.

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<sup>11</sup> *Raymond Proffitt Foundation v. USEPA* (930 F. Supp. 1088, 16 April 1996).

The Pine Creek Valley Watershed Association, Raymond Proffitt Foundation, and Delaware Riverkeeper filed a 60-day notice with USEPA Region 3 during August 2013 demanding enforcement against Act 41 of 2013 as a violation of antidegradation protection afforded the nation's waters by the federal Clean Water Act.