

Butler Township

83 Corporate Drive • Drums, Pennsylvania 18222 • (570) 788-3547 • Fax (570) 788-5938

Mr. Lee E. Murphy
Environmental Group Manager
Bureau of Clean Water
NPDES Permitting Division
Rachel Carson State Office Building
P.O. Box 8774
Harrisburg, Pa. 17105-8774

May 12, 2019

Dear Mr. Murphy:

We are concerned that the MS4 program is not being applied scientifically.

We are concerned that we will have to divert funds and township resources unnecessarily now and increasingly into the future as the MS4 program components become more defined and restrictive. We understand that, in the interest of cleaning up the Chesapeake Bay in Maryland and Virginia, Butler Township, in Pennsylvania, is being mandated to implement, among other things, the "Best Management Practices," either a Pollutant Reduction Plan (PRP) or a Total Maximum Daily Load Plan (TMDL).

We understand that the TMDL Plan is based on a model and the PRP Plan would require a load reduction of 10% of sediment and/or 5% of total phosphorus in the 5 years of the NPDES permit. (If we are not required to do the above, please let us know.)

We are not aware of any study of the Nescopeck Creek, which flows through Butler Township, as regards sediment or phosphorus (or nitrogen) levels that would show the actual amounts of these substances that the Township deposits into the Nescopeck Creek, nor of the amounts deposited upstream or downstream of the Township by other municipalities.

We have no knowledge of the actual baseline levels of these substances, nor of the levels that would be considered insignificant.

We question whether the TMDL model reflects the reality of our Township and, if so, to what degree. We also question why Butler Township which is woodland, farmland and rural/suburban is considered urban.

We ask for proof (data) that Butler Township is contributing significantly to problems with water quality, especially as it appears to have a "good" rating on the Chessie BIBI map of 2008.

We ask how much other communities, including those in Upstate New York, are contributing to adding these substances to the Susquehanna, or to pollution.

We know that The Little Nescopeck Creek is polluted with acid mine drainage from the Jeddo Mine Tunnel coming from under Hazleton and the area around it and that none of it is coming from Butler Township. Is DEP doing anything to remedy this? This would help the area locally and remove a major source of pollution entering the Susquehanna.

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We ask how much the State of Maryland itself is contributing to problems with the Chesapeake considering its complex shoreline, large cities and low grades for its rivers, streams and estuaries. The Chesapeake Bay Foundation in its Form 990 for 2016 states that a "saved bay" scores 70 out of 100 on its scale and that is the organization's goal. A graph produced by The University of Maryland Center for Environmental Science (see ecoreportcard.org) showing the Chesapeake Bay Health Score for the years 1987 through 2017 shows it to have been 48% in 1987 and 54% in 2017. There was a high of 56% in 2002 followed by a low of 35 % in 2003 but it went to 45% in 2004. The average over those 30 years was 46%. There is a lot of variability in the graph and it deals with percentages. The percentages before 1987 are not included. In light of this graph, is 70% a realistic goal? Is DEP being forced to use this goal to guide its regulations? This is a very flat graph when the data are made to fit a straight line. If this is an unreachable goal, what is the point of Butler Township spending its funds and its resources on this project?

Perhaps you could help us answer these concerns.

Also we request that PA DEP provide Butler Township with:

- 1) Sampling of the waterways entering and exiting the municipal borders of the Township.
- 2) Sampling data at intervals along waterways including in other municipalities that feed into the Nescopeck and also above and below the confluence of the Nescopeck with the Susquehanna.
- 3) Sampling Reports in order for the Township to contract a qualified professional to verify the accuracy of the data provided to the Township.
- 4) An Indemnification Agreement in which PA DEP shall indemnify Butler Township against possible lawsuits from environmental groups and others if Butler Township is acting in good faith to comply with State and Federal Regulations.

We have an obligation to our Township's citizens to spend their tax dollars wisely, in an informed manner, and on necessary programs that benefit them locally, and to avoid increases in property taxes and curtailment of services in the Township.

We are also obligated to do our best to protect our citizens' free and quiet enjoyment of their properties in the Township.

Thank you very much for any help you can give us in this matter.

Also, if you wish to meet with us and the citizens of Butler Township to discuss this further, please contact us.

Respectfully Submitted,

Butler Township Supervisors

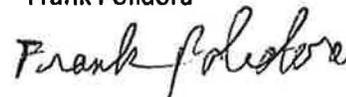


Brian Kisenwether



Charles Altmiller

Frank Polidora



CC: Senator John Gordner
Representative Tarah Toohil.

Butler Township Supervisors
83 Corporate Drive
Drums, Pa 18222
June 18, 2019

Pa State Representative Tarah Toohil
1 West Broad St.
Suite 100
Hazleton, Pa 18201

Dear Representative Toohil.

I reviewed Mr. Murphy's kind response (dated June 11, 2019 and received June 17, 2019) to our letter of May 12, 2019.

He confirms that DEP's PRP (Pollutant Reduction Plan) requirements and materials rely in part on computer modeling work done by the US EPA. The reason cited is that it represents state of-the-art in stormwater management.

I would ask the following questions about this model:

- What assumptions were made in producing this model?
- How reliable is this model in predicting real conditions, past, present and future?
- How complex is this model?
- How many times has it been revised?
- Who influenced this model? This includes lobbyists and litigation/litigators or any industries/corporations that would benefit financially from its implementation.
- Most importantly to Butler Township, was any data from the Nescopeck Creek used to generate this model?

We are still concerned that our entire Township which is woodland/rural/suburban is entirely considered to be urban as regards stormwater management.

It is worrisome that DEP cannot comment on New York's or Maryland's contributions to what are termed "pollutants" to the Chesapeake. On the one hand DEP is encouraging municipalities to work together regionally and assessing waterbodies on a watershed by watershed basis (undefined) and yet does not know what New York and Maryland are doing to the Chesapeake.

Mr. Murphy does not address our concern about the acid mine drainage from the Jeddo Tunnel into the Little Nescopeck.

He confirms that no detailed studies of the waters of the commonwealth have been done. He does not comment on the practicality of the goal of attaining a 70% grade for the Chesapeake.

We are concerned that the Problem (if any) with the Chesapeake from run-off from Butler Township has not been properly defined or framed, nor, if present, to what degree Butler contributes to it, and that the expense and loss of free enjoyment of our citizens in their properties will be sacrificed in the quest for an unattainable goal.

Perhaps DEP, at their cost, could do the sampling of the waters as requested in our May 12th letter to check the validity of the model.

Finally something needs to be done to prevent litigation and lobbying from being the drivers of the MS4 Program; it must be based on unpoliticized science.

Thank you.

For the supervisors and people of Butler Township,
Frank Polidora, Secretary