

SOURCEWATER PROTECTION AD HOC ADVISORY BOARD MAY 2, 2018 MEETING SUMMARY

Attendees: Ray Stolinas, Jeff Ressler, Ron Connelly, Larry Harpster, Erik Scott, Barb Christ, David Hughes, and Gary Petersen

Mr. Stolinas reviewed the main topics discussed at the April 18 Sourcewater Protection Ad Hoc Advisory Board meeting. There was a consensus to start discussions from this list.

Mr. Ressler asked the question—what is the benefit of having a Facilities Profile Sheet (FPS) in the ordinance as a requirement? Mr. Harpster stated that he does not see any benefit whatsoever. Additionally, there is no specification for quantities—does this mean that someone would have to report that they have one tube of caulking in their garage? Mr. Stolinas stated that a similar issue was brought up in the past by Penn State University—there is not a threshold of substances for reporting purposes included in the ordinance.

Mr. Scott stated that after the last meeting's discussion regarding the FPS, he started wondering how effective the FPS would actually be since most, if not all of the farmers, use the same pesticides and herbicides on their properties. If there was a contamination, the Township would have to go to each farm to identify the contaminator anyways. There was a brief discussion among staff and members regarding the need for a FPS. Mr. Ressler made the point that if there was a contamination, those doing the investigation would go out to where the contamination is found instead of going to the Township building to get a list of who has what kind of chemicals. Mr. Stolinas stated that during the drafting of this ordinance, there was discussion regarding integrating the FPS data with the Township GIS database so that if necessary, the data could be queried to see which areas would be affected if a chemical contamination were to happen.

Mr. Scott offered an alternative to the FPS. He stated that instead of requiring farmers and businesses to fill out the FPS, the Township could just have a database of contact information for those types of parcels. If the water authority noticed that there was a certain chemical starting to show up in the water supply, the water authority could inform the Township, who could then use the database to contact those who might use those types of chemicals. This type of reporting would be done before the contamination reached the threshold to report to the Environmental Protection Agency (EPA). After a lengthy discussion regarding the type of process there would be for this type of communication, there was a consensus to recommend to the Board of Supervisors that the Facilities Profile Sheet should not be included in the draft ordinance. The Advisory Board felt that because farmers and business owners already have Safety Data Sheets on their properties for the types of chemicals they use, a Facilities Profile Sheet is unnecessary. There will have to be some coordination between the Township and any water authorities to develop a database of contact information for the farming community and the business community to coincide with the Township GIS system.

The Advisory Board discussed the wells within Ferguson Township and the fact that many of the capture zones cross municipal boundaries. The Advisory Board stated that while having a Sourcewater Protection Ordinance for Ferguson Township is valuable, it would be very beneficial to have a regional Sourcewater Protection Ordinance since the capture zones cross municipal lines.

Mr. Connelly referred to Section 7.1.i of the draft ordinance —“at the discretion of the Water Authority, any application of pesticides has to be approved,” and asked if the Advisory Board could recommend removing that language from the ordinance. Mr. Stolinas referred to an email from Mr. Joe Montenegro, Government Affairs Counsel of the Pennsylvania Farm Bureau. Mr. Montenegro’s comments regarding Mr. Connelly’s comment and the Facilities Profile Sheet are as follows:

“Section 7’s notification requirement. To the extent the section would require farmers to list on the Facility Profile Sheet (Appendix B) pesticides and herbicides used, we think such a notification requirement would be void under Section 111.57(b) of Pennsylvania’s Pesticide Control Act. Similarly, in our view, the Act prohibits various water authorities from exercising veto authority over the use of pesticides.”

“3 P.S. § 111. 57(b): This act and its provisions are of Statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, distribution, notification of use, and use of pesticides to the exclusion of all local regulations. Except as otherwise specifically provided in this act, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, handling or use of pesticides, if any of these ordinances, laws or regulations are in conflict with this act.”

Mr. Stolinas stated that due to the aforementioned language from the Pennsylvania Pesticide Control Act, he believes that the language in Paragraph I would not be legal if left in the draft ordinance. Mr. Stolinas further explained that Paragraph I was suggested to the Board of Supervisors at one point when it was reviewing the draft ordinance—it was not a suggestion from the previous work group. There was a consensus from the Advisory Group to recommend removal of the aforementioned language from Paragraph I of the draft ordinance.

Mr. Stolinas referred to the next three paragraphs in the draft ordinance related to the collection of information regarding other permits an entity may have; past history of contamination or spills on the property; and other decisions, recommendations, or enforcement for the property. He explained that under the Pennsylvania Pesticide Control Act, the Township may not be able to collect that specific data either. After a brief discussion, there was consensus from the Advisory Board to recommend removal of Section 7 of the draft Ordinance altogether.

The Advisory Board discussed the Zone I radii around each of the wells in the Township. Mr. Stolinas explained that staff used the 2007 State College Borough Sourcewater Protection Report which outlines and delineates Zones I based on the draw of the water and other characteristics of the well. In past discussions with other committees, there has been concern regarding who owns or controls the land inside the Zone I radii. The proposed ordinance restricts many types of land development within the Zone I radii. There has been discussions regarding whether a farmer can continue to farm their land within a Zone I radii if this ordinance were to be adopted as is. Mr. Stolinas clarified that any current land use would be exempt from the ordinance and would be allowed to continue. It would not be allowed if a new land use was proposed within a Zone I radii. There has also been concern regarding whether or not the land inside the Zone I radii would be considered a “taking” by the Township since the property owner could not develop certain land uses within the radii. A comment from a Planning Commission member was that the Township should pursue compensation to the property owner for the land inside the Zone I radii. Another comment was that the water authority should have full ownership of the land inside the

Zone I radii. After a brief discussion, the Advisory Board recommend to keep the restriction of certain land uses in Zone I radii as stated in the current draft ordinance.

Mr. Stolinas referred to Section 11 Land Development Design Standards of the draft ordinance regarding geological features, specifically closed depressions. The current draft ordinance does not allow for stormwater to be directed into closed depressions. This language conflicts with the adopted Ferguson Township Stormwater Ordinance which does allow for stormwater runoff into closed depressions under certain circumstances. Mr. Petersen expressed his concern for this language and stated that this language should be congruent with the adopted Stormwater Ordinance. Mr. Petersen also pointed out that the aforementioned language is in conflict with language within the same section—"A qualified design professional shall review closed depressions." He wondered why a design professional would bother reviewing the closed depressions if the ordinance does not allow a developer to use them for stormwater runoff. Mr. Petersen suggested changing the language in number 11 to "Stormwater runoff shall not be directed into a sinkhole." Mr. Stolinas reviewed two comments related to Section 11. Rob Cooper from the Penn State University Office of Physical Plant provided his comment, "Closed depressions frequently contain the most highly renovated soils in the region and therefore, if it is designed correctly, can be an asset to the remediation of stormwater." Ron Seybert, Ferguson Township Engineer, provided his comment, "Section 11 contradicts the Stormwater Ordinance, which permits discharge into sinkholes and closed depressions under certain conditions and stipulations. Perhaps this item can be reworded like item 10 to refer to the Stormwater Ordinance for compliance." Mr. Stolinas stated that the language could read, "Stormwater shall only be directed into sinkholes or closed depressions in compliance with Chapter 26 Part 1 Stormwater." Mr. Hughes stated that he agrees with Mr. Cooper's comments, but he does not think that the Sourcewater Ordinance should allow for water runoff to be directed into sinkholes, period. Mr. Petersen agreed with Mr. Hughes. Mr. Ressler stated that this may be a question for Mr. Seybert. There was consensus from the Advisory Board to recommend that the language be changed to say "Stormwater shall not be directed into sinkholes". Mr. Stolinas stated that staff will need to talk to Mr. Seybert since he works closely with stormwater management. Mr. Petersen asked staff to also look at item 11.A.9 to make sure it is compliant with the Stormwater Ordinance.

The Advisory Board then discussed blasting restrictions within the draft Sourcewater Protection Ordinance. When the original Sourcewater Protection Ordinance working group discussed this issue, it was of their opinion that blasting would not be allowed in the Zone I radii. Blasting would also be restricted to 50 feet away from any geological features listed on 11.A.2 in the Zone II radii. At a Board of Supervisors meeting, it was requested by Mr. Todd Giddings to remove bedrock from that list. There was some discussion regarding the permit requirements that the Department of Environmental Protection (DEP) requires to allow blasting. Mr. Petersen referred to the conversation from the last meeting and stated that Mr. Giddings stated that there has been no evidence of blasting contaminating a well. Mr. Giddings also stated at the last meeting that manually breaking up geological features is just as harmful as blasting. Mr. Stolinas stated that he believes Mr. Giddings spoke with a representative from DEP and the representative said that the Township could still regulate distance from a geological feature even though DEP has rules and regulations for blasting. Mr. Hughes stated that he would like to hear some argument as to why the Township shouldn't regulate the distance of blasting in Zone II. Mr. Petersen explained that there is a lot of limestone pinnacles in this area and a developer would not know if one was present until they started excavating. At that point, they would have to either blast or use an excavator with a jack hammer to remove it. There was a consensus from the Advisory Board to gather more research on blasting versus manually removing geological features before making a recommendation.

The Advisory Board discussed the issue of whether or not the Penn State University research farms should be exempted from the proposed ordinance. Mr. Stolinas stated that the Agricultural Research (AR) districts lie in Zone II, and these agricultural research uses would be required to provide additional information to the Township. A comment from the University stated that there are scientists and researchers managing these farms using best management practices and following certain controls and requirements, so why would these entities be required to provide additional information if a regular farmer does not have to do so? A few of the Advisory Board members stated that the research farms have even more regulations than regular farmers. There was a consensus from the Advisory Board to recommend the elimination of number 46 on page 16.

The Advisory Board discussed the mandate for an educational component to the ordinance. Mr. Stolinas stated that Mr. Mark Stephens, a Sourcewater Protection Coordinator from DEP, provided the Township with six or seven educational materials that municipalities can distribute after such an ordinance is adopted. One brochure gives information on maintaining a residential septic system. Another brochure provides information on farming and pesticide use. Another brochure gives information on how to dispose of hazardous materials. Mr. Stolinas stated that he can send those materials to the Advisory Board as a starting point for discussion. The Advisory Board will also have to make recommendations on how to provide educational information as well as who will get the educational information. Mr. Ressler added that information can also be posted on the Township website. Mr. Scott stated that the most effective way to get information out is to use the Township Facebook page to promote Sourcewater Protection education. Mr. Hughes stated that education through social media is great, but the Township should also be looking at certain stakeholders to educate as well. He went on to say that Penn State University would also be a good source to get educational materials from. Mr. Stolinas asked the Advisory Board if it would be beneficial to add a section to the ordinance stating that the educational program will be established upon the adoption of the Sourcewater Protection Ordinance. This program could be similar to the educational component in the MS4 program that Mr. Seybert runs for the Township. The Advisory Board will continue this discussion at the next meeting.

Due to some absences for the next meeting, Mr. Stolinas will poll the Advisory Board to pick the best date for the next Sourcewater Protection Ad Hoc Advisory Board meeting.