
From: Ferrence, Michael <mferrence@pa.gov>
Sent: Friday, December 1, 2023 5:56 PM
To: Bruder, Paul J.
Cc: John Prevoznik
Subject: RE: [External] M&M/Paradise Twp

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Paul and John,

As promised, here's the additional explanation. The Department has considered your interpretation of the Sewage Facilities Act and offers the following in response.

Section 2 (Definitions)

"Official plan" means a comprehensive plan for the provision of adequate sewage systems adopted by a municipality or municipalities possessing authority or jurisdiction over the provision of such systems and submitted to and approved by the State Department of Environmental Resources as provided herein.

"Official plan revision" means a change in the municipality's official plan to provide for additional or newly identified or future sewage facilities needs, which may include, but not be limited to, any of the following:

(1) Update revision.--A comprehensive revision to an existing official plan required when the Department of Environmental Resources or municipality determines an official plan or any of its parts is inadequate for the existing or future sewage facilities needs of a municipality or its residents or landowners.

(2) Revision for new land development.--A revision to a municipality's official plan resulting from a proposed subdivision.

(3) Special study.--A study, survey, investigation, inquiry, research report or analysis which is directly related to an update revision. Such study shall provide documentation or other support necessary to solve specific problems identified in the update revision.

(4) Supplement.--A sewage facilities planning module for a subdivision for new land development which will not be served by sewage facilities requiring a new or modified permit from the Department of Environmental Resources under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," and which is reviewed and approved by a delegated agency under section 7(b)(4.3)(iv) of this act.

(5) Exception to the requirement to revise.--A process established by regulation promulgated under this act which provides the criteria under which a revision for new land development is not required.

Section 7 (Permits)

(4.1) In the event that the municipality has no plan or has not received department approval of an update revision or special study to the official plan or implemented its plan as required by the rules and regulations of the department

or by order of the department, no permits may be issued under this section in only those areas of the municipality in which the department finds that there is a serious risk to the health, safety and welfare of persons within or adjacent to the municipality by reason of the municipality's failure to revise or implement its plan until the municipality has submitted the said official plan, update revision or special study to the official plan to, and received the approval of the department or has commenced implementation of its plan, update revision or special study in accordance with a schedule approved by the department.

(i) A supplement or a revision for new land development or interim repairs to or the replacement of existing malfunctioning on-lot sewage systems shall not be denied solely on the basis of the failure of the municipality in which the new land development or system in need of repair or replacement is proposed to submit an update revision or special study or implement its plan as required by an order of the department or the rules and regulations of the department or because the update revision or special study is under review by the department.

The Department, based upon the plain language above, does not agree with your interpretation. This provision is applicable to Municipalities, not a private developer, and therefore would not allow for the issuance of a repair permit by the Township. The historical basis for the language was to address concerns many Municipalities had with regard to their responsibilities under the Sewage Facilities Act. It is clear that the provisions apply to the Municipality's Planning obligations.

So, an interim repair to or the replacement of existing malfunctioning on-lot sewage systems shall not be denied solely on the basis of the failure of the municipality to meet the delineated actions in subsection (i). However, this subsection does not say that a permit to repair must be approved even if these responsibilities are not met.

I also want to pull back on the issue relating to nitrates. I may have misunderstood the Program so I need further clarification. I will follow up on that issue as soon as I am able.

Best,
Mike

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From: Ferrence, Michael
Sent: Friday, December 1, 2023 5:11 PM
To: Bruder, Paul J. <pjbruder@mette.com>

Cc: John Prevoznik <JPrevoznik@prevozniklaw.com>

Subject: RE: [External] M&M/Paradise Twp

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Paul and John,

We're in process of preparing a more detailed email regarding this matter but am not certain we'll get it completed and sent before the end of the day. Since I'll not be in the Office on Monday, I wanted to at least give you an abridged version in advance of Monday's Paradise Township meeting where you indicated that you may proceed with authorizing the issuance of a repair permit to M&M Realty. I strongly discourage the Township from taking that action.

In sum, upon careful review of the Sewage Facilities Act and Section 7(4.1) by our Central Office, Region and legal staff, the Department does not concur with your interpretation or that the statute authorizes the Township to issue a repair permit. The Department's Central Office has advised, and the Region concurs, that the section you cite relates to Municipal responsibilities. Further, given the conditions at the M&M Realty property, the lack of Planning is not the "sole basis" for not allowing the issuance of a repair permit. Recent sample results obtained by the Department's Safe Drinking Water Program revealed the presence of nitrates up to as much as three times the allowable limit in drinking water. This is a clear indication that there are Clean Streams Law violations occurring at the property.

My clients are willing, however, to hold a global meeting with representatives of Paradise Township and M&M Realty to work through the issues, provide our explanations on any questions everyone may have, and assist with finding a workable solution.

My clients have serious concerns that the "repair permit", if issued and implemented, may cause more problems than already exist. Further, M&M Realty is already implementing a temporary repair in the form of the monthly pumping.

This is a step the Department allows while a permanent solution can be found.

We will follow up as soon as we can,

Mike

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he/him/his

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From: Bruder, Paul J. <pjbruder@mette.com>

Sent: Monday, November 6, 2023 1:29 PM

To: Ferrence, Michael <mferrence@pa.gov>

Cc: John Prevoznik <JPrevoznik@prevozniklaw.com>

Subject: [External] M&M/Paradise Twp

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Mike - nice speaking with you earlier.

As we discussed, Paradise Township, upon a deeper dive into Act 537 and the regulations, is considering issuing a decision in the M&M matter that would provide for an “interim repair” permit as described in the statute.

Section 7(b)(4.1)(i) of the Sewage Facilities Act states:

(4.1) In the event that the municipality has no plan or has not received department approval of an update revision or special study to the official plan or implemented its plan as required by the rules and regulations of the department or by order of the department, no permits may be issued under this section in only those areas of the municipality in which the department finds that there is a serious risk to the health, safety and welfare of persons within or adjacent to the municipality by reason of the municipality's failure to revise or implement its plan until the municipality has submitted the said official plan, update revision or special study to the official plan to, and received the approval of the department or has commenced implementation of its plan, update revision or special study in accordance with a schedule approved by the department.

(i) A supplement or a revision for new land development or interim repairs to or the replacement of existing malfunctioning on-lot sewage systems shall not be denied solely on the basis of the failure of the municipality in which the new land development or system in need of repair or replacement is proposed to submit an update revision or special study or implement its plan as required by an order of the department or the rules and regulations of the department or because the update revision or special study is under review by the department.

Our reasonable interpretation of this is that the Township can approve interim repairs or replacement on-lot systems where planning has begun but has not yet been approved by the Department.

In the present case, M&M originally appealed the DEP requirement that planning is to be done, but later amended its appeal to remove that issue, thus acknowledging the need for planning. The Township is considering a decision that states that, upon submission of a planning module, an interim repair or replacement of the malfunctioning systems can be approved by the Township.

Our research has not identified any caselaw that has addressed this provision, nor any DEP guidance that is on point. Thus the Township feels that this is a reasonable interpretation of the statute and a defensible position. Additionally, it would be a “win” for all parties in that it ensures environmental protection, it requires planning, and it would allow M&M to do the repairs/replacement and cease the pumping, which it has stated is its goal as well.

Please share this with your program folks and let me and John know what you think. There is a Supervisors meeting this evening at 7 so your thoughts on the matt before then would be helpful.

Thanks Mike.

Paul

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