



Brookshire Developed -- Proposed Pollution Discharge to Perkiomen Creek

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND THE LEHIGH COUNTY CONSERVATION DISTRICT

TO: Watershed Management Program Manager

Department of Environmental Protection

Northeast Region

2 Public Square

Wilkes-Barre, PA 18711-0790

and

Lehigh County Conservation District

Lehigh Ag. Center

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IN RE: NPDES INDIVIDUAL PERMIT APPLICATION FOR DISCHARGE
OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES

BROOKSHIRE PARTNERS - PAI023907002

PROPOSED DISCHARGE OF STORMWATER TO PERKIOMEN CREEK

(Pa. Bulletin Notice, March 24, 2007, vol. 37, no. 12, page 1350)

WRITTEN TESTIMONY FOR PUBLIC HEARING

September 26, 2007 at 7:00 pm. at the Upper
Milford Township Municipal Building

Submitted by: Faith Zerbe, Biologist, Delaware Riverkeeper Network

September 26, 2007

Brookshire Subdivision NPDES Public Hearing,

PA Department of Environmental Protection,

Watershed Management Program, 2
Public Square, Wilkes Barre, PA 18711

Over two years of citizen complaints and at least an entire year of inspection reports listing the same deficiencies over and over without resolution reveals a pattern of total disregard for the E&S control regulations by Brookshire. There is no excuse for a situation of this magnitude to have continued for more than two years without the applicant and the subcontractors being held responsible. In short, the environmental regulations that should have protected the Perkiomen Creek during the construction of the Brookshire Development have been a total sham.

That said, Delaware Riverkeeper Network is submitting this testimony as part of this hearing to help protect the Upper Perkiomen from any further assaults by Brookshire and recommend the following be considered by PA DEP. DRN commends the PA DEP for holding this needed hearing.

On reviewing the proposed individual permit application, we agree with others that the permit application is incomplete, incorrect, and fails to demonstrate compliance with PA DEP's requirements. Furthermore, Brookshire's total disregard for site housekeeping, the unnecessary assaults and sediment laden pollution already suffered by this high quality stream and wetlands and the inability and incompetence for the applicant

to mitigate problems on site, lead DRN to recommend that PA DEP deny this individual NPDES permit application and require a non-discharge alternative for this developer to continue work. Furthermore, DEP cannot allow Brookshire to move forward without the applicant proving that they are capable of continuing the work without any other harm to the stream and adjacent neighboring property. This will entail a complete overhaul of the existing permit application. It is obvious from the applicant's past track record and dismal attempt at self-regulating that strict guidance and oversight is necessary and results must be required before additional development activities are allowed to commence.

Delaware Riverkeeper Network is alarmed that as part of the original permitting process, Brookshire ignored and/or overlooked the existing use of "high quality designation" of the Upper Perkiomen creek and instead was allowed to move forward under a general permit for CWF. It appears that Socio-economic Justification (SEJ) was not even considered for this permit and even so, a residential development should not qualify as SEJ in the first place. This lack of oversight is unacceptable. Both Brookshire and PA DEP should have recognized the anti-degradation requirement afforded High Quality streams and an individual permit should have been submitted and required back in 2002.

In addition, in December 2006, over 70 co-petitioners came together to submit a petition to the PA DEP EQB to upgrade the upper Perkiomen Watershed to Exceptional Value - this petition was based on, among other things, benthic data collected and analyzed by Stroud Water Research Center and Delaware Riverkeeper Network that indicated that the Upper Perkiomen was deserving of a higher designation due to its diverse biological community and its comparability to other EV streams in the region. This petition and the EV nature of the Upper Perkiomen need to be considered as part of this hearing process. The petition, which was submitted as part of the hearing request, includes data and many EV qualities and characteristics of the Upper Perkiomen that make it deserving of this designation. Over 23 restoration projects have been implemented to help bring the Upper Perkiomen up to this exceptional value designation and we cannot allow for irresponsible development practices to throw those improvements away.

PA DEP Water Quality and Standards biologists have sampled the Upper Perkiomen for this upgrade petition this past March. No action should be taken for this permit unless DEP requires the permittee comply as the existing use of the Upper Perkiomen is Exceptional Value and not High Quality - again, a non-discharge alternative would have to be implemented as part of the anti-degradation rules.

DRN is also concerned that stations sampled as part of this upgrade process may have already been compromised by Brookshire's detrimental landuse practices as sediment often covers and suffocates benthic communities and one of DEP's sample stations is located less than one mile downstream from this development site. DEP needs to address this concern when looking at the petition..

Specific Recommendations we have for the PA DEP include:

- 1) A completely new E&S plan and stormwater management plan should be designed taking into consideration the obvious erodibility of the Brookshire site soils and the site's steep slopes - this E & S Plan, as required by the antidegradation requirement must include Special Best Management Practices and only employ a non-discharge alternative for stormwater. Post-Construction Stormwater Management Plans must undergo a thorough anti-degradation review process that evaluates and requires a non-discharge alternative. Non-discharge alternatives should be required particularly in this case due to past violations and inadequacies of the general permit to attempt to mitigate damage already done to the stream.
- 2) A non-discharge alternative must be implemented and strict oversight and sustained monitoring of this site by effective agency personnel involving both LCCD and PA DEP inspectors is needed if Brookshire is to move forward with their development
- 3) A plan of action set in place to immediately address citizen complaints and immediate cease and assist orders granted and fines pursued if the applicant continues to disobey requirements
- 4) Future action on this site should only be granted after Brookshire clearly demonstrates it is capable of reading and understanding their own Erosion and Sediment Pollution Control Plan and will without exception, follow each and every one of its requirements. We would forcefully suggest that before any further action is approved, Brookshire is required to produce several clean inspection reports from the LCCD indicating that they now have read and understand their own Erosion and Sediment Pollution Control Plan and will without exception follow each and every one of it's requirements. Where applicable, any further action on the site has to come after all mitigation of damaged property, wetlands, and stream health is corrected.
- 5) Until Brookshire can demonstrate some proficiency on the part of their site work contractor to read and follow directions and the construction sequences (in order as in 1,2,3...) no additional site work beyond remediation should be permitted. The only effective tool available to encourage compliance is the power of the dollar. This site should be under a stop work order until all E & S requirements are met and strict fines need to be enforced if violations are documented.
- 6) Maintenance issues and a long-term maintenance plan need to be addressed and dealt with by the applicant. In general, their existing E & S Plan won't work, because most of the measures require constant maintenance that Judd, et.al. has already shown they can't accomplish. For example, silt fence is worthless if not properly installed and maintained

- 7) Created wetlands need to be on-site of the property and not incorporating neighboring property or allowing runoff to adjacent property owners. The use of neighboring properties without compensation or easements for disposing of the stormwater from the site is unacceptable. It is no different than throwing your garbage across the back fence into your neighbor's yard. Brookshire has found a cheap way to externalize their stormwater disposal costs, apparently with the local municipality's approval.
- 8) A strict monitoring program needs to be developed by the applicant and oversight by the LCCD and PA DEP is necessary. It is our understanding that the applicant has been fined \$2,500 initially and then an additional \$25,000 was just part of a recent consent decree. Future non-compliance needs to have stronger fines applied that influence and affect the applicant's bottom line.
- 9) Existing wetlands adjacent to and on the site cannot be used to funnel stormwater - these wetlands, as required by the Clean Water Act need to be protected. Mitigation of the damaged wetlands needs to be completed before further work is allowed.

Delaware Riverkeeper Network is hopeful that through this process PADEP, the Lehigh Conservation District and the local authorities will work together to establish meaningful oversight and construction plans that will illustrate to the applicant the requirements necessary in an exceptional value watershed and proper fines and orders will be immediately put in place if additional insults on the creek, neighboring properties, and wetlands are practiced. Thank you for your time and consideration.

Sincerely,

Faith Zerbe, Delaware Riverkeeper Network