

**Crum Creek Neighbors**

**v.**

**Commonwealth of Pennsylvania,  
Department of Environmental  
Protection and Pulte Homes of PA, LP**

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**EHB Docket No.  
2007-287-L**

## **The Facts of the Case**

- **Pulte Homes received NPDES permit from DEP for proposed development in Marple Township**
- **The development is bounded in part by Crum Creek (a warm water fishery (WWF)) and Holland Run (an Exceptional Value use)**
- **Existing runoff from the site drain primarily to Holland Run and Crum Creek**

## **Discharge from the Development (Calculated and Existing)**

- **Proposed discharge:**
  - **Managed five recharge and two detention basins**
  - **Controlled flow with direct discharge from detention basins to WWF area of Holland Run and no discharge to EV area of Holland Run**

# Evidence Before the Board

- **Experts vs. Assumptions**
- **Pulte**
  - **Based its expert opinions on BMPs, DEP checklists, policy manuals, the local ordinance and accepted engineering practices – stuck with DEP guidelines**
- **Objectors**
  - **Based their expert opinions on specific calculations of performance**
- **Board favored calculations and recognized danger in not looking “beyond computer programs”**
- **Simply meeting guidelines does not automatically produce compliance with the anti-degradation regulations**

# The Discharge

- **Objectors' calculations concluded recharge basins could not hold 5 year storms or higher**
  - **Riser was not big enough to transfer excess flow to detention basins**
  - **Board – water will over top retention basins and flow overland to EV area of Holland Run**
- **Over topping of retention basins creates a “discharge”**
- **Pulte could not dispute DEP's conservative guidelines and the objectors used them to create a discharge**

# Effects

- **Degradation by reduction in flow**
  - **Pulte's SWM collection system designed to divert all runoff from portions of the property to the discharge point**
    - **includes predevelopment runoff that would normally have flowed into Holland Run**
  - **Credible risk that there will be a material diminution in at least some portions of Holland Run's flow**
- **DEP had not evaluated ability of Holland Run to support its EV use in the event of diminution**

## **Degradation By Increase In Flow**

- **System can manage 2 year storm, but unable to manage 5 year storm or larger**
- **Unstudied risk that increase in flow in larger storms could degrade EV area**
- **No study of effect of increased flow on streams' biology**

# Actual Risk of Degradation

- **Board finds that “there is no reason to assume the discharge will result in pollutant loading”**
- **Not incumbent on Pulte to improve the quality of Holland Run during large storm events**
- **Actual risk not known, remanded for “proper analysis based on the proven fact that the recharge basins will discharge directly into the EV portion of the stream” and for analysis of potential diminution of flow to parts of the EV portion**

# What it all Means

- **“A permittee may not degrade a stream by altering its physical or biological properties any more than it may degrade a stream by the direct discharge of pollutants”**
- **Don’t rely on DEP guidance if you cannot scientifically defend it on appeal**
- **Start your analysis from the stream up, not the development down.**
- **Analyze effect on stream flow and the effect of any change in stream flow on the biology of the stream**