

EHB Strengthens Clean Streams Law Complaint Process

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A longtime practice by the Pennsylvania Department of Environmental Protection came to an end recently with a precedent-setting case that will make it easier for individuals and businesses to prompt a DEP investigation.

Two Cumberland County businesses recently tried to have the DEP investigate damage to their properties that the owners believed came from construction of the Mariner East 2 pipeline by Sunoco Pipeline, L.P. Pennsylvania's Clean Streams Law authorizes state residents to file complaints to the Department of Environmental Protection about potential pollution released into Commonwealth waters. Under this statute, DEP is required to investigate those complaints.

Until recently, DEP asserted it had unfettered and unreviewable discretion regarding whether it took any action in response to such complaints. The Pennsylvania Environmental Hearing Board (EHB), however, recently ruled that it had jurisdiction to review a DEP decision not to act on a complaint filed by the two businesses.

In their complaint to DEP, the businesses claimed among other things, that releases of drilling fluids during construction caused subsidence and the creation of sinkholes on their property. DEP ultimately decided that it was not going to take any enforcement action against Sunoco. The businesses appealed this decision to the EHB.

DEP argued that its decision not to act on the businesses' complaint was an exercise of its enforcement discretion that could not be reviewed by the EHB. The EHB rejected this argument, holding that the Clean Streams Law imposes certain mandatory duties on DEP, including a duty to investigate a complaint. Accordingly, DEP's decision not to take an enforcement action is a "final action" that the EHB can review.

Because of this ruling, DEP can no longer simply dismiss complaints under the Clean Streams Law filed by individuals and businesses. It will now need to be able to justify and provide a rationale for its decisions, making the process more transparent and making it easier for businesses or individuals to get answers from the state when it comes to possible polluted waters.

If you have any questions on this new development or any questions concerning the DEP, please [contact me](#) or any member of the [Barley Snyder Environment & Energy Industry Group](#). *NOTE: Barley Snyder represented the two businesses in this matter.*

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