Nitrate Monitoring/Public Water System: Berks County Mobile Home Park Challenges Comprehensive Operation Permit Condition Before Pennsylvania Environmental Hearing Board

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Eugene H. Wolfgang Enterprises, Inc. Country View MP ("Country View") filed a September 18th Notice of Appeal ("Notice") before the Pennsylvania Environmental Hearings Board seeking review of a condition in the Comprehensive Operation Permit ("Permit") it reissued for Country View's Public Water System Permit.

The Permit was issued by the Pennsylvania Department of Environmental Protection ("PDEP") Safe Drinking Water Program.

Country View operates a public water system in Berks County, Pennsylvania.

The Permit issued by PDEP is stated to authorize modifications to the existing 4-log treatment system and the construction of new finished water storage.

The Notice filed by Country View states that the Permit contains provisions that exceed PDEP's authority related to nitrate monitoring. The legal standard argued to apply to the appeal is stated to include:

- Pennsylvania courts afford deference to agency interpretations of their regulations, but that deference is not unlimited.
- Courts will reverse agency action when it is taken in bad faith, constitutes a manifest or flagrant abuse of discretion, or represents a purely arbitrary execution of duties.
- An agency's interpretation must be consistent with the regulation and the enabling statute, and it is controlling only if not clearly erroneous.
- Conditions imposed must also be reasonable, supported by the record, and tied to the statutory purpose.
- Arbitrary or unduly burdensome permit requirements may therefore be stricken by the Environmental Hearings Board.

Specific arguments include:

- Nitrate monitoring included in the Permit is beyond the applicable regulation.

- Lack of necessity given the facility's compliance history.
- Excessive financial burden.
- Scientific and logistical unsoundness.
- Recordkeeping disproportionate to risk.
- There is a reasonable alternative.

A copy of the Notice can be downloaded here.