

# PREVENTING THE SPLINTERING OF AUTHORITY IN THE SUSQUEHANNA RIVER BASIN: THE STATE COLLEGE EXPERIENCE

## OVERVIEW

The framers of the Susquehanna River Basin Compact recognized the challenges of numerous government agencies attempting to manage the waters of the Susquehanna. Duplicative, overlapping, and uncoordinated activities were resulting in a splintering of authority and responsibility in the Basin. To prevent this splintering, the framers concluded in the Commission's compact that *a single administrative agency is essential for effective and economical direction, supervision, and coordination of water resources efforts and programs of federal, state, and local governments and of private enterprise.* The Susquehanna River Basin Commission (Commission) was created to be that single agency.

This is a case study of several townships in the State College, Pennsylvania, area where local municipalities sought additional provisions in a State College water project by establishing their own groundwater rules.

## WHAT IS THE STATE COLLEGE WATER PROJECT?

State College and the surrounding communities form a growing metropolitan area with increasing water demands. In 1991, the State College Borough Water Authority (Authority) began seeking additional water sources from surrounding townships.

The Authority first located several groundwater sources in Benner, Half Moon, and Ferguson Townships, and then it applied to the Commission to install and

The water resources of the basin are presently subject to the duplicating, overlapping, and uncoordinated administration of a large number of governmental agencies which exercise a multiplicity of powers resulting in a splintering of authority and responsibility.

Preamble: Susquehanna River Basin Compact, P.L. 91-575; 84 Stat. 1509 et seq.

draw water from large wells in those municipalities. Commission regulation (Section 803.43) requires all groundwater withdrawals in the Basin exceeding 100,000 gallons per day to be approved by the Commission.

## DID THE COMMISSION APPROVE THE PROJECT?

The Commission carefully reviewed the Authority's applications, added additional conditions to each application where appropriate, then approved them. One of the factors that the Commission determines before approving any ground or surface water withdrawal application is the potential impact on water supplies for existing water users - in this case, the three townships. The Commission determined that the Authority's withdrawals would not diminish the water supply for existing users.

## HOW DID THE TOWNSHIPS REACT TO THE PROJECT APPROVAL?

The townships were concerned about the location of the wells. They were concerned that the Authority's withdrawals would impact existing privately-owned wells. Two of the townships responded by creating their own special use conditions to the project. They cited their authority under Pennsylvania's municipal law regarding zoning ordinances (Pennsylvania Municipalities Planning Code). The third township established its own special groundwater withdrawal ordinance.

In all three cases, the Commission explained to the townships that their actions were not in the best interest of managing water regionally as a shared resource. The Commission's groundwater regulations, in combination with the special conditions it placed on the Authority's projects, provided the necessary safeguards to protect adjoining well owners. The Commission urged the townships to reconsider their actions because of the splintering affect it would have of the management of the Basin's water resources.

One of the purposes of the Compact is to apply the principle of uniform treatment to all users of water, without regard to political boundaries. Uniform treatment would be impossible if each local government adopted its own rules for groundwater use.

## DID THE AUTHORITY CHALLENGE THE TOWNSHIPS' RULES?

Yes. In 1992 and 1993, the Authority filed court appeals against the townships' actions on the grounds that the Commission's groundwater regulations pre-empted local rules, and that the local rules only added another layer to the regulatory process. After different trial court judges handed down opposing opinions, the cases went before the Pennsylvania Commonwealth Court, an intermediate appellate court that hears appeals of government actions.

## HOW DID THE COMMONWEALTH COURT RULE?

On May 22, 1995, the Court ruled that the Commission's groundwater regulations do pre-empt local groundwater regulations. The Court pointed specifically to the preamble language in Commission's Compact.

The Commonwealth Court pointed out that the intent of the Compact was to correct the very *evil* represented by this splintering of authority. The court felt that to allow local municipalities to establish their own regulations on groundwater would be to allow for the splintering of authority between the Commission and the townships. This would be in conflict with the clear intent of the Compact.

## WHAT DID COMMONWEALTH COURT RULING MEAN?

The Court's decision upheld the Commission's authority as the single agency responsible for regulating groundwater withdrawals in the Basin. With this, large facilities that use groundwater in Pennsylvania still only need to deal with one government agency and one set of rules in obtaining approvals to withdraw groundwater.

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## DID THE TOWNSHIPS APPEAL THE COMMONWEALTH COURT'S RULING?

Yes. Benner and Half Moon Townships appealed the Commonwealth Court's decision to the Pennsylvania Supreme Court. The Supreme Court refused to hear Half Moon Township's appeal, but did accept Benner Township's appeal on the issue of pre-emption.

In late-January 1997, Benner Township argued its case before the Pennsylvania Supreme Court. In mid-February 1997, the Supreme Court ruled against Benner Township by affirming the Commonwealth Court's prior ruling that the Commission's groundwater regulations pre-empt local ground water regulations.

