

SENT VIA U.S. MAIL AND EMAIL

October 18, 2017

Mr. Andrew Shissler
Delmont Borough
77 Greensburg Street
Delmont, PA 15626

RE: Property Damage

Dear Mr. Shissler:

This communication is in response to your letter of October 10, 2017, a copy of which I attach here.

The Sanctioning by the DEP of the Flouting of the Law by Delmont Borough

You state that Delmont Borough has in the past simply defied federal and state statute in not filing proper written reports with the PA DEP because “it appears those reports were not required by the prior DEP representative who was covering the general Delmont area.” Please provide the name and title of this individual. An internal investigation by the PA DEP into this matter is clearly warranted. Any employee of the PA DEP that encourages or allows a Pennsylvania community to habitually flout the law should be summarily fired.

The LAW is the LAW, however. Its tenets and requirements do not ebb and flow on the basis of specific personnel within the PA DEP or even whether the PA DEP exists at all. The PA DEP does not create environmental law; it is merely tasked with enforcement. The fact that representatives of the PA DEP may inappropriately, unethically, and possibly illegally, actively and specifically choose not to enforce the law does not change Delmont Borough’s, or any community’s, obligation to FOLLOW it. Delmont Borough solicitor Mr. Hewitt of a certainty has so advised members of Borough council throughout the years.

Long-Term Negligence on the Part of the Borough with Regard to the Issues at Hand

I am grateful that through your letter the Borough has officially admitted to the long-term nature of these issues in writing. Of course, other written documents and photos dating back many years support this as fact as well. As Mr. Hewitt likely has advised, municipal immunity can only be invoked if the Borough could not reasonably anticipate that action or inaction on the part of the Borough could result in damage to property, or injury to person, or both. Your acknowledgment of “the site issues at [our] property and the long-term issue of sewage concerns” coupled with the Borough’s lack of any discernable remedial action relevant thereto or resources brought to bear thereupon through many years clearly demonstrates that the Borough long ago moved from negligence to gross negligence in these matters.

Negotiations between the Borough and the PA DEP as to what the DEP will deem “acceptable” in addressing these Issues and “within what time frame”

A number of individuals in positions of authority in local governmental agencies, including governing bodies and municipal authorities, in close physical proximity to Delmont Borough, as well as local business owners and private citizens, have approached me to indicate support in demanding the Borough rectify matters it has long ignored with regard to its failing sewer system and to express their strong interest in what the substance will be of any PA DEP mandate handed down to the Borough relative to the fines and mandates levied upon other local communities, municipal authorities, and businesses for simple non-compliance issues and for environmental-impact law violations far less significant and substantive and of far less consequence than those long perpetrated by Delmont Borough.

We also look forward to learning of the substance of whatever mandate the PA DEP hands down. In the meantime, I suppose we are to expect that Delmont Borough feels no obligation to act on its own to remedy these circumstances in spite of the fact that all of the causal factors of these long-standing, ongoing issues originate in the Borough.

The ongoing “chasing of inflow” into the Borough’s sanitary sewer system, to which you refer in your letter should have long ago been completed, and any related remedial actions on this and other matters such as storm water runoff control long ago taken, given the Borough’s admitted long-term knowledge of these matters.

Whether or not the PA DEP chooses to enforce the law, as is its mandate, is irrelevant. The responsibility to inspect, maintain, and repair/replace the Borough’s sanitary sewer infrastructure and to remedy damages caused as a result of the Borough’s long-term neglect, including full remediation of contaminated soil on the subject property, resides solely with the Borough.

Video of the sewage back up and discharge into our residence as a result of Borough action taken to move the Borough’s sanitary sewer overflows

There are two separate instances recently recorded. Both occurred after the Borough determined to “lock down” the manhole cover on the stack that has been widely featured in recent months on the DelmontSewageIssue.com website and Facebook page and other platforms for its frequent hours-long discharges of raw sewage into the Beaver Run, Westmoreland County’s primary drinking water source. These discharges and discharges from multiple other manholes on the subject property are habitual, are well documented, and are in clear violation of the PA Clean Streams Act.

The most appropriate viewing of these would be on a monitor, perhaps at a public meeting of Delmont Borough council. I will place the caveat, however, that the videos do not properly convey the stench of the sewage backup.

As it relates to the insurance issue, I am still confused. We did not file a claim, which is generally the way the process is initiated. In this case, an agent just showed up at our home.

I look forward to your timely response with regard to these matters and with regard to the specific requests of my previous correspondence dated September 27, 2017.

Ed Rebitch

cc: Ron Schwartz, Acting Regional Director, SW Regional Office, DEP
Chris Kriley, Environmental Program Manager, DEP
Dan Counahan, DEP
Joann Krance, Trustee for Rock Springs Trust
All Members of Delmont Borough Council
Dan Hewitt, Delmont Borough solicitor