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Re: Comments on Application of I80-115 C-1 Site, LLC for National Pollutant Discharge Elimination System (NPDES) Individual Permit for Discharges of Stormwater Associated with Construction Activities (PAD450168).

Dear Ms. Kania:

Citizens for Pennsylvania's Future, Delaware Riverkeeper Network, and Tobyhanna Creek/Tunkhannock Creek Watershed Association (collectively, "Commenters") respectfully submit these comments on the application of I80-115 C-1 Site, LLC ("Applicant") for an NPDES Individual Permit for Discharge of Stormwater Associated with Construction Activities (PAD450168) ("Application") for the construction of a 98-acre land development consisting of 750,000 square feet of warehousing/distribution center uses and a variety of commercial uses (the "Project"). Commenters are concerned about material inadequacies and omissions in the Application and urge the Department to take these comments into consideration and deny the requested NPDES permit.

PennFuture is a membership-based, non-profit, environmental organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water, and land, and to empower citizens to build sustainable communities for future generations. A main focus of PennFuture's work is to improve and protect water resources and water quality across Pennsylvania, with particular emphasis on the Delaware River Basin, through public outreach and education, advocacy, and litigation.

From the New York Highlands to the Delaware Bay, the Delaware Riverkeeper Network (DRN) gives voice to the River and all the communities that depend upon a healthy watershed.

Since 1988, DRN has stood as a vigilant protector and defender of the Delaware River and its tributaries, committed to restoring the natural balance where it has been lost and ensuring its preservation where it still exists.

Tobyhanna Creek/Tunkhannock Creek Watershed Association (TCTCWA) is a non-profit organization founded in 1991 and dedicated to responsible stewardship of water resources for the long-term benefit of all stakeholders within our 125-square-mile watershed. We believe that the condition of ground and surface waters, and the lands draining to them, must be managed thoughtfully, wholistically, and inclusively. Once these resources are degraded, restoration is often challenging if not impossible and involves expense that no one is willing to pay. We are committed to principles of responsible development, seeking balance between the needs of economic and environmental health within our watershed.

Commenters appreciate the Department's consideration of these comments and hope they are helpful as it continues its review of the Application. The waterways that the Project would discharge to—Exceptional Value (EV) wetlands to Mud Pond Run—are among the highest quality waters in the Commonwealth and are entitled under the law to the highest protections. Degradation of these waters will do significant damage to the water quality, to the trout and other aquatic life that live there, and to the people who rely on these waters. The Department must prevent impacts to these special protection waters that degrade these valuable resources. Without vital information about the Project that Applicant has failed to submit, the Department risks irreparable harm to Exceptional Value water resources, forested riparian buffers, and the environment.

Given the importance of the waters on the Property and the inadequacies of the Application, Commenters urge the Department to deny the Application. If the Department does not deny the Application, because the information submitted with the Application is inadequate for the public to truly evaluate the harms this project could inflict, Commenters request another review and public comment period if and when Applicant submits the necessary additional information.

I. APPLICANT IS NOT ENTITLED TO PERMIT COVERAGE BECAUSE IT HAS ALREADY DEMONSTRATED DISREGARD OF DEPARTMENT REGULATIONS WITH RESPECT TO THE PROPERTY.

Persons conducting earth disturbance activities that require permit coverage under Chapter 102 must have permit coverage prior to commencing the earth disturbance activity.¹ The Clean Streams Law empowers the Department to assess civil penalties of up to \$10,000 per day, up to \$10,000 in summary criminal penalties, and up to \$25,000 in misdemeanor criminal penalties for each violation of the Clean Streams Law or any regulation adopted pursuant to it, including Chapter 102.² The Department is further empowered to enforce violations of Chapter 102 by imposing civil penalties and by the suspension, revocation, withholding or denial of permits or approvals.³

It is undisputed that the Project requires an individual NPDES permit and an E&S permit under Chapter 102, neither of which has been issued and neither of which is guaranteed. Despite this, and despite a Notice of Violation issued by the Monroe County Conservation District on February 1, 2023, Applicant has already begun earth disturbance in the form of tree clearing and

¹ 25 Pa. Code § 102.4(e).

² 35 P.S. § 691.605.

³ 25 Pa. Code § 102.32.

tree mulching activities on the Property. Commenters advised the Department of this by letter dated March 3, 2023 (attached hereto), yet the Department has taken no enforcement action to date.

Commenters repeat their position as set forth in their March 3, 2023 letter: Applicants' actions constitute a willful and continuing violation of the Clean Streams Law and Chapter 102 and demonstrate Applicant's proclivity to play fast and loose with the regulations designed to protect our invaluable water resources. The Department has so far declined to use its authority to stop this harm to an ecologically sensitive forested area, but Commenters urge the Department at this time to, at the very least, deny permit coverage to this bad actor, and further, to assess the statutorily authorized penalties against Applicant's brazen forest cuts.

II. APPLICANT HAS NOT SATISFIED THE CHAPTER 93 ANTIDegradation REQUIREMENTS.

A. Applicant must demonstrate compliance with Chapter 93 antidegradation requirements in addition to Chapter 102 requirements.

Any person who proposes a point source discharge to an Exceptional Value water must demonstrate that the discharge will comply with the Chapter 93 antidegradation regulations.⁴ These antidegradation requirements apply to all surface waters, including wetlands.⁵ Specific water criteria found in 25 Pa. Code 93.7 and toxic substance criteria found in 25 Pa. Code § 93.8 must be achieved at least 99% of the time, and general water criteria in 25 Pa. Code § 93.6 must be achieved at all times at design conditions.⁶

The Chapter 93 antidegradation regulations are **in addition to** the Chapter 102 permitting program regulations.⁷ The Chapter 102 requirements "were not intended to nor do they incorporate fully the Chapter 93.4a-d antidegradation requirements."⁸ "Chapter 102 is about BMPs which are 'activities, facilities, measures, or procedures' aimed at controlling erosion and sedimentation."⁹ Chapter 93 is about "a detailed and specific preferential hierarchical process and procedure aimed at arriving at an outcome which will prevent degradation by all physical, chemical, biological parameters."¹⁰ "In other words, the antidegradation regulations, applying as they do to preserving and protecting existing uses, cover more than do the Chapter 102 erosion and sedimentation regulations."¹¹ Consequently, compliance with Chapter 102 regulations **does not** constitute full adherence to the antidegradation regulations of Chapter 93.¹²

⁴ 25 Pa. Code § 93.4c(b)(1); 25 Pa. Code §§ 93.4a–d; *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *9 (Pa. Env'tl. Hrg. Bd. 2006).

⁵ 25 Pa. Code § 96.3.

⁶ 25 Pa. Code 96.3(b), (c).

⁷ 25 Pa. Code § 93.4c(b)(1); *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *9 (Pa. Env'tl. Hrg. Bd. 2006).

⁸ *Blue Mtn. Preservation Assoc.*, 2006 Pa. Environ. LEXIS 55 at *18, 35–36, 38.

⁹ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *18, 38 (Pa. Env'tl. Hrg. Bd. 2006).

¹⁰ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *18, 38 (Pa. Env'tl. Hrg. Bd. 2006).

¹¹ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *36 (Pa. Env'tl. Hrg. Bd. 2006) (citation omitted).

¹² *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *35–36 (Pa. Env'tl. Hrg. Bd. 2006); see *Borough of Stockertown v. Com. of Pa., Dep't of Env't'l Prot.*, Docket No.

The Department must ensure that an application complies with **both** the applicable requirements of Chapter 102 **and** the Chapter 93 antidegradation requirements.¹³ Chapter 93 outlines “a very specific and particular process and procedure” which an applicant proposing a discharge to an EV water “must follow in making certain affirmative demonstrations to the Department as a prerequisite to the Department's granting of a permit for such a new, additional or increased discharge.”¹⁴ This includes demonstrating that the proposed discharge will “maintain and protect the existing quality of receiving surface waters.”¹⁵

The Environmental Hearing Board (“EHB”) has repeatedly counseled that “compliance with the laws against degradation means more than simply engaging in some exercise using labels such as ‘antidegradation,’ ‘nondischarge alternatives,’ and ‘ABACT.’”¹⁶ It is “ultimately not about checking off boxes on form.”¹⁷ The overriding requirement “is that the water quality of HQ and EV waters ‘shall be maintained and protected.’”¹⁸

Applicant proposes two point source discharges to the EV wetlands to Mud Pond Run, yet has not made the affirmative demonstrations required by Chapter 102 and Chapter 93. For this reason, the Department should deny the Application.

B. Applicant has not demonstrated that a cost-effective, environmentally sound nondischarge alternative is not available.

The first step of both the Chapter 93 antidegradation scheme and the Chapter 102 requirements for special protection waters is an evaluation of nondischarge alternatives to the proposed discharge.¹⁹ This is a “threshold step” of the analysis, and nondischarge alternatives (plural) must be considered, regardless of the degree of degradation.²⁰ If there is a nondischarge alternative that is “environmentally sound and cost-effective when compared with the cost of the proposed discharge,” that alternative **must** be used.²¹ Only if an applicant has **demonstrated** that environmentally-sound, cost-effective, nondischarge alternatives are not available is a discharge to an EV water permitted.²²

2014-166-M, 2016 Pa. Environ. LEXIS 37, *9 (Pa. Environ. Hrg. Bd. 2016) (water quality program, including antidegradation program, are broader in scope than the NPDES program).

¹³ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *22–23 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

¹⁴ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *22–23 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

¹⁵ 25 Pa. Code 93.4c(b)(1)(i)(B).

¹⁶ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011). ABACT stands for antidegradation best available combination of technologies.

¹⁷ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011).

¹⁸ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011) (quoting 25 Pa. Code § 93.4a(b-c)).

¹⁹ 25 Pa. Code §§ 93.4c(b)(i)(A), 102.4(b)(6), 102.8(h)

²⁰ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Environ. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *24, 43, 44 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code § 93.4c(b)(1) (“[O]n a most basic level, the antidegradation regulations require an analysis of non-discharge alternatives, in the plural.”); Com. of Pa., Dep’t of Environ’t Prot., WATER QUALITY ANTI-DEGRADATION IMPLEMENTATION GUIDANCE 45 (2003).

²¹ 25 Pa. Code § 93.4c(b)(i)(A).

²² 25 Pa. Code § 93.4c(b)(i)(A), (B).

In the Application, the Department has required, and Applicant has submitted, *NPDES Discharges of Stormwater Associated with Construction Activities Antidegradation Analysis Module 3*. Module 3 requires Applicant to “explain the rationale for non-selection [of non-discharge alternatives], including why none of the alternatives are considered environmentally sound and cost-effective.” Applicant’s response to this request for information is cursory at best. Applicant merely states that “[a]lternative siting, in regard to location, configuration and location of discharge was considered,” and that “no alternative that would eliminate the change in stormwater was identified other than not doing the project.” Applicant then declares, “Not doing the project is not cost effective.”

Applicant provides no further information about the alternatives considered, their absolute cost, or their cost compared to the cost of the proposed discharge. Applicant also provides nothing to support its contention that a non-discharge alternative would render the Project wholly unworkable rather than simply less profitable. These cursory statements are the precise type of hand-waving at the antidegradation requirements that the EHB has cautioned applicants and the Department against. In the absence of a more robust consideration of non-discharge alternatives, the Department must deny the Application.

C. Applicant has not demonstrated that the existing water quality of the EV wetlands to Mud Pond Run will be maintained and protected.

Even if Applicant has adequately demonstrated that nondischarge alternatives are not available (which Commenters dispute), Chapter 93 requires Applicant to demonstrate that the proposed discharge **will maintain and protect the existing quality of receiving surface waters.**²³ This is required “in all cases” and obligates an applicant to “undertake a certain process and make certain showings as a prerequisite to the Department’s granting of an NPDES permit.”²⁴ By the same token, **“the Department is obligated to see to it that the applicant has done so** before it may grant a permit.”²⁵

Module 3 is tailored to the requirements of Chapter 102, which requires that an Applicant evaluate and include nondischarge alternatives in its E&S plan and PCSM plans, and, if nondischarge alternatives do not exist for the project, that ABACT be employed.²⁶ Module 3 does not require, and Applicant has not submitted, information sufficient to satisfy Applicant’s separate obligation under Chapter 93 to demonstrate that the proposed discharge to an EV wetland will maintain and protect the existing quality of receiving surface waters.²⁷

As the Department’s own antidegradation guidance document (Water Quality Antidegradation Implementation Guidance) makes clear, and as stands to reason, assessing whether a proposed activity will maintain and protect the existing quality of receiving surface waters requires data on the existing water quality. This data is necessary for the Department to

²³ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *26 (Pa. Env’tl. Hrg. Bd. 2006) (citing 25 Pa. Code § 93.4c(b)(1)(i)(B)).

²⁴ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *27 (Pa. Env’tl. Hrg. Bd. 2011).

²⁵ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *27 (Pa. Env’tl. Hrg. Bd. 2011).

²⁶ 25 Pa. Code 102.4(b)(6)(i); 102.8(h).

²⁷ 25 Pa. Code 93.4c(b)(1)(B)

determine the instream water quality objectives Applicant must satisfy.²⁸ To this end, an NPDES permit applicant must provide the Department a list of parameters that are known or suspected to be present in the discharge and the expected influent and effluent concentrations of these pollutants, based on the technology it proposes to install, so that the Department can evaluate the effluent values through water quality analysis models to determine if they will exceed the water quality objectives. Here, Applicant has provided no information about existing pollutant concentrations in the EV wetlands to Mud Pond Run or about parameters known or suspected to be present in the proposed discharge from the Project. Neither is the existing benthic macroinvertebrate community which helps keep these clean waters clean addressed in the application at all. Without this information, the Department cannot evaluate whether existing instream water quality will be maintained.

In addition to maintaining existing water quality, all discharges must meet the specific water quality criteria found in 25 Pa. Code § 93.7, which include limitations on alkalinity, ammonia nitrogen, bacteria, chloride, color, dissolved oxygen, fluoride, iron, manganese, nitrite plus nitrite, osmotic pressure, pH, phenolics, sulfate, temperature, total dissolved solids and total residual chlorine.²⁹ Discharges also must meet the criteria for toxic substances set forth in 25 Pa. Code § 93.8a–93.8c. These requirements are distinct from the requirement to maintain existing water quality.³⁰

Applicant has failed to provide any information about the parameters addressed in the specific water quality criteria in 25 Pa. Code § 93.7 or the toxic substances parameters set forth in 25 Pa. Code § 93.8a–93.8c, with the exception of total suspended solids, total phosphorus and total nitrogen. The lack of information about other parameters is concerning for several reasons. The proposed change in land cover will likely generate thermal impacts and changes in hydrology. In addition, given the region’s cold climate and the vehicle-intense use of the Property, it can reasonably be expected that significant amounts of road salt may be used during the winter months. If introduced into the water system, road salt increases salinity and chloride and causes oxygen depletion in the receiving body of water.³¹ Chloride is listed among the parameters to be addressed in a Chapter 93 antidegradation analysis, yet the Application does not address whether salt will be discharged to the special protection waters on the Property or whether the chloride level will be affected (or, if not, what alternative approach to de-icing will be used).³²

Commenters also note the likelihood that runoff from the Project’s vast impervious surface will contain polycyclic aromatic hydrocarbons (PAHs), a class of contaminants found in coat-tar sealed pavement that may be carcinogenic, mutagenic, teratogenic and/or toxic to aquatic

²⁸ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 61 (2003). These include aluminum, ammonia nitrogen, C-BOD5, total copper, total iron, total lead, nitrate/nitrite nitrogen, phosphorus, sulfate, suspended solids and total zinc.

²⁹ 25 Pa. Code § 93.7(a); Com. of Pa., Dep’t of Env’tl Prot., Water Quality Antidegradation Implementation Guidance 60 (2003).

³⁰ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 64 (2003).

³¹ Jeremy Hinsdale, *How Road Salt Harms the Environment*, COLUMBIA CLIMATE SCHOOL (Dec. 11, 2018), <https://news.climate.columbia.edu/2018/12/11/road-salt-harms-environment/>.

³² 25 Pa. Code 93.7, Table 3.

organisms.³³ In addition, the NPDES permit, if granted, will cover discharges related to firefighting activities.³⁴ Firefighting foam is a major environmentally contaminating source of per- and poly-fluoroalkyl substances (PFAS).³⁵ These chemicals are known pollutants and feature fluorine-carbon bonds that make them virtually indestructible, earning them the name “forever chemicals.”³⁶ PFAS exposure may be linked to multiple health issues, including cancer and reproductive and developmental effects, even at low levels of exposure. Last month, the Environmental Protection Agency (EPA) announced proposed rulemaking to limit PFAS in drinking water.³⁷

Although neither PAHs nor PFAS are expressly addressed by the Department’s antidegradation regulations, these regulations recognize that not all possible pollutants are listed.³⁸ For unlisted pollutants, the general criterion is that these may not be inimical or injurious to the existing or designated water uses or to human, animal, plant or aquatic life.³⁹ The Department must use the best available scientific information to develop a criterion for these substances.⁴⁰ Commenters contend that the presence of PAHs and/or PFAS in the discharge from the Project will be inimical and injurious to the EV wetlands to Mud Pond Run if not properly mitigated. However, because Applicant has failed to provide any information about the likely presence of PAHs and PFAS in the proposed discharge to EV waters, the Department cannot fulfill its obligation to ensure that no injury will result from the introduction of these chemicals into the EV wetlands to Mud Pond Run.

In short, Applicant has not provided information sufficient to establish that discharges from the Project to the EV wetlands to Mud Pond Run will satisfy the antidegradation requirements of Chapter 93. Therefore, the Department cannot issue and must deny the requested NPDES permit.

III. THE PROJECT THREATENS GLOBALLY RARE AND VALUABLE WETLAND AREAS.

The swamps, marshes, upland forest, pine barrens and heath of the Pocono Plateau provide pristine habitats for more than 25 species of rare or endangered plants and animals and have earned this unique area a place on the Nature Conservancy’s global list of “Forty Last Great Places.”⁴¹

³³ Austin K. Baldwin, et al, *Primary Sources of Polycyclic Aromatic Hydrocarbons to Streambed Sediment in Great Lakes Tributaries Using Multiple Lines of Evidence*, 39 ENV’T L TOXICOLOGY & CHEM. 1392 (Jun. 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7383861/>.

³⁴ Pa. Dep’t of Env’tl. Prot., NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) INDIVIDUAL PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES APPLICATION INSTRUCTIONS 3 (2022).

³⁵ Pa. Dep’t of Env’tl. Prot., NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) INDIVIDUAL PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES APPLICATION INSTRUCTIONS 3 (2022).

³⁶ Micah Dickinson, *Firefighting Foam & PFAS: What You Need to Know*, VANGUARD-FIRE.COM (Feb. 16, 2022), <https://vanguard-fire.com/firefighting-foam-pfas-what-you-need-to-know/>.

³⁷ U.S. Dep’t of Envir. Prot., FACT SHEET: EPA’S PROPOSAL TO LIMIT PFAS IN DRINKING WATER 1, 5 (Mar. 2023), https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.

³⁸ 25 Pa. Code § 93.7(c).

³⁹ 25 Pa. Code §§ 93.6(a), 93.7(c).

⁴⁰ 25 Pa. Code § 93.7(c).

⁴¹ Michael Decourcy Hinds, *Pocono Journal; Winds of Secession Chill One of the World’s ‘Last Great Places,’* NYTIMES.COM (Dec. 4, 1993), <https://www.nytimes.com/1993/12/04/us/pocono-journal-winds-of-secession-chill-one-of-the-world-s-last-great-places.html>.

“Almost every rare species that occurs in this watershed is an outstanding example of the species . . . Nowhere on the planet is there anything like this place.”⁴² Mud Pond Run and its associated EV wetlands form part of this exceptionally rare and valuable ecosystem.

The River Continuum Concept, developed by scientist Robin Vennote of the Stroud Water Research Center, recognizes that a stream must be understood as a single continuum, from source to sea.⁴³ “To understand what is happening at any point along the way, you must understand what is happening upstream and what is entering from the watershed.”⁴⁴ The science supporting the River Continuum Concept is decades old, and the Department will be failing this science if it does not recognize the essential connections between the EV wetlands to Mud Pond Run, Mud Pond Run, and the downstream waters, including the Exceptional Value Tunkhannock Creek. The Property, with its headwater forested areas, is part of a critical wetland complex that helps ensure that the downstream area of the watershed and aquifer remain pristine. In addition, organic byproducts from insects feeding, assimilating nutrients, growing and dying are washed downstream by the current and provide a valuable food resource to fish and other aquatic insects in downstream reaches while also helping to support the chemical signature of the local reaches.

This River Continuum Concept is particularly crucial here because Mud Pond Run, its associated wetlands, and Tunkhannock Creek form part of the headwaters of the Lehigh River, recently named by American Rivers as one of the nation’s ten most-endangered rivers.⁴⁵ The importance of protecting the Lehigh’s headwater streams, associated wetlands and riparian buffers cannot be overstated.⁴⁶ Moreover, Mud Pond Run and its associated wetlands provide essential water quality benefits for the Tunkhannock watershed and property of the Bethlehem Water Authority, which provides drinking water to 36,000 customers in 12 municipalities.⁴⁷ Drinking water authorities and the DEP understand that protecting the forest and intact ecosystems that remain saves on water treatment costs downstream.⁴⁸

Commenters contend that putting a large-scale warehouse on the Property, with all the parking lot runoff and contaminants it would bring, will have cascading negative impacts on the EV wetlands, Mud Pond Run, Tunkhannock Creek, the Lehigh River, and public drinking water resources. The uptake of stormwater and the quality of the aquifer that interfaces with the wetland will also be negatively impacted from stormwater runoff generated from the warehouse and its parking areas.

⁴² Michael Decourcy Hinds, *Pocono Journal; Winds of Secession Chill One of the World’s ‘Last Great Places,’* NYTIMES.COM (Dec. 4, 1993), <https://www.nytimes.com/1993/12/04/us/pocono-journal-winds-of-secession-chill-one-of-the-world-s-last-great-places.html>.

⁴³ Stroud Water Research Center, *The River Continuum Concept*, STROUDCENTER.ORG, <https://stroudcenter.org/continuum/> (last visited Apr. 28, 2023).

⁴⁴ Stroud Water Research Center, *The River Continuum Concept*, STROUDCENTER.ORG, <https://stroudcenter.org/continuum/> (last visited Apr. 28, 2023).

⁴⁵ American Rivers, *Lehigh River Named Among America’s Most Endangered Rivers of 2023*, AMERICANRIVERS.ORG (Apr. 18, 2023), <https://www.americanrivers.org/media-item/lehigh-river-named-among-americas-most-endangered-rivers-of-2023/>.

⁴⁶ Protecting Headwaters: The Scientific Basis for Safeguarding Stream and River Ecosystems. Stroud Water Research Center, <http://www.stroudcenter.org/research/PDF/ProtectingHeadwaters.pdf>. 2008.

⁴⁷ City of Bethlehem, *Water & Sewer Resources*, BETHLEHEM-PA.GOV, <https://www.bethlehem-pa.gov/water-sewer-resources> (last visited May 1, 2023).

⁴⁸ Edie Juno and John-Rob Pool, *How Forests Near or Far Can Protect Waters for Cities*, WRI.ORG (Sept. 23, 2020), <https://www.wri.org/insights/forests-near-or-far-can-protect-water-cities>

Any negative impact on water resources caused by the Project could also result in significant detrimental economic impact. According to American Rivers' Director of Clean Water Supply, "unprecedented development of open space for warehousing and distribution centers threatens the region's clean water and wildlife, and the communities and economies that rely on them." Monroe County is one such community.⁴⁹ The 2022 Monroe County Return on Environment Study found that benefits provided by nature save the county \$1.1 billion annually, including \$164 million attributed to healthy riparian buffers.⁵⁰ Outdoor recreation, including activities dependent on high-quality waters such as fishing, kayaking, canoeing, hunting, and birding, bring \$368 million into the County each year.

Furthermore, the Project would negatively impact groundwater aquifers. The forested headwater area on the Property is connected to and drains to the aquifer beneath the Pocono Plateau, a primary source for water in Monroe County and an important groundwater supply that the surrounding community relies on for drinking water. In addition, emissions and air pollutants associated with vehicle-intensive uses such as warehouses may affect ground water and surface water and cause acid rain, increased air pollution, and other threats.

In short, the Project and others like it threaten irreparable harm to a globally rare and exceptionally valuable ecosystem that provides irreplaceable habitat, water quality and economic benefits. Commenters contend that the Property is simply not an appropriate site for a sprawling warehouse. Intense industrial development of this kind is more properly sited on existing spoiled land, mined area, or existing paved-over areas. Commenters recognize that the siting of these projects is largely controlled by local governing bodies. However, given the sensitive nature of the site, Commenters contend that the Department must subject the Application to the utmost scrutiny to ensure that the Project will not irreparably damage this pristine landscape or degrade invaluable waters of the Commonwealth. It is Commenters' position that Application does not withstand this high level of scrutiny and must be denied.

IV. APPLICANT'S CLEAR-CUTTING OF INTACT MATURE FOREST WILL RESULT IN LOSS OF IRREPLACEABLE WATER QUALITY BENEFITS.

Of particular concern here is Applicant's proposal to convert vast swaths of mostly native forest on the Property to impervious surface and structural stormwater facilities. Research at the Stroud Water Center and elsewhere has shown that stream health is dependent on the presence of woody vegetation.⁵¹ Forests naturally filter and regulate the flow of water, slow the fall of rainwater to the ground, filter sediment, shade and modify stream temperature, and provide habitat for many species.⁵² Trees are also especially good at removing nutrients and contaminants such as metals, pesticides, solvents, oils and hydrocarbons from soil and water.⁵³ In addition, forests and natural forest soils and leaf litter reduce stream velocity, provide for important infiltration, and

⁴⁹ American Rivers, *Lehigh River Named Among America's Most Endangered Rivers of 2023*, AMERICANRIVERS.ORG (Apr. 18, 2023), <https://www.americanrivers.org/media-item/lehigh-river-named-among-americas-most-endangered-rivers-of-2023/>.

⁵⁰ Kittatinny Ridge, 2022 RETURN ON ENVIRONMENT STUDY: MONROE COUNTY 26 (2022).

⁵¹ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵² Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵³ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

reduce downstream flooding by absorbing and using tremendous amounts of water that would otherwise flow to surface waters.⁵⁴ Research reported by the Penn State Extension shows that an intact forest can take up 60% of the annual rainfall falling on it through the process of evapotranspiration, leaving only 40% to flow to surface waters.⁵⁵ If forest is removed, evaporation drops to 35%, and surface waters receive 65% of the rainfall.⁵⁶ These impacts are especially egregious when forest is replaced by impervious surface. The runoff from one acre of paved parking generates the same amount of annual runoff as 36 acres of forest.⁵⁷

In addition to water quality and stormwater management, forest cover provides diverse habitats. Clear-cutting the Property as Applicant proposes (and has already begun) will destroy this habitat and sever the connection and contiguous forest habitat with the adjacent State Game Lands 127 and other preserved lands. These concerns have led private citizens and conservation groups to preserve similar habitats with conservation easements due to the importance of the ecosystems that remain.

Intact forest buffers also provide substantial economic benefits. The Monroe County 2022 Return on Investment (ROE) report found that headwater forests and wetlands, including those on the Property, have an estimated annual ROE value of up to \$5,750–\$6,568 per acre, the highest ROE value of any land cover type.⁵⁸ Another study examining the economic value of riparian buffers in the Delaware River Basin found that riparian buffers provide over \$10,000 per acre annually in monetized benefits in addition to non-monetized benefits.⁵⁹ The same study estimated an annual loss to the Delaware River Basin of approximately \$981,000 to \$2.5 million in monetized ecosystem services if riparian buffers are not adequately protected. This research shows the critical importance of protecting forested buffers and headwater tributaries and wetlands, the very thing Applicant proposes to develop.⁶⁰

Structural stormwater controls simply cannot take the place of the myriad water quality, water quantity, habitat and economic benefits naturally provided by an intact forest. In the words of the Department’s own *Pennsylvania Stormwater Best Management Practices Manual*, the defining distinction of Non-Structural BMPs, including protecting sensitive and special value features such as forests and minimizing disturbance, is “their ability to prevent stormwater generation and not just mitigate stormwater-related impacts once these problems have been generated.”⁶¹ By contrast, structural BMPs merely “provide mitigation of those stormwater

⁵⁴ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵⁵ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵⁶ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵⁷ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁵⁸ Return on Environment Map, KITTATINNY RIDGE.ORG, <https://wplan.maps.arcgis.com/apps/webappviewer/> (last visited Apr. 28, 2023).

⁵⁹ ECONorthwest, *The Economic Value of Riparian Buffers in the Delaware River Basin* 7 (2018).

⁶⁰ Onlot Septic Systems Proposed in High Quality and Exceptional Value Watersheds (PADEP Doc: #385-2208-001) Michele Adams, Meliora Design. May 7, 2013

⁶¹ Pa. Dep’t of Env’tl. Prot., PENNSYLVANIA STORMWATER BEST MANAGEMENT PRACTICES MANUAL § 5.2 (publication 363-0300-002) (2006).

impacts which cannot be prevented or avoided.”⁶² Recent warehouse guidance from NJ Highlands Council,⁶³ among other sources, supports why this type of preservation is needed and should be required.

While Commenters recognize that Chapter 102 does not govern forest clearing, the destruction of mature forest on the site calls for special scrutiny to ensure that the water quality benefits of an intact forest will be maintained. Redundancies to ensure forests are protected for all the scientific reasons cited is also critical. The Department cannot continue to be hamstrung, behind on the science, as our very last great places and forests are decimated. The Application does not adequately demonstrate that this will be accomplished and, therefore, must be denied.

V. THE APPLICATION ERRONEOUSLY INDICATES THAT THE PROJECT IS NOT IN AN ENVIRONMENTAL JUSTICE AREA.

The Department defines Environmental Justice as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the Commonwealth’s development, implementation, and enforcement of environmental laws, regulations, and policies.” In the Department’s own words:

Historically, minority and low-income Pennsylvanians have been forced to bear a disproportionate share of adverse environmental impacts. It is our duty to ensure that all Pennsylvanians, especially those that have typically been disenfranchised, are meaningfully involved in the decisions that affect their environment and that all communities are not unjustly and/or disproportionately burdened with adverse environmental impacts. Simply put, environmental justice ensures that everyone has an equal seat at the table.⁶⁴

In accordance with this principle, the Department’s Environmental Justice Policy seeks to expand public participation activities in defined Environmental Justice Areas (EJ Areas) to ensure enhanced public notice and opportunities for input to the permit application process to accommodate environmental justice concerns.⁶⁵ EJ Areas are defined as census tracts having a 30 percent or greater minority population or 20 percent or greater at or below the poverty level as defined by the US census bureau.⁶⁶ EJ Areas are mapped on the Department’s online EJ Areas Viewer.⁶⁷ The Department may engage in enhanced public participation under the Environmental Justice Policy for any permit application based on 1) identified community concerns; 2) present or

⁶² Pa. Dep’t of Env’tl. Prot., PENNSYLVANIA STORMWATER BEST MANAGEMENT PRACTICES MANUAL § 5.2 (publication 363-0300-002) (2006).

⁶³ N.J. Highlands Water Protection and Planning Council, POLICY STANDARDS FOR WAREHOUSING IN THE NEW JERSEY HIGHLANDS REGION (2023).

⁶⁴ Pa. Dep’t of Env’tl. Prot., *Office of Environmental Justice*, DEP.PA.GOV, <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/default.aspx> (last viewed Apr. 13, 2023).

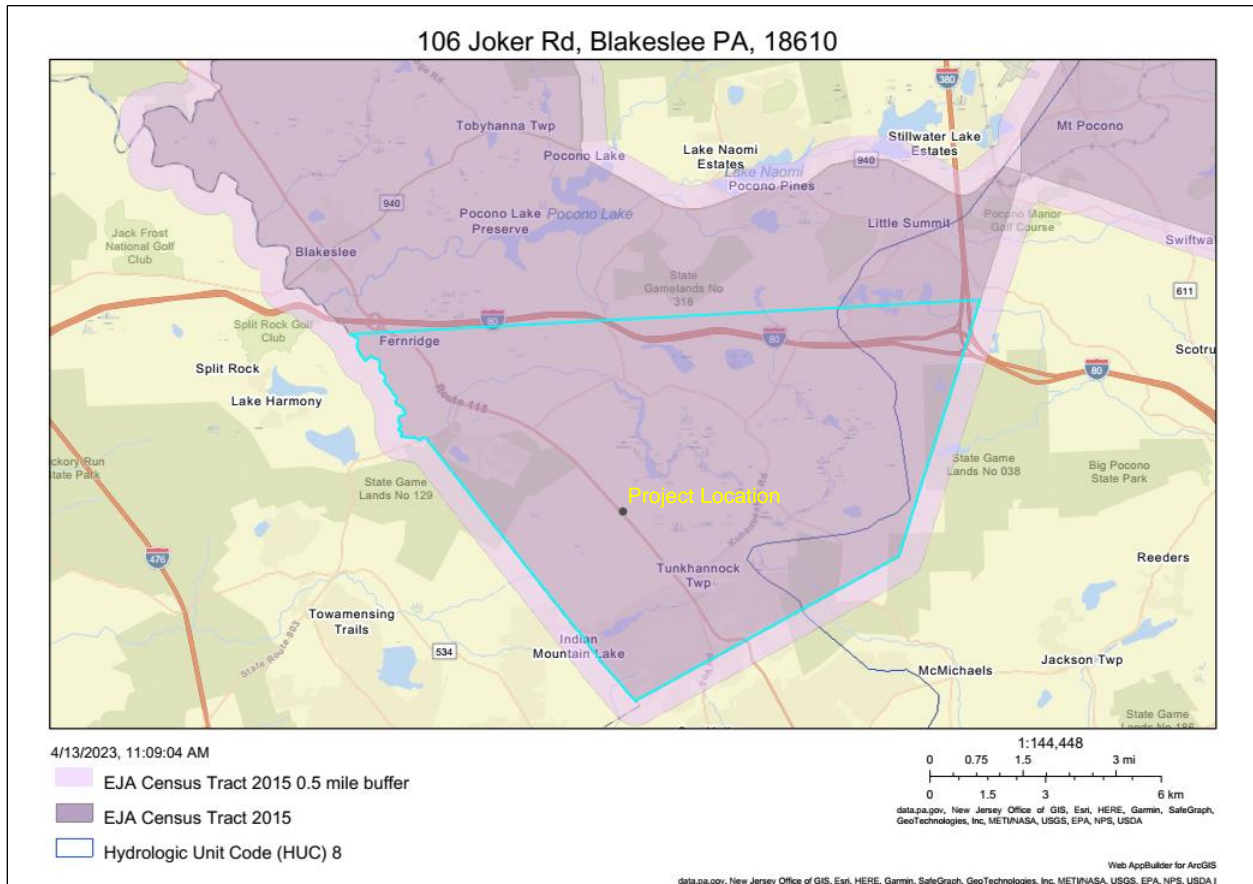
⁶⁵ Pa. Dep’t of Env’tl. Prot. Policy Office, ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY, doc. 012-0501-002 at 1 (2005).

⁶⁶ Pa. Dep’t of Env’tl. Prot. Policy Office, ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY, doc. 012-0501-002 at 1 (2005); Pa. Dep’t of Env’tl. Prot., *PA Environmental Justice Areas*, DEP.PA.GOV, <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx> (last viewed Apr. 13, 2023).

⁶⁷ Pa. Dep’t of Env’tl. Prot., *Environmental Justice Areas Viewer*, dep.pa.gov/EJViewer (last viewed April 13, 2023).

anticipated environmental impacts; and 3) reasonably anticipated significant adverse cumulative impacts.⁶⁸

In order to determine whether enhanced public participation should be pursued, the Department requests that NPDES permit applicants indicate on the *General Information Form* whether the proposed project is located in or within a 0.5-mile radius of an EJ Area according to the Department's EJ Areas Viewer. In this case, Applicant has erroneously indicated that the Project is not within an EJ Area. As seen below, the Project is located within EJA Census Tract 3003.04, which has a minority population of 40% and in which 12% of people live in poverty.



Accurate information regarding a site's relationship to EJ Areas is vital for the Department to determine whether enhanced public participation is necessary to advance environmental justice with respect to any given project. For this reason, Commenters draw the Department's attention to this error in the Application.

VI. OTHER CONCERNS

Commenters note the following additional concerns and urge the Department to consider them in reviewing the Application:

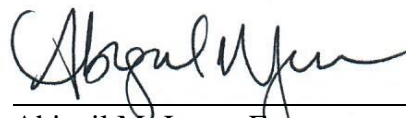
⁶⁸ Pa. Dep't of Env'tl. Prot. Policy Office, ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY, doc. 012-0501-002 at 4 (2005).

- Given the extremely important and sensitive nature of the EV wetlands on the Property, Commenters contend that an Army Corps of Engineers wetland delineation is warranted.
- Department regulations do not adequately address the various unique impacts warehouse/distribution center/logistics developments like the Project have on surface waters and groundwater, including impacts resulting from massive impervious surfaces and intense heavy traffic use. Development of this nature is proliferating at an unprecedented rate in northeastern Pennsylvania and beyond and should be treated as a distinct category of development.
- The Application does not provide any data on existing water quality in the EV wetland or Mud Pond Run or indicate that water quality will be monitored post-construction. Without monitoring data, the Department will be unable to determine if water quality in the receiving water is degraded by the Project.
- With more than 10 proposed warehouses/logistics centers in the Monroe County area (of which Commenters are aware), the concerns attending the Project cannot be viewed in a vacuum. Significant cumulative impacts to the high quality and exceptional valuable waters of the Poconos, including the invaluable Lehigh River headwaters, can be expected from this unprecedented pace of industrial development. To examine the projects piecemeal and one project at a time is not in the spirit of protecting anti-degradation waters; the Department should consider this unprecedented pattern of development as a whole.

VII. CONCLUSION

For the above reasons, the Department should deny Applicant's request for an NPDES permit for the Project. If the Application is not denied and the Department requires Applicant to submit additional information, as Commenters contend they should, the public should be given ample time to review any additional materials submitted. When all materials are submitted, another public comment period of at least 30 days should be provided to the public. Thank you for your time and consideration.

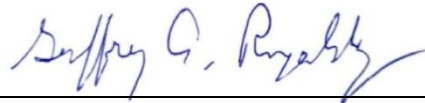
Sincerely,



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