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RE: Comments on Application of CRG Services Management, LLC for National Pollutant Discharge Elimination System (NPDES) Individual Permit for Discharges of Stormwater Associated with Construction Activities For “Core5 at Route 100 Project” (PAD390265). (Wessner Tract Site, 2951 Betz Court)

Dear DEP NERO staff:

The Delaware Riverkeeper Network (“DRN”) respectfully submit these comments on the application of Fred Ferraro of CRG Services Management, LLC (“CRG”) HQ located at 300 Barr Harbor Dr. Suite 720, Conshohocken, PA 19428 –for an NPDES Individual Permit for Discharge of Stormwater Associated with Construction Activities (PAD390265) (“Application”) for the construction of a 56.73 acre land development consisting of a 299,880-square foot warehouse/distribution uses and a variety of commercial uses along Betz Court in Lowhill Township, Lehigh County, PA (the “Project”). The application states the site is located at: 40° 37' 07.88" N Latitude and 75° 38' 43.04" W Longitude. The USGS quadrangle for the property illustrates Kernsville Road as part of the eastern Site boundary and Betz Court as part of the southern Site boundary. The USGS quadrangle also illustrates an unnamed tributary (UNT) in the central region of the site, extending beyond the western boundary. On October 19, 2022, the Department of Environmental Protection (the “Department”) received an NPDES Permit application for the 2951 Betz Court Site, Orefield, PA in Lowhill Township, Lehigh County. The application was deemed administratively complete on January 6, 2023. Written public comments were received during the public comment period. The Department held a second virtual public hearing on Monday, December 11, 2023 from 7:45 p.m.—9:15 p.m. to accept additional comments on the documentation and plans associated with the Individual NPDES Permit Application No. PAD390265 for the discharge of stormwater from construction activities to the following receiving watercourses: UNT to Jordan Creek (HQ—CWF, MF) and EV Wetlands. 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 Individual NPDES permit.

From the New York Highlands to the Delaware Bay, the Delaware Riverkeeper Network 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.

DRN appreciates 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 and a UNT to Jordan Creek designated High Quality (HQ) stream—are among the highest quality waters in the Commonwealth and are entitled to special protections under the Clean Water Act, the Clean Streams law, and associated department regulations. Degradation of these waters will cause damage to the water quality, to the aquatic life that live there, including bog turtle habitats 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 CRG has failed to submit, the Department risks irreparable harm to Exceptional Value and High Quality water resources, forested riparian buffers, and the environment.

DRN notes that the comment periods had been extended now for this proposed application with an added DEP public hearing that was set for December 9, 2023 and subsequent 15 days for written comments which puts the new deadline near end of year holidays. This extension appears to have been required as the applicant, as we point out below in comments, was missing key information to their original application. Many of these deficiencies were noted by sister agencies as well with concerns including the Lehigh County Conservation District. Please note that most of our comments included below were drafted reviewing the application on line in early November and with other partner work with our sister ally, Pennfuture whose attorney have worked extensively on similar warehouse proposals at the local municipal level and state level proposed in EV and HQ watersheds of the Delaware and Lehigh Basins. We have added in additional points with the extension as well but include all information for DEP's review and consideration at this time. Given the importance of the antidegradation waters to be impacted, the inadequacies of the Application, the foot dragging by the applicant and omissions of key needed elements of the application, DRN urges the Department to deny the Application at this time.

I. 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.¹ These antidegradation requirements apply to all surface waters, including wetlands.² 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

¹ 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. Environ. Hrg. Bd. 2006).

² 25 Pa. Code § 96.3.

must be achieved at all times at design conditions.³

The Chapter 93 antidegradation regulations are **in addition to** the Chapter 102 permitting program regulations.⁴ The Chapter 102 requirements “were not intended to nor do they incorporate fully the Chapter 93.4a-d antidegradation requirements.”⁵ “Chapter 102 is about BMPs which are ‘activities, facilities, measures, or procedures’ aimed at controlling erosion and sedimentation.”⁶ 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.”⁷ “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.”⁸ Consequently, compliance with Chapter 102 regulations **does not** constitute full adherence to the antidegradation regulations of Chapter 93.⁹

The Department must ensure that an application complies with **both** the applicable requirements of Chapter 102 **and** the Chapter 93 antidegradation requirements.¹⁰ 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.”¹¹ This includes demonstrating that the proposed discharge will “maintain and protect the existing quality of receiving surface waters.”¹²

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.’”¹³ It is “ultimately not about checking off boxes on form.”¹⁴ The overriding requirement “is that the water quality

³ 25 Pa. Code 96.3(b), (c).

⁴ 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).

⁵ *Blue Mtn. Preservation Assoc.*, 2006 Pa. Environ. LEXIS 55 at *18, 35–36, 38.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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’tl Prot.*, Docket No. 2014-166-M, 2016 Pa. Environ. LEXIS 37, *9 (Pa. Env’tl. Hrg. Bd. 2016) (water quality program, including antidegradation program, are broader in scope than the NPDES program).

¹⁰ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *22–23 (Pa. Env’tl. Hrg. Bd. 2006) (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

¹¹ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *22–23 (Pa. Env’tl. Hrg. Bd. 2006) (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

¹² 25 Pa. Code 93.4c(b)(1)(i)(B).

¹³ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Env’tl. Hrg. Bd. 2011). ABACT stands for antidegradation best available combination of technologies.

¹⁴ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Env’tl. Hrg. Bd. 2011).

of HQ and EV waters ‘shall be maintained and protected.’”¹⁵

Applicant proposes at least three point source discharges to the EV Wetlands and HQ UNT to Jordan Creek, 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 completed Module 3 during the original public comment period and fails to demonstrate 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.¹⁶ This is a “threshold step” of the analysis, and nondischarge alternatives (plural) must be considered, regardless of the degree of degradation.¹⁷ 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.¹⁸ Only if an applicant has **demonstrated** that environmentally-sound, cost-effective, nondischarge alternatives are not available is a discharge to an EV water permitted.¹⁹

In the Application, the Applicant has submitted *Soil Erosion & Sedimentation Control Report for 2951 Betz Court Site Lowhill Township, Lehigh County, PA*. Applicant does not provide information regarding alternatives. Regarding site selection, it is explained that this site was chosen for a variety of reasons, and that “a site was chosen which has no impacts to existing Waters of the Commonwealth (i.e., wetlands, streams), many of which could potentially occur on alternative properties.” Applicant makes the conclusion that this project will not have any impacts on existing waters, despite acknowledging in its Module 1 documentation that there will be three point discharges into HQ UNT to Jordan Creek and that EV wetlands are on the property site. Similarly, the Applicant reasons that because the site naturally drains to the UNTs to Jordan Creek, that no alternative configuration or location discharge could be possible. It is not clear how Applicant can conclude that there is no impact to these waters while simultaneously claiming that there is no alternative configuration or location discharge.

CRG provides no further information about the alternatives considered, their absolute cost, or their cost compared to the cost of the proposed discharge. CRG simply makes conclusory statements that there will be no impacts to waterbodies and that there are not alternative options for discharges without reasoning or explanation as to what influenced those conclusions. These cursory statements are the precise type of lack of care and box checking of 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

¹⁵ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. 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)).

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

¹⁷ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. 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 Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 45 (2003).

¹⁸ 25 Pa. Code § 93.4c(b)(i)(A).

¹⁹ 25 Pa. Code § 93.4c(b)(i)(A), (B).

Department must deny the Application.

The Department has advised that “[i]f discharges are to waters with existing or designated uses of High Quality Waters (HQ) or Exceptional Value Waters (EV), an antidegradation analysis must be completed and recorded on Module 3.”²⁰ The Department requires that Module 3 be “completed to address discharges to special protection waters[.]”²¹ Despite CRG identifying discharges to HQ waters and EV wetlands in the watershed on the General Information Form – Authorization Application, simultaneously CRG also determined that stormwater discharges are not anticipated to impair waters during or following construction activities on its NPDES Application Form. However, without undergoing the investigation and analysis that Module 3 requires, it is not clear how CRG could have concluded that there is no impact to the HQ tributary or EV wetlands. Module 3 requires CRG to “explain the rationale for non-selection [of non- discharge alternatives], including why none of the alternatives are considered environmentally sound and cost-effective.” The Applicant must complete Module 3 because CRG plans to discharge into HQ UNT to Jordan Creek and cannot simply conclude that no further analysis is required.

DRN notes that on November 14, 2023 Module 3 was added to the public records for public review and there was an extension of comment and public hearing, likely due to Lehigh County Conservation District’s letter noting important missing materials. It is curious that the Module is dated October 13, 2023 yet it was not part of the original materials posted on the DEP website – why had the applicant omitted this necessary module at the time? In review of Module 3, the ABACT BMPs checked remain sparse and skimmers are not noted as a planned BMP in one of the questions – yet the applicant mentions using stormwater basins and skimmers in other sections of the Module and further states that compost filter socks will eliminate any pollutants in the subsequent runoff – what data is that statement based on? These conflicting points should be addressed.

DRN does not believe CRG characterized the existing riparian forested buffer of 150’ to provide additional information on the function, structure and species composition and age of the buffer for reviewers to determine the natural quality and function of the buffer in infiltrating any additional runoff. Applicant only states 3 dominant species of *Juglans nigra* (black walnut), *Prunus serotina* (black cherry), and *Lindera benzoin* (northern spice bush) which is likely not representing the full extent of tree and shrub species present on site.

C. CRG has not demonstrated that the existing water quality of the EV wetlands or HQ UNT to Jordan Creek will be maintained and protected.

Even if CRG 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.**²² This is required “in all cases” and obligates an applicant to “undertake a certain process and make

²⁰ Com. of Pa., Dep’t of Env’tl Prot., WPAG-02 GENERAL PERMIT AND INDIVIDUAL NPDES PERMIT FREQUENTLY ASKED QUESTIONS (FAQ) 5 (2020).

²¹ Com. of Pa., Dep’t of Env’tl Prot., WPAG-02 GENERAL PERMIT AND INDIVIDUAL NPDES PERMIT FREQUENTLY ASKED QUESTIONS (FAQ) 5 (2020).

²² *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *26 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code § 93.4c(b)(1)(i)(B)).

certain showings as a prerequisite to the Department's granting of an NPDES permit.”²³ By the same token, “**the Department is obligated to see to it that the applicant has done so** before it may grant a permit.”²⁴

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.²⁵ Module 3 does not require, and CRG has not submitted, information sufficient to satisfy CRG’s separate obligation under Chapter 93 to demonstrate that the proposed discharge to an HQ tributary with nearby EV wetlands will maintain and protect the existing quality of receiving surface waters.²⁶

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 determine the instream water quality objectives CRG must satisfy.²⁷ 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, CRG has provided no information about existing pollutant concentrations in the EV wetlands or to the tributary to Jordan Creek 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.²⁸ 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.²⁹

CRG has failed to provide any information about the parameters addressed in the

²³ *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. Environ. Hrg. Bd. 2011).

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. Environ. Hrg. Bd. 2011).

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

²⁶ 25 Pa. Code 93.4c(b)(1)(B).

²⁷ 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.

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

²⁹ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 64 (2003).

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. The lack of information is concerning for several reasons. The proposed change in land cover will likely generate thermal impacts to water quality and the land and changes in hydrology as over 50% of the site is forested. Soils will be disturbed and irreparably harmed. 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 for the intended warehouse use. If introduced into the water system, road salt increases salinity and chloride and causes oxygen depletion in the receiving body of water.³⁰ 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).³¹ Chloride is also alarmingly causing changes in salinity to groundwater – an emerging threat documented by Stroud Water Research Center and others in the region.

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 organisms.³² In addition, the NPDES permit, if granted, will cover discharges related to possible firefighting activities.³³ Firefighting foam is a major environmentally contaminating source of per- and poly- fluoroalkyl substances (PFAS).³⁴ These chemicals are known pollutants and feature fluorine- carbon bonds that make them virtually indestructible, earning them the name “forever chemicals.”³⁵ 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.³⁶

Although neither PAHs nor PFAS are expressly addressed by the Department’s antidegradation regulations, these regulations recognize that not all possible pollutants are listed.³⁷ 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.³⁸ The

³⁰ 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/>.

³¹ 25 Pa. Code 93.7, Table 3.

³² Austin K. Baldwin, et al, *Primary Sources of Polycyclic Aromatic Hydrocarbons to Streambed Sediment in Great Lakes Tributaries Using Multiple Lines of Evidence*, 39 ENVTL TOXICOLOGY & CHEM. 1392 (Jun. 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7383861/>.

³³ 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).

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 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/>.

³⁶ 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.

³⁷ 25 Pa. Code § 93.7(c).

³⁸ 25 Pa. Code §§ 93.6(a), 93.7(c).

Department must use the best available scientific information to develop a criterion for these substances.³⁹ Commenters contend that the presence of PAHs and/or PFAS in the discharge from the Project will be inimical and injurious to the HQ UNT to Jordan Creek or EV wetlands if not properly mitigated. However, because CRG has failed to provide any information about the likely presence of PAHs and PFAS in the proposed discharge to HQ and EV waters, the Department cannot fulfill its obligation to ensure that no injury will result from the introduction of these chemicals into the HQ UNT to Jordan Creek or EV wetlands.

Steep slope concerns and soils – The wetland delineation report by Kleinfelder shows significant portions of the site have steep slopes which could lead to sediment pollution impacts, challenging conditions, and pollution run off events especially with more increasingly strong rainfall events and storms from climate change. The report notes (diagram included below as well): Berks-Weikert complex, 25 to 60 percent slopes (BkF), comprises approximately 18.1 acres (32.9%) of the Site. Berks-Weikert complex, 15 to 25 percent slopes (BkD), comprises approximately 5.8 acres (10.6%) of the Site. Yet the applicant states that there will be very little runoff from the site though it is proposing to cut mature forest on the site. Forested sites and undisturbed forested soils naturally infiltrate runoff efficiently and effectively – Meliora stormwater experts and others have documented time and time again that a forest is the best way to control and curve stormwater impacts yet the applicant is planning on cutting much of the forest on the site. It would be helpful to reviewers if the footprint of the warehouse was outlined on the property maps and locations.



In short, CRG has not provided information sufficient to establish that discharges from the Project to the HQ UNT to Jordan Creek or EV wetlands will satisfy the antidegradation

requirements of Chapter 93. Therefore, the Department cannot issue and must deny the requested NPDES permit.

II. OTHER CONCERNS

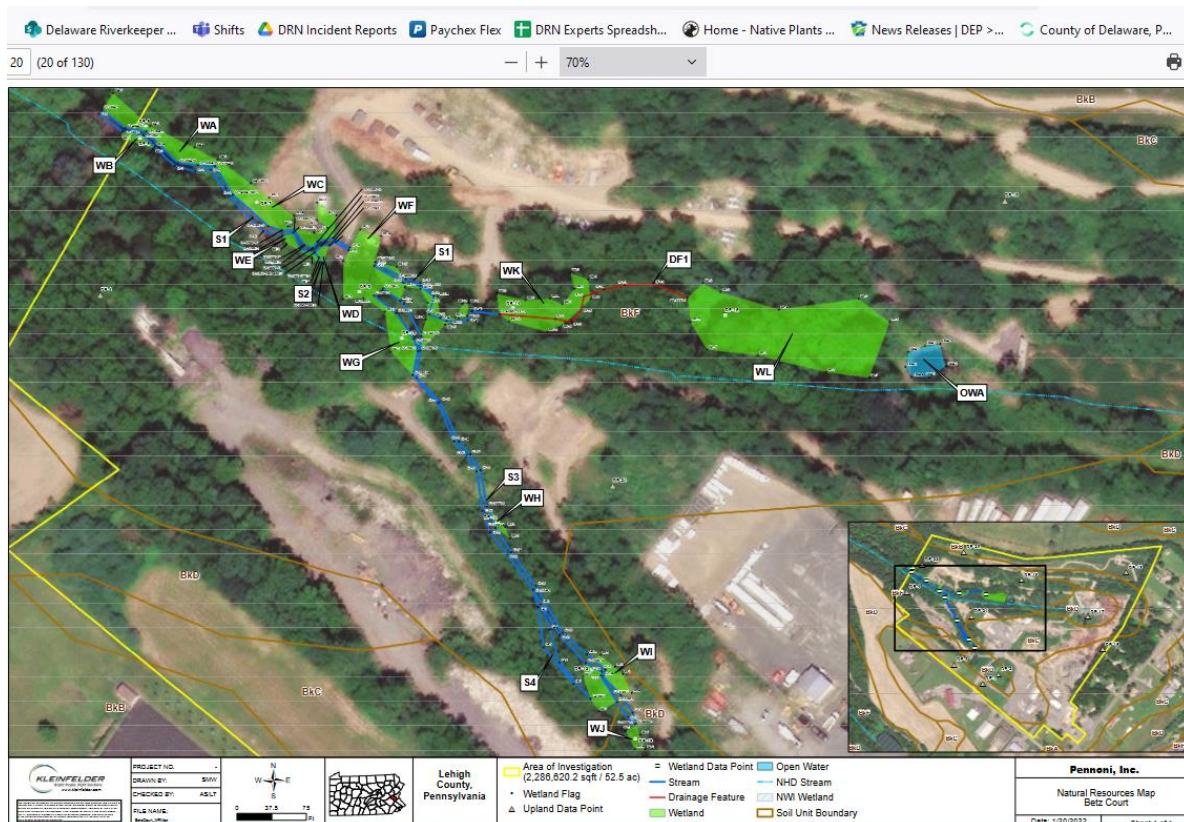
Commenters note the following additional concerns and urge the Department to consider them when reviewing the Application:

The wetlands, waterbodies and streams on site are central to it and the rationale in the application that there will be no encroachment is baffling with the layout of the site.

The delineation report states the “site has a multitude of sensitive water features present outlined in Pennoni wetland delineation report including: Twelve (12) freshwater wetlands, four (4) watercourses, one (1) drainage feature, and one (1) pond were identified and delineated during the Site assessment.

Wetlands A, B, C, D, E, F, G, H, I, J, K, and L and Streams 1, 2, 3 and 4 are likely USACE jurisdictional features (WOTUS) due to have a direct surface water connection to a traditional navigable waters (TNW). Stream 1 (Tributary 03484 of Jordan Creek) is designated as a High Quality-Cold Water Fishes (HQ-CWF) and Migratory Fishes (MF) stream under Chapter 93 in Title 25 of the PA Code. Streams 2, 3, and 4 are tributaries to Stream 1, therefore, would likely be classified as HQ-CWF and MF under Chapter 93 in Title 25 of the PA Code. Open Water A has a direct surface water connection to Stream 1, thus Open Water A is likely a USACE jurisdictional feature. All features delineated on-site are also likely jurisdictional Waters of the Commonwealth of Pennsylvania.” **The Department should not allow a Chapter 105 waiver as is being sought by CRG and as is noted in email correspondence included on the record between the CRG’s consultant and DEP staff (July 27, 2023 email correspondence).**

Diagram included below to show the nature of important waterways on the site.

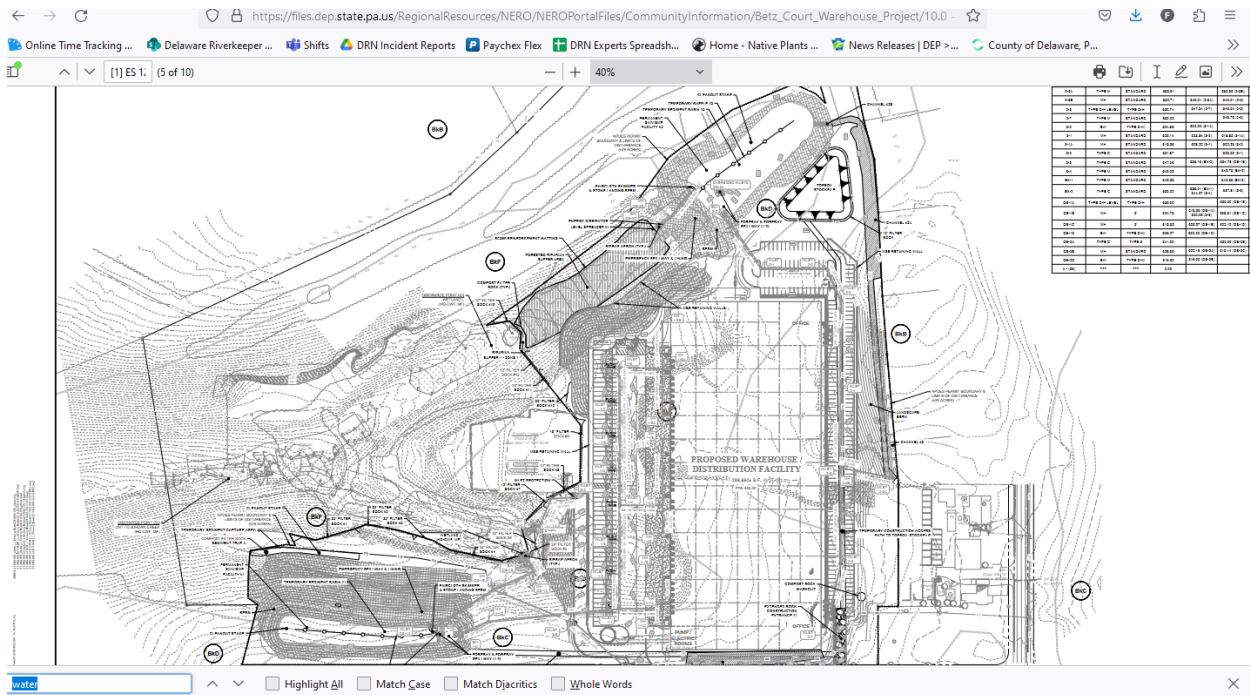


With so many waterbodies on the site, the interface with groundwater and surface water is in close proximity and has to be considered as a warehouse would bring with it polluted runoff that would not only impact the waterways but also likely the groundwater. The Klinefelter delineation report further states, “The 1955 imagery depicts a majority of the Site is comprised of agricultural fields with a wooded area in the southeastern region of the Site. **Two unnamed streams, evidenced by their linear shape and course can be seen on the imagery. They originate in the southcentral portion of the property and flow west, offsite. Between 1955 and 1981, several dark features that appear along the unnamed streams in the central region are likely signs of saturation and inundation.** By 1981 the southern region of the Site is more developed, comprised of parking areas and buildings. **The undeveloped portions of the property are still in agricultural use or are wooded.** The 1992 imagery shows the central and northwestern region has been altered with several structures and access roads; a narrow-wooded area had also begun to grow in the northeastern region of the Site. **Pronounced signs of saturation and inundation also appear on the 1992 aerial imagery in the central region of the Site.** By 2010, most of the southern and central regions of the Site were heavily altered with more buildings, stockpiles, and access roads.

Klinefelter field surveys of waterbodies occurred in the summer months when conditions are often dry – August 5th and 6th, 2021. Conducting waterbody surveys during the hot summer months may not be the ideal time to document the greatest extent of wetlands on site. Yet a vast complex of wetlands was delineated that includes, per the Applicant’s consultant, 18 water and wetland features on the site – its noted these are “centrally located on the site”. More specifically the consultant documented 6 PFO wetlands and 6 PEM wetlands, 4 watercourses (1

perennial and 3 intermittent streams – all HQ status – riffle pool headwater tributaries), 1 drainage feature and one open water/pond. Given the extremely important and sensitive nature of the EV wetlands and complex of headwater HQ tributaries on the Property, DRN urges the DEP to not allow a waiver and instead require an Army Corps of Engineers wetland delineation of the site. This may be even more critical with the additional Core 5 application that could also if permitted, impact the same HQ drainage area of Jordan Creek – Cherith Brook tributary - with an additional 100,569-foot warehouse project.

- The Phase 1 bog turtle survey conducted by Kleinfelder concluded that at least 5 wetlands on site constitute bog turtle habitat (Wetlands C, D, E, F and K) within this watery wetland complex located on site. Furthermore, Kleinfelder notes that “Streams 1 and 2 likely serve as migratory corridors for turtles to travel within and between their wetland habitats. Specifically, Stream 2 is abutted by Wetland E.” “Stream 2 may act as a corridor for bog turtles to migrate to other populations if there is a population in Wetlands D and E. Streams 3 and 4 flow into Stream 1. Streams 3 and 4 abut Wetlands H, I, and J. Stream 1 may act as a corridor for bog turtles to migrate to other populations downstream if there are bog turtles using Wetlands C, D, E, F, and K.” It is the opinion of Kleinfelder that development within 300-feet of Wetlands C, D, E, F, and K should be avoided or a Phase 2 survey would be required. The filling of Wetlands A, B, G, H, I, J, and L will require authorization from the Pennsylvania Department of Environmental Protection and the U.S. Army Corps of Engineers; however, it will not have an impact on habitat suitable for bog turtles according to the consultant – yet the proximity of these wetlands and the migration corridors of the complex of streams makes it difficult to ascertain these artificial boundaries as is being attempted. DRN believes that the project design will not adequately protect this complex wetland and stream system that the Applicant acknowledges likely has bog turtles. Direct discharges of heated and polluting runoff to likely connected wetlands as well as inadequate buffers and a complete overhaul of the site with massive construction planned should not be allowed on the site. As a bare minimum the warehouse footprint should at least have to be minimized to ensure no encroachment by basins, berms, or buildings is allowed.
- E&S plots and drawings show two discharge points to Wetlands L (Discharge 2) and Wetlands J (Discharge 1) as well as a discharge directly in the headwaters of the HQ UNT (Discharge 3). Again, as stated above, the applicant does not appear to undertake the needed assessment of no discharge alternatives and instead wants to propose impacting these HQ and EV resources. Furthermore, the proposed steep berm creation/permanent retaining wall and the moving of topsoil on site appear to crowd the natural water ways located on the site and are within 300 ft of the water resources. Encroachment is occurring and DRN believes a Corps 105 application must be pursued.



- The thermal impact analysis proposed by the applicant is not protective of HQ water impacts and provides no level of detail or any data collection pre and post project --- this application must be denied and as stated above the box checking does not adequately meet the spirit of anti-degradation rules – EHB has been clear on these points.
- 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 UNT to Jordan Creek 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. DRN does not believe compost filter socks will help cool down water and runoff of a site that will be largely deforested (1 to 39 acres of forest to be cut according to the PNDI) – the thermal impact analysis is not complete or sufficient.
- What is the landuse breakdown of the site? Are the temporary basins proposed replacing forest? The applicant does not clearly outline water resources on the plots which is evading better review. Better mapping is possible with better overlays but are not provided by the applicant to make this desk top review easier for reviewers, likely by design.
- Lehigh Valley Planning Commission’s (LVPC) [2021 annual report](#) found that over six

years, 27 million square feet of new warehouse space was approved by local governments, and 16.5 million square feet more was in the process of being approved.⁴⁰ In a [2018 survey](#) conducted by LVPC, more than half of residents said warehouses were their least favorite part of living in the valley, and two-thirds said it was truck traffic. A web search indicates there are at least six new warehouse or distribution centers proposed for Lehigh County alone even with this already massive warehouse space available of which not all is presently leased. Three warehouses have been proposed for Route 100 and Kernsville Road in Lowhill Township alone.⁴¹ Concerns about growth and particularly truck traffic (truck traffic brings with it air pollution deposition to waterways and other threats mentioned above) have locals worried. The water quality concerns attending the Project cannot be viewed in a vacuum. Significant cumulative impacts to the high quality and exceptional valuable waters of the Poconos and greater Delaware River watershed, 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 and cumulatively.

- Per a web search, the total area of listed spaces for rent of warehouses in Lehigh County range from 450 to 1.4 million SF of space. Many of the spaces are available near the Lehigh Valley airport, the FedEx Ground hub, and Interstate 78.^{42 43}
- Furthermore, with cumulative harms, the proposed Core 5 warehouse project (Public Hearing Notice NPDES Permit Application No. PAD390269) should also be considered along with the Betz warehouse discharge as the receiving stream to be impacted is proposed to be the same drainage area. Tributary to Jordan Creek (aka Cherith Brook) (HQ-CWF, MF). This is another warehouse project being proposed for Lowhill Township by Brian Reisinger, Core5 Industrial Partners HQ located at 1250 N. Mountain Rd, Harrisburg, PA 17112. The Dept. should not be operating in a vacuum for these applications that would impact special protection antidegradation waters.
- The PNDI application (PNDI-788921) notes that “the project will impact 1 to 39 acres of forest” but flies under the 40-acre threshold which is short shifting adequate protection of the bats and the forest. More details should be provided. The Indiana bat is an endangered species that thrives in forests and looking at the surrounding areas that are often ag dominated, these forested headwater HQ tributaries are just the type of rare sensitive forested wetland and stream headwater habitats that deserve protection. The PNDI also notes that the project construction will be within 300’ of wetlands while other parts of the application say there will be no disturbance. The applicant sites the more detailed wetland delineation which does not appear upon review, to indicate buffer

⁴⁰ Lehigh Valley News. [Lowhill Township warehouse fight similar to others in the Lehigh Valley | LehighValleyNews.com](#). October 30, 2022

⁴¹ WFMZ-TV, Jeff Ward. Northern Lehigh region, LVPC to hold June 9 meeting to review warehouse development in Lowhill Township. May 24, 2022

⁴² [Warehouses for Lease in Lehigh County | Crexi](#) web search

⁴³ [Lehigh County Industrial and Warehouse Space For Rent & Lease | Showcase](#)

areas at all for any of the waterbodies and wetlands documented on site. The May 22, 2022 PNNDI also requests a Phase 1 bog turtle survey be conducted and subsequent ideal habitat for this endangered turtle.

- The Phase 1 Environmental Site Assessment (ESA) in 2020 was conducted by Terracon Consultants. There appears soil contamination and possible water quality and sub surface contamination may be present on the site from several RECs sited by the consultant. The RECs include history of a fire in the southern portion building on site. The ESA states it should be noted, “structure fires typically involve furnishings and other items made of both natural and synthetic materials. These fires can produce hundreds of combustion byproducts, including polycyclic aromatic hydrocarbons (PAHs) and metals. Based on this information, combustion byproducts produced from the 2020 former site building fire are potentially located in the onsite soils; therefore, the former site building is considered a REC to the site”. Additionally, “the southwestern portion of the site consisted of an orchard from at least 1969 to approximately 2010. It should be noted that orchards were routinely treated with pesticides and other chemicals, such as arsenical pesticides, particularly lead arsenate (LA), from the 1890s until the 1960s. Research has shown that the lead and arsenic from these pesticides remain in soil long after the pesticides were used. Based on the historical application of arsenical pesticides to orchards, the historical orchard activities on the southwestern portion of the site are considered a REC.” The report also notes there is a severe water quality gap of data as well. All of these issues DEP must weigh to determine how the HQ tributaries and wetlands will not degrade by possible earth moving and transport of pollutants that may be located within the soil from these past landuses.
- Terracon reviewed the PAGWIS Water Well Inventory for water quality data on the potable water well; however, no water quality data was available for review. Additionally, water quality sampling data was requested after the site reconnaissance for the on-site water well. Water quality data was not provided. “Without water quality analytical data, Terracon is unable to compare the analytical results to the current applicable PADEP Division of Drinking Water Management MCLs and MRDLs. The lack of available water quality records for the potable well constitutes a data gap.” DEP should be requiring additional water testing.
- Historical aerials dating back to the 1930’s indicate that the site has become mature forest over time for the tributary and wetland areas – it would be a shame to have this application now impact some of this natural vegetation and mature cherry and walnut forest that exist today.
- As indicated in LVPC materials on the portal, it appears the application is not compliant with the Act 167 stormwater plans for the land development (1992 and 2006 updates to the Jordan Creek Act 167 Plan cited).
- An email correspondence dated October 19, 2022 is included on record stating a provision that if the permittee discovers any soil contamination during disturbance once work has started, work must stop. Yet it does not appear that any soil samples or REC soil samples have been required to date to attempt to know if these historical impacts

indeed have soil contamination despite multiple RECs outlined – this does not seem protective of HQ watersheds since contamination once disturbed can become mobile especially with such a intensive planned construction design and with the proposed discharges into special protection waters. These discharges should not be allowed.

III. 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. Please feel free to reach out to DRN's Director of Monitoring, Faith Zerbe faith@delawariverkeeper.org or at 215-369-1188 ext. 110. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Maya K. van Rossum". The signature is written in a cursive style and is positioned above a horizontal line.

Maya K. van Rossum
The Delaware Riverkeeper
Delaware Riverkeeper Network
keepermaya@delawariverkeeper.org

cc. Daniel Hahn, Lehigh County Conservation District, dahn@lehighconservation.org
Lehigh Valley Planning Commission, srockwell@lvpc.org