



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 3 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <http://ehb.courtapps.com/>



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

Maya van Rossum, The Delaware Riverkeeper
925 Canal St., Ste. 3701 (7th Floor)
Bristol, PA 19007
Phone: (215) 369-1188
Keepermaya@delawareriverkeeper.org
daryl@delawareriverkeeper.org

&

Delaware Riverkeeper Network
925 Canal St., Ste. 3701 (7th Floor)
Bristol, PA 19007
(215) 369-1188

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

The Department's issuance of Permit No. E0901120-026, attached hereto as Attachment B

(b) Which Department official took the action?

Mr. John Hohenstein, P.E.
Environmental Program Manager,
Waterways and Wetlands Program

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Tinicum Township, Bucks County, Pennsylvania

(d) How, and on what date, did you receive notice of the Department's action?

On October 15th, 2021 via publication in the Pennsylvania Bulletin

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

Please see Objections to the Department's Actions document, attached hereto as Attachment A

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

N.A.

**NOTICE OF APPEAL FORM
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- | | | |
|--|------------|---|
| (1) Environmental Hearing Board
2 nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16 th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (3) The officer of the Department
who took the action being appealed | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |

Note to Attorneys who electronically file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.

- (4) If your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following:

- | | | |
|--|------------|---|
| The entity to whom the permit, license
approval, or certification was issued. | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input checked="" type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery |
|--|------------|---|

- (5) Where applicable, you should also serve a copy of your appeal on any of the following:

- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
- The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
- The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
- The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.



**NOTICE OF APPEAL FORM
SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: November 15, 2021.

/s Daryl Grable
Signature of Appellant or Appellant's Counsel

Date: November 15, 2021

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Daryl Grable
Attorney Name (Type or Print)

Delaware Riverkeeper Network

925 Canal St., Ste. 3701 (7th Floor)

Bristol, PA 19007
Address

Telephone No.: (215) 369-1188

Email: daryl@delawariverkeeper.org

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.

FILING INSTRUCTIONS

Please read and follow these instructions in their entirety. If you fail to follow the requirements outlined below (including submitting a copy of the action you are appealing and serving process to other parties), the Board may dismiss your appeal.

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate *legal proceedings*, which ask the Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Board. In addition to the Board, the proceedings will also involve interaction with, including you being required to send copies of your filings to, the Department of Environmental Protection and possibly other parties, such as those who have received a permit from the Department.

How to File a Notice of Appeal

Your Notice of Appeal, along with any required documents and information, shall be filed either by facsimile or by mail, hand or other delivery service at the following address:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

Attorneys also have the option to file a Notice of Appeal electronically at <http://ehb.courtapps.com/> A Notice of Appeal filed by *mail, hand, or other delivery service* that is received after the close of the business day at 4:30 PM Eastern Time shall be deemed to be filed on the following business day. A Notice of Appeal filed by *facsimile* shall be deemed filed on the day it is received by the Board. A notice of appeal filed by facsimile should be followed up with a hard copy. A Notice of Appeal filed *electronically* before midnight EST will be considered to be filed on that date.

Filling out the Notice of Appeal Form—Appeal Information

1. When filing a new appeal, provide your name (and that of the business which you represent, if applicable), address, telephone number, and an email address.
2. (a) You must specify on the Notice of Appeal form the action of the Department that you seek to have the Board review, for example, the permit, determination, or other act.
(b) If you have received written notification of an action of the Department, you must attach a copy of the action to the Notice of Appeal (for example, the letter, order, or permit that you are appealing).
(c) You should also identify the Department official that took the action and the location (the municipality and county) of the operation or activity that is the subject of the action.
(d) Additionally, you must describe when and how you were notified of the Department's action.

3. When describing your objections to the Department’s action, you must do so in separate, numbered paragraphs for each objection. The objections must be specific, and may be factual or legal.

Rather than use the space on the Notice of Appeal form, you may type your objections on separate paper if you require more space. Note that if you fail to state an objection to the action in your Notice of Appeal, you may be barred from raising that objection later.

4. Finally, you must specify on the Notice of Appeal form any related appeal already pending before the Board of which you are aware.

Filling out the Notice of Appeal Form—Proof of Service

You must provide proof of service of the Notice of Appeal to the agency taking the action (typically the Department of Environmental Protection), as well as certain other individuals that may be affected by the appeal.

This means that, in addition to filing the Notice of Appeal with the Board, a copy of the Notice of Appeal must be delivered to each the following:

- (1) The Department of Environmental Protection Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (2) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.
- (3) If you are appealing an action by the Department that involves someone else (for example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal. This is required by the Environmental Hearing Board’s rules at 25 Pa. Code § 1021.51(g)-(h). Please see the Proof of Service page of the Notice of Appeal form for more details.

Note: For Attorneys who file an appeal electronically, only the party listed in (3) above must be served (if applicable). Electronically filed Notices of Appeal are automatically served on the Department’s Office of Chief Counsel. There is no need to independently serve the Department.

Additional Information on Appeals Involving a Penalty Assessment

In the case of a penalty assessment, many environmental statutes require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the appeal.

Where the statute requires that prepayment be made to the Board, the appellant shall submit to the Board with the Notice of Appeal a check in the amount of the penalty, or an appropriate bond securing payment of the penalty as required by statute. A check shall be made payable to the *Commonwealth of Pennsylvania*; a bond shall be in favor of the Board, and these shall be sent to the following address:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Where the statute requires that prepayment be made to the Department of Environmental Protection, the appellant shall submit the prepayment to the Department at the following address in accordance with the Department’s instructions:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

If the appellant claims an inability to prepay, that claim must be submitted within the 30-day period by a verified statement either with the Notice of Appeal or in a supplementary document.

Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association’s Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the current availability of volunteers. In addition, you may contact your local or county bar association for more information.

Effective October 6, 2016, small corporations owned by no more than three (3) individuals are also eligible for a pro bono referral if each of the owners’ household income is less than 300% of the federal poverty level.

Attachment A



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

DELAWARE RIVERKEEPER)
NETWORK AND THE DELAWARE)
RIVERKEEPER, MAYA VAN)
ROSSUM, *et al.*,)

Appellants,)

EHB DOCKET NO. ____

v.)

COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)

ELECTRONICALLY FILED

Appellee,)

and COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT)
OF TRANSPORTATION)

Permittee.)

ATTACHMENT A

OBJECTIONS TO THE DEPARTMENT’S ACTIONS

Summary of Objections

1. The Pennsylvania Department of Environmental Protection’s (“DEP” or “Department”) decision to approve the Pennsylvania Department of Transportation’s (“PennDOT”) joint application for a Water Obstruction & Encroachment permit, an Erosion and Sediment Control Permit, and a section 401

Water Quality Certification for demolition and replacement activities in Bucks County (Permit No. E0901120-026, granted October 15, 2021) is arbitrary, capricious, and not in accordance with the law because the permit application, and DEP’s review thereof, failed to meet the substantive requirements of Chapters 93, 102, and 105 as they apply to exceptional value waters and wild and scenic rivers.

Factual Background

2. On October 15th, 2021, the Pennsylvania Department of Environmental Protection issued Permit No. E0901120-026 (“Permit”) authorizing the demolition of Headquarters Road Bridge (“Bridge”) which crosses Tincum Creek, and the construction of a replacement bridge in a different configuration and alignment.

3. The Bridge was built in 1812 and was known as the Burnt Mill Bridge. It is historically significant and is the oldest bridge of its type left in Pennsylvania, and one of only a few spans in the entire nation over 200 years old. U.S. Department of Interior Determination of Eligibility of Headquarters Road Bridge to National Register of Historic Places, April 28, 2006.

4. Tincum Creek, as part of the lower Delaware River, was designated as a Wild and Scenic River by Congress under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271, *et seq.* including 16 U.S.C. § 1276(a) 133 I and 16 U.S.C. § 1276(b)(14).

5. The values for which Tinicum Creek was incorporated into the National Wild and Scenic Rivers Systems under Public Law 106-418 are described in detail in the Lower Delaware River Management Plan (1997), Lower Delaware Wild and Scenic River Study report (1999), and the Delaware River Basin National Wild and Scenic River Values (2012).

6. Tinicum Creek has also been designated, by the Department, as an “Exceptional Value” stream, which is the highest level of anti-degradation protection afforded in Pennsylvania under the Pennsylvania Clean Streams Law.

7. The bank of the Tinicum Creek on the right (western) side (looking downstream from the existing bridge) is adjacent to a floodplain that is a meadow and pasture approximately 375 feet wide with a forested edge that ranges from twelve to twenty (12-20) feet wide within two hundred (200) feet below the Bridge, and increases in range to thirty-five to forty-five (35-45) feet at the downstream edge of the pasture to a point approximately 570 feet below the Bridge. The floodplain then transitions to a forested floodplain and extends for another approximately 275 feet. *Aff. Mary Paist-Goldman ¶ 10, Nov. 14, 2021.*

8. For more than 200 years, the piers and abutments of the Bridge in their existing location have functioned to direct the flow of the Tinicum Creek along the right bank and right riparian buffer in the vicinity of the pasture and meadow.

9. A riparian buffer is a vegetated area near a stream with trees and other riverine plants that help protect the stream from adjacent land erosion and resultant degradation of water quality.

10. Petitioners allege that the demolition of the Bridge and Construction of the replacement in a different configuration and alignment will degrade the water quality in Tinicum Creek and the lower Delaware River for the reasons set forth in the Affidavit of one Mary Paist-Goldman filed in support of this Petition. *See* Aff. Mary Paist-Goldman, Nov. 14, 2021.

11. As part of its obligations under the Wild and Scenic Rivers Act, the National Park Service was required to determine whether the Bridge demolition and replacement project would have a direct and adverse effect on the water quality in the Tinicum Creek and Lower Delaware River. 16 U.S.C. 1278(a). On March 30, 2021, the National Park Service issued a letter to the U.S. Army Corps of Engineers stating that the demolition and replacement “would not have a ‘direct and adverse’ effect on the Lower Delaware Wild and Scenic River’s free-flowing condition, water quality or outstandingly remarkable values. . . .” NPS Evaluation Letter, March 30, 2021, at p. 3.

12. On June 24, 2021, DRN and the Delaware Riverkeeper, Maya Van Rossum, filed suit in the U.S. District Court for the Eastern District of Pennsylvania challenging the sufficiency and completeness of the record on which

the National Park Service made its determination, seeking a declaratory judgment that the National Park Service's actions were arbitrary, capricious, and not in accordance with law under the Administrative Procedures Act and under Section 7 of the Wild and Scenic Rivers Act.

13. On November 15th, 2021, DRN filed a permit appeal and Petition for Supersedeas with the Environmental Hearing Board challenging the process and factual and legal basis for the Department's issuance of the permit, seeking a supersedeas and suspension of the Chapter 102 Permit, Chapter 105 Permit, and Section 401 water quality certification, and an Order to re-evaluate the proposed activities under Section 105 of the Dam Safety and Encroachments Act.

14. The Applicant failed to adequately address consistency with "State antidegradation requirements contained in Chapters 93, 95, and 102 (relating to water quality standards" as required under § 105.14(b)(11). The included antidegradation analysis does not discuss temperature or erosion of the downstream streambanks beyond the project boundary. Tincum Creek is an Exceptional Value stream, requiring the highest level of anti-degradation regulatory protection to apply. 25 Pa. Code § 93.4a(d); 25 Pa. Code § 93.4c(b)(1)(i). The proposed condition will have an adverse impact upon the public natural resources, 25 Pa. Code § 105.16(c), specifically Tincum Creek, and the

Applicant did not demonstrate otherwise in its Application. Aff. Mary Paist-Goldman ¶¶ 22-23, Nov. 14, 2021.

15. In addition, the Application is inaccurate in several important respects, including: the alleged 0.44-acre area of disturbance is a significant underestimate; PennDOT discounted their stormwater contribution and erroneously answered “no” to question 6.0 on page four the Joint Permit Application when asked whether the project will involve discharge of stormwater to a surface water; the Environmental Assessment inaccurately states no risks of impacts to the downstream stream bed and stream banks; and application materials claim to “increase” the free-flowing nature of Tinicum Creek when the stream currently exists in a free-flowing condition with no impediments to biological movement through the bridge section. *See* Joint Permit Application.

Specific Objections to Permit No. XYZC

- I. The Materials Included in PennDOT’s Joint Permit Application Fail to Meet the Requirements of Chapter 105 with Respect to an Exceptional Value Waterbody and a Wild and Scenic River.**
 - a. PennDOT Failed to Demonstrate that the Project Will Not Have an Adverse Impact Upon the Public Natural Resources, and DEP’s Finding that there Will be no Adverse Impact to Public Natural Resources is Arbitrary, Capricious, and Not Supported by the Evidence in PennDOT’s Joint Permit Application.**

16. Tinicum Creek, as part of the lower Delaware River, was designated as a Wild and Scenic River by Congress under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1276(a) 133 I and 16 U.S.C. § 1276(b)(14).

17. DEP is prohibited from approving a Chapter 105 permit application for a project located “in or within 100 feet of a watercourse or body of water that has been designated as a National or State wild or scenic river” “unless the applicant demonstrates and the Department finds that the project *will not have an adverse impact upon the public natural resources.*” 25 Pa. Code § 105.16(c)(1) (emphasis added).

18. Although “public natural resources” is not defined in Chapter 105, that phrase is also used in Pennsylvania’s Green Amendment, Article I, section 27 of the Pennsylvania Constitution, which is expressly incorporated in DEP’s Chapter 105 regulations. In the plurality opinion in *Robinson Twp., Delaware Riverkeeper Network v. Commonwealth of Pennsylvania*, it was noted that the Amendment:

left unqualified the phrase public natural resources, suggesting that the term fairly implicates relatively broad aspects of the environment, and is amenable to change over time to conform, for example, with the development of related legal and societal concerns. The concept of public natural resources includes not only state-owned lands, waterways, and mineral resources, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of private property.

83 A.3d 901 (Pa. 2013).

19. Tincum Creek, therefore, as well as its bed, banks, and riparian areas, are all considered to be public natural resources, and this permit application cannot be approved in absence of a demonstration and finding that no adverse impact will result from the project.

20. Petitioners contend that the proposed condition will have an adverse impact upon the public natural resources, 25 Pa. Code § 105.16(c), specifically Tincum Creek, and that the Applicant did not demonstrate otherwise in its Application. Aff. Mary Paist-Goldman ¶ 23, Nov. 14, 2021.

21. Petitioners further contend that the Joint Permit Application was insufficient to allow the Department to reasonably conclude that adverse hydrologic impacts, water quality impacts, or water pollution would not result from the proposed bridge replacement. Specifically, temperature impacts resulting from the proposed project were not addressed and no discussion regarding streambank erosion and thus total suspended solids in Tincum Creek was included, in violation of 25 Pa. Code § 105.16(c). Aff. Mary Paist-Goldman ¶ 24, Nov. 14, 2021.

22. The Applicant relied on a Hydrologic & Hydraulic Study that was outdated and lacked sufficient technical details to fully assess the erosion impacts of the project. The hydraulic modeling completed by the Applicant and submitted

to PADEP fails to provide sufficient detail to evaluate erosion of the streambanks around the Bridge since only a one-dimensional model of the stream was provided by the Applicant. The one-dimensional modeling of river systems is limited to evaluate potential erosion of stream channels; such models take cross-sections (or slices) of elevation information for a stream channel and its overbanks and solve mathematical equations for energy and/or momentum at each cross-section to predict water surface elevations, velocities, and shear stresses. Aff. Mary Paist-Goldman ¶ 17, Nov. 14, 2021.

23. In situations where the accuracy of predicted velocities and shear stresses in stream channels and stream banks are important as here, there is a need for a two-dimensional model. The significant difference between one-dimensional and two-dimensional models is that the mathematical equations are done across a mesh (meaning a surface grid of elevation data) in a two-dimensional model. The mesh consists of many cells that have multiple sides (up to eight) and calculations are run across each of the cells providing more detailed results and a better estimation of proposed conditions at each cell face. Two-dimensional modeling of a stream provides an increased level of detail regarding anticipated shear stresses and velocities for the modeled flood events and in the riparian zone which predict potential streambank erosion. Aff. Mary Paist-Goldman ¶ 18, Nov. 14, 2021.

24. The more accurate, two-dimensional study is something that is well within DEP's authority to require. 25 Pa. Code § 105.151(4).

25. Had the Department done so, the more accurate study would have demonstrated increases in shear stress and increases in velocity of the western streambank under the proposed conditions that will result in increased erosion of the Tincum Creek streambank soils. As is commonly known, calculated shear stresses and velocities are used to evaluate stability of soils in stream channels and are compared to threshold values based on soil type. The erosion of the downstream riparian corridor in particular will lead to a series of cascading problems involving greater sediment loading, elevated turbidity, and decreased water clarity, ultimately degrading the water quality of Tincum Creek. Aff. Mary Paist-Goldman ¶ 19-20, Nov. 14, 2021.

26. This sediment transport/erosion through the project area is appropriately considered an "indirect impact," which "consist of altering the chemical, physical or biological components of an aquatic resource to the extent that changes to the functions of the resource results." Joint Permit Application, Environmental Assessment at 10.

27. Rather than address these indirect impacts, however, each entry in the Environmental Assessment for indirect impacts was stated to be a value of Zero.

Id.

28. The extent to which long term erosion and sediment load from eroded soils from the riparian buffer and streambank, and eventually the adjacent pasture and meadow, will become problematic or excessive with respect to stream channel stability, erosion and sedimentation has been the subject of substantial discussion among PennDOT, DEP, and the US Army Corps of Engineers throughout the permit review process. NPS Letter Determination, March 30, 2021.

29. These discussions culminated in a monitoring requirement where PennDOT must “monitor streambank stability conditions along the western bank of the stream for the first 180 feet immediately upstream and downstream of the Headquarters Road Bridge *for severe erosion conditions* after construction of the new bridge.” Headquarters Rd. Bridge Monitoring Requirement, December 2020 at 1 (emphasis added). Yet, somehow, the potential for erosion that necessitated the 180 foot downstream monitoring for “severe erosion conditions” is solved, according to the Department, by an armoring of just 15 feet of the streambank downstream of the structure. Comment Response Document for E0901120-026, September, 2021, at 8.

30. It is clear that questions still remain as to whether and to what extent increased erosion and sedimentation will impact Tincum Creek.

31. The Applicant failed to demonstrate and DEP failed to find that the project will not have adverse impacts on Tincum Creek. Thus, DEP’s actions in

reviewing and approving the Joint Permit Application is arbitrary, capricious, and not in accordance with the law.

b. DEP has Failed to Require the Applicant to Demonstrate that the Proposed Action Complies with the Standards and Criteria of Laws Administered by the Department.

32. Tincum Creek is an Exceptional Value water segment, subjecting it to the highest levels of antidegradation regulations in the Commonwealth. Because 25 Pa. Code § 105.21(a)(2) prohibits the issuance of a permit unless the applicant has demonstrated that “[t]he proposed project or action complies with the standards and criteria of this title and with other laws administered by the Department,” DEP was required to obtain evidence from the applicant to establish compliance with all applicable antidegradation regulations.

33. The record does not reflect evidence that the applicant would comply with the standards and criteria of the antidegradation regulation.

34. The Applicant’s Joint Permit Application was insufficient to allow the Department to reasonably conclude that adverse hydrologic impacts. Water quality impacts, or water pollution would not result from the proposed bridge replacement. Specifically, temperature impacts resulting from the proposed project were not addressed and no discussion regarding streambank erosion and thus total suspended solids in Tincum Creek was included. *Aff. Mary Paist-Goldman ¶ 24*, Nov. 14, 2021.

35. It is well-settled that physical alteration of a waterbody, such as through increased turbidity, sedimentation, runoff, and physically altering the course of a stream, constitutes pollution. *DEP v. Leeward Constr., Inc.*, 2001 EHB 870; 35 P.S. § 691.1 (defining pollution very broadly); 25 Pa. Code § 93.6 (prohibiting pollution in general terms); 25 Pa. Code § 93.4a; 25 Pa. Code § 93.4c(b)(1)(i) (setting preference for nondischarge alternatives when environmentally sound and cost-effective and requiring a demonstration that a discharge will maintain and protect existing water quality in the alternative).

36. The Clean Streams Law specifically provides that it is unlawful to cause water pollution. 35 P.S. § 691.401 (“It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.”).

37. Yet, the application materials were insufficient to demonstrate that there would be no adverse hydrologic impacts, water quality impacts, or water pollution on Tinicum Creek. *See* Aff. Mary Paist-Goldman ¶ 24, Nov. 14, 2021.

38. The Applicant failed to “provide a detailed impacts analysis of the potential impacts of the proposed project on water quality, stream flow, fish and

wildlife, aquatic habitat” and “streams which are included within the Federal or State wild and scenic river systems,” as required under Section 105.13.(e)(1)(x). Information was absent from the Application regarding total suspended solids impacts within the Tincum Creek itself and potential temperature impacts resulting from the proposed conditions as well as the impacts on fish and other aquatic species. Aff. Mary Paist-Goldman ¶ 21, Nov. 14, 2021.

39. Additionally, the Applicant failed to adequately address consistency with “State antidegradation requirements contained in Chapters 93, 95, and 102 (relating to water quality standards” as required under § 105.14(b)(11). The included antidegradation analysis does not discuss temperature or erosion of the downstream streambanks beyond the project boundary. Tincum Creek is an Exceptional Value stream, requiring the highest level of anti-degradation regulatory protection to apply. 25 Pa. Code § 93.4a(d); 25 Pa. Code § 93.4c(b)(1)(i). The proposed condition will have an adverse impact upon the public natural resources, 25 Pa. Code § 105.16(c), specifically Tincum Creek, and that the Applicant did not demonstrate otherwise in its Application. Aff. Mary Paist-Goldman ¶¶ 22-23, Nov. 14, 2021.

40. In addition, the Application is inaccurate in several important respects, including: the alleged 0.44-acre area of disturbance is a significant underestimate; PennDOT discounted their stormwater contribution and erroneously

answered “no” to question 6.0 on page four the Application when asked whether the project will involve discharge of stormwater to a surface water; the Environmental Assessment inaccurately states no risks of impacts to the downstream stream bed and stream banks; and application materials claim to “increase” the free-flowing nature of Tinicum Creek when the stream currently exists in a free-flowing condition with no impediments to biological movement through the bridge section. *See* Joint Permit Application.

41. Further, where PennDOT did provide information sufficient to evaluate the impacts of the Project, the information supports the conclusion that DEP failed to require that the Project comply with all applicable standards and criteria of laws administered by the Department.

42. The Joint Permit Application makes clear that the Project will involve new, additional, and increased discharges to Tinicum Creek.

43. First, the Project is required to obtain a Clean Water Act Section 404 permit, which is a permit that allows the discharge of dredge and fill material in to waters of the United States.

44. The Environmental Assessment also identifies that the Project involves the replacement of two existing drainage pipe outlets and “will result in a 249 cu-ft runoff increase during the 2-Year/24-hr storm event.” Joint Permit Application, Environmental Assessment at 17.

45. The Applicant is also planning three new stormwater inlets, which will collect runoff that previously traveled overland into the stream, and discharge stormwater into Tinicum Creek via a drainage pipe. *Id.* at 16-17.

46. Finally, the proposed condition will cause an increase in both the rate and volume of stormwater runoff into Tinicum Creek which was not modeled by the Applicant. This will cause degradation of the water quality. The proposed condition will also result in increased concentrated discharge of the stormwater runoff into the creek due to the increase in impervious cover from paving Sheephole Road, which will increase suspended sediment loading. *Aff. Mary Paist-Goldman ¶¶ 12-13, Nov. 14, 2021.*

47. All of these actions run contrary to the anti-degradation requirements that apply to exceptional value waters like Tinicum Creek. *See 25 Pa. Code § 93.4a(d); 25 Pa. Code § 93.4c(b)(1)(i) (setting preference for nondischarge alternatives when environmentally sound and cost-effective and requiring a demonstration that a discharge will maintain and protect existing water quality in the alternative).*

48. The Applicant conceded as much when it stated in its Anti-Degradation Analysis that its proposed stabilization of the existing downstream stream bank, stabilization which extends a mere 15 feet downstream of the proposed new bridge, well “will reduce the chance of future streambank erosion.”

Joint Permit Application, Antidegradation Analysis at 8; Comment Response Document for E0901120-026, September 2021, at 8.

49. A reduction in the chance of erosion is directly contrary to the requirements of Chapter 105 for any bridge modification or construction, which requires that the new “structure may not so increase velocity or direct flow in a manner which results in erosion of stream beds and banks.” 25 Pa. Code § 105.161(a)(4).

50. In an attempt to make up for the failure to demonstrate the absence of erosion that would result from the construction of the new bridge and demolition of the existing bridge, rather than denying the Joint Permit Application and requiring further analysis and documentation, DEP agreed to the imposition of a post-construction monitoring plan: “These uncertainties warrant monitoring of the project area above and below the bridge during and after construction. To that end, NPS, PennDOT, PA DEP, and the US Army Corps of Engineers have all collaborated on the development of a monitoring protocol [].” NPS Evaluation Letter, at p. 3.

51. Relying on post-construction monitoring to ensure pre-construction antidegradation requirements and compliance with other water quality regulations are met has already been admonished by this Board in *Hudson*:

In the absence of data, the Department has basically approved an experiment. It hopes that testing after excavation and during backfilling will show that CFC's assumptions were correct and that the design is acceptable. However, for good reason, the regulation requires *predevelopment* testing. By the time of the testing proposed by CFC, the site will already have been substantially altered using a site design based on the assumption that these basins with these dimensions in these locations can be made to work. The Department's approach turns the scientific method on its head. It is like testing a bridge after it is mostly built.

2015 EHB 719, 729-30.

52. Similarly, here, the regulations require *predevelopment* demonstrations of compliance. The only difference in this case from *Hudson* is that the experiment requires destruction of the status quo ante, and when the expansion fails, the public natural resources are lost forever.

53. Instead of protecting these resources in an anti-degradation exceptional value stream as required by Chapter 93, the Project threatens the resources by putting them directly in harm's way and fails to take appropriate measures after introducing a new threat to their integrity.

54. Not only are these stream, floodplain, and riparian corridor protections provided through Chapter 93's anti-degradation regulations, but the Commonwealth further codified them in Chapter 105 itself for any bridge repair or construction: "The structure may not so increase velocity or direct flow in a manner which results in erosion of stream beds and banks." 25 Pa. Code § 105.161(a)(4).

55. In sum, by failing to properly apply 25 Pa. Code § 93.4a(d), 25 Pa. Code § 93.4c(b)(1)(i)(B), 25 Pa. Code § 105.161(a)(4), and 35 P.S. § 691.401, DEP acted contrary to law when reviewing the permit application and issuing the Permit to PennDOT. *See, e.g., Teledyne Columbia-Summerhill Carnegie v. Unemployment Compensation Board of Review*, 634 A.2d 665, 668 (Pa. Cmwlth. 1993) (“A duly promulgated regulation has the force and effect of law and it is improper for the [agency] to ignore or fail to apply its own regulation.”); *Oley Twp. v. DEP*, 1996 EHB 1098, 1119 (where DEP “does not review an application as required by the statutes and regulations, it abuses its discretion.”).

c. The Approval of the Joint Permit Application without the Applicant Meeting the Requirements of Chapter 102, as required by 25 Pa. Code § 105.46(a), was a Failure by DEP.

56. DEP’s Chapter 105 regulations require an applicant to comply with Chapter 102 by preparing an erosion and sediment (“E&S”) control plan. 25 Pa. Code § 105.46(a).

57. Chapter 102 requires that “a person proposing a new earth disturbance activity that requires permit coverage under this chapter *or other new Department permit that requires compliance with this chapter* shall be responsible to ensure that a written [post-construction stormwater management (“PCSM”)] Plan is developed, implemented, operated and maintained in accordance with this

section.” 25 Pa. Code § 102.8(a) (emphasis added). This plan must be separate from the E&S plan. 25 Pa. Code § 102.8(d).

58. The goals of a PCSM plan are to “preserve the integrity of stream channels and maintain and protect the physical, biological, and chemical qualities of the receiving stream,” “prevent an increase in the rate of stormwater runoff,” “minimize any increase in stormwater runoff volume,” “minimize impervious areas,” “maximize the protection of existing drainage features and existing vegetation,” “minimize land clearing and grading,” “minimize soil compaction,” and “utilize other structural or nonstructural [best management practices (“BMPs”)] that prevent or minimize changes in stormwater runoff.” 25 Pa. Code § 102.8(b).

59. The application materials failed to include a separate PSCM Plan in addition to the E&S Plan, contrary to the explicit requirements of Chapter 102.

60. This failure is exacerbated by the fact that the proposed condition will cause an increase in both the rate and volume of stormwater runoff into Tinicum Creek which was not modeled by the Applicant. This will cause degradation of the water quality. The proposed condition will result in increased concentrated discharge of stormwater runoff into the Creek due to the increase in impervious cover from paving Sheephole Road, which will increase suspended sediment loading. Aff. Mary Paist-Goldman ¶¶ 12-13, Nov. 14, 2021.

61. Without the separate PCSM Plan, the Applicant is not in compliance with the requirements of Chapter 102. DEP’s issuance of the Chapter 102 Permit is contrary to law.

d. DEP has Failed to Base its Decision to Issue a Section 401 Water Quality Certification on the criteria identified in Chapters 93 and 105.

62. In Pennsylvania, “[f]or structures or activities where water quality certification is required under section 401 of the Clean Water Act . . . , an applicant requesting water quality certification under section 401 shall prepare and submit to the Department for review, an environmental assessment containing the information required by subsection (a)” 25 Pa. Code § 105.15(b).

63. 25 Pa. Code § 105.15(a), in turn, requires the Department to “base its evaluation on information required by § 105.13” and “factors included in § 105.14(b).” Therefore, DEP must base its decision on any application for a Section 401 Water Quality Certification on an environmental assessment that must include the *information* required by Section 105.13, and on the *criteria* identified in Section 105.14(b).

64. One of the criteria required to be considered by the Department before issuing a 401 certification is an applicants’ “Consistency with State antidegradation requirements contained in Chapters 93, 95 and 102 (relating to water quality standards; wastewater treatment requirements; and erosion and

sediment control) and the Clean Water Act (33 U.S.C.A. §§ 1251—1376).” 25 Pa. Code 105.14(b)(11).

65. As stated above, it is well settled that physical alteration of a waterbody, such as through increased turbidity, sedimentation, runoff, and physically altering the course of a stream, constitutes pollution. *DEP v. Leeward Constr., Inc.*, 2001 EHB 870; 35 P.S. § 691.1 (defining pollution very broadly); 25 Pa. Code § 93.6 (prohibiting pollution in general terms); 25 Pa. Code § 93.4a; 25 Pa. Code § 93.4c(b)(1)(i) (setting preference for nondischarge alternatives when environmentally sound and cost-effective and requiring a demonstration that a discharge will maintain and protect existing water quality in the alternative).

66. As an Exceptional Value stream in Pennsylvania, the water quality of Tinicum Creek must be maintained and protected. The DEP approval of the Joint Permit Application does not maintain and protect water quality and will have several direct and indirect effects on the water quality of Tinicum Creek.

67. The increase in impervious cover and stormwater volumes will elevate instream water temperatures via the stormwater runoff. Runoff from impervious surfaces can increase by up to 20 degrees Celsius compared to runoff from vegetated areas. *Aff. Mary Paist-Goldman ¶ 14*, Nov. 14, 2021.

68. Given the proposed widening of the roadway at the bridge crossing, trees in the riparian zone will need to be cleared. A total of 74 linear feet of the

western streambank will be permanently impacted by the proposed conditions. The tree removal along the streambank will result in reduced shading of the stream channel which contributes to an increase in-stream water temperature. Aff. Mary Paist-Goldman ¶ 15, Nov. 14, 2021.

69. These temperature increases and high-light conditions will likely induce filamentous algal blooms. Aff. Mary Paist-Goldman ¶ 16, Nov. 14, 2021.

70. The erosion of the downstream riparian corridor in particular will lead to a series of cascading problems involving greater sediment loading, elevated turbidity, and decreased water clarity, ultimately degrading the water quality of Tinicum Creek. Aff. Mary Paist-Goldman ¶ 20, Nov. 14, 2021.

71. These water quality impacts are inconsistent with the requirements of Chapter 105 and the antidegradation protections contained in Chapter 93.

72. The Department's issuance of a 401 certification for a project that is inconsistent with the requirements of Chapters 105 and 93 is contrary to its legal obligations under 25 Pa. Code. § 105.14(b).

e. DEP has Failed to Require PennDOT to Demonstrate that the Proposed Action is Consistent with the Environmental Rights and Values Secured by Pa. Const. Art. I, § 27.

73. DEP's Permits run contrary to the fiduciary obligations that both DEP and the Applicant have as trustees of Pennsylvania's public natural resources "to refrain from permitting or encouraging the degradation, diminution, or depletion of

public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly . . .” *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 857 (Pa. 2013); Pa. Const. Art. I § 27.

74. Not only do DEP and PennDOT have a duty to prevent the degradation, diminution, or depletion of public natural resources, they also have a constitutional duty to conserve and maintain public natural resources, which has been explicitly integrated into DEP’s implementation of Chapter 105. 25 Pa. Code § 105.2(4); 25 Pa. Code § 105.21(a)(4).

75. To uphold its constitutional obligations, DEP was required to prevent not only “actions with immediate severe impact on public natural resources,” but also “actions with minimal or insignificant present consequences that are actually likely to have significant or irreversible effects in the short or long term.” *Robinson Twp.*, 83 A.3d at 957.

76. The obligations created under the Environmental Rights Amendment weigh heavily against allowing these Permits to move forward largely grounded on a post-construction monitoring plan. *Pa. Env’tl. Def. Found. v. Cmw’lth.*, 108 A.3d 140, 156 (Pa. Cmw’lth. 2015) (quoting *Robinson Twp. v. Cmw’lth.*, 83 A.3d 901, 952 (Pa. 2013) (“The first clause of the Environmental Rights Amendment ‘requires each branch of government to consider *in advance of proceeding* the

environmental effect of any proposed action on the constitutionally protected features.””)).

77. Beyond these environmental impacts, Pennsylvania’s Green Amendment also protects the right of the People to the “preservation of natural, scenic, historic and esthetic values of the environment.” Pa. Const. art. I, § 27.

78. The right to preservation “implicates a holistic analytical approach to ensure both the protection from harm or damage and to ensure the maintenance and perpetuation of an environment of quality for the benefit of future generations.” *Robinson Twp.*, 83 A.3d at 951.

79. Demolition of the existing bridge will have, as noted, cascading effects on many of the Historic District’s key historic, landscape, ecological, and aesthetic elements.

80. Destroying this historic collection of crossings, critical landscape elements of the Ridge Valley Rural Historic District (e.g., the historic pasture), and potentially the district designation itself, by allowing the demolition of Headquarters Road bridge and the impairment of the stream, streambank, riparian buffer, and historical and landscape elements, rises to the level of a constitutional violation.

81. DEP’s obligation is to issue permits only when it has been demonstrated that “[t]he proposed project or action is consistent with the

environmental rights and values secured by Pa. Const. Art. I § 27 and with the duties of the Commonwealth as trustee to conserve and maintain public natural resources of the Commonwealth. 25 Pa. Code. § 105.21(a)(4). DEP failed in this regard.

f. DEP’s Conduct in Reviewing and Granting PennDOT’s Joint Permit Application was Arbitrary and Capricious or Contrary to Law.

82. Generally, DEP’s conduct and actions in reviewing and granting PennDOT’s Joint Permit Application was arbitrary and capricious or contrary to law.

83. It may be sufficient to raise an issue in general terms. *Croner, Inc. v. DEP*, 2000 EHB 75. “So long as an issue falls within the scope of a broadly worded objection found in the notice of appeal, [the Board] will not readily conclude that there has been a waiver.” *Rhodes v. DEP*, 2009 EHB 325, 327 cited in *GSP Mgmt. Co. v. DEP*, 2011 EHB 203, 207.

84. “It is a common and perhaps even well-advised practice to include a catch-all objection . . . in a notice of appeal. It is perfectly understandable that an appellant’s case will require refinement as it progresses toward an adjudication. . . .” *Snyder v. DEP*, 2015 EHB 857, 885.

Respectfully submitted this 15th day of November, 2021.



/s/ Daryl D. Grable
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Attorney for Petitioners



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

DELAWARE RIVERKEEPER)
NETWORK AND THE DELAWARE)
RIVERKEEPER, MAYA VAN)
ROSSUM, *et al.*,)

Appellants,)

EHB DOCKET NO. ____

v.)

COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)

ELECTRONICALLY FILED

Appellee,)

and COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT)
OF TRANSPORTATION)

Permittee.)

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Notice of Appeal was filed with the Environmental Hearing Board and was served on all counsel of record on November 15, 2021.

Respectfully Submitted,

/s/ Daryl D. Grable

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Exhibit A



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

DELAWARE RIVERKEEPER)
NETWORK AND THE DELAWARE)
RIVERKEEPER, MAYA VAN)
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EHB DOCKET NO. ____

v.)

COMMONWEALTH OF)
PENNSYLVANIA, DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)
Appellee.)

ELECTRONICALLY FILED

AFFIDAVIT OF MARY L. PAIST-GOLDMAN

Pursuant to 42 Pa.C.S.A. § 6204, I, Mary L. Paist-Goldman, do hereby declare:

1. I make this declaration in support of the Permit Appeal by the Delaware Riverkeeper Network (DRN), and the Delaware Riverkeeper, Maya van Rossum, of the Water Obstruction & Encroachment Permit under Chapter 105 and a Section 401 Water Quality Certificate, issued by the Pennsylvania Department of Environmental Protection (PADEP) to the Pennsylvania Department of Transportation (Applicant).
2. I received my Bachelor of Science degree in Civil Engineering from the University of Maryland in 2000.
3. I am licensed as a Professional Engineer in Connecticut, Maryland, New Jersey, North Carolina, New York, Pennsylvania, and Virginia.

4. I have more than 20 years of experience in the fields of wetland design, stream restoration and stabilization, bridge and culvert design, stormwater management, regulatory compliance, hydrology and hydraulics, dam safety, and wastewater management.
5. I have designed dozens of projects with low impact development techniques, green infrastructure, and with a focus on improving and/or maintaining water quality.
6. I have been actively involved in environmental regulatory compliance since the beginning of my career.
7. I am experienced in modeling, including hydrologic, hydraulic, and pollutant loading modelling for a variety of project types, including, but not limited to, new and replacement bridge and culvert crossings, water quality impact analyses, and stormwater facility design and analysis.
8. Counsel for DRN asked me to conduct a review of the Chapter 105 Permit and Section 401 Water Quality Certificate (Permit No. E0901120-026) authorizing the demolition of the existing Headquarters Road Bridge and replacement of it, and to complete a detailed hydraulic model of the stream reach in question.
9. In preparation for my analysis, I reviewed the following materials:
 - a. Chapter 105 Joint Permit Application for Headquarters Road Bridge over Tincum Creek as obtained on June 2, 2020, 3798 pages containing the following;
 - i. Completed application form;
 - ii. PNDI Receipt;
 - iii. Alternatives Analysis Headquarters Road over Tincum Creek SR 1012 Sec BRC;
 - iv. Completed Aquatic Resource Impact Table;
 - v. Cultural Resources Headquarters Road over Tincum Creek;

- vi. Executed Memorandum of Agreement Among the Federal Highway Administration, The Advisory Council on Historic Preservation and the Pennsylvania State Historic Preservation Officer;
- vii. Letter dated September 8, 2005 from Commonwealth of Pennsylvania Historical and Museum Commission;
- viii. Riverine Condition Assessment Summary dated March 19, 2020 prepared by Normandeau Associates;
- ix. Environmental Assessment Form SR1012 Section BRC Headquarters Road over Tincum Creek prepared May 2020;
- x. Completed Chapter 105 Environmental Assessment Form;
- xi. Antidegradation Analysis S.R. 1012, Section BRC Headquarters Road Bridge over Tincum Creek Bridge Replacement Project dated May 2020 prepared by Urban Engineers;
- xii. Drawings entitled, “Erosion and Sediment Pollution Control Plan,” 11 sheets, dated May 4, 2020 as prepared by Urban Engineers;
- xiii. “Hydrologic and Hydraulic Study – SR1012 (Headquarters Road) over Tincum Creek,” dated July 2019, as prepared by Urban Engineers;
- xiv. Drawings entitled, “Design Field View Submission” dated June 2019, 6 sheets, as prepared by Urban Engineers;
- xv. USGS Site Location Map;
- xvi. Public Notice Letters and Act 14 Certified Mail Receipts;
- xvii. Completed General Information Form – Authorization Application, 7 pages;
- xviii. Photographs (With Orientation Map) Photo Log;
- xix. Drawings entitled, “Drawings for Construction of State Route 1012 Section BRC in Bucks County,” 7 sheets, dated April 22, 2020, prepared by Urban Engineers;
- xx. Drawing entitled, “Bucks County SR 1012, SEC BRC Wing Extension Plan and Elevation, Sheet S-38947;”
- xxi. Drawing entitled, “Bucks County SR 1012, SEC BRC General Plan and Elevation,” Sheet 1 of 48;
- xxii. Unnamed drawings, two sheets, showing Stages 1A, 1B, 2A, 2B, and 3;
- xxiii. Drawing entitled “Tincum Creek Impact Map” dated May 19, 2020;

- xxiv. Letter of No Wetland Finding dated February 3, 2020 as prepared by A.D. Marble;
- xxv. Letter from Bucks County Conservation District dated February 3, 2020 regarding Headquarters Road Bridge over Tincum Creek stating that the plan is adequate with comments;
- xxvi. Floodplain Management Analysis with Consistency letter for SR1012 Sec BRC;
- xxvii. Memorandum of Meeting dated December 15, 2011 regarding Headquarters Road Bridge over Tincum Creek – Agency Coordination Meeting;
- xxviii. Memorandum of Meeting dated May 11, 2012 regarding Headquarters Road Bridge (S.R. 1012) over Tincum Creek Agency Coordination Meeting #2;
- xxix. Memorandum of Meeting dated September 19, 2012 regarding Headquarters Road Bridge (S.R. 1012) over Tincum Creek Agency Coordination Meeting #3;
- xxx. Mitigation Plan SR 1012 Section BRC Headquarters Road over Tincum Creek dated May 19, 2020;
- xxxi. Project Description SR 1012 Sec BRC Headquarters Road over Tincum Creek dated May 19, 2020;
- xxxii. Risk Assessment SR 1012 Sec BRC Headquarters Road over Tincum Creek dated April 29, 2020;
- xxxiii. Project Purpose Headquarters Road over Tincum Creek;
- xxxiv. Completed PASPGP-5 Review Checklist;
- xxxv. Stormwater Management Analysis with consistency letter SR 1012 Sec BRC Headquarters Road over Tincum Creek dated May 1, 2020;
- xxxvi. Letter dated January 12, 2017 from National Park Service regarding Draft Categorical Exclusion Evaluation S.R. 1012, Section BRC, Headquarters Road Bridge over Tincum Creek;
- xxxvii. Email correspondence from Pennsylvania Department of Transportation dated May 21, 2020 regarding planting plan modifications based on NPS comments;
- xxxviii. Meeting Minutes dated May 14, 2020 regarding Headquarters Road over Tincum Creek Bridge Project under the Wild and Scenic River’s Program;
- xxxix. Letter dated April 15, 2020 from Urban Engineers regarding Bucks County S.R. 1012 (Headquarters Road) over Tincum Creek Agreement No. 00342-Part III National Park Service;

10. The bank of the Tincum Creek on the right (western) side (looking downstream from the existing bridge) is adjacent to a floodplain that is a meadow and pasture approximately 375 feet wide with a forested edge that ranges from twelve to twenty (12-20) feet wide within two hundred (200) feet below the Bridge, and increases in range to thirty-five to forty-five (35-45) feet at the downstream edge of the pasture to a point approximately 570 feet below the Bridge. The floodplain then transitions to a forested floodplain and extends for another approximately 275 feet.

11. This western downstream riparian zone, although mature and valuable, is relatively narrow, particularly in the vicinity of the Bridge. The stream power released upon this downstream western stream-bank and its narrow riparian corridor will destabilize the soils in the riparian zone. Destabilization of the soils will increase erosion and result in loss of the mature trees in the riparian zone which will increase temperature and degrade water quality.

12. The proposed condition will also cause an increase in both the rate and volume of stormwater runoff into Tincum Creek which was not modeled by the Applicant. This will cause degradation of the water quality.

13. The proposed condition will result in increased concentrated discharge of stormwater runoff into the creek due to the increase in impervious cover from paving Sheephole Road, which will increase suspended sediment loading.

14. The increase in impervious cover and stormwater volumes will elevate in-stream water temperatures via the stormwater runoff. Runoff from impervious surfaces can increase by up to 20 degrees Celsius compared to runoff from vegetated areas.¹

¹ Thompson AM et al. 2008a. Thermal characteristics of stormwater runoff from asphalt and sod surfaces. Journal of the American Water Resources Association 44(5):1325-1336.

15. Given the proposed widening of the roadway at the bridge crossing, trees in the riparian zone will need to be cleared. A total of 74 linear feet of the western streambank will be permanently impacted by the proposed conditions. The tree removal along the streambank will result in reduced shading of the stream channel which contributes to an increase in-stream water temperature.
16. These temperature increases and high-light conditions will likely induce filamentous algal blooms.
17. The hydraulic modeling completed by the Applicant and submitted to PADEP fails to provide sufficient detail to evaluate erosion of the streambanks around the Bridge since only a one-dimensional model of the stream was provided by the Applicant. The one-dimensional modeling of river systems is limited to evaluate potential erosion of stream channels; such models take cross-sections (or slices) of elevation information for a stream channel and its overbanks and solve mathematical equations for energy and/or momentum at each cross-section to predict water surface elevations, velocities, and shear stresses.
18. In situations where the accuracy of predicted velocities and shear stresses in stream channels and stream banks are important as here, there is a need for a two-dimensional model. The significant difference between one-dimensional and two-dimensional models is that the mathematical equations are done across a mesh (meaning a surface grid of elevation data) in a two-dimensional model. The mesh consists of many cells that have multiple sides (up to eight) and calculations are run across each of the cells providing more detailed results and a better estimation of proposed conditions at each cell face. Two-dimensional modeling of a stream provides an increased level of detail regarding anticipated shear stresses and velocities for the modeled flood events and in the riparian zone which predict potential streambank erosion.
19. The two-dimensional modeling that I performed documents increases in shear stress and increases in velocity of the western streambank under proposed conditions that will result in increased erosion of the Tinicum

Creek streambank soils. As is commonly known, calculated shear stresses and velocities are used to evaluate stability of soils in stream channels and are compared to threshold values based on soil type.

20. The erosion of the downstream riparian corridor in particular will lead to a series of cascading problems involving greater sediment loading, elevated turbidity, and decreased water clarity, ultimately degrading the water quality of Tincum Creek.
21. Further, the Applicant failed to “provide a detailed impacts analysis of the potential impacts of the proposed project on water quality, stream flow, fish and wildlife, aquatic habitat” and “streams which are included within the Federal or State wild and scenic river systems,” as required under Section 105.13.(e)(1)(x). Information was absent from the Application regarding total suspended solids impacts within the Tincum Creek itself and potential temperature impacts resulting from the proposed conditions as well as the impacts on fish and other aquatic species.
22. Additionally, the Applicant failed to adequately address consistency with “State antidegradation requirements contained in Chapters 93, 95, and 102 (relating to water quality standards)” as required under §105.14(b)(11). The included antidegradation analysis does not discuss temperature or erosion of the downstream streambanks beyond the project boundary. Tincum Creek is an Exceptional Value stream, requiring the highest level of anti-degradation regulatory protection to apply. 25 Pa. Code § 93.4a(d), 25 Pa. Code §93.4c(b)(1)(i).
23. It is my opinion to a reasonable degree of professional certainty that the proposed condition will have an adverse impact upon the public natural resources, 25 Pa. Code §105.16(c), specifically Tincum Creek, and that the Applicant did not demonstrate otherwise in its Application.
24. PennDOT’s Joint Permit Application was insufficient to allow the Department to reasonably conclude that adverse hydrologic impacts, water



quality impacts, or water pollution would not result from the proposed bridge replacement. Specifically, temperature impacts resulting from the proposed project were not addressed and no discussion regarding streambank erosion and thus total suspended solids in Tinicum Creek was included.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Signed on the 14th day of November, 2021, at Bucks County, Pennsylvania, United States.

A handwritten signature in blue ink, reading "Mary L. Paist-Goldman". The signature is written in a cursive style and is positioned above a horizontal line.

Mary L. Paist-Goldman, P.E.
PA Professional Engineer PE-078834-E
Founder, Principal



Exhibit B



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

DELAWARE RIVERKEEPER)	
NETWORK AND THE DELAWARE)	
RIVERKEEPER, MAYA VAN)	
ROSSUM, <i>et al.</i> ,)	
Appellants,)	EHB DOCKET NO. ____
)	
v.)	
COMMONWEALTH OF)	
PENNSYLVANIA, DEPARTMENT)	ELECTRONICALLY FILED
OF ENVIRONMENTAL PROTECTION)	
)	
Appellee.)	

AFFIDAVIT OF MAYA VAN ROSSUM

Pursuant to 42 Pa.C.S.A. § 6204, I, Maya van Rossum, do hereby declare:

1. I make this declaration in support of this Permit Appeal by the Delaware Riverkeeper Network, and myself, individually and as the Delaware Riverkeeper.
2. I have served as the Delaware Riverkeeper, the leader of the Delaware Riverkeeper Network (“DRN”), since 1994. The Delaware Riverkeeper functions as an ombudsman for the Delaware River and its tributaries and watershed.
3. DRN, a 501(c)(3) not-for-profit membership organization, was established in 1988, to protect, restore, and advocate for the ecological, recreational, commercial, and aesthetic qualities of the Delaware River, its tributaries, related watersheds, and habitats.
4. DRN has grown to over 25,000 members who reside and/or transact business throughout the Delaware River Watershed, including various

portions of Pennsylvania and, specifically, Tinicum Creek and its surrounding lands. I am a member of DRN.

5. DRN organizes and implements stream bank restorations, a volunteer monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and, when necessary, environmental law enforcement efforts throughout the four states of the Delaware River Watershed. I act as the lead advocate and executive director of DRN.
6. DRN is headquartered at 925 Canal Street, Suite 3701, Bristol, PA 19007. The Delaware Riverkeeper maintains an office in DRN's headquarters.
7. Approximately 12,800 DRN members live and work in Pennsylvania. DRN members canoe, birdwatch, hike, and participate in other recreational activities in and/or near the Tinicum Creek, which joins with the Delaware River.
8. Some of DRN's members own or reside in properties both upstream and downstream from the Bridge, including along Tinicum Creek and the Delaware River, and are therefore impacted by the Department's and PennDOT's imminent construction and replacement of the Headquarters Road Bridge.
9. Both I and other members of DRN live and work within the Delaware River Watershed and use and enjoy the area surrounding Tinicum Creek for professional, educational, and recreational activities and the historic and aesthetic enjoyment it provides.
10. I am a birdwatcher and naturalist and have been for over twenty years. I regularly participate in observing fish, birds, and other wildlife in various locations along the Delaware River, its tributaries, and adjoining watersheds.
11. I and other members of DRN intend to continue our professional, educational, and personal recreational activities within the Delaware River Watershed, including its tributaries such as Tinicum Creek, for the foreseeable future.

12. DRN has a specific interest in the Headquarters Road Bridge and water quality in Tincicum Creek. In particular, PennDOT's replacement bridge project that has been permitted by the Department imminently threatens harm to: properties where DRN members' reside; the character and water quality of Tincicum Creek, an exceptional value and designated Wild and Scenic waterbody; and the historic and aesthetic character of the Ridge Valley Rural Historic District, of which the Headquarters Road Bridge is an "important element" that was key to the District's recognition as an outstandingly remarkable cultural and historic resource for the Tincicum Creek portion of the Lower Delaware River. (The Headquarters Road Bridge was built in 1812 and is one of the few spans in the nation that is over 200 years old.)
13. Both DRN and I have invested significant time, energy, and resources towards the protection and restoration of the Delaware River watershed, including Tincicum Creek.
14. DRN had a pivotal role in obtaining Special Protection Waters status for the Upper and Middle Delaware Wild and Scenic River segments by petitioning the Delaware River Basin Commission in 1992.
15. DRN petitioned to classify the Lower Delaware as Special Protection status in July 2008. DRN played a significant role in advancing and securing the Wild and Scenic status of the lower Delaware River, which includes the Tincicum Creek.
16. In my role as the Delaware Riverkeeper, I testified before Congress in support of the Wild and Scenic designation of Tincicum Creek.
17. DRN's members will be adversely affected and harmed by the changes to water quality, velocity and magnitude of the flow of the Creek, and in particular the degradation of the west (right) bank and riparian buffer and the adjacent field, which constitutes the floodplain, that will be eroded, causing sediment pollution in Tincicum Creek.
18. Upstream and downstream properties, including those owned by DRN members, will be adversely affected by the changed flow velocity, direction, channel location, and erosion.

19. DRN, DRN's members, and I will be adversely affected and harmed by the loss of the right existing abutment and lateral shift of the new right abutment westward, which help maintain the regulatory protections applicable to the resources of the Tincum Creek, the riparian buffer, floodplain, and the lower Delaware River.
20. The laws of Pennsylvania and DRN's articles of incorporation, bylaws, and Board of Directors authorize it to bring this action on behalf of itself and its members.
21. Appellant the Delaware Riverkeeper, Maya van Rossum, is a full-time privately funded ombudsman responsible for the protection and restoration of the waterways in the Delaware River Watershed, including the cultural, historical, ecological, recreational, commercial, and aesthetic qualities of the Delaware River and its tributaries, habitats, and resources.
22. I regularly visit the Delaware River for personal and professional reasons, and my use and enjoyment of the River and the Tincum Creek area will be significantly diminished by the demolition of the bridge and abutment, and by the impacts to Tincum Creek, and areas downstream resulting from the demolition and subsequent replacement.
23. Personally and professionally, I am also a regular visitor to Tincum Township, the Tincum Creek, and locations at and around the proposed Bridge site that would be adversely affected by the final actions proposed to be taken. My use, enjoyment, and appreciation of the Creek and the Tincum community will be harmed, reduced, and degraded by the replacement of the Bridge and resulting environmental impacts.

I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct to the best of my knowledge, information and belief. I understand that any false statements made are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Signed on the 12th day of November, 2021, at Delaware County, Pennsylvania, United States.



Maya K. van Rossum



Attachment B



Commonwealth of Pennsylvania
Department of Environmental Protection
PA DEP Southeast Regional Office
Waterways and Wetlands Program

WATER OBSTRUCTION AND ENCROACHMENT PERMIT

The Department of Environmental Protection (“Department”), established by the Act of December 3, 1970, P.L. 834 (71 P.S. §§510.1 *et seq.*) and empowered to exercise certain powers and perform certain duties under and by virtue of the Act of November 26, 1978, P.L. 1375, as amended by the Act of October 23, 1979, P.L. 204 (32 P.S. §§693.1 *et seq.*) known as the “Dam Safety and Encroachments Act”; Act of October 4, 1978, P.L. 851 (32 P.S. §§679.101 *et seq.*) known as the “Flood Plain Management Act”; Act of June 22, 1937, P.L. 1987, (35 P.S. §§691.1 *et seq.*), known as “The Clean Streams Law”; and the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, which empowers the Department to exercise certain powers and perform certain duties by law vested in and imposed upon the Water Supply Commission of Pennsylvania and the Water and Power Resources Board, hereby issues this permit to:

**Pennsylvania Department of Transportation
Engineering District 06
7000 Geerdes Blvd.
King of Prussia, PA 19406**

giving its consent to remove an existing three-span, 62.8-foot-long, concrete encased steel I-beam, concrete deck slab bridge with stone masonry abutment and piers, and in its place, construct and maintain a two-span, prestressed concrete spread box beam bridge with equal spans measuring 40 feet each over Tincum Creek (EV). These activities are associated with the Headquarters Road over Tincum Creek Replacement Project and include the construction and maintenance of the following water obstruction and encroachment activities:

- 1. To remove an existing three-span bridge, construct and maintain a proposed two-span bridge, perform channel work and grading, placement of riprap, removal of multiple existing piers and the construction of a new proposed pier resulting in 77.5 linear feet (3,302 square feet, 0.076 acre) of permanent watercourse impact, 1,532 square feet (0.035 acre) of permanent floodway impact and, 4,481 square feet (0.103 acre) of permanent floodplain impact. Additional floodway and floodplain activities include roadway construction, abutment and wingwall construction on opposite sides of watercourse, existing abutment removal, channel work and grading resulting in 2,643 square feet (0.061 acre) of additional permanent floodway impact and 1,934 square feet (0.044 acre) of 100-year floodplain impact. This activity also includes the replacement of a 24- inch CMP floodplain culvert with a 14-inch by 23-inch outfall with the placement of riprap rock apron to facilitate roadside drainage located at the west bridge approach and the placement of riprap associated with an 18-inch outfall located east of the downstream wingwall.**
- 2. To construct and maintain diversion dike system and temporary causeway to facilitate the removal of the existing piers, removal of existing bridge and construction of proposed bridge will result in a total of 74 linear feet (2,271 square feet, 0.052 acre) of temporary watercourse impact, 3,138 square feet (0.072 acre) of temporary floodway impact, and 5,294 square feet (0.121 acre) of temporary floodplain impact.**



The entire project area is located within the Ridge Valley Rural Historic District and Tincum Creek is classified by the National Park Service (NPS) as a component of the Lower Delaware Wild and Scenic River, which is part of the National Wild and Scenic Rivers System. This project is located near the intersection of Sheep Hole Road and Headquarters Road in Tincum Township, Bucks County (USGS PA Bedminster Quadrangle – Latitude 40.470826 N, Longitude 75.136567 W).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §1341.

This permit is issued in response to an application filed with the Department of Environmental Protection on 5/21/2020, and with the understanding that the work shall be performed in accordance with the maps, plans, profiles and specifications filed with and made a part of the application on 7/21/2020 and 4/6/2021, subject to the provisions of the Dam Safety and Encroachments Act, the Flood Plain Management Act, The Clean Streams Law, the Administrative Code, the Rules & Regulations promulgated thereunder and the following conditions and restrictions. **If the work authorized by this permit is not completed on or before 12/31/2024, this permit, if not previously revoked or specifically extended by the Department in writing, shall become void without further notification.**

1. The permittee and an individual responsible for the supervision or conduct of the construction work shall complete and sign an Acknowledgement of Appraisal of Permit Conditions certifying the permittee’s acceptance of, and agreement to comply with, the terms and conditions of this permit. The permittee shall return the completed and signed form to the Department. The permit will not be effective until the signed copy is received by the Department.

2. The Department, in issuing this permit, has relied on the information and data which the permittee has provided in connection with its permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings;

3. This permit does not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the Commonwealth of Pennsylvania; neither does it authorize any injury to private property or invasion of private rights, nor any infringement of Federal, State, or Local laws or regulations; nor does it obviate the necessity of obtaining Federal assent when necessary;

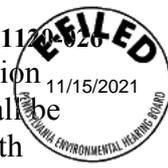
4. The work shall at all times be subject to supervision and inspection by representatives of the Department, and no changes in the maps, plans, profiles, and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the maps, plans, profiles, and specifications as may be considered necessary. The Department further reserves the right to suspend or revoke this permit if in its opinion the best interest of the Commonwealth will be subserved thereby;

5. This permit authorizes the construction, operation, maintenance and normal repair of the permitted structures conducted within the original specifications for the water obstruction or encroachment, and in accordance with the regulations of the Department and term and conditions of this permit. Any repairs or maintenance involving modifications of the water obstruction or encroachment from its original specifications, and any repairs or reconstruction involving a substantial portion of the structure as defined by regulations of the Department shall require the prior written approval and permit of the Department;

6. All construction debris, excavated material, brush, rocks, and refuse incidental to this work shall be removed entirely from the stream channel and placed either on shore above the influence of flood waters, or at such dumping ground as may be approved by the Department;

7. There shall be no unreasonable interference with the free discharge of the river or stream or navigation during construction;

8. If future operations by the Commonwealth of Pennsylvania require modification of the structure or work, or if, in the opinion of the Department, the structure or work shall cause unreasonable obstruction to the free passage of floodwaters or navigation, the permittee shall, upon due notice, remove or alter the structures, work or obstructions caused thereby, without expense to any Commonwealth agency or entity



other than the permittee, so as to increase the flood carrying capacity of the channel or render navigation reasonably free, easy, and unobstructed, in such manner as the Department may require. No claim shall be made by the permittee, or its agents or contractors against the Department or any other Commonwealth agency or entity, on account of any such removal or alteration;

9. The permittee shall notify the Department, in writing, of the proposed time for commencement of work at least 15 days prior to the commencement of construction;

10. If construction work has not been completed within the time specified in this permit and the time limit specified in this permit has not been extended in writing by the Department or if this permit has been revoked for any reason, the permittee shall, at his own expense and in a manner that the Department may prescribe, remove all or any portion of the work as the Department requires and restore the watercourse and floodplain to their former condition;

11. The permittee shall fully inform the engineer or contractor, responsible for the supervision and conduct of the work, of the terms, conditions, restrictions and covenants of this permit. Prior to the commencement of construction, the permittee shall file with the Department in writing, on a form provided by the Department, a statement signed by the permittee and an individual responsible for the supervision or conduct of the work acknowledging and accepting the general and special conditions contained in this permit. Unless the acknowledgment and acceptance have been filed, this permit is void. A copy of this permit and the acknowledgment shall be available at the work site for inspection upon request by an officer or agent of the Department or another Federal, State, County, or municipal agency;

12. The permittee shall operate and maintain the structure or work authorized herein in a safe condition in accordance with the permit terms and conditions and the approved maps, plans, profiles, and specifications;

13. This permit may not be transferred without prior written approval from the Department, such approval being considered upon receipt of the properly executed "Application of Transfer of Permit" form;

14. If and when the permittee desires to discontinue use or abandon the activity authorized herein, it must remove all or part of the structure or work authorized and take other actions as are necessary to protect safety and the environment in accordance with a permit issued by the Department;

15. If the use of explosives in any waterways is required, the permittee shall secure the prior written permit from the Pennsylvania Fish and Boat Commission, pursuant to the Pennsylvania Fish and Boat Code, Act 1980-175 Title 30 Pennsylvania Consolidated Statutes, Section 2906. Requests should be directed to the Pennsylvania Fish and Boat Commission, Division of Environmental Services, 450 Robinson Lane, Bellefonte, PA 16823-9620, telephone 814-359-5140;

16. Permittee shall implement and monitor an Erosion and Sedimentation Control Plan, antidegradation non discharge alternatives, and antidegradation best available combination of technology BMPs, as appropriate in accordance with Chapter 102, so as to minimize the potential for accelerated erosion and sedimentation into the receiving watercourse or body of water;

17. The project site shall at all times be available for inspection by authorized officers and employees of the Pennsylvania Fish and Boat Commission. Prior to commencement and upon completion of the work authorized by this permit, the permittee shall notify the Pennsylvania Fish and Boat Commission's Southeast Region office at 717-626-0228;

18. The project site shall at all times be available for inspection by authorized officers and employees of the Bucks County Conservation District. Prior to commencement and upon completion of the work authorized by this permit, the permittee shall notify the Bucks County Conservation District at 215-345-7577; and

19. SPECIAL CONDITIONS

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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Regional Manager
Waterways and Wetlands Program

1. The permittee shall abide by the Memorandum of Agreement (MOA) between Federal Highway Administration (FHWA), PA State Historic Preservation Office (SHPO) and Advisory Council on Historic Preservation (ACHP) that was executed on August 7, 2018
2. The permittee shall abide by the conditions and monitoring requirements identified in the National Park Service’s (NPS) March 30, 2021 Wild and Scenic Rivers Act Consistency Review/Section 7 Determination letter and the December 2020, Headquarters Road Bridge Monitoring Requirement document.
3. The permittee shall immediately notify DEP of any issue, change, anticipated change, or occurrence that could compromise the integrity of the project or result in adverse environmental impacts.
4. All temporarily impacted watercourses, floodways and floodplains of the Commonwealth are to be restored to the original contours. All banks of watercourses and floodways shall be replanted with indigenous plant species. Any excess fill material must be removed from watercourses, floodways and floodplains of the Commonwealth and disposed/reused in accordance with Department regulations.
5. Permittee shall monitor the restoration of the temporary impacts to watercourses, floodways and floodplains for at least five years after planting. Monitoring reports shall be submitted to the DEP every six months for the first two years after construction and annually for three years thereafter. Monitoring shall not be discontinued until written authorization from DEP is received. The monitoring reports shall contain information describing the success of restoration of the site at the time of inspection including; an inventory of the surviving plant species; volunteer species; an assessment of the hydrology; photographs of the replacement sites with plans showing the location and orientation of each of the photographs; and, a written plan to correct any deficiencies.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

John Hohenstein, P.E.
Environmental Program Manager
Waterways and Wetlands Program

September 29, 2021