

NOTICE OF APPEAL FORM APPEAL INFORMATION

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

National Parks Conservation Association (NPCA)
c/o Libby Fayad, Esq.
777 6th Street NW
Washington, DC 20001

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.)

On July 18, 2016, the Department of Environmental Protection (DEP) granted the Pennsylvania Turnpike Commission (PTC) a National Pollution Discharge Elimination System Permit, PAI01151214, For Stormwater Discharges Associated with Construction Activities for the widening of the Pennsylvania Turnpike from Milepost 320 to Milepost326 (the Permit).

(b) Which Department official took the action?

Domenic Rocco, P.E.
Regional Manager
Waterways and Wetlands
Pennsylvania Department of Environmental Protection

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

Tredyffrin and Upper Merion Townships, Chester and Montgomery Counties.

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

NPCA heard of the approval from unofficial sources on August 2, 2016. The notice of permit approval was posted on the Pennsylvania Bulletin on August 6, 2016.

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.)

NPCA objects to the Permit for the reasons set forth below. Founded in 1919, NPCA is the leading, independent, private citizen voice in support of promoting, protecting and enhancing America's national parks for present and future generations. NPCA has one million members and supporters, including 48,000 members in Pennsylvania. Many of NPCA's members frequently visit and enjoy and are inspired by Valley Forge National Historical Park (Valley

Forge NHP) and its historic and natural resources, including Valley Creek and George Washington's Continental Army Headquarters which sits on the banks of Valley Creek.

1. It was arbitrary and capricious for DEP to have granted the Permit based on PTC's permit application. Among other things, PTC failed to show that its plan to widen and reconstruct the Pennsylvania Turnpike adjacent to Valley Forge NHP (the Plan) would not adversely impact Valley Forge NHP and Valley Creek, a DEP-designated Exceptional Value stream.

- Valley Forge NHP is an iconic memorial and interpretative park dedicated to telling the story to the American public and foreign visitors of the Revolutionary War and of George Washington and the Continental Army's encampment there during a critical period in that War. That park is part of the National Park System and is managed by the National Park Service (NPS). George Washington's Headquarters, a National Historic Landmark, sits on the banks of Valley Creek.
- NPS objected to the Plan in comments to DEP, stating among other things:

"[Valley Forge NHP] lies at the bottom of the Valley Creek watershed. Every un-filtrated drop of water that runs off a paved surface in the watershed flows through the park. Inadequately managed storm water adversely affects public safety; degrades the clean water of the creek; the health of the creek's aquatic life, and recreational resources such as Valley Creek Trail; and causes irreparable harm to the archeological and historic resources that line the creek, including National Historic Landmark Washington's Headquarters."

- In addition, the Plan will cause other adverse impacts, including increased stormwater runoff pollution through Valley Creek into the Schuylkill River and from there into the Lower Delaware River, which is designated by Congress as part of the National Wild & Scenic River System. The Plan will also cause the loss of wild reproducing brown trout habitat. (National Wild & Scenic River Act)
- NPS objected that PTC's stormwater management plan was inadequate to protect those resources and avoid those results. Yet, DEP imposed no further requirements on PTC than the minimum standards of stormwater management on

just 2 lanes of the widening project. The Plan would exacerbate existing flooding issues that could result in irreparable degradation and loss of historical and archeological resources. Additional volume capture is necessary to ensure that historic resources, including but not limited to George Washington's Continental Army Headquarters – a national historic landmark – are not lost for future generations as a result of this Plan and climate change. Additionally, the Plan would result in flooding impacts and in-stream degradation that could result in added remediation costs for the National Park Service, a federally funded agency within the U.S. Department of Interior.

- Even if PTC's Plan would meet minimum standards, which NPCA disputes, it was arbitrary and capricious for DEP to judge the Plan based on the minimum requirements on part of the project, not the widening as a whole, rather than requirements needed to assure the avoidance of the adverse consequences NPS explained to Valley Forge NHP and to Valley Creek.
2. By issuing this permit, DEP violates the Antidegradation Clause of the Pennsylvania Clean Streams Law in that the PTC's permit application does not offer sufficient plans to prevent additional stormwater impairment to Valley Creek, a DEP-designated Exceptional Value stream.
- Under (25 Pa. Code 93.4a (d)) Antidegradation of the Pennsylvania Clean Streams Law, the existing quality of Exceptional Value (EV) Waters must be protected at all times. EV waters are the best or most unique quality waters in the Commonwealth. The issuance of this permit, due to the insufficient stormwater management proposals outlined in the permit application, does not meet DEP's responsibility to uphold the Antidegradation requirements of the Pennsylvania Clean Streams Law.
 - Discharges to EV watersheds must provide adequate and meaningful non-discharge alternatives, which PTC has failed to provide. 25 Pa. Code 93.4c (b) (i) (A) and 25 Pa. Code 102.8 (h).
 - In accordance with section 208(e) of the Clean Water Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan, in this case an EV status. Where a

State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan. (40 CFR 130.12).

- All tributaries to Valley Creek are considered to be of EV status and require the same level of protection given to Valley Creek.
 - PTC has not demonstrated that the Plan's discharges will maintain and protect existing water quality and habitat as required by 25 Pa. Code 93.4c (b) (i) (B) or 93.4a (d), but instead, such discharges will not maintain and protect the existing water quality.
 - DEP has failed to demonstrate that the Plan's discharges will not harm or present a threat of harm to the health, safety or welfare of the people or environment of Pennsylvania as required by the Clean Streams Law, 35 P.S. 691, et seq.
 - DEP failed to adequately consider the harm to the Valley Creek Watershed and its tributaries from increased pollution flow causing erosion, increased sedimentation, warming stream temperatures and harm to aquatic life, as required by the Clean Streams Law, 35 P.S. 691.1 and 691.401 and relevant regulations and policy; and, as required by the Storm Water Management Act, 32 P.S. 680.1, et seq.
3. The Plan is not entitled to be exempt under Section 102.8(g)(2) of the Pennsylvania Code, in whole or in any part.
- DEP applied the "reconstruction" provisions of that section to some parts of the highway and only treated as new construction those parts being added to the existing roadway. But the project approved by DEP is one single integrated project and should be evaluated as such. Therefore, the entire project should be considered new construction and no part thereof should be considered exempt as "reconstruction."
 - Segregating parts of a single project and applying different standards to different parts is an incorrect interpretation and application of Section 102.8(g)(2). Either a project is in essence a reconstruction or it is not. The Plan is not a reconstruction but will fundamentally change the highway in material respects.

4. DEP acted arbitrarily and capriciously by failing to take into account the increased frequency and scale of extreme weather or flooding events in the Valley Creek watershed in light of climate change. DEP should have considered this before issuing the NPDES permit.

- Currently, extreme weather events already cause erosion of and flooding over the banks of Valley Creek before it drains into the Schuylkill River, causing harm to George Washington Headquarters and other historic structures within the park. By allowing increased volumes of stormwater discharges into Valley Creek from the Turnpike, DEP has granted PTC the right to increase the volume of stormwater that flows into Valley Creek and increase the risk of such damage. Weather events that were once understood as 100-year events now occur far more frequently as a result of climate change. DEP should have taken these facts into consideration but failed to do so.
- Climate change will manifest itself not only as shifts in mean conditions (e.g., increasing mean annual temperature and sea level) but also as changes in climate variability (e.g., more intense storms and flooding). (NPS resource)

5. DEP erred in approving PTC's Plan because it may propose to manage stormwater for velocity and nutrients, but it does not adequately address volume considerations.

- Runoff from roadway is routed through structures that slow stormwater discharge. But, the increased volume generated by the Turnpike expansion will be discharged directly into tributaries and the main stem of Valley Creek in multiple "points of interest." This increased volume will have degrading effects on stream health and should be better managed and properly reduced before entering Valley Creek.
- Major segments of the stormwater management proposal rely on slow release detention systems to manage stormwater runoff from the Turnpike roadway. While this may be possible and appropriate in limited portions of a small-scale project, in this large-scale application, where drainage areas are being consolidated into few points of interest, a detailed analysis of these discharges that goes beyond typical peak rate analysis should have been performed. With

changes in rain and snowfall, referenced above, the previous calculation may not accurately reflect the impacts of increased volume in the Valley Creek watershed and on Valley Forge National Historical Park.

- Low flow discharge calculations should be routed with actual storms to evaluate volume and rate changes to point of interest. Slow release rates should be expanded upon and modeled in such a way as to identify actual discharges to streams and tributaries.
 - The stormwater management system concentrates 64% of the volume management for Valley Creek section of roadway into just 3 of 22 proposed facilities.
 - Because of site constraints such as Karst geology, identified high water tables, and potential limits to infiltration, it is not advisable to direct large volumes of roadway runoff to so few facilities for infiltration. This creates the potential for catastrophic failure due to geology or site limitations.
 - Additionally, volume management criteria should be met at each discharge to the creek, and not “added up” cumulatively for a Valley Creek tally. This is especially important because most of the small rainfall events (1/2 inch, 1 inch) will not “fill up” the “oversized” BMPs, and therefore will not compensate for the unmanaged downstream volume when small storms occur.
 - The Turnpike Commission and its engineers failed to demonstrate that the stream base flow will be maintained, and erosive conditions prevented, using this “slow release” approach. The Pennsylvania Turnpike Commission’s consultant, STV Engineers, failed to provide quantifiable technical criteria for justifying slow release, as volume management is not in the current Stormwater Manual.
6. DEP erred by relying on calculations of stormwater impacts by STV Engineers and PTC that were inconsistent and arbitrary and which qualified third-party experts found unintelligible. This deprived the public of rights of review and comment.
- The STV/PTC stormwater calculations often arbitrarily apply engineering coefficients to develop required volumes and rates of runoff to be managed.
 - When inconsistent calculations are combined with the unconventional presentation of “Worksheets and Tables,” proper analysis and review cannot take

place by either PADEP or an outside reviewer.

- Turnpike Consultants, STV Engineers, failed to provide clear and verifiable analysis of the stormwater impacts from PTC's proposed expansion and reconstruction project due to the importance of this project from the Pennsylvania Turnpike Commission's perspective, PADEP's responsibility is to review and verify stormwater management design, and the significance of the natural, historical, and cultural resources in the Valley Creek watershed.
7. DEP erred by approving a Plan in which the permit applicant's case for discharge compliance was based on "points of interest" rather than on evaluating each discharge point. The "points of interest" that are evaluated for volume and flow rate are located downstream and cannot account for adverse and immediate impacts of upstream discharge outfalls.
- STV Engineers calculated the volume of the PTC's stormwater discharges based on cumulative averages as opposed to accounting for the impact that the most polluted and warmest water will have at a given outfall and the water quality and habitat downstream. The warmest, most polluted waters in this project are slated to enter Valley Creek just before it enters Valley Forge National Historical Park.
 - Each and every discharge point to Waters of the US should be evaluated for discharge compliance. Compliance with volume management and peak rate criteria should be demonstrated at every existing and proposed discharge to a stream or creek (the regulatory discharge to Waters of the US), and NOT at some arbitrary downstream "point of interest".
 - It is virtually impossible from the data presented by PTC/STV to compare the volume and flow rate into the creek at specific outfalls to the creek. Without this information, DEP should not have issued a permit.
 - Increasing/decreasing flow rates and volumes in the creek (above a point of interest) could have significant adverse impacts on that segment of the creek. This was a clear basis to deny the applicant's permit.
8. DEP failed to consider active litigation over the settlement between Tredyffrin Township and the PA Turnpike Commission to waive many of the townships municipal stormwater requirements, which are superior to state requirements. DEP should have awaited

conclusion of that litigation before DEP acted on the Plan.

- Should the legal petition that Valley Forge Trout Unlimited, the plaintiff, has filed against Tredyffrin Township to challenge its recent settlement with the Pennsylvania Turnpike Commission conclude in favor of the plaintiff, the Turnpike Commission will need to work through the planning process at the municipal level and comply with more stringent stormwater laws.
 - To issue this permit is premature as the standards would not be compatible with the Township's local stormwater management laws and standards.
 - DEP should not have issued the permit ahead of the case ruling as it could result in a waste of resources and insufficient protection of the township's waterways and the adjacent Valley Forge National Historical Park.
 - This permit is not in compliance with the Tredyffrin Township Stormwater Ordinances or the Valley Creek Watershed Act 167 Plan (32 P.S. 680.11 (a) and 680.13) and constitutes a public nuisance (32 P.S. 680.15).
9. A nearby construction project completed by the PTC has stormwater infiltration basins, similar to those in the Plan, that have already failed in the first year of installation.
- The infiltration basins are designed and will be constructed similarly to the two infiltration basins on either side of the existing electronic interchange to Route 29, and which have failed in the past and as a consequence have been converted into detention basins.
 - Conversion of the proposed infiltration basins into detention basins because of failures similar to those adjacent to Route 29 will cause those proposed basins to fail to meet rate, volume, temperature and other water quality parameters, which in turn will cause erosion and sedimentation and pollution problems on the unnamed tributaries and on Valley Creek itself thereby causing harm to the aquatic life in those waterways.
 - DEP has called for remediation of these violations. With similarities between the stormwater management proposed in both project plans, it was irresponsible for DEP to issue the permit under the assumption that the plans set forth by STV Engineers in permit PAI01151214 would be more successful than those in the the NPDES permit issued for this completed, yet failing, project at the Route 29 electronic interchange.

10. The issuance of this permit violates Article I, section 27 the Pennsylvania Constitution.

- The proposed Plan and discharges of stormwater and other pollutants into Valley Creek will violate Article 1, Section 27 of the Pennsylvania Constitution in that such discharges will adversely affect water resources belonging to all the people of this Commonwealth: not all applicable laws have been followed; alternatives have not been considered; and, the harms outweigh any benefits.

11. DEP failed to consult with agencies responsible for protecting Pennsylvania's historic resources.

DEP should have denied the permit. Instead, DEP granted the permit based on an incomplete analysis and an absence of data to suggest this plan will be effective in protecting downstream water quality and flooding in Valley Creek. DEP did not sufficiently explain its analysis of permit application materials and the review of STV Engineers volume capture calculations in its Response to Public Comment document or other relevant materials released on the day of the NPDES permit issuance, July 18, 2016. The Appellant respectfully requests that this Board deny the above referenced permit and grant any other relief the Board may deem appropriate.

The appeal filed by the Valley Forge Chapter of Trout Unlimited on September 2, 2016 is hereby incorporated by reference as if fully repeated here. A copy of that appeal is attached.

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 (1) and (2) below, and where applicable, upon other interested parties indicated by numbers (3) and (4). 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) Department of Environmental Protection



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: September 2, 2016.

Signature of Appellant or Appellant's Counsel

Begelman, Orlow & Melletz
By: Marc M. Orlow, Esquire
PA ID No. 31356
7415 West Chester Pike,
Upper Darby, PA., 19082
Telephone No.: 215-235-6020
Email: marc.orlow@begelmanorlow.com

Date: 9-2-16

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

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.

Office of Chief Counsel
Attn: April Hain
16th Flr. Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

via first class mail, postage
pre-paid
 overnight delivery
 personal delivery
 electronic filing

AND

(2) The officer of the Department
who took the action being
appealed.

via first class mail, postage
pre-paid
 overnight delivery
 personal delivery
 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 and the officer who took the action being appealed. There is no need for you to independently serve the Department.

Additionally, 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, as applicable:

(3) The entity to whom the permit,
license, approval, or
certification was issued.

via first class mail, postage
pre-paid
 overnight delivery
 personal delivery

AND

(4) Where applicable, 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.