



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



<b>MONROE COUNTY CLEAN STREAMS</b>	:	
<b>COALITION</b>	:	
	:	
v.	:	<b>EHB Docket No. 2017-107-L</b>
	:	
<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
<b>DEPARTMENT OF ENVIRONMENTAL</b>	:	
<b>PROTECTION and BROADHEAD</b>	:	
<b>WATERSHED ASSOCIATION, CITIZENS</b>	:	
<b>FOR PENNSYLVANIA’S FUTURE, AND</b>	:	<b>Issued: October 11, 2018</b>
<b>DELAWARE RIVERKEEPER NETWORK</b>	:	
<b>AND MAYA VAN ROSSUM, THE</b>	:	
<b>DELAWARE RIVERKEEPER, Intervenors</b>	:	

**OPINION AND ORDER ON  
MOTION TO DISMISS**

**By Bernard A. Labuskes, Jr., Judge**

**Synopsis**

The Board grants a motion to dismiss an appeal of a periodically updated existing use classification listing for streams. The Board lacks jurisdiction because the listing does not in and of itself affect any individual personal or property rights, privileges, duties, or obligations. The appropriate time to challenge a stream’s existing use classification is in the context of an appeal from a Department permit or approval.

**OPINION**

Monroe County Clean Streams Coalition (the “Coalition”)<sup>1</sup> has appealed the posting of an update to a list maintained by the Department of Environmental Protection (the “Department”) of existing use classifications of some of the streams in Pennsylvania. The

<sup>1</sup> The Coalition describes itself as an unincorporated association consisting of local businesses and landowners in Monroe County. Its members include Kalahari Resorts & Conventions, Pocono Manor Investors, LP, and Pocono Raceway.

parties refer to the list as the Statewide Existing Use Classification List. The streams at issue in this appeal are Paradise Creek, Devil’s Hole Creek, Swiftwater Creek, and Tunkhannock Creek in Monroe County.<sup>2</sup> Those streams are now indicated on the list as having attained existing uses of exceptional value (EV). This is more protective than the streams’ current designated uses of high quality (HQ).

The Department has moved to dismiss the Coalition’s appeal on the grounds that an update to the list is not a final, appealable action subject to this Board’s jurisdiction. Two of the intervenors in this appeal, the Brodhead Watershed Association and Citizens for Pennsylvania’s Future (PennFuture), have filed joint memoranda in support of the Department’s motion. The Coalition, of course, opposes the motion, contending that the update to the list is appealable because it has significant and immediate impacts on its members. For the reasons set forth below, dismissal of this appeal is appropriate.

The Board has the authority to grant a motion to dismiss where there are no material facts in dispute and where the moving party is entitled to judgment as a matter of law. *Lawson v. DEP*, EHB Docket No. 2017-051-B, slip op. at 2 (Opinion and Order, May 17, 2018); *Brockley v. DEP*, 2015 EHB 198, 198; *Blue Marsh Labs., Inc. v. DEP*, 2008 EHB 306, 307; *Borough of Chambersburg v. DEP*, 1999 EHB 921, 925. The Board evaluates a motion to dismiss in the light most favorable to the nonmoving party. *Ctr. for Coalfield Justice v. DEP*, EHB Docket No. 2018-028-R, slip op. at 4 (Opinion and Order, Sep. 5, 2018); *Teska v. DEP*, 2012 EHB 447, 452; *Pengrove Coal Co. v. DER*, 1987 EHB 913, 915.<sup>3</sup> Motions to dismiss will be granted only when

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<sup>2</sup> On August 13, 2018, the Coalition withdrew its appeal as it related to two additional streams, Cranberry Creek and Tank Creek, because the Coalition said its own independent sampling of the two streams indicated they had attained exceptional value uses.

<sup>3</sup> We have disregarded the parties’ various contentions regarding who said what at a public meeting before the Independent Regulatory Review Commission.

a matter is free from doubt. *Merck Sharp & Dohme Corp. v. DEP*, 2015 EHB 543, 544; *Northampton Twp. v. DEP*, 2008 EHB 563, 570; *Emerald Mine Res., LP v. DEP*, 2007 EHB 611, 612.

The Board only has jurisdiction over final Department actions affecting personal or property rights, privileges, immunities, duties, liabilities, or obligations. 35 P.S. § 7514(a); 25 Pa. Code § 1021.2 (definition of “action”); *Northampton Bucks Cnty. Mun. Auth. v. DEP*, 2017 EHB 84, 85; *Tri-County Landfill, Inc. v. DEP*, 2010 EHB 747, 750; *Kennedy v. DEP*, 2007 EHB 511, 511-12. There is no bright line rule for what constitutes a final, appealable action. *Chesapeake Appalachia, LLC v. Dep’t of Env’tl. Prot.*, 89 A.3d 724, 726 (Pa. Cmwlth. 2014); *HJH, LLC v. Dep’t of Env’tl. Prot.*, 949 A.2d 350, 353 (Pa. Cmwlth. 2008); *Borough of Kutztown v. DEP*, 2001 EHB 1115, 1121. The appealability of Department decisions needs to be assessed on a case-by-case basis. *Dobbin v. DEP*, 2010 EHB 852, 858; *Kutztown*, 2001 EHB 1115, 1121. In short, we ask whether a Department decision adversely affects a person. 35 P.S. § 7514(a) and (c); 25 Pa. Code § 1021.2. Department decisions that “do not affect a party’s personal or property rights, remedies, or avenues of redress are not appealable actions.” *Sayreville Seaport Assocs. Acquisition Co. v. Dep’t of Env’tl. Prot.*, 60 A.3d 867, 872 (Pa. Cmwlth. 2012).

The list that the Coalition has attempted to appeal relates to Pennsylvania’s EPA-approved water quality standards program, which “provides that instream water uses and the level of quality necessary to protect those uses shall be maintained and protected.” *Pine Creek Valley Watershed Ass’n v. DEP*, 2011 EHB 761, 772 (citing 25 Pa. Code § 93.4a). Pennsylvania’s program is concerned with maintaining and protecting (1) existing uses and (2) designated uses. 25 Pa. Code §§ 93.4a(b), 93.9(a), 96.3(a). Existing uses are defined as “[t]hose uses actually attained in the water body on or after November 28, 1975, whether or not they are

included in the water quality standards.” 25 Pa. Code § 93.1. Designated uses are defined as “[t]hose uses specified in §§ 93.4(a) and 93.9a – 93.9z for each water body or segment whether or not they are being attained.” *Id.* Section 93.4(a) sets forth statewide water use types related to aquatic life, water supplies, and recreation. Section 93.3 sets forth protected water use types, which include all of the uses contained in Section 93.4(a), as well as additional aquatic uses such as cold water fishes (CWF) and trout stocking (TSF), and the special protection uses of HQ and EV waters.

*Designated* uses of streams are promulgated by formal rulemaking by the Environmental Quality Board and are listed as regulations in the *Pennsylvania Code*. See 25 Pa. Code §§ 93.9a – 93.9z. The process for classifying the *existing* uses of streams, however, is much different. That process is set forth at 25 Pa. Code § 93.4c(a):

(1) *Procedures.*

- (i) Existing use protection shall be provided when the Department’s evaluation of information (including data gathered at the Department’s own initiative, data contained in a petition to change a designated use submitted to the EQB under § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), or data considered in the context of a Department permit or approval action) indicates that a surface water attains or has attained an existing use.
- (ii) The Department will inform persons who apply for a Department permit or approval which could impact a surface water, during the permit or approval application or review process, of the results of the evaluation of information undertaken under subparagraph (i).
- (iii) Interested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.
- (iv) The Department will make a **final** determination of existing use protection for the surface water **as part of** the **final** permit or approval action.

(Emphases added.)

The existing use regulation does not say the Department should create and disseminate a list of existing uses. The Department is not required to prepare or publish a list. Nevertheless, the Department maintains a running list subject to constant revision. For example, in addition to the October 2017 update under appeal here, the Department also updated the list as recently as July 2018.<sup>4</sup> The list informs permit applicants and permit reviewers alike of the Department's interim view of a stream's water quality. Although there is no requirement for a list, the Department *is* required to inform permit applicants of its evaluation of a stream's existing uses during the permit review process. 25 Pa. Code § 93.4c(a)(1)(ii). The applicant, and any other "interested person" for that matter, then has an opportunity to show the Department why it is wrong as part of the application process. 25 Pa. Code § 93.4c(a)(1)(iii). Indeed, permit applicants can argue against a Departmental use determination in any permit review process whether a particular stream is on the list or not. If and when a permit is ever applied for, the Department uses the use determination to fashion permit conditions, and it issues a permit. Any person adversely affected by the permit can then attempt to show that the Department's use determination was flawed, but only in the context of an appeal *from the permit*. 25 Pa. Code § 93.4c(a)(1)(iv).

There is no question that the Board can and in fact has reviewed the Department's recommended existing use in the context of an appeal from a permit whose conditions were based in part on the Department's use listing pursuant to Section 93.4c(a)(1). *See, e.g., Zlomsowitch v. DEP*, 2004 EHB 756. However, this appeal does not seek review of the issuance or denial of any permit or the conditions thereof. The question presented in this appeal is

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<sup>4</sup> The Coalition complains that updates to the list are difficult to find. Accepting that assertion as true, we do not follow why that fact should factor into our jurisdictional analysis. In any event, the Department is not required to prepare or publish a list at all. The Department is required to advise permit applicants of its recommended use determination, regardless of whether it is on a list. 25 Pa. Code § 93.4c(a)(1)(ii).

whether the Department's lone act of including a stream on its existing use list without any accompanying permit is by itself a separately appealable action.

It is immediately apparent from a review of Section 93.4c(a)(1) that the Department's placement of a stream on the Existing Use Classification List is not independently appealable to the Environmental Hearing Board. Not only is a listing not a "final determination" until a "final permit or approval" is issued, the regulation expressly states that the Department can only make the final use determination "as part of" a final permit or approval action. In other words, the regulation not only describes when a final existing use determination is made, it describes the only context in which that determination must be made.

As to context, the regulation makes clear that an existing use listing disembodied from any Department or permit or approval is inchoate. Unless and until it is used to devise a permit condition, the listing has no independent force or effect. It is not directed at any particular person. It does not require anybody to do anything. It does not limit anybody's activities. It cannot be violated; no penalties can follow from or be based merely upon a listing without something more. Indeed, by simply characterizing the uses of a stream the Department has not created anything to enforce. The Department cannot issue an order to comply with an existing use listing. It is neither a regulation nor an adjudication. It lacks the force of law. It is not binding on permit applicants or reviewers. It is a pronouncement without any corresponding implementation; a bark with no bite. Even if it were a binding norm, it would still not be independently appealable until it was actually implemented.

The Coalition asserts that the use listing in and of itself triggers certain regulatory requirements, but that is simply not true. The Coalition fails to point to a single requirement imposed by law that is triggered based on an existing use listing alone as opposed to a permit that

implements the use listing. The Coalition cites buffer requirements that apply to HQ and EV streams in some cases as an example, but those requirements are actually a good example of how the use determination by itself does *not* trigger any requirements. The buffer requirements are not self-effectuating. Rather, they can only be given effect in the context of a permit. 25 Pa. Code § 102.14(a)(1). If a Coalition member is adversely affected by how the Department applies the riparian buffer requirements to a particular development, the member is free to challenge that implementation in an appeal from the Department's issuance of an earth disturbance permit. No such permitting action implementing the riparian buffer requirements is under appeal in this case. Although the Coalition lists a parade of potential horrors and possible consequences, it has failed to cite a single example of how a use listing in isolation has any independent actual impact on any person's legal rights and liabilities separate and distinct from any permit. It is only when a permit is issued that the underlying use determination can indirectly have that impact.

The Coalition exaggerates the importance and uniqueness of the existing use list. Placing a stream on the list does not make the Department recommendation regarding the use of that stream any more or less significant than it would even if there were no list. In point of fact, the Department must determine the existing use of a receiving stream for *every* water discharge permit, whether that use is on the list or not, because existing uses must always be protected. Existing uses cannot be protected if it is not known what they are. It has never been suggested or held that the use determination that is part of every permit application is independently appealable. Placing a stream on a list without reference to any particular permit is even further removed from the sort of defined process that is at least likely to culminate in a final permit issuance or denial. Placing a stream on the list is simply a heads-up. Legally it is no more significant than the use determinations that must be done as part of the permit application review

process, but it serves to put everyone on a more equal footing to know going into the permit application process what the Department thinks the most recent water quality data shows for the stream in question.

The Department employs the use determination along with numerous other factors to fashion permit terms and conditions. For example, the use determination, along with the flow of the stream, the size of the mixing zone, the quality and quantity of the discharge alone or possible in combination with other discharges, and other factors are all used to produce water-quality based permit terms and conditions. By limiting review of use listings to the permitting process, the procedure outlined in Section 93.4c(a)(1) allows for the fact that the use determination is never actually used in isolation. Since the use determination is not used in isolation, it should not be reviewed by the Board in isolation. Section 93.4c(a)(1) makes it clear that a review of a use determination is likely to be much more meaningful if it is done in the setting where it is implemented. Furthermore, deferring a final decision regarding existing uses until someone applies for a permit allows the Department to not only consider additional information supplied by interested parties, it allows the Department to make a decision with a better understanding and appreciation of the consequences of its decision, both with respect to environmental protection and economic development. Similarly, this Board's review will be more fully informed.

The Coalition places great weight on Subsection (i) of Section 93.4c(a)(1), which says “[e]xisting use protection shall be provided when the Department’s evaluation of information...indicates that a surface water attains or has attained an existing use.” The Coalition wishes to elevate Subsection (i) to coequal status as an alternative final determination point. Of course, that approach completely disregards Subsection (iv) and renders it essentially

superfluous. In fact, it also renders Subsection (iii) essentially meaningless because that section provides that “[i]nterested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.” The Department accordingly must consider that additional information in its permit review process and cannot simply rely on its own existing data as constituting a final determination of an existing use of a waterbody. For this reason, 25 Pa. Code § 93.4c(a)(1)(i) cannot constitute a final decision point as the Coalition suggests.

Subsection (i) creates and defines existing use protection, but it is not directed at describing when that protection becomes final. Subsection 93.4c(a)(1)(i) does not create a mandatory duty to conduct an evaluation or make a finding at any particular time. *Contra Kiskadden v. DEP*, 2012 EHB 171 (Department’s no-impact finding regarding a certain appellant’s water supply appealable because Department required to resolve complaint one way or another). Subsection 93.4c(a)(1)(i) contemplates further action, and that subsequent action is very clearly appealable. *Contra id.* (no-impact finding is the last step in the process). As previously discussed, the “protection” afforded by Subsection (i) is basically theoretical until someone applies for a permit. It is Subsection (iv) that unambiguously defines when and in what context the listing takes its final form. Again, the Coalition has failed to direct us to any case where the “protection” of an existing use classification comes into play sooner than when it is given effect in a Department permit.

The Coalition’s assertion that a stream cannot be downgraded from the Department’s initial listing as part of the permit review process and, therefore, it must be final, is simply wrong. The regulation contains no such restriction. The Department’s failure to consider information supporting an upgrade *or downgrade* in accordance with Subsection 93.4c(a)(1)(iii)

would undoubtedly constitute grounds for an appeal. Even if the Department would irrevocably signal what its final determination will be, the Department's statements about what it intends to do in the future are generally not appealable. *Northampton Bucks Cnty. Mun. Auth. v. DEP*, 2017 EHB 778, 796 (citing *Sayreville*, 60 A.3d 867 (Pa. Cmwlth. 2012)).

The Coalition refers us to the criteria for determining whether a Department communication directed to a named person constitutes an appealable action that we discussed in *Borough of Kutztown v. DEP*, 2001 EHB 1115, but those criteria do not seem to be particularly apposite in this case. *Kutztown* dealt with Department communications that had some marks of informality such as a letter that was sent to a named party. The existing use listings involved in this case are not communications directed at any person in particular so, by their very nature, they do not direct anybody to do anything or constrain anybody from doing anything.

The Coalition's argument that Subsection 93.4c(a)(1)(iv) is an invalid regulatory attempt to constrain the EHB's jurisdiction is not persuasive. That section makes it clear that the Department's evaluations of data pursuant to Subsection (i) are not final *for any purpose*. There is nothing in Section 93.4c(a)(1) that renders unappealable something that would have otherwise been appealable.

Given all of the variables involved in formulating permit conditions, the Department's final existing use determination made in the context of one particular permit application may or may not eventually affect other permittees discharging to the receiving streams. Any adversely affected permittee may choose to appeal the use determination in the context of its own permit appeal. We do not see why such challenges would be barred by, e.g., collateral estoppel if a new permittee is involved. The possibility of multiple viable challenges to the same use determination is inherent in the permit-by-permit adjudicatory review process set forth in Section

93.4c(a)(1). We would add that perfect consistency is rarely attainable in any event. It may not even be desirable if it is used to perpetuate a bad result. Periodic re-review based upon up to date data is not necessarily a bad thing.

Although we are dismissing this appeal now, the dismissal does not impact the Coalition members' ability to challenge the existing use of an affected surface water in the context of any permit they seek. "A person who is deprived of an opportunity to appeal an action is not bound by that action, and that action can have no preclusive effect against the person now or at any time in the future." *Chesapeake Appalachia, LLC v. DEP*, 2013 EHB 447, 459-60, *aff'd*, 89 A.3d 724 (Pa. Cmwlth. 2014). If the Department and a Coalition member disagree on the appropriate existing use of a receiving stream during the permitting process, the member may file an appeal with the Board if the Department issues a permit based on its allegedly flawed determination. The member's rights are preserved. The Department will not be able to come back and argue administrative finality or that the member should have challenged the existing use at any time prior to seeking the permit. *See Chesapeake*, 2013 EHB 447, 460 (Department action that is not final for purposes of appealability is not final for purposes of administrative finality (citing *Kutztown*, 2001 EHB at 1124-25)). The appeal can then play out with a fully developed factual record concerning the project at issue, and the existing use determination can be fully litigated in that appeal.<sup>5</sup>

In sum, it is the permit that affects individual rights, not the listing of a stream's uses that is used to devise the permit. The inclusion of a stream on the Department's unenforceable list has no legal impact by itself. Including a stream on a list does not grant or deny a pending application or permit or direct anyone to take any action or impose any obligations on anyone.

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<sup>5</sup> Note that as potentially interested parties the Coalition's members will be able to participate in the process even if it is not their permit application.

*Sayreville*, 60 A.3d 867, 872. See also *Felix Dam Pres. Ass'n*, 2000 EHB 409, 425-26. This is clearly reflected in the regulatory procedure set forth in 25 Pa. Code § 93.4c(a)(1). There are no pending permit applications in this case. The Department has not commenced any reviews of any permit applications. To our knowledge, no member of the Coalition at this juncture has sought a permit, let alone had the Department take action on a permit. There is no tangible harm of any existing use on any member's interest. In fact, we do not know if the existing use listing will ever reach a point where it concludes in an action that affects the rights and obligations of a person. It is possible that a permit will never be sought for certain waterbodies that are on the list. Accordingly, the Board lacks jurisdiction.

The key point in our minds is that, under Section 93.4c(a)(1), the existing use listing is not separately appealable *at any time*. But if we assume for purposes of discussion that finality is the key, we again find that Board review at this point is premature. Section 93.4c(a)(1) not only says the use determination is only done as part of the permit, it specifies that the *final* determination is only made at the time of the *final* permit. We have repeatedly held that “subsidiary decisions can have a profound and immediate practical effect on a permit applicant, but we nevertheless require the applicant to wait until the Department makes a final decision on the permit before filing an appeal. The Board will not review provisional and interlocutory decisions of the Department.” *Lower Salford Twp. Mun. Auth. v. DEP*, 2011 EHB 333, 338. See also *United Refining Co. v. DEP*, 2000 EHB 132, 133-34 (“Any number of the Department’s decisions during a permit review could have costly, real-world consequences, but this Board will not review them in a piecemeal fashion....In short, the permit review process must be brought to close before this Board will get involved. Until then, there has been no final action.”); *Central Blair Cnty. Sanitary Auth. v. DEP*, 1998 EHB 643, 646 (same). As previously noted, that

precept, which applies to intermediary Department decisions made *during* the permitting process, applies with even greater force to preliminary determinations made *before* the filing of a permit application, like the existing use determinations at issue in this case. Imagine how the already prolonged permit review process would drag on if every subsidiary decision somehow relating to future permits were appealable.

The Coalition's asserted harms are simply too vague, speculative, and generic to be manageable in an appeal at this juncture. The Coalition predicts that the listing will ultimately reduce the amount of usable land, increase operating costs of future development projects, and render certain forms of development infeasible, thus diminishing property values. For example, it says Pocono Raceway might need to run a sewer pipe under Interstate 80. The Coalition references other hypothetical future developments in the vicinity of the streams at issue in the appeal and argues that those hypothetical developments might become more difficult or expensive to develop if, for example, a discharge permit is required. The Coalition's argument is essentially that some landowner member of the Coalition may at some undetermined point in the future consider undertaking a development on property near one of the streams, and the consideration of whether to proceed with that hypothetical development, and in what form, will be influenced by the Department's existing use list. This strained chain of events is far too attenuated to conclude that the Department's listing has any immediate effect on the Coalition's personal or property rights.

Evaluating a challenge to an existing use in the absence of a specific project is too slippery and becomes replete with assumptions of what may or may not happen, which is precisely what we see in the Coalition's arguments. Even if the Department concludes at the end of the permitting process that an EV listing is appropriate, perhaps the project will be shown to

not degrade that use. Perhaps cost-effective nondischarge alternatives will not be required, but if required, can be developed and implemented. At this juncture, we are essentially imagining what might be possible with a development near these streams, when instead we should defer a technical and fact-specific inquiry based on the particulars of a real development in light of an actual permitting action taken by the Department.

The Coalition tries to make its fears more pressing by contending that the effects on the landowners are immediate once the Department updates the list because of market expectations. According to the Coalition, the market immediately adjusts the value of property surrounding streams upon the Department updating the existing use list and uploading the document to its website. We have no record to support that contention, but we can assume it is true for purposes of the dismissal motion. If appealability turned on market reactions and “market expectations,” however, we suspect any number of Department pronouncements would be appealable—the announcement of a new cleanup initiative, the establishment of a grant program, the development of a nutrient credit trading auction, a new technology standard, the listing of a new hazardous chemical, etc. There are market expectations that accompany all sorts of government decisions, but that does not necessarily render those decisions final actions that should be appealable to an adjudicatory body such as the Environmental Hearing Board. The test is not whether some expert prognosticator opines that the Department’s evaluations of existing uses may cause a subjective reaction on the part of anyone who has become aware of them. The test is whether those evaluations are final actions over which the Board has subject matter jurisdiction. Only when a specific Department action threatens cognizable rights, privileges, and duties of a particular person does that decision become something that can be appealed to this Board. The Coalition’s argument is based on debatable market *assumptions* put forth by various

prognosticators of what *could* play out with respect to a possible development near an EV waterbody, but again, because there is no specific project being permitted, all of the assumptions are based on entirely hypothetical adumbrations.

Finally, the Coalition argues that, because the Commonwealth Court conducted a pre-enforcement review of a challenge to a change in a stream's **designated** use, *see Rouse & Assocs. v. Pa. Env'tl. Quality Bd.*, 642 A.2d 642 (Pa. Cmwlth. 1994), we should allow this appeal to proceed as a pre-enforcement review of an existing use determination. We put this argument to rest in *Smithtown Creek Watershed Association v. DEP*, 2002 EHB 713, where we observed that the analysis in *Rouse* centered on the propriety of the Commonwealth Court's jurisdiction, not our own. 2002 EHB at 719. We also had this to say:

Although the Board has ancillary authority to rule on the validity of regulations in the context of our review of a departmental enforcement or permitting action, the courts have many times held that our jurisdiction is expressly limited to post-enforcement review. Stream designations and redesignations are accomplished by the adoption by the EQB through the regulatory process; we can only pass on the validity of the regulation **in the context of an action by the Department applying or otherwise implementing the regulation.**

2002 EHB at 716 (emphasis added) (citations omitted). Thus, even if this appeal had involved designated uses, which it decidedly does not, the Coalition's appeal would have been premature.

For these reasons, we issue the Order that follows.<sup>6</sup>

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<sup>6</sup> Because we find that we do not have jurisdiction over this appeal as a whole, we need not reach the argument of the Department and Intervenors that the Coalition's appeal is moot with respect to Swiftwater Creek because its **designated** use has since been changed to EV.



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



MONROE COUNTY CLEAN STREAMS :  
COALITION :

v. :

EHB Docket No. 2017-107-L

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and BRODHEAD :  
WATERSHED ASSOCIATION, CITIZENS :  
FOR PENNSYLVANIA’S FUTURE, AND :  
DELAWARE RIVERKEEPER NETWORK :  
AND MAYA VAN ROSSUM, THE :  
DELAWARE RIVERKEEPER, Intervenors :

**ORDER**

AND NOW, this 11<sup>th</sup> day of October, 2018, it is hereby ordered that the Department’s motion to dismiss is **granted**. This appeal is dismissed.

**ENVIRONMENTAL HEARING BOARD**

s/ Thomas W. Renwand  
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**THOMAS W. RENWAND**  
**Chief Judge and Chairman**

s/ Michelle A. Coleman  
\_\_\_\_\_  
**MICHELLE A. COLEMAN**  
**Judge**

s/ Bernard A. Labuskes, Jr.  
\_\_\_\_\_  
**BERNARD A. LABUSKES, JR.**  
**Judge**

s/ Richard P. Mather, Sr.  
\_\_\_\_\_  
**RICHARD P. MATHER, SR.**  
**Judge**

s/ Steven C. Beckman  
\_\_\_\_\_  
**STEVEN C. BECKMAN**  
**Judge**

**DATED: October 11, 2018**

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