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Re: Comments on Application of Core5 Industrial Partners, LLC for National Pollutant Discharge Elimination System (NPDES) Individual Permit for Discharges of Stormwater Associated with Construction Activities (PAD450190).

Dear Ms. Kania:

Citizens for Pennsylvania’s Future (PennFuture) respectfully submits these comments on the application of Core5 Industrial Partners, LLC (“Applicant”) for a NPDES Individual Permit for Discharge of Stormwater Associated with Construction Activities (PAD450190) (“Application”) for the construction of a 154.5-acre land development consisting of a 702,000 square foot warehouse/distribution center and associated parking and stormwater facilities (the “Project”) on Warner Road in Pocono Township (“Property”).

PennFuture is a member-supported, statewide environmental advocacy nonprofit and watchdog fighting against potential threats to Pennsylvania’s clean air, pure water, and healthy climate. Since 1998, PennFuture has combined legislative advocacy and legal enforcement at the local, state, and federal levels, educational outreach, and civic engagement support for just and equitable environmental outcomes that improve the quality of life for all Pennsylvanians. A main focus of PennFuture’s work is to improve and protect water resources and water quality across Pennsylvania, with particular emphasis on the Delaware River Basin, through public outreach and education, advocacy, and legal action.

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The Brodhead Watershed Association (BWA) is a non-profit environmental organization dedicated to protecting and improving water resources and the environment in the Brodhead and Cherry creek watersheds. The BWA assists municipalities, residents, businesses and groups with protecting natural resources through outreach, workshops, public programs, stream monitoring and baseline data collection.

Applicant proposes to construct a massive industrial facility on a site that houses **multiple wetland and watercourse features** in the Brodhead Creek watershed.¹ Applicant’s proposed improvements surround and encroach within feet of Exceptional Value (EV) wetlands along Pocono Creek, a High Quality Class A trout stream. These waters are among the highest quality waters in the Commonwealth and are entitled under the law to the highest protections. Given the importance of these waters and the proximity of the proposed improvements, PennFuture and BWA appreciate the Department’s consideration of these comments and hope they are helpful as it continues review of the Application.

PennFuture and BWA are concerned about material inadequacies and omissions in the Application. Without vital information about the Project that Applicant has failed to submit, the Department risks irreparable harm to EV water resources, the climate, and the environment. The Project and others like it threaten irreparable harm to a globally rare and exceptionally valuable ecosystem that provides irreplaceable habitat, water quality, biodiversity, and economic benefits. We contend that the Property simply is not an appropriate site for a sprawling warehouse. Intense industrial development of this kind is more properly sited on existing spoiled land, mined areas, or already deforested lands. We recognize that the siting of these projects is largely controlled by local governing bodies, but given the sensitive nature of the site, we contend that the Department must subject the Application to the utmost scrutiny to ensure that the Project will not irreparably damage this pristine landscape or degrade invaluable waters of the Commonwealth. As discussed further below, it is PennFuture’s and BWA’s position that the Application does not withstand this high level of scrutiny and must be denied.

I. APPLICANT’S STORMWATER INFILTRATION REPORT REFERS TO AN ENTIRELY DIFFERENT PROJECT AND SITE

The first and most egregious deficiency in the Application is the Stormwater Infiltration Report prepared by Geo-Technology Associates, Inc. This report assesses **an entirely different project and site**, located along Stadden Road (“Stadden Road Project”). This report corresponds to a separate warehouse development proposed by Applicant in 2022. Applicant initially sought Township approval for the Stadden Road project but withdrew that application in June 2023. As the report itself warns, it cannot be relied upon if prepared for a different project or a different site.²

¹See Wetland Delineation Report p. 1.

² See Stormwater Infiltration Report p. 8. It is also noted that Applicant’s Wetland Delineation Report covers both the Warner Road and the Stadden Road sites.

This error not only leaves the Department without vital information needed to analyze Applicant's proposed stormwater management facilities but calls into question the thoroughness and accuracy of the Department's review of the Application.

II. APPLICANT'S WETLAND DELINEATION IS INSUFFICIENT TO ENSURE PROTECTION OF GLOBALLY RARE AND VALUABLE WETLAND AREAS

The swamps, marshes, upland forest, pine barrens and heath of the Pocono Plateau provide pristine habitats for more than 25 species of rare or endangered plants and animals and have earned the Pocono Plateau a place on the Nature Conservancy's global list of "Forty Last Great Places."³ "Almost every rare species that occurs in this watershed is an outstanding example of the species . . . Nowhere on the planet is there anything like this place."⁴

Pocono Creek and its associated EV wetlands form part of this exceptionally rare and valuable ecosystem. Applicant's wetland delineation indicates that that the vegetation on the Property consists of diverse native tree species, including canopy species and understory canopy species, shrub species and a variety of forbs and ephemerals and wetland plants. The presence of a multi-tiered natural forest and extensive wetland complex indicate a high value functioning ecosystem that is integrally connected to the water quality of Pocono Creek.

Any negative impact on water resources caused by the Project could also result in significant detrimental economic impact. According to American Rivers' Director of Clean Water Supply, "unprecedented development of open space for warehousing and distribution centers threatens the region's clean water and wildlife, and the communities and economies that rely on them." Monroe County is among the communities that rely on the pristine water quality of the region.⁵ The 2022 Monroe County Return on Environment Study found that benefits provided by nature save the county \$1.1 billion annually, including \$164 million attributed to healthy riparian buffers.⁶ Outdoor recreation, including activities dependent on high-quality waters such as fishing, kayaking/canoeing, hunting and birding, bring in \$368 million in revenue annually.

The limitations of Applicant's Wetland Delineation Report raise serious concerns about the adequacy of the Application. The Wetland Delineation Report covers the 154-acre Property and the comparably-sized Stadden Road Project site. Within this massive area, Applicant's engineers tested a total of fourteen (14) locations, only seven (7) of which are located on the Property that is the subject of the Application. Applicant did not identify any other source of site-specific information relied upon to determine the wetland boundaries.

³ Michael Decourcy Hinds, *Pocono Journal; Winds of Secession Chill One of the World's 'Last Great Places,'* NYTIMES.COM (Dec. 4, 1993), <https://www.nytimes.com/1993/12/04/us/pocono-journal-winds-of-secession-chill-one-of-the-world-s-last-great-places.html>.

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

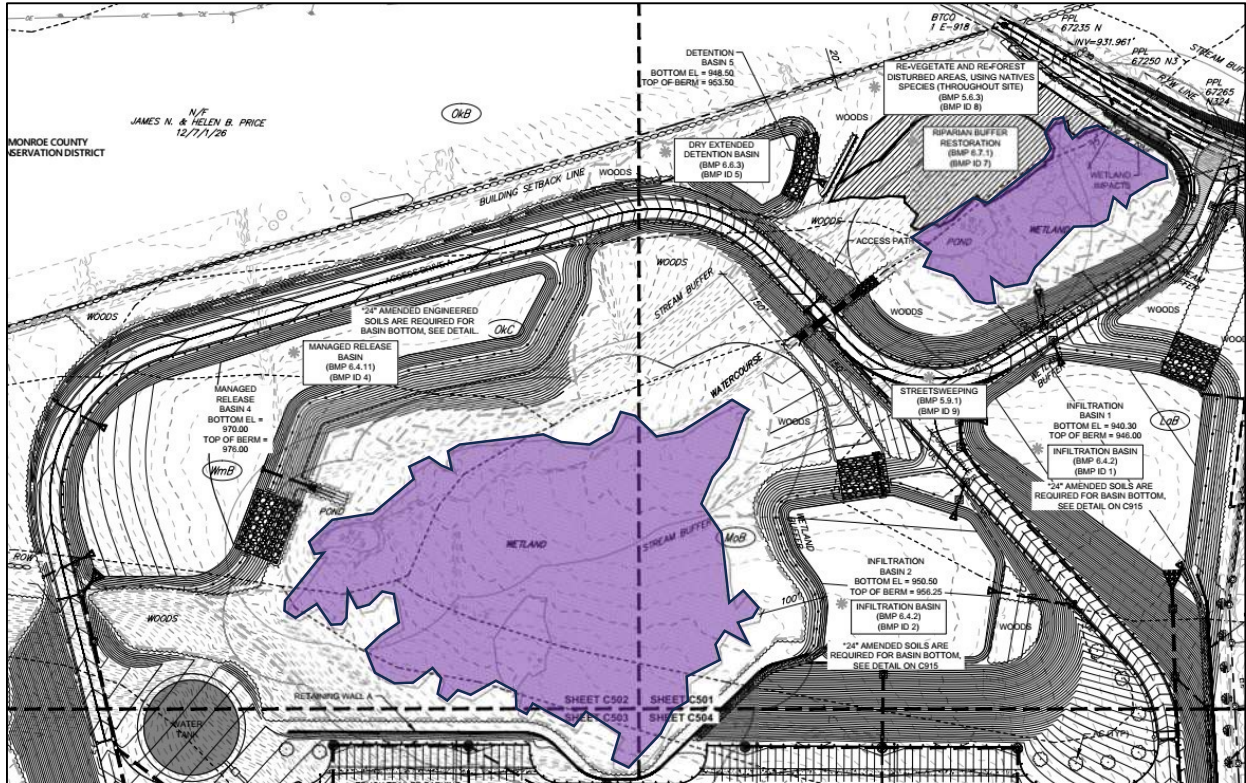
⁵ American Rivers, *Lehigh River Named Among America's Most Endangered Rivers of 2023*, AMERICANRIVERS.ORG (Apr. 18, 2023), <https://www.americanrivers.org/media-item/lehigh-river-named-among-americas-most-endangered-rivers-of-2023/>.

⁶ Kittatinny Ridge, 2022 RETURN ON ENVIRONMENT STUDY: MONROE COUNTY 26 (2022).

According to the Wetland Delineation Report and accompanying Wetland Delineation Map for the Property (shown below), Applicant's engineers mapped the EV wetlands on the Property using a total of four data points, none of which are located within 500 feet of the designated southern boundary of the wetland in the center of the Property.



Accurate wetland delineation is especially critical for this Project because, as Applicant's PCSM Plan (below) shows, the proposed improvements **surround and encroach within feet of the wetland.**



Even if locating improvements in such close proximity to wetlands were appropriate, the wetland delineation is insufficient to ensure that these improvements will not be placed **in** the wetlands themselves. If the wetland delineation is inaccurate by even a few feet (a distinct possibility given the limited number of data points used to establish their boundaries) unacceptable wetland encroachments will occur. Protection of this highly sensitive and valuable environmental resource requires more.

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

Another aspect of the Application that is of particular concern is Applicant's proposal to convert vast swaths of mostly native forest on the Property to impervious surface and structural stormwater facilities. Applicant's General Information Form indicates that the Project will increase the impervious surface on the Property from just over 2 acres to more than 36 acres, destroying nearly 50 acres of forest in the process. As a result, a property that is currently 75% wooded will become 50% impervious. Only 12% of the site will remain wooded, and most of this remaining forest will be separated from the EV wetlands and watercourse by the proposed warehouse facility and parking area.

Research at the Stroud Water Center and elsewhere has shown that stream and wetland health is dependent on the presence of woody vegetation.⁷ Forests naturally filter and regulate the flow of water, slow the fall of rainwater to the ground, filter sediment, shade and modify stream temperature, and provide habitat for many species.⁸ Trees are also especially good at removing nutrients and contaminants such as metals, pesticides, solvents, oils and hydrocarbons from soil and water.⁹ In addition, forests reduce stream velocity and downstream flooding by absorbing and using tremendous amounts of water that would otherwise flow to surface waters.¹⁰ Research reported by the Penn State Extension shows that an intact forest can take up 60% of the annual rainfall through the process of evapotranspiration, leaving only 40% to flow to surface waters.¹¹ If forest is removed, evaporation drops to 35%, and surface waters receive 65% of the rainfall.¹² When forest is replaced by impervious surface, the impacts are especially egregious. The runoff from one acre of paved parking generates the same amount of annual runoff as 36 acres of forest.¹³ In addition to water quality and stormwater management, forests provide diverse habitats.

Intact forest buffers also provide substantial economic benefits. The Monroe County 2022 ROE report found that headwater forests and wetlands, including those on the Property, have an estimated annual return on investment (ROE) value of up to \$5,750–\$6,568 per acre, the highest ROE value of any land cover type.¹⁴ Another study examining the economic value of riparian buffers in the Delaware River Basin found that riparian buffers provide over \$10,000 per acre annually in monetized benefits in addition to non-monetized benefits.¹⁵ The same study estimated an annual loss to the Delaware River Basin of approximately \$981,000 to \$2.5 million in monetized ecosystem services if riparian buffers are not adequately protected. This research shows the critical importance of protecting forested buffers and headwater tributaries and wetlands, the very thing Applicant proposes to develop.¹⁶

Structural stormwater controls simply cannot take the place of the myriad water quality, water quantity, habitat and economic benefits naturally provided by an intact forest. Yet, not only does Applicant propose destroying acres of mature forest surrounding Exceptional Value Wetlands

⁷ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁸ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

⁹ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

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¹¹ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

¹² Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

¹³ Penn State Extension, *The Role of Trees and Forests in Healthy Watersheds*, EXTENSION.PSU.EDU (Aug. 30, 2022), <https://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds>.

¹⁴ Return on Environment Map, KITTATINNY RIDGE.ORG, <https://wplan.maps.arcgis.com/apps/webappviewer/> (last visited Apr. 28, 2023).

¹⁵ ECONorthwest, *The Economic Value of Riparian Buffers in the Delaware River Basin* 7 (2018).

¹⁶ Onlot Septic Systems Proposed in High Quality and Exceptional Value Watersheds (PADEP Doc: #385-2208-001) Michele Adams, Meliora Design. May 7, 2013

and a High Quality stream, but also proposes to replace this invaluable resource with impervious surface in the form of parking areas and an access drive that encroach within feet of these sensitive environmental resources. In some places, applicant proposes only a meager fifty (50) ft. buffer between the industrial footprint and the EV wetland. The Delaware Riverkeeper Network, Stroud Water Research Center, Schmid Wetlands experts, and other wetland scientists have long recommended forested buffers of at least 300 feet to adequately protect water quality and wildlife species.¹⁷ The Brodhead Creek and McMichael Creek Watershed Act 167 Stormwater Management Plan, which applies to the Property, advises that a minimum 150 foot buffer should be maintained for all delineated wetlands.¹⁸ The Project flies in the face of these standards.

While PennFuture recognizes that Chapter 102 does not govern forest clearing or impose forest buffer requirements on wetlands, the destruction of mature forest on the site and the absence of an adequately protective buffer call for special scrutiny to ensure that the water quality benefits of an intact forested buffer will be maintained. The Application does not adequately demonstrate that this will be accomplished and, therefore, must be denied.

IV. THE APPLICATION LACKS SUFFICIENT INFORMATION TO ENABLE THE DEPARTMENT TO ENSURE ANTIDegradation REQUIREMENTS ARE MET.

A. Applicant must demonstrate compliance with antidegradation requirements in addition to Chapter 102 E&S requirements.

Any person who proposes a point source discharge to an EV water, including an EV wetland, must demonstrate that the discharge will comply with the antidegradation regulations found in Chapter 93 of the Department’s regulations, 25 Pa. Code §§ 93.4a–93.4d.¹⁹ Chapter 102 makes the requirement for an antidegradation analysis specifically applicable to stormwater discharges associated with earth disturbance activity in EV and HQ watersheds. These antidegradation regulations are **in addition to** the other permitting program regulations found in Chapter 102.²⁰ “Chapter 102 is about BMPs which are ‘activities, facilities, measures, or procedures’ aimed at controlling erosion and sedimentation.”²¹ The antidegradation requirements are about “a detailed and specific preferential hierarchical process and procedure aimed at arriving at an outcome which will prevent degradation by all physical, chemical, biological parameters.”²²

¹⁷Delaware Riverkeeper Network, *Buffers*, DELAWARERIVERKEEPER.ORG, <https://www.delawareriverkeeper.org/ongoing-issues/buffers> (last visited Jan. 8, 2024).

¹⁸ Brodhead Creek and McMichael Creek Watershed Act 167 Stormwater Management Plan 20 (2022); https://www.mcconservation.org/uploads/9/0/3/0/90302089/2022_renewal_brodhead_creek_act_167_stormwater_management_plan.pdf

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

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

²¹ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *18, 38 (Pa. Env'tl. Hrg. Bd. 2006).

²² *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *18, 38 (Pa. Env'tl. Hrg. Bd. 2006).



“[T]he antidegradation regulations, applying as they do to preserving and protecting existing uses, cover more than do the Chapter 102 erosion and sedimentation regulations.”²³

Chapter 93 and Chapter 102 outline “a very specific and particular process and procedure” which an applicant proposing a discharge to an EV water “must follow in making certain affirmative demonstrations to the Department as a prerequisite to the Department's granting of a permit for . . . a new, additional or increased discharge.”²⁴ This includes demonstrating that the nondischarge alternatives have been analyzed, that discharge is permitted only where cost-effective, environmentally sound nondischarge alternatives are not feasible, and that the proposed discharge will “maintain and protect the existing quality of receiving surface waters.”²⁵ The Environmental Hearing Board (“EHB”) has repeatedly counseled that “compliance with the laws against degradation means more than simply engaging in some exercise using labels such as ‘antidegradation,’ ‘nondischarge alternatives,’ and ‘ABACT.’”²⁶ It is “ultimately not about checking off boxes on form.”²⁷ The overriding requirement “is that the water quality of HQ and EV waters ‘shall be maintained and protected.’”²⁸

The Project falls within the ambit of the antidegradation requirements, yet, as detailed below, Applicant has not made, and the Department has not required, the affirmative demonstrations required by Chapter 102 and Chapter 93.

B. Applicant has not demonstrated that cost-effective, environmentally sound nondischarge alternative(s) are not available.

1. Applicant and the Department have not analyzed alternative sites or site layouts.

The first step of both the Chapter 93 and the Chapter 102 antidegradation regulations is evaluation of nondischarge alternatives to the proposed discharge.²⁹ “Use of nondischarge alternatives . . . is very effective in preventing water quality degradation and localized aesthetic impacts to the waterbody” because “when direct discharge can be minimized, degradation of water quality is usually prevented or minimized.”³⁰ Accordingly, the antidegradation regulations require the applicant to evaluate and use environmentally sound and cost-effective nondischarge alternatives unless such alternatives do not exist for the project.³¹ This is a “threshold step” of the

²³ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *36 (Pa. Environ. Hrg. Bd. 2006) (citation omitted).

²⁴ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *22–23 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code §§ 93.4a(b), (c)) (emphasis added).

²⁵ 25 Pa. Code 93.4c(b)(1)(i)(B); 102.4(b)(6), 102.8(h), 102.1 (definitions of ABACT and nondischarge alternative).

²⁶ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011).

²⁷ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011).

²⁸ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *11 (Pa. Environ. Hrg. Bd. 2011) (quoting 25 Pa. Code § 93.4a(b-c)).

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

³⁰ Com. of Pa., Dep't of Env't'l Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 45 (2003).

³¹ See 25 Pa. Code §§ 93.4c(b)(1); 102.4(b)(6), 102.8(h); Com. of Pa., Dep't of Env't'l Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 40 (2003).

analysis, and nondischarge alternatives **must** be considered, regardless of the degree of degradation.³² If a total nondischarge alternative is not feasible, any partial nondischarge alternative which is feasible must be utilized.³³ Only if an applicant **has demonstrated** that an environmentally-sound, cost-effective, nondischarge alternative is not available is a discharge to an EV or HQ water permitted.³⁴

Given the importance of the nondischarge alternatives analysis, the Department has issued detailed guidance on this requirement in its Water Quality Antidegradation Implementation Guidance (“Antidegradation Manual”). This guidance makes clear that one important component of the nondischarge alternatives analysis is review of the chosen location for the proposed project and the extent and location of improvements on site. The Antidegradation Manual states that “project siting is an important component of nondischarge alternatives analysis” that “must be addressed by the project sponsor early in the process.”³⁵ The Antidegradation Manual goes on to advise permit writers that, “[t]o this end, the following questions must be answered by the project sponsor to ensure that the HQ or EV water is the only suitable location for the proposed project or activity:

- What are the requirements for locating this project/activity? Infrastructure, utilities, transportation, raw materials, work force, other.
- Is this watershed or specific stream segment the only location that offers these requirements?
- Were other sites considered?³⁶

Similarly, the Department’s draft Pennsylvania Post-Construction Stormwater Management Manual (“PCSM Manual”) advises that “at a minimum,” nondischarge alternatives analysis requires applicants to consider “whether the project or discharge could be located elsewhere,” “whether the site can be configured as to result in no discharge to the special protection surface water,” and “whether specific measures can be taken to eliminate planned impervious surfaces.”³⁷

The Department cannot abrogate its duty to engage in this vital step of the antidegradation analysis by relying on the municipal approval process to address the propriety of a chosen site or the layout of site improvements with respect to water quality. Protection of water quality is, at best, only one of the myriad concerns that guides municipal land use and land development planning and approval and is rarely the controlling factor in site selection or site planning. Local

³² *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env'tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *24, 43 (Pa. Environ. Hrg. Bd. 2006) (citing 25 Pa. Code § 93.4c(b)(1); Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 45 (2003).

³³ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 68 (2003).

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

³⁵ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 48 (2003).

³⁶ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 48–49 (2003).

³⁷ Com. of Pa., Dep’t of Env’tl Prot., Draft Pennsylvania Post-Construction Stormwater Management Manual 2-39 (2023).

zoning must address numerous community concerns, including compatibility of uses with neighboring uses, traffic, noise, availability of infrastructure, and economic development. Furthermore, municipalities have a constitutional obligation to zone for all legitimate land uses within their boundaries. This means municipalities must allow highly-impactful uses such as warehouses, landfills, quarries, and power plants to be sited somewhere, and are often forced to choose locations that are less than ideal from an environmental standpoint. Moreover, municipal officials generally lack the expertise to evaluate a proposed stormwater management plan.

By contrast, protection of the waters of the Commonwealth is the sole purpose of the NPDES permitting scheme and the Department is the entity specifically charged with protecting Pennsylvania's air, land and water from pollution. For this reason, municipalities rely upon the Department's thorough review of NPDES permit applications to ensure that their EV and HQ waters are adequately protected, and effectively grant the Department "veto power" over approved land development applications by conditioning approval on the Department's issuance of all relevant permits. Therefore, the existence of a municipal approval process cannot excuse an Applicant or the Department from its obligation to fully consider nondischarge alternatives, including alternative sites and site layouts, though these may differ from the proposal approved by the municipality.

Neither the Application nor the Department's draft permit give any indication that alternative sites or site layouts have been considered. In Module 3, Applicant states only that the site design was "adjusted and finalized" based upon an environmental study and that sensitive environmental features were avoided "to the maximum extent practical." Applicant does not provide any information about potential alternative sites Applicant considered or how the proposed plan reflects consideration of alternative site layouts. Applicant also does not provide any information to support its claim that "impervious areas were minimized to the greatest extent possible."³⁸ In fact, although Applicant may have "avoided" wetlands, riparian buffers, and natural drainage ways to the extent that it does not propose improvements directly atop those features, Applicant seeks approval to construct improvements on practically every other square foot of the Property. This leaves one with the impression that Applicant approached the non-discharge alternatives analysis not by asking what site, building size, and site layout remained available after all cost-effective and environmentally sound nondischarge alternatives were employed to protect the site's Special Protection waters, but by asking what nondischarge alternatives could be squeezed in after the site's construction potential was maximized. This is backwards. Thus, it cannot be said that Applicant performed an adequate nondischarge alternatives analysis, and the application must be denied.

2. *Applicant and the Department have not analyzed the cost-effectiveness of the proposed stormwater facilities compared to alternatives.*

The Antidegradation Manual also sets forth a detailed process by which applicants and permit writers are to evaluate whether nondischarge alternatives are cost-effective and

³⁸ PCSM Report p. 1.

environmentally sound and therefore must be used.³⁹ For this analysis, “economic criteria are needed both to guide an applicant in the preparation of information relative to the evaluation of nondischarge alternatives and to guide DEP in making its determinations.”⁴⁰

The information Applicant supplied in Module 3 is insufficient to demonstrate that Applicant and the Department have truly considered and analyzed the cost-effectiveness of nondischarge alternatives. Applicant failed to provide any information relating to the absolute cost of providing nondischarge alternatives (e.g. maintaining a 150 foot riparian buffer around all special protection waters), the cost of these alternatives relative to the discharge alternatives chosen, or anything else that might make nondischarge alternatives impractical or environmentally unsound. Applicant merely states that sensitive environmental features were “avoided to the maximum extent practicable.” In the absence of this information, it cannot be said that Applicant has demonstrated the non-availability of a cost-effective nondischarge alternative. We are simply to take Applicant’s word that all other options were “impractical” without further information. The antidegradation regulations demand more.

Applicant’s cursory dismissal of nondischarge alternatives is the precise type of hand-waving at the antidegradation requirements that the EHB has cautioned applicants and the Department against. Applicant must demonstrate a more robust consideration of non-discharge alternatives for the Department and the public so both can evaluate the analysis. Without this, the Department cannot issue the requested NPDES permit.

C. Applicant has not demonstrated analysis of different BMP technologies.

A NPDES permit applicant proposing to discharge to an EV or HQ water who has not fully managed the net change in stormwater volume, rate and quality using nondischarge alternatives must employ Antidegradation Best Available Combination of Technologies (ABACT).⁴¹ In the words of the Environmental Hearing Board, “Obviously, the starting point to knowing and employing the best available combination of techniques is to do an analysis of what the alternatives are.”⁴² This requires deliberate contemplation of multiple alternatives and is not satisfied if the controls implemented just happen to consist of some combination of technologies labeled “ABACT.”

[T]his would be like saying that by happening to have all food groups on your plate once you come back from the buffet line you have satisfied an obligation to deliberate, contemplate and conclude before going through the buffet line what would be the best combination of foods to put on your plate to promote health.⁴³

³⁹ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 52–58 (2003).

⁴⁰ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDEGRADATION IMPLEMENTATION GUIDANCE 52 (2003).

⁴¹ 25 Pa. Code §§ 102.4(b)(6)(ii), 102.8(h)(2).

⁴² *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *51 (Pa. Environ. Hrg. Bd. 2006).

⁴³ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, 2006 EHB 589, 2006 Pa. Environ. LEXIS 55 *51–52 (Pa. Environ. Hrg. Bd. 2006).

Applicant has not demonstrated any alternatives analysis and thus has not satisfied this requirement.

D. Applicant has not demonstrated that the existing water quality of the EV wetlands and Pocono Creek will be maintained and protected.

Even if Applicant has demonstrated the unavailability of cost-effective, environmentally sound nondischarge alternatives and employed ABACT, the antidegradation regulations contain a third requirement: An applicant must demonstrate that the discharge **will maintain and protect the existing physical, biological and chemical qualities of receiving surface waters.**⁴⁴ This showing is required “in all cases” and obligates an applicant to “undertake a certain process and make certain showings as a prerequisite to the Department’s granting of an NPDES permit.”⁴⁵ By the same token, “**the Department is obligated to see to it that the applicant has done so** before it may grant a permit.”⁴⁶

It is important to note that the use of ABACT, a technology-based limitation, is not a substitute for ensuring that water quality-based limitations are met. In the words of the Antidegradation Manual:

[M]eeting ABACT may not justify approval of a request to discharge to HQ or EV waters. Additional antidegradation tests must also be applied and met. In EV waters, a discharge at ABACT quality must meet the test for non-degradation for water quality. In HQ waters, a discharge at ABACT must meet either the test of non-degradation of water quality or have demonstrated SEJ for the degradation that will occur.⁴⁷

According to the Antidegradation Manual, “The assessment of whether or not a point source discharge together with any nonpoint sources will affect water quality is directly related to the technical and scientific ability to discern whether a change in stream quality will take place as a result of the discharge.”⁴⁸ In other words, the Department must have information about the existing quality of the receiving water so it can evaluate whether the proposed discharge will alter that quality.

To this end, in accordance with the Antidegradation Manual, an NPDES permit applicant must be required to provide the Department a list of parameters that are known or suspected to be present in the discharge, as well as the expected concentrations of these pollutants, based on the specifics of the proposed development. This information is necessary for the Department to determine whether existing water quality will be maintained.

⁴⁴ 25 Pa. Code §§ 93.4c(b)(1)(i)(B); 102.4(b)(6)(ii), 102.8(h)(2), 102.1 (definition of ABACT), 102.8(b)(1).

⁴⁵ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *27 (Pa. Environ. Hrg. Bd. 2011).

⁴⁶ *Blue Mtn. Preservation Assoc., Inc. v. Com. of Pa. Dept. of Env’tl. Prot.*, Docket No. 2009-080-L, 2011 Pa. Environ. LEXIS 51 *27 (Pa. Environ. Hrg. Bd. 2011).

⁴⁷ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDegradation IMPLEMENTATION GUIDANCE 69–70 (2003).

⁴⁸ Com. of Pa., Dep’t of Env’tl Prot., WATER QUALITY ANTIDegradation IMPLEMENTATION GUIDANCE 60 (2003).

Here, Applicant has provided little to no information about the existing biological or chemical qualities the EV wetlands on site or the HQ Pocono Creek. Applicant also has provided no information about pollutant parameters known or suspected to be present in the proposed discharge from the Project. Given the nature of the Project, road salts, diesel, and other pollutants commonly associated with heavy truck traffic and parking areas are of particular concern. The fact that Applicant has provided no information about the materials expected to be stored in the warehouses on the Property adds an additional layer of concern based on the industry and types of chemical and pollution loads that may be stored, present, or used on the site.

Moreover, given the region's cold climate and the vehicle-intense use of the Property, it can reasonably be expected that significant amounts of road salt may be used. If introduced into the water system, road salt increases salinity and chloride and causes oxygen depletion in the receiving body of water.⁴⁹ Chloride upticks also can negatively affect sensitive aquatic macroinvertebrate life while also increasing salinity in shallow groundwater.⁵⁰ This, in turn can impact stream baseflow salinity.⁵¹ Chloride is listed among the parameters to be addressed in a Chapter 93 antidegradation analysis, yet the Application does not address whether salt will be discharged to the special protection waters on the Property or whether the chloride level will be affected.⁵²

PennFuture also notes the likelihood that runoff from the Project's vast impervious surface will contain polycyclic aromatic hydrocarbons (PAHs), a class of contaminants found in coat-tar sealed pavement that may be carcinogenic, mutagenic, teratogenic and/or toxic to aquatic organisms.⁵³ In addition, the NPDES permit, if granted, will cover discharges related to firefighting activities.⁵⁴ Firefighting foam is a major environmentally contaminating source of per- and poly-fluoroalkyl substances (PFAS).⁵⁵ These chemicals are known pollutants and feature fluorine-carbon bonds that make them virtually indestructible, earning them the name "forever chemicals."⁵⁶ PFAS exposure may be linked to multiple health issues, including cancer and reproductive and developmental effects, even at low levels of exposure. Last month, the

⁴⁹ Jeremy Hinsdale, *How Road Salt Harms the Environment*, COLUMBIA CLIMATE SCHOOL (Dec. 11, 2018), <https://news.climate.columbia.edu/2018/12/11/road-salt-harms-environment/>.

⁵⁰ Steven R. Corsi., et.al. *River chloride trends in snow-affected urban watersheds: increasing concentrations outpace urban growth rate and are common among all seasons*. USGS. Science of the Total Environment. (2015)

⁵¹ Steven R. Corsi., et.al. *River chloride trends in snow-affected urban watersheds: increasing concentrations outpace urban growth rate and are common among all seasons*. USGS. Science of the Total Environment. (2015)

⁵² 25 Pa. Code 93.7, Table 3.

⁵³ Austin K. Baldwin, et al, *Primary Sources of Polycyclic Aromatic Hydrocarbons to Streambed Sediment in Great Lakes Tributaries Using Multiple Lines of Evidence*, 39 ENV'T'L TOXICOLOGY & CHEM. 1392 (Jun. 11, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7383861/>.

⁵⁴ Pa. Dep't of Env'tl. Prot., NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) INDIVIDUAL PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES APPLICATION INSTRUCTIONS 3 (2022).

⁵⁵ Pa. Dep't of Env'tl. Prot., NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) INDIVIDUAL PERMIT FOR DISCHARGES OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITIES APPLICATION INSTRUCTIONS 3 (2022).

⁵⁶ Micah Dickinson, *Firefighting Foam & PFAS: What You Need to Know*, VANGUARD-FIRE.COM (Feb. 16, 2022), <https://vanguard-fire.com/firefighting-foam-pfas-what-you-need-to-know/>.

Environmental Protection Agency (EPA) announced proposed rulemaking to limit PFAS in drinking water.⁵⁷

Although neither PAHs nor PFAS are expressly addressed by the Department's antidegradation regulations, these regulations recognize that not all possible pollutants are listed.⁵⁸ For unlisted pollutants, the general criterion is that these may not be inimical or injurious to the existing or designated water uses or to human, animal, plant or aquatic life.⁵⁹ The Department must use the best available scientific information to develop a criterion for these substances.⁶⁰ PennFuture contends that the presence of PAHs and/or PFAS in the discharge from the Project would be inimical and injurious to the EV wetlands and to Pocono Creek if not properly mitigated. However, because Applicant has failed to provide any information about the likely presence of PAHs and PFAS in the proposed discharge to these waters, the Department cannot fulfill its obligation to ensure that no injury will result from the introduction of these chemicals.

In summary, Applicant has not provided information sufficient to establish that discharges from the Project to the EV wetlands and Pocono Creek will satisfy the antidegradation requirements of Chapter 93 and Chapter 102. Therefore, the Department cannot issue and must deny the requested NPDES permit.

V. CONCLUSION

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

Sincerely,

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⁵⁷ U.S. Dep't of Envir. Prot., FACT SHEET: EPA'S PROPOSAL TO LIMIT PFAS IN DRINKING WATER 1, 5 (Mar. 2023), https://www.epa.gov/system/files/documents/2023-04/Fact%20Sheet_PFAS_NPWDR_Final_4.4.23.pdf.

⁵⁸ 25 Pa. Code § 93.7(c).

⁵⁹ 25 Pa. Code §§ 93.6(a), 93.7(c).

⁶⁰ 25 Pa. Code § 93.7(c).

