



Fair Shake

Environmental Legal Services

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Sent by Certified U.S. Mail

Kristina Heaney, District Manager
Monroe County Conservation District
3060 Running Valley Road
Stroudsburg, PA 18360

Joe Buczynski, P.E., Acting Regional Director
Commonwealth of Pennsylvania,
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701

Re: NDPEs Permit Application No. PAD450158, for Pocono Mountain Corporate Center North Warehouse, located in Coolbaugh Township, Monroe County

Dear District Manager Heaney and Acting Regional Director Buczynski:

My firm, Fair Shake Environmental Legal Services, represents a group of citizens who reside on Sussex Drive, Ross Road, and Memorial Boulevard in Tobyhanna, PA 18466 (hereinafter, the "Citizens"). These Citizens' properties are very close to the proposed Pocono Mountain Corporate Center North Warehouse (the "Warehouse"), which is to be built on the left (south) side of the intersection of S.R. 611 and Laurel Drive in Tobyhanna, PA and less than a half of a mile from the Citizens' residences. The Citizens are concerned with preserving the natural features, heritage, wildlife, and beauty of the surrounding environment, as well as that of their own properties. The Citizens are also concerned with the wetlands and the ability of the nearby ecosystem to drain excess rainfall and stormwater such that flooding does not occur with new development.

On January 13, 2022, an application for a National Pollution Discharge Elimination System ("NPDES") individual permit for discharges of stormwater associated with construction activities under Chapter 102 (Application No. PAD450158) was submitted to the Monroe County Conservation District ("MCCD") and the Department of Environmental Protection ("DEP") for the proposed Warehouse. On May 5, 2022, the DEP issued a "Technical Deficiency Letter" to the applicant. Since May 5, 2022, the Citizens are not aware of any further correspondence or filings made by the applicant to respond to the technical deficiencies identified by the DEP in the May 5, 2022 letter.

I submit the following letter on behalf of the Citizens regarding Application No. PAD450158. In sum, the Citizens believe the application in its current form should be denied or is not ripe for issuance, the reasons for such are explained below.

A. The Stormwater Management System in the Application Does Not Prevent Degradation to High Quality Stream Duckpuddle Run

The Citizens believe that the stormwater management system as identified in the application materials will not prevent degradation to Duckpuddle Run and no reason exists to allow such degradation. Duckpuddle Run is a receiving stream located less than 200 feet from parking lots, spillways, and stormwater management system discharge outlets of the proposed development. In some places, these physical features of the Warehouse are planned to exist at the edge of the 150 foot riparian buffer of Duckpuddle Run and the stormwater management system currently proposed shows at least two storm sewer discharge pipes feeding directly into this stream. Duckpuddle Run has an existing use of High Quality, which may only be reduced if such a lowering of water quality is found to be necessary to accommodate an important economic or social development. 25 Pa. Code §§ 93.4a(b), (c), (d), 93.4c(b)(1)(iii). According to the materials submitted for Application No. PAD450158, the applicant has not set forth any important economic or social development that would necessitate allowing a reduction of the water quality of Duckpuddle Run. Thus, in issuing a Chapter 102 NDPES permit for the Warehouse, the DEP must ensure that Duckpuddle Run's current water quality will not be degraded.

Because the proposed Warehouse will be operated during the winter months, deicing modalities such as laying road salts will be used to ensure traffic safety at the site. It is also foreseeable that dock lock deicer will be used. Dock lock deicer is usually a salt compound used to prevent trailer dock locks from being frozen and inoperable. Because the applicant proposes the Warehouse be used to store and ship items as its main business, it is likely dock lock deicer will be used in the winter months. Thus, these deicers and road salts will wash into the stormwater management system of the Warehouse and the existing permeable ground surfaces near Duckpuddle Run during rain and snow events. It is likely that, throughout the year, the Warehouse parking lots and driveways will have tire residue, small bits of rubber, and rubber residue from trucks and vehicles frequently coming and going from the site which will flow into the stormwater management system and possibly Duckpuddle Run.

The proposed stormwater management system, including the MRC Basin #1 and the Infiltration Basin, show spillways and discharges emptying directly into the riparian buffer of Duckpuddle Run. The current application materials do not explain or describe how excess ions from road salting and deicing (such as Na⁺ and Cl⁻) will be prevented from migrating from the parking lots and driveways to Duckpuddle Run. Studies have shown that excessive ion loading to streams causes "elevated concentrations of major ions" which "strongly correlate with declines in the abundance and diversity of organisms in freshwater communities, particularly in regions with naturally low ion concentrations..."¹

¹ Joel Moore, Rosemary M. Fanelli, and Andrew J. Sekellick, "High-Frequency Data Reveal Deicing Salts Drive Elevated Specific Conductance and Chloride along with Pervasive and Frequent Exceedances of the U.S. Environmental Protection Agency Aquatic Life Criteria for Chloride in Urban Streams," *Environmental Science & Technology*, 2020 54 (2), 778-789, Dec. 17, 2019. Available at <https://pubs.acs.org/doi/10.1021/acs.est.9b04316>

Additionally, even if the stormwater management system were effective at containing ions from road salt runoff, they exist in such close proximity to Duckpuddle Run that groundwater migration would easily transport the salts to the stream. MRC Basin #1 and the Infiltration Basin do not show any barriers or liners existing to prevent migration of water and contaminants in the water to the soil beneath. Because the water captured in these basins would eventually become part of the groundwater around Duckpuddle Run, it is highly likely such road salts in the basins would also be transported by groundwater to Duckpuddle Run. In fact, another study was done showing that “modern stormwater management practices are not protecting surface waters from road salt contamination and suggest they create contaminated plumes of groundwater that deliver Cl⁻ and Na⁺ to streams throughout the year.”² The Citizens maintain that the stormwater management system as proposed will be ineffective in preventing road salt contamination of Duckpuddle Run, which would degrade it. Therefore, the Citizens request the DEP require the stormwater management system to be improved to have either the stormwater diverted to or be collected and transported to a waste sewage/wastewater treatment facility where the contaminants may be removed.

B. The Citizens Believe the Application is Not Ripe for Issuance and Should be Denied for Failure to Address Technical Deficiencies

The Citizens believe Application No. PAD450158 should be denied on the basis that a response to DEP-identified technical deficiencies was due on June 4 and, as of July 11, no response was submitted by the applicant. A Right to Know Law Request was submitted DEP on June 9, 2022 (“DEP RTKL Request”) asking for records of “permits and permit applications and correspondence pertaining to permit applications” for the Warehouse. Additionally, a Right to Know Law Request was submitted to the MCCD on July 21, 2022 (“MCCD RTKL Request”) asking for records of and correspondence regarding permit and permit applications for the Warehouse. On July 11, 2022, a final response to the DEP RTKL Request was received which had only one responsive record (and no records were withheld), which was the letter to the applicant discussing technical deficiencies dated May 5, 2022. On August 2, 2022, a response to the MCCD RTKL Request was received which contained responsive records (and no records withheld) but also did not contain a response from the applicant to the DEP’s technical deficiencies letter. Because these two records requests were filed after the June 4, 2022 deadline for the applicant to respond to the DEP and no correspondence appears to exist from the applicant after the deadline, the Citizens believe Application No. PAD450158 should be denied for failure to timely respond to the DEP’s inadequacies of the application.

The Citizens realize that correspondence from the applicant after June 4, 2022 may exist that may have been overlooked in the MCCD’s and DEP’s preparation of responses to both document requests, but it is more unlikely that both the DEP and MCCD overlooked this in both Right to Know Law Requests. Indeed, if the applicant has failed to address the technical deficiencies to the satisfaction of the DEP and MCCD Application No. PAD450158 in a timely manner, the application should be denied.

² Joel W. Snodgrass, Joel Moore, Steven M. Lev, Ryan E. Casey, David R. Ownby, Robert F. Flora, and Grant Izzo, “Influence of Modern Stormwater Management Practices on Transport of Road Salt to Surface Waters,” *Environmental Science & Technology*, 2017 51 (8), 4165-4172, March 21, 2017. Available at <https://pubs.acs.org/doi/abs/10.1021/acs.est.6b03107>

C. The Application is Not Ripe for Issuance Because the Applicant Has Not Applied for a Chapter 105 Permit

The Citizens maintain that Application No. PAD450158 is not ripe for issuance because the applicant has not applied for a Chapter 105 water obstruction and encroachment permit. According to the submitted Erosion and Sedimentation Plans for Application No. PAD450158, a sewer force main is to be located along the western side of the property to carry sewage from the Warehouse to a treatment location off the boundaries of the property. In the DEP's technical deficiencies letter to the applicant of May 5, 2022 as well as in the application itself, it is indicated that a Chapter 105 obstruction and encroachment permit will be required for the sewer line to reach its destination because it will cross a stream that is connected to Lynchwood Lake at the south end of the property.

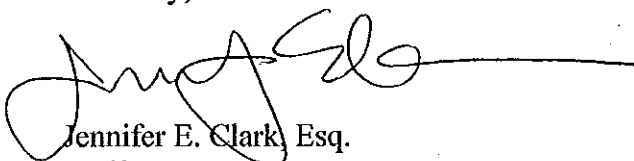
At the time of the writing of this letter, the applicant has not applied for a Chapter 105 permit for the encroachment of the sewer line across the stream, which the DEP has noted is required for the proposed Warehouse. Additionally, as of July 11, 2022, the responses to the above-mentioned DEP and MCCD RTKL Requests, the applicant has not submitted any correspondence or permit modifications to the DEP or MCCD regarding changes to Application No. PAD450158 to show a redirection of this necessary sewer force main to avoid its stream crossing. Thus, it does not appear that the applicant intends to obtain a necessary Chapter 105 permit for the Warehouse's sewer force main. Should the applicant begin implementing the plans for the proposed Warehouse, its failure to obtain a Chapter 105 permit for the sewer line would be a violation of the Pennsylvania Clean Streams Law.

The Citizens believe Application No. PAD450158 is therefore not ripe for issuance due to the applicant's failure to file an application for a Chapter 105 water obstruction and encroachment permit. The Citizens request that the DEP and MCCD refrain from issuing a permit for Application No. PAD450158 until the applicant either modifies the route of the sewer force main to avoid a stream crossing or files to obtain a Chapter 105 permit.

Conclusion

The Citizens maintain that the DEP and MCCD must ensure that Application No. 450158 is complete and includes the proper environmental protections before it is issued. Because Duckpuddle Run is designated as High Quality and the applicant has not set forth any important economic or social development that would necessitate degrading Duckpuddle Run, extra care and consideration must be taken in reviewing and issuing this permit to prevent the stream's water quality from degradation. Thus, the Citizens request that this permit not be issued until the applicant has addressed all technical deficiencies in a timely manner, including setting forth a containment and removal system for salt-contaminated stormwater runoff, and applied for a Chapter 105 water obstruction and encroachment permit.

Sincerely,



Jennifer E. Clark, Esq.
Staff Attorney

Fair Shake Environmental Legal Services