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August 16, 2011

**Sent Via Certified Mail-Return Receipt No.: 7009 0820 0001 5255 6628**

The Hon. Barry J. Schoch, P.E.  
Secretary, Pennsylvania Department of Transportation  
c/o Office of Chief Counsel  
Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Sent Via Certified Mail-Return Receipt No.: 7009 0820 0001 5255 6611**

The Hon. Michael Krancer  
Secretary, Pennsylvania Department of Environmental Protection  
c/o Office of Chief Counsel  
P.O. Box 2063  
400 Market St., 16th Floor  
Harrisburg, PA 17105

**Sent Via Certified Mail-Return Receipt No.: 7009 0820 0001 5255 6604**

The Hon. Lisa Jackson  
Administrator, U.S. Environmental Protection Agency  
1200 Pennsylvania, NW  
Washington, DC 20530-0001

Re: Notice of Delaware Riverkeeper Network, Inc. & The Delaware Riverkeeper  
Concerning PennDOT's Bridge Project for S.R. 1012 (Headquarters Road), for  
Bridges Over Tributaries of Tincum Creek at Tettermer and Cafferty Roads in  
Tincum Township, Bucks County  
Our File No. 7916-45216

Dear Secretaries Schoch and Krancer and Administrator Jackson:

757841.1/45216

We represent the Delaware Riverkeeper Network, Inc. and Maya Van Rossum, the Delaware Riverkeeper, in connection with the above-referenced matter.

This letter restates information already provided to the Pennsylvania Department of Transportation (PennDOT) and Department of Environmental Protection (DEP) concerning PennDOT's failure to comply with its obligations under the Federal Clean Water Act, 33 U.S.C. § 1251 et seq., and the Pennsylvania Clean Streams Law, 35 P.S. § 691. This letter also provides additional notice of our clients' intent to pursue litigation against PennDOT due to these failures.

As PennDOT and DEP are already aware, our clients have retained PrincetonHydro to review this project. PrincetonHydro has concluded that an NPDES Permit is needed in connection with this bridge project because the Limits of Disturbance exceed one (1) acre.

Paul M. Woodworth, a Fluvial Geomorphologist with PrincetonHydro, has identified a large set of deficiencies. The following excerpt from a declaration he has prepared highlights his findings:

\* \* \* \* \*

9. I have reviewed the engineering design plans entitled "Drawings for Construction of State Route 1012 Section 61M" (Approved 4/8/10) and visited both sites, Tettermer Road – Headquarters Road (at an unnamed tributary to Little Tincum Creek) and Cafferty Road – Headquarters Road (at Little Tincum Creek) on June 2, 2011.

10. I have also reviewed correspondence and related files obtained by the Delaware Riverkeeper Network through a Freedom of Information Act Request dated May 23, 2011 (CENAP-OP-R-2011-0280 and CENAP-OP-R-2011-0281) from the US Army Corps of Engineers. This material includes applications and supporting materials for the Pennsylvania State Programmatic General Permit (SPGP-3) submitted to Pennsylvania Department of Environmental Protection (PADEP, referred to as a "Water Obstruction and Encroachment Permit") and US Army Corps of Engineers (USACE). In addition, I have reviewed the erosion and sediment pollution control plan approval letters from the Bucks County Conservation District dated December 12, 2008 and December 3, 2009.

\* \* \* \* \*

12.2 According to the engineering plans referenced in Section 9 above, the Limit of Disturbance at the Tettermer Road site is 0.97 acres (Erosion and Sediment Control Plan, Sheet 5 of 5).

12.3 I imported a digital format (PDF) of this sheet (Erosion and Sediment Control Plan, Sheet 5 of 5) into a Computer Aided Drafting program (AutoCAD 2010) and retraced this Limit of Disturbance and found that the acreage is at least 1.53 acres. (It appears that the Limit of Disturbance actually extends outside the bounds of the sheet and therefore, is actually greater than 1.53 acres.)

12.4 This project exceeds the 1 acre threshold and therefore requires a PADEP NPDES Permit. Exhibit H shows this delineation over the Erosion and Sediment Control Plan, Sheet 5 of 5.

12.5 According to the engineering plans referenced in Section 9 above, the Limit of Disturbance at the Cafferty Road site is reported as 0.84 acres (Erosion and Sediment Control Plan, Sheet 6 of 6).

12.6 I imported a digital format (PDF) of this sheet (Erosion and Sediment Control Plan, Sheet 6 of 6) into a Computer Aided Drafting program (AutoCAD 2010) and retraced this Limit of Disturbance and found that the acreage is in fact 1.117 acres. This project exceeds the 1 acre threshold and therefore requires a PADEP NPDES Permit. Exhibit I shows this delineation over the Erosion and Sediment Control Plan, Sheet 6 of 6.

12.7 Regardless of the actual acreage of the Limit of the Disturbance, the PADEP chose to consider the sites as one project and issued one single Water Obstruction and Encroachment Permit for the proposed work at both sites, Tettermer Road and Cafferty Road, as stated in the permit issuance letter addressed to PennDOT dated March 17, 2010, signed by James Newbold, Regional Manager of Watershed Management, PADEP (Exhibit J).

12.8 In addition, the USACE issued one single SPGP-3 permit for the proposed work at both sites, Tettermer Road and Cafferty Road as stated in the permit issuance letter addressed to PennDOT dated April 30, 2010 signed by Frank J. Cianfrani, Chief, Regulatory Branch, USACE (Exhibit K).

12.9 With the reported areas of Limits of Disturbance exceeding 1 acre (taken individually or combined), a PADEP NPDES Permit should have been required.

While PennDOT and DEP have already been advised of the substance of our clients' claims, these conclusions and the other bases of our clients' complaint are discussed in more detail below,

Delaware Riverkeeper Network, Inc. is a privately-funded Pennsylvania not-for-profit corporation, in good standing. Delaware Riverkeeper Network (hereafter “Riverkeeper”) has over 1,000 members residing in Bucks County, and more than 70 members residing in the Tinicum Creek watershed area. Maya van Rossum, an individual, is the Delaware Riverkeeper, a private-funded ombudsman responsible for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its bay, tributaries including the Tinicum Creek, and Little Tinicum Creek, and their habitats. The Delaware Riverkeeper is also the executive director of the Delaware Riverkeeper Network, and she regularly visits the Delaware River for personal and professional reasons.

At issue here is a tributary to the Tinicum Creek, known as Sundale Creek and also known as Little Tinicum Creek. The Tinicum Creek flows to the Delaware River.

Maya van Rossum and other persons who are members of the Delaware Riverkeeper Network numbering more than seventy (70) people in the Tinicum Creek Watershed area of Bucks County, and more than 1,000 people in Bucks County, will be seriously harmed by the degradation of the quality of Little Tinicum Creek and Tinicum Creek if the Headquarters Road Replacement Bridge Project is constructed as designed. They will suffer a loss of recreational activities, natural and aesthetic enjoyment and use of both creeks due to impairment and degradation of water quality.

Delaware Riverkeeper Network members hike, fish, bird watch and participate in other recreational, education and professional activities in the Tinicum Creek watershed and along the shores of the Delaware River, into which the Tinicum Creek flows.

#### Headquarters Road Replacement Bridge Project

PennDOT through its contractor has begun to mobilize its equipment to begin construction on or about July 18, 2011 at the relevant site in Tinicum Township of a project known as the “Headquarters Road Replacement Bridge Project” (hereafter “the Project”).

One replacement bridge is to be built along Headquarters Road upstream of the intersection of Tettermer Road (hereafter “Tettermer Bridge”) with Headquarters Road; the other replacement bridge is to be built along Headquarters Road downstream of the intersection of Cafferty Road with Headquarters Road (hereafter “Cafferty Bridge”).

Both bridges cross an unnamed tributary to the Tinicum Creek, also known as Sundale Creek, or Little Tinicum Creek (hereafter “Tinicum Creek”).

The two bridges are separated by approximately one-half mile.

Planned work by PennDOT at the Cafferty Road Bridge includes replacement of the existing 21 x 24 foot single span steel bridge with a larger and wider, 30 x 28 foot pre-stressed composite concrete box beam structure; construction of 200 linear feet of concrete retaining wall upstream of the bridge in Tinicum Creek; construction of 100 feet of retaining wall downstream

of the bridge on Tincum Creek; replacement of an existing outfall; placement of scour protection along the bridge abutments, wing walls and retaining walls; and temporary placement of fill for dewatering, erosion and sedimentation control, and for access to the site. Upon information and belief, the excavated fill from one bridge will be used at the site of the other bridge.

Planned work by PennDOT at the Tettermer Bridge includes removal of the existing 15 x 22 foot single span steel beam bridge and construction of a new larger and wider 16 x 29 foot single span precast concrete arch structure moved approximately 55 feet downstream from the locating of the existing structure; realignment of approximately 400 feet of Headquarters Road including the vacating of the existing alignment of Headquarters Road; realignment of approximately 100 feet of the existing intersection of Tettermer Road with the realigned Headquarters Road; placement of scour protection along the bridge abutments and wing walls; and temporary placement of fill for dewatering, erosion and sedimentation control, and for access to the site.

The amount of earth to be disturbed on a temporary and/or permanent basis for the Cafferty Road Bridge is 1.1 acres and for the Tettermer Road Bridge is at least 1.5 acres.

#### Federal And State Storm Water Pollution Law

The federal Clean Water Act, 33 U.S.C. 1341-1344, and corresponding regulations, at 40 C.F.R. Part 122, as well as state law and regulations, require an application for a National Pollutant Discharge Elimination System (NPDES) permit to be made to discharge storm water runoff to surface water bodies such as Tincum Creek, where earth disturbance from a project is greater than one acre.

25 Pa. Code Chapter 192 also requires an applicant who plans to discharge storm water associated with construction activities to apply for and receive an Individual Permit, not a General Permit, where the construction activities occur in special protection watershed, and they include those with "exceptional value" streams.

Little Tincum Creek, also known as Sundale Creek, and here referred to as Tincum Creek, is an Exceptional Value ("EV") stream, and the Tincum Creek watershed is a special protection watershed.

Federal and state law and regulations prohibits the point source discharge of storm water, without having first obtained an approved discharge permit under the National Pollutant Discharge Elimination System ("NPDES").

Individual or cumulative impacts from single and complete projects (hereafter "single and complete projects") to waters of the United States, including jurisdictional wetlands, streams, and open water areas totaling up to 43,560 square feet (1.0 acre) are eligible for authorization under the Pennsylvania State Programmatic General Permit ("PSPGP").

Even where individual projects disturb less than one acre of earth, a NPDES permit may be required. For instance, a NPDES permit is required where the earth disturbance activities disturb equal to or greater than one acre of earth of any portion, or during any stage, of a larger common plan of development that involves greater than one acre of earth disturbance (hereafter “common plan projects”).

For linear projects, such as the Headquarters Road Bridge Replacement Project, the eligibility threshold of one acre of earth disturbance applies to each crossing of a separate water of the United States including wetlands, or to each crossing of a single body of water or wetland, even if at separate and distant locations (hereafter “linear projects”).

DOT did not apply for or receive a NPDES permit for the discharge of storm water after construction of the Headquarters Road Replacement Bridge Project, as a single and complete project encompassing both the Cafferty Road Bridge and the Tettermer Road Bridge.

Pennsylvania established a State Programmatic General Permit (“SPGP”) program<sup>1</sup> to carry out Chapter 105 of the Pennsylvania Clean Streams Law (which requires a permit for stream encroachment) and Section 404 of the federal Clean Water Act (which requires a permit to fill wetlands or open waters), where a project would otherwise require both permits.

DOT applied to the Department of the Army, Corps of Engineers, Philadelphia District (hereafter “Corps of Engineers”), for approval of the construction of both bridges comprising the Headquarters Road Bridge Replacement Project, in a single application.

The PennDOT single application for the Headquarters Road Replacement Bridge Project was based on a preliminary determination of jurisdictional impacts to open waters and wetlands within the project limits.

On March 3, 2010, an individual Water Obstruction and Encroachment Permit (EO9-943) authorizing the proposed work was issued by Pennsylvania DEP, Southeast Regional Office, including a Section 401 (of the Clean Water Act) Water Quality Certification.

On April 30, 2010, the Corps of Engineers approved PennDOT’s application to replace the two bridges and realign Headquarters Road, including nine conditions.

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<sup>1</sup> The federal Clean Water Act, 33 U.S.C. 1344(h), allows States to assume authority from the U.S. Environmental Protection Agency (EPA) to issue wetlands fill permits under Section 404 of the Clean Water Act, 33 U.S.C. 1344. In Pennsylvania, a joint permit program has been established between the Army Corps of Engineers, Philadelphia District, and the Commonwealth of Pennsylvania, through which stream encroachment and water obstruction permits ordinarily issued by Pennsylvania DEP or delegated county conservation districts, are issued through the Pennsylvania State Programmatic General Permit (PASPGP) in certain circumstances, and reviewed by the Corps of Engineers. The application is normally made to and the review undertaken by the DEP, with those applications for projects that have potential significant environmental impacts are forwarded to the Corps for review. See DEP Fact Sheet at <http://www.wilsonecological.com/resources/PASPGP-3%20Fact%20Sheet.pdf>

In the PennDOT application, PennDOT represented to the Corps of Engineers that the amount of disturbance would be less than one acre for each bridge comprising the Headquarters Road Bridge Replacement Project.

Specifically, according to the April 19, 2010 Corps of Engineers Decision Document, Memorandum for the Record, “total impacts include the permanent placement of fill in 0.02 acre of stream channel and temporary impacts to 0.25 acres of streams with the permanent impacts being within the foot print of the temporarily disturbed areas.”

The engineering designs entitled “Drawings for Construction of State Route 1012 Section 61M (approved 4/8/10)” (hereafter “Engineering Drawings”) recite that the Tettermer Bridge project involves 0.97 acres of earth disturbance and the Cafferty Bridge involves 0.84 acres of earth disturbance.

Though a “single and complete project” for federal stream/wetland authorizations is different than the “common plan of development” for NPDES construction, the Headquarters Road Bridge Replacement Project crossing the same stream, one-half mile apart a) disturbs more than one acre; b) is a common plan of development; and c) is a single and complete project for NPDES purposes under the federal Clean Water Act.

#### Harm To The Little Tincum Creek And Tincum Creek

PennDOT authored and published a Design Manual for its construction projects, which, at Part 2, states: “In Pennsylvania, the three primary concerns related to the effects of [stormwater] runoff on water resources from roadway facilities are:

- Stream channel erosion and flooding resulting from increases in runoff rate and volume;
- Water quality impacts to streams and groundwater aquifers from particulates, floatables, hydrocarbons, and deicing materials; and
- Thermal impact on streams caused by heat transfer from pavement to runoff and loss of riparian buffer vegetation.” (Id.)

PennDOT’s Design Manual Part 2 recognizes, that for increases in storm water runoff rate and volume, “It is well documented that a direct relationship exists between the imperviousness of a watershed and the impairment of its surface waters. Unmitigated increases in the rate and volume of runoff discharging from developing areas have a cumulative effect, which has been shown to cause flooding and erosion of streams.”

Direct harm in the form of water quality degradation will occur to the Exceptional Value Tincum Creek when the Headquarters Road Replacement Bridges Project is constructed and completed, if no post-construction storm water discharge prevention, minimization and treatment (infiltration) measures or features are incorporated into the projects, consisting of bridges and

associated retaining walls, outfalls, wind walls, channels and other aspects and structures, if the project is not redesigned now, including reduction of pavement as outlined in the PennDOT Manual.

Specifically, the degradation to the quality of the water in the Little Tincum Creek includes but is not limited to increased temperature, additional volume of, and faster flow of runoff of storm water, which in turn will decrease the quality of the EV Tincum Creek.

The harm likely and expected to be caused to the Tincum Creek if the Headquarters Road Replacement Bridge Project is constructed prior to a NPDES permit issuing, and incorporation of the features and measures to prevent, minimize and control/treat storm water discharges to the Tincum Creek, are irreparable because once the Project's bridges and associated features are built, it will not be pragmatic to remove features that are causing the harm, or to physically retrofit the bridges and structures with measures and features that will protect and maintain the EV Tincum Creek.

Instead, the measures and features to prevent, minimize and control/treat the storm water to be discharged to the Tincum Creek must be planned, designed and incorporated into the Headquarters Road Replacement Bridge Project now, prior to construction.

This is particularly so where the planned Headquarters Road vacation and realignment and the bridge spans are wider than previously constructed, the liner retaining walls are longer and straighter, the outfall larger, and the stream channel larger, all of which will increase the amount, type and velocity of storm water runoff from the added impervious cover from the road and bridge span widenings and associated other structures.

The sediment-bound nutrient phosphorous, released with soil disturbance stimulate algae blooms that deplete oxygen in the stream and harm aquatic life including fish.

Temperature increases from the widened road will lower dissolved oxygen levels leading to local stressed fish and aquatic life populations. According to the Pennsylvania Storm Water Best Management Practices (DEP BMP) Manual Chapter 2, specifically cited in PennDOT's Design Manual Part 2 Chapter 13, "These changes in temperature dramatically affect the aquatic habitat in the stream, ranging from the fish community that the stream can support to the microorganisms that form the foundation of the food chain." (Emphasis added.)

According to the DEP BMP Manual, Chapter 2: "The Center for Watershed Protection (Article 19, Technical Note 115, Watershed Protection Techniques 3(3): 729-734) states that land development influences both the geometry (morphology) and stability of stream channels, causing downstream channels to enlarge through widening and stream bank erosion. These physical changes, in turn, degrade stream habitat and produce substantial increases in sediment loads resulting from accelerated channel erosion. As the shape of the stream channel changes to accommodate more runoff, aquatic habitat is often lost or altered, and aquatic species decline." [http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-48473/03\\_Chapter\\_2.pdf](http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-48473/03_Chapter_2.pdf)



No Anti-Degradation Technologies Or Best Management Practices Were Incorporated Into The Project

The federal Clean Water Act requires states to adopt policies and implement programs that keep our cleanest waters clean. This policy is known as anti-degradation. 40 C.F.R. § 131.12(a) (1992).

Pennsylvania's anti-degradation policy, often referred to as Special Protection Waters, can be found in the Pennsylvania Code in §93.4a on Anti-degradation. *See generally*, 25 Pa. Code § 93.4a (2000). EPA approved Pennsylvania's anti-degradation program in 2007 after the finalization of its *Water Quality Antidegradation Implementation Guidance*. Department of Environmental Protection, Commonwealth of Pennsylvania, Water Quality Antidegradation Implementation Guidance, 23 (November 2003), *available at* <http://www.elibrary.dep.state.pa.us/dsweb/Get/Version-47704/391-0300-002.pdf>, hereinafter "Water Quality Antidegradation Implementation Guidance."

25 Pa. Code §93.4a(d) presents Pennsylvania's policy regarding the protection of Tier 3 waters, referred to on Pennsylvania as Exceptional Value waters: "*Protection for Exceptional Value Waters*—The water quality of Exceptional Value Waters shall be maintained and protected." *Id.* at § 93.4a(d).

As an Exceptional Value stream, Tincum Creek warrants ecologic, geomorphic, and hydraulic design criteria to reduce existing water quality impacts, and eliminate additional water quality impacts.

As part of the "Anti-degradation Analysis" which is part of the NPDES permit application process, PennDOT should have determined what features and measures to incorporate into the Headquarters Road Bridge Replacement Project to prevent, minimize and/or treat through infiltration the storm water runoff from the new bridges, realigned Headquarters Road, and associated structures, prior to construction of the Project.

PennDOT's Design Manual, at Part 2, regarding the prevention of degradation of water quality due to storm water discharges, recommends avoidance of any increase in the volume or flow of storm water by, for example, not adding pavement, and keeping within the footprint of prior development. If avoidance or prevention cannot be achieved, then a number of minimization or treatment (infiltration) measures must be pursued for Level 4 projects that will discharge storm water into Exceptional Value streams.

According to the PennDOT Design Manual, Part 2, due to the Tincum Creek's EV status, the Headquarters Road Bridges Replacement Project warrants the highest (Level 4) Post Construction Storm Water Management measures to be implemented in order to prevent or minimize any increase in the quantity (rate and volume) of runoff while also minimizing the factors affecting water quality.

The PennDOT Design Manual, Part 2, states “The goal of post construction storm water management (PCSM) is to prevent or minimize any increase in the quantity (rate and volume) of runoff while also minimizing the factors affecting the quality.”

Specifically, the target for Level 4 projects is to (1) reduce the post-construction runoff peak rate to the pre-construction peak rate for the 1-year through 100-year storm events and (2) reduce the post-construction runoff volume to the pre-construction runoff volume for the 2-year 24-hour storm event and smaller.

PennDOT has not addressed this “prevent or minimize” target for Level 4 projects in its design of the Headquarters Road Replacement Bridges Project.

According to the above referenced Engineering Drawings, reflecting the widening of Headquarter Road, and widening of both bridges, no specific Post Construction Storm Water Management features, measures or plantings were proposed to be implemented to prevent or minimize any increase in the rate and volume of storm water runoff or to minimize factors expected to degrade water quality in the receiving waters of Tinicum Creek, other than the landscaping in the vacated portion of Headquarters Road (and it is not clear that that will have any effect on stormwater).

Level 4 projects require that a water quality analysis be performed, even if the targets for rate and volume have been met.

The Pennsylvania Department of Environmental Protection (PADEP) NPDES Permit application includes an Anti-degradation Analysis Module that must be completed by the permit applicant, here PennDOT. As noted *infra*, PennDOT did not apply for or receive a NPDES storm water discharge permit.

As part of the NPDES application process, PennDOT should have performed an analysis through the NPDES permit application process to determine how much degradation to water quality of the receiving stream would occur from the post-construction discharge of storm water discharge from the Headquarters Road Replacement Bridge Project.

If best management practices (“BMPs”) cannot prevent an increase in storm water rate, volume and quality, then Anti-degradation Best Available Combination of Technologies (hereafter “ABACT”) BMPs must be incorporated into the Headquarters Road Bridge Replacement Project. These ABACT BMPs include several measures and features which are recited in Table 13.11 in the PennDOT Design Manual Part 2.

BMPs and ABACT BMPs are described in the annexed Affidavit of Paul Woodworth, at Para. 11 (all subsections).

Immediate And Irreparable Harm

Degradation of the exceptional value of Tincum Creek is irreparable harm that is threatened to occur immediately upon commencement of construction.

Once the degradation occurs, restoration of the exception value status of the Tincum Creek and Little Tincum Creek is a complex, expensive and time-consuming process which is not guaranteed to succeed. Removal of certain features of the Headquarters Road Replacement Bridge Project may be necessary to improve stream quality and restore the Exceptional Value of the Little Tincum Creek and Tincum Creek.

Bucks County Act 167 Storm Water Management Plan

Tincum Creek is addressed in Bucks County Planning Commission and Pennoni Associates Inc. Delaware River (North) Act 167 Storm water Management Plan (hereafter "Bucks County SW Act 167 Plan"). See Bucks County, Pennsylvania. Volume I – Study Report and Volume II – Appendices. DEP ME# 96427 File No. SWMP 089-09. February 28, 2002.

This Bucks County SW Act 167 Plan was adopted pursuant to the Pennsylvania Storm Water Management Act.

Upon information and belief, and after investigation, PennDOT did not consult the Bucks County SW Act 167 Plan in the design of the projects and certainly the requirements of the plan were not implemented.

According to the PennDOT Design Manual Part 2, "PennDOT must be consistent with the standards of watershed-based storm water management plans approved by PA DEP and implemented under the Storm Water Management Act (1978 Act 167)."

With an Act 167 plan, the PennDOT Design Manual Part 2, at p. xx, states that "In any case, the more restrictive requirements between the NPDES permit and the PA DEP-approved Act 167 plan govern the design of PCSM for PennDOT projects."

The DEP Best Management practice (BMP) Manual continues, "It is apparent that increasing impervious areas can lead to significant degradation of surface water by altering the entire aquatic ecosystem." (Emphasis added.)

Added impervious coverage results in additional runoff volume, and unmanaged with a reduced time to collect, discharges to the stream at higher peak flows. The higher peak flows directed to a point (pipe) discharge results in local scour of the stream channel – in the case of the Tincum Creek with shallow bedrock, the result is scour of bed material and detritus important to macroinvertebrate life. Increased volume has a cascading effect of increasing flood stages, stream velocities and channel erosion.

The DEP BMP Manual explains, "...as the volume of runoff from each storm event is increased, natural stream channels experience more frequent bank full or near bankfull conditions. As a result, streams change their natural shape and form."

The DEP BMP Manual further warns, "The majority of this stream channel devastation is intensified during the frequently occurring small-to-moderate precipitation events, not during major flooding events." (Empahsis added.) Excess volume of runoff will additionally tax downstream infrastructure and stabilized stream banks.

Because of the Exceptional Value ("EV") classification of the Little Tincum Creek PennDOT and Tincum Creek, PennDOT cannot rely on mixing or so called "dilution of pollution" to mitigate its point discharges of storm water. The pollutants must be removed before the discharge of storm water runoff into the stream.

The DEP BMP Manual states that "Improperly managed storm water causes increased flooding, water quality degradation, stream channel erosion, reduced groundwater recharge, and loss of aquatic species."

Therefore, our clients request that PennDOT cease constructing the Headquarters Road Replacement Bridges Project, unless and until the Anti-degradation standards and Post Construction Storm water Management measures outlined in Section 13.7 of PennDOT's Design Manual Part 2 and in the PADEP BMP Manual and the Bucks County SW Act 167 Plan are considered, analyzed and implemented in the bridge and roadway designs so that they do not cause a public nuisance, and that the measures and features described in the Pennsylvania Storm water Best Management Practices (DEP BMP Manual), a document referenced in Chapter 13 of the PennDOT Design Manual, are fully planned, installed, or implemented.

#### Relief Requested

Our clients request the following relief:

- a) PennDOT shall cease construction of the bridges and associated structures described in the Headquarters Road Replacement Bridge Project and Engineering Drawings;
- b) PennDOT shall cease removing, demolishing, or destroying any of the existing bridges and structures crossing a tributary to the Tincum Creek known as Sundale Creek or Little Tincum Creek;
- c) PennDOT shall cease vacating and realigning a portion of Headquarters Road, in Tincum Township, Bucks County;
- d) PennDOT shall cease proceeding with the Headquarters Road Replacement Bridge Project until and unless PennDOT submits an application for and

The Hon. Barry J. Schoch, P.E.  
The Hon. Michael Krancer  
The Hon. Lisa Jackson  
Page 13  
August 16, 2011



receives a NPDES permit for the post-construction discharge of storm water runoff from the Project; and

Conclusion

This letter supplements the notice previously provided and, as with such prior notice, satisfies any and all notice requirements of federal and state law, including those under the Clean Water Act, 33 U.S. C. § 1365(b), and the Clean Streams Law, 35 P.S. § 691.601(e).

If, within sixty (60) days of your notice of these claims, your agencies do not provide a satisfactory response and fully address the deficiencies outlined in this letter and in the prior notice provided, our clients will pursue their claims through litigation and will seek all appropriate legal and equitable relief, including but not limited to attorneys' fees and costs.

If you have any questions or would like to discuss this matter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jordan B. Yeager', with a stylized flourish extending to the right.

Jordan B. Yeager  
For Curtin & Heefner LLP

cc: Pennsylvania Office of Attorney General  
21 South 12th Street, 3rd Floor  
Philadelphia, PA 19107

Eric H. Holder, Jr., US Attorney General  
U.S. Department of Justice  
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