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*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DELAWARE RIVERKEEPER NETWORK, and  
MAYA K. VAN ROSSUM, the DELAWARE  
RIVERKEEPER,

Plaintiffs,

v.

DELAWARE RIVER BASIN COMMISSION and  
DELAWARE RIVER PARTNERS LLC,

Defendants.

**No.: 1:21-cv-1108**

**COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

TO THE HONORABLE COURT:

Plaintiffs Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, by and through their undersigned counsel, allege as follows:

**INTRODUCTION**

1. In this action, Plaintiffs Delaware Riverkeeper Network and Maya K. van Rossum, in her capacity as the Delaware Riverkeeper and leader of the organization (collectively, “DRN”), 925 Canal Street, Suite 3701, Bristol, Pennsylvania, challenge the December 9, 2020 final determination of the Delaware River Basin Commission (“DRBC” or “Commission”), 25 Cosey Road, West Trenton, New Jersey, affirming its approval of Docket 2017-009-2 (“Dock 2 Docket”) issued to Delaware River Partners LLC (“DRP”), 200 North Repauno Avenue, Gibbstown, New Jersey, pursuant to Section 3.8 of the Delaware River

Basin Compact (the “Compact”), for a dredging and deep-water berth construction project (“Dock 2 Project”), at DRP’s Gibbstown Logistics Center (“GLC”) in Greenwich Township, Gloucester County, New Jersey.

2. This action by the Commission is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the Compact. The Commission unreasonably concluded that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan, despite evidence in the record that the Dock 2 Project presented unknown risks to surface and groundwater quality, that threatened and endangered species would be adversely impacted by the Dock 2 Project, and that unnecessary harm would be inflicted on submerged aquatic vegetation. Furthermore, the Commission reached this conclusion despite no evidence in the record concerning the GLC’s contribution of polychlorinated biphenyls (“PCBs”) to Zone 4 of the tidal Delaware River. Finally, the Commission arbitrarily and capriciously failed to consider both the initial construction of the GLC and Dock 1 and the Dock 2 Project together as a single project impacting the Delaware River Basin.

3. Until Defendants comply with the requirements of the Compact, Plaintiffs will seek temporary, preliminary, or permanent injunctions against any activities in furtherance of the Dock 2 Project, and any other such relief as Plaintiffs deem appropriate.

4. This relief is necessary to preserve the status quo and to forestall irreparable injury to the environment and to Plaintiffs’ interests.

**PARTIES**

*Plaintiffs*

5. Plaintiff Delaware Riverkeeper Network was established in 1988 to protect and restore the Delaware River, its tributaries and habitats. To achieve these goals, Delaware Riverkeeper Network organizes and implements stream restoration projects, volunteer water quality and ecosystem monitoring, educational programs, community technical assistance projects, environmental advocacy initiatives, community/member action and involvement projects, recreational activities, and environmental litigation throughout the entire Delaware River watershed, including the Delaware Estuary and Delaware Bay, and at a state or national level when necessary to advance the organization's mission. The watershed includes portions of New Jersey, New York, Pennsylvania, and Delaware. Delaware Riverkeeper Network is a not-for-profit membership organization with over 25,000 members, including members who live in, work in, and/or recreate in the State of Delaware, the State of New Jersey, the State of New York, and the Commonwealth of Pennsylvania. Delaware Riverkeeper Network members fish, canoe, kayak, boat, swim, birdwatch, hike, bike, and participate in other recreational activities in the Lower Delaware River Watershed, including in the State of New Jersey. Delaware Riverkeeper Network undertakes numerous activities and initiatives that take place in, directly benefit from, and/or directly impact State of New Jersey waters, habitats, ecosystems, and communities.

6. Plaintiff the Delaware Riverkeeper, Maya K. van Rossum, works full-time for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper advocates and works for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its estuary, bay, tributaries, and habitats. The Delaware Riverkeeper regularly visits the Delaware River for professional

reasons. The Delaware Riverkeeper is the chief executive officer of the Delaware Riverkeeper Network.

7. Delaware Riverkeeper Network brings this action on behalf of its members, including many who live in the vicinity of the Delaware River and Estuary, or rely on them for recreational, professional, personal, or aesthetic uses, and will suffer injuries from the ecological and/or economic damage and the safety concerns caused by the Dock 2 Project.

Defendants

8. Defendant Delaware River Basin Commission is an agency and instrumentality created by the signatory parties to the Delaware River Basin Compact of 1961. It consists of the four governors of Delaware, New Jersey, New York, and Pennsylvania, *ex officio*, and the Division Engineer, North Atlantic Division, U.S. Army Corps of Engineers, who serves as the federal representative. The Commission is charged with conserving and managing the water resources of the Delaware River and its watershed.

9. Defendant DRP is a limited liability company formed under the laws of the state of Delaware with its primary place of business at 200 N. Repauno Avenue, Gibbstown, New Jersey 08027. DRP is majority owned by Fortress Transportation and Infrastructure Investors LLC, which owns and acquires infrastructure and equipment for the transportation of goods and people. DRP sought and received approval from the Commission for the Dock 2 Project.

**JURISDICTION**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) by virtue of the Compact, which reads, in relevant part: “The United States district courts shall have original jurisdiction of all cases or controversies arising under the Compact . . . .” 75 Stat. 688, Pub. L. 87-328, § 15.1(p) (Sept. 27, 1961).

11. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2202.

12. DRBC Rule of Practice and Procedure Article 6, Section 2.6.10, provides:

Any party participating in a hearing conducted pursuant to the provisions of this article may appeal any final commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of the final Commission action.

18 C.F.R. § 401.90. Plaintiffs have timely filed this complaint within 45 days of the Commission's December 9, 2020 final determination.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because all Defendants reside in the District of New Jersey. Venue is also proper in this District because Plaintiffs and a substantial number of the members of Plaintiff organization Delaware Riverkeeper Network reside, work, and/or recreate in the District. Venue is also proper in this District because the GLC and proposed Dock 2 Project are located in Greenwich Township in New Jersey, and the adverse effects of these facilities will substantially affect New Jersey.

14. DRP is subject to the general personal jurisdiction of this Court because its principal place of business is located in Gibbstown, Greenwich Township, New Jersey. The joinder of DRP in this action is thus proper.

15. Furthermore, this Court has specific personal jurisdiction over DRP. In submitting a docket application to the Commission—the ultimate determination of which DRP knew may be appealed in federal court—DRP submitted itself to specific jurisdiction in New Jersey

where the Commission is located, and where the actions that are the subject of the docket application are proposed to occur. The joinder of DRP in this case is thus proper.

16. Plaintiffs have no adequate remedy at law. Unless this Court grants the requested relief, the Defendants' actions will continue to cause irreparable harm to the environment, to Plaintiffs, and to the public in violation of the Compact and the public interest. No monetary damages or other legal remedy could adequately compensate Plaintiffs or the public for these harms.

### **STATUTORY FRAMEWORK GIVING RISE TO PLAINTIFFS' CLAIMS**

#### *The Delaware River Basin Compact*

17. In 1961, the states of Delaware, New Jersey, New York, the commonwealth of Pennsylvania, and the United States entered into the Compact, after “recogniz[ing] the water and related resources of the Delaware River Basin as regional assets vested with local, State, and National interests, for which [the signatory parties] have a joint responsibility . . .” Compact, Part I.

18. Accordingly, the signatories sought to conserve, utilize, develop, manage, and control the water and related resources of the Basin “under a comprehensive multipurpose plan” in order to avoid the “splintering of authority and responsibilities” that existed among local, State, and Federal agencies at the time the Compact was created. *See id.*

19. The Compact created the Commission as an “agency and instrumentality of the governments of the respective signatory parties,” *id.* § 2.1, with jurisdiction to “have, exercise and discharge its functions, powers and duties within the limits of the basin . . . .” *Id.* § 2.7.

20. The Compact further directs the Commission to “develop and adopt . . . a comprehensive plan for the immediate and long range development and use of the water resources of the basin.” *Id.* § 13.1.

21. The Comprehensive Plan “is intended to describe the general characteristics of river basin development which the Commission finds to be in the public interest” and “provides . . . a flexible, growing and evolving general framework for the orderly development of the water and related resources of the basin.” Comprehensive Plan, § I.A.d.

22. Among the powers and duties of the Commission is the power and duty to review projects within the basin:

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission . . . . The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan.

*Id.* § 3.8.

23. The Commission implements the Compact and the Comprehensive Plan, in relevant part, through its Administrative Manual: Rules of Practice and Procedure (“RPP”) (codified at 18 C.F.R. Part 401) and its Water Code (codified at 18 C.F.R. Part 410).

24. Article 3 of the RPP governs project review under Section 3.8 of the Compact. *See* 18 C.F.R. Part 401, Subpart C.

25. If a project “may have a substantial effect on the water resources of the Basin,” it must be “submitted to the Commission for a determination as to whether the project impairs or conflicts with the Comprehensive Plan . . . .” 18 C.F.R. §§ 401.34, 401.35(b).

26. Article 6 of the Commission's RPP governs hearings held by the Commission. *See* 18 C.F.R. Part 401, Subpart F.

27. Under Article 6, "[a]ny person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this subpart provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing." 18 C.F.R. § 401.81(c).

28. The Commission "shall grant a request for a hearing . . . if it determines that an adequate record with regard to the action or decision is not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commission or that the Commission has found that an administrative hearing is necessary or desirable." 18 C.F.R. § 401.82(a).

29. Once a hearing is granted, a Hearing Officer may be designated by the Chairman, *see id.* § 401.83(a), and "the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure," as well as "any person whose legal rights may be affected by the decision rendered . . . ." *Id.* § 401.84(a).

30. Based on evidence adduced during the hearing and pleadings submitted to the Hearing Officer, *see id.* § 401.84(b), the Hearing Officer "shall prepare a report of [their] findings and recommendations," to which the interested parties may file objections. *Id.* § 401.88.

31. The Hearing Officer's findings and recommendations, along with the interested parties' objections are then submitted to the Commission. *Id.* § 401.88(a). The Executive Director "may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other



recommendation Commission action,” to which the interested parties have at least ten days to respond. *Id.* 401.88(b).

32. Once the Commission acts on the hearing officer’s findings and recommendations, any party that participated in the hearing “may appeal any final Commission action” within forty-five days. *Id.* § 401.90.

*The Total Maximum Daily Load for PCBs in the Tidal Delaware River*

33. In December 2003, the Commission prepared, and the United States Environmental Protection Agency (“EPA”) approved total maximum daily loads (“TMDLs”) for PCBs for zones two through five of the tidal Delaware River. *See* U.S. Env’tl. Prot. Agency Regions II & III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2–5 of the Tidal Delaware River (Dec. 15, 2003) (hereinafter, “PCBs TMDL”).

34. TMDLs are calculations defining the level of a certain pollutant necessary to attain and maintain the applicable narrative and numerical water quality standards in a body of water established pursuant to the federal Clean Water Act. 40 C.F.R. § 130.7(c)(1); *see also* 33 U.S.C. § 1313(d)(1)(C). A TMDL is the sum of wasteload allocations from point sources, such as stormwater and industrial outfalls, and load allocations from nonpoint sources, such as stormwater runoff, and natural background. 40 C.F.R. § 130.2(i).

35. The PCBs TMDL contains reasonable assurance that the TMDLs will be achieved by requiring “[e]ffluent quality data and source minimization plans . . . through NPDES permits issued by state permitting authorities . . . .” PCBs TMDL at 10–11.

36. The PCBs TMDL also contains reasonable assurance through the implementation of the Commission’s authority to “control future pollution and abate existing pollution in the waters of the basin including Section 2.3.5B of the Commission’s Rules of Practice and

Procedure . . . .” PCBs TMDL at 11; *see also* 18 C.F.R. § 401.35(b) (RPP 2.3.5B, requiring submission to the Commission of “[a]ll other projects which have or may have a substantial effect on the water resources of the Basin”).

37. In 2005, according to Commission reports, the DuPont-Repauno facility—a portion of which contains the new GLC—was among the top ten point source dischargers of PCBs in the tidal Delaware River, discharging 463 milligrams of PCBs per day, an amount eight times the entire TMDL for Zone 4.

38. The Commission has reported that, as of 2016, the DuPont-Repauno facility’s wasteload had been reduced by 61% through implementation of the PCBs TMDL, which upon information and belief would mean the DuPont-Repauno facility was contributing approximately three times the TMDL for Zone 4 in 2016.

39. Stage 1 of the PCBs TMDLs was based on individual wasteload allocations for each zone, and compliance with these wasteload allocations was to be achieved through water quality based effluent limitations in the Clean Water Act Section 402 National Pollutant Discharge Elimination System (“NPDES”) permits issued by EPA or the relevant state. *See* PCBs TMDL at 12; *see also* 33 U.S.C. § 1342.

40. The Commission’s Water Code also requires implementation of Pollutant Minimization Plans for, among other dischargers, those that have received an individual wasteload allocation in the PCBs TMDL, and “any discharger” of PCBs “that the Commission determines after public notice and hearing, has an adverse effect on the water resources of the Basin.” *See* 18 C.F.R. Part 410, Section 4.30.9(A)(2)(b).

41. The PCB TMDL provided wasteload allocations for the DuPont Repauno facility in Stage 1, assigning DuPont Repauno's discharges to "Group 1." See PCBs TMDL at Appx. 2.

### **FACTS GIVING RISE TO PLAINTIFF'S CLAIMS**

#### *Overview of the Dock 2 Project*

42. DRP is in the process of developing a site located at Block 8, Lots 1, 2, 3, 4, 4.01, and 4.02 in Greenwich Township, Gloucester County, New Jersey, commonly known as 200 North Repauno Avenue (the "Gibbstown Logistics Center" or "GLC").

43. The GLC is located on the site of the former DuPont Repauno facility, which was in use for over one hundred years for explosives manufacturing, anhydrous ammonia production, and the manufacturing of organic compounds.

44. DuPont's operations ceased in 1986, and the site began remediation in 2002.

45. The subject of this Complaint is the proposed Dock 2 Project, a new marine terminal consisting of two loading platforms, eight breasting dolphins, eleven mooring dolphins, walkways to provide access between the loading platforms and dolphins, a trestle supporting a one-lane vehicular roadway with adjacent pedestrian access and an internal pipe system for the transfer of bulk liquid product, including LNG, and mechanical dredging in the Delaware River.

#### *The Commission's Approval of the Dock 1 Project*

46. On August 8, 2017, DRP applied to the Commission requesting approval under Section 3.8 of the Compact of a dredging and deep-water berth construction project at the site of the GLC ("Dock 1 Project").

47. The Dock 1 Project was approved by the Commission December 13, 2017, and Docket No. D-2017-009-1 (the “Dock 1 Docket”) was issued to DRP.

48. The Dock 1 Project involved dredging 371,000 cubic yards of sediment from the Delaware River, demolishing an existing wharf and bulkhead, and constructing a new bulkhead, a pile-supported wharf structure, and six new stormwater outfalls.

49. Approximately 71,000 cubic yards of the sediment dredged as a part of the Dock 1 Project were contaminated with polycyclic aromatic hydrocarbons, metals, and PCBs.

50. As a condition of the Dock 1 Docket, the Commission required DRP to “perform an investigation of the site to assess the disposition of stormwater and the flow paths for individual stormwater outfalls either directly or indirectly to the Delaware River in order to develop and implement a PCB stormwater sampling plan” which would inform a potential pollutant minimization plan (“PMP”) in accordance with Section 4.30.9 of the Commission’s Water Code.

51. Upon information and belief, at the time of this filing, a PCB stormwater sampling plan has not been implemented, and sampling results have not been evaluated to determine whether stormwater discharges and/or stormwater runoff from the GLC contain PCBs.

52. Upon information and belief, at the time of the filing, no NPDES permit has been issued to DRP for the GLC incorporating water quality based effluent limitations for PCBs.

*The Commission’s Approval of the Dock 2 Project*

53. On March 11, 2019, DRP submitted an application for project review to the Commission pursuant to Section 3.8 of the Compact.

54. The subject of that application, the proposed Dock 2 Project, is a deep-water facility for the export of bulk liquid products featuring two berths capable of loading liquids from either trucks or rail cars.

55. In order to construct the Dock 2 Project, DRP would need to dredge approximately 665,000 cubic yards of sediment from the Delaware River, nearly twice as much as the Dock 2 Project, to a depth of 43 feet below mean lower low water.

56. The berth structure would consist of a trestle pier, two loading platforms, eight breasting dolphins, eleven mooring dolphins, and walkways to provide access between platforms and dolphins.

57. On March 25, 2019, the Commission provided notice on its website that it received DRP's Dock 2 Project application.

58. On May 24, 2019, the Commission published draft docket D-2017-009-2 and gave notice of a public hearing to be held on June 6, 2019, with written comments being accepted through June 7, 2019.

59. DRN submitted comment letters to the Commission dated May 28, June 3, and June 7, 2019. Tracy Carluccio, Deputy Director, was also present and provided verbal comment on behalf of DRN at the Commission's June 6, 2019 hearing on the draft docket.

60. On June 12, 2019, the Commission approved Docket D-2017-009-2 (the "Dock 2 Docket") by unanimous vote.

*The Administrative Hearing*

61. DRN requested a hearing pursuant to Article 6 of the RPP on July 11, 2019, to review the Commission's decision to approve the Dock 2 Docket on the basis that: the Commission failed to account for the cumulative impact of both Dock 1 and Dock 2 of the

GLC; the Commission wrongfully approved the Dock 2 Docket despite DRP's lack of compliance with the Dock 1 Docket; the Commission had insufficient evidence to determine whether the Dock 2 Project complied with the Water Code; and that the Commission failed to give adequate public notice of the Dock 2 Project by omitting information relating to the proposed liquefied natural gas ("LNG") transloading operations, among other reasons.

62. On September 11, 2019, the Commission granted DRN's request for a hearing, finding that "an administrative hearing is desirable under the circumstances of this specific docket approval."

63. The Commission Chair designated John D. Kelly, Esquire, as the Hearing Officer on November 1, 2019, to conduct the administrative hearing.

64. On March 2, 2020, the Commission provided notice in the Federal Register of the administrative hearing, scheduled to begin April 15, 2020, and advised that written public comment would be accepted through April 24, 2020. *See* Adjudicatory Hearing and Additional Written Comment Period, 85 Fed. Reg. 12,276 (March 2, 2020).

65. Due to the COVID-19 pandemic, the hearing was postponed and conducted virtually from May 11 to May 20, 2020. Direct lay and expert testimony was provided through written declarations and reports, and the parties were given the opportunity to cross-examine during the virtual hearing.

66. During the hearing, DRN presented evidence showing that the Commission failed to consider the Dock 2 Project's:

- impact on surface water and groundwater quality due to a lack of appropriate sediment testing and evaluation of hydrogeologic conditions;

- threats to fisheries, including threatened and endangered species such as the Atlantic and shortnose sturgeon;
- threats to freshwater mussels;
- impact on vitally important submerged aquatic vegetation;
- impact on ongoing remediation at the site;
- potential to cause PCBs to migrate from the GLC into the tidal Delaware River;  
and
- cumulative effect on the water resources of the Basin when considered in combination with the effects of the Dock 1 Project;

in reaching the conclusion that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan.

67. On July 21, 2020, Hearing Officer Kelly issued his Report of Findings and Recommendations, concluding that DRN had failed to meet its evidentiary burden, and recommending that the Dock 2 Docket remain as previously approved by the Commission. The parties were permitted to respond to the Hearing Officer's findings and recommendations.

68. On September 10, 2020, the Commission resolved to stay its approval of the Dock 2 Project pending the Commission's final determination resolving DRN's administrative appeal, to provide adequate time to review the evidentiary record generated by the hearing.

69. On December 9, 2020, the Commission adopted the findings of the Hearing Officer with modifications and affirmed its June 12, 2019 approval of the Dock 2 Docket in a twenty-five-page opinion.

**COUNT I**

**Abuse of Discretion by Unreasonably Determining That the Dock 2 Project Would Not Substantially Impair or Conflict with the Comprehensive Plan, Contrary to Evidence in the Record**

70. Plaintiffs hereby incorporate the allegations in paragraphs 1 through 69 as if fully stated herein.

71. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to dredging impacts.

72. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to surface and ground water impacts.

73. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to impacts on submerged aquatic vegetation.

74. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to impacts on endangered species, including Atlantic and shortnose sturgeon.

75. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to impacts on state-listed mussel species and/or mussel species of special concern.

76. The Commission's determination that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan was unreasonable, based on the evidence in the record as to the lack of coordination of remediation and redevelopment of the site.



77. In light of the abundance of evidence presented by DRN both in its public comments prior to issuance of the Dock 2 Docket and during the hearing process, and the lack of evidence provided by DRP to support its application, the Commission could not reasonably conclude that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan.

78. Accordingly, the Commission's approval of the Dock 2 Docket was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, and Plaintiffs are entitled to relief.

## **COUNT II**

### **Abuse of Discretion by Failing to Consider the Impacts of the GLC as a Whole in Determining Substantial Impairment or Conflict with the Comprehensive Plan**

79. Plaintiffs hereby incorporate the allegations in paragraphs 1 through 78 as if fully stated herein.

80. By reviewing the Dock 1 Project and the Dock 2 Project separately, considering their effects in isolation, the Commission failed to accurately evaluate the GLC's impact on the Basin.

81. Without considering the impacts of the entire GLC as a single project, the Commission could not reasonably conclude that the Dock 2 Project did not substantially impair or conflict with the Comprehensive Plan.

82. Accordingly, the Commission's approval of the Dock 2 Docket was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, and Plaintiffs are entitled to relief.

**COUNT III**

**Abuse of Discretion by Failing to Adequately Address PCB Contamination Via the Procedures Created to Implement the PCBs TMDL**

83. Plaintiffs hereby incorporate the allegations in paragraphs 1 through 82 as if fully stated herein.

84. The Commission unreasonably concluded that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan despite that DRP's NPDES permits contained no water quality based effluent limitations for PCBs as required to implement Stage 1 of the PCBs TMDL.

85. The Commission unreasonably concluded that the Dock 2 Project would not substantially impair or conflict with the Comprehensive Plan despite an absence of information in the record regarding whether PCB-contaminated point or nonpoint stormwater was impacting the tidal Delaware River.

86. The Commission unreasonably failed to require DRP to prepare a pollutant minimization plan to reduce or prevent releases of PCB-contaminated stormwater, despite that the DuPont Repauno facility had been identified in the PCBs TMDL as a major contributor of PCBs to Zone 4 of the tidal Delaware River.

87. Without evaluating and controlling the PCB impacts of the GLC in accordance with the PCBs TMDL, the Commission could not reasonably conclude that the Dock 2 Project did not substantially impair or conflict with the Comprehensive Plan.

88. Accordingly, the Commission's approval of the Dock 2 Docket was as an abuse of discretion or otherwise not in accordance with law, and Plaintiffs are entitled to relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaratory judgment that the Commission's approval of the Dock 2 Docket was an abuse of discretion without sufficient justification in the administrative record or otherwise not in accordance with all procedures required by law;
2. For injunctive relief enjoining Defendant DRP from taking any action authorized by the Dock 2 Docket until such time that the statutory and regulatory requirements under the Delaware River Basin Compact, Water Code, Water Quality Regulations, and Delaware River Basin Administrative Manual: Rules of Practice and Procedure are complied with in full;
3. For injunctive relief enjoining Defendant the Commission from permitting DRP to proceed with any action authorized by the Dock 2 Docket until such time that the Commission has fully complied with all statutory and regulatory requirements under the Delaware River Basin Compact, Water Code, Water Quality Regulations, and Delaware River Basin Administrative Manual: Rules of Practice and Procedure;
4. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein;
5. For an award of Plaintiffs' costs of litigation, including reasonable attorney's fees;  
and
6. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

Respectfully submitted this 25th day of January, 2021,

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