

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Delaware Riverkeeper Network, and	:	
the Delaware Riverkeeper,	:	
Maya Van Rossum,	:	
Petitioners	:	
	:	
v.	:	
	:	
Pennsylvania Department of	:	
Environmental Protection of the	:	
Commonwealth of Pennsylvania and	:	
Environmental Quality Board of the	:	
Commonwealth of Pennsylvania,	:	No. 285 M.D. 2019
Respondents	:	Heard: July 26, 2021

MEMORANDUM AND ORDER

NOW, July 27, 2021, upon consideration of the Pennsylvania Department of Environmental Protection’s (DEP) and Environmental Quality Board’s (EQB) (collectively, Respondents) Application for Relief in the Nature of a Motion to Dismiss for Mootness (Application) and the Answer filed by Delaware Riverkeeper Network, and the Delaware Riverkeeper, Maya Van Rossum (collectively, Riverkeeper), the Application is hereby DENIED.

In their Application, Respondents assert that DEP has now responded to Riverkeeper’s Rulemaking Petition by recommending a maximum containment level for Perfluorooctanoic Acid, which recommendation was accepted by the EQB on June 15, 2021. Thus, because Riverkeeper seeks “declaratory relief to compel [DEP] to respond to the Rulemaking Petition, and because [DEP] has now responded to the Rulemaking Petition, [Riverkeeper] currently seek[s] declaratory relief to compel [DEP] to do that which it has already done, and this case is now moot.” (Motion to

Dismiss ¶ 11.) In its Answer, Riverkeeper asserts that DEP's response to the Rulemaking Petition has not resolved the controversy of its *delayed* response and a declaratory order from this Court will still meaningfully clarify what Respondents are required to do.

It is well settled that, “[u]nless an actual case or controversy exists at all stages of the judicial or administrative process, this Court will dismiss a case as moot.” *Cytemp Specialty Steel Div., Cyclops Corp. v. Pa. Pub. Util. Comm'n.*, 563 A.2d 593, 596 (Pa. Cmwlth. 1989). It is apparent that, from the inception of this matter, Riverkeeper sought both a response by DEP to the Rulemaking Petition and a declaration from this Court as to whether Respondents have responded appropriately to the Rulemaking Petition. Although DEP has responded to the Rulemaking Petition, the question of whether its response was appropriate remains outstanding. As such, it does not appear that this matter is moot. It is for this reason that the Court denies the Application.



P. Kevin Brobson, President Judge