UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNENVIRONMENT, INC. and THREE RIVERS WATERKEEPER, Plaintiffs, v. BVPV STYRENICS LLC and STYROPEK USA, INC., Defendants.	)	Civil Action No.: 2:23-CV-2067 **COMPLAINT**

INTRODUCTION

1. This is a citizen enforcement suit brought by two non-profit environmental organizations, PennEnvironment, Inc. and Three Rivers Waterkeeper (collectively, "Plaintiffs"), to address the unpermitted discharge of millions of tiny plastic pellets into waters, riverbanks, and sediments in and around Raccoon Creek and the Ohio River in northwest Pennsylvania. Plaintiffs bring suit on behalf of their individual members against BVPV Styrenics LLC ("BVPV"), and its parent company, Styropek USA, Inc. ("Styropek"), to redress and prevent this ongoing violation of the federal Clean Water Act ("CWA" or the "Act").

2. This suit is authorized under Section 505 of the CWA, 33 U.S.C. § 1365, commonly known as the "citizen suit" provision.

3. Since approximately October 2020, Defendant Styropek has owned Defendant BVPV and the expandable polystyrene ("EPS") manufacturing facility ("Styropek Facility" or "Facility") located at 400 Frankfort Road in Monaca, PA.

4. Upon information and belief, both Styropek and BVPV participate in the operation of the Facility.

5. The Styropek Facility manufactures EPS plastic resins in the form of beads, which are often referred to as "nurdles." The nurdles are small, rigid spheres that measure up to 3 millimeters in diameter. Styropek's customers eventually expand the nurdles into a moldable foam, colloquially referred to as "Styrofoam," which is used in products such as coffee cups, coolers, and packing materials.

6. Defendants discharge wastewater from the Facility into the Ohio River and into Raccoon Creek, a tributary to the Ohio River. Defendants also discharge stormwater from the Facility into Raccoon Creek.

7. Dischargers of industrial wastewater and stormwater, like Defendants, must comply with permits issued under the National Pollutant Discharge Elimination System ("NPDES"), a federal program established in Section 402 of the Act, 33 U.S.C. § 1342. In Pennsylvania, the NPDES program is administered by the Pennsylvania Department of Environmental Protection ("Pennsylvania DEP"), subject to the oversight and ultimate authority of the U.S. Environmental Protection Agency ("USEPA").

8. An NPDES discharge permit, which is required by federal law to meet certain specified criteria, identifies allowable pollutants, contains limits on the discharge of those pollutants, and often imposes other requirements intended to reduce the impacts of a facility's discharge on the quality of receiving waters.

9. The discharge of any pollutant that is not specifically authorized by an NPDES permit is prohibited under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

10. The discharge of any pollutant in ways that violate an NPDES permit requirement is prohibited by Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. BVPV has been issued an NPDES permit (No. PA0006254) for the Styropek Facility ("Styropek Permit" or "Permit").

12. Wastewater and stormwater discharged by the Styropek Facility into Raccoon Creek and the Ohio River routinely contains small plastic nurdles. These nurdles are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), because they are discarded and are chemical, solid, and industrial wastes. The Permit does not authorize the discharge of nurdles in the Facility's wastewater or stormwater, and Defendants have thereby violated, and continue to violate, the CWA prohibition against discharging pollutants that are not specifically authorized by the Permit.

13. The routine, unpermitted discharge of nurdles from the Styropek Facility has also resulted in, and will continue to result in, violations of two requirements in the Permit that are intended to protect Raccoon Creek and the Ohio River. Each violation of these NPDES permit requirements is a violation of the CWA.

14. Defendants will continue to violate the CWA after the date this Complaint is filed.

15. Plaintiffs intend this action to encompass both pre- and post-Complaint violations of the types alleged herein.

16. Plaintiffs and their individual members place a high value on the health and quality of Raccoon Creek and its surroundings and on the health and quality of the Ohio River. They are concerned about the impacts of the nurdles discharged from the Styropek Facility on the health and safety of the creek, the river, and the animal and plant life that live on or in these waterways and their surroundings. Plaintiffs' members' use and enjoyment of Raccoon Creek and the Ohio River are adversely affected by the CWA violations described herein.

17. Neither the federal government nor the Commonwealth of Pennsylvania has taken action sufficient to prevent Styropek and BVPV from violating the Act in the past, or to prevent future violations.

CITIZEN ENFORCEMENT UNDER THE CWA

18. The objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA prohibits the discharge of any pollutant from a point source into navigable waters except as authorized by a NPDES permit applicable to that point source. 33 U.S.C. §§ 1311(a) and 1342.

19. The CWA authorizes citizens who are affected by such violations to commence an enforcement action in federal court against any "person," including partnerships and corporations, alleged to be in violation of "an effluent standard or limitation." 33 U.S.C. § 1365(a). By definition, a violation of an "effluent standard or limitation" includes (a) an unlawful act under 33 U.S.C § 1311(a) and (b) a violation of any condition or requirement of an NPDES permit. 33 U.S.C. § 1365(f).

20. The CWA authorizes the plaintiffs in such citizen enforcement suits to seek injunctive relief, civil penalties payable to the United States, and their costs of litigation. 33 U.S.C § 1365(a) & (d).

21. To facilitate citizen oversight of water pollution and to encourage the filing of citizen enforcement suits, the CWA requires dischargers to monitor their pollution discharges and makes the resulting discharge monitoring data available to the public. 33 U.S.C. § 1318.

PARTIES

PennEnvironment

22. PennEnvironment, Inc. ("PennEnvironment") is a non-profit Pennsylvania corporation with approximately 7,000 members.

23. PennEnvironment is a "person" within the meaning of 33 U.S.C. § 1362(5), which defines "person" under the CWA to include "corporation."

24. PennEnvironment advocates for clean air, clean water, and the preservation of Pennsylvania's natural resources. PennEnvironment's advocacy includes efforts to protect and preserve the Ohio River watershed.

25. Among other activities in pursuit of these goals, PennEnvironment researches and distributes analytical reports on environmental issues, advocates before legislative and administrative bodies, conducts public education and membership recruitment campaigns (door to door, over the phone, via social media, and by direct mail), and pursues public interest litigation on behalf of its members.

26. PennEnvironment has members who live, work, or recreate in, on, or near Raccoon Creek and the Ohio River, in close proximity to the Facility.

27. PennEnvironment brings this suit on behalf of its members who are adversely affected by the unpermitted discharge of nurdles from the Styropek Facility into Raccoon Creek and the Ohio River. They are reasonably concerned that the CWA violations described herein are harming fish and other aquatic life, and this lessens their enjoyment of both Raccoon Creek and the Ohio River. Some of these members use these waterbodies less than they otherwise would because of these violations.

Three Rivers Waterkeeper

28. Three Rivers Waterkeeper is a non-profit Pennsylvania corporation with approximately 600 members, including 150 active volunteers.

29. Three Rivers Waterkeeper is a "person" within the meaning of 33 U.S.C. § 1362(5), which defines "person" under the CWA to include "corporation."

30. Three Rivers Waterkeeper advocates for drinkable, fishable, swimmable water in the Monongahela, Allegheny, and Ohio Rivers, as well as their respective watersheds.

31. In pursuit of its organizational goals, Three Rivers Waterkeeper staff and members patrol and monitor the Ohio River and its tributaries for pollution and use advanced water-sampling technologies to collect baseline water quality data and to conduct water quality analyses. Through outreach programs, the organization educates community members about watersheds, clean water laws, and water quality issues, and trains community members to spot and report pollution.

32. Three Rivers Waterkeeper has members who live, work, or recreate in, on, or near Raccoon Creek and the Ohio River, in close proximity to the Facility.

33. Three Rivers Waterkeeper brings this suit on behalf of its members who are adversely affected by the unpermitted discharge of nurdles from the Styropek Facility into Raccoon Creek and the Ohio River. They are reasonably concerned that the CWA violations described herein are harming fish and other aquatic life, and this lessens their enjoyment of both Raccoon Creek and the Ohio River. Some of these members use these waterbodies less frequently than they otherwise would because of these violations.

BVPV Styrenics LLC and Styropek USA, Inc.

34. BVPV is a limited liability company formed in Delaware on July 15, 2020.

35. BVPV is a "person" within the meaning of 33 U.S.C. § 1362(5), which defines "person" under the CWA to include "partnership" and "corporation."

36. BVPV manufactures EPS nurdles at the Facility.

37. BVPV operates the Facility.

38. BVPV owns the Facility.

39. For at least 20 years prior to the formation of BVPV, NOVA Chemicals, Inc. ("NOVA Chemicals") operated and owned the Facility.

40. NOVA Chemicals formed BVPV as a subsidiary to facilitate the sale of its EPS business. NOVA Chemicals transferred ownership of the Styropek Facility, along with all other assets associated with its EPS business, to BVPV upon BVPV's formation in July 2020.

41. The Foreign Registration Statement filed by BVPV with the Pennsylvania Department of State on August 7, 2020, shows BVPV shared NOVA Chemicals' principal office (1555 Coraopolis Heights Road, Moon Township, Pennsylvania) and general counsel (Byron C. Romain).

42. Styropek is a corporation incorporated in Delaware and with its principal place of business in Houston, Texas.

43. Styropek is a "person" within the meaning of 33 U.S.C. § 1362(5), which defines "person" under the CWA to include "corporation."

44. On October 30, 2020, Styropek acquired a 100% interest in BVPV (including the Styropek Facility) from NOVA Chemicals.

45. Styropek also operates the Facility. Styropek employees hold supervisory roles at the Facility and communicate with third parties, including Pennsylvania DEP, regarding environmental compliance at the Facility. Styropek publishes technical data sheets for all products manufactured at the Facility, provides instructions for product storage, handling, production, and recycling to customers, and makes Styropek staff available to answer questions regarding the same.

46. Styropek owns the Facility through its ownership of BVPV.

47. Along with its foreign affiliates, Styropek describes itself as the "North America leader in the EPS (Expandable Polystyrene) industry and the largest EPS producer in the American Continent."[1]

48. Styropek is part of the Alpek Group, which identifies itself as "the largest petrochemical company in America." In 2022, Alpek reported $10.555 billion in total revenue, including $2.321 billion from its Plastics & Chemicals segment.[2] It operates 35 plants in nine countries, including EPS plants in the United States, Mexico, Argentina, Brazil, and Chile.

JURISDICTION, VENUE, AND NOTICE

49. This Court has subject matter jurisdiction over this action pursuant to 33 U.S.C. § 1365(a)(1) (the CWA citizen suit provision) and 28 U.S.C. § 1331.

50. Venue lies in this District under 33 U.S.C. § 1365(a)(1) because the Facility is located within this District.

51. Pursuant to 28 U.S.C. § 2201(a), this Court may issue a declaratory judgment finding that Defendants Styropek and BVPV violated the Permit and the CWA, and determining the number of days of violations Defendants have committed.

52. On October 3, 2023, counsel for PennEnvironment and Three Rivers Waterkeeper mailed a letter (the "Notice Letter," a copy of which is attached as **Exhibit 1** and is incorporated by reference herein) by certified mail, return receipt requested, to the following, each of whom received the Notice Letter:

a. The Manufacturing Leader of BVPV Styrenics LLC at the Facility, Tim Ford. A copy of the return receipt for Mr. Ford is attached as part of **Exhibit 2**.

[1] https://styropek.com, accessed on November 30, 2023.

[2] https://www.alpek.com/wp-content/uploads/2023/03/Alpek-Annual-Report-2022.pdf, accessed on November 30, 2023.

b. The President of Styropek USA, Inc., David Berkowitz. A copy of the return receipt for Mr. Berkowitz is attached as part of **Exhibit 2**.

c. CT Corporation System, the registered agent for BVPV Styrenics LLC. A copy of the return receipt for CT Corporation System is attached as part of **Exhibit 2**.

d. CT Corporation System, the registered agent for Styropek USA, Inc. A copy of the return receipt for CT Corporation System is attached as part of **Exhibit 2**.

e. The Administrator of the USEPA, Michael S. Regan. A copy of the return receipt for the Administrator is attached as part of **Exhibit 2**.

f. The Regional Administrator for Region 3 of the USEPA, Adam Ortiz. A copy of the U.S. Postal Service confirmation of delivery to the Regional Administrator is attached as part of **Exhibit 2**.

g. The Secretary of the Pennsylvania DEP, Rich Negrin. A copy of the return receipt for the Secretary is attached as part of **Exhibit 2**.

45. The Notice Letter satisfies the CWA's pre-suit notice requirements, as set forth in 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3.

46. PennEnvironment and Three Rivers Waterkeeper filed this Complaint more than 60 days after the mailing of the Notice Letter, as required by 33 U.S.C. § 1365(b)(1)(A). For the purpose of the Act's 60-day notice requirement, the Notice Letter was served on October 3, 2023, the date on which it was sent via certified mail, return receipt requested. 40 C.F.R. § 135.2(c).

47. PennEnvironment and Three Rivers Waterkeeper will serve a copy of this Complaint on the U.S. Attorney General and the Administrator of the USEPA, pursuant to 33 U.S.C. § 1365(c)(3).

48. As of the time of filing of this Complaint, neither USEPA nor Pennsylvania DEP has commenced or is diligently prosecuting a civil or criminal action against Styropek and/or

BVPV in a court of the United States or a state to require compliance with any of the CWA provisions or NPDES permit provisions Plaintiffs allege are being violated at the Facility.

49. As of the date of service of the Notice Letter, neither USEPA nor Pennsylvania DEP had begun an administrative action to assess a penalty against Styropek and/or BVPV for any of the violations set forth in the Notice Letter.

FACTUAL BACKGROUND

The Facility

50. The Facility is located at 400 Frankfort Road in Monaca, PA.

51. The Facility sits at the confluence of Raccoon Creek and the Ohio River. As depicted in a satellite image from the Facility's NPDES permit renewal Fact Sheet, Raccoon Creek abuts the eastern edge of the property and the Ohio River abuts the northwestern edge. The Facility itself is labeled "NOVA Chemicals" in the satellite image.

52. Operations at the Facility include the manufacture of EPS and other specialty plastic resins from styrene monomer and other raw materials. The plastic resins manufactured at the Facility take the form of small beads (nurdles).

53. The plastic resin nurdles manufactured at the Facility are intended for later processing at other facilities that will subject them to a molding process during which the nurdles expand to up to 50 times their original size. When expanded, the nurdles are composed of 95% to 98% air and 2% to 5% polystyrene.

54. The Facility has an annual production capacity of 123,000 tons of EPS nurdles.

55. According to Technical Data Sheets published by Styropek and made available on its website, the Facility manufactures more than ten distinct EPS products. Each EPS product is a variety of plastic resin, in the form of a nurdle, with specific properties that make it suitable for conversion by Styropek customers into certain types of end products, such as food packaging (e.g., take-out containers, ice-cream containers, labeled and printed cups, noodle bowls), shipping materials (e.g., protective packaging, food boxes, fish boxes), or construction materials (e.g., concrete forms, block insulation, sheathing). The sizes of the EPS nurdles manufactured at the Facility vary across product lines, ranging from approximately 0.3 millimeters ("mm") in diameter to 2.5 mm in diameter.

56. The Facility also has an annual production capacity of 36,000 tons of "ARCEL" nurdles. ARCEL is the trademarked name for a specialty type of EPS copolymer. Styropek advertisements tout its use in protective packaging for high-end products like electronics.

57. According to Technical Data Sheets published by Styropek and made available on its website, the Facility manufactures six distinct ARCEL products. The ARCEL products

manufactured at the Facility are sold as nurdles ranging in size from 0.7 mm in diameter to 2.5 mm in diameter. They are white or "natural" in color.

58. The Facility discharges treated process wastewaters generated from organic chemical manufacturing (i.e., production of EPS nurdles and ARCEL nurdles), non-contact cooling water, treated sanitary wastewaters, stormwater, and excess raw water from the Facility's cooling water intake structure. These discharges flow into Raccoon Creek and the Ohio River through Outfalls 001, 002, 020, 021, and 025. Additional outfalls discharge potable water and river water used to clean intake screens.

59. Process wastewater generated from the Facility's organic chemical manufacturing (i.e., production of EPS nurdles and ARCEL nurdles) is combined with treated sanitary wastewater. It then undergoes treatment at the Facility's wastewater treatment plant to remove certain pollutants before it is discharged into Raccoon Creek through Outfall 002.

60. When operating as designed, the wastewater treatment plant treats the process wastewater using carbon adsorption (for certain production lines) and lime addition before the wastewater is directed to a mix pit. There, a cationic coagulant and an anionic polymer are added. The wastewater is then treated at a clarifier, sedimentation basin, aeration lagoon, and quiescent lagoon. Finally, the wastewater receives an anti-foam addition and passes through a step aerator before it is discharged from Outfall 002.

61. Outfall 002 is an underwater outfall located along the bed of Raccoon Creek. It discharges wastewater below the surface of Raccoon Creek approximately six feet from shore.

62. Outfall 002 has an anticipated average flow rate of 1.543 million gallons per day.

63. Outfall 002 is a "point source" as defined in 33 U.S.C. § 1362(14).

64. Stormwater runoff from the Facility is discharged into Raccoon Creek through three permitted outfalls, numbered 020, 021, and 025.

65. Outfall 020 discharges stormwater drainage from 11 acres of parking and administration areas. Outfall 021 and Outfall 025 discharge stormwater drainage from a 1-acre portion and a 2-acre portion of the manufacturing plant, respectively. Each of these outfalls discharges into Raccoon Creek upstream of Outfall 002, at the locations depicted in the satellite image in paragraph 51, above.

66. Outfall 020, Outfall 021, and Outfall 025 are all "point sources" as defined in 33 U.S.C. § 1362(14).

67. The wastewater discharged into Raccoon Creek and the Ohio River is also known as the Facility's "effluent."

The Facility's NPDES Permit Limits

68. Once issued, NPDES permits generally are effective for five years. They may be modified during the five-year term and must be re-issued upon expiration.

69. The current version of the Styropek Permit (No. PA0006254-3) was issued on July 16, 2019, became effective on August 1, 2019, and was most recently modified on July 30, 2021. A copy is attached as **Exhibit 3**.

70. The Styropek Permit expires on July 31, 2024.

71. The previous version of Styropek Permit was issued on December 27, 2001, and went into effect on February 1, 2002 ("2002 Permit"). Through an administrative extension from Pennsylvania DEP, the 2002 Permit remained in effect until it was superseded by the current Styropek Permit on August 1, 2019.

72. The current Styropek Permit and the 2002 Permit (and all amended versions thereof) govern wastewater and stormwater discharges from the Facility to Raccoon Creek and the Ohio River during the time period covered by this lawsuit.

73. The current Styropek Permit and the 2002 Permit (and all amended versions thereof) state in Part B.II.A and Part B.2.a, respectively, "Any person violating Sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act or any permit condition or limitation implementing such sections in a permit issued under Section 402 of the Act is subject to civil, administrative and/or criminal penalties as set forth in 40 CFR 122.41(a)(2)."

74. The "Additional Requirements" section of the current Styropek Permit (and all amended versions thereof) prohibits the Styropek Facility from discharging the following:

- "floating solids, scum, sheen or substances that result in observed deposits in the receiving water," at Section A(1); and
- "substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life," at Section A(3).

Discovery and Documentation of Nurdle Discharges from the Facility

Discovery and Documentation by Environmental Groups

75. As part of Three Rivers Waterkeeper's efforts to quantify plastic pollution in the region, in February 2022 the group joined with Mountain Watershed Association, another non-profit environmental group, to conduct monthly physical surveys, or "nurdle patrols," of the Ohio River.

76. The nurdle patrols are conducted using a skiff, from which staff collect samples of floating debris from the water's surface using a "manta trawl" that incorporates a 300-micron net. During patrols, the groups also gather photographic evidence and collect soil and sediment samples. Evan Clark, who holds the position of Waterkeeper at Three Rivers Waterkeeper, leads the patrols, often assisted by staff and members of the groups.

77. The monthly nurdle patrols initially focused on a segment of the Ohio River flowing past the Shell Polymers Plant, an "ethane cracker" facility located on a sprawling 384-acre tract of riverside property. The facility manufactures polyethylene nurdles that are used to create a large variety of plastic products. The first nurdle patrols sought to gather baseline data on nurdle concentrations in the Ohio River before the new Shell Polymers Plant became operational.

78. The Styropek Facility is immediately downstream of the Shell Polymers Plant along the Ohio River.

79. During a patrol on September 6, 2022, staff from Three Rivers Waterkeeper and Mountain Watershed Association detected particularly small nurdles near the mouth of Raccoon Creek. During subsequent patrols on September 20 and October 3, 2022, the groups found these uniquely sized nurdles in increasing concentrations up Raccoon Creek, including on the water's surface and on shoreline vegetation.

80. On October 12, 2022, staff from the two groups observed nurdles drifting in Raccoon Creek in the immediate vicinity of Outfall 002. By positioning the skiff immediately above Outfall 002, they confirmed that nurdles were actively emerging from the underwater outfall and floating to the surface of Raccoon Creek. Similar nurdles were observed on the water's surface and coating shoreline vegetation.

81. On ten subsequent monthly nurdle patrols conducted from October 2022 through August 2023, staff from the two groups visited Raccoon Creek in the immediate vicinity of Outfall 002. On all but one of these patrols (December 6, 2022), they detected nurdles in the water in the immediate vicinity of Outfall 002. A summary of findings and samples from these patrols is set forth in Table 1 to the Notice Letter (**Exhibit 1**).

82. Staff from Three Rivers Waterkeeper and Mountain Watershed Association have conducted three additional nurdle patrols that are not summarized in the Notice Letter sent on

October 3, 2023. On each of those patrols – conducted on September 6, October 4, and November 3, 2023 – they detected nurdles in the water in the immediate vicinity of Outfall 002.

83. Nurdles released from the Facility persistently accumulate at various locations on the surface of Raccoon Creek and frequently collect on aquatic vegetation in the creek and along the shore. The groups have also found them in Raccoon Creek sediments. Photographs depicting nurdle accumulation on vegetation near Outfall 002 are attached as **Exhibit 4**.

Reports Made to Pennsylvania DEP and Styropek

84. In September 2022, Three Rivers Waterkeeper filed a report with Pennsylvania DEP describing its discovery of nurdles downstream of the Shell Polymers Plant.

85. In October 2022, Three Rivers Waterkeeper submitted an oral complaint to Pennsylvania DEP identifying the Styropek Facility as the likely source of the nurdles.

86. In October 2022, Three Rivers Waterkeeper staff brought an officer from the Pennsylvania Fishing & Boat Commission to Raccoon Creek to view nurdle discharges from Outfall 002.

87. On November 14, 2022, Heather Hulton Van Tassel, Executive Director of Three Rivers Waterkeeper, notified Styropek that the group had found "small plastics coming out of your outfall #2 along Raccoon Creek in Pennsylvania" and that "[p]ollution incidents have been occurring since September and continue." She disclosed that Three Rivers Waterkeeper had submitted complaints to Pennsylvania DEP, and asked Styropek to investigate and end the nurdle releases.

88. On December 1, 2022, Styropek responded, in part, that "[o]ur sampling and testing since September have indicated that our discharges from this Outfall remain compliant with our permit."

Documentation by Pennsylvania DEP

89. On December 13, 2022, Pennsylvania DEP personnel conducted a boat survey of several locations at the Styropek Facility and Raccoon Creek. According to a Pennsylvania DEP General Inspection Report issued the following week (see below), Pennsylvania DEP personnel found nurdles in Raccoon Creek and on the bank of Raccoon Creek in the vicinity of Outfall 002. They also found nurdles in the vicinity of stormwater Outfall 025, including "throughout the soil" in an excavated area.

90. On December 21, 2022, Pennsylvania DEP conducted a general inspection of the Facility. Nurdles were again identified near Outfalls 002 and 025. Fugitive nurdles were found in other locations throughout the Facility, including along the bank of the aeration lagoon and in neighboring cattail vegetation, along the banks of the settling basin, and on paved areas. A copy of the December 2022 Pennsylvania DEP General Inspection Report (with photographs) is attached as **Exhibit 5**.

91. On December 23, 2022, Pennsylvania DEP issued a Notice of Violation to BVPV Styrenics regarding violations found during the general inspection on December 21, 2023. Violations included "[d]ischarge of floating materials, scum, sheen, foam, oil, grease, or substances that produced an observable change or resulted in deposits in receiving waters."

92. The Notice of Violation was not the commencement of an enforcement action, and no enforcement action has since been initiated for the violations described in the Notice of Violation or for any other CWA violations at the Facility.

93. On January 17, 2023, Pennsylvania DEP conducted another general inspection of the Facility. Nurdles were again identified near Outfall 002. Nurdles were also "visible in the soil" at stormwater Outfalls 021 and 025. Additional nurdles visible on the road and gravel areas of Facility grounds had been marked by Styropek staff with an orange traffic cone for eventual

cleanup. A copy of the January 2023 Pennsylvania DEP General Inspection Report (with photographs) is attached as **Exhibit 6**.

Documentation by Styropek

94. In a letter to Pennsylvania DEP on December 16, 2022, Styropek disclosed that it had retained an environmental consultant to conduct a site visit on December 14 and 15, and that the company "identified the presence of plastic beads along a portion of Raccoon Creek, consistent with PADEP and Three Rivers Waterkeeper observations." The company further stated that "[s]ome of the plastic beads observed appear to be consistent with the size and nature of the material we manufacture and process."

95. In an email to Three Rivers Waterkeeper on January 6, 2022, Styropek corrected its previous statement (described in paragraph 88, above) that it was not discharging plastic beads into Raccoon Creek. It confirmed that Pennsylvania DEP "found that plastic beads are present in Raccoon Creek" during its December inspection. Styropek further stated, "[a]round the same time, Styropek conducted routine (semi-annual) sampling of stormwater effluent (discharged via a different outfall than #002), which indicated the presence of plastic beads."

96. Following receipt of the December 2022 Notice of Violation, Styropek has submitted three quarterly progress reports to Pennsylvania DEP acknowledging its need to stop unpermitted nurdle discharges from the Facility (which Styropek refers to as "alleged discharge violations") via Outfall 002 and its stormwater Outfalls 020, 021, and 025.

THE POLLUTANTS DISCHARGED BY DEFENDANTS ARE HARMFUL

97. Plastic pollution is an international problem. Each year, billions or even trillions of tiny, lightweight nurdles like those manufactured at the Styropek Facility make their way into aquatic environments through drains and watercourses. A 2016 scoping study estimated that

each year up to 53 billion nurdles are released into the environment in the United Kingdom alone.[3]

98. Even if composed of purportedly non-toxic materials, nurdles act as "toxic sponges," attracting hydrophobic chemical toxins and transporting them throughout aquatic environments.[4]

99. Nurdles discharged by the Styropek Facility are similar in size, shape, and color to fish eggs and other foundational elements of the food chain in Raccoon Creek and the Ohio River. Hundreds of fish species are known to ingest such plastics in marine settings.[5]

100. The nurdles manufactured at the Styropek Facility meet the definition of "microplastics" because they are plastic pieces that are less than 5 mm in length.

101. Exposure to microplastics causes a variety of health issues in fish, including tissue damage, oxidative stress, and neurotoxicity, and cause fish to suffer growth retardation and behavioral abnormalities.[6]

102. Microplastics inadvertently ingested by fish can enter the food chain of humans and other animals.[7]

103. The segment of the Ohio River adjacent to the Styropek Facility has been classified by the Commonwealth of Pennsylvania as an impaired waterway pursuant to section

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[3] *See, e.g.,* FIDRA, Study to quantify plastic pellet loss in the UK (Report Briefing) (https://www.nurdlehunt.org.uk/images/Leaflets/Report_briefing.pdf)

[4] Mato, et al. (2000). Resin Pellets as a Transport Medium for Toxic Chemicals in the Environment, *Environmental Science & Technology 35*(2), 318-324. (https://pubs.acs.org/doi/abs/10.1021/es0010498)

[5] Savoca, et al. (2021). Plastic ingestion by marine fish is widespread and increasing. *Global Change Biology, 27*(10), 2188-2199. (https://onlinelibrary.wiley.com/doi/10.1111/gcb.15533)

[6] Bhuyan, Simul (2022). Effects of Microplastics on Fish and in Human Health, *Frontiers in Environmental Science, 2022*(10). (https://www.frontiersin.org/articles/10.3389/fenvs.2022.827289)

[7] United Nations Environment Programme (2018). Single-Use Plastics: A Roadmap for Sustainability (Rev. ed., Chapter 2, p. 14) (unep.org/resources/report/single-use-plastics-roadmap-sustainability)

304(*l*) of the CWA, 33 U.S.C. § 1314(*l*). It has a use impairment for fish consumption due to PCBs, chlordane, and dioxins. Although the Facility does not discharge these pollutants, they may be adsorbed onto the surface of the nurdles discharged by the Facility. And the nurdles can be mistaken for food by fish and pose health risks to those fish if ingested. Any discharge of pollutants that compounds an existing impairment of the Ohio River is a matter of concern and contributes to the water quality degradation of the Ohio River.

DEFENDANTS' VIOLATIONS OF THE CLEAN WATER ACT

COUNT I:
Unpermitted Pollutant Discharges from Outfall 002

104. Paragraphs 1 through 103 are re-alleged and incorporated by reference herein.

105. The addition of a pollutant from a point source to a water of the United States is prohibited under Section 301(a) of the CWA, 33 U.S.C. § 1311(a), unless it is specifically authorized by an NPDES permit.

106. Every nurdle that is manufactured at the Facility and discharged in the effluent of the Facility is a pollutant under Section 502(6) of the CWA, 33 U.S.C. § 1362(6). Such nurdles qualify as pollutants because they are discarded by Styropek with its effluent, and are thus "solid waste, ... chemical wastes, ... and industrial ... waste discharged into water." *Id.*

107. Defendants add nurdles to Raccoon Creek on a regular basis through Outfall 002, and some of these nurdles make their way downstream to the Ohio River. Both Raccoon Creek and the Ohio River are waters of the United States within the meaning of the CWA.

108. The Styropek Permit does not authorize the Facility to discharge nurdles from Outfall 002. Defendants have never disclosed to the Pennsylvania DEP, as part of a permit application or as part of a permit renewal, that the Facility discharges nurdles or seeks authorization to discharge nurdles from Outfall 002.

109. Each discharge of a nurdle from the Styropek Facility through Outfall 002 is a violation of the CWA.

110. On each day that a nurdle is discharged from the Facility through Outfall 002, Defendants commit one day of violation of the CWA.

111. The monthly nurdle patrols conducted by Three Rivers Waterkeeper on the portion of Raccoon Creek adjacent to Outfall 002 beginning in September 2022 establish that the Styropek Facility routinely discharges significant quantities of nurdles through Outfall 002 into Raccoon Creek.

112. Three Rivers Waterkeeper staff have observed evidence of nurdle discharges from Outfall 002 during 12 of the 13 patrols conducted to date. Such nurdle patrols last less than half an hour, covering less than 5% of the 24 hours per day that the Facility discharges pollutants into Raccoon Creek through Outfall 002.

113. Every inspection of the Facility conducted by Pennsylvania DEP since it first received complaints of nurdle discharges has confirmed that nurdles were present in Raccoon Creek near Outfall 002.

114. An environmental consultant retained by Styropek similarly confirmed that nurdles were present in Raccoon Creek near Outfall 002 during its initial site visit, and Styropek staff have subsequently confirmed that nurdles are discharged from Outfall 002 into Raccoon Creek.

115. All available evidence indicates that nurdles are discharged from Outfall 002 into Raccoon Creek on a daily basis. Plaintiffs therefore allege that during the period from October 3, 2018 (the beginning of the statute of limitation period for this case) through the present, Defendants violated the CWA's prohibition against unpermitted discharges of pollutants from Outfall 002 on each day that the Facility operated.

116. The violations are ongoing. Plaintiffs are unaware of any change to operations or treatment technology at the Facility sufficient to enable the Facility to stop violating the CWA prohibition against the unpermitted discharge of nurdles from Outfall 002. This action addresses all such violations occurring after those described in the Notice Letter and after the filing of this Complaint.

COUNT II:
Unpermitted Pollutant Discharges from Outfalls 020, 021, and 025

117. Paragraphs 1 through 116 are re-alleged and incorporated by reference herein.

118. The Styropek Permit authorizes the Facility to discharge variable amounts of stormwater into Raccoon Creek through stormwater outfalls designated Outfall 020, Outfall 021, and Outfall 025.

119. Defendants add nurdles to Raccoon Creek through Outfalls 020, 021, and 025, and some of these nurdles make their way downstream to the Ohio River.

120. The Styropek Permit does not authorize the Facility to discharge nurdles through Outfall 020, Outfall 021, or Outfall 025. Defendants have never disclosed to the Pennsylvania DEP, as part of a permit application or as part of a permit renewal, that the Facility discharges nurdles or seeks authorization to discharge nurdles from Outfall 020, Outfall 021, or Outfall 025.

121. Each discharge of nurdles from the Styropek Facility through Outfall 020, Outfall 021, or Outfall 025 is a separate violation of the CWA.

122. On each day that a nurdle is discharged from the Facility through Outfall 020, Outfall 021, or Outfall 025, Defendants commit one day of violation under the CWA for each outfall from which a nurdle is discharged, for as many as three days of violation per calendar day among these outfalls.

123. Pennsylvania DEP Inspection Reports from December 2022 and January 2023 document the presence of loose nurdles at numerous locations at the Facility from which stormwater flows to one of the three stormwater outfalls, including on pavement and "throughout the soil" near stormwater Outfall 025 (December 2022), and on the road, in gravel areas, and "visible in the soil at the stormwater outfalls" (January 2023).

124. In an email to Three Rivers Waterkeeper on January 6, 2023, Styropek personnel acknowledged that in mid-December 2022, Styropek "conducted routine (semi-annual) sampling of stormwater effluent (discharged via a different outfall than #002), which indicated the presence of plastic beads."

125. Plaintiffs are not presently able to determine each date during the period from October 3, 2018 (the beginning of the statute of limitation period for this case) to the present on which the Facility has discharged stormwater through Outfall 020, Outfall 021, and Outfall 025.

126. All available evidence indicates that nurdles are transported with stormwater and discharged from Outfall 020, Outfall 021, and Outfall 025 into Raccoon Creek on each occasion that rainfall results in a stormwater system discharge. Plaintiffs therefore allege that during the period from October 3, 2018, through the present, Defendants violated the CWA's prohibition against unpermitted discharges of pollutants at Outfall 020, Outfall 021, and Outfall 025 on each day that stormwater was discharged from each of those outfalls.

127. The violations are ongoing. Plaintiffs are unaware of any change to operations or treatment technology at the Facility sufficient to enable the Facility to stop violating the CWA prohibition against the unpermitted discharge of nurdles from Outfall 020, Outfall 021, and Outfall 025. This action addresses all such violations occurring after those described in the Notice Letter and after the filing of this Complaint.

COUNT III:
Violations of the Permit's Prohibition Against Floating Solids and Observable Deposits

128. Paragraphs 1 through 127 are re-alleged and incorporated by reference herein.

129. Section A(1) of the Styropek Permit prohibits the Facility from discharging "floating solids, scum, sheen or substances that result in observed deposits in the receiving water."

130. The discharge of any pollutant in ways that violate an NPDES permit requirement is prohibited by Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

131. The nurdles discharged by the Facility to Raccoon Creek are "floating solids" and "substances that result in observed deposits in the receiving waters" within the meaning of Section A(1) of the Styropek Permit.

132. Since September 2022, the environmental groups, Pennsylvania DEP inspectors, Styropek staff, and a contractor retained by Styropek have all observed floating nurdles and deposits of nurdles in Raccoon Creek.

133. Participants in the Three Rivers Waterkeeper nurdle patrols have observed nurdles literally "bubbling up" to the surface of Raccoon Creek from Outfall 002, where they then float along the surface of the creek and collect on the water, in sediments, on the creek banks, and on bordering vegetation as observed deposits.

134. On each date that nurdles are discharged from the Facility through Outfall 002, the discharged nurdles constitute floating solids and contribute to observable deposits in and along Raccoon Creek. Each such discharge violates Section A(1) of the Styropek Permit, and constitutes one additional day of violation of the CWA.

135. On each date that nurdles are discharged from the Facility through Outfall 020, Outfall 021, or Outfall 025, the discharged nurdles constitute floating solids and contribute to

observable deposits in and along Raccoon Creek. Each such discharge violates Section A(1) of the Styropek Permit, and constitutes one additional day of violation of the CWA at each outfall.

136. The violations are ongoing. Plaintiffs are unaware of any changes to operations or treatment technology at the Facility sufficient to prevent nurdles from being discharged from Outfall 002, Outfall 020, Outfall 021, or Outfall 025, or to prevent such discharges from adding floating solids and observable deposits to Raccoon Creek. This action addresses all such violations occurring after those described in the Notice Letter and after the filing of this Complaint.

COUNT IV:
Violations of the Permit's Prohibition Against Discharging Substances in Harmful Amounts

137. Paragraphs 1 through 136 are re-alleged and incorporated by reference herein.

138. Section A(3) of the Styropek Permit prohibits the Facility from discharging "substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life."

139. The discharge of any pollutant in ways that violate an NPDES permit requirement is prohibited by Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

140. Nurdles discharged from Outfall 002 rise through the water and float on the surface of Raccoon Creek. Nurdles discharged from Outfalls 020, 021, and 025 are discharged directly to the surface of Raccoon Creek. These nurdles are available to be ingested by fish and other aquatic life, both in Raccoon Creek and further downstream in the Ohio River.

141. Nurdles discharged from the Facility infiltrate the root systems of aquatic plants in Raccoon Creek and cover the leaves of aquatic vegetation in and around the creek. Such nurdles are available to be ingested by fish and other aquatic life, as well as birds and land-based animals.

142. Nurdles discharged from the Facility are present in observable concentrations in the bed of Raccoon Creek near Outfall 002. Such nurdles will not degrade and will remain a persistent

component of the sediment and silt until they are released to the water above, which may happen during storms, periods of high or low flow, or through physical manipulation or disturbances of the riverbed.

143. Nurdles present on the surface of Raccoon Creek and in surrounding vegetation and sediment act as "toxic sponges," and attract to their surface any hydrophobic chemical toxins present in Raccoon Creek. The long history of heavy industrialization along Raccoon Creek makes it likely that such toxic materials are present in the water and sediments.

144. Each additional discharge of nurdles from the Facility through Outfall 002 compounds the risk to human, animal, and plant life posed by the previously released nurdles present in the water, sediments, and aquatic vegetation of Raccoon Creek and further downstream in the Ohio River. Defendants thereby violate Section A(3) of the Styropek Permit and commit one additional day of violation of the CWA each day that nurdles are discharged from Outfall 002.

145. Each additional discharge of nurdles from the Facility through Outfall 020, Outfall 021, or Outfall 025 compounds the risk to human, animal, and plant life posed by the previously released nurdles present in the water, sediments, and aquatic vegetation of Raccoon Creek and further downstream in the Ohio River. Defendants thereby violate Section A(3) of the Styropek Permit and commit one additional day of violation of the CWA each day that nurdles are discharged from each of Outfalls 020, 021, and 025.

146. The violations are ongoing. Plaintiffs are unaware of any changes to operations or treatment technology at the Facility sufficient prevent nurdles from being discharged from Outfall 002, Outfall 020, Outfall 021, and Outfall 025 in concentrations or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life in Raccoon Creek and the Ohio River. This action addresses all such violations occurring after those described in the Notice Letter and after the filing of this Complaint.

PLAINTIFFS' MEMBERS ARE HARMED BY DEFENDANTS' VIOLATIONS

147. Numerous water access points and recreational areas are located along Raccoon Creek immediately upstream of the Facility. This includes a private boat launch and the Rocky Bottom Natural Area.

148. Common recreational activities on or near Raccoon Creek, and on or near the Ohio River immediately downstream from Raccoon Creek, include kayaking, canoeing, motorboating, swimming, fishing, camping, and hiking. Members of the public regularly water ski along the Ohio River within sight of the Facility. Recreational fishing boats use the area near Outfall 002, focusing their efforts on the fish that congregate there due to the nutrients and warm water discharged by the Facility.

149. Plaintiffs PennEnvironment and Three Rivers Waterkeeper have members who live, own homes, or recreate in, on, or near Raccoon Creek and the Ohio River.

150. Plaintiffs' members consider Raccoon Creek and the Ohio River to be important natural resources and aesthetically significant fixtures of the area in which they live, and they want them to be as clean, healthy, and vibrant as possible.

151. Plaintiffs' members want Raccoon Creek and the Ohio River to be subjected to as little pollution as possible, and their enjoyment of these waterways is diminished by their knowledge of the Facility's pollution of these water resources.

152. Plaintiffs have members who devote personal and professional time to improving the water quality of the Raccoon Creek and the Ohio River, and these efforts are adversely affected by Defendants' unpermitted discharges and violations of the Styropek Permit.

153. Evan Clark is a member of Three Rivers Waterkeeper and is employed as the group's Waterkeeper. He frequently navigates along the portions of Raccoon Creek and the Ohio River at issue in this action, both recreationally and for the purpose of gathering water quality data

as part of his professional efforts to improve the health of both waterways. Mr. Clark frequently swims in Raccoon Creek and the Ohio River, and often hikes and forages along both bodies of water. The presence of nurdles in Raccoon Creek and the potential for the nurdles to impact water quality and aquatic life in the Ohio River lessens his enjoyment of these activities. The nurdles discharged by Defendants disrupt his ability to rely on Raccoon Creek and the Ohio River as sources of relaxation and calm.

154. James Cato is a resident of Pittsburgh, Pennsylvania. He is a member of Three Rivers Waterkeeper and is also employed by Mountain Watershed Association as the group's Regional Organizer. Mr. Cato has assisted Evan Clark during many of the nurdle patrols discussed herein. In addition to his professional work in and around Raccoon Creek and the Ohio River, Mr. Cato hikes along the Ohio River both downstream and upstream of the Facility. He is concerned that nurdles from the Facility, and harmful substances carried on the surface of those nurdles, will be detrimental to the health and wellbeing of the fish, birds, mammals, and reptiles that he enjoys encountering on his hikes. The release of nurdles from the Facility detracts from his aesthetic enjoyment of Raccoon Creek and the Ohio River. He finds himself constantly scanning for nurdles when he is near both waterbodies, which negatively and significantly impacts his ability to relax and enjoy his time in nature.

155. Anais Peterson is a resident of Wilkinsburg, Pennsylvania. She is a member of both PennEnvironment and Three Rivers Waterkeeper. Ms. Peterson has volunteered on a nurdle patrol and has led boat tours from the Monaca boat launch down the Ohio River to Raccoon Creek. Although Ms. Peterson recreationally boats on the Ohio River upstream of Raccoon Creek, she avoids boating on the segment near Raccoon Creek because she is concerned about the impact of nurdles released from the Facility on the water quality and on surrounding wildlife. Her concerns about the impacts of pollution from the Facility on the water quality of Raccoon Creek have also

caused Ms. Peterson to forego opportunities to kayak on the creek and hike in Raccoon Creek State Park, activities that she otherwise would have undertaken.

156. Wanda Wilson is a resident of Pittsburgh, Pennsylvania, and is a member of PennEnvironment. Ms. Wilson frequently kayaks on the Ohio River and bikes on the Three Rivers Heritage Trail. She is concerned about the presence of pollutants in Racoon Creek and the Ohio River, as she wants to recreate in and around these waterways free from worry about any negative impacts on her health and wellbeing. Ms. Wilson is also concerned about the impact of nurdles released from the Facility on aquatic life in and around Raccoon Creek, and the potential for those negative impacts to spread from the creek and impact the food chain along the Ohio River and the surrounding watershed. Her concerns about nurdle pollution dampen her enjoyment of activities in and around Raccoon Creek, the Three Rivers Heritage Trail, and the Ohio River.

157. The frequency with which these and other members of the Plaintiff groups participate in recreational activities in and around Raccoon Creek and the Ohio River, and their enjoyment of those activities, are both reduced by their knowledge of the Facility's unpermitted nurdle discharges and by the effects that the Facility's unpermitted nurdle discharges have on both waterways.

158. Plaintiffs' members are concerned that CWA violations at the Facility pose a threat to public health and to aquatic life and wildlife in and around Raccoon Creek and the Ohio River. In particular, Plaintiffs have members who avoid the water in waterbodies due to concerns of health-related impacts associated with nurdles, including their ability to transmit harmful bacteria and toxic pollutants.

159. Plaintiffs' members want to preserve the aquatic life and wildlife in, on, and near Raccoon Creek and the Ohio River to the greatest extent possible, and for this reason want as little pollution in the waterways as possible.

160. The ongoing actual and threatened harm to Plaintiffs' members would be redressed by an injunction, civil penalty, or other relief that prevents or deters further violations of the Facility's Permit and by relief that remediates the harm caused to Raccoon Creek and the Ohio River by Defendants' violations.

RELIEF REQUESTED

Plaintiffs request that this Court:

a. Declare Defendants BVPV and Styropek to have violated and to be in continuing violation of the Clean Water Act and the Facility's NPDES permit by committing (i) each of the violations described above in Counts I through IV, (ii) any additional violations of the same type that occurred before the filing of this Complaint, and (iii) all additional violations of the same type that occur after the filing of this Complaint;

b. Determine the number of days of violation committed by Defendants under each Count;

c. Order Defendants to comply with the requirements of the Clean Water Act and the Facility's NPDES Permit that have been violated, and to refrain from further violations of the requirements at issue in this action;

d. Order Defendants to implement measures to remedy, mitigate, or offset the harm to the environment caused by the violations alleged above;

e. Assess an appropriate civil penalty against Defendants for each day of violation of the Clean Water Act and the Facility's NPDES Permit, as provided by 33 U.S.C. §§ 1319(d) & 1365(a) and 40 C.F.R. § 19.4, which require the Court to impose a penalty of up to a statutory maximum of $64,618 per day of violation;

f. Award Plaintiffs their costs of litigation (including reasonable attorney and expert witness fees), as provided by 33 U.S.C. § 1365(d); and

g. Order such other relief as the Court deems appropriate.

Dated: December 5, 2023

ATTORNEYS FOR PLAINTIFFS:

/s/ Matthew J. Donohue
Charles C. Caldart
Joshua R. Kratka
Matthew J. Donohue
Pro hac vice motions to be filed
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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

PennEnvironment, Inc. and Three Rivers Waterkeeper

(b) County of Residence of First Listed Plaintiff Allegheny
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Michael Comber, Comber Miller, LLC, 300 Koppers Bldg., Pittsburgh, PA 15219, (412) 894-1380; see attached.

DEFENDANTS

BVPV Styrenics LLC and Styropek USA, Inc.

County of Residence of First Listed Defendant Beaver
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

George H. Buermann, Goldberg Segalla, 1037 Raymond Boulevard, Suite 1010, Newark, NJ 07102, (973) 681-7002

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Clean Water Act, 33 U.S.C. § 1251 et seq.

Brief description of cause:
Citizen enforcement suit regarding violations of the Clean Water Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: Dec 5, 2023

SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Comber

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ADDITIONAL COUNSEL OF RECORD FOR PLAINTIFFS

Charles C. Caldart
Joshua R. Kratka
Matthew J. Donohue
Pro hac vice motions to be filed
National Environmental Law Center
294 Washington Street, Suite 500
Boston, MA 02108
(617) 747-4304 (phone)

Exhibit 1

Matthew J. Donohue
Staff Attorney
617.747.4304
mdonohue@nelc.org

October 3, 2023

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tim Ford
Manufacturing Leader
BVPV Styrenics LLC
400 Frankfort Road
Monaca, PA 15061
Certified Mail # 7021 2720 0000 7505 1412

David Berkowitz
President
Styropek USA, Inc.
16945 Northchase Drive, Suite 1560
Houston, TX 77060
Certified Mail # 7021 2720 0000 7505 1429

RE: **Notice of Clean Water Act Violations**

Dear Mr. Ford and Mr. Berkowitz,

I write on behalf of PennEnvironment and Three Rivers Waterkeeper (collectively, the "Citizen Groups"). We respectfully request the opportunity to meet with you within 45 days to discuss resolution of the matters raised in this letter.

This letter is being provided pursuant to Section 505(b)(1) of the Clean Water Act, 33 U.S. Code § 1365(b)(1).

Publicly available information shows that BVPV Styrenics LLC ("BVPV Styrenics"), a wholly owned subsidiary of Styropek USA, Inc. ("Styropek"), discharges wastewater and stormwater into the Ohio River and into Raccoon Creek, a tributary to the Ohio River, from the facility it operates at 400 Frankfort Road in Monaca, Pennsylvania ("Styropek Facility"). The Styropek Facility manufactures expandable polystyrene (EPS) beads, often referred to as "nurdles," for eventual incorporation into products such as food packaging and construction materials. The Facility is one of several owned by Styropek, which, along with its foreign affiliates, identifies itself as the "largest EPS producer in the American Continent."

EPS nurdles have been observed – consistently and by multiple parties – in the process wastewater and stormwater discharged by the Styropek Facility, in Raccoon Creek, and in the

Ohio River. Based on these documented observations, the Citizen Groups believe that the Styropek Facility has violated, and will continue to violate, the federal Clean Water Act and its state-issued wastewater discharge permit. These violations are the responsibility of BVPV Styrenics and, to the extent that it exerts control over the Styropek Facility, Styropek itself. The Citizen Groups intend to file suit to enforce the permit, as described below.

Violations of the Statutory Prohibition Against Unpermitted Discharges

Dischargers of pollutants to surface waters must comply with permits issued under the National Pollutant Discharge Elimination System ("NPDES") of the Clean Water Act. In Pennsylvania, the NPDES program is administered by the Pennsylvania Department of Environmental Protection ("DEP"). The NPDES permit governing the Styropek Facility is Pennsylvania DEP Permit No. PA0006254 A-3 ("Styropek Permit"). The discharge of pollutants not specifically authorized by an NPDES permit is prohibited under Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The Styropek Permit does not authorize the discharge of nurdles, which are pollutants because they are discarded and are chemical, solid, and industrial waste. *See* 33 U.S.C. § 1362 (definition of "pollutant"). Each discharge of nurdles from the various outfalls at the Styropek Facility, as described below, is therefore a violation of the Clean Water Act. For the reasons described below, the Citizen Groups believe such prohibited discharges occur every day the Styropek Facility operates. This notice covers all violations of this prohibition that occurred within the five years immediately preceding the date of this notice, and all such violations occurring thereafter.

Violations of the Styropek NPDES Permit

The discharge of pollutants in violation of an NPDES permit requirement is prohibited under Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The "Additional Requirements" section of the Styropek Permit, at p. 19, prohibits the Styropek Facility from discharging the following:

- "floating solids, scum, sheen or substances that result in observed deposits in the receiving water," at Section A(1); and

- "substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life," at Section A(3).

Permit Violations at Outfall 002

According to the Styropek Permit, the Facility is designed to discharge a maximum of 1.543 million gallons of wastewater per day from its wastewater treatment plant into Raccoon Creek through a discharge point known as Outfall 002. Discharge Monitoring Reports submitted by BVPV Styrenics to Pennsylvania DEP over the past five years confirm that the Styropek

Facility typically discharges at or near this design flow. The wastewater discharged from Outfall 002 into Raccoon Creek includes the treated process wastewater from the Styropek Facility's polystyrene and specialty plastics production.

Based in part on physical surveys begun in September 2022, the Citizen Groups believe that the Styropek Facility routinely discharges significant quantities of nurdles through Outfall 002 into Raccoon Creek. Publicly available information, including Pennsylvania DEP Inspection Reports and statements by BVPV Styrenics personnel, supplemented by dated observations, photographs, and samples gathered by staff and members of Three Rivers Waterkeeper during monthly "nurdle patrols" of Raccoon Creek, all indicate that such releases occur on a daily basis. Each of these discharges is a violation of both Section A(1) and Section A(3) of the "Additional Requirements" section of the Styropek Permit (as set forth above).

The nurdles are "floating solids" and "substances that result in observed deposits in the receiving waters" within the meaning of Section A(1). This has been confirmed by all of the observers listed above. Participants in the Three Rivers Waterkeeper nurdle patrols have observed nurdles literally "bubbling up" to the surface of Raccoon Creek from Outfall 002, where they then float along the surface of the creek and collect in sediments, on the creek banks, and on bordering vegetation as observed deposits.

Three Rivers Waterkeeper staff and members have also observed and documented the accumulation of nurdles released from the Styropek Facility in sufficient concentrations "to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life," in Raccoon Creek and downstream in the Ohio River, including throughout the sediment near Outfall 002, in violation of Section A(3). The ability of tiny, lightweight nurdles to make their way into aquatic environments through drains and watercourses is well understood.[1] Even if composed of purportedly non-toxic materials, nurdles act as "toxic sponges," attracting hydrophobic chemical toxins and transporting them throughout aquatic environments.[2] Hundreds of fish species are known to ingest such plastics in marine settings.[3] Microplastics ingested by fish can enter the food chain of humans and other animals.[4] The nurdles released by the Styropek Facility pose similar risks to life in and around Raccoon Creek and the Ohio River.

Evidence establishing the Styropek Facility's ongoing violations of these requirements at Outfall 002 is summarized in **Table 1**. The discharge of nurdles from Outfall 002 has been detected during all but one of the Three Rivers Waterkeeper nurdle patrols since the group began

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[1] *See, e.g.,* FIDRA, Study to quantify plastic pellet loss in the UK (Report Briefing) (https://www.nurdlehunt.org.uk/images/Leaflets/Report_briefing.pdf)

[2] Mato, et al. (2000). Resin Pellets as a Transport Medium for Toxic Chemicals in the Environment, *Environmental Science & Technology 35*(2), 318-324. (https://pubs.acs.org/doi/abs/10.1021/es0010498)

[3] Savoca, et al. (2021). Plastic ingestion by marine fish is widespread and increasing. *Global Change Biology, 27*(10), 2188-2199. (https://onlinelibrary.wiley.com/doi/10.1111/gcb.15533)

[4] United Nations Environment Programme (2018). Single-Use Plastics: A Roadmap for Sustainability (Rev. ed., Chapter 2, p. 14) (unep.org/resources/report/single-use-plastics-roadmap-sustainability)

conducting such patrols near the Styropek Facility on September 6, 2022. Further, Pennsylvania DEP and BVPV Styrenics have each independently detected the discharge of nurdles from Outfall 002, including within a few days of the one outing (December 6, 2022) on which the Three Rivers Waterkeeper nurdle patrol failed to detect the discharge of nurdles. When paired with the Facility's daily production of nurdles and associated daily discharge of process wastewater and the magnitude of nurdle deposits in and around Raccoon Creek, including in the soil and sediment, these observations strongly support the conclusion that nurdles are discharged from Outfall 002 on a daily basis. Accordingly, the Citizen Groups believe, and therefore allege, that the Styropek Facility has violated Permit Sections A(1) and A(3) at Outfall 002 every day for the five years preceding this notice, and that these violations will continue on each day following the date of this notice.

Permit Violations at Outfalls 020, 021, and 025

According to the Pennsylvania DEP Fact Sheet for the Styropek Permit, the Styropek Facility also discharges variable amounts of stormwater into Raccoon Creek through three stormwater runoff discharge points located on site. These points are designated as Outfalls 020, 021, and 025. The Fact Sheet indicates that discharges from these Outfalls enter Raccoon Creek upstream of Outfall 002, meaning they flow towards Outfall 002 and then into the Ohio River.

Pennsylvania DEP Inspection Reports from December 2022 and January 2023 identify loose nurdles at numerous locations, including on pavement and "throughout the soil" near Stormwater Outfall 025 (December 2022), and on the road, in gravel areas, and "visible in the soil at the stormwater outfalls" (January 2023). The Facility's stormwater system is directly connected to each of these locations. Available evidence therefore indicates that Styropek Permit Sections A(1) and A(3) are violated at Outfalls 020, 021, and 025 on each occasion that rainfall results in a stormwater system discharge. The precise dates of stormwater events and on-site spills at the Styropek Facility (such as the documented spill that occurred on October 19, 2021) can be found in the company's records.

Each day on which nurdles are released from Outfall 002, 020, 021, or 025 constitutes two days of violation of the Styropek Permit, one for the violation of Section A(1) and one for the violation of Section A(3). This notice covers all similar violations of these permit requirements that occurred within the five years immediately preceding the date of this notice, and all similar violations occurring thereafter.

The Citizen Groups seek to improve the water quality of Raccoon Creek and the Ohio River by securing the Styropek Facility's long-term compliance with applicable law, and would welcome the opportunity to discuss this letter and the violations described herein. If you are interested in discussing this matter, and/or if you believe any of the information in this letter or in the attached table is incorrect, please contact me by email at mdonohue@nelc.org, by phone at 603-512-5897 (cell), or by letter at the address listed below.

Sincerely,

Matthew J. Donohue
Staff Attorney
National Environmental Law Center
294 Washington Street, Suite 500
Boston, Massachusetts 02108
(617) 747-4304 (office)
(603) 512-5897 (cell)

Address and telephone numbers of Citizen Groups

PennEnvironment
6425 Living Place, Suite 200
Pittsburgh, PA 15206
(412) 521-0943

Three Rivers Waterkeeper
800 Vinial Street, Suite B314
Pittsburgh, PA 15212
(412) 589-9311

cc: By certified mail – return receipt requested

CT Corporation System (registered agent for BVPV Styrenics LLC)
600 North 2nd Street, Suite 401
Harrisburg, PA 17101
Certified Mail # 7021 2720 0000 7505 1436

CT Corporation System (registered agent for Styropek USA, Inc.)
600 North 2nd Street, Suite 401
Harrisburg, PA 17101
Certified Mail # 9589 0710 5270 0506 2929 20

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Certified Mail # 9589 0710 5270 0506 2929 13

Adam Ortiz, Regional Administrator
U.S. EPA Region 3
Four Penn Center
1600 JFK Boulevard
Philadelphia, PA 19103
Certified Mail # 9589 0710 5270 0506 2929 06

Rich Negrin, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101
Certified Mail # 9589 0710 5270 0506 2928 90

TABLE 1: Evidence of Violations of NPDES Permit Sections A(1) and A(3) at Outfall 002		
Date	**Source**	**Findings**
9/6/22	3RWK / MWA - Nurdle Patrol Unless otherwise indicated, each Nurdle Patrol was led by Captain Evan Clark (Three Rivers Waterkeeper) and James Cato (Mountain Watershed Association). Nurdle Patrols involve visual analyses, supplemented by the collection of nurdle samples and photographs, as noted. "Net Samples" are collected from the water's surface using a 300 micron net.	Various types of unique nurdles observed during patrol of Ohio River in the vicinity of Raccoon Creek. Net Sample collected.
9/20/22	3RWK / MWA - Nurdle Patrol	Various types of unique nurdles again observed during patrol of Ohio River in the vicinity of Raccoon Creek. Net Sample collected.
10/3/22	3RWK / MWA - Nurdle Patrol For this and all subsequent nurdle patrols of Raccoon Creek, the following procedure was utilized: Over an approximately 10-minute period, a boat drags the net from the mouth of Raccoon Creek, upstream beyond Outfall 002, then turns around and completes several passes in the immediate vicinity of Outfall 002. Gathered material is passed through a series of sieves. Nurdles are isolated and then stored in glass containers by 3RWK Staff.	Patrol tracked the various types of unique nurdles into Raccoon Creek, with concentration of nurdles increasing approaching Outfall 002, including on vegetation.

10/12/22	3RWK / MWA - Nurdle Patrol (also attended by Eric Harder of Mountain Watershed Association)	Various types of unique nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. These nurdles are confirmed to be emerging from Outfall 002. Similar nurdles observed coating vegetation at the high water mark in Raccoon Creek. Note: all references to "nurdles" in subsequent entries include the various types of unique nurdles first identified on 9/6/2022 and subsequently traced to the Styropek Facility. Net Sample collected.
10/27/22	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
12/6/22	3RWK / MWA - Nurdle Patrol	Nurdles are not observed drifting in Raccon Creek in immediate vicinity of Outfall 002.
12/13/22	PA DEP	<u>Boat Survey</u> Per General Inspection Report on 12/21/2022 (below), PA DEP personnel conducted a boat survey of several locations at the Styropek Facility. Nurdles were identified on 12/13/22 in areas adjacent to Outfall 002. Note: Nurdles also found "throughout the soil" near Stormwater Outfall 025.
12/14/22	BVPV Styrenics	<u>Environmental Consultant</u> In correspondence to PADEP, BPVP Styrenics confirms it hired an Environmental Consultant to "assist in the verification of the allegation of the discharge of plastics, and if found, to identify causes and potential corrective actions associated with this condition." During initial site visit conducted on December 14-15, 2022, BVPV Styrenics "identified the presence of plastic beads along a portion of Raccoon Creek, consistent with PADEP and Three Rivers Waterkeeper observations. Some of the plastic beads observed appear to be consistent with the size and nature of the material we manufacture and process…In addition, we wish to inform you that plastic beads were also observed in stormwater effluent contributing to Raccoon Creek as observed during our routine stormwater sampling event conducted on December 15, 2022."

12/21/22	PA DEP	General Inspection Report PA DEP personnel identified nurdles near Outfall 002. Note: Visible nurdles also uncovered in the area near Stormwater Outfall 025, "can be seen throughout the soil" removed during excavation to install a catch basin.
1/10/22	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
1/17/23	PA DEP	General Inspection Report PA DEP personnel identified nurdles near Outfall 002. Note: Nurdles also "visible in the soil" at Stormwater Outfalls 021 and 025. Additional visible nurdles on the road and gravel areas are marked with "orange cone system" (i.e., traffic cones) for cleanup.
2/8/23	3RWK / MWA - Nurdle Patrol (not attended by James Cato)	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
3/2/23	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
4/10/23	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
5/11/23	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.
6/21/23	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Significant quantities observed downstream of Outfall 002 all the way to the mouth of Raccoon Creek into the Ohio River. Net Sample collected.
7/17/23	3RWK / MWA - Nurdle Patrol (not attended by James Cato)	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected.

8/2/23	3RWK / MWA - Nurdle Patrol	Nurdles observed drifting in Raccon Creek in immediate vicinity of Outfall 002. Net Sample collected. Sediment Sample collected. Approximately one gallon of mud/debris/water collected from creek bed within 10 feet of Outfall 002. Allowed to settle. Salt added to separate nurdles from the sediment, floating hundreds of nurdles in the sample. A selection of these floating nurdles was skimmed, rinsed and photographed.

Exhibit 2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BVPV Styrenics LLC c/o
600 North 2nd Street, St. 401
Harrisburg, PA
CT Corporation System

9590 9402 8145 3030 2497 28

2. Article Number (Transfer from service label)

7021 2720 0000 7505 1436

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COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Terri L. McEntee ☐ Agent ☐ Addressee

B. Received by (Printed Name): TERRI L MCENTEE
C. Date of Delivery: 10/10/23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
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1. Article Addressed to:

Tim Ford, Manufacturing Leader
BVPV Styrenics LLC
400 Frankfort Road
Monaca, PA 15061

9590 9402 7223 1284 6965 58

2. Article Number (Transfer from service label)

7021 2720 0000 7505 1412

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1. Article Addressed to:

Styropek USA, Inc. C/O
CT Corporation System
600 North 2nd Street, Suite 401
Harrisburg, PA 17101

9590 9402 7223 1284 6965 72

2. Article Number (Transfer from service label)

9589 0710 5270 0506 2929 20

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A. Signature
X Terri L. McEntee ☐ Agent ☐ Addressee

B. Received by (Printed Name): TERRI L MCENTEE
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1. Article Addressed to:

David Berkowitz, President
Styropek USA, Inc.
16945 Northchase Drive, Suite 1560
Houston, TX 77060

9590 9402 7223 1284 6965 65

2. Article Number (Transfer from service label)

7021 2720 0000 7505 1429

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A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name): Silvia Garcia
C. Date of Delivery: 10-12-23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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1. Article Addressed to:

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue
Washington, D.C. 20460

9590 9402 7223 1284 6965 41

2. Article Number (Transfer from service label)

9589 0710 5270 0506 2929 13

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OCT 1 0 2023

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1. Article Addressed to:

Rich Negrin, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

9590 9402 7223 1284 6965 27

2. Article Number (Transfer from service label)

9589 0710 5270 0506 2928 90

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If YES, enter delivery address below: ☐ No

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☐ Collect on Delivery Restricted Delivery
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nsured Mail Restricted Delivery over $500)
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Tracking Number:

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Your item has been delivered to an agent for final delivery in PHILADELPHIA, PA 19103 on October 11, 2023 at 1:26 pm.

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USPS Tracking Plus®

Delivered to Agent
Delivered to Agent for Final Delivery
PHILADELPHIA, PA 19103
October 11, 2023, 1:26 pm

Arrived at Post Office
PHILADELPHIA, PA 19104
October 11, 2023, 10:33 am

Available for Pickup
PHILADELPHIA, PA 19103
October 7, 2023, 7:24 am

In Transit to Next Facility
October 6, 2023

Arrived at USPS Regional Destination Facility
PHILADELPHIA PA DISTRIBUTION CENTER
October 5, 2023, 9:35 pm

Departed USPS Regional Facility
BROCKTON MA DISTRIBUTION CENTER
October 4, 2023, 7:51 pm

Exhibit 3

3800-PM-BCW0011 Rev. 2/2020
Permit

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF CLEAN WATER

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM DISCHARGE REQUIREMENTS FOR INDUSTRIAL WASTEWATER FACILITIES

NPDES PERMIT NO: PA0006254
Amendment No. 3

In compliance with the provisions of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* ("the Act") and Pennsylvania's Clean Streams Law, as amended, 35 P.S. Section 691.1 *et seq.*,

BVPV Styrenics LLC
400 Frankfort Road
Monaca, PA 15061-2212

is authorized to discharge from a facility known as **Beaver Valley Site**, located in **Potter Township, Beaver County**, to **Ohio River (WWF) and Raccoon Creek (WWF)** in Watershed(s) **20-B and 20-D** in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts A, B and C hereof.

THIS PERMIT SHALL BECOME EFFECTIVE ON AUGUST 1, 2019

THIS PERMIT SHALL EXPIRE AT MIDNIGHT ON JULY 31, 2024

The authority granted by this permit is subject to the following further qualifications:

1. If there is a conflict between the application, its supporting documents and/or amendments and the terms and conditions of this permit, the terms and conditions shall apply.

2. Failure to comply with the terms, conditions or effluent limitations of this permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. (40 CFR 122.41(a))

3. A complete application for renewal of this permit, or notice of intent to cease discharging by the expiration date, must be submitted to DEP at least 180 days prior to the above expiration date (unless permission has been granted by DEP for submission at a later date), using the appropriate NPDES permit application form. (40 CFR 122.41(b), 122.21(d)(2))

   In the event that a timely and complete application for renewal has been submitted and DEP is unable, through no fault of the permittee, to reissue the permit before the above expiration date, the terms and conditions of this permit, including submission of the Discharge Monitoring Reports (DMRs), will be automatically continued and will remain fully effective and enforceable against the discharger until DEP takes final action on the pending permit application. (25 Pa. Code §§ 92a.7 (b), (c))

4. This NPDES permit does not constitute authorization to construct or make modifications to wastewater treatment facilities necessary to meet the terms and conditions of this permit.

DATE PERMIT ISSUED JULY 16, 2019

DATE PERMIT AMENDMENT ISSUED JULY 30, 2021

ISSUED BY

Christopher Kriley, P.E.
Environmental Program Manager
Southwest Regional Office

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. A. For Outfall 001 , **Latitude** 40° 39' 29.75" , **Longitude** -80° 21' 26.75" , **River Mile Index** 951.40 , **Stream Code** 32317

Receiving Waters: Ohio River (WWF)

Type of Effluent: Non-contact cooling water, excess intake water, and storm water runoff

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX	Continuous	Recorded
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0	1/week	Grab
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	1.0	XXX	1/week	Grab
Temperature (°F)	XXX	XXX	XXX	XXX	110.0	XXX	1/week	I-S
Total Dissolved Solids	XXX	XXX	XXX	XXX	Report	XXX	1/quarter	Grab
Copper, Total	XXX	XXX	XXX	Report	Report	XXX	2/month	Grab
Sulfate, Total	XXX	XXX	XXX	XXX	Report	XXX	1/quarter	Grab
Chloride	XXX	XXX	XXX	XXX	Report	XXX	1/quarter	Grab
Bromide	XXX	XXX	XXX	XXX	Report	XXX	1/quarter	Grab
Styrene	XXX	XXX	XXX	Report	Report	XXX	2/month	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 001

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. B. For Outfall 002 , **Latitude** 40° 39' 34.65" , **Longitude** -80° 21' 0.34" , **River Mile Index** 0.2400 , **Stream Code** 33564

Receiving Waters: Raccoon Creek (WWF)

Type of Effluent: Treated process wastewaters from polystyrene and specialty plastics production; cooling tower blowdown; filter backwash water from potable water plant; miscellaneous non-hazardous purge water; and treated sanitary wastewaters monitored at IMP 102

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Annual Average	Daily Maximum	Instant. Minimum	Annual Average	Daily Maximum	Instant. Maximum		
Flow (MGD)	Report Avg Mo	Report	XXX	XXX	XXX	XXX	1/day	Measured
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0	1/week	Grab
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX	2/month	Grab
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.44 Avg Mo	1.03	XXX	1/week	Grab
Biochemical Oxygen Demand (BOD5)	315.0 Avg Mo	835.0	XXX	24.0 Avg Mo	64.0	XXX	1/week	24-Hr Composite
Total Suspended Solids	520.0 Avg Mo	1,685.0	XXX	40.0 Avg Mo	130.0	XXX	1/week	24-Hr Composite
Oil and Grease	XXX	XXX	XXX	15.0 Avg Qrtly	30.0	XXX	2/quarter	Grab
Chromium, Total	14.2	35.6	XXX	1.11	2.77	XXX	2/year	24-Hr Composite
Copper, Total	1.07 Avg Mo	2.14	XXX	0.083 Avg Mo	0.166	XXX	1/week	24-Hr Composite
Cyanide, Total	5.40	15.4	XXX	0.420	1.20	XXX	2/year	24-Hr Composite
Lead, Total	4.12 Avg Mo	8.88	XXX	0.320 Avg Mo	0.690	XXX	1/week	24-Hr Composite
Nickel, Total	21.7 Avg Mo	51.2	XXX	1.69 Avg Mo	3.98	XXX	1/week	24-Hr Composite

Outfall 002, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Annual Average	Daily Maximum	Instant. Minimum	Annual Average	Daily Maximum	Instant. Maximum		
Zinc, Total	6.18 Avg Mo	12.4	XXX	0.480 Avg Mo	0.960	XXX	1/week	24-Hr Composite
2-Chlorophenol	0.399	1.26	XXX	0.031	0.098	XXX	2/year	24-Hr Composite
2,4-Dichlorophenol	0.502	1.44	XXX	0.039	0.112	XXX	2/year	24-Hr Composite
2,4-Dimethylphenol	0.231	0.463	XXX	0.018	0.036	XXX	2/year	24-Hr Composite
Fluorene	0.283	0.759	XXX	0.022	0.059	XXX	2/year	24-Hr Composite
2,4-Dinitrophenol	0.914	1.58	XXX	0.071	0.123	XXX	2/year	24-Hr Composite
2,4-Dinitrotoluene	1.46	3.66	XXX	0.113	0.285	XXX	2/year	24-Hr Composite
2,6-Dinitrotoluene	3.28	8.25	XXX	0.255	0.641	XXX	2/year	24-Hr Composite
4,6-dinitro-o-cresol	1.00	3.56	XXX	0.078	0.277	XXX	2/year	24-Hr Composite
2-Nitrophenol	0.527	0.888	XXX	0.041	0.069	XXX	2/year	24-Hr Composite
4-Nitrophenol	0.927	1.59	XXX	0.072	0.124	XXX	2/year	24-Hr Composite
Phenol	0.193 Avg Mo	0.334	XXX	0.015 Avg Mo	0.026	XXX	1/week	24-Hr Composite
Acenaphthene	0.283	0.759	XXX	0.022	0.059	XXX	2/year	24-Hr Composite
Acenaphthylene	0.283	0.759	XXX	0.022	0.059	XXX	2/year	24-Hr Composite
Acrolein	0.078 Avg Qrtly	0.121	XXX	0.0060 Avg Qrtly	0.0094	XXX	2/quarter	4 Grabs/24 Hours
Acrylonitrile	0.816	1.27	XXX	0.063	0.098	XXX	2/year	4 Grabs/24 Hours
Anthracene	0.283	0.759	XXX	0.022	0.059	XXX	2/year	24-Hr Composite
Chlorobenzene	0.193	0.360	XXX	0.015	0.028	XXX	2/year	4 Grabs/24 Hours

Outfall 002, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Annual Average	Daily Maximum	Instant. Minimum	Annual Average	Daily Maximum	Instant. Maximum		
1,2-Dichlorobenzene	0.991	2.09	XXX	0.077	0.163	XXX	2/year	4 Grabs/24 Hours
1,3-Dichlorobenzene	0.399	0.566	XXX	0.031	0.044	XXX	2/year	4 Grabs/24 Hours
1,4-Dichlorobenzene	0.193	0.360	XXX	0.015	0.028	XXX	2/year	4 Grabs/24 Hours
1,3-Dichloropropylene	0.373	0.566	XXX	0.029	0.044	XXX	2/year	4 Grabs/24 Hours
1,2,4-Trichlorobenzene	0.875	1.80	XXX	0.068	0.140	XXX	2/year	24-Hr Composite
Ethylbenzene	0.412	1.39	XXX	0.032	0.108	XXX	2/year	4 Grabs/24 Hours
Hexachlorobenzene (3)	0.004	0.006	XXX	0.0003	0.0005	XXX	2/year	24-Hr Composite
Nitrobenzene	0.347	0.875	XXX	0.027	0.068	XXX	2/year	24-Hr Composite
Benzene	0.476	1.75	XXX	0.037	0.136	XXX	2/year	4 Grabs/24 Hours
Benzo(a)Anthracene (3)	0.013	0.020	XXX	0.0010	0.0016	XXX	2/year	24-Hr Composite
Benzo(a)Pyrene	0.060	0.094	XXX	0.0047	0.0073	XXX	2/year	24-Hr Composite
Benzo(k)Fluoranthene	0.060	0.094	XXX	0.0047	0.0073	XXX	2/year	24-Hr Composite
3,4-Benzofluoranthene	0.060	0.094	XXX	0.0047	0.0073	XXX	2/year	24-Hr Composite
Carbon Tetrachloride	0.232	0.489	XXX	0.018	0.038	XXX	2/year	4 Grabs/24 Hours
Chloroethane	1.33	3.45	XXX	0.104	0.268	XXX	2/year	4 Grabs/24 Hours
1,1,1-Trichloroethane	0.270	0.695	XXX	0.021	0.054	XXX	2/year	4 Grabs/24 Hours
1,1,2-Trichloroethane	0.270	0.695	XXX	0.021	0.054	XXX	2/year	4 Grabs/24 Hours
1,1-Dichloroethane	0.283	0.759	XXX	0.022	0.059	XXX	2/year	4 Grabs/24 Hours

Outfall 002, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Annual Average	Daily Maximum	Instant. Minimum	Annual Average	Daily Maximum	Instant. Maximum		
1,2-Dichloroethane	0.875	2.71	XXX	0.068	0.211	XXX	2/year	4 Grabs/24 Hours
1,2-Dichloropropane	1.97	2.96	XXX	0.153	0.230	XXX	2/year	4 Grabs/24 Hours
Bis(2-Ethylhexyl)Phthalate	1.32	3.59	XXX	0.103	0.279	XXX	2/year	24-Hr Composite
Chloroform	0.270	0.592	XXX	0.021	0.046	XXX	2/year	4 Grabs/24 Hours
Chrysene	0.060	0.094	XXX	0.0047	0.0073	XXX	2/year	24-Hr Composite
Diethyl Phthalate	1.04	2.61	XXX	0.081	0.203	XXX	2/year	24-Hr Composite
Dimethyl Phthalate	0.244	0.605	XXX	0.019	0.047	XXX	2/year	24-Hr Composite
Di-n-Butyl Phthalate	0.347	0.733	XXX	0.027	0.057	XXX	2/year	24-Hr Composite
Fluoranthene	0.321	0.875	XXX	0.025	0.068	XXX	2/year	24-Hr Composite
Hexachlorobutadiene	0.257	0.630	XXX	0.020	0.049	XXX	2/year	24-Hr Composite
Hexachloroethane	0.270	0.695	XXX	0.021	0.054	XXX	2/year	24-Hr Composite
Methyl Chloride	1.11	2.44	XXX	0.086	0.190	XXX	2/year	4 Grabs/24 Hours
Methylene Chloride	0.515	1.14	XXX	0.040	0.089	XXX	2/year	4 Grabs/24 Hours
Naphthalene	0.283	0.759	XXX	0.022	0.059	XXX	2/year	24-Hr Composite
Phenanthrene	0.129 Avg Qrtly	0.202	XXX	0.010 Avg Qrtly	0.015	XXX	2/quarter	24-Hr Composite
Pyrene	0.321	0.862	XXX	0.025	0.067	XXX	2/year	24-Hr Composite
Styrene	XXX	XXX	XXX	Report Avg Qrtly	Report	XXX	2/quarter	Grab
1,1-Dichloroethylene	0.206	0.321	XXX	0.016	0.025	XXX	2/year	4 Grabs/24 Hours

Outfall 002, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Annual Average	Daily Maximum	Instant. Minimum	Annual Average	Daily Maximum	Instant. Maximum		
trans-1,2-Dichloroethylene	0.270	0.695	XXX	0.021	0.054	XXX	2/year	4 Grabs/24 Hours
Tetrachloroethylene	0.283	0.721	XXX	0.022	0.056	XXX	2/year	4 Grabs/24 Hours
Toluene	0.334	1.03	XXX	0.026	0.080	XXX	2/year	4 Grabs/24 Hours
Trichloroethylene	0.270	0.695	XXX	0.021	0.054	XXX	2/year	4 Grabs/24 Hours
Vinyl Chloride	0.400	0.624	XXX	0.031	0.048	XXX	2/year	4 Grabs/24 Hours

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 002

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. C. For Internal Monitoring Point 102

Receiving Waters: Raccoon Creek through Outfall 002

Type of Effluent: Treated sanitary wastewaters

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX	1/day	Estimate
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0	1/day	Grab
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.6	1/day (4)	Grab
Carbonaceous Biochemical Oxygen Demand (CBOD5)	XXX	XXX	XXX	25	XXX	50	1/week	8-Hr Composite
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60	1/week	8-Hr Composite
Fecal Coliform (No./100 ml) Nov 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000	1/week	Grab
Fecal Coliform (No./100 ml) May 1 - Oct 31	XXX	XXX	XXX	200 Geo Mean	XXX	400	1/week	Grab
Total Nitrogen	XXX	XXX	XXX	XXX	Report	XXX	1/month	Grab
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX	1/month	Grab
Ultraviolet light dosage ($mWsec/cm^2$)	XXX	XXX	XXX	XXX	Report	XXX	1/day	Recorded

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Internal Monitoring Point 102

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. D. For Outfall 004 , **Latitude** 40° 39' 51.44" , **Longitude** -80° 21' 1.07" , **River Mile Index** 951.00 , **Stream Code** 32317

Receiving Waters: Ohio River (WWF)

Type of Effluent: River pump house sump contact seal water

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Discharges shall consist solely of uncontaminated potable/river water leakage.								

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. E. For Outfall 005 , **Latitude** 40° 39' 50.43" , **Longitude** -80° 21' 2.06" , **River Mile Index** 951.00 , **Stream Code** 32317

Receiving Waters: Ohio River (WWF)

Type of Effluent: River pump house sump contact seal water

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Discharges shall consist solely of uncontaminated potable/river water leakage.								

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. F. For Outfall 006 , **Latitude** 40° 39' 51.44" , **Longitude** -80° 21' 1.07" , **River Mile Index** 951.00 , **Stream Code** 32317

Receiving Waters: Ohio River (WWF)

Type of Effluent: River water used to clean the river intake screens

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Debris collected on the intake trash racks shall not be returned to the waterway.								

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. G. For Outfall 007 , **Latitude** 40° 39' 50.43" , **Longitude** -80° 21' 2.06" , **River Mile Index** 951.00 , **Stream Code** 32317

Receiving Waters: Ohio River (WWF)

Type of Effluent: River water used to clean the river intake screens

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Debris collected on the intake trash racks shall not be returned to the waterway.								

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. H. For Outfall 020 , **Latitude** 40° 39' 15.66" , **Longitude** -80° 21' 2.74" , **River Mile Index** 0.6100 , **Stream Code** 33564

Receiving Waters: Raccoon Creek (WWF)

Type of Effluent: Storm water runoff

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	XXX	Report	XXX	XXX	XXX	XXX	1/6 months	Estimate
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Nitrate-Nitrite as N	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chromium, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Copper, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Lead, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Zinc, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Benzo(a)Anthracene (ug/L) (3)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Outfall 020, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Phenanthrene (ug/L)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 020

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. I. For Outfall 021 , **Latitude** 40° 39' 17.47" , **Longitude** -80° 21' 4.86" , **River Mile Index** 0.5800 , **Stream Code** 33564

Receiving Waters: Raccoon Creek (WWF)

Type of Effluent: Storm water runoff

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	XXX	Report	XXX	XXX	XXX	XXX	1/6 months	Estimate
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Nitrate-Nitrite as N	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chromium, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Copper, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Lead, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Zinc, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Benzo(a)Anthracene (ug/L) (3)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Outfall 021, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Phenanthrene (ug/L)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 021

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. J. For Outfall 025 , **Latitude** 40° 39' 22.49" , **Longitude** -80° 21' 2.94" , **River Mile Index** 0.4800 , **Stream Code** 33564

Receiving Waters: Raccoon Creek (WWF)

Type of Effluent: Storm water runoff

1. The permittee is authorized to discharge during the period from **August 1, 2019** through **July 31, 2024**.

2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements and Footnotes).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	XXX	Report	XXX	XXX	XXX	XXX	1/6 months	Estimate
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Nitrate-Nitrite as N	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Chromium, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Copper, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Lead, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Zinc, Total	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab
Benzo(a)Anthracene (ug/L) (3)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Outfall 025, Continued (from August 1, 2019 through July 31, 2024)

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) (1)		Concentrations (mg/L unless otherwise indicated)				Minimum (2) Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Phenanthrene (ug/L)	XXX	XXX	XXX	XXX	Report	XXX	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

at Outfall 025

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS (Continued)

Additional Requirements

The permittee may not discharge:

1. Floating solids, scum, sheen or substances that result in observed deposits in the receiving water. (25 Pa Code § 92a.41(c))

2. Oil and grease in amounts that cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline, or that exceed 15 mg/l as a daily average or 30 mg/l at any time (or lesser amounts if specified in this permit). (25 Pa. Code § 92a.47(a)(7), § 95.2(2))

3. Substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life. (25 Pa Code § 93.6(a))

4. Foam or substances that produce an observed change in the color, taste, odor or turbidity of the receiving water, unless those conditions are otherwise controlled through effluent limitations or other requirements in this permit. For the purpose of determining compliance with this condition, DEP will compare conditions in the receiving water upstream of the discharge to conditions in the receiving water approximately 100 feet downstream of the discharge to determine if there is an observable change in the receiving water. (25 Pa Code § 92a.41(c))

Footnotes

(1) When sampling to determine compliance with mass effluent limitations, the discharge flow at the time of sampling must be measured and recorded.

(2) This is the minimum number of sampling events required. Permittees are encouraged, and it may be advantageous in demonstrating compliance, to perform more than the minimum number of sampling events.

Parameters with a minimum measurement frequency of 2/quarter or 2/year shall be sampled during the same calendar month to calculate an average.

(3) Refer to Condition III in Part C of this permit for requirements applicable to Benzo(a)Anthracene and Hexachlorobenzene.

(4) Sampling and analysis for Total Residual Chlorine shall be conducted daily at times when chlorine is being used for disinfection in place of ultraviolet light.

Supplemental Information

The effluent limitations for Outfalls 001 and 002 were determined using effluent discharge rates of 15 MGD and 1.543 MGD, respectively.

II. DEFINITIONS

At Outfall (XXX) means a sampling location in outfall line XXX below the last point at which wastes are added to outfall line (XXX), or where otherwise specified.

Average refers to the use of an arithmetic mean, unless otherwise specified in this permit. (40 CFR 122.41(l)(4)(iii))

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollutant loading to surface waters of the Commonwealth. The term also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities. (25 Pa. Code § 92a.2)

Bypass means the intentional diversion of waste streams from any portion of a treatment facility. (40 CFR 122.41(m)(1)(i))

Calendar Week is defined as the seven consecutive days from Sunday through Saturday, unless the permittee has been given permission by DEP to provide weekly data as Monday through Friday based on showing excellent performance of the facility and a history of compliance. In cases when the week falls in two separate months, the month with the most days in that week shall be the month for reporting.

Clean Water Act means the Federal Water Pollution Control Act, as amended. (33 U.S.C.A. §§ 1251 to 1387).

Chemical Additive means a chemical product (including products of disassociation and degradation, collectively "products") introduced into a waste stream that is used for cleaning, disinfecting, or maintenance and which may be detected in effluent discharged to waters of the Commonwealth. The term generally excludes chemicals used for neutralization of waste streams, the production of goods, and treatment of wastewater.

Composite Sample (for all except GC/MS volatile organic analysis) means a combination of individual samples (at least eight for a 24-hour period or four for an 8-hour period) of at least 100 milliliters (mL) each obtained at spaced time intervals during the compositing period. The composite must be flow-proportional; either the volume of each individual sample is proportional to discharge flow rates, or the sampling interval is proportional to the flow rates over the time period used to produce the composite. (EPA Form 2C)

Composite Sample (for GC/MS volatile organic analysis) consists of at least four aliquots or grab samples collected during the sampling event (not necessarily flow proportioned). A separate analysis should be performed for each sample and the results should be averaged.

Daily Average Temperature means the average of all temperature measurements made, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar day or during the operating day if flows are of a shorter duration.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. (25 Pa. Code § 92a.2, 40 CFR 122.2)

Daily Maximum Discharge Limitation means the highest allowable "daily discharge."

Discharge Monitoring Report (DMR) means the DEP or EPA supplied form(s) for the reporting of self-monitoring results by the permittee. (25 Pa. Code § 92a.2, 40 CFR 122.2)

Estimated Flow means any method of liquid volume measurement based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.

Geometric Mean means the average of a set of n sample results given by the nth root of their product.

Grab Sample means an individual sample of at least 100 mL collected at a randomly selected time over a period not to exceed 15 minutes. (EPA Form 2C)

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act. (40 CFR 122.2)

Hauled-In Wastes means any waste that is introduced into a treatment facility through any method other than a direct connection to the wastewater collection system. The term includes wastes transported to and disposed of within the treatment facility or other entry points within the collection system.

Immersion Stabilization (i-s) means a calibrated device is immersed in the wastewater until the reading is stabilized.

Instantaneous Maximum Effluent Limitation means the highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample. (25 Pa. Code § 92a.2)

Measured Flow means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.

Monthly Average Discharge Limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month. (25 Pa. Code § 92a.2)

Municipal Waste means garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; and sludge not meeting the definition of residual or hazardous waste under this section from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility. (25 Pa. Code § 271.1)

Non-contact Cooling Water means water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, waste product (other than heat), or finished product.

Residual Waste means garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if it is not hazardous. The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act. The term does not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on under and in compliance with a valid permit issued under the Clean Streams Law. (25 Pa Code § 287.1)

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 CFR 122.41(m)(1)(ii))

Stormwater means the runoff from precipitation, snow melt runoff, and surface runoff and drainage. (25 Pa. Code § 92a.2)

Stormwater Associated With Industrial Activity means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, and as defined at 40 CFR 122.26(b)(14) (i) - (ix) & (xi) and 25 Pa. Code § 92a.2.

Total Dissolved Solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

Toxic Pollutant means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains may, on the basis of information available to DEP cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring. (25 Pa. Code § 92a.2)

III. SELF-MONITORING, REPORTING AND RECORDKEEPING

A. Representative Sampling

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity (40 CFR 122.41(j)(1)). Representative sampling includes the collection of samples, where possible, during periods of adverse weather, changes in treatment plant performance and changes in treatment plant loading. If possible, effluent samples must be collected where the effluent is well mixed near the center of the discharge conveyance and at the approximate mid-depth point, where the turbulence is at a maximum and the settlement of solids is minimized. (40 CFR 122.48, 25 Pa. Code § 92a.61)

2. Records Retention (40 CFR 122.41(j)(2))

   Except for records of monitoring information required by this permit related to the permittee's sludge use and disposal activities which shall be retained for a period of at least 5 years, all records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records), copies of all reports required by this permit, and records of all data used to complete the application for this permit shall be retained by the permittee for 3 years from the date of the sample measurement, report or application, unless a longer retention period is required by the permit. The 3-year period shall be extended as requested by DEP or the EPA Regional Administrator.

3. Recording of Results (40 CFR 122.41(j)(3))

   For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

   a. The exact place, date and time of sampling or measurements.
   b. The person(s) who performed the sampling or measurements.
   c. The date(s) the analyses were performed.
   d. The person(s) who performed the analyses.
   e. The analytical techniques or methods used; and the associated detection level.
   f. The results of such analyses.

4. Test Procedures

   a. Facilities that test or analyze environmental samples used to demonstrate compliance with this permit shall be in compliance with laboratory accreditation requirements of Act 90 of 2002 (27 Pa. C.S. §§ 4101-4113) and 25 Pa. Code Chapter 252, relating to environmental laboratory accreditation.

   b. Test procedures (methods) for the analysis of pollutants or pollutant parameters shall be those approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapters N or O, unless the method is specified in this permit or has been otherwise approved in writing by DEP. (40 CFR 122.41(j)(4), 122.44(i)(1)(iv))

   c. Test procedures (methods) for the analysis of pollutants or pollutant parameters shall be sufficiently sensitive. A method is sufficiently sensitive when 1) the method minimum level is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or 2) the method has the lowest minimum level of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapters N or O, for the measured pollutant or pollutant parameter; or 3) the method is specified in this permit or has been otherwise approved in writing by DEP for the measured pollutant or pollutant parameter. Permittees have the option of providing matrix or sample-specific minimum levels rather than the published levels. (40 CFR 122.44(i)(1)(iv))

5. Quality/Assurance/Control

In an effort to assure accurate self-monitoring analyses results:

a. The permittee, or its designated laboratory, shall participate in the periodic scheduled quality assurance inspections conducted by DEP and EPA. (40 CFR 122.41(e), 122.41(i)(3))

b. The permittee, or its designated laboratory, shall develop and implement a program to assure the quality and accurateness of the analyses performed to satisfy the requirements of this permit, in accordance with 40 CFR Part 136. (40 CFR 122.41(j)(4))

B. Reporting of Monitoring Results

1. The permittee shall effectively monitor the operation and efficiency of all wastewater treatment and control facilities, and the quantity and quality of the discharge(s) as specified in this permit. (25 Pa. Code §§ 92a.3(c), 92a.41(a), 92a.44, 92a.61(i) and 40 CFR §§ 122.41(e), 122.44(i)(1))

2. The permittee shall use DEP's electronic Discharge Monitoring Report (eDMR) system to report the results of compliance monitoring under this permit (see www.dep.pa.gov/edmr). Permittees that are not using the eDMR system as of the effective date of this permit shall submit the necessary registration and trading partner agreement forms to DEP's Bureau of Clean Water (BCW) within 30 days of the effective date of this permit and begin using the eDMR system when notified by DEP BCW to do so. (25 Pa. Code §§ 92a.3(c), 92a.41(a), 92a.61(g) and 40 CFR § 122.41(l)(4))

3. Submission of a physical (paper) copy of a Discharge Monitoring Report (DMR) is acceptable under the following circumstances:

   a. For a permittee that is not yet using the eDMR system, the permittee shall submit a physical copy of a DMR to the DEP regional office that issued the permit during the interim period between the submission of registration and trading partner agreement forms to DEP and DEP's notification to begin using the eDMR system.

   b. For any permittee, as a contingency a physical DMR may be mailed to the DEP regional office that issued the permit if there are technological malfunction(s) that prevent the successful submission of a DMR through the eDMR system. In such situations, the permittee shall submit the DMR through the eDMR system within 5 days following remedy of the malfunction(s).

4. DMRs must be completed in accordance with DEP's published DMR instructions (3800-FM-BCW0463). DMRs must be received by DEP no later than 28 days following the end of the monitoring period. DMRs are based on calendar reporting periods and must be received by DEP in accordance with the following schedule:

   - Monthly DMRs must be received within 28 days following the end of each calendar month.
   - Quarterly DMRs must be received within 28 days following the end of each calendar quarter, i.e., January 28, April 28, July 28, and October 28.
   - Semiannual DMRs must be received within 28 days following the end of each calendar semiannual period, i.e., January 28 and July 28.
   - Annual DMRs must be received by January 28, unless Part C of this permit requires otherwise.

5. The permittee shall complete all Supplemental Reporting forms (Supplemental DMRs) attached to this permit, or an approved equivalent, and submit the signed, completed forms as attachments to the DMR, through DEP's eDMR system. DEP's Supplemental Laboratory Accreditation Form (3800-FM-BCW0189) must be completed and submitted to DEP with the first DMR following issuance of this permit, and anytime thereafter when changes to laboratories or methods occur. (25 Pa. Code §§ 92a.3(c), 92a.41(a), 92a.61(g) and 40 CFR § 122.41(l)(4))

6. The completed DMR Form shall be signed and certified by either of the following applicable persons, as defined in 25 Pa. Code § 92a.22:

- For a corporation - by a principal executive officer of at least the level of vice president, or an authorized representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.
- For a partnership or sole proprietorship - by a general partner or the proprietor, respectively.
- For a municipality, state, federal or other public agency - by a principal executive officer or ranking elected official.

If signed by a person other than the above and for co-permittees, written notification of delegation of DMR signatory authority must be submitted to DEP in advance of or along with the relevant DMR form. (40 CFR § 122.22(b))

7. If the permittee monitors any pollutant at monitoring points as designated by this permit, using analytical methods described in Part A III.A.4. herein, more frequently than the permit requires, the results of this monitoring shall be incorporated, as appropriate, into the calculations used to report self-monitoring data on the DMR. (40 CFR 122.41(l)(4)(ii))

C. Reporting Requirements

1. Planned Changes to Physical Facilities – The permittee shall give notice to DEP as soon as possible but no later than 30 days prior to planned physical alterations or additions to the permitted facility. A permit under 25 Pa. Code Chapter 91 may be required for these situations prior to implementing the planned changes. A permit application, or other written submission to DEP, can be used to satisfy the notification requirements of this section.

   Notice is required when:

   a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b). (40 CFR 122.41(l)(1)(i))

   b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in this permit. (40 CFR 122.41(l)(1)(ii))

   c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 CFR 122.41(l)(1)(iii))

   d. The planned change may result in noncompliance with permit requirements. (40 CFR 122.41(l)(2))

2. Planned Changes to Waste Stream – Under the authority of 25 Pa. Code § 92a.24(a), the permittee shall provide notice to DEP as soon as possible but no later than 45 days prior to any planned changes in the volume or pollutant concentration of its influent waste stream, as specified in paragraphs 2.a. and 2.b., below. Notice shall be provided on the “Planned Changes to Waste Stream” Supplemental Report (3800-FM-BCW0482), available on DEP’s website. The permittee shall provide information on the quality and quantity of waste introduced into the facility, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the facility. The Report shall be sent via Certified Mail or other means to confirm DEP’s receipt of the notification. DEP will determine if the submission of a new application and receipt of a new or amended permit is required.

   a. Introduction of New Pollutants (25 Pa. Code § 92a.24(a))

      New pollutants are defined as parameters that meet all of the following criteria:

      (i) Were not detected in the facilities’ influent waste stream as reported in the permit application; and

(ii) Have not been approved to be included in the permittee's influent waste stream by DEP in writing.

The permittee shall provide notification of the introduction of new pollutants in accordance with paragraph 2 above. The permittee may not authorize the introduction of new pollutants until the permittee receives DEP's written approval.

b. Increased Loading of Approved Pollutants (25 Pa. Code § 92a.24(a))

Approved pollutants are defined as parameters that meet one or more of the following criteria:

(i) Were detected in the facilities' influent waste stream as reported in the permittee's permit application; or

(ii) Have been approved to be included in the permittee's influent waste stream by DEP in writing; or

(iii) Have an effluent limitation or monitoring requirement in this permit.

The permittee shall provide notification of the introduction of increased influent loading (lbs/day) of approved pollutants in accordance with paragraph 2 above when (1) the cumulative increase in influent loading (lbs/day) exceeds 20% of the maximum loading reported in the permit application, or a loading previously approved by DEP, or (2) may cause an exceedance in the effluent of Effluent Limitation Guidelines (ELGs) or limitations in Part A of this permit, or (3) may cause interference or pass through at the facility (as defined at 40 CFR 403.3), or (4) may cause exceedances of the applicable water quality standards in the receiving stream. Unless specified otherwise in this permit, if DEP does not respond to the notification within 30 days of its receipt, the permittee may proceed with the increase in loading. The acceptance of increased loading of approved pollutants may not result in an exceedance of ELGs or effluent limitations and may not cause exceedances of the applicable water quality standards in the receiving stream.

3. Reporting Requirements for Hauled-In Wastes

a. Receipt of Residual Waste

(i) The permittee shall document the receipt of all hauled-in residual wastes (including but not limited to wastewater from oil and gas wells, food processing waste, and landfill leachate), as defined at 25 Pa. Code § 287.1, that are received for processing at the treatment facility. The permittee shall report hauled-in residual wastes on a monthly basis to DEP on the "Hauled In Residual Wastes" Supplemental Report (3800-FM-BCW0450) as an attachment to the DMR. If no residual wastes were received during a month, submission of the Supplemental Report is not required.

The following information is required by the Supplemental Report. The information used to develop the Report shall be retained by the permittee for five years from the date of receipt and must be made available to DEP or EPA upon request.

(1) The dates that residual wastes were received.

(2) The volume (gallons) of wastes received.

(3) The license plate number of the vehicle transporting the waste to the treatment facility.

(4) The permit number(s) of the well(s) where residual wastes were generated, if applicable.

(5) The name and address of the generator of the residual wastes.

(6) The type of wastewater.

The transporter of residual waste must maintain these and other records as part of the daily operational record (25 Pa. Code § 299.219). If the transporter is unable to provide this information or the permittee has not otherwise received the information from the generator, the residual wastes shall not be accepted by the permittee until such time as the permittee receives such information from the transporter or generator.

(ii) The following conditions apply to the characterization of residual wastes received by the permittee:

(1) If the generator is required to complete a chemical analysis of residual wastes in accordance with 25 Pa. Code § 287.51, the permittee must receive and maintain on file a chemical analysis of the residual wastes it receives. The chemical analysis must conform to the Bureau of Waste Management's Form 26R except as noted in paragraph (2), below. Each load of residual waste received must be covered by a chemical analysis if the generator is required to complete it.

(2) For wastewater generated from hydraulic fracturing operations ("frac wastewater") within the first 30 production days of a well site, the chemical analysis may be a general frac wastewater characterization approved by DEP. Thereafter, the chemical analysis must be waste-specific and be reported on the Form 26R.

b. Receipt of Municipal Waste

(i) The permittee shall document the receipt of all hauled-in municipal wastes (including but not limited to septage and liquid sewage sludge), as defined at 25 Pa. Code § 271.1, that are received for processing at the treatment facility. The permittee shall report hauled-in municipal wastes on a monthly basis to DEP on the "Hauled In Municipal Wastes" Supplemental Report (3800-FM-BCW0437) as an attachment to the DMR. If no municipal wastes were received during a month, submission of the Supplemental Report is not required.

The following information is required by the Supplemental Report:

(1) The dates that municipal wastes were received.

(2) The volume (gallons) of wastes received.

(3) The BOD_5 concentration (mg/l) and load (lbs) for the wastes received.

(4) The location(s) where wastes were disposed of within the treatment facility.

(ii) Sampling and analysis of hauled-in municipal wastes must be completed to characterize the organic strength of the wastes, unless composite sampling of influent wastewater is performed at a location downstream of the point of entry for the wastes.

4. Unanticipated Noncompliance or Potential Pollution Reporting

a. Immediate Reporting - The permittee shall immediately report any incident causing or threatening pollution in accordance with the requirements of 25 Pa. Code §§ 91.33 and 92a.41(b).

(i) If, because of an accident, other activity or incident a toxic substance or another substance which would endanger users downstream from the discharge, or would otherwise result in pollution or create a danger of pollution or would damage property, the permittee shall immediately notify DEP by telephone of the location and nature of the danger. Oral notification to the Department is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution.

(ii) If reasonably possible to do so, the permittee shall immediately notify downstream users of the waters of the Commonwealth to which the substance was discharged. Such notice shall include the location and nature of the danger.

(iii) The permittee shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition, within 15 days from the incident, shall remove the residual substances contained thereon or therein from the ground and from the affected waters of this Commonwealth to the extent required by applicable law.

b. The permittee shall report any noncompliance which may endanger health or the environment in accordance with the requirements of 40 CFR 122.41(l)(6). These requirements include the following obligations:

(i) 24 Hour Reporting - The permittee shall orally report any noncompliance with this permit which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported within 24 hours under this paragraph:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violation of the maximum daily discharge limitation for any of the pollutants listed in the permit as being subject to the 24-hour reporting requirement. (40 CFR 122.44(g))

(ii) Written Report - A written submission shall also be provided within 5 days of the time the permittee becomes aware of any noncompliance which may endanger health or the environment. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(iii) Waiver of Written Report - DEP may waive the written report on a case-by-case basis if the associated oral report has been received within 24 hours from the time the permittee becomes aware of the circumstances which may endanger health or the environment. Unless such a waiver is expressly granted by DEP, the permittee shall submit a written report in accordance with this paragraph. (40 CFR 122.41(l)(6)(iii))

5. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under paragraph C.4 of this section or specific requirements of compliance schedules, at the time DMRs are submitted, on the Non-Compliance Reporting Form (3800-FM-BCW0440). The reports shall contain the information listed in paragraph C.4.b.(ii) of this section. (40 CFR 122.41(l)(7))

D. Specific Toxic Pollutant Notification Levels (for Manufacturing, Commercial, Mining, and Silvicultural Direct Dischargers) - The permittee shall notify DEP as soon as it knows or has reason to believe the following: (40 CFR 122.42(a))

1. That any activity has occurred, or will occur, which would result in the discharge of any toxic pollutant which is not limited in this permit, if that discharge on a routine or frequent basis will exceed the highest of the following "notification levels": (40 CFR 122.42(a)(1))

a. One hundred micrograms per liter.

b. Two hundred micrograms per liter for acrolein and acrylonitrile.

c. Five hundred micrograms per liter for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol.

d. One milligram per liter for antimony.

e. Five times the maximum concentration value reported for that pollutant in this permit application.

f. Any other notification level established by DEP.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following "notification levels": (40 CFR 122.42(a)(2))

a. Five hundred micrograms per liter.

b. One milligram per liter for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application.

d. Any other notification level established by DEP.

PART B

I. MANAGEMENT REQUIREMENTS

A. Compliance

1. The permittee shall comply with all conditions of this permit. If a compliance schedule has been established in this permit, the permittee shall achieve compliance with the terms and conditions of this permit within the time frames specified in this permit. (40 CFR 122.41(a)(1))

2. The permittee shall submit reports of compliance or noncompliance, or progress reports as applicable, for any interim and final requirements contained in this permit. Such reports shall be submitted no later than 14 days following the applicable schedule date or compliance deadline. (25 Pa. Code § 92a.51(c), 40 CFR 122.47(a)(4))

B. Permit Modification, Termination, or Revocation and Reissuance

1. This permit may be modified, terminated, or revoked and reissued during its term in accordance with 25 Pa. Code § 92a.72 and 40 CFR 122.41(f).

2. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. (40 CFR 122.41(f))

3. In the absence of DEP action to modify or revoke and reissue this permit, the permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions. (40 CFR 122.41(a)(1))

C. Duty to Provide Information

1. The permittee shall furnish to DEP, within a reasonable time, any information which DEP may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. (40 CFR 122.41(h))

2. The permittee shall furnish to DEP, upon request, copies of records required to be kept by this permit. (40 CFR 122.41(h))

3. Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to DEP, it shall promptly submit the correct and complete facts or information. (40 CFR 122.41(l)(8))

D. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, adequate laboratory controls including appropriate quality assurance procedures. This provision also includes the operation of backup or auxiliary facilities or similar systems that are installed by the permittee, only when necessary to achieve compliance with the terms and conditions of this permit. (40 CFR 122.41(e))

E. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge, sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment. (40 CFR 122.41(d))

F. Bypassing

1. Bypassing Not Exceeding Permit Limitations - The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions in paragraphs two, three and four of this section. (40 CFR 122.41(m)(2))

2. Other Bypassing - In all other situations, bypassing is prohibited and DEP may take enforcement action against the permittee for bypass unless:

   a. A bypass is unavoidable to prevent loss of life, personal injury or "severe property damage." (40 CFR 122.41(m)(4)(i)(A))

   b. There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance. (40 CFR 122.41(m)(4)(i)(B))

   c. The permittee submitted the necessary notice required in F.4.a. and b. below. (40 CFR 122.41(m)(4)(i)(C))

3. DEP may approve an anticipated bypass, after considering its adverse effects, if DEP determines that it will meet the conditions listed in F.2. above. (40 CFR 122.41(m)(4)(ii))

4. Notice

   a. Anticipated Bypass – If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the bypass. (40 CFR 122.41(m)(3)(i))

   b. Unanticipated Bypass – The permittee shall submit oral notice of any other unanticipated bypass within 24 hours, regardless of whether the bypass may endanger health or the environment or whether the bypass exceeds effluent limitations. The notice shall be in accordance with Part A III.C.4.b.

II. PENALTIES AND LIABILITY

A. Violations of Permit Conditions

Any person violating Sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act or any permit condition or limitation implementing such sections in a permit issued under Section 402 of the Act is subject to civil, administrative and/or criminal penalties as set forth in 40 CFR 122.41(a)(2).

Any person or municipality, who violates any provision of this permit; any rule, regulation or order of DEP; or any condition or limitation of any permit issued pursuant to the Clean Streams Law, is subject to criminal and/or civil penalties as set forth in Sections 602, 603 and 605 of the Clean Streams Law.

B. Falsifying Information

Any person who does any of the following:

- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, or

- Knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit (including monitoring reports or reports of compliance or noncompliance)

Shall, upon conviction, be punished by a fine and/or imprisonment as set forth in 18 Pa.C.S.A § 4904 and 40 CFR 122.41(j)(5) and (k)(2).

C. Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance pursuant to Section 309 of the Clean Water Act or Sections 602, 603 or 605 of the Clean Streams Law.

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under the Clean Water Act and the Clean Streams Law.

D. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (40 CFR 122.41(c))

III. OTHER RESPONSIBILITIES

A. Right of Entry

Pursuant to Sections 5(b) and 305 of Pennsylvania's Clean Streams Law, and Title 25 Pa. Code Chapter 92a and 40 CFR 122.41(i), the permittee shall allow authorized representatives of DEP and EPA, upon the presentation of credentials and other documents as may be required by law:

1. To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; (40 CFR 122.41(i)(1))

2. To have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; (40 CFR 122.41(i)(2))

3. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and (40 CFR 122.41(i)(3))

4. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or the Clean Streams Law, any substances or parameters at any location. (40 CFR 122.41(i)(4))

B. Transfer of Permits

1. Transfers by modification. Except as provided in paragraph 2 of this section, a permit may be transferred by the permittee to a new owner or operator only if this permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (40 CFR 122.61(a))

2. Automatic transfers. As an alternative to transfers under paragraph 1 of this section, any NPDES permit may be automatically transferred to a new permittee if:

   a. The current permittee notifies DEP at least 30 days in advance of the proposed transfer date in paragraph 2.b. of this section; (40 CFR 122.61(b)(1))

   b. The notice includes the appropriate DEP transfer form signed by the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them; (40 CFR 122.61(b)(2))

   c. DEP does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue this permit, the transfer is effective on the date specified in the agreement mentioned in paragraph 2.b. of this section; and (40 CFR 122.61(b)(3))

d. The new permittee is in compliance with existing DEP issued permits, regulations, orders and schedules of compliance, or has demonstrated that any noncompliance with the existing permits has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including compliance schedules set forth in the permit), consistent with 25 Pa. Code § 92a.51 (relating to schedules of compliance) and other appropriate DEP regulations. (25 Pa. Code § 92a.71)

3. In the event DEP does not approve transfer of this permit, the new owner or operator must submit a new permit application.

C. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege. (40 CFR 122.41(g))

D. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit. (40 CFR 122.41(b))

E. Other Laws

The issuance of this permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

IV. ANNUAL FEES

Permittees shall pay an annual fee in accordance with 25 Pa. Code § 92a.62. Annual fee amounts are specified in the following schedule and are due on each anniversary of the effective date of the most recent new or reissued permit. All flows identified in the schedule are annual average design flows. (25 Pa. Code § 92a. 62)

Minor IW Facility without ELG (Effluent Limitation Guideline)	$500
Minor IW Facility with ELG	$1,500
Major IW Facility < 250 MGD (million gallons per day)	$5,000
Major IW Facility ≥ 250 MGD	$25,000
IW Stormwater Individual Permit	$1,000
CAAP (Concentrated Aquatic Animal Production Facility)	$0

As of the effective date of this permit, the facility covered by the permit is classified in the following fee category: **Major IW Facility <250 MGD**.

Invoices for annual fees will be mailed to permittees approximately three months prior to the due date. In the event that an invoice is not received, the permittee is nonetheless responsible for payment. Throughout a five year permit term, permittees will pay four annual fees followed by a permit renewal application fee in the last year of permit coverage. Permittees may contact DEP at 717-787-6744 with questions related to annual fees. The fees identified above are subject to change in accordance with 25 Pa. Code § 92a.62(e).

Payment for annual fees shall be remitted to DEP at the address below by the anniversary date. Checks should be made payable to the Commonwealth of Pennsylvania.

PA Department of Environmental Protection
Bureau of Clean Water
Re: Chapter 92a Annual Fee
P.O. Box 8466
Harrisburg, PA 17105-8466

PART C

I. OTHER REQUIREMENTS

A. The approval herein given is specifically made contingent upon the permittee acquiring all necessary property rights by easement or otherwise, providing for the satisfactory construction, operation, maintenance or replacement of all structures associated with the herein approved discharge in, along, or across private property, with full rights of ingress, egress and regress.

B. Collected screenings, slurries, sludges, and other solids shall be handled, recycled and/or disposed of in compliance with the Solid Waste Management Act (35 P.S. §§ 6018.101 – 6018.1003), 25 Pa. Code Chapters 287, 288, 289, 291, 295, 297, and 299 (relating to requirements for landfilling, impoundments, land application, composting, processing, and storage of residual waste), Chapters 261a, 262a, 263a, and 270a (related to identification of hazardous waste, requirements for generators and transporters, and hazardous waste, requirements for generators and transporters, and hazardous waste permit programs), federal regulation 40 CFR Part 257, The Clean Streams Law, and the Federal Clean Water Act and its amendments. Screenings collected at intake structures shall be collected and managed and not be returned to the receiving waters.

The permittee is responsible to obtain or assure that contracted agents have all necessary permits and approvals for the handling, storage, transport and disposal of solid waste materials generated as a result of wastewater treatment.

C. The terms and conditions of Water Quality Management (WQM) permits that may have been issued to the permittee relating to discharge requirements are superseded by this NPDES permit unless otherwise stated herein.

D. If the applicable standard or effluent guideline limitation relating to the application for Best Available Technology (BAT) Economically Achievable or to Best Conventional Technology (BCT) is developed by DEP or EPA for this type of industry, and if such standard or limitation is more stringent than the corresponding limitations of this permit (or if it controls pollutants not covered by this permit), DEP may modify or revoke and reissue the permit to conform with that standard or limitation.

E. The permittee shall optimize chlorine dosages used for disinfection or other purposes to minimize the concentration of Total Residual Chlorine (TRC) in the effluent, meet applicable effluent limitations, and reduce the possibility of adversely affecting the receiving waters. Optimization efforts may include an evaluation of wastewater characteristics, mixing characteristics, and contact times, adjustments to process controls, and maintenance of the disinfection facilities. If DEP determines that effluent TRC is causing adverse water quality impacts, DEP may reopen this permit to apply new or more stringent effluent limitations and/or require implementation of control measures or operational practices to eliminate such impacts.

Where the permittee does not use chlorine for primary or backup disinfection, but proposes the use of chlorine for cleaning or other purposes, the permittee shall notify DEP prior to initiating use of chlorine and monitor TRC concentrations in the effluent on each day in which chlorine is used. The results shall be submitted as an attachment to the DMR.

F. <u>Temperature</u>

This discharge shall not cause a change in the stream temperature of more than 2°F during any one hour.

G. Chlorine or other approved biocides may not be discharged from any single generating unit for more than two hours per day unless the discharger demonstrates to the permitting authority that discharges for more than two hours are required for macroinvertebrate control. Simultaneous multi-unit chlorination/biocide application is permitted.

H. There shall be no net addition of pollutants to non-contact cooling water over intake values except for heat and water conditioning additives for which complete information was submitted in the application or is required to be submitted as a condition of this permit.

I. In accordance with ORSANCO's Pollution Control Standards, the permittee shall post and maintain a permanent marker at the establishment under permit as follows:

1. A marker shall be posted on the stream bank at each outfall discharging directly to the Ohio River (Outfall(s) 001, 004, 005, 006, and 007).

2. The marker shall consist of, at a minimum, the name of the establishment to which the permit was issued, the permit number, and the outfall number. The information shall be printed in letters not less than two inches in height.

3. The marker shall be a minimum of two feet by two feet and shall be a minimum of three feet above ground level.

J. Cooling tower blowdown discharges shall contain no detectable amounts of the 126 Priority Pollutants listed in 40 CFR Part 423, Appendix A, that are contained in chemicals added for cooling tower maintenance, except for Total Chromium and Total Zinc. When requested by DEP, the permittee shall conduct monitoring or submit engineering calculations to demonstrate compliance with 40 CFR 423.13(d)(1).

II. SOLIDS MANAGEMENT

A. The permittee shall manage and properly dispose of sewage sludge and/or biosolids by performing sludge wasting that maintains an appropriate mass balance of solids within the treatment system. The wasting rate must be developed and implemented considering the specific treatment process type, system loadings, and seasonal variation while maintaining compliance with effluent limitations. Holding excess sludge within clarifiers or in the disinfection process is not permissible.

B. The permittee shall submit the Supplemental Reports entitled, "Supplemental Report – Sewage Sludge/Biosolids Production and Disposal" (Form No. 3800-FM-BCW0438) and "Supplemental Report – Influent & Process Control" (Form No. 3800-FM-BCW0436), as attachments to the DMR on a monthly basis. When applicable, the permittee shall submit the Supplemental Reports entitled, "Supplemental Report – Hauled In Municipal Wastes" (Form No. 3800-FM-BCW0437) and "Supplemental Report – Hauled In Residual Wastes" (Form No. 3800-FM-BCW0450), as attachments to the DMR.

III. WQBELs BELOW QUANTITATION LIMITS

A. The parameter(s) listed below are subject to water quality-based effluent limits (WQBELs) in Part A of this permit that are necessary to comply with state water quality standards, but may be less than quantitation limits (QLs), as defined in 25 Pa. Code § 252.1, that are generally achievable by conventional analytical technology. The permittee shall analyze the parameter(s) using methods that will achieve the QL(s) as listed below. For the purpose of compliance, a statistical value reported on the DMR that is less than the QL(s) (i.e., "non-detect") will be considered to be in compliance.

Parameter Name	Quantitation Limit
Benzo(a)anthracene	2.5 µg/L
Hexachlorobenzene	5.0 µg/L

B. The permittee shall, where determined to be feasible by the permittee, achieve a QL less than the QL identified above to improve the level of confidence that state water quality standards are being met in the receiving waters.

C. The permittee shall manage non-detect values and report statistical results to DEP in accordance with published DMR guidance (3800-BK-DEP3047 and 3800-FS-DEP4262). Where a mixed data set exists

containing non-detect results and "detected" values (i.e., results greater than or equal to the QL), the QL shall be used for non-detect results to compute average statistical results.

IV. CHEMICAL ADDITIVES

A. Approved Chemical Additives List

1. The permittee is authorized to use chemical additives that are published on DEP's Approved Chemical Additives List (Approved List) (see www.dep.pa.gov/chemicaladditives) subject to paragraphs A.2 and A.3, below.

2. The permittee may not discharge a chemical additive at a concentration that is greater than the water quality-based effluent limitation (WQBEL) for the chemical additive or, if applicable, a technology-based effluent limitation. If effluent limitations are not specified in Part A of this permit for the chemical additive, the permittee is responsible for determining the WQBEL and ensuring the WQBEL is not exceeded by restricting usage to an amount that will not cause an excursion above in-stream water quality standards.

3. If the permittee decides to use a chemical additive that is on DEP's Approved List and the use would either (1) constitute an increase in the usage rate specified in the NPDES permit application or previous notification to DEP or (2) constitute a new use, not identified in the NPDES permit application or otherwise no previous notification occurred, the permittee shall complete and submit the "Chemical Additives Notification Form" (3800-FM-BCW0487) to the DEP regional office that issued the permit. The permittee may proceed to use the chemical additive as reported on the Form upon receipt by the DEP regional office.

B. New Chemical Additives, Not on Approved Chemical Additives List

1. In the event the permittee wishes to use a chemical additive that is not listed on DEP's Approved List, the permittee shall submit the "New Chemical Additives Request Form" (3800-FM-BCW0486) to DEP's Central Office, Bureau of Clean Water (BCW), NPDES Permitting Division, Rachel Carson State Office Building, PO Box 8774, Harrisburg, PA 17105-8774, prior to use. A copy shall be submitted to the DEP regional office that issued the permit. The form must be completed in whole in order for BCW to approve the chemical additive, and a Material Safety Data Sheet (MSDS) that meets the minimum requirements of 29 CFR 1910.1200(g) must be attached.

2. Following placement of the chemical additive on the Approved List, the permittee may submit the Chemical Additive Notification Form in accordance with paragraph A.3, above, to notify DEP of the intent to use the approved chemical additive. The permittee may proceed with usage when the new chemical has been identified on DEP's Approved List and following DEP's receipt of the Chemical Additives Notification Form.

3. The permittee shall restrict usage of chemical additives to the maximum usage rates determined and reported to DEP on Chemical Additives Notification Forms.

C. Chemical Additives Usage Reporting Requirements

The "Chemical Additives Usage Form" (3800-FM-BCW0439) shall be used to report the usage of chemical additives and shall be submitted as an attachment to the Discharge Monitoring Report (DMR) at the time the DMR is submitted.

D. DEP may amend this permit to include WQBELs or otherwise control usage rates of chemical additives if there is evidence that usage is adversely affecting receiving waters, producing Whole Effluent Toxicity test failures, or is causing excursions of in-stream water quality standards.

V. REQUIREMENTS APPLICABLE TO STORMWATER OUTFALLS

A. The permittee is authorized to discharge non-polluting stormwater from its site, alone or in combination with other wastewaters, through the following outfalls:

Outfall No.	Area Drained (ac)	Latitude	Longitude	Description
001	88	40° 39' 29.75"	-80° 21' 26.75"	Manufacturing plant
020	11	40° 39' 15.66"	-80° 21' 2.74"	Parking and administration areas
021	1	40° 39' 17.47"	-80° 21' 4.86"	Small portion of the manufacturing plant
025	2	40° 39' 35.80"	-80° 21' 13.50"	Small portion of the manufacturing plant

Monitoring requirements and effluent limitations for these outfalls are specified in Part A of this permit, if applicable.

B. Stormwater Annual Report.

The permittee shall submit a complete Annual Report to the DEP office that issued the permit by May 1 each year using DEP's Annual Report template, attached to this permit. The Annual Report shall address activities under the permit for the previous calendar year. The permittee shall submit the Annual Report electronically if notified by DEP in writing. If the permittee discharges to a municipal separate storm sewer system (MS4), a copy of the Annual Report shall be submitted to the operator of the MS4.

C. Best Management Practices (BMPs).

The permittee shall implement and, as necessary, maintain the following BMPs to remain in compliance with this permit.

1. Pollution Prevention and Exposure Minimization.

The permittee shall minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff in order to minimize pollutant discharges by either locating industrial materials and activities inside or protecting them with storm resistant coverings wherever feasible. The permittee shall implement and maintain the following measures, at a minimum:

a. Use grading, berming or curbing to prevent runoff of polluted stormwater and divert run-on away from areas that contain polluted stormwater

b. Locate materials, equipment, and activities so that potential leaks and spills are contained or able to be contained or diverted before discharge to surface waters

c. Clean up spills and leaks promptly using dry methods (e.g., absorbents) to prevent the discharge of pollutants to surface waters

d. Store leaky vehicles and equipment indoors or, if stored outdoors, use drip pans and absorbents to prevent the release of pollutants to the environment.

e. Use spill/overflow protection equipment.

f. Perform all vehicle and/or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also that capture any overspray.

g. Drain fluids from equipment and vehicles that will be decommissioned, and, for any equipment and vehicles that will remain unused for extended periods of time, inspect at least monthly for leaks.

h. Keep all dumpster lids closed when not in use. For dumpsters and roll off boxes that do not have lids, ensure that discharges have a control (e.g., secondary containment, treatment). This General Permit does not authorize dry weather discharges from dumpsters or roll off boxes.

i. Minimize contamination of stormwater runoff from fueling areas by implementing the following BMPs where determined to be feasible: cover fueling areas; install oil/water separators or oil and grease traps in fueling area storm drains; use berms to prevent run-on to and runoff from fueling areas; use spill/overflow protection and cleanup equipment; use dry cleanup methods; and/or treat and/or recycle collected stormwater runoff.

j. Train employees routinely (no less than annually) on pollution prevention practices as contained in the PPC Plan.

2. Good Housekeeping.

The permittee shall perform good housekeeping measures in order to minimize pollutant discharges including the routine implementation of the following measures, at a minimum:

a. Implement a routine cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust or debris may accumulate to minimize the discharge of pollutants in stormwater. The cleaning and maintenance program must encompass, as appropriate, areas where material loading and unloading, storage, handling and processing occur.

b. Store materials in appropriate containers.

c. Minimize the potential for waste, garbage and floatable debris to be discharged by keeping exposed areas free of such materials, or by intercepting them before they are discharged.

d. Eliminate floor drain connections to storm sewers.

e. Use drip pans, drain boards, and drying racks to direct drips back into a fluid holding tank for reuse. Drain fluids from all equipment and parts prior to disposal. Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.

f. Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries).

g. Prohibit the practice of hosing down an area where the practice would result in the discharge of pollutants to a municipal or other storm water collection system that conveys pollutants off-site without proper treatment.

3. Erosion and Sediment Controls.

a. The permittee shall minimize erosion and pollutant discharges by stabilizing exposed soils and placing flow velocity dissipation devices at discharge locations to minimize channel and stream bank erosion and scour in the immediate vicinity of stormwater outfalls.

b. The permittee shall conduct all earth disturbance activities and, when applicable, shall maintain all post-construction stormwater management (PCSM) BMPs in accordance with 25 Pa. Code Chapter 102.

c. The permittee may not utilize polymers or other chemicals to treat stormwater unless written permission is obtained from DEP.

4. Spill Prevention and Responses.

The permittee shall minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop a PPC Plan for effective responses to such releases. The permittee shall conduct the following spill prevention and response measures, at a minimum:

a. Maintain an organized inventory of materials on-site. Plainly label containers (e.g., “Used Oil,” “Spent Solvents,” “Fertilizers and Pesticides”) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur.

b. Implement procedures for material storage and handling, including the use of secondary containment and barriers between material storage and traffic areas, or a similarly effective means designed to prevent the discharge of pollutants from these areas.

c. Develop and implement employee and contractor training on the procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. The permittee shall conduct periodic training, no less than annually, and document the training on the Annual Report specified in paragraph B of this section.

d. Keep spill kits on-site, located near areas where spills may occur or where a rapid response can be made.

e. Notify appropriate facility personnel when a leak, spill, or other release occurs.

f. To the extent possible, eliminate or reduce the number and amount of hazardous materials and waste by substituting non-hazardous or less hazardous materials of equal function, as determined by the permittee.

g. Clean up leaks, drips, and other spills without using large amounts of water or liquid cleaners. Use absorbents for dry cleanup whenever possible.

When a leak, spill or other release occurs during a 24-hour period that contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 40 CFR Parts 110, 117 or 302, the permittee shall, in addition to the notification requirements contained in Part A III.C.4 of this permit, notify the National Response Center (NRC) at (800) 424-8802 in accordance with the requirements of 40 CFR Parts 110, 117, and 302 as soon as the permittee becomes aware of the discharge.

5. Sector- and Site-Specific BMPs.

a. The permittee shall implement the BMPs in the applicable Appendix to the NPDES PAG-03 General Permit for Discharges of Stormwater Associated with Industrial Activities that is currently in effect.

D. Routine Inspections.

1. The permittee shall visually inspect the following areas and BMPs on a semiannual basis (calendar periods), at a minimum:

a. Areas where industrial materials or activities are exposed to stormwater.

b. Areas identified in the PPC Plan as potential pollutant sources.

c. Areas where spills or leaks have occurred in the past three years.

d. Stormwater outfalls and locations where authorized non-stormwater discharges may commingle.

e. Physical BMPs used to comply with this permit.

At least once each calendar year, the routine inspection must be conducted during a period when a stormwater discharge is occurring.

2. The permittee shall evaluate and document the following conditions, at a minimum, in the Annual Report required by paragraph B of this section through required inspections:

a. Raw materials, products or wastes that may have or could come into contact with stormwater.

b. Leaks or spills from equipment, drums, tanks and other containers.

c. Off-site tracking of industrial or waste materials, or sediment where vehicles enter or exit the site.

d. Tracking or blowing of raw, final or waste materials from areas of no exposure to exposed areas.

e. Control measures or BMPs needing replacement, maintenance or repair.

f. The presence of authorized non-stormwater discharges that were not identified in the permit application and non-stormwater discharges not authorized by this permit.

E. Preparedness, Prevention and Contingency (PPC) Plan

1. The permittee shall develop and implement a PPC Plan in accordance with 25 Pa. Code § 91.34 following the guidance contained in DEP's "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" (DEP ID 400-2200-001), its NPDES-specific addendum and the minimum requirements below.

   a. The PPC Plan must identify all potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the facility.

   b. The PPC Plan must describe preventative measures and BMPs that will be implemented to reduce or eliminate pollutants from coming into contact with stormwater resulting from routine site activities and spills.

   c. The PPC Plan must address actions that will be taken in response to on-site spills or other pollution incidents.

   d. The PPC Plan must identify areas which, due to topography or other factors, have a high potential for soil erosion, and identify measures to limit erosion. Where necessary, erosion and sediment control measures must be developed and implemented in accordance with 25 Pa. Code Chapter 102 and DEP's "Erosion and Sediment Pollution Control Manual" (DEP ID 363-2134-008).

   e. The PPC Plan must address security measures to prevent accidental or intentional entry which could result in an unintentional discharge of pollutants.

   f. The PPC Plan must include a plan for training employees and contractors on pollution prevention, BMPs, and emergency response measures. This training must be conducted in accordance with paragraph C.4.c of this section.

   g. If the facility is subject to SARA Title III, Section 313, the PPC Plan must identify releases of "Water Priority Chemicals" within the previous three years. Water Priority Chemicals are those identified in EPA's "Guidance for the Determination of Appropriate Methods for the Detection of Section 313 Water Priority Chemicals" (EPA 833-B-94-001, April 1994). The Plan must include an evaluation of all activities that may result in the stormwater discharge of Water Priority Chemicals.

   h. Spill Prevention Control and Countermeasure (SPCC) plans may be used to meet the requirements of this section if the minimum requirements are addressed.

2. The permittee shall review and if necessary update the PPC Plan on an annual basis, at a minimum, and when one or more of the following occur:

   a. Applicable DEP or federal regulations are revised, or this permit is revised.

   b. The PPC Plan fails in an emergency.

c. The facility's design, industrial process, operation, maintenance, or other circumstances change in a manner that materially increases the potential for fires, explosions or releases of toxic or hazardous constituents; or which changes the response necessary in an emergency.

d. The list of emergency coordinators or equipment changes.

e. When notified in writing by DEP.

The permittee shall maintain all PPC Plan updates on-site, make the updates available to DEP upon request, and document the updates in Annual Reports.

F. Stormwater Monitoring Requirements.

1. The permittee shall conduct monitoring of its stormwater discharges at the representative outfalls identified in Part A of this permit, if applicable. The permittee shall document stormwater sampling event information and no exposure conditions for each calendar year on the Annual Report required by paragraph B of this section.

2. The permittee shall, upon written notice from DEP, install inlets, pipes, and/or other structures or devices that are considered necessary in order to conduct representative stormwater sampling, in accordance with a schedule provided by DEP.

3. The permittee shall collect all samples from discharges resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The 72-hour storm interval is waived when the preceding storm did not yield a measurable discharge, or if the permittee is able to document that a less than 72-hour interval is representative for local storm events during the sample period.

4. The permittee shall collect all grab samples within the first 30 minutes of a discharge, unless the permittee determines that this is not possible, in which case grab samples must be collected as soon as possible after the first 30 minutes of a discharge. The permittee shall explain why samples could not be collected within the first 30 minutes of any discharge on the Annual Report required by paragraph B of this section.

5. The permittee shall collect stormwater samples at times when commingling with non-stormwater discharges is not occurring or at locations prior to the commingling of non-stormwater discharges, unless Part A of this permit recognizes commingling of stormwater and non-stormwater discharges.

6. In the event that stormwater discharge concentrations for a parameter exceeds the benchmark values identified below at the same outfall for two or more consecutive monitoring periods, the permittee shall develop a corrective action plan to reduce the concentrations of the parameters in stormwater discharges. The permittee shall submit the corrective action plan to DEP within 90 days of the end of the monitoring period triggering the need for the plan, and shall implement the plan immediately upon submission or at a later time if authorized by DEP in writing. The permittee shall, in developing the plan, evaluate alternatives to reduce stormwater concentrations and select one or more BMPs or control measures for implementation, unless the permittee can demonstrate in the plan that (1) the exceedances are solely attributable to natural background sources; (2) no further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice; or (3) further pollutant reductions are not necessary to prevent stormwater discharges from causing or contributing to an exceedance of applicable water quality standards.

Parameter	Benchmark Value
Total Suspended Solids	100 mg/L
Chemical Oxygen Demand	120 mg/L
pH	between 6.0 and 9.0 s.u.
Nitrate+Nitrite as N	0.68 mg/L

Parameter	Benchmark Value
Phosphorus, Total	2.0 mg/L
Aluminum, Total	0.75 mg/L
Chromium, Total	0.086 mg/L
Copper, Total	0.09375 mg/L
Iron, Total	3.0 mg/L
Lead, Total	0.0032 mg/L
Zinc, Total	0.12 mg/L

VI. COOLING WATER INTAKE STRUCTURE(S)

A. Nothing in this permit authorizes a take of endangered or threatened species under the Endangered Species Act.

B. Technology and operational measures currently employed at the cooling water intake structures must be operated in a way that minimizes impingement mortality and entrainment to the fullest extent possible.

C. The location, design, construction or capacity of the intake structure(s) may not be altered without prior approval of DEP.

D. The permittee shall monitor the actual intake flows at a minimum frequency of daily, including measurements of cooling water withdrawals, make-up water and blow down volume or, alternatively, monitor cycles of concentration at a minimum frequency of daily.

E. Requirements for Permit Renewal Application.

The permittee shall submit the following information with its subsequent permit renewal application:

1. Source water physical data.

2. Cooling water intake structure data.

3. Source water biological baseline characterization data.

4. Cooling water system data.

5. Operational status.

6. The permittee must submit an entrainment reduction technology evaluation with the subsequent permit renewal application, which must include at a minimum, an evaluation of the feasibility, cost estimates, and environmental impacts of reducing intake flow using alternate sources of cooling water, water re-use, closed-cycle recirculating cooling; and fine mesh screens.

7. If DEP requests additional information to make a BTA determination, the permittee shall submit information within 30 days unless an alternate schedule is approved by DEP.

F. The permittee shall retain data and other records for any information developed pursuant to Section 316(b) of the Clean Water Act for a minimum of ten years.

Exhibit 4

Exhibit 5

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF POINT AND NON-POINT SOURCE MANAGEMENT

GENERAL INSPECTION REPORT (Non-NPDES)

Type of Inspection	WQM Permit Number	County	Municipality
Pollution Incident	**PA0006254**	**Beaver**	**Potter Township**

Name and Location of Facility or Pollution Incident	Entry Time/Date
Styropek Beaver Valley Site	**~0900/21DEC2022**
400 Frankfort Road, Monaca, PA 15061	Exit Time/Date **~1130/21DEC2022**

Name, Address of Responsible Party	Title	
Todd Link	**Environmental Engineer**	
400 Frankfort Road	Telephone **(724)770-4380**	Contacted Yes ☒ No ☐
Monaca, PA 15061		

SUMMARY OF VIOLATIONS/RECOMMENDATION/COMMENTS:

The purpose of this visit was a result of a call received by Styropek on DEC 20, 2022 requesting permission to bring a temporary clarifier on line due to a malfunction during routine maintenance. During the visit, I was accompanied by Todd Link. Prior to conducting the visit, we discussed the issue of the sludge falling off the sides of the clarifier and clogging the outlet. In addition to notifying the Department, the facility took actions to reduce production and divert flow through the emergency overflow north settling basin. We also discussed the previous visit conducted October 26, 2022 to complete the annual inspection. During that inspection we discussed maintenance of the clarifer due to a raised sludge blanket and planned maintenance. Additionally, we agreed to visit the locations nurdles were found during a boat survey conducted by the Department on December 13, 2022. We started the visit at stormwater outfall 025. During excavation to install a catch basin, some visible nurdles were uncovered in the area and can be see throughout the soil where it was removed. It looked similar to what as found during the Department boat survey. We went to outfall 002. Raccoon Creek in that area still had a white like plume noted during the survey and seen in previous photos during inspections. We viewed some of the areas and discussed how and where the Department conducted the survey or nurdles on the bank and in the creek of this area. We then visited the quiescent pond. We viewed the weir and area where the facility conducts sampling. There was no visible nurdles at that time. We found a few on vegetation and banks of the pond.

Compliance Assistance Provided ☐

Pollution Prevention Activity ☐

Sample No.	Location	Field Measurements and Observations
None Taken	**Receiving stream at outfall**	**White plume in Raccoon Creek vic outfall discharge**

Inspector Name	Inspector Signature	Title	Date **21DEC2022**
Shawn P. Bell	Shawn P. Bell	**WQS**	Telephone **412-442-4051**
Name of Person Interviewed	Signature of Person Interviewed	Title	Date **21DEC2022**
Todd Link	**e-mailed report 12/23/2022**	**Environmental Engineer**	Telephone **(724)770-4380**

This document is official notification that a representative of the Department of Environmental Protection, inspected the above facility or site. The findings of this inspection are shown above and on any attached pages.

Any violations which were uncovered during the inspection are indicated. Violations may also be discovered upon examination of the results of laboratory analyses of the discharge and review of Department records. Notification will be forthcoming, if such violations are noted.

☐ White - Regional Office ☐ Yellow - Responsible Person ☐ Pink – Inspector

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Styropek Beaver Valley Site	**Beaver**	**Potter Township**

We viewed the turbidity screen at the quiescent pond and did not see any nurdles floating on the surface or at the screen. We also viewed the turbidity screen between the quiescent pond and aeration lagoon and did not see any nurdles floating on the surface. We went to the inlet from the clarifier to the aeration lagoon. It was this area in the vicinity of the chute that many nurdles were in the area along the bank of the lagoon and in the cattail vegetation. Also while we were at the aeration lagoon, I noted the foam and white streaks in the water appeared similar to what was seen in the vicintiy of the Raccoon Creek plume and where were able to initially find nurdles while sampling these streaks of foam. Next we went to view the temporary clarifier and the clarifier that malfunctioned. During that time we discussed maintenanc of the clarifier. There were several contracted and facility personnel working to address the issue.It was stated that maintenance was normally scheduled to occur twice a year by an outside party. They had just hired a new party to complete this maintenance. Facility personnel did not do the maintenance. We discussed and it was recommended that facility personnel do more routine inspections to avoid future incidents like today and the sludge blanket rising. It is possible that the lack of clarifier maintenance could be contributing to the issues with the nurdles being found in Raccoon Creek. Photos were taken of the temporary clarifier and current clarifier and sent to the Department engineer, Ryan Decker, to expedite approval to bring the temporary clarifier on line. The facility had the temporary clarifier on site since June but needed a slowing in production and some piping to be completed to request it be brought on line. We went to the north overflow settling basin next to the clarifier. Facility personnel stated it had less capacity than the clarifier and had shorter settling time. There was a skimmer to take floating material off the top. It does not reach all areas of the pond. There was also a turbidity screen at the outlet of the pond. There were many floating nurdles in the vicinity of the outlet, along the banks of the basin, and areas the skimmer did not reach. The nurdles were making their way around the turbidity screen. It was stated the turbidity screens go ~2 to 3 feet deep and nothing was supposed to go through them. It appears they are not working as required. We discussed the possibility of other screens with different micron sizes and routine maintenance. Upon completion of looking at these WWTP areas, we went to the areas of concern regarding improved BMPs to clean up any nurdles seen on the ground. Since the visit of the facility in OCT 2022, the facility has trained site personnel on identifying nurdles and measures to clean them up as soon as possible. Currently, they are in the process of implementing and refining a traffic cone system to identify the areas needing cleaned up. Additionally, the facility has hired a contractor to evaluate their BMPs, processes, and WWTP system to determine where nurdles are getting into the system and ways to prevent future occurrences. Prior to this incident, the Department has planned a visit on January 05, 2023 to do a walk through of the facility to include its process, WWTP, outfalls, and stream bank area near outfall 002 if safely accessible at that time.

The following are recommendations: Continue to complete maintenance on the clarifier. Increase visual inspections and more maintenance on the WWTP, specifically, the clarifier. Continue to work with a contractor/third party to evaluate sources of nurdles to your storm water outfalls and WWTP outfall. Obtain core samples of the sediments in the quiescent, aeration, and north basins to determine the amount of nurdles found. If any are found, it is recommended cleaning out the sludge/sediment from these areas. Continue to do a more thorugh evaluation of nurdles found in the dead flow areas of the ponds/lagoon along with the vegetation to determine where nurdles are gathering and the possibility to remove them from these areas. Continue to improve the clean up of nurdles on the ground of the facility to prevent them from entering the WWTP and environment.

The following violations were noted during the inspection: 25 Pa Code 92a.41(a)(5) NPDES-Failure to properly operate and maintain all facilities which are installed or used by the permittee to achieve compliance. ; 25 Pa. Code 92a.41(c) NPDES-Discharge of floating materials, scum, sheen, foam, oil, grease or substances that produced an observable change or resulted in deposits in receiving waters.

We request that you submit a report to this office within 15 days of the date of this report, describing the cause of noncompliance and the steps being taken to prevent recurrence of the violations along with a correction schedule.

Photos attached.

Inspector Name	Inspector Signature	Date
Shawn P. Bell	Shawn P. Bell	**23DEC2022**

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Styropek

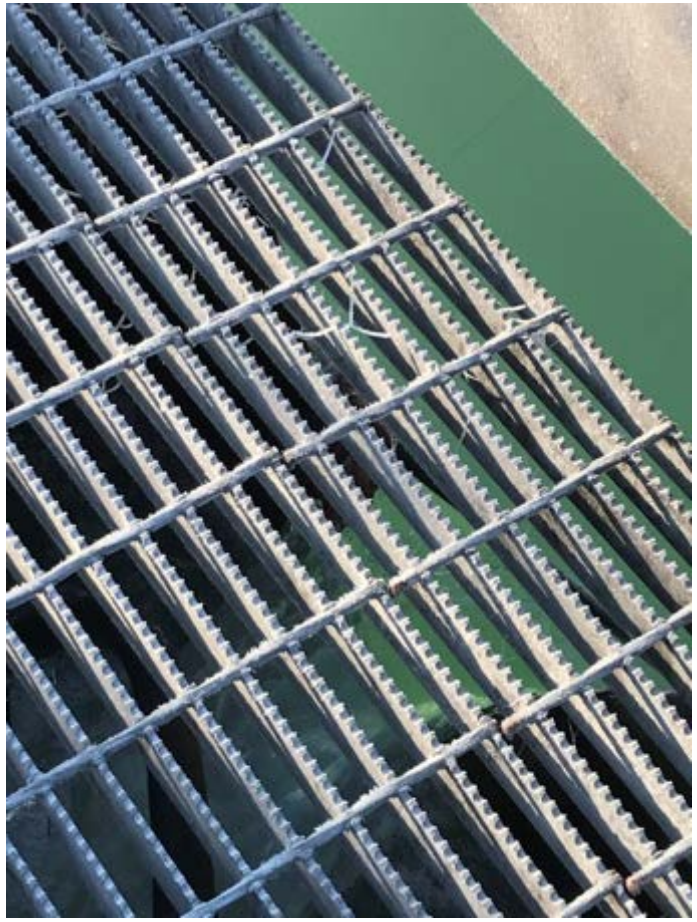
Photos Pollution Incident 12/21/2022

Clarifier

Stormwater Outfall 025

Outfall 002

Quiescent pond and weir discharge to outfall 002



Quiescent pond and aeration lagoon

Turbidity screen between aeration lagoon and quiescent pond; foam aeration lagoon

Chute from clarifier/emergency overflow north settling basin; nurdles on shore & vegetation around chute

Nurdles near clarifier chute to aeration lagoon; temporary clarifier

Temporary clarifier

Clarifier

Clarifier

Emergency overflow north settling basin

Turbidity blanket and skimmer emergency overflow north settling basin; Nurdles near discharge to aeration lagoon from basin

Nurdles in north settling basin along the bank and in the vegetation

Cone system to identify nurdles on the ground to be cleaned up

Exhibit 6

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400 Frankfort Road, Monaca, PA 15061	Exit Time/Date **~1230/17JAN2023**

Name, Address of Responsible Party	Title	
Todd Link	**Environmental Engineer**	
400 Frankfort Road	Telephone **(724)770-4380**	Contacted Yes ☒ No ☐
Monaca, PA 15061		

SUMMARY OF VIOLATIONS/RECOMMENDATION/COMMENTS:

The purpose of this visit was to discuss the way ahead regarding improvements made to the WWTP clarifier and the plan to address pellets(nurdles) found at the property. We spent some time in the conference room discussing short term and long term actions proposed by the company to address these issues. After the meeting we did a tour of he WWTP and facility outfalls. Specifically, we viewed stormwater outfalls 021, 025, & outfall 002. There were nurdles visible in the soil at the stormwater outfalls. During the tour, there were some visible nurdles on the road and gravel areas marked with an orange cone system for clean up. The source of the nurdles in these locations has not been specifically determined and were part of the discussion prior to the site tour. There will be some short term measures and long term measures to determine the source as well as prevent future instances of nurdles being released. The clarifier was back on line and the plant treatment process was still being studied/adjusted to improve operations. Further study is planned to improve future operations. After viewing the WWTP we went to Outfall 002. There was still a white colored plume in the vicinity of the discharge into Raccoon Creek. We discussed the areas the Department took sampling. We also discussed future sampling to be conducted by the facility. After the site tour, we did a wrap up of our visit. We asked for a timeline of corrective actions to be taken to address the previously sent Notice of Violation regarding these violations. Both parties agreed to discuss entering into a Consent Order & Agreement.

Compliance Assistance Provided ☐

Pollution Prevention Activity ☐

Sample No.	Location	Field Measurements and Observations
None Taken	**Receiving stream at outfall**	**White plume in Raccoon Creek vic outfall discharge**

Inspector Name	Inspector Signature	Title	Date **17JAN2023**
Shawn P. Bell	Shawn P. Bell	**WQS**	Telephone **412-442-4051**
Name of Person Interviewed	Signature of Person Interviewed	Title	Date **17JAN2023**
Todd Link	**e-mailed report 01/30/2023**	**Environmental Engineer**	Telephone **(724)770-4380**

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Photos attached.

Inspector Name	Inspector Signature	Date
Shawn P. Bell	Shawn P. Bell	**17JAN2023**

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Styropek

JAN 17, 2023, Visit

Stormwater Outfalls 021 and 025

Nurdles vicinity outfall 025 and road from admin area

Insert in catch basins to prevent nurdles migration; more nurdles in gravel alongside road

WWTP Clarifier and anti foam addition; nurdles in emergency pond between turbidity screens

Discharge from emergency pond; discharge to aeration pond

Bank of aeration pond with nurdle build up; discharge/sampling point for Outfall 002

White plume visible in Raccoon Creek at Outfall 002