

# PENNSYLVANIA CAMPAIGN FOR CLEAN WATER

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**Re: Proposed Conditional State Water Quality Certification for the Army Corps of Engineers Pennsylvania State Programmatic General Permit (PASPGP-5) - Special Public Notice # SPN 16-22**

To whom it may concern:

This letter is provided on behalf of the Exceptional Value workgroup of the Pennsylvania Campaign for Clean Water, a coalition of over 180 environmental, conservation, sporting, and religious groups from all corners of the state. The Exceptional Value workgroup that is a working arm of the Campaign for Clean Water (EV Campaign) concentrates its efforts to the protection of Pennsylvania's pristine high quality and exceptional value waterways. The EV Campaign submits the following concerns to the Pennsylvania Department of Environmental Protection for consideration.

The document open for public comment and to be put into effect for the next five years per the May 28, 2016 Pennsylvania Bulletin, Vol. 46, No 22. currently states: *The following Category III Activities under PASPGP-4 are Non-Reporting Activities under PASPGP-5: "b. Some activities waived at 25 PA Code § 105.12(a)(2)-Waiver 2 -Water Obstructions in a Stream or Floodway With a Drainage Area of 100 Acres or Less (250 linear feet of permanent impact to streams and/or rivers must be submitted to the Corps as a Reporting Activity) (Part IV, (A)(13));"*

**Comment:** Under this Chapter 105 Waiver 2, any stream in Pennsylvania where the drainage area is 100 acres or less --- including any EV or HQ stream --- can be filled in and eliminated. Such impacts to Special Protection waters would qualify for the SPGP (general permit) as non-reporting which means that they would not be reviewed at any level. Despite the science that clearly documents the harm this headwater filling practice causes, it appears no changes are being considered at this time to stop this practice for the next five years. This type of waiver should not be allowed in any stream and definitely should not be allowed in Special Protection waters. The science on headwater streams clearly indicates that these important headwaters provide essential watershed health qualities, habitat for benthic macroinvertebrates and other wildlife and fauna, nutrient cycling, and reduction of

sediment and pollutants to help purify water quality downstream<sup>1</sup>. Stroud Water Research Center, in 2008 made the case and went so far as stating:

*“Evidence shows that very small watersheds (some as small as 5.5 acres) can support both permanent and intermittent headwater streams. But the Commonwealth of Pennsylvania allows waivers for the disturbance of watersheds with drainage areas of 100 acres or less. Based on our current understanding of their ability to support vital headwater streams, we (Stroud) recommend that these smaller watersheds be protected.”*

Headwater streams are an integral component of river networks and account for more than 90 percent of the streams within a stream network and nearly half of all river miles in the United States (Leopold et al. 1964). We attach this scientific white paper with our comment to provide more details and support for not allowing this waiver to continue. At the very least, the Department should not allow this waiver in EV and HQ streams.

Second, it appears from the language that certain Chapter 105 General Permit registrations still are allowed in HQ and EV waters.

In both of these situations the projects impacting our streams and wetlands will get little to no review and so are essentially on the “honor” system of the applicant. We believe that such impacts being automatically allowed in EV (and possibly in HQ) waters would be in direct opposition to state and federal (Tier 3) antidegradation requirements, the Clean Streams Law, and Article 1, Section 27 of the Pennsylvania Constitution. We believe that all activities proposed in HQ and EV waters should be authorized only after careful individual permit review, and that no waivers or general permits should be allowed in EV or HQ waters --- otherwise, the Department cannot ensure that these streams are being afforded "special protection" or that activities proposed in them will satisfy state and federal anti-degradation requirements.

The EV Campaign also has concern that wetlands are not being properly monitored and therefore are not being adequately protected: See the following language: *“Monitoring is required for temporary impacts to wetlands that exceeds 0.10 acre Part VI, (A)(23)). Monitoring would be completed using a standardized monitoring form which will be available on the Corps website at:*

<http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx>. *The monitoring requirement may be waived after Corps consideration of a written request from the applicant; or the monitoring requirement may be superseded if the Corps determines more stringent monitoring is required and incorporates the requirement as a Special Condition of a PASPGP-5 verification;*

**Comment:** In this instance, there should not be a waiver allowed simply when an applicant writes a request to avoid this step. The importance of wetlands cannot be overstated and allowing such a waiver is not in the best interest of the wetlands that still remain intact. Also, the link to the monitoring protocol leads to an error page -- 404 error --- so we were unable to review that

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<sup>1</sup> Kaplan, Louis A. et.al. *“Protecting Headwaters: The Scientific Basis for Safeguarding Stream and River Ecosystems A Research Synthesis”*, Stroud™ Water Research Center, 2008.

component of the monitoring protocols at the time of review. We understand there may be valid concerns that applications get accepted by the Department on winter assessments which does not adequately protect these wetlands from harm.

For these reasons we urge that the current proposals be tightened up to better protect our most sensitive headwater streams and wetlands and to address issues with this practice that have been on the books for far too long. To let this practice continue another five years would be a gross failure not grounded by the science that we cannot afford.

Thank you for your time and consideration of our concerns and comments and we look forward to a response.

Sincerely,



Krissy Kasserman

CCW Exceptional Value Co-Chair



Faith Zerbe

CCW Exceptional Value Co-Chair

cc. Ms. Mary Lou Martin, US Army Corps of Engineers  
Ms. Patricia Strong, US Army Corps of Engineers  
Mr. Wade Chandler, Chief Pennsylvania Section, Regulatory Branch  
Maya van Rossum, the Delaware Riverkeeper

Enclosure. *Protecting Headwaters: The Scientific Basis for Safeguarding Stream and River Ecosystems A Research Synthesis*, Stroud™ Water Research Center, 2008