

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, on)
behalf of the UNITED STATES)
DEPARTMENT OF THE INTERIOR)
)
and)
)
COMMONWEALTH OF PENNSYLVANIA)
)
Plaintiffs,)
v.)
)
RUTGERS ORGANICS LLC)
)
Defendant.)

CIVIL ACTION NO. 4:26-CV-560

CONSENT DECREE

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I. BACKGROUND

A. Plaintiffs United States of America (“United States”), on behalf of the United States Department of the Interior (“DOI”) acting through the U.S. Fish and Wildlife Service, and the Commonwealth of Pennsylvania (the “Commonwealth”), acting through the Pennsylvania Fish and Boat Commission (“PFBC”) and the Pennsylvania Game Commission (“PGC”), have filed a Complaint in this action against Defendant Rutgers Organics LLC (“ROL”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, and Section 702(a) of the Pennsylvania Hazardous Site Cleanup Act (“HSCA”), 35 P.S. § 6020.702(a).

B. The Complaint alleges that ROL is a liable party under CERCLA and HSCA for damages for injury to, destruction of, or loss of natural resources and their services, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release of hazardous substances from its manufacturing facility at the Centre County Kepone Superfund Site in College Township, Centre County, Pennsylvania (the “Site”) (see Appendix A).

C. This Consent Decree (the “Decree” or “Consent Decree”) resolves the claims alleged in the Complaint against ROL for Natural Resource Damages, as that term is defined in Paragraph 4 below.

D. For a period of over three decades beginning in about 1957, discharges containing contaminants including volatile organic compounds (“VOCs”) and the pesticides kepone and mirex were released from ROL’s facility at the Site to soils, water, groundwater, and sediments of the plant property, and some contaminants were transported to the Freshwater Drainage Ditch, Thornton Spring, Spring Creek, and its floodplain.

E. Investigations conducted by various Commonwealth and federal agencies in and

around the Site have detected kepone and mirex in Site soils, sediments, and biota over a three-decade time period. Investigations also found VOCs in the groundwater, surface water, and sediments as contaminants of concern. The EPA required remediation of soil, sediment and water to remove contamination, and these cleanup efforts continue to be monitored by the EPA.

F. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, DOI, through the United States Fish and Wildlife Service (“FWS”), has been delegated authority to act as Federal Trustee for natural resources impacted by the release of hazardous substances.

G. The PFBC and PGC have been delegated authority to act as Commonwealth Trustees for natural resources in the Commonwealth of Pennsylvania impacted by the release of hazardous substances.

H. The Federal Trustee and the Commonwealth Trustees (collectively, the “Trustees”), have formed a Trustee Council to coordinate natural resource damage assessment and restoration activities relating to the release of hazardous substances.

I. The Trustees have undertaken various natural resource damage assessment activities in and around the Site. The Trustees found that hazardous substances have been released into the environment at and from the Site; benthic invertebrates, fish, and birds have likely been injured by exposure to the hazardous substances released at and from the Site.

J. Based upon information developed and analyzed by the Trustees, the damage assessment activities, regulatory standards, and scientific literature, the Trustees evaluated injury to natural resources and their services alleged to have occurred as a result of exposure to concentrations of contaminants in surface water and sediment. The Trustees have also reviewed data from the CERCLA response efforts at the Site and other prior studies in the watershed to

assess injuries to natural resources located at the facility and downstream of the facility where the hazardous substances came to be located.

K. The Trustees relied on an ecological service model to support their determinations of the type and magnitude of restoration efforts required to restore the injured natural resources and their services.

L. Based on this information, the United States, the Commonwealth, and ROL (the “Parties”) agree that no further natural resource damage assessment activities are required to effectuate the purposes of this Consent Decree. Although the Trustees have not completed a full natural resource damage assessment for the Site, the Trustees have developed and analyzed information sufficient to support a settlement that is fair, reasonable, and in the public interest.

M. The Trustees have prepared a draft Restoration Plan in accordance with 42 U.S.C. § 9611 and 43 C.F.R. § 11.93 to evaluate proposed restoration alternatives that will restore, rehabilitate, replace, and/or acquire natural resources and services equivalent to those allegedly injured, lost, or destroyed as a result of the release of hazardous substances. A copy of the draft Restoration Plan is being made available for public review and comment in coordination with this proposed Consent Decree (see Appendix B).

N. By entry into this Decree, ROL does not admit the allegations in the Complaint and does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

O. Plaintiffs and ROL agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid prolonged and complicated litigation among the Parties; and that this Decree is fair, reasonable and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1367(a). The Court has personal jurisdiction over ROL. Solely for the purposes of this Consent Decree and the underlying Complaint, ROL waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. ROL shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c).

III. PARTIES BOUND

3. This Decree is binding upon the United States, the Commonwealth, ROL and its successors and assigns. Any change in ownership or corporate or other legal status of ROL, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibility of ROL under this Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, or in regulations promulgated under CERCLA or the CWA, shall have the meaning assigned to them in such law or regulations. Whenever the terms listed below are used in this Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. “ClearWater” means ClearWater Conservancy, a nonprofit accredited land trust in State College, Pennsylvania that has conserved over 12,300 acres in the region.

ClearWater is neither an entity controlled by ROL nor a contractor of ROL.

c. “Commonwealth” means the Commonwealth of Pennsylvania.

d. “Commonwealth Trustees” means the Pennsylvania Fish and Boat Commission, and the Pennsylvania Game Commission.

e. “Consent Decree” or “Decree” means this Decree and, all attached appendices. In the event of a conflict between this Decree and any attached appendix or plan, this Decree shall control.

f. “Day” or “day” means a calendar day. In computing any period of time under this Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time will run until the close of business the next working day.

g. “DOI” means the United States Department of Interior and any of its successor departments or agencies of the United States.

h. “DOJ” means the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

i. “Effective Date” means the date upon which the approval of this Decree is recorded on the Court’s docket.

j. “Existing In-Stream Structures” refers to the improvements made to the NRDAR Property which were completed in 2019. These improvements include but are not limited to log cribbing and the placement of boulder clusters, buffers, and pollinator plots.

k. “Federal Trustee” means the United States Department of Interior, acting through the Fish and Wildlife Service.

l. “Interest” means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

m. “Natural Resource” or “Natural Resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the Commonwealth.

n. “Natural Resource Damages” shall mean any damages recoverable by the United States or the Commonwealth on behalf of the public under Section 107(a)(4)(C) and 107(f) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9607(f), for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources as a result of the release of hazardous substances at or from the Site including, but not limited to: (i) the reasonable costs of assessing injury to, destruction of, loss of, loss of use of, or impairment to Natural Resources arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources and/or their services; (iii) the costs of planning, overseeing, and monitoring such restoration activities including RIM costs; and (iv) any other compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 CFR § 11.15.

- o. “NRDAR Fund” means the DOI Natural Resource Damage Assessment and Restoration Fund established pursuant to 43 U.S.C. §§ 1474b and 1474b-1.
- p. “NRDAR Property” means the two parcels of land along Spring Creek identified in Appendix A, and having tax parcel #19-004-111-0001P (easterly segment) and #19-003-003D.
- q. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.
- r. “Parties” means the United States, the Commonwealth of Pennsylvania, and ROL.
- s. “Plaintiffs” means the United States and the Commonwealth of Pennsylvania.
- t. “RIM Costs” means the natural resource restoration planning, implementation and monitoring costs to be incurred by the Trustees in connection with the release of hazardous substances, including costs to oversee compliance with, and to implement this Consent Decree and costs to implement, and to amend if necessary, the Restoration Plan for the Centre County Kepone Site prepared by the Trustee Council.
- u. “ROL” means Rutgers Organics LLC.
- v. “Section” means a portion of this Consent Decree identified by a Roman numeral.
- w. “Site” means the Centre County Kepone Superfund Site in College Township, Centre County, Pennsylvania, encompassing approximately 35 acres owned or formerly owned by ROL and a portion of the Spring Creek watershed, including Thornton Spring, and extending downstream to the former McCoy’s Dam near Milesburg, Pennsylvania.
- x. “Spring Creek” means the waterway originating southeast of the Site and flowing roughly northward for approximately 40 kilometers (25 miles) which receives surface and groundwater from the Site.

y. “Subparagraph” means a portion of this Consent Decree identified by a lower case letter.

z. “Trustee Council” means the entity formed by the Federal Trustee and the Commonwealth Trustees to coordinate natural resource damage assessment and restoration activities relating to the release of hazardous substances.

aa. “Trustees” means collectively, the DOI and the Commonwealth acting through their delegated officials.

bb. “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

V. STATEMENT OF PURPOSE

5. The mutual objectives of the Parties entering into this Decree are to (i) restore, replace, or acquire the equivalent of the Natural Resources allegedly injured, destroyed or lost as a result of hazardous substance releases at and from the Site; (ii) fund the Trustees’ future Natural Resource RIM Costs; (iii) reimburse natural resource damage assessment costs incurred by the Trustees; (iv) resolve ROL’s liability for Natural Resource Damages as provided herein; and (v) avoid potentially costly and time-consuming litigation.

VI. PAYMENT OF NATURAL RESOURCE DAMAGES

6. Within 45 days after the Effective Date, ROL shall pay the sum of \$795,263 for Natural Resource Damages to the Trustees as follows:

a. Restoration Costs. ROL shall pay a total of \$290,000 to the United States as a joint recovery of Natural Resource Damages on behalf of the Trustees as provided in this Paragraph. The total amount paid shall be deposited into a segregated, case-specific sub-account within the NRDAR Fund to be managed at the sole discretion and for the joint

benefit and use of the Trustees for restoration, replacement, rehabilitation, and/or acquisition of the equivalent of Natural Resources and their services injured by the release of hazardous substances in Spring Creek or nearby natural resources.

b. Trustees' RIM Costs. ROL shall pay a total of \$60,000 as a joint recovery on behalf of the Trustees for the Trustees' future RIM Costs estimated to be incurred after lodging of this Consent Decree. The total amount paid shall be deposited in a segregated, case-specific sub-account within the NRDAR Fund, to be managed for the joint benefit and use of the Trustees and applied toward RIM Costs incurred by DOI and the Commonwealth.

c. Future Repair and Maintenance of Existing In-Stream Structures. ROL shall pay a total of \$122,000 to the United States, which shall be deposited into a segregated, case-specific sub-account within the NRDAR Fund to be managed at the sole discretion and for the joint benefit and use of the Trustees for the future repair and maintenance of the Existing In-Stream Structures on the NRDAR Property.

d. DOI's Past Assessment Costs. ROL shall pay to the United States, as reimbursement for past assessment costs incurred by DOI, the sum of \$146,060. Subject to the deduction required by the 1994 CJS Appropriations Act, the total amount paid by ROL pursuant to this Paragraph shall be deposited in the NRDAR Fund to be applied toward NRD assessment costs incurred by DOI.

e. PFBC's Past Assessment Costs. ROL shall pay a total of \$172,727 to the PFBC for unreimbursed assessment costs.

f. PGC's Past Assessment Costs. ROL shall pay a total of \$4,476 to the PGC for unreimbursed assessment costs.

7. Payment Instructions.

a. Payments to the United States. ROL shall make the payments to the United States (including restoration funds and RIM costs) to be deposited into the NRDAR Fund by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to ROL by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Middle District of Pennsylvania after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which ROL shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Glenn Palmer
2 Turner Place
Piscataway, NJ 08554
Glenn.palmer@evonik.com

ROL may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States in accordance with Section XVII (Notices).

b. Payments to the Commonwealth. ROL shall make payment to the PFBC and PGC under this Consent Decree, by means of two separate electronic transfers (one for PFBC and one for PGC), using the following Bank’s information.

Beneficiary Name: Commonwealth of PA
Bank Account Number: 4603162694
9-Digit ACH Routing Number: 121000248
Bank Name: Wells Fargo
City: Philadelphia, PA

8. Notice of Payment. Upon making any payment required under this Consent Decree, ROL shall send written notice to each Trustee representative in accordance with Section

XVII (Notices). Such notice shall reference the exact date and amount of each payment, the civil action number, CDCS number, and DOJ case number 90-11-3-1436/4.

VII. LAND CONSERVATION

9. ClearWater owns the NRDAR Property in fee simple with the intent of holding it in trust for long-term stewardship, conservation, and recreational angler access in perpetuity. The NRDAR Property is located along Spring Creek in the same watershed as the Site and contains surface water, sediment, and other natural resources important to the ecosystem of the area. The NRDAR Property also contains Existing In-Stream Structures placed there in 2019 to support a healthy riparian corridor along the property, and presents a unique opportunity for increased recreational angler access to Spring Creek.

10. ROL Restoration Obligations Concerning the NRDAR Property. ROL shall be responsible for the completion of the following actions:

a. Facilitating Public Fishing Access. Within 270 days of the Effective Date, ROL will ensure that the portion of Spring Creek encompassed by the NRDAR Property is made accessible for lawful public fishing access, as further detailed in the Scope of Work found in Appendix C. This includes construction of an accessible parking lot and access trail.

b. Recordation of Conservation Easement. Within 90 days of the Effective Date, ROL will ensure the recordation of a conservation easement on the NRDAR Property that restricts its use to conservation purposes and allows for public access for purposes of fishing. The conservation easement shall be in conformance with the template set forth in Appendix D and in compliance with all applicable Commonwealth law. The Commonwealth Trustees will hold a third-party right of enforcement for the NRDAR

Property for purposes of ensuring its perpetual conservation and access to the public for fishing.

c. Notifications. ROL shall provide notice of its completion of each of the Restoration Obligations required by this Paragraph in accordance with Section XVII (Notices), and provide copies of relevant documents to the Commonwealth Trustees, such as the recorded easements and photographs of the as-built accessible parking and access trail. Once notification has been received from ROL, the Commonwealth Trustees will make arrangements to field-verify completion of the Restoration Obligations.

VIII. REPORTING REQUIREMENTS

11. Beginning no sooner than six months after the lodging of this Consent Decree, and until termination of this Decree pursuant to Section XXI (Consent Decree Termination), ROL shall submit by email to the Commonwealth Trustees a semi-annual report on January 31st and July 31st of each year for the preceding half-calendar-year (*i.e.*, July 1st through December 31st and January 1st through June 30th, respectively). For the first semi-annual report only, the reporting period shall commence with the lodging of this Consent Decree and extend through December 31, 2025. Each semi-annual report shall summarize the status of ROL's progress in satisfying its obligations under Paragraph 9 (ROL Restoration Obligations Concerning the NRDAR Property), including, at a minimum, (i) a narrative description of relevant activities undertaken and any problems encountered and solutions implemented during the reporting period, (ii) a narrative description of any anticipated problems and proposed solutions to such problems, (iii) appropriate maps and photographs demonstrating ROL's progress, and (iv) a narrative description, including a schedule if applicable, of anticipated activities to be undertaken in the next reporting period in furtherance of its obligations under

Paragraph 9.

12. Each report submitted by ROL under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

13. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

14. The reporting requirements of this Consent Decree do not relieve ROL of any reporting obligations required by CERCLA, the CWA, the HSCA, or their respective implementing regulations, or by any other federal, commonwealth, or local law, regulation, permit, or other requirement.

IX. STIPULATED PENALTIES

15. ROL shall be liable for stipulated penalties to the United States and the Commonwealth for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

16. ROL shall not deduct any penalties paid under this Decree pursuant to this Section in calculating its federal, commonwealth, or local income tax.

17. Payment Obligation.

a. Interest. In the event any payment required by Paragraph 6 is not made when due, ROL shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment requirement by Section VI (Payment of Natural Resource Damages) is not made when due, ROL shall also pay the Trustees the following stipulated penalties per day for each day the payment is late through the date of full compliance. If ROL fails to satisfy any requirement or deadline set forth in Section VII (Land Conservation) or Section VIII (Reporting Requirements), ROL shall pay the Commonwealth Trustees the following stipulated penalties per day for each day the required restoration action or report is late through the date of full compliance.

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 30 th day	\$1000
31 st day and beyond	\$2500

18. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

19. ROL shall pay any stipulated penalties to the United States and/or the Commonwealth within 30 days of a written demand by any Plaintiff. Of the total stipulated penalty amount due, and except for payments made for a failure to satisfy any requirement set

forth in Section VII (Land Conservation) or Section VIII (Reporting Requirements), ROL shall pay 50% to the United States and 50% to the Commonwealth of Pennsylvania. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

20. Any Interest payments under Subparagraph 17.a shall be paid in the same manner as the overdue principal amount and shall be directed to the same account as the overdue principal amount. Any stipulated penalty payments to the United States under this Section IX shall be paid in accordance with Paragraph 7 above.

21. Stipulated penalties shall continue to accrue as provided in Paragraph 18, during any Dispute Resolution, but need not be paid until the following:

a. ROL shall pay accrued penalties determined to be owing either by a decision of the Plaintiff(s) that is not appealed to the Court, or an agreement of the Parties, together with Interest, to the Plaintiff(s) within 30 days of the effective date of the agreement or the receipt of the Plaintiff(s)' decision.

b. If the dispute is appealed to the Court and the Plaintiff(s) prevail in whole or in part, ROL shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, ROL shall pay all accrued penalties determined to be owing, together with Interest, within 30 Days of receiving the final appellate court decision.

22. If ROL fails to pay stipulated penalties according to the terms of this Consent Decree, ROL shall be liable for Interest on such penalties, accruing as of the date payment

became due. Nothing in this Paragraph shall be construed to limit the United States or the Commonwealth from seeking any remedy otherwise provided by law for ROL's failure to pay any stipulated penalties.

23. The payment of penalties and interest, if any, shall not alter in any way ROL's obligation to complete the performance of the requirements of this Consent Decree.

24. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the Commonwealth's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Sections XIV and XVI (Reservation of Rights by Plaintiffs and Effect of Settlement/Contribution Protection), the Plaintiffs expressly reserve the right to seek any other relief that a Plaintiff deems appropriate for ROL's violation of this Decree or applicable law, including but not limited to an action against ROL for statutory penalties, additional injunctive relief or restoration work, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. FORCE MAJEURE

25. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of ROL, of any entity controlled by ROL, or of ROL's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite ROL's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include ROL's financial inability to

perform any obligation under this Consent Decree.

26. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, ROL shall provide notice by email to the impacted Trustee(s), within seven days of when ROL first knew that the event may cause a delay. Within seven days thereafter, ROL shall provide in writing to the impacted Trustee(s) an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; ROL's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of ROL, such event may cause or contribute to an endangerment to public health, welfare or the environment. ROL shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude ROL from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. ROL shall be deemed to know of any circumstance of which ROL, any entity controlled by the ROL, or ROL's contractors knew or should have known.

27. If the impacted Trustees agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Trustees for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The impacted Trustee(s) will notify ROL in

writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

28. If the impacted Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the impacted Trustee(s) will notify ROL in writing of their decision.

29. If ROL elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of the Trustee(s)' notice. In any such proceeding, ROL shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the ROL complied with the requirements of Paragraphs 25 and 26. If ROL carries this burden, the delay at issue shall be deemed not to be a violation by ROL of the affected obligation of this Consent Decree identified to the Trustees and the Court.

XI. DISPUTE RESOLUTION

30. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

31. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when ROL sends the Plaintiffs a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by

written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, ROL invokes formal dispute resolution procedures as set forth below.

32. Formal Dispute Resolution. ROL shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending the Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting ROL's position and any supporting documentation relied upon by ROL.

33. The Plaintiff(s) shall send their(its) Statement of Position to ROL within 60 days of receipt of ROL's Statement of Position. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiff(s). The Statement of Position shall be binding on ROL, unless ROL files a motion for judicial review of the dispute in accordance with the following Paragraph.

34. ROL may seek judicial review of the dispute by filing with the Court and serving on the Plaintiff(s), in accordance with Section XVII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of ROL's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

35. The Plaintiff(s) shall respond to ROL's motion within the time period allowed by the Local Rules of this Court. ROL may file a reply memorandum, to the extent permitted by the Local Rules.

36. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 32 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or other deliverables requiring Plaintiff approval under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, ROL shall have the burden of demonstrating, based on the administrative record, that the position of the Plaintiff(s) is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 32, ROL shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the Consent Decree's objective to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of the release of hazardous substances.

37. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of ROL under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but

payment shall be stayed pending resolution of the dispute as provided in Paragraph 21. If ROL does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

38. Notwithstanding any provision of the Decree, the United States and the Commonwealth retain any access authorities and rights they may have under CERCLA and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION AND RETENTION OF RECORDS

39. ROL shall provide to the Trustees, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within its possession or control or that of its contractors or agents relating to the implementation of this Decree, including, but not limited to, reports, correspondence, or other documents or information regarding any work required. ROL shall also make available to the Trustees, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the implementation of this Decree.

40. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site. ROL may redact documents containing information evidencing conditions at or around the Site but only to remove privileged information, other than the data evidencing conditions at or around the Site.

41. Notwithstanding any provision of this Consent Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions

related thereto, under CERCLA and any other applicable statutes or regulations.

42. Until three years after ROL has fully implemented this Decree, ROL shall preserve and retain all non-identical copies of Records (Records may be retained exclusively in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to (i) the claims alleged in the Complaint, or (ii) ROL's compliance with this Decree. ROL must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to implementation of the requirements of this Decree, provided, however, that ROL (and its contractors and agents) must retain, in addition, copies of all data generated during the implementation of the requirements of this Decree and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

XIII. COVENANTS NOT TO SUE BY PLAINTIFFS

43. Covenant by the United States. Except as specifically provided by Paragraph 45 (General Reservations) and Paragraph 46 (Special Reservations Regarding Natural Resource Damages), the United States covenants not to sue or take administrative action against ROL for Natural Resource Damages known or reasonably ascertainable as of the date of lodging this Consent Decree with the Court pursuant to CERCLA Section 107, 42 U.S.C. § 9607, and the Clean Water Act Section 311, 33 U.S.C. § 1321. This covenant not to sue shall take effect upon receipt of ROL's payment pursuant to Section VI (Payment of Natural Resource Damages). This covenant not to sue is conditioned upon the satisfactory performance by ROL of its obligations

under this Consent Decree. This covenant not to sue extends only to ROL and does not extend to any other person.

44. Covenant by the Commonwealth. Except as specifically provided by Paragraph 45 (General Reservations) and Paragraph 46 (Special Reservations Regarding Natural Resource Damages), the Commonwealth covenants not to sue ROL for Natural Resource Damages known or reasonably ascertainable as of the date of lodging this Consent Decree with the Court pursuant to CERCLA Section 107, 42 U.S.C. § 9607, the Clean Water Act Section 311, 33 U.S.C. § 1321, and the HSCA. This covenant not to sue shall take effect upon receipt of ROL's payment pursuant to Section VI (Payments of Natural Resource Damages). This covenant not to sue is conditioned upon the satisfactory performance by ROL of its obligations under this Consent Decree. This covenant not to sue extends only to ROL and does not extend to any other person.

XIV. RESERVATION OF RIGHTS BY PLAINTIFFS

45. General Reservations. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against ROL and with respect to all matters not expressly included within Paragraph 43 (Covenant by the United States) and Paragraph 44 (Covenant by the Commonwealth). Notwithstanding any other provisions of this Consent Decree, the United States and the Commonwealth reserve all rights against ROL with respect to:

- a. claims based on a failure by ROL to meet a requirement of this Consent Decree;
- b. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;
- c. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. §9607 (a)(4)(A), for

costs of removal or remedial action incurred by the United States or the Commonwealth;

- d. liability for any costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site;
- e. liability for any other costs incurred or to be incurred by the United States or by the Commonwealth that are not within the definition of Natural Resource Damages;
- f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside the Site;
- g. liability arising from any disposal of hazardous substances at the facility by ROL after the lodging of this Consent Decree; and
- h. criminal liability.

Notwithstanding the foregoing, nothing in this Consent Decree shall affect any liability release or covenant not to sue provided to ROL in the Consent Decree in *United States of America and Commonwealth of Pennsylvania, Department of Environmental Protection v. Rutgers Organics Corporation*, entered on March 8, 2011, in the U.S. District Court for the Middle District of Pennsylvania, Civ. No. 10-2113, Dkt 7.

46. Special Reservations Regarding Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, if conditions are discovered or information is received relating to the Site that is not known to, or reasonably ascertainable by, the Trustees at the time of lodging this Consent Decree, and these conditions and/or information, together with any other relevant information, indicate that past or ongoing releases of hazardous substances from the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type that was not known to, or reasonably ascertainable by, or of a magnitude significantly greater than was known to, or reasonably ascertainable by, the Trustees as of the date of lodging

of this Consent Decree, then the United States and the Commonwealth each reserve the right to institute proceedings against ROL in this action or in a new action seeking recovery of Natural Resource Damages. For purposes of this Paragraph, information and conditions known to, or reasonably ascertainable by, the Trustees relating to the Site as of the date of lodging of this Consent Decree shall include any information or conditions identified or referenced in records that were: (A) in the possession of; (B) under the control of; or (C) otherwise known to the Trustees as of the date of lodging of this Consent Decree. By example, the following are not sufficient to institute proceedings in this action or a new action under this Paragraph: (a) an increase in the Federal or State Trustee's assessment of a previously known or reasonably ascertainable injury to, destruction of, or loss of Natural Resources due solely to changes to Trustee assessment methodologies or general scientific literature; or (b) injury to, destruction of, or loss of Natural Resources arising from (i) the re-exposure, resuspension, or migration by natural causes of hazardous substances previously released or discharged at or from the Site and known or reasonably ascertainable by the Trustees to be present in the sediments, soils, or groundwater as of the date of lodging of this Consent Decree, or (ii) releases of hazardous substances caused by entities other than ROL.

XV. COVENANTS BY ROL

47. Covenants by ROL. ROL covenants not to sue and agrees not to assert any claims or causes of action against the United States or the Commonwealth, or their contractors or employees, with respect to Natural Resource Damages or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Hazardous Substance Superfund based on Sections

106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim against the United States or the Commonwealth pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages; and

c. any claim against the United States or the Commonwealth pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

48. Except as provided in Paragraph 54, the covenants in this Section shall not apply if the United States or Commonwealth brings a cause of action or issues an order pursuant to any of the reservations in Section XIV (Reservation of Rights by Plaintiffs), other than in Subparagraphs 45.a (claims for failure to meet a requirement of the Consent Decree) or 45.h (criminal liability), but only to the extent that ROL's claims arise from the same response action, response costs, or damages that the United States or the Commonwealth is seeking pursuant to the applicable reservation.

49. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

50. Nothing in this Consent Decree shall operate to waive or release any claim or action by ROL under any contract of insurance.

XVI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

51. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution),

defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the release of hazardous substances against any person not a Party hereto.

52. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement pursuant to which ROL has resolved liability alleged in the Plaintiffs' Complaint in this action within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages; provided, however, that if a Plaintiff exercises rights under the reservations set forth in Section XIV (Reservation of Rights by Plaintiffs) other than in Subparagraphs 45.a (claims for failure to meet a requirement of the Consent Decree) or 45.h (criminal liability), the "matters addressed" in this Consent Decree will no longer include those Natural Resource Damages that are within the scope of the exercised reservation. The contribution protection afforded by this Consent Decree shall take effect upon receipt of ROL's payment pursuant to Section VI (Payment of Natural Resource Damages).

53. ROL also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, ROL will notify the persons identified in Section XVII (Notices) in writing within 10 days of service of the complaint or claim upon it. In addition, ROL shall notify the persons identified in Section XVII (Notices) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

54. In any subsequent administrative or judicial proceeding initiated by the United States or Commonwealth for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the release of hazardous substances, ROL shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the Plaintiffs set forth in Section XIII.

55. This Consent Decree is not a permit, or a modification of any permit, under any federal, Commonwealth, or local laws or regulations. ROL is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth, and local laws, regulations, and permits; and ROL's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the Commonwealth do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that ROL's compliance with any aspect of this Consent Decree will result in compliance with provisions of CERCLA, the CWA, HSCA, or with any other provisions of federal, commonwealth, or local laws, regulations, or permits.

XVII. NOTICES

56. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses or emails specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified

herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and the Commonwealth, and ROL, respectively.

57. Notices and documents submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

58. Notice or submission to the “Plaintiffs” shall mean notice or submission to the United States (both DOJ and DOI), and the Commonwealth (PFBC and PGC).

59. Notice or submission to the “Trustees” shall mean notice or submission to DOI, PFBC, and PGC.

As to the United States:

As to DOJ:

eescdcopy.enrd@usdoj.gov

Re: DJ # 90-11-3-1436/4

As to DOI:

Madeleine Dwyer Schirf
Attorney-Advisor
Environmental Restoration Branch
Office of the Solicitor
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
madeleine.dwyer@sol.doi.gov

As to Pennsylvania:

As to PFBC:

Christopher M. Andreoli
Assistant Counsel
Pennsylvania Fish and Boat Commission
Office of Chief Counsel
1601 Elmerton Avenue
Harrisburg, PA 17110
chandreoli@pa.gov

As to PGC:

Nathan W. Carter

Assistant Counsel
Pennsylvania Game Commission
Office of Chief Counsel
2001 Elmerton Avenue
Harrisburg, PA 17110-9797
nathcarter@pa.gov

As to ROL:

Jillian Mooney
Senior Counsel
2 Turner Place
Piscataway, NJ 08854
jillian.mooney@evonik.com

XVIII. APPENDICES

60. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” contains maps of the Site and NRDAR Property.

“Appendix B” is the draft Restoration Plan and Environmental Assessment.

“Appendix C” is the Scope of Work for Public Fishing Access on the NRDAR Property.

“Appendix D” is the Grant of Conservation Easement and Declaration of Covenants.

XIX. EFFECTIVE DATE AND RETENTION OF JURISDICTION

61. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

62. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XX. CONSENT DECREE MODIFICATIONS

63. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

64. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

65. Unanticipated or increased costs or expenses associated with the implementation of actions required by this Consent Decree and economic hardship or changed financial circumstances of ROL shall not serve as a basis for modifications of this Consent Decree.

XXI. CONSENT DECREE TERMINATION

66. This Consent Decree may be terminated when the Plaintiffs determine that ROL has satisfactorily completed performance of its obligations required by this Decree, including payment of any outstanding stipulated penalties under Section IX. The Parties shall file with the Court an appropriate joint stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

67. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs reserve the right to withdraw or

withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. ROL consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the Plaintiffs have notified ROL in writing that they no longer support entry of the Decree. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, the agreement represented by this Consent Decree is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIII. SIGNATORIES/SERVICE

68. The undersigned representatives of ROL, the United States, and the Commonwealth each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

69. ROL shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail or email on behalf of the ROL with respect to all matters arising under or relating to this Consent Decree. ROL hereby agrees to accept service by either mail or email from any party to this Consent Decree and with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable local rules of this Court including, but not limited to, service of a

summons. ROL need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

70. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

71. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court between and among the United States, the Commonwealth, and ROL. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

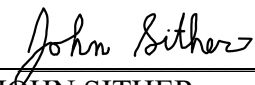
SO ORDERED this ___ day of _____, 20__.

United States District Judge

Consent Decree to Resolve Natural Resource Damages Claims at the Centre County Kepone Superfund Site, College Township, Centre County, Pennsylvania:

FOR THE UNITED STATES OF AMERICA:


ADAM R. F. GUSTAFSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice



JOHN SITHER
Senior Counsel
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044


Consent Decree to Resolve Natural Resource Damages Claims at the Centre County Kepone Superfund Site, College Township, Centre County, Pennsylvania:

FOR THE PENNSYLVANIA GAME COMMISSION:

Name: 
Title: Stephen P. Smith, Executive Director


Consent Decree to Resolve Natural Resource Damages Claims at the Centre County Kepone Superfund Site, College Township, Centre County, Pennsylvania:

FOR THE PENNSYLVANIA FISH AND BOAT COMMISSION:

Name: 
Title: Timothy D. Schaeffer, Executive Director
Pennsylvania Fish and Boat Commission

Consent Decree to Resolve Natural Resource Damages Claims at the Centre County Kepone Superfund Site, College Township, Centre County, Pennsylvania:

FOR RUTGERS ORGANICS LLC BY ITS DULY AUTHORIZED REPRESENTATIVE:


Name: SHAWN MARSH
Title: PRESIDENT, RUTGERS ORGANICS, LLC
AUGUST 21, 2025

CONSENT DECREE

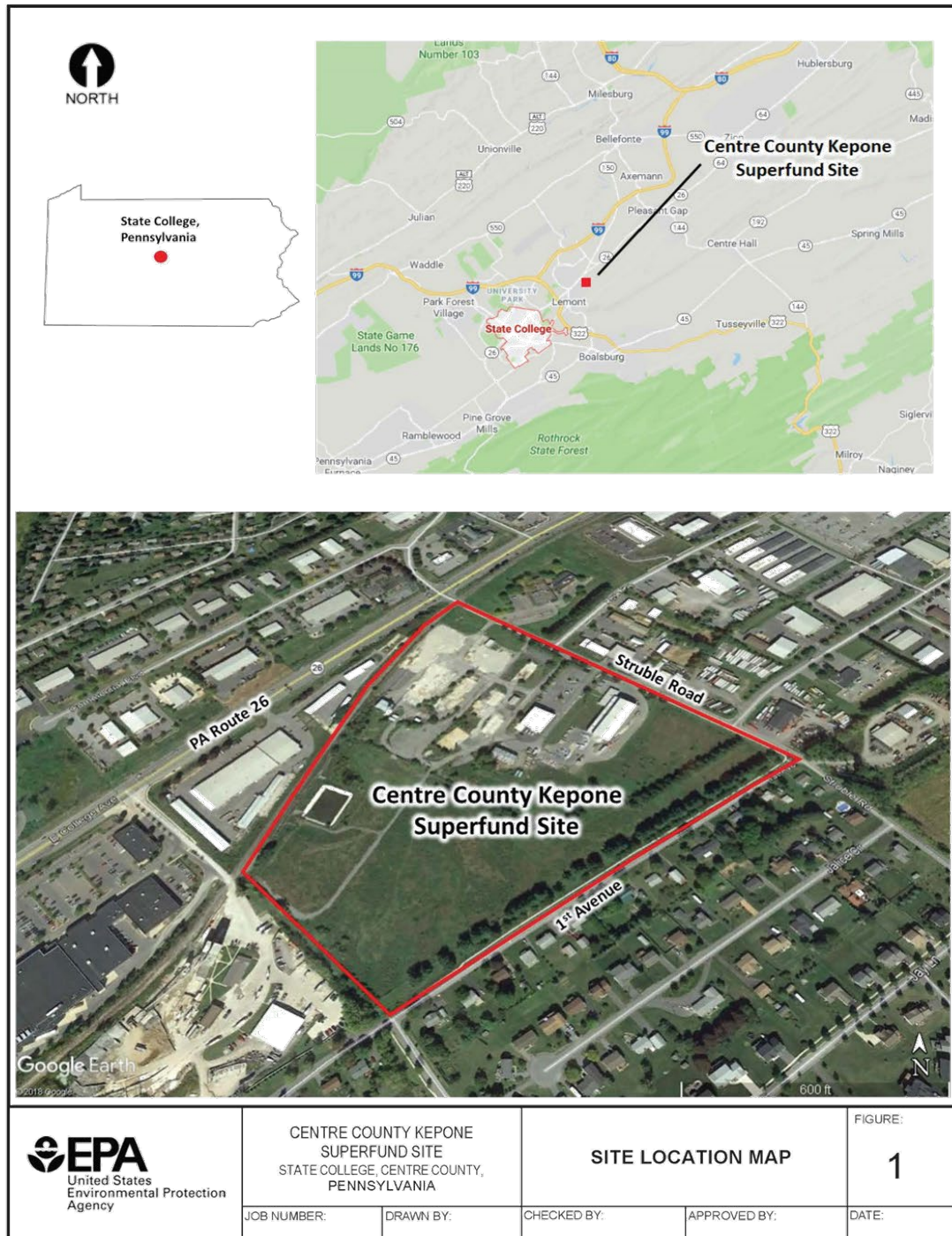
Appendix A

Includes:

Map of the Site

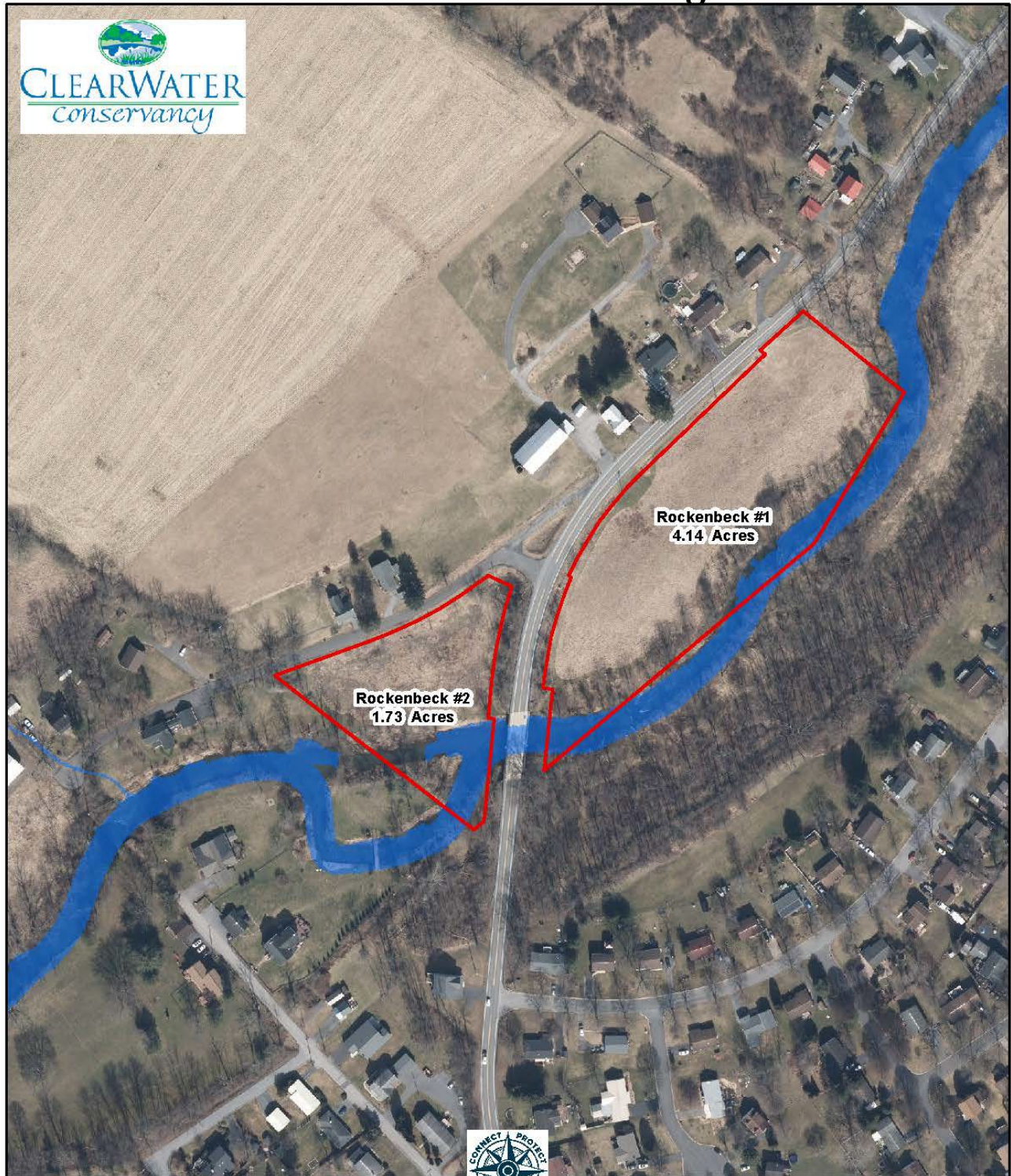
Legal Descriptions and Maps of the NRDAR Property



Site Vicinity Map

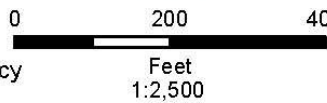


Disclaimer: This map and any boundary lines within the map are approximate and subject to change. The map is not a survey. The map is for informational purposes only regarding EPA's response actions at the Site.

Rockenbeck Planning



-  Rockenbeck Property
-  Flow Path - Chesapeake Conservancy



Created By: ClearWater Conservancy
November 2024 - JAB
Data Sources: Centre County Planning & Community Development, USGS, Chesapeake Conservancy
Background Aerial Imagery: Centre County - 2024

Legal Descriptions and Maps of the NRDAR Property



2568 Park Center Boulevard
State College, PA 16801
814.238.7117
FAX 814.238.7126
www.hrg-inc.com

Project # 007558-425
Date: 9-28-2021

Surveyor's Description Easterly Segment

ALL THAT CERTAIN PARCEL OF LAND, situated in College Township, County of Centre, and Commonwealth of Pennsylvania, being more fully shown as the western lot on a plan entitled "Clearwater Conservancy for property of Rockenbeck Umberger Edwards Family Partnership, LLP", prepared by Herbert, Rowland & Grubic, Inc., dated September 28, 2021, having a drawing number SU-1, Project # 007558-425 and intended to be filed in the Centre County Courthouse in Plat Book _____ Page _____, bounded and described as follows to wit:

BEGINNING at a point along the southern Right-of-Way line of Houserville Road (T-376) (Being a variable width Right-of-Way), at the common northwest corner of lands now or formerly Thomas Kauffman (R.B. 2149 Page 148), and the northeast corner of lands now or formerly of Rockenbeck Umberger Edwards Family Partnership, LLP, (R.B. 1621 Page 428 Easterly Segment), as shown on the above described plan, being the northeast corner of the herein described parcel;

THENCE along the southwest line of Thomas Kauffman, S 51°03'07" E a distance of 212.67 feet to a point in Spring Creek at the common corner of lands now or formerly of Rodger A. and Fawn L. Houtz (D.B. 381 Page 326) passing through a found 3/4" pipe at 11.50 feet and a 1" pipe at 184.01 feet;

THENCE along said lands of Rodger A. and Fawn L. Houtz and crossing Spring Creek, S 30°47'04" W a distance of 287.39 feet to a found 1/2" rebar on the southeastern bank of Spring Creek at the common corner of lands now or formerly of College Township (R.B. 1989 Page 182);

THENCE along said lands of College Township and crossing over Spring Creek and then crossing it again, S 49°55'57" W a distance of 578.59 feet to a set 5/8" rebar on the south side of Spring Creek along the southeastern Right-of-Way line of Houserville Road (T-376)(Being a variable width Right-of-Way);

THENCE along said southeastern line of Right-of-Way the following (9) courses:

1. N 05°50'02" E a distance of 134.08 feet to a point;
2. N 84°09'58" W a distance of 15.00 feet to a point;
3. N 05°50'02" E a distance of 15.93 feet to a point;
4. By the arc of a curve to the right, having a radius of 538.89 feet, an arc length of 172.84 feet, and a chord bearing and distance of N 15°01'32" E, 172.10 feet to a point;
5. N 65°48'57" W a distance of 5.00 feet to a point;
6. By the arc of a curve to the right, having a radius of 543.89 feet, an arc length of 209.38 feet, and a chord bearing and distance of N 35°14'59" E, 208.09 feet to a point;
7. N 46°20'02" E a distance of 279.04 feet to a point;
8. N 43°39'58" W a distance of 11.00 feet to a point;
9. N 47°42'40" E a distance of 94.27 feet to the point of **BEGINNING**;



2568 Park Center Boulevard
State College, PA 16801
814.238.7117
FAX 814.238.7126
www.hrg-inc.com

CONTAINING 4.14 acres of land more or less, gross area.

UNDER AND SUBJECT, NEVERTHELESS, to all existing easements, right-of-ways, conditions, restrictions, and covenants of record.



Herbert, Rowland & Grubic, Inc.
2568 Park Center Boulevard
State College, PA 16801
814.238.7117
www.hrg-inc.com

Project # 007558-427
Date: 11-7-2023

Surveyor's Description
LOT 2

ALL THAT CERTAIN PARCEL OF LAND, situated in College Township, County of Centre, and Commonwealth of Pennsylvania, being more fully shown as Lot 2 on a plan entitled "Final Subdivision Plan For Juliet A. Umberger and Margaret E. Rockenbeck, Clearwater Conservancy", prepared by Herbert, Rowland & Grubic, Inc., dated October 20, 2023, having a drawing number SB1, Project # 007558-427 and intended to be filed in the Centre County Courthouse in Plat Book ____ Page ____, bounded and described as follows to wit:

BEGINNING at a set 5/8 inch rebar, at the common northeast corner of lands now or formerly of Timothy James and Christina L. Traynor (R.B. 2299 Page 761), the northern corner of lands now or formerly of Edward E. and Stacie Washell, (R.B. 2166 Page 548), the eastern corner of Lot 1RR, as shown on the above mentioned plan, and being a southwestern corner of the herein described Lot 2, as shown on the above mentioned plan;

THENCE along the northeastern line of said Lot 1RR, N 52°10' 27" W a distance of 128.48 feet to a point (4.10 feet from a found 3/4" found pipe), along the southeastern Right-of-Way line of Old Houserville Road (T-375)(Being a 33' wide Right-of-Way);

THENCE along said Right-of-Way line of Old Houserville Road (T-375), N 69°58' 03" E a distance of 170.40 feet to a point;

THENCE along the same by the arc of a curve to the left, having a radius of 675.03 feet, an arc length of 203.46 feet, and a chord bearing and distance of N 61°19' 58" E, 202.69 feet to a point;

THENCE along the same, N 52°41' 54" E a distance of 14.55 feet to a set 5/8 inch rebar, along the western Right-of-Way line of Houserville Road (T-376)(Having a variable width Right-of-Way);

THENCE along said western Right-of-Way line of Houserville Road (T-376), S 64°04' 31" E a distance of 43.42 feet to a 5/8 inch rebar set;

THENCE along the same by the arc of a curve to the left, having a radius of 623.69 feet, an arc length of 145.75 feet, with a chord bearing and distance of S 12°31' 44" W, 145.42 feet to a point;

THENCE along the same, S 05°50' 02" W a distance of 73.93 feet to a point;

THENCE along the same, S 84°09' 58" E a distance of 10.00 feet to a point;

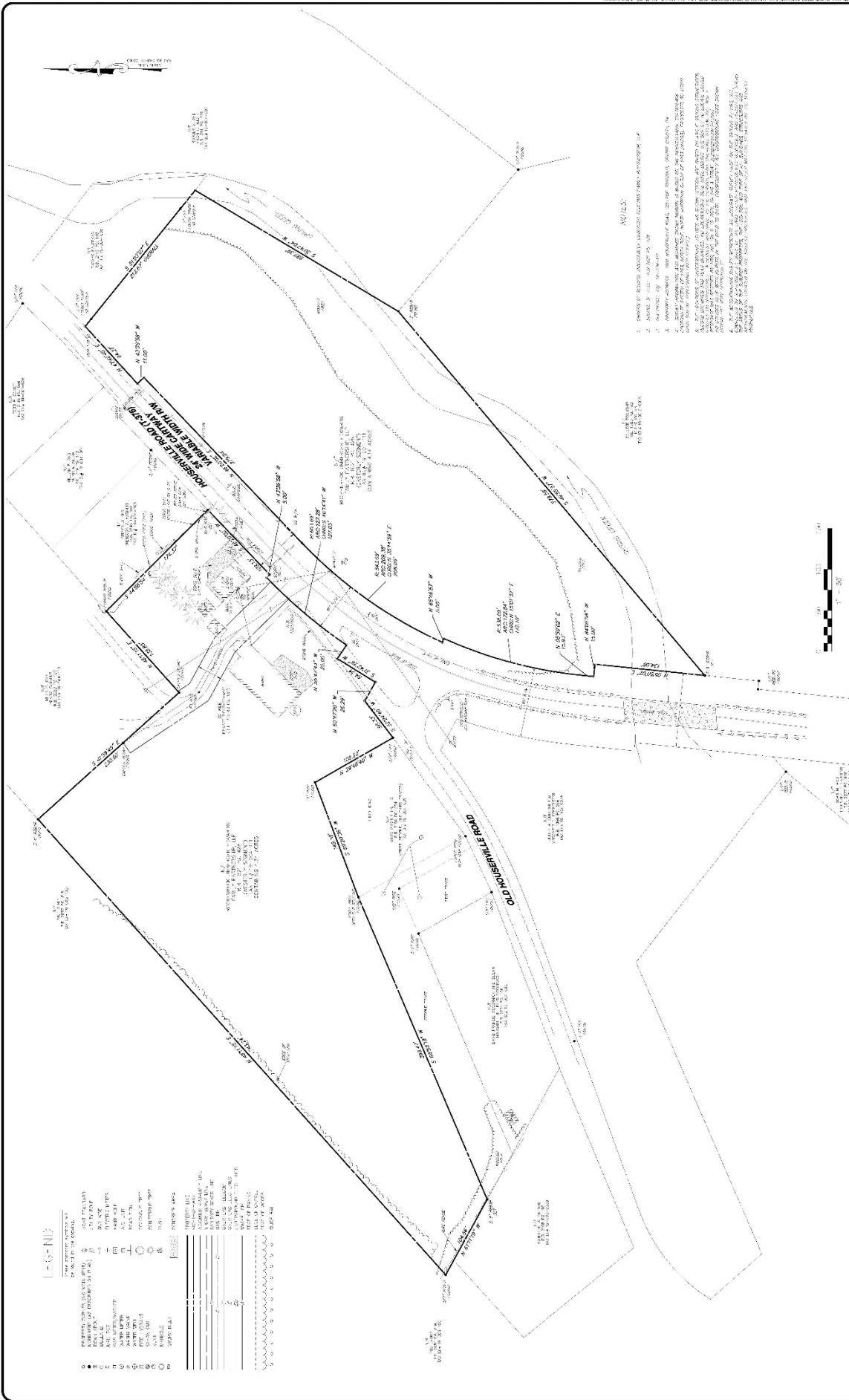
THENCE along the same, S 05°50'02" W a distance of 168.96 feet to a set 5/8 inch rebar, at the common northeastern corner of lands now or formerly of Sean M. and Heidemarie K. Laurent (R.B. 2277 Page 646);

THENCE along said northern line of Sean M. and Heidemarie K. Laurent, S 49°55' 57" W a distance of 21.46 feet to a point (2.31 feet from a found 1/2 inch rebar), at the common northeastern corner lands now or formerly of Jon H. Priovolos (R.B. 809 Page 1078);

THENCE along said land of Jon H. Priovolos and said lands of Edward E. and Stacie Washell, N 52°10' 27" W a distance of 284.05 feet to the place of **BEGINNING**;

CONTAINING 1.728 acres of land more or less.

UNDER AND SUBJECT, NEVERTHELESS, to all existing easements, right-of-ways, conditions, restrictions, and covenants of record.



ISSUING NO. **SU-1**
 SHEET NO. 1 OF 1
 PROJECT NUMBER 425

PROJ. NO. 26-000000-0000
 PROJ. NAME: BOUNDARY RETRACEMENT AND EXISTING CONDITIONS PLAN
 CLIENT: CLEARWATER CONSERVANCY FOR PROPERTY OF ROCKENBECK UMBERGER EDWARDS FAMILY PARTNERSHIP, LLP
 DATE: 03/06/26

BOUNDARY RETRACEMENT AND EXISTING CONDITIONS PLAN
 CLEARWATER CONSERVANCY FOR PROPERTY OF ROCKENBECK UMBERGER EDWARDS FAMILY PARTNERSHIP, LLP
 COLLEGE TOWNSHIP CENTRE COUNTY PENNSYLVANIA

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Appendix B

Draft Restoration Plan and Environmental Assessment for Centre County Kepone NPL Site NRDAR

August 2025



Natural Resource Trustees

U.S. Fish and Wildlife Service

Pennsylvania Fish and Boat Commission

Pennsylvania Game Commission



EXECUTIVE SUMMARY

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. § 9601 et seq.) and the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) implementing regulations (43 C.F.R. Part 11) authorize federal and state agencies, as well as Indian tribes, to act as trustees of natural resources on behalf of the public. When a hazardous substance(s) is released into the environment and harm the public's natural resources, these trustees conduct assessments to determine the extent of injury, recover monetary and other damages from the potentially responsible party/ies, and use these recovered damages to plan and implement restoration actions that will compensate the public for the loss of natural resources and the services they would have provided but for the hazardous substance release.

The Centre County Kepone Site, located in Centre County, State College, Pennsylvania, includes the 32.3-acre chemical manufacturing facility of raw materials and solvents to produce soap, detergent, agricultural chemicals, pharmaceuticals, metal plating chemicals, and plastics. The facility also produced two pesticides, kepone and mirex, which were found in site soil, sediment, and biota over a three decades-long period. Once soil and groundwater were contaminated, affected groundwater originating at the Site flowed toward Thornton Spring and Spring Creek. Analysis of site-related data found that the aquatic invertebrate and fish communities were depressed in the 6.1-kilometer reach of Spring Creek downstream from Thornton Spring and was attributed to releases from the Centre County Kepone Site.

The natural resource trustees (Trustees) for the Centre County Kepone Site are the U.S. Fish and Wildlife Service (USFWS), on behalf of the U.S. Department of the Interior (DOI), the Pennsylvania Fish and Boat Commission (PFBC), and the Pennsylvania Game Commission (PGC), both on behalf of the Commonwealth of Pennsylvania (the Commonwealth).

The Trustees prepared this Draft Restoration Plan and Environmental Assessment (Draft RP/EA) pursuant to CERCLA Section 111(i) to identify and evaluate possible restoration projects in the vicinity of Spring Creek that are expected to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources and their services that have been injured by releases of hazardous substances. The alternatives described and evaluated using the CERCLA NRDAR restoration evaluation criteria (43 CFR § 11.82(d)) are 1) Conservation Easement and Angler Access at NRDAR Property; 2) Future Repair and Maintenance of Existing In-Stream Structures along NRDAR Property; 3) Additional Land Conservation in Spring Creek Watershed; 4) Additional Restoration Projects within Spring Creek Watershed; and 5) the No Action alternative.

The Draft RP/EA also includes analyses required by the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 et seq). Under NEPA, federal agencies must identify and evaluate environmental impacts that may result from proposed major federal actions. This Draft RP/EA describes the purpose and need for action, identifies potential restoration alternatives, including a No Action alternative, summarizes the affected environment, and describes the potential environmental consequences of a reasonable range of alternatives.

The Trustees are soliciting public comments on this Draft RP/EA and will address any public comments received in the Final RP/EA.

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Abbreviations and Acronyms List

Commonwealth	Commonwealth of Pennsylvania
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DOI	U.S. Department of the Interior
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FDA	U.S. Food and Drug Administration
FONSI	Finding of No Significant Impact
NEPA	National Environmental Policy Act
NCP	National Contingency Plan
NRDAR	Natural Resource Damage Assessment and Restoration
PA-SHARE	Pennsylvania's State Historic and Archaeological Resource Exchange
PA SHPO	Pennsylvania State Historic Preservation Office
PFBC	Pennsylvania Fish and Boat Commission
PGC	Pennsylvania Game Commission
PNDI	Pennsylvania Natural Diversity Inventory
ROL	Rutgers Organics LLC
RP/EA	Restoration Plan and Environmental Assessment
Site	Centre County Kepone Site
Trustees	U.S. Fish and Wildlife Service, Pennsylvania Fish and Boat Commission, and Pennsylvania Game Commission
USC	U.S. Code
USFWS	U.S. Fish and Wildlife Service

Cover Photo Credit: Pennsylvania Fish and Boat Commission

1.0 Introduction

This Draft Restoration Plan and Environmental Assessment (Draft RP/EA) was developed by the U.S. Fish and Wildlife Service (USFWS), on behalf of the U.S. Department of the Interior (DOI), the Pennsylvania Fish and Boat Commission (PFBC), and the Pennsylvania Game Commission (PGC), both on behalf of the Commonwealth of Pennsylvania (the Commonwealth), collectively known as the “Trustees”, in accordance with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 111(i) and its implementing regulations, 43 C.F.R. § 11.93, to inform the public as to the types and scale of restoration to be undertaken to compensate for injuries to natural resources and ecological services lost due to the release of hazardous substances.

Additionally, actions undertaken to restore natural resources or services under CERCLA, and other federal laws are subject to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. NEPA requires federal agencies to consider the potential environmental impacts of proposed federal actions. If an impact is considered significant, then an Environmental Impact Statement (EIS) is prepared. If the impact is considered not significant, then an Environmental Assessment (EA) is drafted and a Finding of No Significant Impact (FONSI) is issued.

In accordance with CERCLA and NEPA, this Draft RP/EA describes the purpose and need for action, identifies a reasonable range of potential restoration alternatives, summarizes the affected environment, and describes the potential environmental consequences of proposed restoration actions, including reasonably foreseeable impacts. The Trustees are soliciting comments on this Draft RP/EA and will address comments in the Final RP/EA where the Trustees will identify the Selected Restoration Alternative(s). This Draft RP/EA was prepared concurrently with a Consent Decree between the Trustees and Rutgers Organics LLC (ROL), which is also available for public review and comment.

1.1 Purpose and Need for Restoration

In 2014, the Trustees completed a Pre-assessment Screen Determination finding that the assessment of injuries to natural resources in Spring Creek was appropriate (43 C.F.R. §§ 11.23-11.25).

The need for restoration actions arises from the statutory requirement to use recovered natural resource damages to restore, replace, and/or acquire the equivalent of natural resources injured by the release of hazardous substances (42 U.S.C. § 9607(f)(1)) and to describe the restoration actions or projects that the Trustees have proposed to undertake using recovered restoration funds. The purpose of this Draft RP/EA is to address natural resource injuries and lost recreational services due to releases of hazardous substances and identify and analyze the reasonable range of alternatives that the Trustees have developed.

1.2 NRDAR Authority and Process

This Draft RP/EA was prepared pursuant to the authority of DOI and the Commonwealth acting in its capacity as a natural resource trustee under Section 107(f) of CERCLA; Subpart G of the National Oil and Hazardous Substances Contingency Plan (NCP) (40 C.F.R. § 300.600); and the

CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations (43 C.F.R. Part 11). The NRDAR process allows a natural resource trustee to pursue claims against a potentially responsible party for damages based on injuries to natural resources and their associated services in order to compensate the public for the loss of natural resources and their services. The goal of this process is to implement actions to restore, replace, or rehabilitate the natural resources that were injured or lost as a result of the release of a hazardous substance, or to acquire the equivalent resources or the services they provide. The scope of DOI's trusteeship is for natural resources, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by DOI, such as migratory birds and endangered species, 40 C.F.R. § 300.600.

1.2.1 State Authority and Process

This Draft RP/EA was prepared pursuant to the authority of the PGC and PFBC, as designated Trustees for natural resources under Section 107(f) of CERCLA and Section 300.605 of the NCP. The Commonwealth's trusteeship is for natural resources, including their supporting ecosystems, within its boundary and/or belonging to, managed by, controlled by, or appertaining to the Commonwealth, 40 C.F.R. § 300.605.

1.3 Compliance with other Authorities

Other legal requirements may apply to NRDAR planning or implementation. These may include:

- Endangered Species Act (16 U.S.C. § 1531 et seq.),
- National Historic Preservation Act (16 U.S.C. § 470 et seq.),
- Federal Water Pollution Control Act (Clean Water Act, 33 U.S.C. § 1251 et seq.),
- Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.),
- Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), and
- Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c).

Compliance with laws, regulations, and policies applicable to the selected restoration alternative(s) will be achieved prior to implementation.

In addition to compliance with these statutes and regulations, the Trustees will consider relevant environmental or economic programs or plans that are ongoing or planned in or near the affected environment, and they will ensure that restoration projects neither impede nor duplicate such programs or plans prior to selection of a restoration alternative(s). By coordinating restoration projects identified in this Draft RP/EA with other relevant restoration programs and plans, the Trustees will enhance the restoration and improvement of resources and services affected by the release of hazardous substances at or from the Centre County Kepone Facility.

1.4 Public Participation

Public participation and review are integral parts of the restoration planning process and are specifically required in the CERCLA NRDAR regulations (e.g., 43 C.F.R. § 11.81(d)(2)). In addition, NEPA requires that federal agencies fully consider the environmental impacts of their proposed decisions and that such information is made available to the public.

The Trustees will review and consider all public comments on the Draft RP/EA received during the public comment period prior to publishing the Final RP/EA. The Trustees will prepare a responsiveness summary to the comments that will be included as an appendix in the Final RP/EA. Based on the public's comments, or other information, the Trustees may amend the Draft RP/EA. In the event of a significant modification to the Draft RP/EA, the Trustees will provide the public with an opportunity to comment on that particular amendment. An electronic version of the Draft RP/EA is available online: [Draft Centre County Kepone RP/EA](#).

The USFWS will accept written comments on this Draft RP/EA during the thirty (30) day public comment period beginning from the date of publication of the Notice of Availability. Interested individuals, organizations, and agencies may submit comments by mailing or emailing. If emailing, please include "Draft RP/EA Centre County Kepone NRDAR" in the subject line.

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This public comment period is concurrent with the public comment period for the proposed consent decree, which is available for public review at <https://www.justice.gov/enrd/consent-decrees>.

2.0 Site History and Description

2.1 Site Overview

The Centre County Kepone Site (Site), located in Centre County, State College, Pennsylvania, includes the 32.3-acre chemical manufacturing facility formerly operated by the Nease Chemical Company from 1957 through 1977 (SMC Environmental Services Group 1992; **Figure 1**). In December 1977, Ruetgers-Nease Chemical Company, now known as ROL, took over plant operations as part of a corporate merger. Spring Creek originates southeast of the Site and flows roughly northward for approximately 40 kilometers (25 miles) and receives surface and groundwater from the Site. Thornton Spring lies to the southwest of the Site and flows approximately 300 feet before emptying into Spring Creek through a culvert under Pike Street immediately upstream from PA Route 26.

The facility manufactured raw materials and solvents to produce soap, detergent, agricultural chemicals, pharmaceuticals, metal plating chemicals, and plastics. In addition, two pesticides were produced, kepone (chlordecone) and mirex (dodecachloropentacyclodecane), Kepone and especially mirex are long-lived compounds that adsorb into soil, are transported through the movement of contaminated soil and sediment, and can accumulate in high concentrations in both stream sediment and biota. Kepone and mirex were found in Site soil, sediment, and biota over a three decade-long period by: the Commonwealth of Pennsylvania (Hughey 1985), Rice (1987), and SMC Environmental Services Group (1992). The U.S. Environmental Protection Agency (EPA) placed the Site on the National Priorities List of contaminated sites on September 8, 1983. The remediation of the Site is now complete.

The release of hazardous substances from chemical production and storage areas contaminated on-site soil and groundwater beneath the Site. After production ceased in 2003, contaminated soil and groundwater remained, which served as sources for further release of volatile organic compounds, kepone, and mirex. Once soil and groundwater were contaminated, affected groundwater flowed toward Thornton Spring and Spring Creek. Additionally, precipitation that fell on the Site and flowed overland to the Fresh Water Drainage Ditch carried contaminated soils and sediments to Spring Creek (**Figure 2**). Finally, contaminated sediment residing in stream channels were resuspended during precipitation events, which caused redistribution of contaminants and additional exposure to receptors downstream.

2.2 Injured Resources and Environment

Fringe wetlands, surface water, and sediments along Spring Creek have been affected by kepone and mirex contamination, and thus their respective biota that occupy these habitats have been affected. Additionally, recreational uses such as recreational fishing, hunting, trapping, wading, picnicking, and wildlife viewing supported by surface water and sediment resources have been affected.

During the early 1970's the Pennsylvania Fish Commission, now the Pennsylvania Fish and Boat Commission, stocked approximately 27,000 catchable trout per year in Spring Creek. In 1976, Spring Creek fish were found to be contaminated with kepone and mirex above U. S. Food and

Drug Administration (FDA) action levels for safe consumption: 100 ug/kg for mirex¹ and 300 ug/kg for kepone.² The PFBC ceased stocking trout below the point of release from the Site in 1978 and established a “No-Kill Zone Due to Contamination” that prohibited the harvest of all fish in Spring Creek in response to the human health concerns in 1982 (PFC 1982). Kepone levels declined rather quickly after remedial activities implemented by EPA, but mirex levels persisted in trout in excess of FDA action levels until 2001.

Analysis of site-related data revealed that the aquatic invertebrate communities experienced a decline in pollution intolerant individuals and Brown Trout communities experienced a decrease in biomass in the 6.1-kilometer reach of Spring Creek from Thornton Spring to the University Area Joint Authority sewage treatment plant discharge, where community health improved. The depression in the Brown Trout population in this section of Spring Creek contrasted with an increasing population in all other sections of Spring Creek under identical management during the same period. Injuries to fish and invertebrates in the area downstream from Thornton Spring were attributed to the release from the Centre County Kepone Site. Spring Creek continues to be managed under no-harvest regulations for trout.

2.3 Summary of Settlement

The Trustees have reached a proposed Settlement Agreement with ROL to resolve claims for natural resource damages arising from natural resource injuries and lost services resulting from the release of hazardous substances from the Site.

The proposed consent decree was released concurrently with this Draft RP/EA for public review and comment. In addition to restoration actions to be performed by ROL, the proposed consent decree also provides funding to reimburse Trustees their past assessment costs and fund future administrative costs associated with oversight, implementation, and monitoring of restoration projects that are ultimately selected.

¹ [FDA Chemical Contaminants Transparency Tool: Mirex](#)

² [FDA Chemical Contaminants Transparency Tool: Kepone](#)

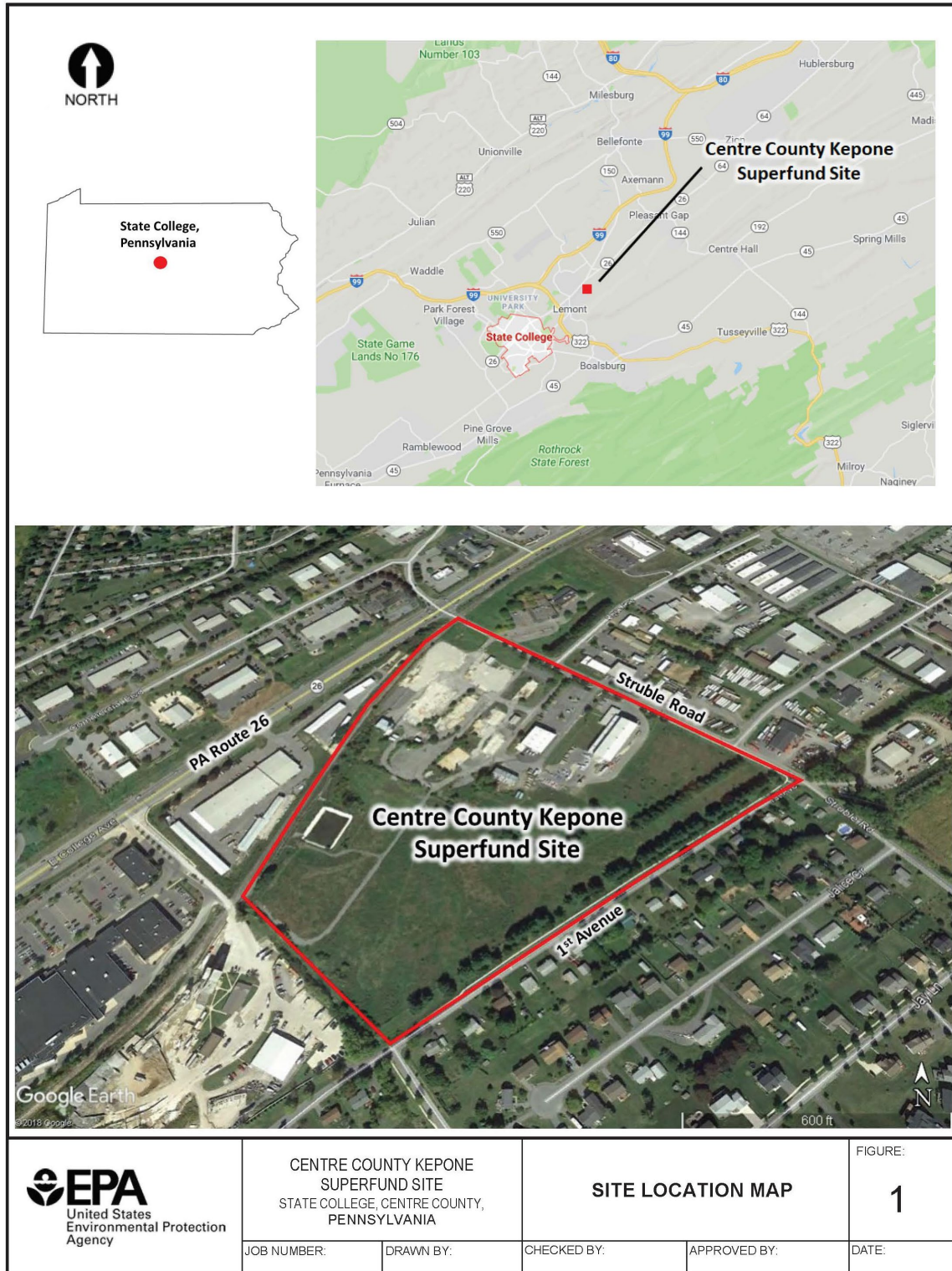


Figure 1. Vicinity map of the Centre County Kepone Site located in State College, Pennsylvania.
Disclaimer: This map and any boundary lines within the map are approximate and subject to change. The map is not a survey. The map is for informational purposes only regarding EPA’s response actions at the Site (EPA 2019).

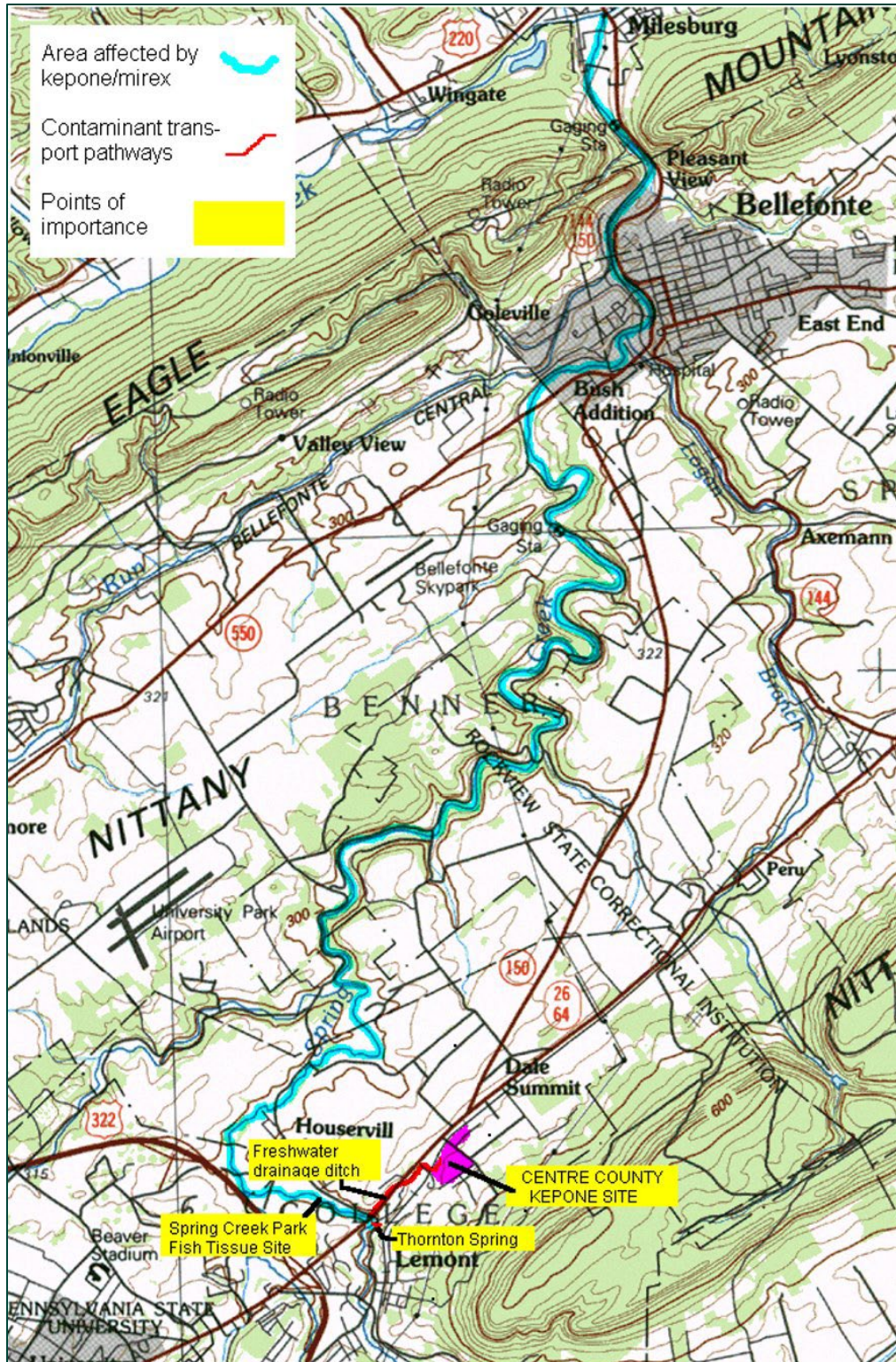


Figure 2. Map showing the Centre County Kepone Site, indicated in pink, and the area affected by the contaminants indicated in teal. Once soil and groundwater were contaminated due to releases of hazardous substances from the Site, affected groundwater originating at the Site flowed toward Thornton Spring and Spring Creek.

3.0 Affected Environment

This Draft RP/EA evaluates restoration alternatives to compensate the public for the natural resource injuries and lost recreational services resulting from exposure to hazardous substances released from the Site. As part of the evaluation, the Trustees assessed the current physical, biological, socio-economic, and cultural resources of the area within which restoration is likely to occur (Spring Creek, Centre County, PA; **Figure 2**). This information will ensure that potential restoration projects are designed to maximize ecological benefits while minimizing or eliminating project-related adverse environmental consequences.

3.1 Physical and Biological Environment

The PFBC and Pennsylvania Department of Environmental Protection classify Spring Creek as a limestone stream, which is in the Northern Limestone/Dolomite Valley sub-ecoregion (EPA 2004). Tributaries develop from drainage on the sandstone ridges, flow down the ridge flanks, and frequently disappear into sinkholes when water reaches limestone rock units associated with this sub-ecoregion. Water commonly emerges from springs along the broad limestone valley floor. Spring Creek originates on Tussey Mountain near Tusseyville and flows roughly northward for approximately 40 kilometers (25 miles) to Milesburg, where it flows into Bald Eagle Creek (PA DER 1990). The drainage area covers 175 square miles (Giddings 1974). Major tributaries from headwaters to mouth include Cedar Run, Slab Cabin Run, Logan Branch, and Buffalo Run. Spring Creek is not a pristine watershed, with various users contributing toward alteration of the watershed's hydrology and quality from an undeveloped condition (PA DER 1990).

Aquatic invertebrates in Spring Creek are quite abundant but lack great diversity, typical of limestone-influenced streams that have more moderate temperature and flow regimes. Spring Creek is one of six Pennsylvania streams that have a great wealth of caddisfly biodiversity, attributed to the springs within Spring Creek (Brokenstraw Watershed Council 2020). The Spring Creek Watershed harbors one of the most productive wild trout fisheries in Pennsylvania. The persistence of wild trout in Spring Creek is related to its geology, with the springs providing year-round stream flow and moderating water temperatures. Extensive surveys of trout populations have been completed, and since 1980, densities of wild Brown Trout have increased substantially (Carline et. al 2011).

The Endangered Species Act (ESA) of 1973 (16 U.S.C. § 1531, *et seq.*) requires federal agencies to conserve endangered and threatened species and to conserve the ecosystems upon which these species depend. The Commonwealth also identifies species that are of special concern through the Pennsylvania Natural Heritage Program. A few federal and state listed, threatened, or endangered species potentially occur in the area within which restoration is likely to occur (Appendix; **Table 3**). In addition to the listed species, there are 17 migratory bird species, which are USFWS Birds of Conservation Concern, potentially occurring in the area within which restoration is likely to occur (Appendix; **Table 4**).

Watershed land use was characterized by PA DER (1990) as a mix of residential, commercial, industrial, agricultural, and open space. Conversion of forests and agricultural land to urban

areas and to transportation networks represents the biggest threat to the Spring Creek Watershed and the trout fishery (Carline et. al 2011).

3.2 Socioeconomic and Cultural Environment

The proposed alternatives are subject to review under Section 106 of the National Historic Preservation Act of 1966, coordinated with the Pennsylvania State Historic Preservation Office (PA SHPO) and implemented in accordance with applicable laws and regulations concerning the protection of cultural and historic resource. The Pennsylvania's State Historic and Archaeological Resource Exchange, or PA-SHARE³, is the PA SHPO online data management and cultural resources GIS tool. PA-SHARE maps eligible properties throughout Pennsylvania and provides users with access to the documentation used to make the determinations. A preliminary search of properties or locations included in the National Register of Historic Places was completed. The portion of Spring Creek proposed for restoration activities includes the Old Houserville Historic District, which is listed as an eligible district by the PA SHPO. No data was available regarding the summary of significance or periods of significance for the district.

The Spring Creek Watershed offers a variety of recreational hunting opportunities includes big game, small game, and trapping (Brokenstraw Watershed Council 2020). The Spring Creek trout fishery has been a fishing destination of regional and national significance for many years. The PFBC operates three fish culture stations in the Spring Creek basin and distributes trout from these facilities across the state. Spring Creek was first stocked with catchable-sized trout in 1931 to provide recreational use by anglers. From 1931 to 1977, annual trout stockings ranged from 12,000 to 42,000 in Spring Creek.

Angler use of Spring Creek has changed due to the regulation and fish population changes over the past few decades. Prior to mirex and kepone contamination, fishing was concentrated early in the season when legal-sized trout were stocked. Trips taken by anglers to catch stocked trout no longer occurred after 1977.

On May 7, 2001, the PFBC removed the No-Kill Zone associated with contamination because mirex levels in trout fillets had fallen below the FDA action level. However, wild trout continue to be protected from harvest in the Spring Creek Trout Management Area. Harvest of other species, such as White Suckers, is permitted under the current regulations, except for Fisherman's Paradise, where the taking of bait fish is prohibited (Carline et. al 2011).

³ <https://www.pa.gov/agencies/phmc/pa-share.html>

4.0 Evaluation of Restoration Alternatives

This section discusses the Trustees' goals for restoration and describes their evaluation and analysis of the restoration alternatives. To compensate the public for injuries to natural resources and associated lost services resulting from hazardous substance releases, the Trustees are required to develop alternatives for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the natural resources and the services those resources provide (43 C.F.R. § 11.82(a) and § 11.93).

The Trustees have integrated the CERCLA and NEPA evaluation processes in this Draft RP/EA. The CERCLA restoration evaluation criteria are defined in Section 4.2. In addition, the Trustees have prepared a NEPA analysis, in the form of an EA, for the alternatives described in Section 4.3. Detailed information on the affected environment is presented in Section 3.0. Under NEPA, the Trustees analyzed the potentially affected environment and the degree of the effects of the action. In considering the affected environment, the Trustees considered the affected area (national, regional, local); and its resources such as listed species and designated critical habitat under the ESA. In considering the degree of the effects the Trustees consider both short- and long-term effects; both beneficial and adverse effects; effects on public health and safety; and effects that would violate applicable federal, state, Tribal or local laws protecting the environment. This analysis informs the Trustees' analysis and decision-making process under CERCLA.

4.1 Restoration Goals

Based on the nature of the natural resource injuries and service losses, the restoration goals listed below were identified by the Trustees and guided development of this plan:

1. To offset lost ecological services and/or recreational services due to hazardous substance contamination.
2. To increase protected habitat and conservation efforts within the Spring Creek Watershed, with priority given to projects that further extend an existing conservation corridor along Spring Creek.
3. To increase public angling access in Spring Creek or an important recreational angling stream in the Spring Creek Watershed.

4.2 CERCLA Restoration Evaluation Criteria

The Trustees considered several restoration alternatives to compensate for lost natural resources and associated services and evaluated each alternative against the CERCLA restoration evaluation criteria described in this section.

CERCLA NRDAR regulations provide ten factors to consider when evaluating restoration alternatives (43 C.F.R. § 11.82(d)).

1. Technical Feasibility: Technology and management skills are well known, and that each element of the alternative has a reasonable chance of successful completion in an acceptable period of time, 43 C.F.R. § 11.14(qq).

2. Cost Benefit Comparison: The relationship between the expected benefits of the alternative versus the costs; the full range of costs and benefits should be considered, in terms of recovery of the resource and public use.
3. Cost Effectiveness: When two or more activities provide the same or a similar level of benefits, the least costly activity providing that level of benefits will be selected, 43 C.F.R. § 11.14(j).
4. Results of Any Actual or Planned Response Actions: The contribution of any action to clean up the site will be considered in the identification and evaluation of restoration alternatives.
5. Potential for Additional Injury: Whether a restoration alternative may cause further harm to injured natural resources or other resources including short-term, long-term, and indirect impacts. Alternatives that avoid or minimize adverse impacts to the environment and natural resources are preferred.
6. Natural Recovery Period: Consideration of the time required for injured resources to recover if no action is taken.
7. Ability of Resources to Recover With or Without Restoration: Whether the resource would be able to recover on its own versus the ability to recover associated with the preferred restoration alternative(s). Projects that restore, rehabilitate, replace, or acquire the equivalent of the same type of resources and services injured by the contamination are preferred to projects that benefit different resources or services.
8. Adverse Effects to Public Health and Safety: Whether an alternative would pose unacceptable risks to public health and safety.
9. Consistency with relevant federal, state, and tribal policies.
10. Compliance with applicable federal, state, and tribal laws.

4.3 Restoration Alternatives Considered

4.3.1 Alternative A: No Action/Natural Recovery

Pursuant to CERCLA (43 C.F.R. § 11.82(c)(2)) and NEPA, the Trustees considered a No Action Alternative. Under this alternative, the Trustees would rely on natural recovery and would take no direct action to compensate the public for interim lost natural resource services. Under the No Action Alternative, some resources within Spring Creek may recover naturally. However, the Trustees would do no additional work to compensate the public for injured natural resources and related services. The primary advantages of this approach are the ease of implementation and lack of costs because natural processes rather than humans determine the trajectory of the system.

4.3.1.1 CERCLA Evaluation

Under the No Action/Natural Recovery alternative, the Trustees would take no direct action to restore injured natural resources or compensate for lost services pending restoration to baseline condition. It is anticipated that this natural recovery would take decades (43 C.F.R. § 11.82(d)(6-7)). The No Action alternative would not provide compensation for lost use of natural resources and services. There are no further actual or planned response activities;

therefore, there is no impact on the No Action alternative and vice versa (43 CFR § 11.82(d)(4)). The Trustees believe there are feasible and appropriate restoration opportunities within the Spring Creek Watershed to restore, replace, or acquire the equivalent of natural resources injured by releases of hazardous substances at the Site. Therefore, the No Action alternative is not consistent with federal and state laws and policies (43 C.F.R. § 11.82(d)(9-10)).

4.3.1.2 NEPA Evaluation

4.3.1.2.1 Physical and Biological Environment Impacts

The No Action Alternative would not result in any direct adverse impacts to the physical environment, however the water quality benefits anticipated in Spring Creek due to the proposed restoration actions would also not occur.

The No Action Alternative would not result in any direct adverse air quality impacts since no restoration actions would be undertaken. Climate variables and air quality would retain current status under this alternative.

The No Action Alternative would not result in any impacts to fish and wildlife resources since no restoration actions would be undertaken, including those species protected under various laws.

4.3.1.2.2 Socioeconomic and Cultural Environment Impacts

The No Action Alternative would not implement the proposed restoration actions and therefore would not result in any increased opportunities for recreational use.

The No Action Alternative would not result in any change in current or ambient traffic or noise levels in the area within which restoration is likely to occur since no restoration actions would be undertaken.

The No Action Alternative would not provide enhanced benefits to the public from improvements to water quality in the area nor provide economic benefits.

4.3.1.3 Conclusion

The Trustees found that the No Action Alternative does not meet the purpose and need for restoration under this draft RP/EA or the responsibilities of the Trustees under CERCLA, including the CERCLA restoration evaluation criteria (**Table 2**). This Alternative would not compensate for injured resources, and technically feasible and cost-effective restoration approaches are available to compensate for these losses.

4.3.2 Alternative B: Conservation Easement and Angler Access at NRDAR Property

Under Alternative B, a landowner agreement will ensure long-term conservation and angler access along Spring Creek. In determining which areas to pursue, the Trustees prioritized:

- Properties that would allow permanent protection of contiguous tracts of existing conserved, protected, or eased land,
- Properties with at least 1000 ft of perennial riparian corridor that provide recreational angling opportunities,

- Projects that reduce the amount of posted land unavailable to anglers, and
- Projects that can provide enhanced angler opportunities. This could include securing or improving fishing access, increasing or enhancing parking availability for anglers and stream visitors, and/or improving stream habitat.

From these priorities, the Trustees identified two parcels of land along Spring Creek with unique opportunities for restoration and improved fishing access in the region and are referred to as the “NRDAR Property”, or “Rockenbeck Properties” as identified in **Figure 3**:

- Rockenbeck Property #1 comprising 4.14 acres and the associated approximately 1,000 ft of Spring Creek, (tax parcel #19-004-111-0001P (easterly segment) and
- Rockenbeck Property #2 comprising 2.67 acres and the associated approximately 700 ft of Spring Creek (tax parcel #19-003-003D)

In the near future, an underground sewer line will be installed through a portion of the NRDAR Property, avoiding any removal of mature trees in the area. This underground sewer line will impose a restriction against planting trees within a 10-ft right of way, which will be restored with a native meadow mix. The current planting plan for the riparian buffer calls for 150 trees per acre, which results in about 15-ft spacing between trees, such that the sewer right of way will not be evident after restoration. The Trustees also evaluated the impacts of the sewer line on the restoration benefits of the NRDAR Property and determined that the sewer line installation would have minimal effect on the overall preservation value of the property, and in particular, the protection of the streambank and creek.

Long-term conservation could be accomplished through an easement on the NRDAR Property, which would restrict development of land in an area experiencing high development pressure, while concurrently maintaining the area’s ecological and recreational value. These preservation efforts will ensure protection of Spring Creek’s water quality and add to existing conserved lands that together will complete a 1.5-mile continuous corridor of connected and permanently protected stream.

Further, to address the recreational losses, Alternative B would ensure that the portion of Spring Creek encompassed by the NRDAR Property would be available for public angling, including the construction of a parking area to improve access for recreational opportunities. The NRDAR Property is located directly across from College Township open space, making the entire stream portion of Spring Creek publicly accessible for fishing. The total stream length conserved and open to angling from the project would be 1,770 ft. To ensure these conservation and fishing access outcomes, the Commonwealth will hold a third party right of enforcement on the easement to ensure the benefits of the perpetual conservation and access to the public for fishing are achieved.

Rockenbeck Planning

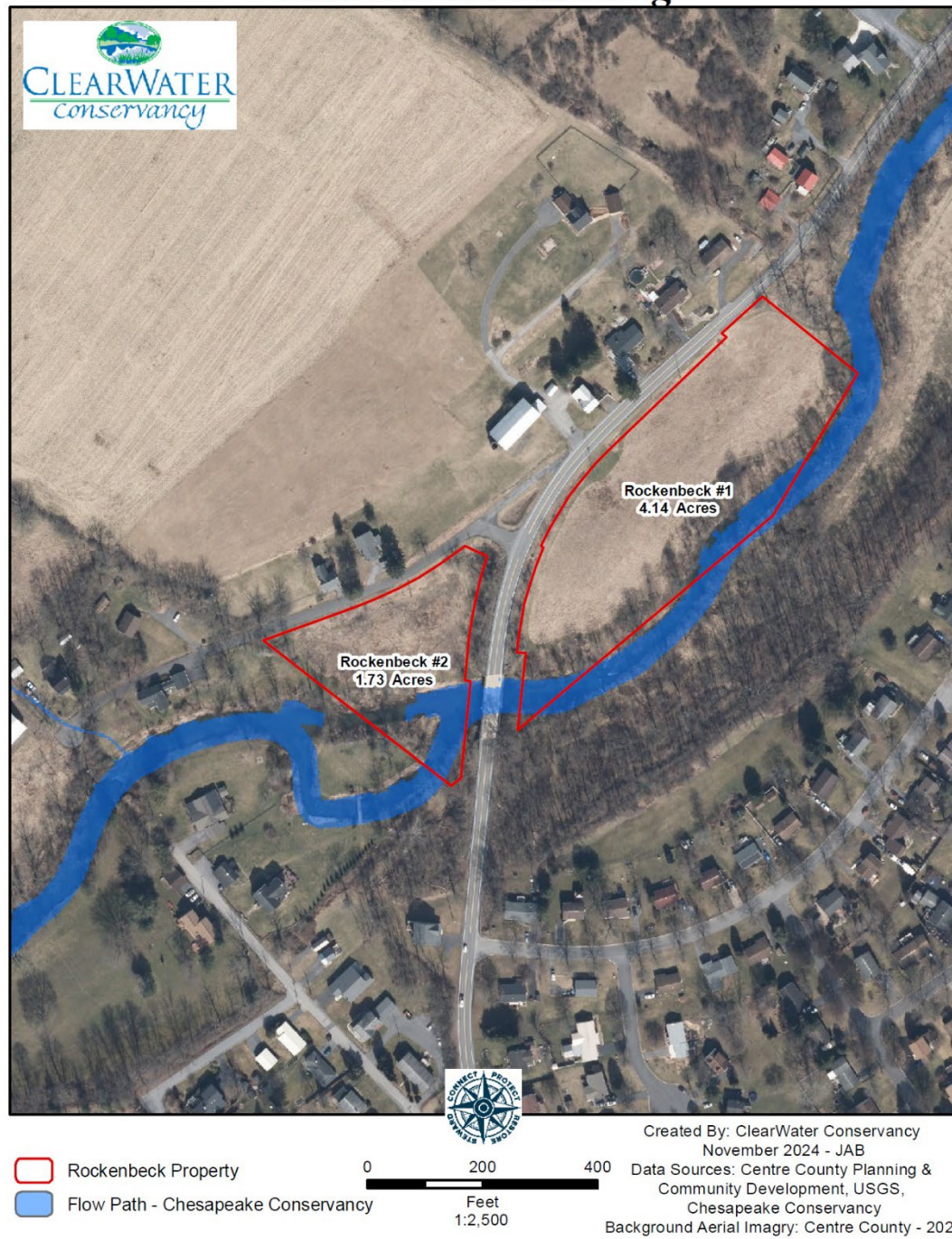


Figure 3. Map of the NRDAR Property to be conserved under Alternative B along Spring Creek, in Centre County, State College, Pennsylvania.

4.3.2.1 CERCLA Evaluation

Opportunities to conserve significant portions of Spring Creek are scarce given the development pressure in this part of Centre County. The land preservation action provided by Alternative B will protect Spring Creek's water quality and therefore benefit the Spring Creek Watershed and the public. The perpetual conservation of the NRDAR Property is considered to have a high level of technical feasibility and is a common practice (43 C.F.R. § 11.82(d)(1)). The Trustees do not have cost information with which to evaluate cost-effectiveness, or benefit-to-cost ratios, with multiple substantial resource benefits (43 C.F.R. § 11.82(d)(2-3)). There are no actual or planned response actions that will affect this alternative.

The potential for additional injury or adverse impacts resulting from the proposed action is minimal, even with the construction of the parking lot, because the proposed action focuses on the long-term preservation of the property and stream overall (43 C.F.R. § 11.82(d)(5)). Natural recovery at the Site is expected to take a considerable amount of time. The preservation efforts will improve the Site's recovery ability as no development will be allowed on the property (43 C.F.R. § 11.82(d)(6-7)).

The land protection action within Alternative B would not adversely impact public health or safety; rather, protecting these natural resources would provide the public with added opportunities for outdoor recreation. Additionally, land preservation can facilitate the protection of natural resources and ecosystems. This helps prevent pollution, manage stormwater, and preserve green spaces that contribute to overall public health (43 C.F.R. § 11.82(d)(8)). The actions included within Alternative B are consistent and compliant with relevant federal and state laws and policies (43 C.F.R. § 11.82(d)(9-10)).

4.3.2.2 NEPA Evaluation

4.3.2.2.1 Physical and Biological Environment Impacts

The preservation of the stream bank along Spring Creek will prevent degradation of water quality and bank destabilization. Therefore, the overall impacts on the physical environment by Alternative B are anticipated to be long-term, moderate, and beneficial.

The proposed restoration action under Alternative B is not expected to result in any direct adverse air quality impacts. Climate variables and air quality would retain current status under this alternative.

The land preservation action within Alternative B has the potential to reduce habitat fragmentation and adverse effects on fish and wildlife that can result from development activities within habitats on which these resources depend. Alternative B is anticipated to provide long-term, minor, and beneficial impacts to the biological environment.

A few federal and state listed, threatened, or endangered species potentially occur in or around the NRDAR Property (Appendix; **Table 3**). In addition to the listed species, there are 17 migratory bird species, which are USFWS Birds of Conservation Concern, (Appendix; **Table 4**). There are no critical habitats for these species on or around the property. The Northern Metalmark does not have a protected status, but it does have a Pennsylvania Department of

Conservation and Natural Resources State Rank of S2: Imperiled. As this alternative proposes land preservation, Alternative B is not anticipated to have any adverse impacts on federal or state listed, threatened, or endangered species or their designated critical habitat; species proposed for federal listing; proposed critical habitat; or USFWS Birds of Conservation Concern. If this alternative is selected, any impacts to listed species will be evaluated as needed under the ESA Section 7 consultation process and screened through the Pennsylvania environmental review process (PA Natural Diversity Inventory, PNDI).

4.3.2.2.2 Socioeconomic and Cultural Environment Impacts

The increase in public angling access described in Alternative B is anticipated to have long-term and beneficial impacts on resource-based recreational activities. Due to the increase in public access for recreational opportunities, including the construction of a parking area, this may result in increased traffic in the area within which restoration is likely to occur. As this area has an already existing road system in place, Alternative B is anticipated to have long-term, minor, adverse impacts on traffic and noise conditions.

Permanent publicly available areas may increase nearby residential land values, and the increase in recreational activity in the NRDAR Property may result in increased local sales in food service, hospitality, and recreation-related industries. Thus, the economic impacts of Alternative B are anticipated to be long-term, minor, and beneficial.

The NRDAR Property is located in the Old Houserville Historic District, which is listed as an eligible district by the PA SHPO. Consultation with the PA SHPO regarding any documented cultural resources in the area will be completed as needed. As the conservation actions will not change the physical properties of the land, Alternative B is not anticipated to result in any adverse impacts to historic or cultural resources.

4.3.2.3 Conclusion

The Trustees found that Alternative B: Conservation Easement and Angler Access at the NRDAR Property along Spring Creek satisfies the CERCLA restoration evaluation criteria (**Table 2**), the Trustees' restoration goals, and to be an acceptable project to compensate for Site-related natural resource injuries and losses.

4.3.3 Alternative C: Future Repair and Maintenance of Existing In-Stream Structures along NRDAR Property

The NRDAR Property in Alternative B also contains existing in-stream structures which were placed in 2019 under a National Fish and Wildlife Foundation grant with Spring Creek Trout Unlimited and support a healthy riparian corridor. Before the installation of in-stream structures, this part of stream included areas of high erosion and sedimentation and lacked a riparian buffer. High levels of erosion and sedimentation led to embedded stream gravel and a lack of overhead fish cover, which prevented trout from using the area as spawning habitat. Fish require overhead cover in streams for protection and hiding, regulating stream temperature, and providing a source of nutrients and food. **Table 1** describes the different types of existing in-stream structures and their environmental benefits.

Table 1. Existing In-Stream Structures along the NRDAR Property in Spring Creek.

IN-STREAM STRUCTURE	BENEFITS
338 ft mudsill (log cribbing)	Mudsills stabilize the stream banks, help to correct Spring Creek's bankfull width (very wide in places resulting in shallow water with high sediment), and provide great overhead cover because they act like an undercut bank. This also reduces stream temperature because of increased depth from scour by the face log and shade provided by the log's placement.
50 ft log toe	The log toe stabilizes the bank, corrects the bankfull width, and provides some cover especially for young-of-the-year trout.
138 ft rock toe	Similar to the log toe, the irregularity of the rock may provide even more hiding places for young-of-the-year trout.
2 rock cross vanes	The rock cross vanes correct Spring Creek's bankfull width, protect the left and right banks from further erosion, and provide a small riffle that glides into a plunge pool. These structures slow erosion, oxygenate the water, and greatly increase overhead cover by depth.
221 ft of brush mattress	Brush mattress help narrow the stream, trap sediment, and provide habitat for young-of-the year trout, turtles, and amphibians.
8 random boulder clusters	Boulder clusters help mix the water with air, allowing more oxygen to dissolve into the water. These structures also help move sediment through the system and provide clean spawning gravel.
5 single rock vanes	Rock vanes provide near bank protection, stabilize the bank, direct water to the center of the stream, and provide passage from the water to the bank for such things as fisherman and wood turtles.

In addition to the in-stream structures, the 2019 project included buffer planting of 285 trees/shrubs on 0.87 acres of land and installation of a 1.2-acre pollinator plot to provide native insect and songbird habitat, as well as overhead stream shade. The 2019 project has also been effective in reducing stream erosion.

These structures generally need little attention except for impacts associated with strong storms when debris jams can occur in undesirable areas and cause increased erosion. The riparian buffer and pollinator plots need regular maintenance to control invasive plants, especially poison hemlock and teasel. Under this Alternative C, maintenance on invasives would occur every year, and maintenance on the debris jams and other issues, will occur as needed, dependent on weather and storms. Under Alternative C, the Trustees would fund long-term maintenance and repairs of the structures, when necessary, to facilitate the continued habitat benefits for trout.

4.3.3.1 CERCLA Evaluation

The future repair and maintenance of the existing in-stream structures, as well as the plantings alongside Spring Creek, is considered technically feasible due to the prior successful installation

of in-stream structures and resulting benefits to the stream and riparian area. Ongoing maintenance and repairs can be implemented effectively using established protocols (43 C.F.R. § 11.82(d)(1)). The Trustees have determined that the long-term maintenance of the existing structures is cost-effective and will have favorable benefit-to-cost ratios as the expected benefits of improved trout habitat and ecosystem health will outweigh the maintenance costs, and will also reduce future restoration expenses related to erosion and sedimentation (43 C.F.R. § 11.82(d)(2-3)).

As the proposed action focuses on maintaining already existing structures, the potential for additional injury or adverse impacts resulting from the proposed action is negligible (43 C.F.R. § 11.82(d)(5)). Natural recovery at the Site is expected to take a considerable amount of time. The continued habitat benefits from the structures will help reduce the Site's recovery time. Continuous maintenance will further enhance their recovery potential and extend the timeframe for benefits. Without intervention, recovery may be slower due to ongoing erosion and loss of habitat (43 C.F.R. § 11.82(d)(6-7)).

The repair and maintenance actions within Alternative C would not adversely impact public health or safety (43 C.F.R. § 11.82(d)(8)). The actions included within Alternative C are consistent and compliant with relevant federal and state laws and policies (43 C.F.R. § 11.82(d)(9-10)).

4.3.3.2 NEPA Evaluation

4.3.3.2.1 Physical and Biological Environment Impacts

Alternative C may result in short-term, minor, adverse impacts to the physical environment during times of repair and maintenance activities but would be temporary and infrequent. The long-term prevention of erosion and sedimentation are expected to provide major and direct benefits to the Spring Creek ecosystem.

The proposed restoration actions under Alternative C are not expected to result in any direct adverse air quality impacts. Climate variables and air quality would retain current status under this alternative.

The aquatic biota within Spring Creek, in particular trout, are anticipated to have long-term, major, beneficial impacts from the in-stream structures, and therefore from their continued repair and maintenance. The invasive species management actions have the potential to have temporary, adverse impacts on habitat and biota, however these impacts would be short-term in nature and would be minimized using best management practices (BMPs). The management of invasive species is expected to provide long-term improvements to native habitat, thus benefitting the associated biota including those protected under various laws.

As discussed in Section 4.3.2.2.1, a few federal and state listed, threatened, or endangered or State-imperiled species potentially occur in the NRDAR Property, as well as migratory birds (Appendix; **Table 3-Table 4**). If this alternative is selected, any impacts to listed species will be evaluated as needed under the ESA Section 7 consultation process and screened through the Pennsylvania environmental review process (PNDI). Overall, based on the proposed restoration

actions, Spring Creek's biota should expect long-term beneficial impacts, due to habitat and water quality improvements.

4.3.3.2.2 Socioeconomic and Cultural Environment Impacts

Alternative C would have long-term, minor, beneficial impacts on recreational use. The in-stream structures enhance the aquatic habitat, which can lead to better fishing and wildlife observation opportunities.

Alternative C may result in short-term, minor, ambient traffic and noise levels in the area within during times of repair and maintenance. However, these impacts would be temporary and infrequent.

As the structures already exist, the Trustees do not anticipate any adverse impacts to cultural resources. If this alternative is selected, consultation with the PA SHPO regarding any documented historical or cultural resources in the area will be completed as needed.

4.3.3.3 Conclusion

The Trustees found that Alternative C: Future Repair and Maintenance of Existing In-Stream Structures along NRDAR Property satisfies the required CERCLA restoration evaluation criteria (**Table 2**), the Trustees' restoration goals, and to be an acceptable project to compensate for Site-related natural resource injuries and losses.

4.3.4 Alternative D: Additional Land Conservation in Spring Creek Watershed

Alternative D would seek to conserve additional property/ies within the Spring Creek Watershed, targeting areas along Spring Creek with angler access opportunities. These properties would be different than those already evaluated under Alternative B. In determining property/ies to pursue, the Trustees would prioritize:

- Properties that would allow permanent protection of contiguous tracts of existing conserved, protected or eased land,
- Properties with at least 1000 ft of perennial riparian corridor that provide recreational angling opportunities,
- Projects that reduce the amount of posted land unavailable to anglers, and
- Projects that can provide enhanced angler opportunities. This could include securing or improving fishing access, increasing or enhancing parking availability for anglers and stream visitors, and/or improving stream habitat.

Under Alternative D, the preservation of the land would help to ensure protection of water quality and recreational fishing access for the public to enjoy in the Spring Creek Watershed.

4.3.4.1 CERCLA Evaluation

The land preservation actions provided by Alternative D would benefit the Spring Creek Watershed by protecting water quality and the public. Land conservation is a common restoration technique and is considered to have a high level of technical feasibility (43 C.F.R. § 11.82(d)(1)). The Trustees also consider Alternative D to be cost-effective, and anticipate

favorable benefit-to-cost ratios, with multiple substantial resource benefits, including trout (43 C.F.R. § 11.82(d)(2-3)).

As the proposed action focuses on land preservation, the potential for additional injury or adverse impacts resulting from the proposed action is negligible (43 C.F.R. § 11.82(d)(5)). Natural recovery at the Site is expected to take a considerable amount of time. The preservation efforts will reduce the Site's recovery time and improve the Site's recovery ability as no development will be allowed on the properties (43 C.F.R. § 11.82(d)(6-7)).

The land protection actions within Alternative D would have no adverse impacts on public health or safety; and instead, protecting these natural resources would provide the public with added opportunities for outdoor recreation, including angling. Land preservation can facilitate the protection of natural resources and ecosystems. This helps prevent pollution, manage stormwater, and preserve green spaces that contribute to overall public health (43 C.F.R. § 11.82(d)(8)). The actions included within Alternative D are consistent and compliant with relevant federal and state laws and policies (43 C.F.R. § 11.82(d)(9-10)).

4.3.4.2 NEPA Evaluation

4.3.4.2.1 Physical and Biological Environment Impacts

The preservation of the stream bank within the Spring Creek Watershed through land conservation will provide protection from degradation of water quality and from physical erosion. Therefore, the impacts on the physical environment by Alternative D are anticipated to be long-term, moderate, and beneficial.

The proposed restoration action under Alternative D is not expected to result in any direct adverse air quality impacts. Climate variables and air quality would retain current status under this alternative.

The land preservation action within Alternative D has the potential to reduce habitat fragmentation and adverse effects on fish and wildlife that can result from development activities within habitats on which these resources depend. Overall, Alternative D is anticipated to provide long-term, minor, and beneficial impacts to the biological environment.

As discussed in Section 4.3.2.2.1, a few federal and state listed, threatened, or endangered or State-imperiled species potentially occur in the NRDAR Property, as well as migratory birds (Appendix; **Table 3-Table 4**). As this alternative proposes land preservation, Alternative D is not anticipated to have any adverse impacts on federal or state listed, threatened, or endangered species or their designated critical habitat; species proposed for federal listing; proposed critical habitat; or USFWS Birds of Conservation Concern. If this alternative is selected, any impacts to listed species will be evaluated as needed under the ESA Section 7 consultation process and screened through the Pennsylvania environmental review process (PNDI).

4.3.4.2.2 Socioeconomic and Cultural Environment Impacts

The potential for an increase in public fishing access described in Alternative D is anticipated to have long-term and beneficial impacts on resource-based recreational activities. Due to the potential for an increase in public access for recreational opportunities, this may result in

increased traffic in the area within which restoration is likely to occur. Alternative D is anticipated to have long-term, moderate, adverse impacts on traffic and noise conditions, dependent on location of the easements.

Permanent publicly available areas may increase nearby residential land values, and the increase in recreational activity in the area within which restoration is likely to occur may result in increased local sales in food service, hospitality, and recreation-related industries. Thus, the economic impacts of Alternative D are anticipated to be long-term, minor, and beneficial.

Consultation with the PA SHPO regarding any documented historical or cultural resources in the area will be completed as needed. As the conservation actions will not change the physical properties of the land, Alternative D is not anticipated to result in any adverse impacts to historic resources.

4.3.4.3 Conclusion

The Trustees found that Alternative D: Additional Land Conservation in Spring Creek Watershed satisfies the required CERCLA restoration evaluation criteria (**Table 2**), the Trustees' restoration goals, and to be an acceptable project to compensate for Site-related natural resource injuries and losses.

4.3.5 Alternative E: Additional Restoration Projects within Spring Creek Watershed

Under Alternative E, the Trustees would pursue restoration project(s) that reduce sediment inputs, remove fish passage barriers, reduce/treat stormwater inputs, or protect known areas of groundwater recharge along Spring Creek. Potential projects within Spring Creek will be prioritized, but projects both upstream and downstream within the Spring Creek Watershed will also be considered. The Trustees have determined example project techniques that would fall under this alternative and also meet the CERCLA restoration criteria and Trustee goals:

- **Stream Bank Stabilization:** Actions that restore eroding banks which are prevalent along roadways and rail lines within the Spring Creek Watershed. This could include installation of instream habitat structures such as log deflectors, mudsill cribbing, rock cross vanes, etc. Cattle exclusion fencing to preserve streambank integrity and riparian vegetation would also be appropriate.
- **Aquatic Connectivity:** Actions that generally remove fish passage obstructions in either the mainstem or tributaries of Spring Creek would be considered. Support in the form of funding could also be provided to private individuals or local governments to assist with the design and removal of these structures. Additionally, for road stream crossings that have been identified as Aquatic Organism Passage (AOP) barriers according to the North American Aquatic Connectivity Assessment methodology, funding could be provided to assist with the design and construction of replacement structures that meet AOP standards.
- **Groundwater Recharge Projects:** Several areas in the upper Spring Creek Watershed have been identified as critical for groundwater recharge. As a limestone stream, water temperature and base flow is largely regulated by the influence of groundwater. Identifying properties with known sinks of significant catchment size and securing its

preservation could ensure future development does not compromise water quality or divert surface flows reducing groundwater contribution to Spring Creek. This may become important in maintaining Spring Creek's cold-water aquatic community as additional stressors (e.g., stormwater runoff) begin to impact the lower watershed.

When determining locations of restoration efforts, the Trustees would consider land ownership. Local governments, Penn State, PGC, and PFBC have significant land holdings within the Spring Creek Watershed (Spring Creek Park, SGL 333, fish hatchery properties, etc.). Sections of Spring Creek and its tributaries on these properties that have stream habitat assessment scores below a certain threshold could be identified as priority areas for restoration. Portions of these properties that are contiguous with lands already allowing for public access would be prioritized by the Trustees.

In addition, the Trustees may identify existing, ongoing restoration efforts in the Spring Creek Watershed with which to partner to increase the environmental benefits of these projects. These include riparian plantings, stream restoration, and bank stabilization projects that could be completed in conjunction with the Keystone Tree Fund, the USFWS's partners for wildlife group, and the PFBC's Division of Habitat Management.

4.3.5.1 CERCLA Evaluation

The proposed restoration actions are technically feasible, as they utilize proven methodologies such as stream bank stabilization techniques and removal of fish passage obstruction strategies, which have successfully been implemented by the Trustees or by approved third-party contractors (43 C.F.R. § 11.82(d)(1)). The Trustees also consider Alternative E to be cost-effective, and anticipate favorable benefit-to-cost ratios, with multiple substantial resource benefits. In particular, if the Trustees pursue restoration efforts in conjunction with partners, there is an expected high level of cost-effectiveness (43 C.F.R. § 11.82(d)(2-3)).

The potential for additional injury or adverse impacts resulting from the proposed action is negligible as the projects are common practice (43 C.F.R. § 11.82(d)(5)). Natural recovery at the Site is expected to take a considerable amount of time. The environmental benefits from the potential projects will help reduce the Site's recovery time. Without intervention, recovery may be slower due to water quality degradation and habitat fragmentation (43 C.F.R. § 11.82(d)(6-7)).

The restoration actions within Alternative E would not adversely impact public health or safety. Instead, the proposed actions could enhance human health and safety by improving water quality and reducing flood risks, which benefit local communities (43 C.F.R. § 11.82(d)(8)). The actions included within Alternative E are consistent and compliant with relevant federal and state laws and policies (43 C.F.R. § 11.82(d)(9-10)).

4.3.5.2 NEPA Evaluation

4.3.6.2.1 Physical and Biological Environment Impacts

Alternative E may result in short-term, adverse, impacts to the physical environment during construction but would be temporary and minimized utilizing BMPs. The proposed restoration

actions are anticipated to provide long-term, minor, beneficial impacts to Spring Creek's water quality.

The proposed restoration actions under Alternative E are not expected to result in any direct adverse air quality impacts. Climate variables and air quality would retain current status under this alternative.

As discussed in Section 4.3.2.2.1, a few federal and state listed, threatened, or endangered or State-imperiled species potentially occur in the NRDAR Property, as well as migratory birds (Appendix; **Table 3-Table 4**). If this alternative is selected, any impacts to listed species will be evaluated as needed under the ESA Section 7 consultation process and screened through the Pennsylvania environmental review process (PNDI). Overall, based on the proposed restoration actions, Spring Creek's biota should expect long-term, minor to moderate, beneficial impacts, due to habitat and water quality improvements.

4.3.6.2.2 Socioeconomic and Cultural Environment Impacts

Alternative E would have long-term, minor, beneficial impacts on recreational use. With the proposed restoration actions, Spring Creek's health will benefit, and therefore benefit angling and other recreational opportunities.

Alternative E may result in short-term, minor, ambient traffic and noise levels in the area within which restoration is likely to occur, specifically during construction. Once construction is complete, traffic and noise levels should return to baseline.

Alternative E could have short-term, minor, and beneficial socioeconomic impacts due to potential job creation for construction activities, as well as increased property values as properties near clean and healthy waterways often see increased real estate values.

If this alternative is selected, consultation with the PA SHPO regarding any documented historical or cultural resources in the area will be completed as needed.

4.3.5.3 Conclusion

The Trustees found that Alternative E: Additional Restoration Projects within Spring Creek Watershed satisfies the CERCLA restoration evaluation criteria (**Table 2**), the Trustees' restoration goals, and to be an acceptable project to compensate for Site-related natural resource injuries and losses. As specific projects are identified by the Trustees, additional environmental compliance analyses will be conducted, as needed.

Table 2. Summary of Restoration Alternatives Evaluation.

ALTERNATIVE	DESCRIPTION	CERCLA CRITERIA AND EVALUATION
A	No Action/Natural Recovery	<ol style="list-style-type: none"> 1. Technical Feasibility: Pass. 2. Cost/Benefit: Not applicable. 3. Cost Effectiveness: Not applicable. 4. Results of Response Actions: Not applicable. 5. Additional Injury: Not applicable. 6. Recovery Period: Fail. 7. Recovery Ability: Not applicable. 8. Public Health and Safety: Not Applicable. 9. Policy Consistency: Fail. Restoration is feasible under CERCLA. 10. Regulatory Compliance: Not Applicable.
B	Conservation Easements and Angler Access along Spring Creek	<ol style="list-style-type: none"> 1. Technical Feasibility: High. 2. Cost/Benefit: The Trustees do not have cost information to determine. 3. Cost Effectiveness: The Trustees do not have cost information to determine. 4. Results of Response Actions: Not applicable. 5. Additional Injury: Pass. 6. Recovery Period: Medium. 7. Recovery Ability: Medium. 8. Public Health and Safety: Pass. 9. Policy Consistency: Pass. 10. Regulatory Compliance: Pass.
C	Future Repair and Maintenance of Existing In-Stream Structures along NRDAR Property	<ol style="list-style-type: none"> 1. Technical Feasibility: High. 2. Cost/Benefit: High. 3. Cost Effectiveness: High. 4. Results of Response Actions: Not Applicable. 5. Additional Injury: Not Applicable. 6. Recovery Period: High. 7. Recovery Ability: Medium. 8. Public Health and Safety: Pass. 9. Policy Consistency: Pass. 10. Regulatory Compliance: Pass.

ALTERNATIVE	DESCRIPTION	CERCLA CRITERIA AND EVALUATION
D	Additional Land Conservation in Spring Creek Watershed	<ol style="list-style-type: none"> 1. Technical Feasibility: High. 2. Cost/Benefit: High. 3. Cost Effectiveness: High. 4. Results of Response Actions: Not Applicable. 5. Additional Injury: Not Applicable. 6. Recovery Period: Medium. 7. Recovery Ability: Medium. 8. Public Health and Safety: Pass. 9. Policy Consistency: Pass. 10. Regulatory Compliance: Pass.
E	Additional Restoration Projects within Spring Creek Watershed	<ol style="list-style-type: none"> 1. Technical Feasibility: Medium. 2. Cost/Benefit: High. 3. Cost Effectiveness: High. 4. Results of Response Actions: Not Applicable. 5. Additional Injury: Pass. 6. Recovery Period: High. 7. Recovery Ability: Medium. 8. Public Health and Safety: Pass. 9. Policy Consistency: Pass. 10. Regulatory Compliance: Pass.

4.4 Reasonably Foreseeable Impacts

Reasonably foreseeable effects include those effects from federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a responsible official would take into account in reaching a decision. Federal and non-federal activities that must be taken into account include, but are not limited to, activities for which there are existing decisions, funding, or proposals identified by the Trustees. Reasonably foreseeable effects are typically analyzed in terms of the specific resource, ecosystem, and human community being affected and should focus on effects that are truly meaningful.

The reasonably foreseeable impacts analysis of the restoration alternatives in this Draft RP/EA is commensurate with the nature of the proposed alternative types and the degree of direct and indirect effects anticipated from implementation of the primarily beneficial projects. For the purpose of this analysis, the spatial boundary includes the Spring Creek Watershed located in Centre County, PA.

The Trustees have identified restoration alternatives intended to conserve and restore habitats within Spring Creek to support fish and associated angling opportunities injured and lost by the release of hazardous substances. The restoration alternatives are anticipated to result in predominantly beneficial effects on those same resources and services, to help return injured

natural resources and associated services to baseline conditions, and to compensate for interim losses.

The alternatives evaluated in this Draft RP/EA are designed to improve environmental quality or to increase recreational opportunities and enjoyment of natural resources. Overall, no significant adverse impacts are anticipated from the proposed restoration actions. A net cumulative beneficial impact may result from synergy with nearby past, current, and future restoration activities, including the ongoing efforts to create a continuous protected corridor along Spring Creek. Therefore, the Trustees conclude that the restoration alternatives identified have the potential to provide long-term beneficial cumulative impacts to physical, biological, and socioeconomic resources.

5.0 Conclusion

The goal of the NRDAR process is to plan and implement actions to restore, replace, rehabilitate, and/or acquire the equivalent of the natural resources and natural resource services that were injured or lost because of the hazardous substance release(s). To meet this goal, in this Draft RP/EA the Trustees have evaluated potential alternatives to compensate for injuries. The Trustees will select one or multiple restoration alternatives in the Final RP/EA and provide a responsiveness summary to any comments received.

6.0 References

- Brokenstraw Watershed Council. 2020. Spring Creek Watershed Conservation Plan.
- Carline, R.F., Dunlap, R.L., Detar, J.E., and B.A. Hollender. 2011. The fisher of Spring Creek – a watershed under siege. Pennsylvania Fish and Boat Commission, Technical Report Number 1. Harrisburg, PA.
- Giddings, M.T., Jr. 1974. Hydrologic budget of Spring Creek drainage basin, Pennsylvania. Ph.D. thesis. Penn State Univ., Department of Geosciences, University Park.
- Hughey, R.E. 1994. Logan Branch 22997 Sediment/Benthos Survey, Centre County. August 1, 1994, memo to Thomas M. Schmick. Department of Environmental Resources, Water Management Program, Northcentral Region. Williamsport, PA. 14 pp.
- Pennsylvania Department of Environmental Resources (PA DER). 1990. Spring Creek, Centre County, Special Protection Evaluation Report, Water Quality Standards Review. Bureau of Water Quality Management, Division of Water Quality. Quality Assessment Unit. Harrisburg.
- Pennsylvania Fish Commission (PFC). 1982. Pennsylvania Fish Commission minutes, 151st meeting, January 23, 1982. Harrisburg.
- Rice, C.L. 1987. Follow-up survey of contaminants in fish from four streams in Centre County, Pennsylvania. State College Field Office Environmental Contaminants Report No. 88-1. Department of the Interior. U.S. Fish and Wildlife Service. State College, Pennsylvania. 63 pp.
- SMC Environmental Services Group. 1992. Ruetgers-Nease Chemical Company, Inc. Final remedial investigation report. December 23, 1992. Valley Forge, PA.
- U.S. Environmental Protection Agency (EPA). 1995. Record of Decision, Centre County Kepone Site Operable Unit 1. U.S. EPA Region III. Philadelphia. 78 pp.
- U.S. Environmental Protection Agency (EPA). 2004. Level III and IV Ecoregions of EPA Region 3 Map.
- U.S. Environmental Protection Agency (EPA). 2019. Fourth five-year review report for Centre County Kepone Superfund Site, Centre County, Pennsylvania. 73 pp.
- U.S. Fish and Wildlife Service (USFWS). 2021. Birds of Conservation Concern 2008. United States Department of Interior, Fish and Wildlife Service, Migratory Bird Program, Arlington, <https://www.fws.gov/media/birds-conservation-concern-2021>.

7.0 Appendix

Table 3. List of Federal and State protected species potentially occurring at or in the vicinity of the area within which restoration is likely to occur in Centre County, PA. Federal protected species data from USFWS Information, Planning, and Conservation System (www.ipac.ecosphere.fws.gov/) generated on June 17, 2025. State protected species data from the Pennsylvania Natural Diversity Inventory (www.naturalheritage.state.pa.us).

COMMON NAME	SCIENTIFIC NAME	FEDERAL PROTECTION STATUS	STATE PROTECTION STATUS
Indiana Bat	<i>Myotis sodalis</i>	Endangered	-
Monarch Butterfly	<i>Danaus plexippus</i>	Candidate	-
Northeastern Bulrush	<i>Scirpus ancistrochaetus</i>	Endangered	-
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Endangered	Endangered
Northern Metalmark	<i>Calephelis borealis</i>	-	Species of Concern
Tricolored Bat	<i>Perimyotis subflavus</i>	Proposed Endangered	-

Table 4. List of Migratory Birds of Conservation Concern⁴ potentially occurring at or in the vicinity of the area within which restoration is likely to occur in Centre County, PA. Data from U.S. Fish and Wildlife Service Information, Planning, and Conservation System (www.ipac.ecosphere.fws.gov/) generated on June 17, 2025.

COMMON NAME	SCIENTIFIC NAME	BREEDING SEASON
Bald Eagle ⁵	<i>Haliaeetus leucocephalus</i>	September 1 to August 31
Black-billed Cuckoo	<i>Coccyzus erythrophthalmus</i>	May 15 to October 10
Black-capped Chickadee	<i>Poecile atricapillus praticus</i>	April 10 to October 10
Bobolink	<i>Dolichonyx oryzivorus</i>	May 20 to July 31
Canada Warbler	<i>Cardellina canadensis</i>	May 20 to August 10
Cerulean Warbler	<i>Setophaga cerulea</i>	April 27 to July 20
Chimney Swift	<i>Chaetura pelagica</i>	March 15 to August 25
Eastern Whip-poor-will	<i>Antrostomus vociferus</i>	May 1 to August 20
Golden Eagle ²	<i>Aquila chrysaetos</i>	Breeds elsewhere
Golden-winged Warbler	<i>Vermivora chrysoptera</i>	May 1 to July 20
Kentucky Warbler	<i>Geothlypis formosa</i>	April 20 to August 20
Northern Saw-whet Owl	<i>Aegolius acadicus</i>	March 1 to July 31
Prairie Warbler	<i>Setophaga discolor</i>	May 1 to July 31
Prothonotary Warbler	<i>Protonotaria citrea</i>	April 1 to July 31
Red-headed Woodpecker	<i>Melanerpes erythrocephalus</i>	May 10 to September 10
Rusty Blackbird	<i>Euphagus carolinus</i>	Breeds elsewhere
Wood Thrush	<i>Hylocichla mustelina</i>	May 10 to August 31

⁴ The overall goal of the Birds of Conservation Concern (USFWS, 2021) is to accurately identify the migratory and non-migratory bird species (beyond those already designated as federally threatened or endangered) that represent USFWS' highest conservation priorities.

⁵ "This is not a Bird of Conservation Concern in this area but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities" (<https://ipac.ecosphere.fws.gov/>).

CONSENT DECREE

Appendix C

SCOPE OF WORK FOR PUBLIC FISHING ACCESS ON THE NRDAR PROPERTY

Project Description

To compensate the public for the natural resources and related services allegedly damaged as a result of the release of hazardous substances from the CCK Site, ROL shall fund Clearwater Conservancy's establishment of an accessible public access point for recreational fishing within the portion of Spring Creek encompassed by the NRDAR Property.

Access infrastructure will also be constructed as part of this project. This includes the creation of parking spaces, including spaces for those with disabilities, and pathways for anglers to access Spring Creek.

Performance Criteria

The Commonwealth Trustees will assess ROL's compliance with the conservation requirements outlined in the Consent Decree using the following Performance Criteria:

- A public access point for recreational fishing will be established within the portion of Spring Creek encompassed by the NRDAR Property.
- There must be parking for at least three vehicles to reasonably access the fishing access point.
- At least one of these parking spaces must be accessible to those with disabilities and in compliance with the Americans with Disabilities Act Standards for Accessible Design.
- The parking spaces and any pathways to the fishing access point should be made of material suitable for ADA compliance and compatible with the Conservation Easement, as applicable.
- The location of access infrastructure, including parking spaces, pathways, and related structures shall be compatible with the Owner's Development Plan dated March 14,

2025, as approved by the Trustees on the basis of benefits and values for improved recreational access to Spring Creek.

- All access infrastructure and its construction should minimize impacts on the NRDAR Property while providing reasonable fishing access to members of the public, including those with disabilities.

CONSENT DECREE

Appendix D

Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax parcel(s):

Grant of Conservation Easement and Declaration of Covenants

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS (this “Grant”) dated as of _____ (the “Easement Date”) is by and between Clearwater Conservancy (the “undersigned Owner or Owners”) and College Township (the “Holder”), with the Pennsylvania Fish and Boat Commission (“PFBC”) and the Pennsylvania Game Commission (“PGC”) having Third Party Rights of Enforcement (the “Third Parties”).

Background; Grant to Holder

Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in exhibit A (the “Property”). The Property is also described as: The NRDAR Property

Street address: 1601 Houserville Road

Municipality: College Township

County: Centre County State: Pennsylvania

Parcel identifier: 19-003-,003D and 19-004-,111-,0001P (easterly segment) Acreage:5.87

Easement; Covenants

Easement. By this Grant, the undersigned Owner or Owners grant and convey to Holder an unconditional and perpetual easement upon the NRDAR Property for the purpose of advancing the Conservation Objectives described below (that easement, the “Conservation Easement”). The Conservation Easement empowers Holder to block activities, uses, and Improvements inconsistent with the Conservation Objectives. Article 6 more fully describes the rights this Grant vests in Holder.

Owner Covenants. By this Grant, the undersigned Owner or Owners, in furtherance of the Conservation Objectives, establish covenants binding upon Owners’ interest in the NRDAR Property, which are set forth in

articles 2 through 5. Article 7 addresses potential violation of these covenants and remedies.

Holder Covenants. By this Grant, Holder accepts the Conservation Easement and, in furtherance of the Conservation Objectives, establishes covenants binding upon Holder's easement interest in the NRDAR Property, which are set forth in article 6.

Conservation Objectives

The resource-specific and area-specific purposes of the Conservation Easement (collectively, the "Conservation Objectives") are as follows:

Resource-Specific

Water Resources. To maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream of the NRDAR Property.

Biological Resources. To protect and improve the quality of natural habitat for animals, plants, fungi, and other organisms, particularly Native Species.

Soil Resources. To prevent the loss and depletion of soil on the NRDAR Property.

Scenic Resources. To protect scenic views of the NRDAR Property visible from public rights-of-way and other public access points outside the NRDAR Property.

Ecosystem Services. To absorb within the NRDAR Property rainwater that otherwise might cause erosion and flooding downstream of the NRDAR Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes.

Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed an acknowledgment of the accuracy of the report (the "Baseline Documentation") to be kept on file at the principal office of Holder. The Baseline Documentation contains an original, full-size version of the Easement Plan and other information sufficient to identify on the ground the protection areas identified in this article; describes Existing Improvements; identifies the conservation resources of the NRDAR Property described in the Conservation Objectives; and includes, among other information, photographs depicting existing conditions of the NRDAR Property as of the Easement Date.

Defined Terms

Initially capitalized terms not defined in this article 1 are defined in article 9.

Federal Tax Items

The provisions of this section supplement and, to the extent of an inconsistency, supersede provisions set forth elsewhere in this Grant.

Qualified Conservation Contribution. The undersigned Owner or Owners intend this grant of Conservation Easement, a transfer of a partial interest in real estate, to qualify as a qualified conservation contribution (as defined under §170(h)(1) of the Code). If the Conservation Easement is transferred to any Person, that Person must commit to hold it exclusively for conservation purposes as defined in the Regulations.

Public Benefit. The undersigned Owner or Owners have granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits

described in the Conservation Objectives, the Baseline Documentation may identify other information supporting the significant public benefit of the Conservation Easement.

Mineral Interests. The undersigned Owner or Owners represent that no Person has retained a qualified mineral interest in the NRDAR Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of such an interest is prohibited, and Holder has the right to prohibit the exercise of such a right or interest if granted in violation of this provision.

Notice Required Under Regulations. To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Owners agree to notify Holder before exercising reserved rights that may have an adverse impact on the conservation interests associated with the NRDAR Property.

Extinguishment. In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that (1) the grant of the Conservation Easement gives rise to a real estate right, immediately vested in Holder, that entitles Holder to compensation upon extinguishment of the easement; and (2) extinguishment for unexpected changes that make impossible or impractical the continued use of the NRDAR Property for conservation purposes (as defined in the Regulations) of this Grant can only be accomplished by judicial proceedings. The fair market value of the right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the NRDAR Property as a whole as of the Easement Date (the "Proportionate Value"). If the Proportionate Value exceeds the compensation otherwise payable to Holder under this Grant or Applicable Law, Holder is entitled to payment of the Proportionate Value. Holder must use funds received on account of the Proportionate Value for conservation purposes (as defined in the Regulations).

Acknowledgment of Donation. Except for such monetary consideration (if any) as is set forth in this article, Holder acknowledges that no goods or services were delivered to the undersigned Owner or Owners in consideration of this Grant.

No Representation of Tax Benefits. The undersigned Owner or Owners represent, warrant, and covenant to Holder that:

The undersigned Owner or Owners have not relied upon information or analyses furnished by Holder with respect to either the availability, amount, or effect of a deduction, credit, or other benefit to Owners under Applicable Law; or the value of the Conservation Easement or the NRDAR Property.

The undersigned Owner or Owners have relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial, and accounting professionals engaged by the undersigned Owner or Owners. If a Person providing services in connection with this Grant or the NRDAR Property was recommended by Holder, the undersigned Owner or Owners acknowledge that Holder is not responsible in any way for the performance of services by these Persons.

This Grant is not conditioned upon the availability or amount of a deduction, credit, or other benefit under Applicable Law.

Third Party Rights of Enforcement

Owner and Holder agree that third-party rights of enforcement shall be held by the Pennsylvania Fish and Boat Commission ("PFBC") and the Pennsylvania Game Commission ("PGC"), and any successor agencies. All rights conveyed to the Holder under this Easement shall extend to and are enforceable by the Third Parties. These rights are in addition to, and do not alter or limit the enforcement rights of Holder under this Easement.

Consideration

The undersigned Owner or Owners acknowledge receipt, as of the Easement Date, of the sum of \$1.00 in consideration of this Grant.

Superior to All Liens

The undersigned Owner or Owners warrant to Holder that the NRDAR Property is, as of the Easement Date, free and clear of Liens or, if it is not, that Owners have obtained and recorded in the Public Records the legally binding subordination of the Liens affecting the NRDAR Property as of the Easement Date.

Transfer; Subdivision

Prohibitions

All of the following are prohibited except as set forth in the next section:

Transfer of Portion of NRDAR Property. Transfer of ownership, possession, or use of a portion of the NRDAR Property, including subsurface portions of the NRDAR Property, independent of the remainder of the NRDAR Property.

Subdivision. Change in the boundary of a Lot or other Subdivision of the NRDAR Property.

Transfer of Density. Use of open space area protected under this Grant to increase (above limits otherwise permitted under Applicable Law) allowable density or intensity of development within other portions of the NRDAR Property or outside the NRDAR Property.

Transfer of Rights. Transfer of development rights or other rights granted or allocated to the NRDAR Property in support of development outside the NRDAR Property.

Permitted

The following actions are permitted:

Lots Within NRDAR Property. If the NRDAR Property contains more than one Lot, Subdivision to (1) merge two or more Lots into one; or (2) subject to Review, reconfigure one or more of the boundaries of such Lots except a boundary of the NRDAR Property as described in exhibit A.

Transfer to Qualified Organization. Subject to Review and approval by Holder without any obligation to do so, creation and transfer of a Lot to a Qualified Organization for park, nature preserve, public trail, or other conservation purposes.

Commitments Regarding Resource Management Practices. Commitments to implement resource management practices consistent with Conservation Objectives and otherwise permitted under this Grant together with the transfer of rights, credits, or offsets (for example, carbon or nutrient credits) arising from or related to such commitments.

Requirements

Establishment of Lots; Allocations. Prior to transfer of a Lot following a Subdivision, Owners must (1) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of each Lot created or reconfigured by the Subdivision; (2) mark the boundaries of each Lot with permanent markers; and (3) allocate in a document recorded in the Public Records those limitations applicable to more than one Lot under this Grant. This information will become part of the Baseline Documentation incorporated into this Grant.

Amendment. Holder may require Owners to execute an Amendment of this Grant to reflect a change to the description of the NRDAR Property set forth in exhibit A or other changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Improvements

Improvements within the Highest Protection Area are prohibited except as permitted below in this article.

Existing Improvements. Existing Improvements may be maintained, repaired, and replaced in their existing locations. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.

Existing Servitudes. Improvements that Owners are required to allow because of an Existing Servitude are permitted.

Additional Improvements. The following Additional Improvements are permitted:

Improvements as generally depicted on Owner's Land Development Plan dated March 14, 2025.

Improvements reasonably related to Riparian Buffer Protection Activities.

Improvements for seating areas associated with the public's access to the Property.

Fences, walls, and gates, not to exceed five feet in Height or such greater Height as is approved by Holder after Review.

Signs; however, signs other than Regulatory Signs are limited to a maximum eight square feet per sign and a total of 32 square feet for the entire NRDAR Property.

Habitat enhancement devices such as birdhouses and bat houses.

Trails covered (if at all) by wood chips or gravel, unless another trail cover is necessary for ADA compliance ,

Subject to Review, footbridges, stream crossing structures, and stream access structures.

Subject to Review, parking spaces for angler access, including handicap parking.

Subject to Review, Access Drives and Utility Improvements to service Improvements within the NRDAR Property but only if there is no other reasonably feasible means to provide access and utility services to the NRDAR Property.

Activities and Uses

Activities and uses within the Highest Protection Area are prohibited except as permitted below in this article and provided in any case that:

The intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.

No Invasive Species are introduced.

Existing Servitudes. Activities and uses that Owners are required to allow because of an Existing Servitude are permitted.

Resource Management and Disturbance. The following activities and uses are permitted:

Cutting trees, Construction, or other disturbance of resources to the extent reasonably prudent to remove, mitigate, or warn against an unreasonable risk of harm to Persons or their belongings. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.

Planting, replanting, and maintaining Native Species or, subject to Review, planting, replanting, and maintaining other vegetation.

Subject to Review, removal of vegetation to accommodate replanting as permitted in this article; subject to Review, eliminating Invasive Species to benefit natural habitat and the ecosystem.

Construction of permitted Improvements with prompt restoration of soil and vegetation disturbed by such activity.

Vehicular use in the case of emergency and in connection with activities or uses permitted under this subsection.

Except within Wet Areas, cutting or removing trees, standing or fallen, but only if the aggregate inside bark diameter of stumps (one foot above ground on the uphill side) does not 200 inches per year.

Application of manure and plant material, both well composted, and, subject to compliance with manufacturer's recommendations, other substances to promote the health and growth of vegetation. (These permitted substances do not include sludge, biosolids, septic system effluent, and related substances.)

Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or permitted uses.

Other activities that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives and are conducted in accordance with the Resource Management Plan or other plan approved for that activity after Review.

Recreation and Education. Recreational, educational, and scientific research activities are permitted that do not require Improvements other than trails and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (1) walking, horseback riding on trails, cross-country skiing, bird watching, nature study, fishing, and hunting; and (2) wildlife research consistent with and in furtherance of the Conservation Objectives. Vehicular use is not permitted in connection with the activities permitted under this subsection unless Holder approves the use after Review.

Rights and Duties of Holder and Rights of Third Parties

Holder Covenants

In support of the Conservation Objectives, Holder declares the following covenants binding upon its easement interest in the NRDAR Property:

Exercise of Powers. Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the NRDAR Property inconsistent with the Conservation Objectives.

Must Be Qualified Organization. Holder must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under this Grant to a Person

other than a Qualified Organization committed to upholding the Conservation Objectives.

Forfeiture Remedy. If Holder fails to abide by the covenants of this section, a Third Party of the Conservation Easement or the Commonwealth of Pennsylvania may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing, and able to abide by such covenants.

Rights and Duties of Holder

The items set forth below are both rights and duties vested in Holder by this Grant:

Enforcement. To enter the NRDAR Property to investigate a suspected, alleged, or threatened violation of the covenants and, if found, to enforce the terms of this Grant by exercising Holder's remedies in this Grant.

Inspection. To enter and inspect the NRDAR Property for compliance with the requirements of this Grant upon reasonable notice, in a reasonable manner, and at reasonable times.

Review. To exercise rights of Review in accordance with the requirements of this article.

Interpretation. To interpret the terms of this Grant and, at the request of Owners, furnish Holder's explanation of the application of such terms to then-existing, proposed, or reasonably foreseeable conditions within the NRDAR Property.

Other Rights of Holder

The items set forth below are also rights vested in Holder by this Grant; however, Holder, in its discretion, may or may not exercise them:

Amendment. To enter into an Amendment with Owners if Holder determines that the Amendment: (1) will not impair Holder's power, enforceable in perpetuity, to block activities, uses, and Improvements of the NRDAR Property inconsistent with the Conservation Objectives; (2) will not result in a private benefit prohibited under the Code; and (3) will be consistent with Holder's policy with respect to Amendment as of the applicable date of reference.

Signs. Subject to Review by Owner, not be unreasonably withheld, to install one or more signs within the NRDAR Property identifying the interest of Holder or Third Parties in the Conservation Easement. Such signs do not reduce the number or size of signs permitted to Owners under this Grant. Signs are to be of the customary size installed by Holder or Beneficiary, as the case may be, and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owners.

Proceedings. To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) pertains to the impairment of Conservation Objectives; or (2) may result in a transfer, Improvement, or use that violates the terms of this Grant.

Review

The following provisions are incorporated into any provision of this Grant that is subject to Review:

Notice to Holder. Before Owners begin or allow a Subdivision, Improvement, activity, or use that is subject to Review, Owners must (1) notify Holder of the proposed change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the proposal and its potential impact on the Conservation Objectives and (2) receive Holder's approval.

Notice to Owners. Upon receipt of Owners' notice, Holder must review the proposed change and notify Owners of Holder's determination to (1) accept Owners' proposal in whole or in part; (2) reject Owners' proposal in whole or in part; (3) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (4) reject Owners' proposal for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (3), commencement of the proposed Subdivision, Improvement, activity, or use constitutes acceptance by Owners of all conditions set forth in Holder's notice.

Time for Review. If requested by Owners, Holder must furnish its estimate of the time required to review the proposed change and use its best efforts and due diligence to notify Owners of its determination within this time period. Otherwise, Holder must make its determination within a reasonable period of time following receipt of Owners' notice to Holder.

Standard of Review

The phrase "without any obligation to do so," in relation to an approval or determination by Holder, means that, in that particular case, Holder's approval is wholly discretionary and may be given or withheld for any reason or no reason.

In all other cases, Holder's approval is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that may adversely affect resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.

Costs and Expenses

Owners must pay or reimburse, as the case may be, Holder's costs and expenses (including Losses, Litigation Expenses, allocated personnel costs, and reasonably incurred liabilities) in connection with: (a) enforcement (including exercise of remedies) under the terms of this Grant; (b) response to requests by Owners for Review, Waiver, or Amendment; and (c) compliance with requests for information, interpretation, or other action pertaining to the Grant if required by Applicable Law.

Violation; Remedies

Violation

If Holder determines that the terms of this Grant are being or have been violated or that a violation is threatened or imminent, then the provisions of this section will apply:

Notice. Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the NRDAR Property damaged or altered as a result of the violation.

Opportunity to Cure. Owners' cure period expires 30 days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;

Owners and Holder agree, within the initial 30-day period, upon the measures Owners will take to cure the violation;

Owners commence to cure within the initial 30-day period; and

Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

Imminent Harm. No notice or cure period is required if circumstances require prompt action to prevent or

mitigate irreparable harm or alteration to a natural resource or other feature of the NRDAR Property described in the Conservation Objectives.

Remedies

Upon expiration of the cure period (if any) described in the preceding section, Holder may do one or more of the following:

Injunctive Relief. Seek injunctive relief to specifically enforce the terms of this Grant, to restrain present or future violations of the terms of this Grant, and/or to compel restoration of resources destroyed or altered as a result of the violation.

Civil Action. Exercise Holder's rights under Applicable Law to obtain a money judgment (together with interest thereon at the Default Rate).

Self-Help. Enter the NRDAR Property to prevent or mitigate further damage to or alteration of natural resources of the NRDAR Property identified in the Conservation Objectives.

Modification or Termination

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder, the following provisions apply:

Compensatory Damages. Holder is entitled to collect, from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the NRDAR Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of the Conservation Easement, Holder is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Grant.

Restitution. Holder is entitled to recover from the Person seeking the modification or termination: (1) restitution of amounts paid for this Grant (if any) and any other sums invested in the NRDAR Property for the benefit of the public as a result of rights vested by this Grant, plus (2) reimbursement of Litigation Expenses as if a violation had occurred.

Remedies Cumulative

The description of Holder's remedies in this article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise one or more of the other rights or remedies available to Holder at the same time or at any other time.

Waivers

No Waiver. If Holder does not exercise a right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with the terms of this Grant or a waiver of Holder's rights to exercise its rights or remedies at another time.

No Material Effect. Holder in its discretion may provide a Waiver if Holder determines that the accommodation is for a limited time and limited purpose and will have no material effect on the Conservation Objectives.

No Fault of Owners

Holder may waive its right to reimbursement in regard to a violation as to Owners (but not other Persons who

may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

Multiple Owners

Multiple Lots. If different Owners own Lots within the NRDAR Property, only Owners of the Lot in violation will be held responsible for the violation.

Single Lot. If more than one Owner owns the Lot in violation of the terms of this Grant, the Owners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

Miscellaneous

Notices

Requirements. Each Person giving notice pursuant to this Grant must give the notice in writing and must use one of the following methods of delivery: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid.

Address for Notices. Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

If to Third Parties:

Office of Chief Counsel
Pennsylvania Fish and Boat Commission
1601 Elmerton Avenue
Harrisburg, PA 17110

Office of Chief Counsel
Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110

Governing Law

The laws of the Commonwealth of Pennsylvania govern this Grant.

Transfer

Notice Required. Not less than thirty (30) days prior to transfer of the NRDAR Property or a Lot, Owners must notify Holder of the name(s) and address for notices of the Persons who will become Owners following the transfer.

Prior to Transfer. Owners authorize Holder to (1) contact the Persons to whom the NRDAR Property or Lot will be transferred, and other Persons representing Owners or the prospective transferees, to discuss with them this Grant and, if applicable, other pertinent documents; and (2) enter the NRDAR Property to assess compliance with this Grant.

Ending Continuing Liability. If Holder is not notified per this section's requirement, it is not the obligation of Holder to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Owners continue to be liable on a joint and several basis with the post-transfer Owners for the correction of violations under this Grant until such time as Holder is given the opportunity to inspect and all violations noted in Holder's resulting inspection report are cured.

Burdens; Benefits

This Grant binds and benefits Owners and Holder and their respective personal representatives, successors, and assigns.

Binding on All Owners. This Grant vests a servitude running with the land binding upon the undersigned Owner or Owners and, upon recordation in the Public Records, all subsequent Owners of the NRDAR Property or any portion of the NRDAR Property are bound by its terms whether or not Owners had actual notice of this Grant and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Grant.

Rights Exclusive to Holder. Except for rights of the Third Parties under this Grant, only Holder has the right to enforce the terms of this Grant and exercise other rights of Holder. Owners of Lots within the NRDAR Property do not have the right to enforce the terms of this Grant against Owners of other Lots within the NRDAR Property. Only Owners of the Lot that is the subject of a request for Review, Waiver, Amendment, interpretation, or other decision by Holder have a right to notice of, or other participation in, such decision.

Documentation Requirements

Between Holder and Owners. No Amendment, Waiver, approval after Review, interpretation, or other decision by Holder is valid or effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance or with respect to any Lot does not imply that an Amendment or Waiver will be granted in any other instance.

Between Holder and Assignee. Any assignment of Holder's rights under this Grant, if otherwise permitted under this Grant, must be in a document signed by both the assigning Holder and the assignee Holder. The assignment document must include a covenant by which the assignee Holder assumes the covenants and other obligations of Holder under this Grant. The assigning Holder must deliver the Baseline Documentation and such other documentation in Holder's possession reasonably needed to uphold the Conservation Objectives.

Severability

If any provision of this Grant is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Grant remain valid, binding, and enforceable. To the extent permitted by Applicable Law, the parties waive

application of any provision of Applicable Law that renders any provision of this Grant invalid, illegal, or unenforceable in any respect.

Counterparts

This Grant may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) a breach or violation of this Grant or Applicable Law; and (b) personal injury (including death) and damage to personal belongings occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

Guides to Interpretation

Captions. The descriptive headings of the articles, sections, and subsections of this Grant are for convenience only and do not constitute a part of this Grant.

Glossary. If a term defined in the Glossary is not used in this Grant, the defined term is to be disregarded.

Other Terms

The word “including” means “including but not limited to.”

The word “must” is obligatory; the word “may” is permissive and does not imply an obligation.

Conservation and Preservation Easements Act. This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation and Preservation Easements Act.

Restatement (Third) of the Law of Property: Servitudes. This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of the Law of Property: Servitudes.

Interpret in Favor of Conservation Objectives. If any provision of this Grant or any writing submitted to or issued by or on behalf of Holder in connection with this Grant is vague, ambiguous, or may be interpreted or construed to favor an interest other than Holder’s, such provision is to be given the interpretation or construction most favorable to Holder’s interest in the Conservation Easement.

Entire Agreement

This is the entire agreement of Owners, Holder, and Third Parties pertaining to the subject matter of this Grant. The terms of this Grant supersede in full all statements and writings between Owners, Holder, and Third Parties pertaining to the transaction set forth in this Grant.

Incorporation by Reference

Each exhibit attached to this Grant is incorporated into this Grant by this reference. The Baseline Documentation (whether or not attached to this Grant) is incorporated into this Grant by this reference.

Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the Conservation and Preservation Easements Act:

NOTICE: The Conservation Easement may impair the development of coal interests including workable coal seams or coal interests that have been severed from the NRDAR Property.

Jurisdiction; Venue

Holder and Owners submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania located in the county in which the NRDAR Property is located and agree that any legal action or proceeding relating to this Grant or the Conservation Easement may be brought only in those courts located in that county.

Glossary

“**Access Drive**” means a road, drive, or lane providing vehicular access.

“**Additional Improvement**” means an Improvement other than an Existing Improvement.

“**Amendment**” means an amendment, modification, or supplement to this Grant signed by Owners and Holder and recorded in the Public Records. The term “Amendment” includes an amendment and restatement of this Grant.

“**Applicable Law**” means federal, state, or local laws, statutes, codes, ordinances, standards, and regulations applicable to the NRDAR Property, the Conservation Easement, or this Grant, as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations (including notices issued interpreting the Regulations) are also included in the defined term.

“**Beneficiary**” means a Person given rights under the terms of this Grant (other than Owners or Holder).

“**Best Management Practices**” mean a series of guidelines or minimum standards (sometimes referred to as BMP’s) recommended by federal, state, and/or county resource management agencies for farming and forestry operations; for preventing and reducing pollution of water resources and other disturbances of soil, water, and vegetative resources; and for protecting wildlife habitats.

“**Code**” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

“**Conservation and Preservation Easements Act**” means the Pennsylvania act of June 22, 2001 (P.L. 390, No. 29) (32 P.S. §§5051-5059) as amended through the applicable date of reference.

“**Construction**” means demolition, construction, reconstruction, maintenance, expansion, exterior alteration, installation, or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, excavation, dredging, mining, filling, or removal of gravel, soil, rock, sand, coal, petroleum, or other minerals.

“**Default Rate**” means an annual rate of interest equal at all times to two percent (2%) above the prime rate announced from time to time by the *Wall Street Journal*.

“Existing Improvement” means an Improvement existing as of the Easement Date as identified in the Baseline Documentation.

“Existing Servitude” means an easement or other matter affecting title to the NRDAR Property (other than a Lien) accorded priority to the Conservation Easement by notice in the Public Records or other prior notice recognized under Applicable Law.

“Extraction Improvements” mean wells, casements, impoundments, and other Improvements for the exploration, extraction, collection, containment, transport, and removal (but not processing or refining) of oil or natural gas (regardless of source) from substrata beneath the surface of the NRDAR Property. The term “Extraction Improvements” includes any Access Drive required for the Construction or operation of Extraction Improvements or the removal of oil or natural gas from the NRDAR Property.

“Forestry” means planting, growing, nurturing, managing, and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat, and other Conservation Objectives.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes, and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Coverage” means the footprints (including roofs, decks, stairs, and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete, and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Also included in Impervious Coverage are green roofs and porous pavement surfaces. Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake), bedrock and naturally occurring stone and gravel, and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

“Improvement” means a building, structure, facility, or other improvement, whether temporary or permanent, located on, above, or under the NRDAR Property.

“Indemnified Parties” mean Holder, each Beneficiary (if any), and their respective members, directors, officers, employees and agents, and the heirs, personal representatives, successors, and assigns of each of them.

“Invasive Species” means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Plant Invaders of Mid-Atlantic Natural Areas” by the National Park Service and U.S. Fish and Wildlife Service, are to be used to identify Invasive Species.

“Lien” means a mortgage, lien, or other encumbrance securing the payment of money.

“Litigation Expense” means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or claim for indemnification under this Grant including, in each case, attorneys’ fees, other professionals’ fees, and disbursements.

“Losses” mean any liability, loss, claim, settlement payment, cost, expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, penalties, or other charge other than a Litigation Expense.

“Lot” means a unit, lot, or parcel of real estate separated or transferable for separate ownership or lease under Applicable Law.

“Market Value” means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing

seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

“Native Species” mean a plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is native.

“Owners” mean the undersigned Owner or Owners and all Persons after them who hold an interest in the NRDAR Property.

“Person” means an individual, organization, trust, government, or other entity.

“Public Records” mean the public records of the office for the recording of deeds in and for the county in which the NRDAR Property is located.

“Qualified Organization” means a governmental or charitable entity that (a) meets the criteria of a qualified organization under §1.170(A-14)(c)(1) of the Regulations and (b) is duly authorized to acquire and hold conservation easements under the Conservation and Preservation Easements Act.

“Regulations” mean the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

“Regulatory Signs” mean signs (not exceeding one square foot each or such greater dimensions as are the minimum required by Applicable Law) to control access to the NRDAR Property or for informational, directional, or interpretive purposes.

“Resource Management Plan” means a record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources that the Conservation Objectives aim to protect during certain operations potentially affecting those resources. It includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate), and projects a multi-year description of planned activities for operations to be conducted in accordance with the plan.

“Review” means review and approval by Holder under the procedure described in article 6.

“Review Requirements” mean, collectively, any plans, specifications, or other information required for approval of the Subdivision, activity, use, or Improvement under Applicable Law (if any) plus the information required under (a) an exhibit incorporated into this Grant or (b) the Baseline Documentation or (c) if the information described in items (a) and (b) is inapplicable, unavailable, or insufficient under the circumstances, the guidelines for Review of submissions set by Holder to provide sufficient information to conduct its Review.

“Riparian Buffer” means the strips of land stretching one hundred (100) feet landward from the top of the banks of the waterway, together with the banks and bed of the waterway, to the extent that the strips, banks and bed are, as of the applicable date of reference, located within the NRDAR Property.

“Riparian Buffer Protection Activities” means to monitor the water quality of the waterway and the condition of the Riparian Buffer, and to manage them, if necessary, to preserve and improve the Water Resources described in the Conservation Objectives. Riparian Buffer Protection Activities may include streambank stabilization, streambank enhancement, water testing, fencing, removal of vegetation, planting and replanting within the Riparian Buffer.

“Site Improvement” means an unenclosed Improvement such as an Access Drive, Utility Improvement, walkway, boardwalk, retention/detention basin or other stormwater management facility, well, septic system,

bridge, parking area or other pavement, lighting fixture, sign, mailbox, fence, wall, gate, man-made pond, berm, and landscaping treatment. The term does not include Extraction Improvements.

“Soil Conservation Plan” means a plan for soil conservation that meets the requirements of the Natural Resources Conservation Service as of the applicable date of reference and for erosion and sedimentation control under Applicable Law.

“Steep Slope Area” means an area greater than one acre having a slope greater than 15%.

“Subdivision” means any division of the NRDAR Property or any Lot within the NRDAR Property; and any creation of a unit, lot, or parcel of real estate, including subsurface portions of the NRDAR Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. The term “Subdivision” includes any “subdivision” as defined in the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended as of the applicable date of reference.

“Sustainable” means land management practices that provide goods and services from an ecosystem without degrading soil or water resources and without a decline in the yield of those goods and services over time.

“Utility Improvement” means an Improvement for the reception, storage, or transmission of potable water, stormwater, sewage, electricity, gas, telecommunications, or other sources of power. The term does not include Extraction Improvements.

“Waiver” means a written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances.

“Wet Area” means a watercourse, spring, wetland (including vernal pools), or non-impounded standing water, and the area within 100 feet of its edge.

“Woodland Area” means an area within the NRDAR Property described as “wooded” or “forested” in the Baseline Documentation or identified as such on the Easement Plan, or if not wooded or forested as of the Easement Date, is designated as successional woodland area on the Easement Plan.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Grant as of the Easement Date.

Witness/Attest:

_____ (SEAL)

Owner’s Name:

_____ (SEAL)

Owner's Name:

[NAME OF HOLDER]

_____ By: _____ (SEAL)

Name:

Title:

This document is based on the seventh edition of the

Model Grant of Conservation Easement and Declaration of Covenants

(v. 2023.10.04) provided by WeConservePA.



Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. It should be revised under the guidance of legal counsel to reflect the specific situation.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name: