

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

ANDREW DYMSKI AND RACHAEL DYMSKI, STANLEY SHIVELL AND JODY SHIVELL	:	
	:	
	:	
Appellants	:	EHB Docket No.
	:	2026 – 095 - CS
	:	
v.	:	
	:	
CUMBERLAND COUNTY CONSERVATION DISTRICT and COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	
	:	
Appellees	:	
	:	
and	:	
	:	
CARLISLE DEVELOPMENT PARTNERS, LLC	::	
	::	
	::	
Permittee	:	

AMENDMENT TO NOTICE OF APPEAL

Andrew and Rachael Dymski and Stanley and Jody Shivell, (“Appellants”), by their undersigned attorney, hereby submit this Amendment to the Notice of Appeal of the approval by the Cumberland County Conservation District of the amendments to coverage under PAG-02, NPDES General Permit No. PAC210079 and the Department’s response to the informal hearing under 25 Pa. Code § 102.32(c) and states as follows:

Subsequent Events and Amendment as of Right

141. Appellants amend this Notice of Appeal as of right pursuant to paragraph 3 of Pre-Hearing Order No. 1. The filed Notice of Appeal contains two paragraphs numbered 139; this amendment cites the second (the paragraph addressing the Determination's omission of any

Environmental Rights Amendment analysis, which precedes the Conclusion) where citation to it is necessary, as "Paragraph 139a," treats the filed Notice of Appeal as ending at Paragraph 140, and accordingly begins this Amendment at Paragraph 141.

142. The paragraphs that follow plead facts and records postdating, or first available to Appellants after, the Department's July 16, 2026 Determination, as further evidence and further grounds in support of the objections already stated to the actions already appealed — the four amendments to NPDES General Permit No. PAC210079 and the Department's July 16, 2026 Determination. They rest on three records: the District's Chapter 102 Inspection Report No. 26-02 for PAC210079A-4, based on an inspection of August 5, 2026 and transmitted August 6, 2026 (Exhibit J); the individual-permit record produced in the Department's August 2026 response to Appellants' Right-to-Know request (Exhibits K, M and N), together with the Department's July 17, 2026 deficiency letter received by Appellants on August 8, 2026 (Exhibit L); and Governor Shapiro's Executive Order 2026-05, executed August 18, 2026 (Exhibit I). This amendment adds no parties and appeals no additional actions.

143. Several records bearing on these paragraphs remain outstanding: Inspection Report 26-02 scheduled a follow-up inspection on or about August 27, 2026 and demanded a written reply from the permittee; Inspection Report No. 26-01 for PAC210079A-4 (dated June 17, 2026) has not been produced to Appellants;¹ and the Department's July 17, 2026 deficiency letter, quoted at Paragraphs 167 and 168 below, requires a response "within sixty (60) calendar days from the date of this letter, on or before September 15, 2026, or DEP may consider the registration to be withdrawn by the applicant." (Exhibit J, form p. 5 and cover letter; Exhibit L, p. 4.)

¹ References to documents produced or not produced refers to right to know requests submitted to the District, Township and Department. To date, Appellants have yet to serve formal discovery requests on the Department, District or Permittee.

The August 6, 2026 Inspection Report 26-02 on Amendment 4

144. On August 5, 2026 — seventy-nine days after the District acknowledged coverage under the fourth amendment — District representatives inspected the PAX-1 site. The resulting Chapter 102 Inspection Report No. 26-02 for PAC210079A-4 describes itself as a "Routine and complaint inspection"; the box "Complaint Inspection? Yes" is checked; and the report identifies itself as a "Follow-up (Previous Report #26-01)." The report was transmitted under a District cover letter dated August 6, 2026, with copies to Middlesex Township, the permittee's engineer, and the site operator. (Exhibit J, form pp. 1, 5; cover letter p. 2. Because the District's report numbering restarts with each permit coverage, every inspection report cited in this amendment is identified by coverage number and inspection date.)

145. Report 26-02 records that earth disturbance under Amendment 4 — 100.00 acres — commenced on May 22, 2026, four days after the District acknowledged coverage on May 18, 2026. The report places the site at Bulk Earthwork, construction sequence #24, and identifies the operator conducting the disturbance as James Armor of Liberty Excavators, Inc. (Exhibit J, form p. 1.)

146. Report 26-02 checks two violation blocks: "Failure to implement and/or maintain E&S BMPs for earth disturbance (§§ 102.4(b)(1), 102.22(a)(1))" and "Failure to temporarily stabilize areas where there will be a cessation of earth disturbance activities for at least 4 days (§ 102.22(b))." The block "No violations observed at this time" is not checked. The pre-printed lines stating that E&S BMPs and PCSM SCMs "were evaluated and appear to be functioning as designed" are not checked (form pp. 2–3). The regulation the second checked block references provides that where "a cessation of earth disturbance activities will exceed 4 days, the site shall be immediately seeded, mulched, or otherwise protected from accelerated erosion and

sedimentation pending future earth disturbance activities." 25 Pa. Code § 102.22(b)(1); the "at least 4 days" formulation is the inspection form's. (Exhibit J, form p. 2.)

147. The District's cover letter states: "The blocks checked in the report reference which sections of the laws have been violated." It states that the violations noted "constitute unlawful conduct as defined in Section 611 of the Clean Streams Law." And it directs: "Please submit a written reply to this letter detailing the corrective measures taken or planned to correct the violations referenced above." (Exhibit J, cover letter pp. 1–2.)

148. The provisions checked in Report 26-02 are the same regulatory provisions the District documented at this general permit in 2025. Inspection Report 25-02 for base coverage PAC210079 (inspection March 31, 2025) recorded that "Sediment Basin A remains not installed per plans," that "[a]reas of the site that have been idle for four (4) or more days are not temporarily stabilized," and that "[t]he Staging of Earth Moving Activities is not being completed in sequential order," and stated on its face that it "serves as a Notice of Violation (NOV)," as pleaded at Paragraphs 38 through 40 above. The Department's own July 2025 assessment of the transferee's position was that "as the new owners, they purchased this violation." (District Inspection Report 25-02, March 31, 2025; Department email of July 31, 2025, quoted at Paragraph 54 above; Paragraphs 38–40, 48– 57 above.)

149. The July 16, 2026 Determination states: "PADEP has not identified that outstanding violations existed at the time of Amendment 4 and there is no evidence of a pattern of violations or lack of intention or ability to comply with regulatory requirements for Carlisle Development Partners, LLC that would support the denial of coverage in Amendment 4." Twenty days later, the District's first available inspection report under Amendment 4 checked violations of the same two Chapter 102 provisions its 2025 reports had documented at this permit. Appellants do not

plead that the August 5, 2026 findings contradict the Determination's statement about "the time of Amendment 4"; they plead them as post-Determination evidence bearing on the Department's forward-looking finding of "no evidence of a pattern of violations or lack of intention or ability to comply." The most recent inspection report available to Appellants when the Determination issued — the April 8, 2026 report pleaded at Paragraph 128 above — was an inspection of Amendment 3 coverage; Report 26-02 is the first available report on Amendment 4 coverage, and it checked violations. (Exhibit H, p. 2; Exhibit J, form p. 2; Paragraphs 127–130 above.)

150. 25 Pa. Code § 92a.54(e) provides that "[t]he Department will deny coverage under a general permit when one or more of the following conditions exist," including, at paragraph (3): "The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department." The regulation names the Department; the District administers Chapter 102 under the Department's delegation, and the PAG-02's own recitation of the provision, quoted at Paragraph 127 above, renders it with "[District]." As pleaded at Paragraphs 128 and 130 above, no document in any record available to Appellants records that analysis being performed at any of the four amendments.

151. Report 26-02 records four separate compost filter socks — CFS #4, #9, #68 and #72 — as having overtopped, been undercut, or been dislodged, in the report's own words: CFS #4, at the discharge of Sediment Basin A1, "appeared to have overtopped during a recent storm event"; CFS #9 "was visually observed to be overtopped and undercut"; CFS #68 was "dislodged" and "appeared to have overtopped"; and CFS #72 "appeared to have overtopped during the most recent storm event," with "[s]ediment ... visually observed near discharge point 024" — the discharge point the Amendment 4 NOI lists to "Channel 04" at a distance to waters of 0 feet —

though the report observed no sediment reaching Channel 04 itself. The report also records that Sediment Basins A1 and C1 were operating without the plywood baffles and sediment clean-out stakes the approved plans require, and that a topsoil pile north of Basin K1 lacked temporary stabilization, with perimeter controls accumulating sediment. (Exhibit J, form pp. 1, 4, observations 6, 7, 8, 9, 10, 12, 14; Amendment 4 NOI, discharge-point tables.)

152. Observation 8 of Report 26-02 states: "CFS #9 was visually observed to be overtopped and undercut. Sedimentation was visible within the boundary of Wetland Y; however, the relationship between this sediment and nearby controls could not be determined with certainty during this inspection. No visual evidence indicated sediment movement beyond the LOD boundary or reaching discharge point 002 at the time of inspection." The report's photographic log — sixty-seven date-stamped photographs — records the condition of CFS #9 and Wetland Y at photographs 19 through 28. (Exhibit J, form p. 4 and photo log.)

153. The Amendment 4 NOI lists Wetland Y as the receiving water for discharge points 002 and 021, in each case at a listed distance to waters of 0 feet. The District's March 30, 2026 technical deficiency letter, item 54, records that the applicant's PCSM narratives "point out that all wetlands, except wetland Y and W, are 'primarily surface runoff fed.'" The water-quality demonstration described at Paragraph 109 above was, as there pleaded, incomplete as to these receiving wetlands. The Department's pending July 17, 2026 deficiency letter, quoted at Paragraphs 167 and 168 below, concerns the applicant's registrations for "Wetland Y & C Utility Crossings" — the same wetland. No record produced to Appellants contains a determination of what deposition this wetland can absorb. (Amendment 4 NOI, pp. 6, 8; District technical-deficiency letter of March 30, 2026, item 54; Paragraphs 108–112 above; Exhibit L, p. 1.)

154. Report 26-02 checks the block "There is a need for modifications to the E&S Plan, PCSM Plan, or permit coverage," describing the need as "E&S/PCSM plan revisions for the addition of the retaining walls being constructed onsite." Observation 13 records the operator's own report "that a plan or construction sequence modification may be needed due to the planned retaining wall on the basin's southern side, which they stated may limit access once installed." Observation 6 records that riprap required at Sediment Basin A1's outlet "had not yet been installed due to ongoing retaining wall construction in the vicinity," with "[a]reas of erosion ... visually observed at the basin's outlet." Retaining walls appear on the approved May 5, 2026 plan set; the District's word is "addition," and its determination is that the approved plans require revision to match what is being built. The District had written to the applicant's engineer on March 11, 2026: "Chapter 102 regulations require the plans submitted to our office for review are the final plans for construction." Seventy-nine days after coverage issued on the May 5, 2026 plans, the District's inspection determined those plans need revision. The PAG-02 itself provides: "The permittee may not proceed to implement the proposed change until the permittee receives written approval for the amendment from DEP/CCD, when applicable." (Exhibit J, form pp. 3–4; approved plan set of May 5, 2026; Exhibit N, Item 11 (McCollum to Hanes, LIVIC, March 11, 2026, copies to the Department); PAG-02 Part B, "Amending Permit Coverage"; Paragraphs 84–113 and 133 above.)

155. Observation 15 of Report 26-02 records that the western portion of the site was "in preparation for retaining wall construction" and recites: "The approved construction sequence (Step 23) references Sediment Basin R1 construction prior to retaining Wall 3 for Campus 1." Step 23 of the approved sequence — "CONSTRUCT SEDIMENT BASIN R1 AND K1. PLACE STRIPPED TOPSOIL IN DESIGNATED LOCATIONS. (CRITICAL STAGE)" — precedes

Step 24, "BEGIN CAMPUS 1 RETAINING WALL 3." Observation 13 records that Sediment Basin K1's outlet structure, baffles, and clean-out stakes "did not appear to be installed." No construction sequence violation block is checked; Appellants plead these facts as evidence bearing on the sequential-order history pleaded at Paragraph 148 above and on the compliance-analysis objection stated at Paragraphs 127 through 130 above. (Exhibit J, form p. 4; approved plan set, construction sequence steps 23–24.)

156. In 2026 the District issued at least three different Chapter 102 inspection reports numbered "26-01" — for Amendment 2 coverage (inspection January 21, 2026), Amendment 3 coverage (inspection April 8, 2026), and Amendment 4 coverage (inspection June 17, 2026) — and at least two numbered "26-02," one of which bears a misprinted permit number on its face ("PAC210097 A-3"). Each amendment to PAC210079 carries its own inspection-report sequence over the same land; Paragraph 133 above pleads the District's own July 9, 2025 description of the difficulty of tracking this project's amendments. Report 26-01 for Amendment 4 coverage — the first inspection report of earth disturbance under the challenged coverage, dated June 17, 2026 and referenced twice in Report 26-02 — has not been produced to Appellants and appears in no record available to them. Appellants plead these facts in further support of the general-permit-eligibility objection stated at Paragraph 133 above. (District inspection reports of January 21, 2026 (Amendment 2 coverage) and February 11 and April 8, 2026 (Amendment 3 coverage); Exhibit J, form pp. 1, 4, observation 16; Paragraph 133 above.)

157. Report 26-02 states on its face: "This report serves as a Compliance Notice (CN)"; the Notice of Violation box is not checked. The report schedules a follow-up inspection "on or about: 8/27/2026." The Site Representative Signature line is blank. Observation 1 records that the District requested, and was provided, the permittee's visual site inspection reports for the rain

events of July 28 and August 2, 2026, and that those self-inspection reports "appeared to have been completed per the forms instructions"; the form's block for failure to accurately complete such reports is not checked. The VSIRs themselves have not been produced to Appellants. In 2025, the District's written-reply demand on the Notice of Violation produced no written response in the record, as pleaded at Paragraph 40 above. (Exhibit J, form pp. 1, 5; cover letter p. 2; Paragraph 40 above.)

158. Report 26-02 identifies James Armor of Liberty Excavators, Inc. as the operator conducting the 100-acre earth disturbance under Amendment 4. 25 Pa. Code § 102.5(h) provides:

"Operators who are not the permittee shall be co-permittees." No executed co-permittee acknowledgment for Liberty Excavators, Inc. appears in any record produced to Appellants.

Appellants plead these facts as evidence bearing on the compliance analysis pleaded at Paragraphs 127 through 130 above and on the Department's finding of no "lack of intention or ability to comply," not as a separately appealed action. (Exhibit J, form p. 1; 25 Pa. Code § 102.5(h).)

159. The District's August 6, 2026 cover letter transmitting Report 26-02 is addressed to "Petri Ottavainen" at Carlisle Development Partners LLC, and the report's permittee-email field is pottavainen@americanrepartners.com — the same individual whose designation as recipient of Amendment 4 the Determination excused as "a clerical error ... corrected by the Cumberland County Conservation District on July 9, 2026." The District's compliance correspondence on this coverage remains directed to Mr. Ottavainen. (Exhibit J, cover letter p. 1, form p. 1; Exhibit H, p. 1; Paragraph 110 above.)

160. The facts pleaded at Paragraphs 144 through 159 further support the objections stated at Paragraphs 84 through 113 and 127 through 130 above, as to both the District's acknowledgment

of coverage for Amendment 4 and the Department's Determination declining to disturb it. The June 16, 2026 request presented the compliance-analysis contention; the Determination answered it with a standard the regulation does not contain, as pleaded at Paragraph 129 above; and the facts pleaded at Paragraphs 144 through 159 above bear on whether that omission was harmless.

The Individual Permit Record – What the Department's Own File Shows

161. The Department's Permit Application Consultation Tool, responding to the applicant's June 2025 submittal, stated: "If the project is located within an HQ or EV Watershed, an individual NPDES permit is required." In the same submittal the applicant described the project to the Department as spanning "approximately 715 contiguous acres across four parcels" reflecting "a deliberate, phased approach," and answered "No" to the question "Will the project be located in a special protection watershed (High Quality or Exceptional Value) defined by Chapter 93 ...?" That answer was defensible as to the footprint then defined. On July 18, 2025, the Department's preapplication meeting summary stated: "General NPDES (PAG02), coverage may be sought for activities in non-special protection watersheds. DEP understands that the applicant is already working with the Cumberland County Conservation District (CCCD) on transferring and modifying existing permit PAC 210079 to accommodate the proposed work." (Exhibit N, Item 1 (Clean Water response and Questions 47 and 49) and Item 2; Paragraphs 23–30 above.)

162. On October 21, 2025, the District described PAX-1 to the Department as "an eventual PAG-02 project." On November 13, 2025, the Department's Assistant Regional Director wrote that "modifications to any parts of the pumpstation and force main that were previously permitted for the residential subdivision ... would trigger the need for a permit amendment," and that more detail was needed "before DEP can comment on necessary authorizations for that aspect of the project." The offsite force main was identified in the Department's own correspondence as an

unresolved permitting question before the District's acknowledgment of Amendment 3 coverage beginning December 30, 2025 and of Amendment 4 coverage beginning May 18, 2026. (Exhibit N, Items 4 and 5 (the latter quoting the November 13, 2025 email); Exhibits F, G.)

163. On March 6, 2026 — nine days after the United States Army Corps of Engineers wrote that it had withdrawn the project "due to it not being a single and complete project," as pleaded at Paragraph 133 above — the Department's Regional Program Manager for Waterways and Wetlands wrote to the Corps that, as to PAX-1, "[i]ssues appear to be single and complete status and conservation easement for remaining wetlands." No document in any record produced to Appellants answers the Corps' February 25 and March 3, 2026 questions in writing. (Exhibit N, Item 6; Paragraph 133 above.)

164. On May 27, 2026 — nine days after the District acknowledged Amendment 4 coverage — a meeting titled "PAX-1 Force Main and NPDES Permit Coordination," convened by an April 10, 2026 appointment from the Governor's Office of Transformation and Opportunity, brought together six Department staff, three District staff, the applicant's engineering team, and the permittee's representative, Petri Ottavainen (see Paragraph 159 above). LIVIC's minutes of that meeting, prepared on LIVIC letterhead and transmitted to the Department on June 15, 2026, record: "An NPDES permit was in place for a residential development ('Cumberland Knoll') when the property was acquired. The NPDES permit boundary was expanded to the full 700-acre property limit." (Exhibit N, Item 7; Exhibit K, minutes p. 1 and transmittal email.)

165. LIVIC's minutes record Scott Williamson — the Department official who seven weeks later signed the Determination under appeal — as stating "that the offsite sewer and/or fiber lines are part of the common plan of development and must be included under the project's permit," and that "[s]ince this work extends into the HQ watershed, it will result in a shift of the project from

being permitted under the PAG-02 to an individual construction stormwater permit." The minutes state: "Some of the new offsite work extends into the Letort Spring Run watershed, which is designated High-Quality (HQ)." The minutes record the applicant's engineer, Justin Ross, as confirming that "their internal assessment reached the same conclusion." Appellants plead the trigger accurately: the High Quality watershed is reached by the offsite common-plan work, not by Amendment 4's own discharge points, which discharge to waters classified WWF, MF. (Exhibit K, minutes p. 2; Amendment 4 NOI.)

166. On June 15 and 16, 2026, the applicant's engineer transmitted those minutes to seven named Department staff and four District staff with the request: "Please review and provide confirmation on the following items at your earliest convenience: 1. Confirmation of the meeting minutes." No confirmation, correction, or objection from the Department appears anywhere in the Department's production, which runs through July 16, 2026. A week earlier, on a different set of applicant drafted notes, a Department manager had replied: "Only one edit, the rest of your notes are accurate." The Department's next two signed documents touching the subject were the July 16, 2026 Determination, which is silent on the question, and the July 17, 2026 deficiency letter quoted at Paragraph 167 below. (Exhibit N, Items 8 and 9; Exhibit K; Exhibit H; Exhibit L.)

167. The Department's November 4, 2025 eligibility deficiency letter states: "The proposed waterline project is part of a large, phased project that will require additional Chapter 105 permitting and an evaluation of Cumulative Impacts." On July 17, 2026 — the day after signing the Determination stating that "this letter addresses only that Amendment 4" — the same Regional Program Manager signed an eligibility deficiency letter identifying "significant eligibility deficiencies" in the applicant's offsite utility-crossing registrations at Wetlands Y and

C (File Nos. GP112103226-007 and GP052103226-005, APS No. 1165454). Its item 12 states: "The proposed utility crossings and culvert extension are part of a large, phased project that will require additional Chapter 105 permitting and an evaluation of Cumulative Impacts." The first finding sat in the Department's file before the District acknowledged Amendment 3 or Amendment 4 coverage; the second was signed the day after the Determination, in nearly the same words. No campus-wide evaluation of cumulative impacts appears in any record produced to Appellants. (Exhibit M, p. 2; Exhibit L, pp. 1, 3; Exhibit H; Paragraph 133 above.)

168. The same July 17, 2026 letter records that the common plan's impacts remain unevaluated in several further respects. It states that "[t]he Pennsylvania Natural Diversity Inventory (PNDI) receipt indicates that agency coordination is incomplete," and that "[w]ritten concurrence from Pennsylvania Department of Conservation and Natural Resources and the U.S. Fish and Wildlife Service is required, as both agencies have identified potential impacts." It states that "[t]he HY-8 analysis indicates an increase in the upstream water surface elevation for the 25-year event," and that "per Condition 7.H of the GP-11, bridge and culvert replacements may not increase the 100-year water surface elevation"; as to the fill and grade the plans propose over the existing crossing, it directs the applicant to "[r]evise the design to comply with GP-11 conditions or submit an application for a permit that can provide adequate coverage for the proposed work." It demands documentation that the proposed activities "will not adversely impact, historical, cultural, and/or archaeological resources" (the second of the letter's two items numbered "8"). And as to Wetland Y — the wetland pleaded at Paragraphs 152 and 153 above — and Wetland C, it directs that proposed fiber optic lines and the "industrial wastewater line crossing (GP-5-5)" be relocated "in order to minimize wetland impacts," or that the applicant demonstrate why they

cannot be, observing: "It is unclear why both of the proposed fiber optic lines cannot be co-located." (Exhibit L, pp. 1–3, items 4, 5, 6, second 8, 13, 14.)

169. 25 Pa. Code § 102.1 defines the NPDES permit for stormwater discharges associated with construction activities to reach "an earth disturbance activity on any portion, part, or during any stage of, a larger common plan of development or sale," and 25 Pa. Code § 92a.23(a) requires the NOI to "demonstrate that the discharge from the point sources, individually or cumulatively, will not cause or contribute to a violation of an applicable water quality standard established under Chapter 93," among other content. What the common plan here comprises is established by the applicant's own certifications and record statements: the common-plan certifications pleaded at Paragraph 36 above, the "deliberate, phased approach" across "approximately 715 contiguous acres" described to the Department in June 2025, and the boundary expansion recorded in LIVIC's minutes. As pleaded at Paragraph 133 above, no document in any record produced to Appellants records the Department or the District determining that these discharges were not "more appropriately controlled under an individual permit," 25 Pa. Code § 92a.54(e)(1) — and the Department's file, by May 18, 2026, contained its November 4, 2025 cumulative-impacts finding, the Corps' single-and-complete withdrawal, and its own manager's acknowledgment of the issue. (Exhibit N, Item 1; Exhibit K; Exhibits M, N; Paragraphs 23–30, 36, 133 above.)

170. The June 16, 2026 request presented the individual-permit contention to the Department: the project was permitted "through four sequential amendments ... rather than through an individual NPDES permit with full public notice," and "[a]n individual permit was required." The Department's June 22, 2026 letter recited the contentions by name and announced no scope limitation, as pleaded at Paragraph 123 above. The July 16, 2026 Determination does not address the contention; the word "individual" appears in it once, in the sentence "Aside from the error of

naming the individual that has now been corrected ..." — this although, per LIVIC's minutes, the Determination's own signatory had stated seven weeks earlier that the project will shift to an individual construction stormwater permit, and although he signed the deficiency letter restating the large-phased-project finding the following day. The Determination's scope sentence — "this letter addresses only that Amendment 4" — excluded the contentions presented as to the earlier amendments, as pleaded at Paragraphs 122 through 124 above, and the Determination nowhere addresses the individual-permit contention as to any amendment; it was for those further reasons contrary to law. (Appellants' June 16, 2026 request; Department letter of June 22, 2026; Exhibit H; Exhibit K; Exhibit L; Paragraphs 114–126 above.)

171. The transition to an individual permit is being administered so that the requirement never operates on the disturbance it exists to control. LIVIC's minutes record the applicant's "goal ... to keep both 102 permits above under the existing General Permit (PAG-02)," and append a proposed timeline under which two further general-permit major amendments would be submitted July 13 and August 31, 2026, while the first individual NPDES application would not be submitted until September 14, 2026, with approval estimated March 15, 2027; the minutes record that "the developer is permitted to conduct earth disturbance the whole way through, while the individual permit application is under review." As of the date of this amendment, no individual NPDES permit application for the PAX-1 common plan of development appears in any record produced to Appellants, and no acknowledgment, Bulletin notice, or approval of either planned major amendment appears in any such record. The individual permit that the Department's own tool conditioned on the HQ watershed — a condition that, per LIVIC's minutes, the offsite common plan work now meets — has, as of the date of this amendment, never been applied for. Earth disturbance that commenced May 22, 2026 continues, most

recently inspected August 5, 2026, with the results pleaded at Paragraphs 144 through 157 above. (Exhibit K, minutes pp. 1, 2, 4; Exhibit J.)

172. 25 Pa. Code § 92a.21(b) directs that persons "shall file a complete application for an individual permit at least 180 days before the date on which it is desired to commence the discharge of pollutants," or within another period the Department determines sufficient. 25 Pa. Code § 92a.54(f) authorizes the Department to "revoke or terminate coverage under a general permit, and require the point source discharger to apply for and obtain an individual permit for any of the reasons in subsection (e)," and provides that "[a]n interested person may petition the Department to take action under this subsection." Appellants' June 16, 2026 request asked the Department, in substance, for exactly that action — "An individual permit was required" — and the Determination did not act on it. No notification under § 92a.54(f) has issued. These facts further support the objections stated at Paragraphs 23 through 30 and 133 above and the relief requested at WHEREFORE clause (e). (Appellants' June 16, 2026 request; Exhibit H.)

Executive Order 2026-05

173. On August 18, 2026 — five days after this appeal was filed — Governor Shapiro executed Executive Order 2026-05, "Protecting Pennsylvania Consumers from Data Center Impacts," effective immediately. Appellants do not contend that the Order governs the authorizations under appeal: it applies principally to applications submitted after its effective date, and it "is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its departments, agencies, or entities, its officers, employees, or agents, or any other persons." EO 2026-05, § 6. Appellants plead the Order as the Commonwealth's own determination, made five days after this appeal was filed, concerning the permitting of this project class, and as a changed circumstance material to the

relief requested at WHEREFORE clause (b) — vacatur of the July 16, 2026 Determination and remand to the Department "with direction to make the determination 25 Pa. Code § 102.32(c) requires" — and to the other relief requested. (Exhibit I, §§ 6, 8; Notice of Appeal, WHEREFORE clause (b).)

174. Section 1(e) of the Order directs: "The Office of Transformation and Opportunity shall remove any existing data center project from the PA Permit Fast Track Program, established under Executive Order 2024-04, PA Permit Fast Track Program, and data center projects shall no longer be eligible for the PA Permit Fast Track Program." Unlike Sections 1(b) through 1(d), Section 1(e) is not limited to applications submitted after the effective date; it reaches "any existing data center project," and PAX-1 is, as pleaded at Paragraph 45 above, an existing data center project in that program. For any permit or authorization application submitted after the effective date in connection with a data center project with peak demand of over 25 MW, by an applicant that has not executed a Consent Order and Agreement to comply with the GRID Requirements, Section 1(c)(3) directs that the Department shall "[n]ot issue permits or authorizations on a rolling basis and not issue permits or authorizations until after all necessary permit or authorization applications have been received and reviewed by DEP." Coverage under PAC210079 was expanded through four sequential amendments issued while other applications for the same common plan remained unfiled or unresolved, as pleaded at Paragraphs 48 through 113 and 133 above. (Exhibit I, §§ 1(c) (3), 1(e).)

De Novo Review and the Environmental Rights Amendment – Supplemental Paragraphs

175. The Board's review of the appealed actions is *de novo*: "The Board's duty is to determine if [the Department's] action can be sustained or supported by the evidence taken by the Board." *Warren Sand & Gravel Co. v. DER*, 20 Pa. Cmwlth. 186, 203-04, 341 A.2d 556 (1975).

"Although we are not necessarily limited to what the Department considered, we clearly can and should at a minimum review what the Department did consider when we evaluate whether it made the correct decision." *Friends of Lackawanna v. DEP*, 2017 EHB 1123, 1165, quoted in *Protect PT v. DEP*, EHB Docket No. 2023-074-W, slip op. at 12 (Opinion and Order, Feb. 7, 2024). The facts pleaded in this amendment are offered as evidence within that review.

176. Article I, Section 27 "requires each branch of the government to consider in advance of proceeding the environmental effect of any proposed action on the constitutionally protected features." *Robinson Township v. Commonwealth*, 83 A.3d 901, 952 (Pa. 2013) (plurality), as quoted in *Center for Coalfield Justice v. DEP*, 2017 EHB 799, 857. As pleaded at Paragraph 109 above, the water-quality demonstration was incomplete as to these receiving wetlands. As pleaded at Paragraphs 152 and 153 above, the District's own report records sediment within the boundary of Wetland Y — a named receiving water at a listed distance of 0 feet, one of the two wetlands the applicant's own narratives except from "primarily surface runoff fed" — with the caveats quoted at Paragraph 152 above. The failure to obtain information regarding environmental effects does not excuse the constitutional obligation, as pleaded at Paragraph 136 above.

177. "At a minimum, a Department permitting action that is not lawful under the statutes and regulations in place to protect the waters of the Commonwealth, cannot be said to meet the Department's trustee responsibility under Article I, Section 27 and is clearly a state action taken contrary to the rights of citizens to pure water." *Center for Coalfield Justice*, 2017 EHB 799, 857. As a fiduciary, the Commonwealth must act toward the public natural resources "with prudence, loyalty, and impartiality," as pleaded at Paragraph 137 above. The Department's July 17, 2026 letter, quoted at Paragraphs 167 and 168 above, states that "agency coordination is

incomplete" as to species impacts both DCNR and the U.S. Fish and Wildlife Service have identified, that the applicant's own hydraulic analysis "indicates an increase in the upstream water surface elevation," and that documentation of no adverse impact to "historical, cultural, and/or archaeological resources" remains outstanding — while earth disturbance proceeds under the challenged coverage and no campus-wide evaluation of cumulative impacts appears in any record produced to Appellants. Executive Order 2026-05's recitals recite "Pennsylvanians' right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment" — a recitation of the same constitutional values, confirming the trustee's duty pleaded above, not its source. (Exhibit L, pp. 1–2; Exhibit I, recitals; Paragraphs 134–140 above.)

178. Three documents in this amendment postdate the July 16, 2026 Determination. On July 17, 2026, the Department's Regional Program Manager signed the eligibility deficiency letter described at Paragraph 167 above. On August 5 and 6, 2026, the District conducted the inspection and issued the Compliance Notice pleaded at Paragraphs 144 through 157 above. On August 18, 2026, the Governor executed Executive Order 2026-05, pleaded at Paragraphs 173 and 174 above.

Conclusion

179. The facts pleaded in this amendment further support each form of relief requested in the WHEREFORE clause of the Notice of Appeal, Paragraphs (a) through (g), and in particular clause (e), which asks that the Board "[i]n the alternative, direct that the Department require an individual NPDES permit for the discharges associated with the common plan of development of which Amendment 4 is a part, before further earth disturbance proceeds" — relief that Executive Order 2026-05 confirms is administrable Commonwealth policy for this project class — and

clause (f), re-publication with an adequate description and a comment period of not less than thirty days. Appellants request no additional relief by this amendment.

180. Appellants renew their reservation of the right to further amend this Notice of Appeal in accordance with the Board's rules and upon information obtained in discovery, including upon: the District's follow-up inspection scheduled on or about August 27, 2026, and its report; the permittee's written reply to the August 6, 2026 Compliance Notice; Inspection Report No. 26-01 for coverage PAC210079A-4 (dated June 17, 2026), which has not been produced to Appellants; any response to the Department's July 17, 2026 deficiency letter, due September 15, 2026; and any submission of the planned general-permit major amendments or of an individual NPDES permit application for the common plan.

Respectfully submitted,



William J. Cluck
Pa Attorney Id No. 52892
Law Office of William J Cluck
587 Showers Street
Harrisburg, Pa 17104
717-238-3027
717-238-8033 (fax)
e-mail: billcluck@billcluck.com

Date: September 2, 2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Amendment to Notice of Appeal was served on this date upon the following:

Via E-Filing:

Counsel for Carlisle Development Partners, LLC
Scott A. Gould, sgould@mcneeslaw.com
Errin T. McCaulley, Jr., emccaulley@mcneeslaw.com

Counsel for the Department of Environmental Protection
Elizabeth A. Davis, elidavis@pa.gov
Adam T. Duh, aduh@pa.gov

Date: September 2, 2026



William J Cluck, Esquire

EXHIBITS (Continuing the filed Notice of Appeal's sequence after Exhibit H.)

Exhibit I — Executive Order 2026-05, "Protecting Pennsylvania Consumers from Data Center Impacts," executed by Governor Josh Shapiro, August 18, 2026 (8 pages).

Exhibit J — Cumberland County Conservation District Chapter 102 Inspection Report No. 26-02, Permit No. PAC210079A-4, inspection of August 5, 2026 (Thomas Swartz, E&S Program Manager), with the District's cover letter of August 6, 2026 and the complete photographic log (67 photographs, date-stamped August 5, 2026).

Exhibit K — Minutes of the May 27, 2026 "PAX-1 Force Main and NPDES Permit Coordination" meeting, prepared by LIVIC Civil on LIVIC letterhead and transmitted to the Department on June 15–16, 2026, together with the transmittal email and LIVIC's Chapter 105 approach concurrence request letter of June 15, 2026 (Justin H. Ross, P.E.).

Exhibit L — Department of Environmental Protection eligibility deficiency letter, July 17, 2026, to Petri Ottavainen, Carlisle Development Partners LLC, re "Eligibility Deficiency — Pennsylvania Digital 1 (PAX-1) - Wetland Y & C Utility Crossings,"

Exhibit M — Department of Environmental Protection eligibility deficiency letter, November 4, 2025, File No. GP052103225-003 (Pennsylvania Digital 1 (PAX-1) – Water Main Relocation).

Exhibit N — Composite: the individual-permit correspondence record, from the Department's August 2026 Right-to-Know production.

Item 1 — the applicant's Permit Application Consultation Tool submittal and the Department's consultation response, June 6, 2025.

Item 2 — the Department's pre-application meeting summary, July 18, 2025.

Item 3 — District email of July 9, 2025 ("4+ amendments").

Item 4 — District email of October 21, 2025 ("an eventual PAG-02 project").

Item 5 — LIVIC reply of January 19, 2026, quoting the Department's November 13, 2025 force-main email.

Item 6 — Army Corps of Engineers–Department correspondence of February 25, March 3, and March 6, 2026.

Item 7 — Office of Transformation and Opportunity meeting appointment of April 10, 2026.

Item 8 — Department email of June 8, 2026 ("Only one edit").

Item 9 — LIVIC transmittals of June 15–16, 2026.

Item 10 — the 2023 renewal Notice of Intent, Cumberland Knoll Phase 1.

Item 11 — District email of March 11, 2026 ("final plans for construction").