

November 16, 2017

NOTICE OF VIOLATION

Mr. Matthew Gordon
Sunoco Pipeline, L.P.
535 Fritztown Road
Sinking Springs, PA 16908

Andrew Mack
Welded Construction, L.P.
P.O. Box 470
Perrysburg, OH 43552

Re: Violations of The Clean Streams Law, and the
Dam Safety and Encroachments Act
Pennsylvania Pipeline / Mariner East II Project
DEP Permit Nos. ESG0300015002 and E06-701
DEP File No NOV 06 17 102
New Morgan Borough, Berks County

Dear Mr. Gordon and Mr. Mack:

On November 11, 2017, the Department of Environmental Protection (“Department”) received notice of a release of sediment to an unnamed tributary (“UNT”) to Hay Creek (S-Q90) in New Morgan Borough, Berks County (“Site”). On November 13 and 14, 2017, the Berks County Conservation District (“BCCD”) conducted inspections of the Site and documented that an inadvertent return (“IR”) of drilling fluids had occurred within an UNT to Hay Creek (S-Q90), a water of the Commonwealth, as a result of Horizontal Direction Drill (“HDD”) activities at this location. Hay Creek is a Class A wild trout fishery and the Hay Creek basin is classified as an Exceptional Value Waters in 25 Pa. Code § 93.9(f). The drilling fluids that comprised the IR constitute Industrial Waste. The discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of Section 301 of The Clean Streams Law, 35 P.S. § 691.301. The Department did not authorize any IRs at the Site by permit or other authorization. Further, the Department did not authorize the crossing of the UNT to Hay Creek (S-Q90) using HDD methodology.

Department permits ESG030015002 and E06-701 require permittee(s) to follow their ‘*HDD Inadvertent Return, Preparedness, Prevention, and Contingency Plan*’, (“IR PPC Plan”) that is part of the approved plans in the aforementioned permits to reduce, minimize, or eliminate a pollution event. The IR PPC Plan, E06-701, and ESG030015002 contain the following requirements:

- A. Immediately notify the pertinent Department Regional Office 24-hour Emergency Response Line of an IR. For the Southcentral Office, the number is 866.825.0208. No such notification was made.
- B. Notify the Department at least 24 hours prior to the beginning of each HDD, including conventional boring under waters of the Commonwealth. No such notification was made.
- C. Submit an initial report of the IR to the Department using Attachment B of the IR PPC Plan. No such report has been submitted.
- D. Obtain an amendment to E06-701 prior to deviating from the construction methodology or project design that is shown on the approved drawings. The crossing of S-Q90 was approved as a dry stream crossing/open cut. No permit amendment was obtained prior to altering the construction methodology to an HDD.

Allowing the unauthorized discharge of Industrial Waste to waters of the Commonwealth, failing to obtain a Chapter 105 permit, failing to comply with permit conditions, and failing to perform work according to permit specifications, constitutes a violation of Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18.

In order to develop an appropriate enforcement strategy, the Department requests that you submit the following to the attention of Ronald Eberts by email at reberts@pa.gov by November 22, 2017:

- 1. IR reporting form(s) for the Site—as required by the Section 6.3 of the IR PPC Plan.
- 2. A detailed description, including photos documenting current Site conditions, of the actions taken to contain and remove the IR from waters of the Commonwealth and a plan for any additional measures necessary to complete remediation.
- 3. Daily construction logs, including drill logs, covering the time period from the commencement of HDD activities through present day. The logs should document the following for each day of activity: start and stop times of drill, stage of HDD process, approximate progress along the drill alignment, drill pressure, depth of cover, and any loss of pressure and/or drilling fluids, including volumes or percentages of diminished returns.

4. An assessment by a qualified professional geologist of the events, circumstances, and/or site conditions that caused or contributed to the IR. The assessment should also include a discussion and evaluation of the effectiveness of any and all measures that have been employed to prevent or minimize the occurrence of an IR at the Site, including, but not limited to, reduced drilling pressures, thickened drilling fluid mixture, and/or addition of pre-approved loss circulation materials. The assessment must be completed, signed, and sealed by a qualified professional geologist licensed to practice in the Commonwealth of Pennsylvania.
5. A proposed plan of action, including schedule, for completing pipeline construction at the Site. The plan should clearly indicate whether a permit amendment request for E06-701 will be sought for the altered construction methodology or if the current HDD activities will be properly abandoned to returned to the construction methodology already approved in E06-701.
6. A list of all pipeline crossings of a water of the Commonwealth along the entire Mariner East II Project where construction has been completed and/or initiated using a crossing methodology other than what was authorized by the initial permit approval or amendment thereto. At a minimum, the listing should include the following information:
 - Water Obstruction and Encroachment Permit number
 - crossing identifier (specifying 20-inch or 16-inch line),
 - county and municipality,
 - latitude and longitude for the beginning and end of each crossing,
 - approved construction methodology,
 - utilized construction methodology,
 - date of construction initiation,
 - date of construction completion,
 - stage of current construction if the crossing is not complete, and
 - for each HDD, including conventional boring under waters of the Commonwealth—the date that the Department was notified of the initiation of construction.

Please be reminded Department approval is required before restarting any HDD operations or any other crossing methodology at this location. Additionally, as an IR occurred during the first pipe installation at this location, a re-evaluation is required for any subsequent pipe installation in accordance with Paragraph 3 of the August 10, 2017 Corrected Stipulated Order.

This Notice of Violation is neither an order nor any other final action of the DEP. It neither imposes nor waives any enforcement action available to DEP under any of its statutes. If DEP determines that an enforcement action is appropriate, you will be notified of the action.

Mr. Matthew Gordon
Mr. Andrew Mack

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November 16, 2017

DEP looks forward to your cooperation in this matter. If you have any questions, please contact me at 717.705.4763.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Blosser". The signature is fluid and cursive, with a large initial 'A' and 'B'.

Andrea Blosser
Environmental Group Manager
Conservation, Restoration, and Inspection Section
Waterways & Wetlands Program

cc: Brian Shields –Berks County Conservation District
Captain Raymond Bednarchik - PA Fish and Boat Commission, Southeast Region
Debby Nizer - US Army Corps of Engineers, Baltimore District
Chris Embry - Sunoco Pipeline, LP
New Morgan Borough



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERWAYS ENGINEERING AND
WETLANDS

DEP USE ONLY

EP -06-17-107

PASPGP Authorization Included

☐ Yes☒ No

PNDI receipt # 644025

potential impacts ☒ Yes ☐ Noif yes, species ☐ State ☒ Federal

EMERGENCY PERMIT

SECTION A. PERMITTEE

Mr. Matthew Gordon, Sunoco Pipeline LP

(Name)

535 Fritztown Road

(Mailing Address)

Sinking Spring, PA

(City and State)

19608

(Zip Code)

()

(Home Telephone #)

(610) 670-3284

(Work Telephone #)

SECTION B. SITE LOCATION DATA (Attach 8½ x 11 copy)

UNT Hay Creek (EV)

(Stream Name)

New Morgan Borough – Robeson Township

(Municipality)

Berks

(County)

Latitude: 40.187634 Longitude: -75.888828

(7½ min. Quad Name)

SECTION C. PROJECT DATA (DESCRIPTION OF WORK)

See Attached.

SECTION D. PERMIT CONDITIONS

- Contact and advise the Pennsylvania Fish and Boat Commission's Southeast Regional Office as to when the work will begin and when the work has been completed at telephone number (717) 626-0228.
- Contact the Berks County Conservation District at telephone number (610) 372-4657 prior to commencement of work.
- An Erosion and Sediment Control Plan, meeting the requirements of Chapter 102, must be implemented during and after construction and available on the project site.
- All work will be accomplished from the stream bank. In those cases where this is **not** possible, the use of equipment in the stream channel is to be minimized.
- All excavated material shall be disposed of beyond the limits of the floodplain.
- Secure all other approvals that may be necessary under other Federal, State or local regulations.
- This approval does not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest, in, to, or over any land belonging to the Commonwealth of Pennsylvania; neither does it authorize any injury to private property or invasion of private rights.
- Notify the affected municipality as soon as possible verbally and provide a follow-up notice in writing within forty-eight (48) hours from the issuance of this permit.
- SPECIAL CONDITIONS** as follows:
 - All structures installed within the stream and floodway shall be removed within 24-hours upon completion of this sediment removal project.
 - Sediment removal shall be accomplished in segments of the stream if possible.

THIS PERMIT WILL EXPIRE IN 60 DAYS UNLESS WRITTEN PERMISSION EXTENDING THAT TIME IS ISSUED BY THE DEPARTMENT.

SECTION E. APPROVAL

Edward J. Muzic, P.E.

APPROVED BY

11/15/17

DATE

SIGNATURE OF PERMITTEE

DATE

☒ PA Fish and Boat Commission
☒ County Conservation District

☐ U.S. Fish and Wildlife Service
☒ U.S. Army Corps of Engineers
☐ DEP, Central Office

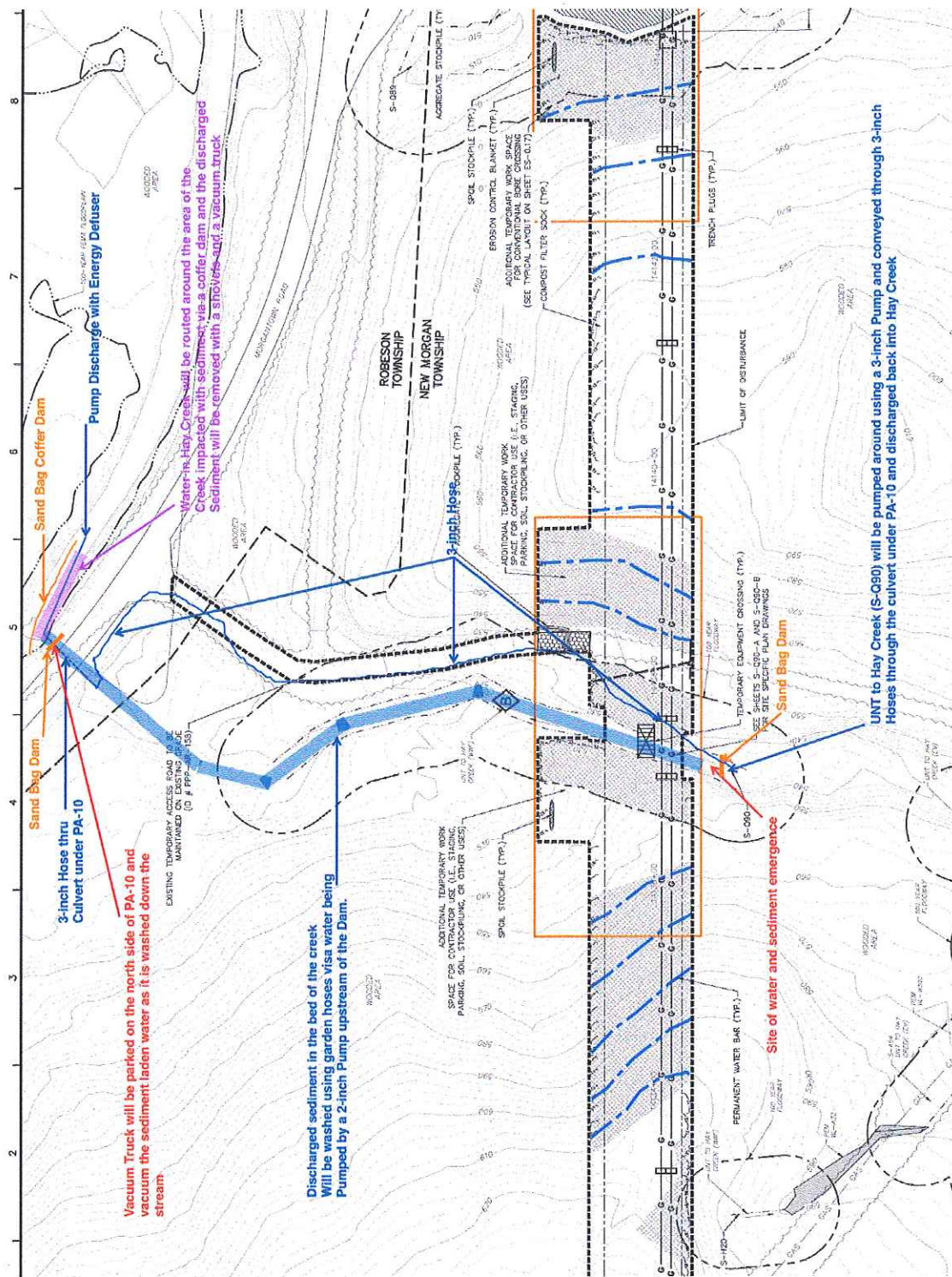
Work Plan for the Removal of Excess Sediment in S-Q90 at PA-BR-0165.0000

Section 1.

1. The UNT to Hay Creek (S-Q90) will be dammed upstream of the sediment release and upstream of the culvert under Morgantown Road (PA-10) with sand bags filled with washed sand. The water in the creek will be pumped via a 3-inch pump around into the culvert under PA-10.
2. Utilizing 2-inch trash pumps attached with garden hoses the water from the creek upstream of the release will be used to wash the released sediment from the bed of the creek. Only water from the creek will be used, no municipal water will be used.
3. A vacuum truck will be parked on the south side of Morgantown Road where it will vacuum up the sediment laden water as it is washed down towards the sandbag dam upstream of the culvert under the road.
4. The downstream side of the culvert under PA-10 will be dammed up with sand bags and the sediment deposited in the culvert will be washed out and vacuumed with a Vacuum Truck.
4. The dam and pump will remain in place until Section 2 is completed.

Section 2.

1. The impacted portion of Hay Creek along the southern bank will be contained with a washed sand bag coffer dam to allow the creek to flow freely during sediment removal.
2. A vacuum truck parked on the north side of PA-10 will vacuum the released sediment from the bed of Hay Creek.
3. The dam and pump operation will be stopped and all sand bags dams will be removed from the creeks.



1. PROJECT INFORMATION

Project Name: **UNT Hay Creek Cleanup**
Date of Review: **11/15/2017 10:28:20 AM**
Project Category: **In-stream / Riverine Activities and Projects, Other**
Project Area: **10.90 acres**
County(s): **Berks**
Township/Municipality(s): **NEW MORGAN; ROBESON**
ZIP Code: **19540; 19543**
Quadrangle Name(s): **MORGANTOWN**
Watersheds HUC 8: **Schuylkill**
Watersheds HUC 12: **Hay Creek**
Decimal Degrees: **40.187634, -75.888828**
Degrees Minutes Seconds: **40° 11' 15.4825" N, 75° 53' 19.7813" W**

This is a draft receipt for information only. It has not been submitted to jurisdictional agencies for review.

2. SEARCH RESULTS

Agency	Results	Response
PA Game Commission	No Known Impact	No Further Review Required
PA Department of Conservation and Natural Resources	No Known Impact	No Further Review Required
PA Fish and Boat Commission	No Known Impact	No Further Review Required
U.S. Fish and Wildlife Service	Potential Impact	MORE INFORMATION REQUIRED, See Agency Response

As summarized above, Pennsylvania Natural Diversity Inventory (PNDI) records indicate there may be potential impacts to threatened and endangered and/or special concern species and resources within the project area. If the response above indicates "No Further Review Required" no additional communication with the respective agency is required. If the response is "Further Review Required" or "See Agency Response," refer to the appropriate agency comments below. Please see the DEP Information Section of this receipt if a PA Department of Environmental Protection Permit is required.

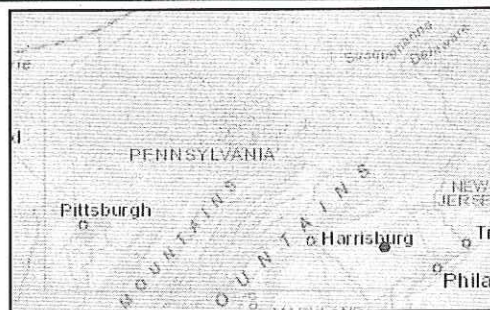
Note that regardless of PNDI search results, projects requiring a Chapter 105 DEP individual permit or GP 5, 6, 7, 8, 9 or 11 must comply with the bog turtle habitat screening requirements of the PASPGP.

UNT Hay Creek Cleanup

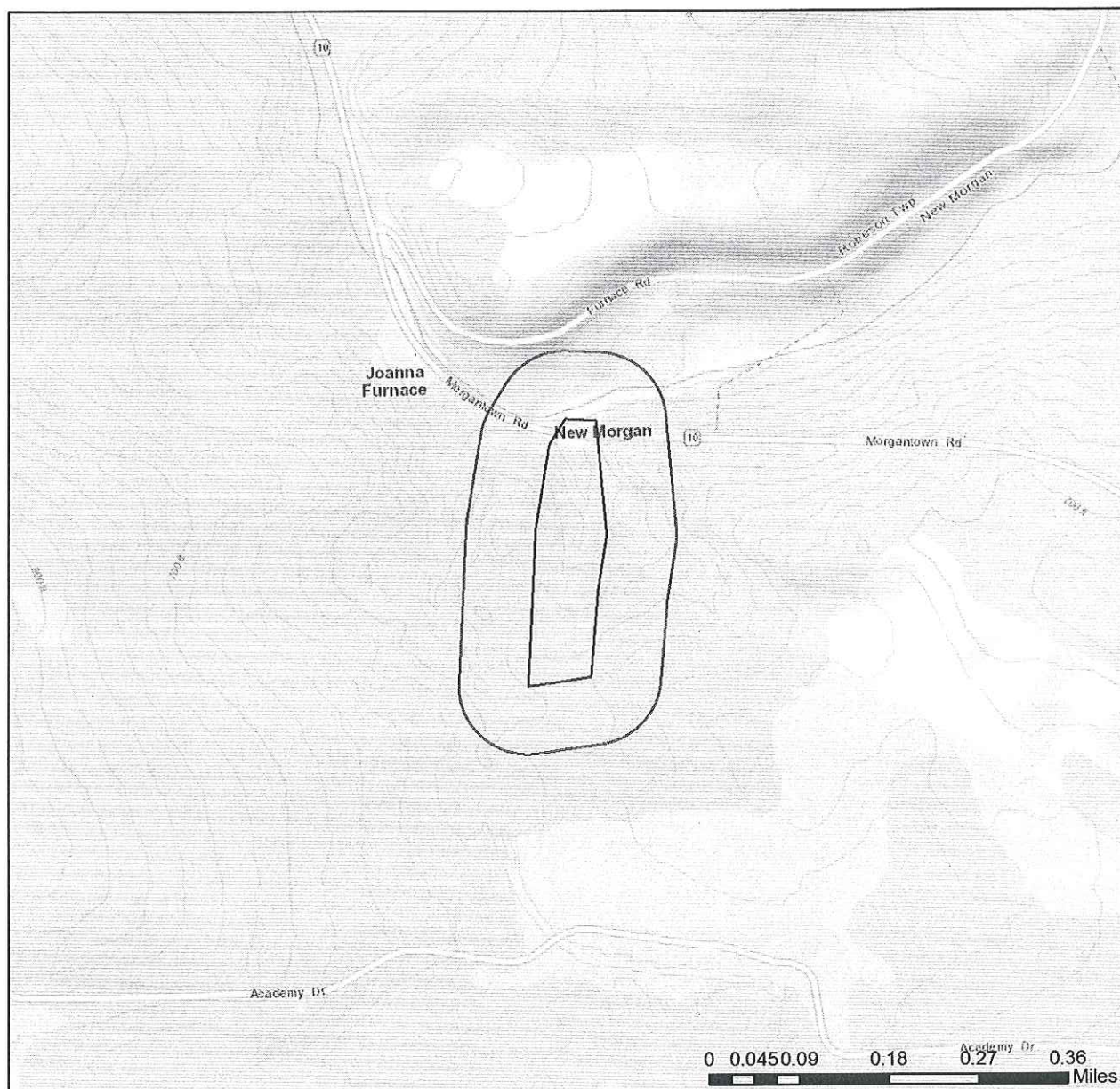


- ☐ Project Boundary
- ☐ Buffered Project Boundary

Service Layer Credits: Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community
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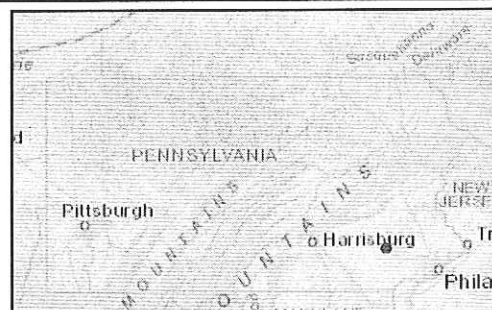


UNT Hay Creek Cleanup



- ☐ Project Boundary
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RESPONSE TO QUESTION(S) ASKED

Q1: Accurately describe what is known about wetland presence in the project area or on the land parcel by selecting ONE of the following. "Project" includes all features of the project (including buildings, roads, utility lines, outfall and intake structures, wells, stormwater retention/detention basins, parking lots, driveways, lawns, etc.), as well as all associated impacts (e.g., temporary staging areas, work areas, temporary road crossings, areas subject to grading or clearing, etc.). Include all areas that will be permanently or temporarily affected -- either directly or indirectly -- by any type of disturbance (e.g., land clearing, grading, tree removal, flooding, etc.). Land parcel = the lot(s) on which some type of project(s) or activity(s) are proposed to occur.

Your answer is: The project area (or land parcel) has not been investigated by someone qualified to identify and delineate wetlands, or it is currently unknown if the project or project activities will affect wetlands.

3. AGENCY COMMENTS

Regardless of whether a DEP permit is necessary for this proposed project, any potential impacts to threatened and endangered species and/or special concern species and resources must be resolved with the appropriate jurisdictional agency. In some cases, a permit or authorization from the jurisdictional agency may be needed if adverse impacts to these species and habitats cannot be avoided.

These agency determinations and responses are **valid for two years** (from the date of the review), and are based on the project information that was provided, including the exact project location; the project type, description, and features; and any responses to questions that were generated during this search. If any of the following change: 1) project location, 2) project size or configuration, 3) project type, or 4) responses to the questions that were asked during the online review, the results of this review are not valid, and the review must be searched again via the PNDI Environmental Review Tool and resubmitted to the jurisdictional agencies. The PNDI tool is a primary screening tool, and a desktop review may reveal more or fewer impacts than what is listed on this PNDI receipt. The jurisdictional agencies **strongly advise against** conducting surveys for the species listed on the receipt prior to consultation with the agencies.

PA Game Commission

RESPONSE:

No Impact is anticipated to threatened and endangered species and/or special concern species and resources.

PA Department of Conservation and Natural Resources

RESPONSE:

No Impact is anticipated to threatened and endangered species and/or special concern species and resources.

PA Fish and Boat Commission

RESPONSE:

No Impact is anticipated to threatened and endangered species and/or special concern species and resources.

U.S. Fish and Wildlife Service

RESPONSE:

Information Request: Conduct a Bog Turtle Habitat (Phase 1) Survey in accordance with USFWS Guidelines for Bog Turtle Surveys (April 2006). Evaluate all wetlands within 300 feet of the project area, which includes all areas that will be impacted by earth disturbance or project features (e.g., roads, structures, utility lines, lawns, detention basins, staging areas, etc.). IF THE PHASE 1 SURVEY IS DONE BY A QUALIFIED BOG TURTLE SURVEYOR (see <https://www.fws.gov/northeast/pafo/endangered/surveys.html>): 1) Send positive results to USFWS for concurrence, along with a project description documenting how impacts will be avoided. OR, conduct a Phase 2 survey and send Phase 1 and 2 results to USFWS for concurrence. 2) Send a courtesy copy of negative results to USFWS (label as "Negative Phase 1 Survey Results by Qualified Bog Turtle Surveyor: USFWS Courtesy Copy"). USFWS approval of negative results is not necessary when a qualified surveyor does the survey in full accordance with USFWS guidelines. IF THE PHASE 1 SURVEY IS NOT DONE BY A QUALIFIED SURVEYOR: Send ALL Phase 1 results to USFWS for concurrence, and if potential habitat is found, also send a project description documenting how impacts will be avoided. As a qualified bog turtle surveyor, I _____ (name) certify that I conducted a Phase 1 survey of all wetlands in and within 300 feet of the project area on _____ (date) and determined that bog turtle habitat is absent.

(Signature)

WHAT TO SEND TO JURISDICTIONAL AGENCIES

If project information was requested by one or more of the agencies above, upload* or email* the following information to the agency(s). Instructions for uploading project materials can be found [here](#). This option provides the applicant with the convenience of sending project materials to a single location accessible to all three state agencies. Alternatively, applicants may email or mail their project materials (see AGENCY CONTACT INFORMATION).

***Note:** U.S.Fish and Wildlife Service requires applicants to mail project materials to the USFWS PA field office (see AGENCY CONTACT INFORMATION). USFWS will not accept project materials submitted electronically (by upload or email).

Check-list of Minimum Materials to be submitted:

____ Project narrative with a description of the overall project, the work to be performed, current physical characteristics of the site and acreage to be impacted.

____ A map with the project boundary and/or a basic site plan (particularly showing the relationship of the project to the physical features such as wetlands, streams, ponds, rock outcrops, etc.)

In addition to the materials listed above, USFWS REQUIRES the following

____ **SIGNED** copy of a Final Project Environmental Review Receipt

The inclusion of the following information may expedite the review process.

____ Color photos keyed to the basic site plan (i.e. showing on the site plan where and in what direction each photo was taken and the date of the photos)

____ Information about the presence and location of wetlands in the project area, and how this was determined (e.g., by a qualified wetlands biologist), if wetlands are present in the project area, provide project plans showing the location of all project features, as well as wetlands and streams.

4. DEP INFORMATION

The Pa Department of Environmental Protection (DEP) requires that a signed copy of this receipt, along with any required documentation from jurisdictional agencies concerning resolution of potential impacts, be submitted with applications for permits requiring PNDI review. Two review options are available to permit applicants for handling PNDI coordination in conjunction with DEP's permit review process involving either T&E Species or species of special concern. Under sequential review, the permit applicant performs a PNDI screening and completes all coordination with the appropriate jurisdictional agencies prior to submitting the permit application. The applicant will include with its application, both a PNDI receipt and/or a clearance letter from the jurisdictional agency if the PNDI Receipt shows a Potential Impact to a species or the applicant chooses to obtain letters directly from the jurisdictional agencies. Under concurrent review, DEP, where feasible, will allow technical review of the permit to occur concurrently with the T&E species consultation with the jurisdictional agency. The applicant must still supply a copy of the PNDI Receipt with its permit application. The PNDI Receipt should also be submitted to the appropriate agency according to directions on the PNDI Receipt. The applicant and the jurisdictional agency will work together to resolve the potential impact(s). See the DEP PNDI policy at <https://conservationexplorer.dcnr.pa.gov/content/resources>.

5. ADDITIONAL INFORMATION

The PNDI environmental review website is a preliminary screening tool. There are often delays in updating species status classifications. Because the proposed status represents the best available information regarding the conservation status of the species, state jurisdictional agency staff give the proposed statuses at least the same consideration as the current legal status. If surveys or further information reveal that a threatened and endangered and/or special concern species and resources exist in your project area, contact the appropriate jurisdictional agency/agencies immediately to identify and resolve any impacts.

For a list of species known to occur in the county where your project is located, please see the species lists by county found on the PA Natural Heritage Program (PNHP) home page (www.naturalheritage.state.pa.us). Also note that the PNDI Environmental Review Tool only contains information about species occurrences that have actually been reported to the PNHP.

