

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

Pennsylvania American Water Company	:	Violations of the Clean Streams Law
852 Wesley Drive	:	and Title 25 of the Pennsylvania
Mechanicsburg, PA 17055	:	Code

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 20th day of June, 2024, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and Pennsylvania American Water Company.

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations (“rules and regulations”) promulgated thereunder.

B. Pennsylvania American Water Company (“PAWC”) is a Domestic Business Corporation with a registered business address of 852 Wesley Drive, Mechanicsburg, PA 17055.

C. “Person,” as defined in Section 1 of The Clean Streams Law, 35 P.S. § 691.1, “shall be construed to include natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term ‘person’ shall not exclude the members of an association and the directors, officers or agents of a corporation.”

D. PAWC is a “person” as defined by Section 1 of The Clean Streams Law, 35 P.S. § 691.1.

E. PAWC owns and operates a water and wastewater utility company and its associated structures, including Dunmore No. 7 Dam (“the Dam”) located on the Roaring Brook, Dunmore Borough, Lackawanna County, Pennsylvania.

F. On June 21, 1944, the Commonwealth of Pennsylvania, Department of Forests and Waters, Water and Power Resources Board issued Permit 35-19 (“Permit D35-019”) for the modification and continued operation and maintenance of the Dam across the Roaring Brook, four (4) miles above the mouth, in Dunmore Borough, Lackawanna County, Pennsylvania. The construction of the Dam was originally completed in 1872. Permit D35-019 included an expiration date of January 1, 1946 if the work as specified within the permit was not completed. The work was completed; therefore, the permit is valid.

G. On September 2, 2022, PAWC submitted an application to the Department regarding a proposed rehabilitation project at the Dam. The proposed project includes installation of anchors in the masonry dam, construction of mass concrete buttresses downstream of the left non-overflow section, replacement of the existing crest of the overflow section with an ogee profile, construction of a concrete apron at the toe of the spillway, replacement of the original outlet system control valves and their relocation for upstream closure, routine repairs to the existing dam structure, and demolition of several outbuildings and other structures.

H. On October 11, 2023, the Department issued a Letter of Amendment for Permit D35-019 and a Pennsylvania State Programmatic General Permit to complete improvements to the Dam described in Paragraph G, above.

I. On February 4, 2024, the Department received a complaint regarding the discharge of sediment from the Dam.

J. On February 8, 2024, in response to the complaint described in Paragraph I above, the Department conducted a Chapter 105 Water Obstruction and Encroachment Inspection at the Dam relating to the on-going rehabilitation work and downstream locations of the Roaring Brook. During this inspection, heavy sediment laden water was observed leaving the dam site, causing heavy siltation to the Roaring Brook. Prior to that date, as part of the approved Dam rehabilitation work, PAWC had opened a 48-inch valve at the Dam in order to allow flow through the valve opening and lower the water level in the reservoir. The flow through the valve opening was carrying sediment from behind the Dam.

K. On February 9, 2024, in response to the Department's February 8, 2024 inspection, PAWC proposed a plan to address the situation, which involved the installation of an additional, enhanced check dam in Roaring Brook downstream of the Dam to capture sediment that had passed through the valve opening and a temporary inlet structure upstream of the Dam to minimize the amount of sediment entering the outlet works. The Department approved these modifications to the approved work on the Dam.

L. PAWC installed the proposed check dam enhancements and the temporary inlet structure in the days following February 9, 2024.

M. On February 12, 2024, following installation of the additional, enhanced check dam and temporary inlet structure, PAWC concluded that the modifications were not sufficient and closed the 48-inch valve at the Dam stopping flow through the valve opening.

N. On February 14, 2024, the Department conducted a Chapter 105 Water Obstruction and Encroachment Inspection at the Dam relating to the on-going rehabilitation work and

downstream locations of the Roaring Brook. During this inspection, sediment laden water was observed leaving the dam site, causing continued siltation to the Roaring Brook.

O. On February 14, 2024 and February 20, 2024, the Department conducted cause/effect stream surveys on the Roaring Brook and the Lackawanna River. The Department concluded from these surveys that the sediment release from the Dam caused significant impacts to the Roaring Brook as follows:

- Instream physical habitat impacts include the deposition of sediment results in the burying of stable instream substrate and creation of extensive sediment bars.
- Sediment deposited in and along the floodplain of the stream represents potential sediment loads to downstream reaches of the stream after future elevated flow events.
- The water quality results of total aluminum below the Dam in Roaring Brook exceeded the water quality criteria maximum concentration of 750 ug/l set forth in 25 Pa. Code § 93. *See* 25 Pa. Code § 93.8c (human health and aquatic life criteria for toxic substances).
- Biologically, major reductions in the abundance of benthic macroinvertebrates and low Index of Biotic Integrity scores were observed downstream.
- Downstream of the Dam and upstream of the confluence with Little Roaring Brook represented a new impaired segment, and upstream of Myrtle Street to Little Roaring Brook represented a new impairment cause (siltation).
- It is expected that the excessive sediment found in Roaring Brook will continue to be moved downstream during periods of elevated flows, settling into deep pools, areas of slow currents, and eventually into the Lackawanna River, representing an ongoing sediment issue as it moves through the system and re-deposits along the way.

- The original stream bottom should also begin to be uncovered and re-exposed in areas of scour, which should allow the future recolonization of benthic macroinvertebrates.

P. On February 15, 2024, the Department conducted a Chapter 105 Water Obstruction and Encroachment Inspection at the Dam relating to the on-going rehabilitation work to document any potential release of additional sediment laden water to the Roaring Brook and the Lackawanna River and the depth of sediment previously deposited into the downstream channel and floodway (“Chapter 105 inspection”). The flow in the watercourse at the Myrtle Street location and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam continues to remobilize and migrate downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

Q. On February 16, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Myrtle Street location and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam continues to remobilize and migrate downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

R. On February 17, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Myrtle Street location and where the Roaring Brook discharges into the Lackawanna River was more sediment laden as compared to immediately downstream of the Dam. Sediment deposits were noted at Myrtle Street along channel edges and

in the floodway, and within the channel and floodway upstream of the bridge crossing. Minor sediment deposits were observed at downstream limits of concrete U-channel at the Roaring Brook confluence as well as near the Scranton Iron Furnaces property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

S. On February 18, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Sediment deposits were observed along the channel, floodway and behind the rock filter within the Roaring Brook. The pool area behind the rock filter had sediment deposited across the channel and floodway. The flow in the watercourse at Myrtle Street and where the Roaring Brook discharges into the Lackawanna River were more sediment laden as compared to immediately downstream of the Dam. Sediment deposits were noted at Myrtle Street along channel edges and in the floodway, and within the channel and floodway upstream of the bridge crossing. Minor sediment deposits were observed at the downstream limits of the concrete U-channel at the Roaring Brook confluence as well as near the Scranton Iron Furnaces property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

T. On February 19, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Sediment deposits were observed in the channel and the floodway and behind the rock filter within the Roaring Brook. The pool area behind the rock filter had sediment deposited across the channel and floodway. The flow in the watercourse at Myrtle Street and where the Roaring Brook discharges into the Lackawanna River was more sediment laden as compared to immediately

downstream of the Dam. Sediment deposits were noted at Myrtle Street along channel edges and in the floodway, and within the channel and floodway upstream of the bridge crossing. Minor sediment deposits were observed at the downstream limits of the concrete U-channel at the Roaring Brook confluence, as well as near the Scranton Iron Furnaces property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

U. On February 20, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Sediment deposits were observed along the channel edges, floodway and behind the rock filter within the Roaring Brook. The pool area behind the rock filter had sediment deposited across the channel and floodway. The flow in the watercourse at Myrtle Street and where the Roaring Brook discharges into the Lackawanna River were more sediment laden as compared to immediately downstream of the Dam. Sediment deposits were noted at Myrtle Street along the channel edges and in the floodway, and within the channel and floodway upstream of the bridge crossing. Minor sediment deposits were observed at downstream limits of the concrete U-channel at the Roaring Brook confluence, as well as near the Scranton Iron Furnaces property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

V. On February 21, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street and Myrtle Street locations was sediment laden with much deposition noted in the channel and floodway. The flow in the watercourse at the Scranton Iron Furnaces was sediment laden with fines in the channel bottom and floodway.

The flow in the watercourse where the Roaring Brook discharges into the Lackawanna River was sediment laden with sediment deposits observed throughout the channel and floodway. The flow in the Lackawanna River downstream of the Elm Street bridge was slightly sediment laden and discolored with a thin layer of very fine sediment covering the cobblestones in the bed of the river. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

W. On February 22, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street and Myrtle Street locations was sediment laden with much deposition noted in the channel and floodway. The flow at the Scranton Iron Furnaces was sediment laden with fines in the channel bottom and floodway. The flow in the watercourse where the Roaring Brook discharges into the Lackawanna River was sediment laden with sediment deposits observed throughout the channel and floodway. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

X. On February 23, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street and Myrtle Street locations was sediment laden with much deposition noted in the channel and floodway. It was also noted that the flow

appeared slightly more turbid due to the increased flow. The flow in the watercourse at the Scranton Iron Furnaces was sediment laden with fines in the channel bottom and floodway. The flow in the watercourse where the Roaring Brook discharges into the Lackawanna River was sediment laden with sediment deposits observed throughout the channel and floodway. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

Y. On February 24, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Sediment deposits were still observed in the channel and floodway and behind the rock filter within the Roaring Brook. The pool area behind the rock filter had sediment deposited across the channel and floodway. The flow at Myrtle Street, where the Roaring Brook discharges into the Lackawanna River and in the area of the Elm Street bridge crossing was more sediment laden as compared to immediately downstream of the Dam. Sediment deposits were also evident at Myrtle Street along channel edges and the floodway, within the channel and floodway upstream of bridge crossing. Minor sediment deposits were observed at downstream limits of the concrete U-channel at the Roaring Brook confluence as well as near the Scranton Iron Furnace property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

Z. On February 25, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Sediment deposits were still observed in the channel and floodway and behind the rock filter

within the Roaring Brook. The pool area behind the rock filter had sediment deposited across the channel and floodway. The flow at Myrtle Street, where the Roaring Brook discharges into the Lackawanna River and in the area of the Elm Street bridge crossing was more sediment laden as compared to immediately downstream of the Dam. Sediment deposits were also evident at Myrtle Street along channel edges and the floodway, within the channel and floodway upstream of bridge crossing. Minor sediment deposits were observed at downstream limits of the concrete U-channel at the Roaring Brook confluence, as well as near the Scranton Iron Furnaces property. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

AA. On February 26, 2024, the Department conducted a Chapter 105 Inspection of the Dam. The flow in the watercourse at Ash Street and Myrtle Street was sediment laden with much deposition noted in the channel and floodway. The flow in the watercourse at the Scranton Iron Furnaces was sediment laden with fines in the channel bottom and floodway. The flow where the Roaring Brook discharges into the Lackawanna River was sediment laden with sediment deposits observed throughout the channel and floodway in both the Roaring Brook and the Lackawanna River. The flow downstream of the Elm Street Bridge was slightly sediment laden with a thin layer of fines on the cobblestone creek bottom. The flow in the watercourse at Ash Street, Myrtle Street and Scranton Iron Furnaces was much more sediment laden as compared to immediately downstream of the Dam. The increased flow in the Roaring Brook as one continues downstream is remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. Inspection photographs of the Roaring Brook show the sediment that was

released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

BB. On February 27, 2024, the Department conducted a Chapter 105 Inspection of the Dam. The flow in the watercourse at Ash Street and Myrtle Street was sediment laden with much deposition noted in the channel and floodway. The flow at the Scranton Iron Furnaces was sediment laden with fines in the channel bottom and floodway. The flow where the Roaring Brook discharges into the Lackawanna River was sediment laden with sediment deposits observed throughout the channel and floodway in both the Roaring Brook and the Lackawanna River. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. The increased flow in the Roaring Brook as one continues downstream was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

CC. On February 28, 2024, the Department conducted a Chapter 105 Inspection of the Dam. The flow at the downstream rock filter, 500 feet downstream of the Dam, and at the conluent with the Little Roaring Brook was heavily sediment laden. The flow in the watercourse at Ash Street, Myrtle Street, and the Scranton Iron Furnaces was also heavily sediment laden. The flow where the Roaring Brook discharges into the Lackawanna River was heavily sediment laden. The flow in the Lackawanna River upstream of the Roaring Brook was slightly turbid. The flow in the watercourse along the Lackawanna River downstream of the Elm Street bridge was much more sediment laden as compared to the previous couple of days. The increased flow in the

Roaring Brook as one continues downstream was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. It was also noted that most of the previously observed sediment deposits in the channels and floodways were not observed on this date due to the increased flows in the channels due to rain. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

DD. On February 29, 2024, the Department conducted a Chapter 105 Inspection of the Dam. The flow at the downstream rock filter, 500 feet downstream of the Dam, and at the confluence with the Little Roaring Brook was heavily sediment laden. The flow in the watercourse at Ash Street, Myrtle Street, and the Scranton Iron Furnaces was also heavily sediment laden. The flow where the Roaring Brook discharges into the Lackawanna River was heavily sediment laden. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the watercourse at all locations downstream of the Dam was heavily sediment laden. The increased flow in the Roaring Brook as one continues downstream was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. It was also noted that most of the previously observed sediment deposits in the channels and floodways were not observed on this date due to the increased flows in the channels due to rain. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

EE. On March 1, 2024, the Department conducted a Chapter 105 Inspection of the Dam. The flow at the downstream rock filter, 500 feet downstream of the Dam, and at the confluence

with the Little Roaring Brook was clear. The flow in the watercourse at Ash Street, Myrtle Street, and the Scranton Iron Furnaces was still heavily sediment laden. The flow where the Roaring Brook discharges into the Lackawanna River remained heavily sediment laden. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River downstream of the Dam was heavily sediment laden. The increased flow in the Roaring Brook as one continues downstream was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. It was also noted that the flow in the watercourse was subsiding since the rainfall event, and, as a result, much of the previously deposited sediment was visible again. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

FF. On March 2, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The sediments deposits were mostly covered with flow in the channel and floodway, but some areas of deposition were visible within the Roaring Brook. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was more sediment laden as compared to immediately downstream of the Dam. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

GG. On March 3, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Recent rainfall had elevated water levels in the stream, covering sediment deposits in some areas. The flow in the watercourse at Ash Street, Myrtle Street, Scranton Iron Furnaces, and where the

Roaring Brook discharges into the Lackawanna River was more sediment laden as one proceeds downstream and in contrast to Little Roaring Brook and the Lackawanna River. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

HH. On March 5, 2024, the Department received results from three (3) sediment samples that were collected by Department staff on February 20, 2024. As to the inorganic, volatile organic, semi-volatile, and herbicide/pesticide analyses, none of the compounds on the Historic Fill Screening Compounds list were found to be present in concentrations greater than the Statewide Health Standards for soil. Two of the sediment samples were collected from dredged material that was formerly located immediately upstream of the Dam, and the third sample was collected from sediment that was deposited immediately downstream of the Dam.

II. On March 7, 2024, the Department conducted a Chapter 105 Inspection at the Dam. Much of the previously deposited sediment in the Roaring Brook and the Lackawanna River was not visible due to the high flows and increased water elevation in the channels. It could not be determined if the previously deposited sediments were moving farther downstream into the Lackawanna River due to a heavy rainfall event on March 6, 2024. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

JJ. On March 7, 2024, the Department issued a Notice of Violation (“NOV”) to PAWC, notifying PAWC of its violations associated with the unpermitted discharge of sediment that occurred during the rehabilitation work being performed at the Dam, including violations

described above in Paragraphs J; N, P-GG; and II, above. The Department requested PAWC to respond in writing to the NOV within 15 days of its receipt. Further, the Department requested PAWC to provide a plan to remediate the damage created by the unpermitted discharge within 15 days of its receipt, and to remove from the affected waters of this Commonwealth the excess sediment contained therein.

KK. On March 8, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at Ash Street and Myrtle Street was sediment laden. The flow where the Roaring Brook discharges into the Lackawanna River was heavily sediment laden with sediment deposits observed throughout the channel and floodway. The flow in the watercourse at Ash Street, Myrtle Street, and where the Roaring Brook discharges into the Lackawanna River was much more sediment laden as compared to immediately downstream of the Dam. The flow in the Roaring Brook was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

LL. On March 11, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow where the Roaring Brook discharges into the Lackawanna River was heavily sediment laden as it has a sharp contrast as compared to the flow in the Lackawanna River. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The heavy flow in the Roaring Brook as one continues downstream was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated

downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

MM. On March 13, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, and the Scranton Iron Furnaces was relatively clear with no sediment laden water visible. The flow where the Roaring Brook discharges into the Lackawanna River was slightly sediment laden as compared to the flow in the Lackawanna River. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was remobilizing previously deposited sediments farther downstream into the Lackawanna River; however, the flow at the confluence appeared the least sediment laden compared to all previous inspections. It was also noted that more of the rocky substate in the Roaring Brook was becoming more visible over time as the previously deposited sediments are moved farther downstream.

NN. On March 15, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, and the Scranton Iron Furnaces was relatively clear with no sediment laden water visible. The flow where the Roaring Brook discharges into the Lackawanna River was slightly sediment laden as compared to the flow in the Lackawanna River. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River; however, the flow at the confluence appears the least sediment laden compared to previous inspections. It was also noted that some of the previously observed sediment deposits and sand bars in the channel and floodway were visible along the edges of the channel, but more of the rocky substate in the areas of stronger flow were becoming more visible.

OO. On March 19, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear with no sediment laden water visible. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was not remobilizing the previously deposited sediments into the Lackawanna River. All flows were reasonably clear. It was also noted that some of the previously observed sediment deposits and sand bars in the channel and floodway were visible along the edges of the channel, but more of the rocky substate in the areas of stronger flow were becoming more visible.

PP. On March 20, 2024, the Department received a response from PAWC to the March 7, 2024 NOV acknowledging the unanticipated discharge of sediment to the Roaring Brook during the rehabilitation project on the Dam. PAWC also submitted a Plan of Study to investigate conditions downstream of the Dam that includes benthic macroinvertebrate sampling, physical stream characterization, and in-stream water quality monitoring. PAWC expressed that it intends to work collaboratively with the Department and other stakeholders to remedy the impact of the discharge.

QQ. On March 21, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear with no sediment laden water visible. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was not remobilizing the previously deposited sediments into the Lackawanna River. All flows were reasonably clear. It was also noted that some of the previously deposited sediment deposits and sand bars in the channel and floodway were visible

along the edges of the channel, but more of the rocky substate in the areas of stronger flow were becoming more visible.

RR. On March 24, 2024, the Department conducted a Chapter 105 Inspection at the Dam. It was noted that recent heavy rainfall had elevated water levels in Roaring Brook covering sediment deposits in most areas. Inspection photographs of the Roaring Brook show the sediment that was released from the Dam remobilized and migrated downstream to where the Roaring Brook confluences with the Lackawanna River. A sediment plume was present.

SS. On March 26, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear with no sediment laden water observed. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was not remobilizing the previously deposited sediments into the Lackawanna River. All flows were reasonably clear. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

TT. On March 28, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear with no sediment laden water observed. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was not remobilizing the previously deposited sediments into the Lackawanna River. All flows were reasonably clear. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

UU. On April 2, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow at Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The flow in the Roaring Brook was remobilizing the previously deposited sediments and moving them farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

VV. On April 4, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River had a brownish-green tint. The flow in the Lackawanna River upstream of the Roaring Brook had a brownish-green tint. It could not be determined if the previously deposited sediments were moving farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

WW. On April 4, 2024, the Department received PAWC's Plan of Action. This Plan of Action was developed to assess and characterize the conditions of Roaring Brook downstream of the Dam and the Lackawanna River downstream to Bridge Street. This plan included several proposed sampling stations established along the Roaring Brook and the Lackawanna River to characterize the physical habitat features, along with benthic macroinvertebrate sampling.

XX. On April 4, 2024, the Department received PAWC's updated Plan of Study. The updated Plan of Study includes benthic macroinvertebrate sampling, physical stream characterization, and in-stream water quality monitoring in both the Roaring Brook downstream of the Dam and the Lackawanna River.

YY. On April 4, 2024, the Department received results from three (3) sediment samples that Department staff collected on February 20, 2024. These results indicated none of the PFAS compounds, including the three compounds that have Statewide Health Standards, were found in the three sediment samples. Two of the sediment samples were collected from dredged material that was formerly located immediately upstream of the Dam, and the third sample was collected from sediment that was deposited immediately downstream of the Dam.

ZZ. On April 9, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear. The flow in the Lackawanna River upstream of the Roaring Brook was clear. The previously deposited sediments were not moving farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

AAA. On April 10, 2024, the Department received PAWC's updated Plan of Action. This updated Plan of Action includes proposed dredging locations, placement of rock check dams, location of sediment bags, and silt curtains at the Cedar Avenue and Myrtle Street locations.

BBB. On April 12, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear. The flow in the Lackawanna River upstream of the Roaring Brook was sediment laden with a slight brown coloration. The previously deposited sediments were not moving farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

CCC. On April 18, 2024, the Department received PAWC's further updated Plan of Action for mitigating the sediment released from the Dam. This updated Plan of Action includes minimizing sediment migrating downstream in the Roaring Brook and into the Lackawanna River by constructing modified check dams at several locations along the Roaring Brook to collect fine sediment for removal by means of hydraulic dredging. Construction of each modified check dam will include an initial sediment removal within the impounded reach of the check dam, as well as recurring sediment removals to alleviate sediment accumulation behind each check dam. A manual cleanup effort to remove visible sandbars and sediment from the release will occur at the Dam site to Mill Street. PAWC proposed silt curtains/barriers, rock check dams, modified rock check dams, and hydraulic dredging as the primary Best Management Practice ("BMP") to utilize throughout the Plan of Action to minimize sediment transport to the Lackawanna River and to remove sediment within the Roaring Brook.

DDD. On April 18, 2024, the Department issued a letter to PAWC, approving PAWC's Plan of Action. The letter approved the concept of sediment removal at the following locations: downstream of the Dunmore No. 7 Dam, D's U-Pull It, Myrtle Street Pump Station, and Cedar Avenue. The approval requires PAWC to contact the Department for Emergency Permits for the respective work.

EEE. Also on April 18, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear. The previously deposited sediments were not moving farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

FFF. On April 19, 2024, the Department conducted a Chapter 105 Inspection at the Dam. The flow in the watercourse at the Ash Street bridge, Myrtle Street bridge, Scranton Iron Furnaces, and where the Roaring Brook discharges into the Lackawanna River was clear. The previously deposited sediments were not moving farther downstream into the Lackawanna River. It was also noted that some of the previously deposited sediment and sand bars in the channel and floodway were visible along the edges of the channel.

Applicable Law

GGG. Section 401 of the Clean Streams Law states:

It shall be unlawful for any person or municipality to put or place into any of the water of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the water of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

35 P.S. § 691.401.

HHH. The Water Resources Regulations promulgated in the rules and regulations under the Pennsylvania Code provide in relevant part, as follows:

1. Section 91.33(a) provides:

[i]f, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

25 Pa. Code § 91.33(a).

2. Section 93.6 states,

(a) Water may not contain substances attributable to point or nonpoint source discharges in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life. (b) In addition to other substances listed within or addressed by this chapter, specific substances to be controlled include, but are not limited to, floating materials, oil, grease, scum and substances that produce color, tastes, odors, turbidity or settle to form.

25 Pa. Code § 93.6.

3. Section 105.46(b) states, “[c]onstruction must be done in a manner to minimize erosion of banks and bed of the stream and disturbance of the regimen of the stream.” 25 Pa. Code § 105.46(b).

4. Section 105.106 states, “[a]ctivities and facilities on the construction site must be conducted and operated in a manner to avoid pollution of the air and waters of this Commonwealth and in accordance with applicable laws and the provisions of this title.” 25 Pa. Code § 105.106.

III. The unpermitted discharge to the waters of the Commonwealth and resulting pollution by PAWC’s rehabilitation of the Dam as described in Paragraphs J; O-GG; II-OO; QQ-VV; ZZ; BBB; and EEE-FFF above, constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

JJJ. PAWC’s failure to notify the Department of the unpermitted discharge that could create a danger of pollution of the waters or would damage property, as described in Paragraph I above, constitutes a violation of 25 Pa. Code § 91.33(a).

KKK. The unpermitted discharge by PAWC's rehabilitation of the Dam occurred in concentrations or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life, and PAWC's failure to control substances that produce turbidity or settle to form, as described in Paragraphs J; P-GG; II-OO; QQ-VV; ZZ; BBB; and EEE-FFF above, constitutes a violation of 25 Pa. Code § 93.6.

LLL. PAWC's failure to do construction in a manner that did not minimize the erosion of banks and bed of the stream and allowed disturbance of the regimen of the stream, as described in Paragraphs J; P-GG; II-OO; QQ-VV; ZZ; BBB; and EEE-FFF above, constitutes a violation of 25 Pa. Code § 105.46(b).

MMM. PAWC's failure to conduct and operate activities on the construction site in a manner that did not avoid pollution of the waters of this Commonwealth, as described in Paragraphs J; P-GG; II-OO; QQ-VV; ZZ; BBB; and EEE-FFF above, constitutes a violation of 25 Pa. Code § 105.106.

NNN. The violations described in Paragraphs J; O-GG; II-OO; QQ-VV; ZZ; BBB; and EEE-FFF above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subjects PAWC to civil penalty liability under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by PAWC as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Clean Streams Law, 35 P.S. § 693.5, and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. In any matter or proceeding between PAWC and the Department, PAWC shall not challenge or deny the Department's assertion of the truth, accuracy, or validity of Paragraphs A through NNN, above.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Corrective Action.**

a. **PLAN OF ACTION**

- i. PAWC will implement the Plan of Action, submitted by PAWC to the Department on April 18, 2024 and approved by the Department on April 20, 2024. The Plan of Action may be amended as necessary upon request by PAWC and approval by the Department in writing.
- ii. Since the Roaring Brook is a stocked trout stream, no work shall be done in the stream channel between February 15th to June 1st without the prior written approval of the Pennsylvania Fish and Boat Commission.
- iii. At the Cedar Avenue location (Point 7 identified in the Plan of Action), PAWC will install a staff gauge to measure the depth of sediment accumulation behind the weir. Following initial sediment removal at this location as specified in the Plan of Action, PAWC will inspect the Cedar Avenue location every two weeks for the first twelve (12) months

following execution of this Consent Order and Agreement and every month thereafter until the obligation to remove sediment terminates as provided in 3.a.viii below, and after rainfall events exceeding 0.5 inches of rain. Whenever the staff gauge indicates that the sediment level has reached two and one-half (2.5) feet from the top of the weir, PAWC shall begin planning for additional sediment removal, including reserving necessary equipment, applying for required approvals, and scheduling labor, and shall proceed to implement such removal when all relevant conditions allow after receipt of all required approvals. Independent and regardless of how many sediment cleanouts have occurred at the Cedar Avenue location, PAWC shall cleanout the Cedar Avenue location, regardless of sediment levels at the time of requesting termination of this Consent Order and Agreement. All staff gauges will be removed upon termination of this Consent Order and Agreement.

- iv. PAWC will submit sediment removal reports to the Department within 30 days of completion of any sediment removal for any location. The reports will include detailed information such as the amount of material removed, the extent of the removal area, and location(s) where the material was deposited and permanently stabilized per 25 Pa. Code 102. The sediment removal reports must be submitted to the Department, Waterways Program Manager (c/o Pamela Kania, P.E.) within 30 days of completion of sediment removal activity at any location.

- v. PAWC will ensure that a Pollution Prevention Control Plan will be onsite during any sediment removal.
- vi. PAWC will re-evaluate sediment deposition areas of Roaring Brook from the Dam to the confluence with the Lackawanna River by May of each year. PAWC will submit a request to the Department to amend the Plan of Action to address any new deposition areas that may be reasonably accessed by PAWC with hydraulic dredging equipment or similar methods.
- vii. PAWC is responsible for ensuring that any material brought to the off-site waste area is clean fill. Form FP-001 must be retained by the property owner for any fill material affected by a spill or release of a regulated substance but qualifying as clean fill due to analytical testing. PAWC will have an Erosion and Sediment Control plan approved by the Lackawanna County Conservation District and fully implemented prior to off-site waste areas being utilized.
- viii. The sediment removal activities specified by this Section 3.a will continue until twelve (12) months after PAWC completes the rehabilitation project at the Dam, at which time PAWC will complete a final sediment removal action at the Cedar Avenue location (Point 7). If necessary to address the impacts of the events described in the Findings or other impacts from PAWC's rehabilitation work on the Dam, the Department may extend the period of monitoring and sediment removal at the Cedar Avenue location

pursuant to Section 8, below; PAWC reserves the right to challenge any action which the Department may take to extend the period of work.

b. PLAN OF STUDY

- i. Within 60 calendar days of the Consent Order and Agreement, PAWC shall submit a plan of study, by an experienced environmental consultant, to the Department for approval to conduct twice-a-year Cause and Effect Surveys on the Roaring Brook at 41.40863541 - 75.59919308, 41.41435713-75.60936981, and 41.40639759 - 75.63786028 and the Lackawanna River at 41.40203228 - 75.67273121 and 41.39863515 - 75.67680679. If necessary due to stream conditions or other relevant factors, the location(s) of the Cause and Effect Surveys may be modified upon written approval of the Department. The Plan of Study shall be consistent with the Cause and Effect Surveys Section in Chapter 2 of the Department's *Office of Water Programs, Bureau of Clean Water, Water Quality Monitoring Protocols for Streams and Rivers 2021*, as updated and amended. To the extent the Department determines the Plan of Study submitted is not consistent with the Cause and Effect Surveys Section referenced above, the Department will notify PAWC, in writing. PAWC will respond, in writing, within 15 calendar days from receipt of the Department's written notification. The Cause and Effect Surveys shall be conducted twice a year, during March to April and November to December beginning in November-December 2024 until thirty-six (36) months from the date PAWC completes the rehabilitation project at the Dam.

- ii. The twice-a-year Cause and Effect Survey reports must be submitted to the Department, Waterways and Wetlands Program Manager (c/o Pamela Kania, P.E.) within 60 calendar days of completion of each Cause and Effect survey.
- iii. After the Department receives the last Cause and Effect Survey report within thirty-eight (38) months from the date PAWC completes the rehabilitation project at the Dam, if necessary to address the impacts of the events described in the Findings or other impacts from PAWC's rehabilitation work on the Dam, the Department may extend the period of study pursuant to Section 8, below; PAWC reserves the right to challenge any action which the Department may take to extend the period of study.

4. ***Submission of Documents.*** With regard to any document that PAWC is/are required to submit pursuant to Paragraph 3, above, of this Consent Order and Agreement, the Department will review the document and will approve or disapprove the document, or any portion thereof, in writing. If the document, or any portion thereof, is disapproved by the Department, PAWC shall submit a revised document to the Department that addresses the Department's concerns within a reasonable time, as specified by the Department. Upon approval by the Department, the document, including any Department-approved implementation schedules, shall become a part of this Consent Order and Agreement for all purposes and shall be enforceable as such.

5. ***Civil Penalty Settlement.***

a. PAWC consents to the assessment of a civil penalty of twenty-three thousand dollars (\$23,000.00). This payment is in settlement of the Department's claim for civil

penalties for the violations set forth in Paragraphs J; P-GG; II-OO; QQ-VV; ZZ; BBB; EEE-FFF; and III-NNN, above, covering the period from February 8, 2024 to March 11, 2024.

b. PAWC consents to the assessment of a civil penalty of one hundred forty-seven thousand and eight hundred thirteen dollars (\$147,813.00). This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs J; P-GG; II-OO; QQ-VV; ZZ; BBB; EEE-FFF; and III-NNN, above, covering the period from February 8, 2024 to March 11, 2024.

c. The payment of the total one-hundred seventy thousand, eight-hundred thirteen dollars (\$170,813.00) shall be made by completing the Project as set forth in Paragraph 6, below.

6. ***Community Environmental Project.*** PAWC shall perform the Project as follows:

a. **Within one-hundred twenty (120) days of the date of this Consent Order and Agreement,** PAWC shall submit applications for required permits for the CEP to the Department.

b. **Within forty-five (45) days of the date of the Department's issuance of all required permits for the CEP,** PAWC will commence construction (subject to the restrictions on work in the stream specified by the Pennsylvania Fish and Boat Commission).

c. PAWC will perform construction in low flow and outside of trout restricted times of year as required by the Pennsylvania Fish and Boat Commission.

d. PAWC shall submit to the Department progress reports monthly, detailing the design, permit application development, and/or construction related to the CEP.

e. **Tax Deductibility.** PAWC shall not deduct any costs incurred in connection with or in any way associated with the Project for any tax purpose or otherwise obtain

favorable tax treatment for those costs. If requested to do so by the Department, PAWC shall submit an affidavit of the corporate officer responsible for the financial affairs of PAWC, certifying that PAWC has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Project.

f. **Publicity About the Project.** PAWC agrees that whenever it publicizes, in any way, the Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

g. **Completion of Project.** Within one year of issuance of all required permits, PAWC shall submit to the Department an affidavit of PAWC's corporate official responsible for overseeing the Project that the Project is complete and a statement setting forth all costs incurred in completing the Project. The cost of the Project exceeding \$170,813.00 shall not relieve PAWC from completing the project in accordance with this Consent Order and Agreement.

7. ***Cost Recovery.***

a. PAWC shall pay five thousand four hundred and six dollars (\$5,406.00) to reimburse the Department's costs incurred regarding the matters addressed by this Consent Order and Agreement for the Chapter 105 inspections from February 8, 2024 up to and including April 19, 2024. The reimbursement shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania "PA Dams and Encroachment Funds" and sent to the Department of Environmental Protection, 2 Public Square, Wilkes- Barre, PA 18701-1915, Attn: Pamela Kania, P.E., Waterways and Wetlands Program, Program Manager.

b. PAWC shall pay ten thousand seven hundred eighty-nine dollars (\$10,789.00) to reimburse the Department's costs incurred regarding the matters addressed by this Consent Order and Agreement for the sampling of sediment released to the Roaring Brook from

the Dam. The reimbursement shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania and sent to Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attn: Eric Supey, Environmental Cleanup & Brownfields Program Manager.

c. PAWC shall pay one thousand eight hundred eighty-six dollars (\$1,886.00) to reimburse the Department's costs incurred regarding the matters addressed by this Consent Order and Agreement for composing this Consent Order and Agreement. The reimbursement shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania "Clean Air Fund" and sent to Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attn: Mark Wejkszner, P.E., Air Quality Program Manager.

d. PAWC shall pay six thousand nine hundred ninety-one dollars (\$6,991.00) to reimburse the Department's costs incurred regarding the matters addressed by this Consent Order and Agreement for the Roaring Brook Cause/Effect Stream Survey. The reimbursement shall be made by corporate check or the like made payable to the Commonwealth of Pennsylvania "Clean Streams Fund" and sent to the Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attn: Amy Bellanca, P.E., Clean Water Program, Program Manager.

8. ***Stipulated Civil Penalties.***

a. In the event PAWC fails to comply in a timely manner with any term or provisions of this Consent Order and Agreement, PAWC shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$250.00 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month and shall be submitted in accordance with Paragraph 10 (Correspondence with the Department), below.

c. Any payment under this paragraph shall neither waive the PAWC's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel PAWC's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only PAWC's liability for civil penalties arising from the violations of this Consent Order and Agreement for which the payment is made.

d. Except for violations of Paragraph 3.a.ii., stipulated civil penalties shall be due automatically and without notice.

9. ***Additional Remedies.***

a. In the event PAWC fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action for civil penalties or action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 6 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

10. ***Reservation of Rights.*** The Department reserves the right to require additional measures to achieve compliance with applicable law. PAWC reserves the right to challenge any action which the Department may take to require those measures.

11. ***Liability of Operator.*** PAWC shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. PAWC also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

12. ***Transfer of Site.***

a. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Dam or any part thereof.

b. If PAWC intends to transfer any legal or equitable interest in the Dam which is affected by this Consent Order and Agreement, PAWC shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Regional Office of the Department of such intent.

13. ***Correspondence with Department.*** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Pamela Kania, P.E.
Program Manager, Waterways and Wetlands Program
Pennsylvania Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes Barre, PA 18701

Email: pkania@pa.gov

14. ***Correspondence with PAWC.*** All correspondence with PAWC concerning this Consent Order and Agreement shall be addressed to:

Kurt Staller, P.E.
Manager Engineering - Dams

Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg PA 17055

Email: kurt.staller@amwater.com

PAWC shall notify the Department whenever there is a change in the contact person's name, title, or address. PAWC agrees that service of any notice, document, or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made electronically by email to the above email address or by mailing a copy by first class mail to the above address.

15. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

16. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

17. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

18. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

19. ***Titles.*** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph but shall not be treated as controlling.

20. ***Decisions Under Consent Order.*** PAWC waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. The Department agrees that any objection that PAWC may have to any such decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

21. ***Termination.*** The obligations of Paragraph 3 (Corrective Action) shall terminate when the Department determines that PAWC has complied with the requirements of Paragraph 3, above.

22. ***Execution of Agreement.*** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The PAWC certifies [or undersigned representatives of PAWC certify] under penalty of law, as provided by 18 Pa. C.S. § 4904, [that they are authorized to execute this Consent Order and Agreement on behalf of PAWC;] that PAWC consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PAWC hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by PAWC's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR PENNSYLVANIA AMERICAN
WATER COMPANY:



Kurt Staller, P.E.
Manager Engineering - Dams

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Pamela Kania, P.E.
Program Manager
Waterways and Wetlands Program



Name Andrew L. Swope
Attorney for PAWC



Ann Conserette
Assistant Counsel

EXHIBIT A
(Community Environmental Project)



Community Environmental Project
In-Stream Habitat Enhancement
Roaring Brook

1. Identification of person or regulated entity subject to enforcement action (including contact information)

Pennsylvania American Water Company
Contact: Kurt Staller, P.E.
Manager Engineering - Dams
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg PA 17055
Email: kurt.staller@amwater.com

2. Description of violation(s)

Release of accumulated sediment through the valves of Dunmore No. 7 Dam during the course of rehabilitation work on the Dam.

3. Project description

a. Overall project proposal

Provide in-stream habitat enhancement features along a 1,000-foot section of Roaring Brook downstream of Dunmore No. 7 Dam and along the East Scranton Ballfield Park / Darcy Park Area adjacent to land owned by Scranton Redevelopment Authority. The proposed improvements / enhancements would include:

1. Fish habitat – J-hooks, random boulder placement and other fish enhancement structures approved by the Department within the subject stream area.
2. Right bank stabilization –perform bank stabilization along right bank of stream (see photos below).
3. Educational features – provide landscape features of native plantings that include signage and explain benefits to educate the public on beneficial planning; also include signage and explanation of the benefits of the flood control project. PAWC would look

to partner with a local environmental conservation organization with respect to the post-construction upkeep of the signage and landscape features.

4. Handicap access – Provide a fishing deck with handicap access along the bank at one or more deeper holes, along with handicap accessible parking for access to the fishing deck.

This section of Roaring Brook provides public access and is within the section that is typically stocked with trout.

b. Location (county, municipality, watershed, etc.)

Approximately 2 miles downstream of Dunmore No. 7 Dam along Roaring Brook, adjacent to the East Scranton Ballfield Park / Darcy Park area. This area of stream is typically stocked with trout. See the following illustration showing the approximate area of work.



Project Location Photos



Bank Stabilization Photos

c. Implementation and monitoring plan

- Applications for required permits to be submitted within 120 days of execution of Consent Order and Agreement.
- Construction to commence within 45 days of receipt of all required permits.
- Construction to occur in low flow and outside of trout restricted times of year as required by the PA FBC.
- Construction to be completed within 1 year of issuance of all required permits.

d. Costs and resource allocation

Cost is expected to exceed \$300,000. These costs include:

- Design/permitting – approximately \$50,000
- Bank stabilization – approximately \$150,000
- Habitat improvements – approximately \$75,000
- Educational features - approximately \$25,000
- Handicap access - approximately \$50,000

Cost documentation to be provided to the Department upon project completion.

Precise extent (length) of stabilization work and number of habitat improvement features to depend on actual costs.

e. Proposed benefit(s) to public health and safety or the environment

This open section of stream corridor along Roaring Brook has adequate opportunity for public access and is stocked with trout over most of its length. The proposed features would provide habitat improvements for fish cover and recruitment, which are intended to enhance the fishery opportunity for the area. The stream bank stabilization also will provide habitat improvements for fish cover and recruitment and reduce erosion and sedimentation in Roaring Brook. The education and handicap access improvements will benefit members of the public and increase awareness regarding beneficial planning and flood control.

4. Partners and outreach activities – Completing the project will require partners at various levels of involvement. Project partners to provide access and permitting on the project include:

- PADEP, PA Fish and Boat Commission, City of Scranton, Scranton Redevelopment Authority, Lackawanna County Conservation District, and adjacent private property owners.

Project Partners have also been identified to aid in project design and implementation. Specifically, Trout Unlimited and Lackawanna River Conservation Association have both agreed to assist in project planning aspects related to fish habitat structure placement, native plant selection and educational signage, handicap accessible fishing deck location and design. We also have discussed a possible expanded role with Trout Unlimited and Lackawanna River Conservation Association where they would implement a portion of the project with financial and engineering/design support from PAWC. However, these discussions have not advanced past a preliminary stage and further input is needed from the partners and PADEP regarding the details and viability.

Should you have questions, need additional information, or wish to discuss in greater detail, please contact us at your convenience.