

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Alvin S. and Naomi S. King (permittees)	:	Violations of the PA Dam Safety
Leon J. and Barbara Ann King (owners)	:	and Encroachments Act,
202 Shreiner Road	:	The PA Clean Streams Law, and
Leola, PA 17540	:	Chapter 102 and 105 of
	:	Title 25 of the Pennsylvania Code

**ORDER**

NOW this 23rd day of September, 2021, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department” or “DEP”) has found and determined the following facts and findings:

- 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 *et seq.* (“Clean Streams Law”); the Dam Safety and Encroachments Act, the Act of November 26, 1978 P.L. 1375, as amended, 32 P.S. § 693.1 *et seq.* (“Dam Safety and Encroachments Act”); 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 promulgated thereunder (“rules and regulations”).
- B. Alvin S. and Naomi S. King are husband and wife and are the permittees of Pennsylvania Water Obstruction and Encroachment Permit No. E36-490 (“Permit”), issued on August 7, 1992, by DEP (the Department of Environmental Resources at the time) for a multiple-pipe stream crossing in Cocalico Creek. Permit E36-490 is attached as Exhibit #1.
- C. Leon J. and Barbara Ann King are husband and wife and are the owners of the Site identified in Paragraph E, below. To date, Alvin S. and Naomi S. King have not transferred the Permit to Leon J. and Barbara Ann King.
- D. Alvin S., Naomi S., Leon J., and Barbara Ann King all maintain a mailing address of 202 Shreiner Road, Leola, PA 17540 (collectively referred to herein as the “Kings”). The Site referenced in Paragraph E., below, is also located at 202 Shreiner Road, Leola, PA.
- E. The multiple-pipe stream crossing in Cocalico Creek spans the boundary of two parcels owned by Leon J. and Barbara Ann King: (1) the approximately 11-acre property located at 222 Rear, in West Earl Township, Lancaster County, Pennsylvania, referenced in Lancaster County Parcel Search as Property ID number 2108786100000; and, (2) the adjoining approximately 15.4-acre property located at 3854 Oregon Pike, in Warwick Township, Lancaster County, Pennsylvania, referenced in the Lancaster County Parcel Search as Property ID number 6004685200000 (collectively, the “Site”).

- F. Cocalico Creek is a water of the Commonwealth. The segment of Cocalico Creek at the Site has designated uses listed in 25 Pa. Code § 93.9o. as Warm Water Fishes and Migratory Fishes (“WWF, MF”).
- G. Regulated waters of this Commonwealth are defined in 25 Pa. Code § 105.1 as “Watercourses, streams or bodies of water and their floodways wholly or partly within or forming part of the boundary of this Commonwealth”.
- H. The Department performed recent inspections of activities at the Site. The Department documented the following conditions during those inspections at the Site:
1. On June 8, 2021, the Department and the Pennsylvania Fish and Boat Commission conducted an inspection at the Site in response to information the Department received about a recent boating safety incident at the Site. During this inspection, the Department observed fallen trees, other floating and submerged woody debris, and trash collected along the upstream side of the multi-pipe crossing of Cocalico Creek, in violation of Condition 18.D. of the Permit.
  2. During the June 8, 2021 inspection, the Department also observed that fill had been placed within the floodway of Cocalico Creek, regulated waters of this Commonwealth, near the multiple-pipe crossing.
  3. On June 10, 2021, the Department served a Compliance Order upon the Kings, requiring the maintenance removal of the debris in Cocalico Creek by June 28, 2021, and the posting of a navigational warning sign by June 14, 2021. The Department conducted an inspection of the Site with Leon J. King in order to discuss navigational warning sign details and installation. The June 10, 2021 Compliance Order is attached as Exhibit #2.
  4. On June 11, 2021, the Department served Amended Compliance Order upon the Kings, which revised the warning sign details and deadlines, requiring a temporary sign by June 14, 2021 and two permanent signs by June 18, 2021. The Department conducted an inspection of the Site with Leon J. King in order to discuss revised navigational warning sign details and installation. The June 11, 2021 Amended Compliance Order is attached as Exhibit #3.
  5. On June 22, 2021, the Department conducted an inspection of the Site and verified that the two navigational warning signs were posted. The Department also observed that the accumulated debris at the multiple-pipe stream crossing had not yet been removed and that the fill in the floodway had not been removed.
  6. On June 29, 2021, the Department conducted an inspection of the Site and observed that the vast majority of the accumulated debris at the multiple-pipe stream crossing had been removed. However, some smaller woody debris had collected on the upstream end of two pipes, on deformed portions of the metal pipe material, and fill in the floodway had not been removed.
  7. During the June 29, 2021 Department inspection of the Site, the Department also observed the following: due to the reduced water surface elevations in Cocalico

Creek and removal of some of the debris blocking the multiple-pipe stream crossing, more of the crossing was above water surface and was able to be inspected; the two culvert pipes on the south side (two right-most pipes) of the multiple-pipe stream crossing were damaged and deformed, one of which had significant damage; the observed damage and deformation had reduced the waterway opening of the pipes; and, the damage did not appear to be new.

8. On July 6, 2021, the Department conducted an inspection of the Site and observed that the former woody debris that had collected on the upstream end of the two right-most pipes of the multiple-pipe stream crossing was gone, but additional woody debris had collected deeper inside of the pipes, which the Kings had not removed. The Department also observed that the Kings had removed a portion but not all of the fill from the floodway.
9. On August 20, 2021, the Department conducted an inspection of the Site after recent rain events (1.18" on 7/9/21, 1.29" on 7/13/21, 1.05" on 8/1/21, and 3.27" on 8/18/21, per Lancaster Airport gauge data from Penn State Climatologist) and observed that a substantial amount of woody debris, including submerged logs, had again accumulated across the entire upstream side of the multiple-pipe stream crossing. The debris was severely obstructing water flow, with the upstream water level being approximately 2.5 feet above the downstream water level. In addition, a portion of the downstream left bank area (north side of crossing) of the concrete deck surface had failed and fallen off. The Department also observed that the Kings had not removed any of the remaining portion of the fill from the floodway.
10. On September 9, 2021, the Department conducted an inspection of the Site to observe the condition of the multiple-pipe stream crossing following the storm events experienced on September 1 (5.99") and September 8-9 (1.39"). The Department observed that the waters of Cocalico Creek completely covered the multiple-pipe stream crossing which was acting as a low-head dam, with the upstream water level being an estimated 2.0 feet higher than the downstream water level. The Department also observed that the majority of the fill in the floodway had been washed away by the September 1st storm event floodwaters, with the exception of the larger rock material which still remained.
  - I. The Department determined that fill was placed in the floodway of Cocalico Creek, as identified in Paragraph H.2., above. The Kings did not obtain a Water Obstruction and Encroachment Permit, required by 25 Pa. Code § 105.11, prior to placing fill in the floodway of Cocalico Creek.
  - J. The failure to obtain a Water Obstruction and Encroachment Permit for placing fill in a floodway, a regulated water of this Commonwealth, is a violation under 25 Pa. Code § 105.11 and Section 6 of the Dam Safety and Encroachments Act, 32 P.S. § 693.6; and is unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18, and Section 611 of the Clean Streams Law, 35 P.S. § 691.611.
  - K. The Department determined that the King's multiple-pipe stream crossing has not been maintained in good condition, nor has it been maintained free of flood debris and deposits, as required by Condition 13 and Special Condition 18.D of the Permit.

- L. The Kings' failures to monitor, operate and maintain the multi-pipe crossing in a safe condition in accordance with the regulations, terms and conditions of the Permit, and the allowance of debris to accumulate in and at the multiple-pipe stream crossing creates a significant threat to public safety and is a violation of 25 Pa. Code §§ 105.51, 105.53(4), 105.171, and Section 13 of the Dam Safety and Encroachments Act, 32 P.S. § 693.13; and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. §693.18,
- M. On June 9, 2021, the Department confirmed the details of the recent boating safety incident at the multiple-pipe stream crossing at the Site. The Department also performed an administrative file review of the permit file and determined that this was not the first recorded boating safety incident at this Site. In 1994, a boater drowned and second boater nearly drowned after getting stuck in the multiple-pipe stream crossing. *See* attached Exhibit #4.
- N. The Department has additional documentation in the Permit file that there were other complaints from 1997 about the Kings' failures to maintain the crossing in accordance with their permit and placement of fill in the floodway without a permit, including a DEP Notice of Violation. *See* attached Exhibits #5-#7.
- O. The failure to maintain an encroachment or water obstruction in accordance with permit terms and conditions is a violation of 25 Pa. Code, §§ 105.51, 105.53(4), 105.171, and Section 13 of the Dam Safety and Encroachments Act, 32 P.S. § 693.13; and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18.
- P. As identified in Paragraphs H.5-H.9., above, the Kings failed to comply with June 10, 2021 Compliance Order and the June 11, 2021 Amended Compliance Order.
- Q. The Kings did not appeal either the June 10, 2021 Compliance Order or the June 11, 2021 Amended Compliance Order.
- R. The failure to comply with an Order of the Department is a violation of 25 Pa. Code, § 105.62 and Section 13 of the Dam Safety and Encroachments Act, 32 P.S. § 693.13; and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18.
- S. Based on the violations and observations described in Paragraphs H.1, H.5-H.10, I, J., K., L., O., P., and R., above, and the information described in Paragraphs M., and N., above, the Department has determined that the multiple-pipe stream crossing at the Site does not render navigation in Cocalico Creek reasonably free, easy, and unobstructed. The Kings' failure to maintain the crossing, the allowance of debris to accumulate in this crossing, and the unreasonable obstruction that the multiple-pipe crossing creates constitutes a significant threat to public safety.
- T. Based upon the above facts and findings, and pursuant to Conditions 4 and 8 of the Permit, the Department has determined that revocation of the Permit is in the best interest of the Commonwealth of Pennsylvania and that the multiple-pipe crossing causes an

unreasonable obstruction to navigation in Cocalico Creek, necessitating the removal of the multiple-pipe crossing to protect public safety and to render the navigation of Cocalico Creek reasonably free, easy, and unobstructed.

NOW, THEREFORE, pursuant to Sections 5, 401, 402, and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.402, and 691.610; Sections 14, 20 of the Dam Safety and Encroachments Act, 32 P.S. §§ 693.14 and 693.20; Section 1917-A of the Administrative Code, 71 P.S. § 510-17; the rules and regulations adopted thereunder; and the Conditions of the Permit; the Department hereby ORDERS as follows:

1. Pursuant to Condition 4 of the Permit, 25 Pa. Code, § 105.26, and Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; the Department hereby revokes the Kings' Permit No. E36-490.

2. Within sixty (60) days of receipt of this Order, unless a later date is approved by the Department in writing, the Kings shall completely remove the multiple-pipe stream crossing from Cocalico Creek, including all metal pipes, earth and rock fill, concrete rubble, and concrete road surface. All removed materials shall be placed in a suitable, upland location (outside of all regulated waters of the Commonwealth, including but not limited to watercourses, wetlands, bodies of water, streams, and the FEMA-delineated 100-year frequency floodway) at the Site.

3. The removal of the multiple-pipe stream crossing shall be performed only from the existing bridge surface and from above the top of bank of Cocalico Creek. Machinery shall not enter or cross the Cocalico Creek bed or banks at any time, unless the Kings receive advance written approval from the Department to enter the stream.

4. The Kings shall stabilize the stream banks and approaches to the former multiple-pipe stream crossing with a perennial grass seed, free of weeds, and invasive species and a straw mulch erosion control blanket, or alternate permanent stabilization method approved by the Department in writing.

5. The Kings shall notify the Department by phone or mail within five (5) days of completion of the removal required by Paragraphs 1-3, above. Phone notification can be made to Mr. Todd Gipe of DEP at 717.537.8467. Mail shall be sent to PADEP, 909 Elmerton Ave., Harrisburg, PA 17110-8200 c/o Mr. Todd Gipe.

6. After the removal of the multiple-pipe stream crossing is completed and has been verified by Department inspection, the Kings shall immediately remove the two upstream navigational WARNING signs.

Any person aggrieved by this action may appeal the action to the Environmental Hearing Board (“Board”) pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A. The Board’s address is:

Environmental Hearing Board  
Rachel Carson State Office Building, Second Floor  
400 Market Street  
P.O. Box 8457  
Harrisburg, PA 17105-8457

TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984.

Appeals must be filed with the Board within 30 days of receipt of notice of this action unless the appropriate statute provides a different time. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

A Notice of Appeal form and the Board's rules of practice and procedure may be obtained online at <http://ehb.courtapps.com> or by contacting the Secretary to the Board at 717-787-3483. The Notice of Appeal form and the Board's rules are also available in braille and on audiotape from the Secretary to the Board.

**IMPORTANT LEGAL RIGHTS ARE AT STAKE. YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD AT 717-787-3483 FOR MORE INFORMATION. YOU DO NOT NEED A LAWYER TO FILE A NOTICE OF APPEAL WITH THE BOARD.**

**IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST BE FILED WITH AND RECEIVED BY THE BOARD WITHIN 30 DAYS OF RECEIPT OF NOTICE OF THIS ACTION.**

FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Scott R. Williamson  
Program Manager  
Waterways and Wetlands Program