

Item I.2

March 2021 DEP Conservation District Field Rep Talking Points

2021 Virtual Conservation District and PA Agency Ag Meeting - The 2021 Virtual Conservation District and PA Agency Ag Meeting will be held via Zoom March 16-17, 2021. Staff from PA state agencies, USDA-NRCS, and conservation district agricultural technicians, watershed specialists, and management are invited to attend. Registration is free and required.

Formerly known as the All Bay Meeting, this annual meeting has been expanded to include sessions that are relevant to conservation districts across the state, as well as more focused sessions for conservation districts within the Chesapeake Bay watershed.

The draft agenda includes topics such as agency updates, getting the most out of PracticeKeeper, a review of the Integrated Water Quality Report and mapping tools, local rapid stream delisting strategies, and other timely and relevant sessions. For more information and to register go to:

<https://pacleanwateracademy.remote-learner.net/course/view.php?id=487>

Agricultural Energy Use Workshops - As a first step in improving outreach to the ag community, DEP has partnered with Penn State Extension to provide Farm Energy Day workshops focusing on energy efficiency, solar energy, heating options, lighting, and biogas. These workshops have been scheduled as a virtual, 8-part webinar series that will be held Thursdays at noon beginning March 18, 2021. Please check Extension's website for additional details and the registration link here:

<https://extension.psu.edu/catalogsearch/result/?q=%22farm+energy+day>

DEP and Penn State Extension have also partnered to provide Pennsylvania farmers with a utility bill analysis upon request. Extension staff can help analyze your utility bills to help you understand your electricity use, bill charges, and potential ways to save energy. If interested in this free service, please contact Ed Johnstonbaugh with Extension at exj11@psu.edu.

2021 Conservation District Director Nominations –Thank you to the nearly 80% of counties have submitted their director appointments to the Commission for approval. The Commission has not yet received director appointments from the following counties: Allegheny, Bucks, Lackawanna, Lehigh, Potter, Westmoreland, and Wyoming. If your county is on this list, please contact your County Chief Clerks and remind them to submit director appointments to the SCC after the Commissioners appoint them. Conservation District Field Representatives and Barb Buckingham (bbuckingha@pa.gov) at the State Conservation Commission are available to answer questions concerning the director nomination process.

Leadership Development 2021 Board Leadership Webinar Series- February 16 & 17 the Leadership Development Program held webinars for district directors and managers on conflicts of interest and the PA Ethics Act. Thomas Tupitza of Knox McLaughlin Gornall & Sennett, P.C presented “Ethics & Conflicts of Interest for Conservation District Boards while Brian Jacisin, Deputy Executive Director of the PA Ethics Commission presented “Conservation Districts and the PA Ethics Act.” Both presentations covered information relating to how the PA Ethic’s Act relates to Conservation district directors and staff and how to avoid conflicts of interest or the perception of a conflict. We encourage all directors to go to the Leadership Development website, www.paleadership.org to watch theses presentations if you were not able to watch them live. To access Thomas Tupitza presentation directly click here:

https://youtu.be/zf_jZui8KVA and to access Brian Jacisin’s presentation directly click here:

<https://youtu.be/X3aBLWdE3B4> .

Statement of Financial Interests - All Conservation District Directors are considered Public Officials and most District Employees are considered Public Employees. Any Conservation district employee that meets one or more of the criteria in the definition below **MUST** fill out a Statement of Financial Interest. Completing a statement is not optional. It is required by law. Statements are to be completed and filed with the Conservation District no later than May 1st. The general rule with this form is “when in doubt, fill it out”.

“Public Official” includes any person (*such as a conservation district director*) appointed by a governmental body (such as the board of county commissioners or the county council)

“Public Employee” includes any individual employed by the Commonwealth or a political subdivision (*like a conservation district*) who is responsible for taking or recommending official action of a non-ministerial nature with regard to: Contracting or procurement; Administering or monitoring grants or subsidies; Planning or zoning; Inspecting, licensing, regulating, or auditing any person; or Any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

Please refer to the Director Handbook (pp. 4-6) or the Red Ethics Pamphlet (p. 12-15 & 31-36) for additional information. If you require additional forms go to www.ethics.state.pa.us and click on "forms" on the left side of the page.

Retaining Virtual Participation Options for District Board Meetings – As district boards begin to hold in person meetings again, the State Conservation Commission recommends district continue to offer a way for board members, cooperating agencies and the public to participate in meetings either through conference call or video conference. Cooperating agency staff may not be allowed to attend in person meetings during this time and board members and the public may not feel comfortable attending. Providing a virtual option will allow greater participation in district board meetings.

Tips for holding virtual meetings:

- Meetings must comply with ALL Sunshine Act requirements
- Take a roll call to ensure minutes can accurately record directors present and that there is a quorum
- Provide an opportunity for public comment. Participants from the public who make comment should identify themselves
- Participants should announce themselves when speaking especially when making motions to ensure accurate recording of minutes
- Virtual meetings may be recorded. If it is recorded, you must announce that the meeting is being recorded
- Recordings of virtual meetings are public records under RTK if retained after the minutes are approved at the next board meeting.

National Conservation Planning Partnership (NCCP) Producer Survey - NCCP is seeking your input as they continue to move toward their goal to reinvigorate conservation planning. They are conducting a national survey of producers to obtain feedback on specific ways to improve the format, usefulness and value of a conservation plan and help you carry out your goals for your land, whether on one acre or thousands of acres. The results will be used along with previous feedback to provide you with an improved conservation planning product that is more personalized and responsive to your needs. For more information and to participate in the survey go to: [Producer Survey Letter \(PDF\)](#)

102 ePermitting – The Chapter 102 ePermit system went Live January 25, 2021. Internal Reference Materials (e.g. SOP for PAG-02 NOI Review via ePermit, User Guides) are updated and are available on the [Clean Water Academy](#) under ‘ePermit Resources’. This includes a Q&A document from the internal 102 ePermit trainings. There is also a new ‘PAG-02 Fact Sheet for ePermit’ in [Clean Water Academy](#) under ‘Chapter 102 Internal Forms’ and within the ‘Fact Sheet’ folder. The ePermit test site (i.e., Sandbox) is available, as of January 29, 2021. CCD users should now all have test accounts for the sandbox and are able to go into the test system and submit and review NOIs. A Sandbox User guide is available on CWA. Please note that when the new Greenport release occurs, which is anticipated for March, CCD users will need to make a new accounts for the ePermit test site. The external reference materials (e.g. ePermit User Guide) are on the [Clean Water- Chapter 102 ePermit website](#). During the external training there were many questions on Electronic Filing Administrator (EFA) (i.e. applicant/client) registration process and access/permissions for Operators (e.g. Consultants). Resources are available on the website to provide guidance on this, including instructional videos on the registration process, a Getting Started Summary for EFAs/consultants, an EFA (e.g. Applicant) User Guide, and an Operator (e.g., Consultants) user guide. Please note a Q&A document from the external 102 ePermit training will follow soon. BCW plans to create additional trainings on the ePermit system and we will keep you posted as these are available. Contact Tiffany Landis with questions tilandis@pa.gov

REMINDER: CAFO Winter Manure Application Form

CAFOs that will apply manure in the winter must submit the “Winter Period Application of Manure Notification” form ([3830-FM-BCW0532](#)). This form must be submitted within seven days prior to the anticipated manure application to the Bureau of Clean Water in DEP’s Central Office.

Chesapeake Bay Update

Tier 1-2 Counties

DEP has awarded \$800,000 in state grant funds to continue supporting the eight Tier 1 and 2 county coordinators in the implementation of their CAPs to improve local water quality. The grants are funded through the Environmental Stewardship Fund to support and coordinate local CAP implementation to reduce nutrient pollution.

CAP Implementation Workshop

Following January’s successful CAP Implementation Workshop with the eight Tier 1 and 2 CAP county partners -- Adams, Bedford, Centre, Cumberland, Franklin, Lancaster, Lebanon and York County – DEP’s Chesapeake Bay Office is meeting individually with county coordinators and lead team members on a regular basis to continue expanding partnership efforts and support CAP implementation for 2021 “The Year of Action.”

Tier 3-4 Counties

DEP has awarded approximately \$1 million in state grant funds to support the 26 Tier 3 and 4 counties in the development of their countywide action plans to improve local water quality. The grants are funded through the Environmental Stewardship Fund to support local development of planning teams and coordination of CAPs. Several counties have begun stakeholder meetings to develop partnerships to develop their countywide action plans.

“This is an exciting first in Pennsylvania’s longtime work to improve the health of the watershed,” said DEP Secretary Patrick McDonnell. “Having all counties on board demonstrates a new level of community commitment to improving local waters and protecting the benefits they bring to our lives. It also reflects the effectiveness of new partnerships by state agencies and the agriculture, forestry, wastewater, and business sectors to support this local work. DEP will do everything we can to sustain this action for healthy waters.”

Pennsylvania's Phase 3 Watershed Implementation Plan – monthly e-newsletter

The Department of Environmental Protection Chesapeake Bay Office (CBO) produces a monthly newsletter to showcase progress and updates on the statewide Phase 3 Watershed Implementation Plan and our local partners' Countywide Action Plans. Our newsletter will highlight activities from the CBO and our partnering counties, agencies, and action team leaders; reporting and data tools; funding and grant opportunities; and major announcements.

<https://www.dep.pa.gov/Business/Water/Pennsylvania%E2%80%99s%20Chesapeake%20Bay%20Program%20Office/WIP3/Pages/Newsletter.aspx>

The Ag Plan Reimbursement Program (APRP) is in its fourth year of a four-year contract. There have been more than 395 plans registered and more than 46,765 acres registered for this round. There is approximately \$637,000 remaining this year to cost-share privately developed Ag E&S, Conservation, Nutrient Management, and Manure Management Plans. This is the FINAL round of APRP. Funding is limited and will be allocated on a first-come, first-serve basis. Please keep this in mind and try to submit complete packages as soon as possible. There will be no rollover into another round after this. **The REGISTRATION DEADLINE IS APRIL 1, 2021. All plans must be registered by this date. If plans are not registered by April 1, 2021, they will NOT be eligible for reimbursement.** More information can be found here:

<https://www.dep.pa.gov/Business/Water/Pennsylvania%E2%80%99s%20Chesapeake%20Bay%20Program%20Office/agriculture/Pages/Funding-Programs.aspx>

Dates to Remember:

SCC Meetings – 1:00 PM

Virtual Meeting	March 9
Virtual Meeting	May 11

SCC Conference Calls – 8:30 – 10:00 AM

Conference Call	April 13
Conference Call	June 8

2021 Virtual Conservation District and PA Agency Ag Meeting

2021 Virtual Conference	March 16 – 17, 2021
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PACD Spring Regional Meetings – All will be Virtual 10:00 am -12:00 pm

North Central Region	March 18
South Central Region	March 24
South East Region	March 25
South West Region	March 30
North West Region	April 8
North East Region	April 16

102/105 E&S Basic Technical Training

Intro to Waters of the Commonwealth	March 30	2:00 – 2:45 PM
Intro to E&S Plan Reviews	March 31	10:00 am – 12:00 pm

Agricultural Technician Training

Boot Camp I – ‘Basic’	April 12 – 16, 2021 (Virtual/Classroom) August 2-4, 2021 (Field)
Boot Camp II – ‘Advanced’	April 26 – 30, 2021

Also, check the Conservation District Training/Special Events Calendar at, www.PACD.org Select the "Events" tab and then the "Training Calendar" tab.

E&S Report

2021 Report for February

2021 Report

		Feb 2021	Total
Total Plan Submissions		26	45
Total Plan Acres		404,4889	731.3969
Total Disturbed Acres		34.31443	140.4634
Fees Collected	NPDES Permit Fees Collected	\$6,500	\$17,000
	Chapter 105 Permit Fees Collected	\$1,150	\$2,700
	DEP Fees Collected	\$10,500	\$21,700
	E&S Plan Review Fees	\$42,150	\$99,290

Total Complaints for February 2021

<u>Date Received</u>	<u>Municipality</u>	<u>Land Unit Acres</u>
2/3/2021	COLERAIN TWP	
2/14/2021	MANOR TWP	0.88
2/18/2021	MANOR TWP	0.16
2/24/2021	WEST DONEGAL TWP	0.99
2/24/2021	RAPHO TWP	8.25

2020 Report

		Feb 2020	Total
Total Plan Submissions		27	61
Total Plan Acres		462.3654	1422.051
Total Disturbed Acres		144.322	259.897
Fees Collected	NPDES Permit Fees Collected	\$8,500	\$12,500
	Chapter 105 Permit Fees Collected	\$3,700	\$5,675
	DEP Fees Collected	\$15,000	\$25,200
	E&S Plan Review Fees	\$50,900	\$81,985

Total Complaints for February 2020

<u>Date Received</u>	<u>Municipality</u>	<u>Land Unit Acres</u>
2/3/2020	EAST COCALICO TWP	5.36
2/4/2020	BRECKNOCK TWP	0.79
2/5/2020	ADAMSTOWN BORO	0.19
2/6/2020	EAST COCALICO TWP	1.08
2/11/2020	EAST HEMPFIELD TWP	9.34
2/13/2020	RAPHO TWP	0.24
2/18/2020	WEST COCALICO TWP	2.84
2/20/2020	MANOR TWP	0.82
2/21/2020	PROVIDENCE TWP	49.15
2/21/2020	PROVIDENCE TWP	49.15
2/27/2020	DRUMORE TWP	2.94

Erosion and Sedimentation Plan Submission

2/1/2021 to 2/28/2021

<u>Project Name</u>	<u>Municipality</u>	<u>Disturbed Acres</u>	<u>Fees Amount</u>
East Lampeter Municipal Improvements	EAST LAMPETER TWP	0.51	\$800.00
2002 Fruitville Pike	MANHEIM TWP	0.252	\$800.00
437 Shirktown Road	CAERNARVON TWP	0.9	\$500.00
Benuel King	PROVIDENCE TWP	4.6	\$2,000.00
Overlook Golf Course Tee Box 12	MANHEIM TWP	0.456	\$800.00
East Hempfield Roadway Improvement	EAST HEMPFIELD TWP	0.53	\$800.00
Weaver Drive Lot 12 B-A	WARWICK TWP	0.475	\$500.00
Jonathon Lehman	CLAY TWP	0.587	\$500.00
Donegal Place and Furnace Road Improvements	MARIETTA BORO	4.2	\$1,800.00
1156 Four Star Drive	RAPHO TWP	9.34	\$2,800.00
2246 Lincoln Highway East	EAST LAMPETER TWP	0.53	\$800.00
Autumn Leaf Estate Lot #8	RAPHO TWP	0.9	\$500.00
314 N. Strickler Road	RAPHO TWP	0.8	\$800.00
Sewer Interceptor Relocate Phase II	WARWICK TWP	0.65	\$800.00
Menno Miller	LEACOCK TWP	0.54	\$500.00
Ivan Fisher SWM	STRASBURG TWP	0.966	\$650.00
North Cedar Street Gas Main Relocate GP05	LITITZ BORO	0	\$500.00
Brian McCarly	EPHRATA BORO	0.48	\$800.00
Fred Herr GP06	WEST LAMPETER TWP	0.015427	\$100.00
1585 Commerce Drive	MANHEIM TWP	0.83	\$800.00
Houston Run Properties	SALISBURY TWP	101	\$2,200.00
John Beiler SWM	FULTON TWP	0.934	\$500.00
E. Mohler Church Road 9 Lot Subdivision	EPHRATA TWP	3.643	\$1,850.00
Brunners Grove Road Lot 5	EAST COCALICO TWP	0.55	\$500.00
Christian Stoltzfus	RAPHO TWP	0.137	\$500.00
1069 Red Run Road	BRECKNOCK TWP	0.57	\$800.00
33 South Eastland Drive	EAST LAMPETER TWP	0.92	\$950.00
Bridle Path Section 3	EAST DONEGAL TWP	27.99	\$400.00
Etter/Kauffman Subdivision	EAST DONEGAL TWP	0.99	\$500.00
Grandview	MANHEIM TWP	23	\$100.00
Walnut Street Extension	EAST LAMPETER TWP	70.65	\$15,200.00
3101 Yellow Goose Road	EAST HEMPFIELD TWP	2.73	\$1,600.00



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

GARY SCHATZ GARAGE LLC	:	
	:	
v.	:	EHB Docket No. 2020-021-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION, LANCASTER COUNTY	:	Issued: March 2, 2021
CONSERVATION DISTRICT and	:	
BOROUGH OF MOUNT JOY, Permittee	:	

**OPINION AND ORDER ON
MOTION FOR SUMMARY JUDGMENT**

By Bernard A. Labuskes, Jr., Judge

Synopsis

The Board denies a motion for summary judgment where the movant has failed to show based upon undisputed facts as a matter of law that there is any actual or possible defect in a permittee’s post construction stormwater management plan for a project that is limited to the enlargement of a preexisting stormwater basin.

OPINION

Introduction

The Appellant, Gary Schatz Garage LLC (“Schatz Garage”) operates an automobile repair garage at 1090 West Main Street in Mount Joy, Pennsylvania. There is a stormwater detention basin on the property owned by the Borough of Mount Joy next to and upslope from the garage. The Borough would like to enlarge and improve the basin to help mitigate downslope flooding. Schatz Garage has suffered from that flooding in the past. The Borough has obtained funding for this flood mitigation project from the Commonwealth Financing Agency. The project site for the



Borough's detention basin modification project will consist of 3.9 acres with a total disturbed area of 1.85 acres. The project will increase the basin's capacity by at least 147,000 cubic feet while creating no new impervious surfaces. All of the work relates to the basin itself; it does not involve any new upslope development. The Borough plans to restore the basin's vegetative surface back to its preexisting condition, except for the removal of a couple of trees necessitated by the enlargement. There is no dispute that the project will *not* result in any increase in stormwater runoff volume. Nor is there any indication in the record at this juncture that the project will change stormwater flowing into it in any way.

In order to carry out the project the Borough applied for coverage under the NPDES General Permit for Discharges of Stormwater Associated with Construction Activities ("PAG-02"). The Lancaster County Conservation District, as delegatee of the Department of Environmental Protection (the "Department"), reviewed the Borough's Notice of Intent (NOI) to obtain coverage and approved coverage. The Conservation District determined that the basin project constituted "site restoration" of "utility infrastructure." The regulation codified at 25 Pa. Code § 102.8 ordinarily requires a person proposing a new earth disturbance activity at a "project site" that requires permit coverage to prepare a post construction stormwater management (PCSM) plan describing best management practices (BMPs) that will be used to manage changes in stormwater runoff volume, rate, and water quality after earth disturbance activities have ended and the project site is permanently stabilized. 25 Pa. Code § 102.8.¹ However, the PCSM plan requirements set forth in 25 Pa. Code § 102.8 that would otherwise apply are substantially relaxed for "restoration or reclamation" activities. Subsection 102.8(n) in particular reads as follows:

¹ A "project site" is somewhat confusingly defined at 25 Pa. Code § 102.1 as "[t]he entire area of activity, development, lease, or sale including: (i) the area of an earth disturbance activity; (ii) the area planned for an earth disturbance activity; (iii) other areas which are not subject to an earth disturbance activity." 25 Pa. Code § 102.1.



Regulated activities that require site restoration or reclamation, and small earth disturbance activities. The portion of a site reclamation or restoration plan that identifies PCSM BMPs to manage stormwater from oil and gas activities or mining activities permitted in accordance with Chapters 78 and 86-90; timber harvesting activities; pipelines; other similar utility infrastructure; Department permitted activities involving less than 1 acre of disturbance; or abandoned mine land reclamation activities, that require compliance with this chapter, may be used to satisfy the requirements of this section if the PCSM, reclamation or restoration plan meets the requirements of subsections (b), (c), (e), (f), (h), (i) and (l) and, when applicable, subsection (m).

25 Pa. Code § 102.8(n).

Schatz Garage is apparently not satisfied with the project and wants the Borough to do more to further ensure that past flooding of its business will not reoccur. It asked the Department to hold an informal hearing regarding the Conservation District's coverage approval. The Department held the hearing, at which it heard comments from Schatz Garage's consultant. After the hearing, the Department affirmed the Conservation District's decision to approve coverage under PAG-02. The Department endorsed the "restoration" finding. Schatz Garage filed this appeal from the District's and the Department's approvals.

Schatz Garage has now moved for summary judgment.² Its primary argument in support of its motion is that the Conservation District and the Department committed an error of law by treating the Borough's project as "site restoration" of "utility infrastructure." Schatz Garage says that the Borough's enlargement of the existing stormwater basin is not the sort of project that is contemplated by the restoration-activities exemption. It asks us to grant summary judgment in its

² Summary judgment is appropriate when the record, including pleadings, depositions, answers to interrogatories, and other related documents, shows that there is no genuine issue of material fact in dispute and the moving party is, therefore, entitled to judgment as a matter of law. Pa.R.C.P. No. 1035.1-1035.2; *Williams v. DEP*, 2019 EHB 764, 766-67. In evaluating whether summary judgment is proper, the Board views the record in the light most favorable to the non-moving party. *Stedje v. DEP*, 2015 EHB 31, 33. All doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Eighty Four Mining Co. v. DEP*, 2019 EHB 585, 587 (citing *Clean Air Council v. DEP*, 2013 EHB 404, 406). Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Tri-Realty Co. v. DEP*, 2016 EHB 214, 217.



favor, rule that the basin project does not qualify for the “site restoration” exemption, revoke the coverage approval, and remand the matter to the Conservation District with instructions that the Borough must provide acceptable stormwater analysis for rate, volume, and water quality. The Borough and the Department have filed briefs and supporting documents opposing summary judgment but not asking for summary judgment in their favor.

Schatz Garage raises an interesting issue but we are hesitant to address it in the context of its motion for summary judgment because it has failed to explain why it could make any difference in the ultimate resolution of this appeal. We are not anxious to engage in a purely academic exercise. *Clean Air Council v. DEP*, 2018 EHB 245, 257; *Milco Indus. v. DEP*, 2002 EHB 723, 725. The Garage fails to explain how further analysis under Section 102.8 would, or could even possibly, result in any changes in the PCSM for the project, even if we assume *arguendo* that the basin project does not qualify as a restoration activity. In other words, even if the Conservation District and the Department used the wrong analysis, Schatz Garage has provided us with nothing to suggest that they arrived at the wrong result given the lack of any change in stormwater flow resulting from the project.

Unlike a typical project site where a new development of some kind resulting in new impervious surfaces requires stormwater management controls to manage that new development, the Borough’s project is limited to improving a long preexisting stormwater control. There is no other development included in the project the impacts of which must be managed. The basin at issue is not ancillary to or part of a larger development. The “project site” in this case does not appear to go beyond the immediate location of the basin itself.

Thus, for example, while Section 102.8(a)(3) requires a PCSM plan to minimize any **increase** in stormwater volume, it appears to be undisputed that the Borough’s project will not in



and of itself result in **any** increase in stormwater runoff volume. Nor is there any claim or suggestion in the record at this point that there will be **any** increase in the rate, or decrease in the water quality, of stormwater runoff from the project. A PCSM plan must manage “changes in stormwater runoff volume, rate, and water quality,” 25 Pa. Code §§ 102.1, 102.8 (emphasis added), but here the Garage has not alleged that there will be any such changes. Permittees are required to manage changes in the rate, volume, and water quality of stormwater resulting from increased impervious surfaces associated with the earth disturbance activity compared to the conditions of the site prior to the earth disturbance activities, and there are no increases in impervious surfaces or any changes in the rate, volume, or water quality of stormwater from increased impervious surfaces in this case.

In support of its motion, the Garage contends that there is no evidence to show that the PCSM plan is adequate to account for all of the upslope development that has occurred over the years.³ The Garage has failed to point to any regulatory obligation on the part of the Borough to address or account for the preexisting development in the basin’s drainage area that is neither related to nor a part of the basin modification project itself in its PCSM plan. It would seem that the *construction* in the post *construction* plan is the basin work itself, not all of the antediluvian development work that occurred over decades upstream of the basin. The Garage seems to be approaching this project as if it were the construction of a new basin to address ancillary development that will change stormwater flow, but none of that appears to be the case here. Of course, the Borough must account for and manage the construction and rehabilitation work on the

³ Although it is true that a party can sometimes prevail in an appeal based on a lack of proper analysis, it is usually likely to fair much better if it shows us there is in fact a real problem. *Sludge Free UMBT v. DEP*, 2015 EHB 469, 484; *Kiskadden v. DEP*, 2015 EHB 377, 410; *O’Reilly v. DEP*, 2001 EHB 19, 45.



basin itself, but Schatz Garage fails to explain how the Borough's plan as incorporated into its coverage approval falls short in that narrow respect.

To the extent Schatz Garage is trying to translate the Borough's obligation to develop a PCSM plan that manages changes in stormwater rate, flow, or water quality resulting from the project itself into a more comprehensive obligation to build a larger basin that better manages all upstream flow that is not a part or result of the project, it fails to provide a regulatory basis for that contention.⁴ It does not explain how any alleged defects in the PCSM plan could possibly translate into a regulatory requirement that the Borough must build a larger basin. Furthermore, even though the Garage wants the Borough to build a larger basin, it acknowledges the enlargement is designed to accommodate a 100-year storm. (Schatz Statement of Undisputed Facts ¶ 17.) The Garage has not pointed to any regulatory requirement that it needs to be bigger than that.

Schatz Garage briefly mentions a couple of other arguments but none of them entitle it to summary judgment. It cites 25 Pa. Code § 102.4(b)(5) for the proposition that a project's PCSM and erosion and sedimentation (E & S) control plans must be consistent but it does not clearly point to any examples of where its E & S plan says one thing but its PCSM plan says another. The Garage complains about the methods used by the Borough's engineer to calculate runoff amounts, but since, as noted above, the project will not result in any increased runoff, it is not clear why those calculations were regulatorily required in the first place.

The Borough is obviously trying to do a good thing. It has obtained a substantial grant to assist it in alleviating flooding problems. It has submitted affidavits averring that, if those grant monies are lost due to delays in this appeal, the work simply will not get done. Schatz Garage can

⁴ If the basin work was part of a larger development, the permittee might very well be required to account for not only the changes wrought by the new development but the other conditions within the basin's drainage basin as well, but that is not the case here.



only benefit from the improvements. It is worth noting that we are not aware that the Borough has a regulatory obligation to do anything with the basin. We agree with the Department's statement in its brief that "it is not particularly clear what Appellant seeks to achieve with this appeal." Although Schatz Garage may be able to explain its case further as the appeal proceeds to hearing, for now it is enough to say that it has failed to provide a sufficient legal basis for concluding that it is entitled to judgment as a matter of law.

Accordingly, we issue the Order that follows.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

GARY SCHATZ GARAGE LLC	:	
	:	
v.	:	EHB Docket No. 2020-021-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION, LANCASTER COUNTY	:	
CONSERVATION DISTRICT and	:	
BOROUGH OF MOUNT JOY, Permittee	:	

ORDER

AND NOW, this 2nd day of March, 2021, it is hereby ordered that the Appellant’s Motion for Summary Judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: March 2, 2021

c: DEP, General Law Division:
Attention: Maria Tolentino
(via *electronic mail*)

For the Commonwealth of PA, DEP:
Curtis C. Sullivan, Esquire
(via *electronic filing system*)

For Appellant:
William J. Cluck, Esquire
(via *electronic filing system*)

For Permittee:
Josele Cleary, Esquire
(via *electronic filing system*)

RONALD GANTZ,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LANCASTER COUNTY, PENNSYLVANIA
	:	
v.	:	NO. CI-20-05722
	:	
LANCASTER COUNTY	:	CIVIL ACTION - LAW
CONSERVATION DISTRICT:	:	
DISTRICT MANAGER, CHAIRMAN OF	:	JURY TRIAL DEMANDED
THE DIRECTORS,	:	
Defendant	:	

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Plaintiff, Ronald Gantz, hereby terminates, discontinues and dismisses with prejudice all claims, potential claims and causes of action against the Lancaster County Conservation District in this matter, and requests that the matter be marked closed and discontinued.

Respectfully submitted,

BY: Ronald Gantz
Ronald Gantz
Plaintiff

Dated: 2/16/2021

Summary Results from 2020 Farmer Survey: Lancaster County

Practice		Acreage (ac)			
Core nutrient management	Nitrogen: 28,778 ac		Phosphorus: 18,360 ac		
Supplemental N nutrient management	Rate: 35,949 ac	Placement: 16,979 ac		Timing: 29,638 ac	
Supplemental P nutrient management	Rate: 25,557 ac	Placement: 12,675 ac		Timing: 10,908 ac	
Manure incorporation	High disturbance w/in 24 hours: 1,133 ac	High disturbance w/in 1-3 days: 3,304 ac	Low disturbance w/in 24 hours: 4,243 ac	Low disturbance w/in 1-3 days: 7,143 ac	
Manure injection	1,402 ac				
Animal waste management storages	119 dairy units	25 beef units	11 swine units	34 poultry units	
Barnyard runoff controls	75 systems				
Prescribed grazing	1,639 ac				
Soil conservation and water quality plans	16,525 ac row crops	2,829 ac hay		1,715 ac pasture	
No-till/minimum tillage	36,257 ac high residue, minimum soil disturbance tillage	13,324 ac conservation tillage		14,577 low residue tillage	
Cover crops	11,899 ac traditional cover crops	17,872 ac traditional cover crops with fall nutrients		984 ac commodity cover crops	
Riparian buffers (cropland)	401 ac wide forest buffers	662 ac narrow forest buffers	589 ac wide grass buffers	573 ac narrow grass buffers	
Riparian buffers with stream exclusion fencing (pasture)	69 ac wide forest buffers	426 ac narrow forest buffers	259 ac wide grass buffers	310 ac narrow grass buffers	