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Via Electronic Mail

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**Re: DEP’s Recent Approval of 49 Authorizations Under the New General Permit
WMGR123 Without Proper Public Notice**

Dear DEP Waste Management Staff:

The Environmental Integrity Project, Citizens for Pennsylvania's Future ("PennFuture"), Mountain Watershed Association, Center for Coalfield Justice, Earthworks, and the individuals listed below are writing because we were alarmed to see that DEP granted 49 approvals for coverage under General Permit WMGR123 on December 23, 2020, and January 4, 2021, without proper public notice. This barrage of approvals for waste management without proper public notice came despite the fact that the newly revised WMGR123 had already been approved on December 18, 2020 and went into effect on January 4, 2021, and mandates public notice of general permit determination of applicability applications in the *Pennsylvania Bulletin* prior to DEP's approval.

These approvals at issue are listed in Attachment A. Of the 49 approvals, DEP failed to provide any notice at all prior to authorizing coverage for 26 of them. While DEP provided notice for 23 of the 49, the notice was for coverage under the *previous* version of WMGR123, which is no longer in effect. DEP cannot satisfy its public notice obligations by providing public notice as to coverage under a previous permit but then grant coverage under the new permit, which has wholly revised and different terms and which was not in effect exist at the time of notice. In all 49 cases, DEP failed to provide proper notice as required by the newly revised WMGR123 because DEP did not publish notice in the *Pennsylvania Bulletin* that an application for a determination of applicability was administratively complete for coverage under the current, revised version of General Permit WMGR123. This is especially egregious because the old permit, which only required registration, rather than a determination of applicability, to operate under the general permit, did not require public notice prior to coverage, but the new permit does.

Each of these 49 authorizations will last for 10 years, meaning the many affected communities will not have a formal opportunity to review and or the chance to provide pre-authorization comment on the applications for these authorizations for nearly another 10 years. Furthermore, many of the organizational and individual signatories to this letter provided comments on the proposed renewal of the WMGR123 base permit and included in those comments many additional changes that were ultimately not incorporated into the WMGR123 general permit. Had they not been deprived of proper notice and the opportunity to present public comments on the individual authorizations, these organizations and individuals could have raised and presented these and similar comments for site-specific consideration by DEP. These comments likely would have also requested a formal public comment period, called for an individual permit to be required given site-specific conditions, and requested increased reporting requirements due to the extreme difficulty some individuals and groups have had obtaining records that companies are required to keep (but not submit) regarding their activities.

General Permit WMG123, issued on January 4, 2021, states, "[a] person or municipality that proposes to operate under the terms and conditions of this general permit after the date of permit issuance must obtain a "Determination of Applicability" ("DOA") from the appropriate

DEP Regional Office (see attached list) prior to commencing authorized activities under this general permit.¹

Pennsylvania regulations require that “[t]he Department will provide notice in the *Pennsylvania Bulletin* of each application for a determination of applicability of a general permit which the Department has determined to be administratively complete.”² The regulations further state that “[t]he Department may amend, suspend or revoke coverage under a general permit if a person or municipality authorized to conduct solid waste activities under a general permit is not in compliance with the permit conditions or for one or more of the reasons in subsection (e),” which include a failure to demonstrate that “the proposed activity is consistent with the terms and conditions of the general permit.”³

DEP’s failure to provide proper public notice for any of these 49 applications as required by regulation and the terms of the general permit itself deprived the undersigned individuals and organizations, the organizations’ members, and other residents of the Commonwealth with an interest in these activities and their impacts on health, environment, and public safety and welfare, of the opportunity to obtain and review the applications and voice the concerns to the DEP prior to authorization. This deprivation will extend for a decade, which is the next time the general permit, or these authorizations thereunder, will be renewed.

A notable example relates to a resident of Sweden Township, Potter County, PA: Melissa A. Troutman is directly affected by operations authorized under the new WMGR123 permit. Ms. Troutman was pleased to see that her suggestion to “[b]roaden opportunity for public participation” was partially adopted in DEP’s revision of the general permit. Ms. Troutman anticipated the opportunity to address site-specific concerns about a facility stationed near her family’s home – operating under permit WMGR123NC038 – when the facility’s permit renewal was postponed until after the new general permit was approved. However, Troutman was disappointed to learn that the opportunity to formally raise site-specific concerns, including the lack of enforcement procedures regarding nuisance under Operating Condition #9 of the permit, was denied when DEP issued the new WMGR123NC038 without providing public notice or a public comment period on this application prior to approval.

In light of DEP’s failure to provide proper public notice for authorization under WMGR123, the undersigned organizations and individuals request that DEP use its authority to immediately suspend or revoke all determinations of applicability authorizing coverage under WMGR123 that failed to comply with the public notice requirements, listed in Attachment A, and to publish notice of the determination of applicability applications received for each of these activities in the *Pennsylvania Bulletin* with a 60-day public comment period prior to reissuance.

¹ DEP, WMGR123, PROCESSING AND BENEFICIAL USE OF OIL AND GAS LIQUID WASTE, at 1, Section B (Jan. 4, 2021).

² See 25 Pa. Code § 287.642(c); see also DEP, WMGR123 Comment and Response Document, at 4 (Jan. 4, 2021), available at

<http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=3480119&DocName=PROCESSING%20AND%20BENEFICIAL%20USE%20OF%20OIL%20AND%20GAS%20LIQUID%20WASTE%20CR%20DOCUMENT.PDF>.

³ 25 Pa. Code § 287.642(g), (e).

It does not escape us that in weighing the options to address what we view as a glaring oversight and misapplication of the law on DEP's part, the Department opted to determine its actions in issuing these permits were correct and justifiable. There is not enough time, realistically, for us to obtain the documents required, such as permit applications, to properly review these permits and if necessary, appeal. It is also nearly impossible for the environmental nonprofit legal community to appeal 49 permits simultaneously.

Given the time-sensitive nature of our and the public's action windows to appeal these 49 approvals, the undersigned request a formal response no later than Thursday, February 11, 2021.

Sincerely,



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