

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

VALLEY FORGE CHAPTER OF TROUT :
UNLIMITED, P.O. Box 1356, West :
Chester, PA 19320, :

Petitioner, : Original Jurisdiction

v. :

TOWNSHIP OF TREDYFFRIN, 1100 :
DuPortail Road, Berwyn, PA 19312 and :
PENNSYLVANIA TURNPIKE :
COMMISSION, 700 South Eisenhower :
Blvd, Middletown, PA 17057.

Respondents.

PETITION FOR REVIEW (ORIGINAL JURISDICTION)

Petitioners seek this Court to review and declare void and invalid the attached Agreement (Exhibit 1) in this matter and for the following reasons:

INTRODUCTION

1. This action is filed pursuant to the court’s original jurisdiction. Pa. R. App. P. 1501 and 1502.
2. This action is also filed pursuant to authority of the Pennsylvania Storm Water Management Act, 32 P.S. Section 680.15 (b) to bring actions in equity for violations of storm

water ordinances.

3. The action is also filed pursuant to the Declaratory Judgments Act, 42 Pa. C.S.A. Section 7531, et. seq.

4. The following party seek relief: Valley Forge Chapter of Trout Unlimited (VFTU).

5. The following are the government units whose actions are at issue: Township of Tredyffrin (Township) and Pennsylvania Turnpike Commission (PTC).

6. The Supervisors of the Township and the PTC have signed an agreement (Agreement) on January 19, 2016 whereby the Township agreed to waive the enforcement of some of its stormwater and flood ordinances that would normally apply to the PTC in its construction activities in Tredyffrin Township for widening the Pennsylvania Turnpike and such unregulated stormwater will enter the Valley Creek and Trout Creek Watersheds. See, Exhibit 1.

7. Petitioners seek this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance.

PARTIES AND STANDING

8. The Valley Forge Chapter of Trout Unlimited (VFTU) with an address of P.O. Box 1356, West Chester, PA 19320, is an organization, *inter alia*, devoted to restoring, protecting and preserving the Valley Creek Watershed and the Trout Creek Watershed since 1976, having spent money and time on projects to further these goals.

9. VFTU has members who use Valley Creek and Trout Creek, both within Tredyffrin Township and downstream for fishing, recreation and aesthetic enjoyment and will be harmed by the effects of pollution from uncontrolled stormwater runoff caused by failure of the PTC to

comply with all of the Township stormwater ordinances.

10. VFTU has one member who owns land in Tredyffrin Township and whose land will be permanently harmed by the effects of pollution from uncontrolled stormwater runoff caused by failure of the PTC to comply with all of the Township stormwater ordinances.

11. The Township of Tredyffrin (Township) is a Township of the Second Class located in Chester County and with a mailing address of 1100 DuPortail Road, Berwyn, PA 19312.

12. The Pennsylvania Turnpike Commission (PTC) is an instrumentality of the Commonwealth and with a mailing address of 700 South Eisenhower Blvd, Middletown, PA 17057.

BACKGROUND

13. The PTC plans to reconstruct approximately 6.4 miles of the Pennsylvania Turnpike that runs through Tredyffrin Township.

14. The reconstruction will involve widening the roadway (from four lanes to six lanes), expanding the median and expanding the shoulders.

15. The reconstruction also will include replacement of two (already constructed) overhead bridges, seven mainline bridges, three arch culverts, crossing pipes, noise barriers, retaining walls, storm water facilities and conveyance systems.

16. The reconstruction will allow for the permanent increase in stormwater runoff to the Valley Creek and Trout Creek Watersheds from the roadway and area.

17. The reconstruction will allow for the increase of traffic which will cause a permanent increase of pollution runoff, such as oils, greases, gasoline constituents, and mercury and nickel from brake dust all of which will go into the Valley Creek and Trout Creek Watersheds.

18. In order to complete the reconstruction Township ordinances require the PTC to comply with, *inter alia*, storm water standards for the protection of the environment. Township Stormwater Management, Section 174-1 , et. seq. See, Exhibit 2 (selected sections).

19. Portions of the reconstruction are in the Valley Creek Watershed (an Exceptional Value Watershed afforded the highest protection under Pennsylvania laws) and Trout Creek Watershed (an impaired waterway).

20. For purposes of the reconstruction Valley Creek is divided into eleven sub-watersheds and Trout Creek is divided into two sub-watersheds.

21. Exceptional Value Watersheds are required to receive the highest protection under Pennsylvania requirements (25 Pa. Code 93.4a (d)) and federal requirements (40 CFR 130.12).

22. Impaired waterways do not meet water quality standards and need to be protected so that they may recover and be restored to their former water quality.

23. PTC and the Township admit, in the Agreement, that there is a conflict between the PTC's ability to complete the reconstruction as designed and PTC's ability to meet the Township standards. Agreement, 17th Whereas Clause, p. 2.

24. PTC and the Township admit that PTC's reconstruction "departs from various Township ordinances, regulations and standards with regard to stormwater management and/or the Township's Flood Hazard Zoning District." Agreement, 16th Whereas Clause, p. 2.

25. The purposes of the Township's stormwater management ordinances are, *inter alia*, "to promote the public health, safety, and welfare within Tredyffrin Township by maintaining the natural hydrologic regime and minimizing the impacts described in Section 174-2 [uncontrolled runoff, erosion, pollution, threats to public health and safety, etc.]" Township Ordinance,

Section 174-3, Purpose.

26. PTC and the Township agreed that litigation may be necessary to solve the above differences. Agreement, 23rd Whereas Clause, p. 3.

27. PTC and the Township agreed that the reconstruction shall have preeminence over all Township standards regarding stormwater and flood hazard that conflict with the PTC reconstruction as identified in Agreement, Exhibit B. Agreement, par. 3, p. 4.

28. PTC and the Township claimed that environmental protection will be greater than the existing and pre-reconstruction situation.

29. The existing and pre-construction situation is that of no stormwater or flood hazard controls, therefore, any controls would be better than no controls but that cannot be an excuse for violating environmental ordinances.

30. The PTC's reconstruction and new alteration of land, without stormwater controls required by Township ordinances will cause harm to the Valley Creek Watershed and the Trout Creek Watershed.

31. The Agreement deprives VFTU of the right to appeal a decision by the Township or its zoning or planning commissions that would be appealable to Chester County Court of Common Pleas and then further appealable through the judicial procedures available for decisions by townships on land development.

32. This Petition for Review raises the sole question of whether the Township and the PTC may agree to the violation of Township stormwater and flood ordinances.

COUNT 1

TREDYFFRIN TOWNSHIP VIOLATED THE PENNSYLVANIA STORM WATER MANAGEMENT ACT WHEN IT SIGNED THE AGREEMENT

33. Paragraphs 1 through 32 are incorporated by reference.

34. The Pennsylvania Storm Water Management Act (SWMA), 32 P.S. Section 680.1, *et. seq* was passed to remedy the harmful effects of unregulated storm water runoff and such protection was declared to be “fundamental to the public health, safety and welfare and the protection of the people of the Commonwealth, their resources and the environment.” SWMA, Section 680.2.

35. The policy and purpose of the Act, *inter alia*, is to “[E]ncourage local administration and management of storm water consistent with the Commonwealth’s duty as trustee of natural resources and the people’s constitutional right to the preservation of natural, economic, scenic, aesthetic, recreational and historic values of the environment.” SWMA, Section 680.3 (3)

36. After adoption of a stormwater plan in accordance with the SWMA the location, design and construction of, *inter alia*, “highways and transportation facilities” shall be conducted in accordance with the stormwater plan. SWMA, Section 680.11 (a).

37. Tredyffrin Township enacted its storm water management plan, *inter alia*, pursuant to the authority of the SWMA. Tredyffrin Township Stormwater Management, Section 174-4. A. Statutory Authority. See also, Tredyffrin SALDO, Section 181-53 adopted pursuant to SWMA, Section 680.11 (b).

38. The Agreement allows the PTC to violate the requirements of some of the Township’s stormwater ordinances, in violation of the SWMA.

39. Violation of the Township’s stormwater ordinances adversely affects the “public health, safety and welfare and the protection of the people of the Commonwealth, their resources and the environment.” SWMA, Section 680.2.

40. Violation of the Township’s stormwater ordinances constitutes a public nuisance. SWMA, Section 680.15 (a).

41. Tredyffrin Township, therefore, cannot waive its obligation under the SWMA to enforce its stormwater ordinances against the PTC.

42. VFTU is an aggrieved person and seeks to abate the violation of the SWMA and the Township stormwater ordinances. SWMA, Section 680.15 (b).

43. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU’s interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 2

THE PENNSYLVANIA TURNPIKE COMMISSION VIOLATED THE PENNSYLVANIA STORM WATER MANAGEMENT ACT WHEN IT SIGNED THE AGREEMENT

44. Paragraphs 1 through 43 are incorporated by reference.

45. The SWMA requires the PTC to implement measures consistent with the Township Stormwater Management Plan. SWMA, Section 680.13.

46. The PTC is a “person” within the meaning of the SWMA and can be sued.

47. The PTC, therefore, cannot waive its obligation under the SWMA to comply with the Township Stormwater Management ordinances.

48. The Agreement allows the PTC to violate the requirements of some of the Township’s stormwater ordinances, in violation of the SWMA.

49. Violation of the Township’s stormwater ordinances adversely affects the “public health, safety and welfare and the protection of the people of the Commonwealth, their resources and the environment.” SWMA, Section 680.2.

50. Violation of the Township’s stormwater ordinances constitute a public nuisance. SWMA, Section 680.15 (a).

51. VFTU is an aggrieved person and seeks to abate the violation of the SWMA and the Township stormwater ordinances. SWMA, Section 680.15 (b)

52. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU’s interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 3

**TREDYFFRIN TOWNSHIP VIOLATED THE PENNSYLVANIA CONSTITUTION
ARTICLE I, SECTION 27 (ENVIRONMENTAL RIGHTS) WHEN IT SIGNED THE
AGREEMENT**

53. Paragraphs 1 through 52 are incorporated by reference.

54. “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Pa. Const. Art. I, Sec. 27 (Environmental Rights Amendment).

55. The Township is a trustee responsible for protecting the environmental resources that are located in the township.

56. The Township cannot waive its obligation under the Environmental Rights Amendment.

57. The Township violated the Environmental Rights Amendment by agreeing to waive the requirements of its stormwater ordinances whose purpose is to protect the environmental resources of the township.

58. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU’s interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 4

THE PENNSYLVANIA TURNPIKE COMMISSION VIOLATED THE PENNSYLVANIA CONSTITUTION, ARTICLE I, SECTION 27 (ENVIRONMENTAL RIGHTS) WHEN IT SIGNED THE AGREEMENT

59. Paragraphs 1 through 58 are incorporated by reference.

60. The PTC is a trustee responsible for protecting the environmental resources that are located in the township.

61. The PTC violated the Environmental Rights Amendment by agreeing to waive the requirements of its stormwater ordinances whose purpose is to protect the environmental resources of the township.

62. The PTC violated the Environmental Rights Amendment by agreeing to waive the requirements of the Township stormwater ordinances whose purpose is to protect the environmental resources of the township.

63. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU's interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 5

TREDYFFRIN TOWNSHIP ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, COMMITTED AN ABUSE OF DISCRETION AND NOT ACTED IN ACCORDANCE WITH LAW WHEN IT SIGNED THE AGREEMENT

64. Paragraphs 1 through 63 are incorporated by reference.

65. The Township’s Home Rule Charter allows for the enactment, amendment and dissolution of stormwater ordinances, but it does not allow for the exemption of individual parties from the requirements of those ordinances.

66. The purposes of the Township’s stormwater management ordinances are, *inter alia*, “to promote the public health, safety, and welfare within Tredyffrin Township by maintaining the natural hydrologic regime and minimizing the impacts described in Section 174-2 [uncontrolled runoff, erosion, pollution, threats to public health and safety, etc.]” Township Ordinance, Section 174-3. Purpose.

67. The Township’s stormwater ordinances were enacted, *inter alia*, pursuant to the Pennsylvania Municipalities Planning Code (PMPC), 53 P.S. Section 10101, et. seq. Township Ordinance, 174-4. Statutory Authority.

68. No land development may be conducted in violation of ordinances enacted pursuant to the Pennsylvania Municipalities Planning Code. PMPC, 53 P.S. Section 10507.

69. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU’s interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

70. The Township is a municipality that only has such powers as were expressly granted to it.

71. The Township has not been granted the power to exempt a specific party from its stormwater ordinances.

72. There has been no public notice or opportunity for the public to comment on the Agreement prior to it being signed.

73. The Township has acted in an arbitrary and capricious manner, abused its discretion and acted not in accordance with law by signing the Agreement and this action constitutes bad faith.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 6

THE PENNSYLVANIA TURNPIKE COMMISSION ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, COMMITTED AN ABUSE OF DISCRETION AND NOT ACTED IN ACCORDANCE WITH LAW WHEN IT SIGNED THE AGREEMENT

74. Paragraphs 1 through 73 are incorporated by reference.

75. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU's interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

76. The PTC has an obligation to comply with all Township ordinances.

77. The PTC has acted in an arbitrary and capricious manner, abused its discretion and acted not in accordance with law by signing the Agreement and this action constitutes bad faith.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes,

Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 7

TREDYFFRIN TOWNSHIP VIOLATED DUE PROCESS BECAUSE SIGNING THE AGREEMENT DEPRIVES PARTIES THEIR RIGHTS TO APPEAL TOWNSHIP ACTIONS

78. Paragraphs 1 through 77 are incorporated by reference.

79. The Agreement bypasses the normal zoning and land development process as established by the Municipalities Planning Code and Township requirements.

80. Prior to the Agreement, VFTU would have the legal right to appeal any variances, exceptions or deviations from Township stormwater ordinances made by the Township through the established legal process of administrative appeals, appeals to common pleas court and appeals to this Court in its appellate capacity.

81. There has been no public notice or opportunity for the public to comment on the Agreement prior to it being signed.

82. The Agreement deprives VFTU of its due process rights to notice and opportunity to be heard, both before Township bodies and higher adjudicatory bodies.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 8

**TREDYFFRIN TOWNSHIP VIOLATED THE PENNSYLVANIA CONSTITUTION
ARTICLE I, SECTION 26 (EQUAL PROTECTION) WHEN IT SIGNED THE
AGREEMENT**

83. Paragraphs 1 through 82 are incorporated by reference.

84. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU's interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

85. The people have a right to equal protection of the laws. Pa. Constit. Art I, Sec. 26. (Equal Protection Amendment).

86. Exempting one party from the stormwater ordinances violates the Equal Protection Amendment.

87. Government may not exempt individual parties from obligations under laws meant to regulate everyone.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

COUNT 9

**THE PENNSYLVANIA TURNPIKE COMMISSION VIOLATED THE PENNSYLVANIA
CONSTITUTION ARTICLE I, SECTION 26 (EQUAL PROTECTION) WHEN IT
SIGNED THE AGREEMENT**

88. Paragraphs 1 through 87 are incorporated by reference.

89. The people have a right to equal protection of the laws. Pa. Constit. Art I, Sec. 26.

(Equal Protection Amendment).

90. Exempting one party from the stormwater ordinances violates the Equal Protection Amendment.

91. Government may not exempt individual parties from obligations under laws meant to regulate everyone.

92. Alteration of the land by the PTC in violation of the Township stormwater ordinances will adversely affect VFTU's interest in protecting the environment of the Valley Creek Watershed and the Trout Creek Watershed.

WHEREFORE, VFTU respectfully requests this court to declare void and invalid the Agreement because it is in violation of the Pennsylvania Constitution, Pennsylvania statutes, Township Ordinances; will cause harm to the environment; and, is a public nuisance; and, to provide any other relief deemed appropriate.

Respectfully submitted,

JOHN WILMER,
Attorney for Petitioner,
Valley Forge Chapter of Trout Unlimited

21 Paxon Hollow Road,
Media, PA 19063
(610) 565-2736; jwilmer@ix.netcom.com
ID 33119

Date: February 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I served the foregoing document by first class mail to the government units listed below:

Township of Tredyffrin
1100 DuPortail Road,
Berwyn, PA 19312;

Pennsylvania Turnpike Commission
700 South Eisenhower Blvd,
Middletown, PA 17057; and,

Pennsylvania Attorney General
Strawberry Square
Harrisburg, PA 17120.

Respectfully submitted,

JOHN WILMER,
Attorney for Petitioner,
Valley Forge Chapter of Trout Unlimited