

VANGUARD

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

VALLEY CREEK COALITION,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and VANGUARD GROUP,
Permittee

:
:
:
:
:
:
:
:
:
:
:

Docket No. 2000-068-MG

SETTLEMENT AGREEMENT

WHEREAS, on February 1, 2000, the Department of Environmental Protection (“Department”) issued National Pollutant Discharge Elimination System (“NPDES”) Permit No. PAS10-G376 (“Permit”).

WHEREAS, the Permit was issued to the Vanguard Group and authorized the discharge of stormwater from construction activities associated with Vanguard’s expansion of its business campus in Tredyffrin Township, Chester County.

WHEREAS, the stormwater discharges to Little Valley Creek, a tributary of Valley Creek, which is classified as an Exceptional Value water under pursuant to 25 Pa. Code § 93.9(f).

WHEREAS, the Valley Creek Coalition (“Coalition”), a coalition of citizens’ groups, composed of the Green Valleys Association of Southeastern Pennsylvania; the Open Land

Conservancy of Chester County; the Pennsylvania Environmental Defense Foundation; the Raymond Proffitt Foundation; the Schuylkill River Keeper; the Valley Forge Chapter of Trout Unlimited and the West Chester Fish, Game & Wildlife Association, filed a timely appeal from the issuance of the Permit.

WHEREAS, the Valley Creek watershed is a resource with unique environmental and historic significance. Valley Creek is an Exceptional Value stream located in a highly urbanized area and contains within its boundaries the Valley Forge National Historical Park. The Department recognizes the importance of this resource and that Valley Creek warrants the highest degree of protection to maintain and protect its Exceptional Value status.

WHEREAS, the parties recognize that the pressures of increased development in this unique watershed have resulted in a substantial increase in impervious cover which in turn has resulted in increased stormwater runoff and decreased infiltration reducing stream base flows. The increased runoff presents a serious threat to the chemical, physical and biological integrity of Valley Creek. Valley Creek now overflows its banks far more frequently than in the past and stream bank erosion and stream bed scour have become critical problems. In addition, with the increased stormwater runoff comes an increase in pollutant load in the receiving streams. The decreased base flows affect stream viability during extended dry periods.

WHEREAS, the Department and the Coalition have engaged in discussions concerning settlement of this appeal, and have agreed to the conditions set forth in the following paragraphs as a basis for resolution of this appeal.

1. The Department acknowledges that it has the duty and responsibility, during review of the application for an NPDES Permit for Stormwater Associated with Construction Activities, to consider the permanent and cumulative effects of post-construction

stormwater impacts resulting from the project on both the base flow and the surface waters of receiving Exceptional Value watersheds.

2. In order to protect and maintain the Exceptional Value surface waters of Valley Creek, the following conditions will apply to the Department's review of NPDES Permits for Stormwater Associated with Construction Activities.

(a) Applicants must demonstrate that the post-construction stormwater infiltration on the project site will be no less than the stormwater that infiltrated under pre-development conditions. Where a project applicant demonstrates that site-specific conditions preclude achievement of this requirement, the project proponent will be required to provide appropriate off-site infiltration within the watershed, preferably upstream from the project.

(b) In order to protect and maintain the quality of Valley Creek from the effects of scour and erosion, applicants must demonstrate that the volume and rate of stormwater runoff will not cause or cumulatively contribute to scour or erosion. Applicants may make this demonstration either through the implementation of on-site controls or through a combination of on-site and off-site controls. Applicants who design stormwater controls for sites that will control the volume and rate of stormwater runoff such that the post-construction volume and rate of stormwater runoff will not exceed the volume and rate of stormwater runoff under pre-development conditions for all storms up to and including the 2-year frequency, 24 hour duration rainfall will be considered to have met this requirement.

(c) Applicants will be required to demonstrate that post construction discharges from the project site will not cause a measurable change in the quality of Valley Creek and its tributaries through the addition of pollutants or a change in temperature.

Applicants will be encouraged to use subsurface storage for infiltration BMPs to prevent a measurable change in temperature from post-construction stormwater discharges.

3. This agreement shall apply to all applications for an NPDES Permit for discharges of Stormwater Associated with Construction Activities to Valley Creek received subsequent to the date of execution of this agreement.

4. The provisions of this agreement implement and are consistent with the provisions of the Department's regulations which protect the existing and designated uses of the waters of the Commonwealth and which govern the review and issuance of NPDES permits for the discharge of stormwater from construction activities. Nothing in this agreement is intended to conflict with any more stringent federal, state, county or local laws that do or may regulate the discharge or control of stormwater.

5. The Coalition agrees to withdraw its appeal of NPDES Permit No. PAS10-G376 within five days of execution of this agreement.

6. This Stipulation constitutes the entire agreement between the Department and the Coalition, and no alteration, additions, or amendments shall be valid unless mutually agreed to by the parties and set forth in writing and duly executed by them.

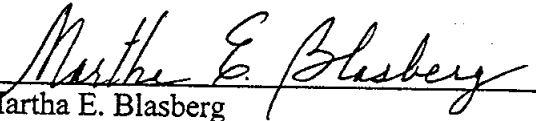
7. The parties agree to bear their respective attorneys' fees, expenses and costs associated with this matter.

8. By their signatures below, the parties consent to the terms of this Settlement Agreement and represent that they are authorized to execute this agreement on behalf of the party for whom they sign.

FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION:

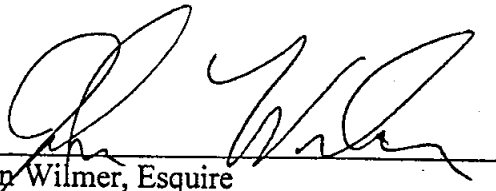


James Newbold, P.E.
Regional Manager
Water Management



Martha E. Blasberg
Supervisory Counsel

FOR THE VALLEY CREEK COALITION:



John Wilmer, Esquire
Attorney for the Valley Creek Coalition

**SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

VALLEY CREEK COALITION SIGNATURE PAGE (1 OF 7)

Date: 9.6.2001

A handwritten signature in cursive script, appearing to read "Peter McCay", is written over a horizontal line. The signature is written in black ink.

Valley Forge Chapter of Trout Unlimited, Inc.

SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

VALLEY CREEK COALITION SIGNATURE PAGE (2 OF 7)

Date: 9.4.01

M. John Johnson President

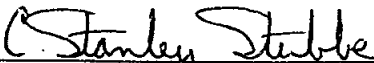
West Chester Fish, Game and
Wildlife Association, Inc.

**SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

VALLEY CREEK COALITION SIGNATURE PAGE (3 OF 7)

Date:

9/5/01

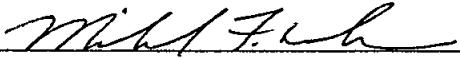
A handwritten signature in cursive script, reading "Stanley Stubbe", written over a horizontal line.

Green Valleys Association
of Southeastern Pennsylvania

SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

VALLEY CREEK COALITION SIGNATURE PAGE (4 OF 7)

Date:



Open Land Conservancy of Chester County

**SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

VALLEY CREEK COALITION SIGNATURE PAGE (5 OF 7)

Date: August 31, 2001

Charles R. Marshall

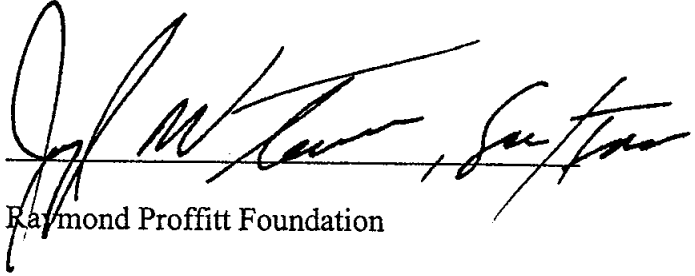
Pennsylvania Environmental Defense Foundation

SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

VALLEY CREEK COALITION SIGNATURE PAGE (6 OF 7)

Date:

8/31/2001




Raymond Proffitt Foundation

SETTLEMENT AGREEMENT BETWEEN VALLEY CREEK COALITION
AND COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

VALLEY CREEK COALITION SIGNATURE PAGE (7 OF 7)

Date: 9/5/01


Margo K. La Rosa
Delaware Riverkeeper/Executive Director
Delaware Riverkeeper Network

Schuylkill Office, Delaware Riverkeeper Network
(on behalf of Schuylkill River Keeper)