

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

POTOMAC RIVERKEEPER, INC. d/b/a  
POTOMAC RIVERKEEPER NETWORK  
AND SHENANDOAH RIVERKEEPER,

Appellant,

v.

VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

Appellee,

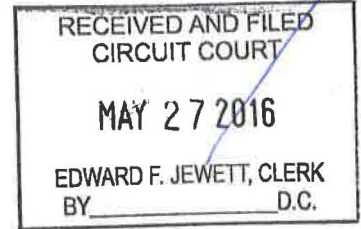
Serve: David K. Paylor, Director  
Department Environmental Quality  
629 East Main Street  
Richmond, VA 23219

with a copy to

MASSANUTTEN PUBLIC SERVICE  
CORPORATION,

Permit applicant,

Serve: Corporation Service Company,  
Registered Agent, Massanutten Public  
Service Corporation  
Bank of America Center, 16th Floor  
1111 East Main Street  
Richmond, VA 23219



Case No.: CL 16-2524

**PETITION FOR APPEAL**

IN RE: MASSANUTTEN PUBLIC SERVICE CORPORATION

ISSUANCE OF VPDES PERMIT NO. VA0024732  
MASSANUTTEN PUBLIC SERVICE CORPORATION SEWAGE  
TREATMENT PLANT

## CASE DECISION APPEALED

1. Under the Virginia State Water Control Law, Va. Code Ann. §§ 62.1-44.5, 62.1-44.15(5), 62.1-44.29, the Virginia Administrative Process Act, Va. Code Ann. §§ 2.2-4019, 2.2-4026, 2.2-4027, 2.2-4029, 2.2-4030, the federal Clean Water Act, 33 U.S.C. §§ 1311, 1314, 1317, 1318, 1326, 1341, 1342, 1370, and implementing regulations, Appellants the POTOMAC RIVERKEEPER, INC. d/b/a POTOMAC RIVERKEEPER NETWORK and SHENANDOAH RIVERKEEPER (hereafter “Riverkeeper”) appeal the final decision of the Virginia Department of Environmental Quality (hereafter “DEQ”), to renew and reissue Virginia Pollutant Discharge Elimination System (“VPDES”) Permit No. VA0024732 on March 28, 2016, to Massanutten Public Service Corporation (“Massanutten”) for the discharge of treated wastewater to state waters from its Massanutten Sewage Treatment Plant (“STP”) under the Virginia Pollutant Discharge Elimination System Permit Regulation, the Virginia State Water Control Law, and the federal Clean Water Act, and implementing regulations.

2. In compliance with Rule 2A:2 of the Rules of the Supreme Court of Virginia, Riverkeeper filed a notice of appeal with David Paylor, Director of the Department of Environmental Quality, and counsel on April 27, 2016, within 30 days of DEQ’s March 28, 2016, decision and mailed a copy to the permit applicant, Massanutten. A copy of the notice of appeal is attached with this petition as **Attachment A**.

3. In compliance with Rule 2A:4 of the Rules of the Supreme Court of Virginia, Riverkeeper submits this petition for appeal within 30 days of filing its notice of appeal on April 27, 2016.

## PARTIES

4. Appellants are the Potomac Riverkeeper Inc., d/b/a the Potomac Riverkeeper Network and the Shenandoah Riverkeeper (hereafter “Riverkeeper”). Riverkeeper is a nonprofit organization dedicated to restoring clean water in the Potomac River watershed, which includes the Potomac and Shenandoah Rivers. It uses the Clean Water Act (hereafter “CWA” or the “Act”) and other environmental laws to stop pollution that damages water quality and river habitats and that negatively impacts the ability of the Riverkeeper’s members and the public to use and enjoy the Potomac and Shenandoah Rivers and their tributaries. Riverkeeper seeks to protect the health and safety of the nearly six million people who use the Potomac River for drinking water and recreation, to preserve and restore the health of aquatic life in the Potomac River and its tributaries, and to preserve and restore the scenic and recreational resources throughout the Potomac watershed. Shenandoah Riverkeeper is a branch of the Potomac Riverkeeper Network.

5. Riverkeeper currently has approximately 1,000 members throughout Virginia, Maryland, West Virginia, and the District of Columbia. Members of the organization regularly use and enjoy the natural resources of the Potomac and Shenandoah Rivers and their tributaries, including Quail Run, Boone Run and the South Fork Shenandoah River, for fishing, swimming, boating, wildlife viewing, and other purposes.

6. On November 9, 2015, the Potomac Riverkeeper submitted comments on Massanutten’s application for renewal of VPDES Permit No. VA0024732, which regulates the discharge of wastewater from the STP into Quail Run.

7. Appellee is the Virginia Department of Environmental Quality (DEQ). Under the State Water Control Law, Va. Code Ann. § 62.1-44.14, and Virginia VPDES Permit regulations at 9VAC25-31-920, the Director of DEQ has the authority to issue VPDES permits to discharge

sewage, industrial wastes, and other wastes into or adjacent to state waters. The DEQ approved the reissuance of VPDES Permit No. VA0024732 to Massanutten on March 28, 2016.

8. The Permit Applicant is Massanutten Public Service Corporation.

### **JURISDICTION AND VENUE**

9. Under Va. Code Ann. § 62.1-44.29, any person is entitled to judicial review of the final decision to issue a VPDES permit if such person has participated in the public comment process and if such person meets the requirements for judicial review under Article III of the United States Constitution.

10. Riverkeeper submitted written comments to the DEQ on November 9, 2015, raising concerns about nutrient discharge limits and other issues, and objecting to the proposed reissuance of VPDES Permit No. VA0024732.

11. Riverkeeper has standing to seek judicial review of the DEQ's reissuance of the permit for Massanutten STP under Article III of the U.S. Constitution because: (i) the permitted discharges of wastewater would harm the organization's interests in preventing pollution and restoring river habitat in the Shenandoah River and its tributaries; (ii) the injuries to the organization's interests are traceable to the DEQ's decision to reissue the permit; and (iii) such injuries would be redressed by a favorable decision of this Court.

12. Riverkeeper also has standing to seek judicial review of DEQ's issuance of the VPDES permit for Massanutten STP under Article III of the U.S. Constitution because: (i) the permitted discharges of wastewater from Massanutten STP would harm the recreational, aesthetic, and scientific interests of the organization's members in using Quail Run, the South Fork



Shenandoah River, and the Shenandoah River for fishing, boating, swimming, sightseeing, and other activities; (ii) the injuries to the interests of the members are traceable to the DEQ's decision to reissue the permit; and (iii) such injuries would be redressed by a favorable decision of this Court.

13. In support of Riverkeeper's standing in this case, the affidavits of Mark Frondorf, Shenandoah Riverkeeper, and Phillip Musegaas, Legal Director of Riverkeeper, are attached and incorporated into this petition as **Attachment B**.

14. Under Va. Code Ann. § 62.1-44.29, Riverkeeper is entitled to judicial review in accordance with the provisions of the Administrative Process Act, Va. Code Ann. § 2.2-4000 et seq. As authorized by § 2.2-4026 of the Administrative Process Act, any person affected by a case decision has the right to direct review of the decision by court action against the authorizing agency or its officers.

15. Venue is permissible in this Court under Va. Code Ann. § 2.2-403, § 2.2-4026, and § 8.01-261(1).

### **LEGAL BACKGROUND**

16. The federal Clean Water Act's objective is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

17. To achieve its objective, the Clean Water Act ("CWA") sets a national goal of "eliminating" the release of pollutants into waterways. 33 U.S.C. § 1251(a)(1).

18. The CWA set a goal that “wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.” 33 U.S.C. § 1251(a)(2).

19. Under the CWA, no person may discharge pollutants from any point source into waters of the United States without having obtained a National Pollutant Discharge Elimination System (“NPDES”) permit. *See* 33 U.S.C. § 1342(a).

20. The United States Environmental Protection Agency (“EPA”) has delegated authority to administer the permitting program in Virginia to the state. *See* 33 U.S.C. § 1342(b). DEQ is charged with administering the program under the State Water Control Law, Va. Code Ann. § 62.1-44.15(5), and the Virginia Pollutant Discharge Elimination System (“VPDES”) Permit Regulation, 9 Va. Admin. Code § 25-31-10 *et seq.*

21. Under the CWA, Virginia is required to adopt and maintain Water Quality Standards which “shall consist of the designated uses” of the waters and “the water quality criteria for such waters based upon such uses.” 33 U.S.C. § 1313(c)(2)(A).

22. Under federal regulations implementing the CWA, “States must adopt those water quality criteria that protect the designated use.” 40 CFR § 131.11(A).

23. Criteria are defined in the federal regulations as “elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.” 40 CFR § 131.3(b).

24. VPDES permits “shall include conditions . . . necessary to [a]chieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.” 40 CFR § 122.44.

25. Effluent limitations in VPDES permits “must control all pollutants or pollutant parameters . . . which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” 40 CFR § 122.44(d)(1)(i).

26. When determining whether a discharge “causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard,” DEQ must use procedures which “account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the *dilution of the effluent in the receiving water.*” 40 C.F.R. § 122.44(d)(1)(ii)(emphasis added).

27. The Virginia Water Quality Standards regulation requires that “[a]ll state waters... are designated for the following uses: recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish.” 9VAC25-260-10.

28. Virginia Water Quality Standards do not contain numeric criteria for total phosphorus (“TP”) or total nitrogen (“TN”) that apply to Quail Run, Boone Run, the South Fork Shenandoah River, or the Shenandoah River.

29. Virginia's "General Criteria" require that "State waters . . . shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life." 9VAC25-260-20.A.

30. Under the General Criteria "[s]pecific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and *substances which nourish undesirable or nuisance aquatic plant life.*" 9VAC25-260-20.A. (emphasis added.)

31. Federal regulations require that:

Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion with an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of [three listed options].  
40 CFR § 122.44(d)(1)(vi).

32. The options provided in federal regulations by which States may translate narrative criteria into numeric permit limitations are;

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

- (B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or
- (C) Establish effluent limitations on an indicator parameter for the pollutant of concern.

40 CFR 122.44(d)(1)(vi).

33. Virginia's State Water Control Law mandates the development and implementation of a Watershed General Virginia Pollution Discharge Elimination System Permit ("Watershed General Permit") which authorizes point source discharges of total nitrogen and total phosphorus into Chesapeake Bay and its tributaries. Section 62.1-44.19:14(A) of the State Water Control Law.

34. The Watershed General Permit controls in lieu of effluent limitations for total nitrogen and total phosphorus in individual VPDES permits, for "facilities covered by the general permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries." Section 62.1-44.19:14(A) of the State Water Control Law.

35. The State Water Control Law authorizes the setting of annual wasteload allocations in the Watershed General Permit for discharges of total nitrogen and total phosphorus into Chesapeake Bay and its tributaries, and allows for the use of credits to offset exceedances of wasteload allocations. Section 62.1-44.19:14(B), (C)(1) of the State Water Control Law.

36. The State Water Control Law also specifically preserves the State Water Control Board's authority "to establish and enforce more stringent water quality-based effluent limitations

for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality.” Section 62.1-44.19:14(B) of the State Water Control Law.

37. Virginia’s Watershed General Permit regulations state that the General Permit “shall not control in lieu of more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality...” 9VAC25-820-30(B).

38. The State Water Control Law states that “[T]he exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.” Section 62.1-44.19:14(B) of the State Water Control Law.

39. In issuing a VPDES permit, the DEQ must ensure that “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 40 C.F.R. § 131.12(a)(1); 9 Va. Admin. Code § 25-260-30(A)(1).

40. The CWA allows the use of schedules of compliance, under appropriate circumstances, to allow permittees to come into compliance with the CWA and implementing regulations. 40 C.F.R. §122.47(a).

41. Any schedule of compliance shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA. 40 C.F.R. § 122.47(a)(1), 9VAC25-31-250(A)(1).

42. If a permit establishes a schedule of compliance which exceeds 1 year from the

date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement. 40 C.F.R. §122.47(a)(3), 9VAC25-31-250(A)(4).

43. Examples of interim requirements include: (a) Submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities. 40 C.F.R. § 122.47(a)(3)(ii)(Note).

44. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a finding that the compliance schedule will in fact lead to compliance with an effluent limitation and meet water quality standards by the end of the compliance schedule as required by sections 301(b)(1)(C) and 502(17) of the CWA. *Memorandum from Jim Hanlon, Dir. of Office of Wastewater Management, EPA, on Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits*, (May 10, 2007) at 2.

45. Compliance schedules in NPDES permits must be “an enforceable sequence of actions or operations leading to compliance with a [water quality based] effluent limitation [“WQBEL”] as required by the definition of “schedule of compliance” in section 502(17) of the CWA.” *Memorandum from Jim Hanlon, Dir. of Office of Wastewater Management, EPA, on Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits*, (May 10, 2007) at 2. See also 40 C.F.R. §122.2.

### **FACTUAL BACKGROUND**

46. The Massanutten STP discharges treated wastewater into Quail Run. Quail Run flows into Boone Run, which flows into the South Fork Shenandoah River, which is a tributary of the Shenandoah River.

47. The designated uses of Quail Run under Virginia water quality regulations are “recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish.” 9VAC25-260-10.

48. Quail Run in the vicinity of the discharge is listed as impaired for failing to meet the General Standard (Benthics) for aquatic life use, and is listed as having elevated levels of bacteria. VPDES Permit Fact Sheet for Massanutten, pg. 2.

49. The wastewater discharged by Massanutten STP contains nitrogen and phosphorus (collectively “nutrients”).

50. The draft VPDES permit for Massanutten released for public comment in October 2015 did not contain a schedule of compliance.

51. The Fact Sheet that accompanied the draft VPDES permit released for public comment contained no discussion or reference to a schedule of compliance.

52. The final Massanutten VPDES permit issued on March 28, 2016 included a Schedule of Compliance for meeting Total Nitrogen and Total Phosphorus effluent limits. Massanutten VPDES Permit, Section I.F at 12.

53. The new effluent limits for Total Nitrogen and Total Phosphorus come into effect under the Schedule of Compliance on January 1, 2020, nearly four years after the reissuance of the permit. Massanutten VPDES Permit, Section I.F at 12.



54. According to the Schedule of Compliance in the Massanutten VPDES permit, between the effective dates of April 16, 2016 and January 1, 2020, no specific effluent limitations for Total Nitrogen and Total Phosphorus apply to the facility. Massanutten VPDES Permit, Section I.F at 12.

55. The Schedule of Compliance is comprised solely of a requirement to “submit a progress report by January 10, 2017 and annually thereafter until the final limits become effective.” Massanutten VPDES Permit, Section I.F at 12.

56. Neither the Massanutten VPDES Permit nor the accompanying Fact Sheet contain any explanation of or reference to the basis for including a four year compliance schedule in the permit to comply with effluent limits for nutrients.

57. The reissued Massanutten VPDES permit includes annual average limitations on concentrations of TN and TP that may be discharged to Quail Run, which are calculated to ensure compliance with the annual load allocations in the Watershed General Permit.

58. The Fact Sheet that accompanied issuance of the Massanutten STP permit indicates that annual average concentration limitations on TP and TN are based on “Best Professional Judgment” and on the “Regulation for Nutrient Enriched Waters and Discharges Within the Chesapeake Bay Watershed,” at 9VAC25-40-10, and associated DEQ guidance documents. VPDES Permit Fact Sheet for Massanutten, Appendix B, pages 1-3.

59. The concentration limits for ammonia in the Massanutten STP permit are set to meet toxicity-based numeric criteria in Quail Run. VPDES Permit Fact Sheet for Massanutten, Appendix B, pages 6.

60. The Massanutten STP is registered as a point source discharger under the Watershed General Permit, and must comply with the annual load limits for Total Nitrogen and Total Phosphorus specified in the Permit, or purchase nutrient credits to offset any exceedances.

61. Annual load allocations for nutrients in the Watershed General Permit are calculated to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries, pursuant to the Chesapeake Bay Total Maximum Daily Load (TMDL). *See* Section 62.1-44.19:14(A) of the State Water Control Law.

62. Massanutten STP has exceeded its annual load allocations for Total Nitrogen and Total Phosphorus in the Watershed General Permit for at least the last two years.

63. Excessive amounts of nutrients in streams can cause or contribute to plant growth that is undesirable or creates conditions that are unsuitable for recreational activities and aesthetic enjoyment.

64. Excessive amounts of nutrients in streams can cause or contribute to detrimental changes in the composition and health of the biological life in streams and to physical impairments, such as depressed dissolved oxygen concentrations in the water.

65. Neither the Fact Sheet nor any other document in the record for the Massanutten STP permit reissuance contains any information or analysis by DEQ regarding the discharge's potential to cause or contribute to the violation of narrative water quality criteria or support of

designated uses related to discharges of nutrients in Quail Run, Boone Run, the South Fork Shenandoah River, or the Shenandoah River.

66. The Massanutten STP discharge will constitute the entirety of the flow in Quail Run during critical low flow periods. Fact Sheet, Appendix A, pg. 3.

67. Evidence in the record shows heavy growths of algae on the bottom substrate of Quail Run during June and September of 2015. VPDES Permit Fact Sheet for Massanutten, Appendix A, pages 4 and 5; Riverkeeper Comments on Draft Permit, Attachment 14.

68. Testimony in the record shows that conditions in Quail Run in September of 2015 were undesirable and of a nature that failed to support use of the stream for recreation and aesthetic enjoyment. Riverkeeper Comments on Draft Permit, pg. 9.

69. Stream monitoring has shown very low dissolved oxygen concentrations in Quail Run and that these low concentrations were in part due to heavy algal growth in the stream. Riverkeeper Comments on Draft Permit, pg. 6.

70. The DEQ considers stream concentrations of total phosphorus above 0.2 mg/l "to constitute threatened conditions that merit closer observation" and "[c]oncentrations of TP above the 0.2 mg/l threshold were observed both upstream and downstream of the STP outfall, with more TP threshold exceedances reported downstream. Five-year average concentrations of P were above the levels needed for eutrophic growth." Riverkeeper Comments on Draft Permit, pg. 7.

71. During periods of critical low stream flows, the Massanutten STP permit will allow stream concentrations of TP as high as 0.30 milligrams per liter ("mg/l") with an annual average frequency.

72. During periods of critical low stream flows, the Massanutten STP permit will allow stream concentrations of TN as high as 4.0 mg/l with an annual average frequency. If the STP is enlarged to discharge higher average flow amounts in the future, the TN levels would be allowed to reach as high as 3.0 mg/l.

73. The U.S. EPA has developed recommended numeric water quality criteria for nutrients that are specific to rivers and streams in different geographic areas of the country designated as "ecoregions." Riverkeeper Comments on Draft Permit, Attachment 5, pg. 3.

74. The EPA's nutrient ecoregion criteria are "derived to represent conditions of surface waters that are minimally impacted by human activities and protective of aquatic life and recreational uses" and are characterized as "reference conditions." *Id.* at v.

75. The EPA determined reference conditions for Ecoregion IX, in which the Shenandoah River watershed lies, to be concentrations of 0.69 mg/l for TN and 0.03656 mg/l for TP.

76. Discharges from Massanutten STP at the effluent limits for TN of 4.0 mg/l and 3.0 mg/l would exceed reference conditions expected to protect recreational and aquatic life uses in Quail Run by 480% and 335%, respectively.

77. Discharges from Massanutten STP at the effluent limit for TP of 0.30 mg/l would exceed reference conditions expected to protect recreational and aquatic life uses in Quail Run by 720%.

78. The South Fork Shenandoah River and Shenandoah River, into which Quail Run feeds, after joining Boone Run for a short distance, are both shown to have extensive algae blooms which hinder recreation and contribute to obnoxious deposits, odors, and colors in the water. Riverkeeper Comments on Draft Permit, Attachment 9.

79. Nutrients discharged to Quail Run persist in the water and on sediments carried by the water downstream into the South Fork Shenandoah River and the Shenandoah River.

## **CLAIMS OF ERROR**

### **CLAIM I**

**The Schedule of Compliance in the Massanutten permit for meeting Total Nitrogen and Total Phosphorus effluent limits fails to comply with the Clean Water Act, federal regulations and the Virginia State Water Control Law and regulations.**

80. The reissued Massanutten VPDES Permit includes a Schedule of Compliance for meeting Total Nitrogen and Total Phosphorus effluent limits by January 1, 2020, a period exceeding one year from the date of permit issuance.

81. The Schedule of Compliance fails to include "interim requirements and the dates for their achievement."

82. The Schedule of Compliance only requires the submission of "a progress report by January 10, 2017 and annually thereafter until the final limits become effective."

83. The reissued Massanutten VPDES Permit and accompanying Fact Sheet fail to include a finding by DEQ that the compliance schedule will in fact lead to compliance with an

effluent limitation and meet water quality standards by the end of the compliance schedule as required by sections 301(b)(1)(C) and 502(17) of the CWA.

84. DEQ has failed to provide any factual or regulatory basis for allowing Massanutten a nearly four year Schedule of Compliance to come into compliance with nutrient discharge limits. Neither the reissued VPDES Permit nor the accompanying Fact Sheet explain why Massanutten requires this length of time to come into compliance.

85. The Schedule of Compliance's sole requirement to file annual Progress Reports fails to meet the regulatory minimum, because it does not contain "interim requirements and dates for their achievement."

86. In the absence of interim requirements and dates for their achievement, the Schedule of Compliance contains no enforceable sequence of actions or operations leading to compliance, and severely restricts, if not prevents entirely, Riverkeeper or the public from determining whether Massanutten is on schedule to come into compliance by January 1, 2020.

87. The Schedule of Compliance does not contain interim effluent limits that should apply between the effective dates of April 16, 2016 and January 1, 2020, when the new effluent limits for nutrients become effective.

88. Therefore, the reissued Massanutten VPDES Permit violates Sections 502(17) and 301(b)(1)(c) of the Clean Water Act, federal regulations at 40 C.F.R. § 122.47(a), and Virginia state regulations at 9VAC25-31-250(A).

## CLAIM II

**The DEQ failed to perform the required analysis to determine whether the Massanutten permit discharge has the potential to cause or contribute to violations of Virginia water quality standards.**

89. Allegations 1 through 88 are re-alleged in this section.

90. Quail Run, the South Fork Shenandoah River, and the Shenandoah River are to be maintained, under Virginia's Water Quality Standards, to fully support "recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish." 9VAC25-260-10.

91. The State of Virginia has not adopted numeric nutrient criteria for streams in the Shenandoah River watershed, but narrative criteria contained in the water quality standards regulation require that "State waters . . . shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life." 9VAC25-260-20.A.

92. Under the narrative General Criteria "[s]pecific substances to be controlled include, but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and *substances which nourish undesirable or nuisance aquatic plant life.*" 9VAC25-260-20.A. (Emphasis added.)

93. Federal regulations require that:

Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion with an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of [three listed options].

40 CFR § 122.44(d)(1)(vi).

94. The Massanutten STP discharge contains nitrogen and phosphorus.

95. In issuing the Massanutten STP permit the Virginia DEQ failed to conduct or document any analysis to determine whether the nutrients in the Massanutten STP will cause, contribute to, or have the reasonable potential to cause or contribute to violation of Water Quality Standards.

96. There is abundant evidence in the record for this permit issuance that nutrient discharges from Massanutten are violating the narrative criteria for Quail Run, the South Fork Shenandoah River, and Shenandoah River and impairing the uses of these streams for recreation, and the nutrient limits in the reissued permit will allow violations to continue.

97. DEQ cannot rely on the annual nutrient load allocations under the Watershed General Permit, which are calculated to protect and restore Chesapeake Bay and its tidal tributaries, to ensure protection of local water quality in lieu of more stringent effluent limitations for nutrients, derived from a reasonable potential analysis that would lead to compliance with applicable narrative water quality standards for Quail Run, Boone Run and the South Fork Shenandoah River.

98. Therefore, in reissuing the VPDES Permit for Massanutten STP, DEQ violated the Clean Water Act, 33 U.S.C. § 1313(c)(2)(A); federal regulations, 40 C.F.R. § §131.11(a),



131.12(a)(1), 122.44(d) *et seq*; the Virginia State Water Control Law, Sections 62.1-44.19:14(A), (B); and Virginia state regulations, 9VAC25-260-20(A), 9VAC25-820-30(B), 9VAC25-260-30(A)(1).

### **CLAIM III**

**The DEQ failed to establish effluent limitations for nutrients in the Massanutten STP permit sufficient to protect receiving waters from nutrient-related impairments.**

99. Allegations 1 through 98 are re-alleged in this section.

100. The Massanutten STP permit contains effluent limitations for total nitrogen and total phosphorus that are based on “Best Professional Judgment” and on the “Regulation for Nutrient Enriched Waters and Discharges Within the Chesapeake Bay Watershed,” at 9VAC25-40-10, and associated DEQ guidance documents.

101. The concentrations of TN and TP that will occur in Quail Run under the permit's effluent limitations will greatly exceed the concentrations of each pollutant that are necessary to maintain support of designated uses and meet narrative criteria.

102. Therefore, DEQ's reissuance of the VPDES Permit for Massanutten STP violates the Clean Water Act, 33 U.S.C. § 1313(c)(2)(A); federal regulations, 40 C.F.R. §§131.11(a), 131.12(a)(1), 122.44(d) *et seq*; the Virginia State Water Control Law, Sections 62.1-44.19:14(A), (B); and Virginia state regulations, 9VAC25-260-20(A), 9VAC25-820-30(B), 9VAC25-260-30(A)(1).

### **RELIEF REQUESTED**

Riverkeeper respectfully requests that this Court grant the following relief:

1. That this Court invalidate, vacate, and declare null and void the modified VPDES permit no. VA0024732 approved by the Department of Environmental Quality to Massanutten STP on March 28, 2016;
2. That this Court remand the matter to the Department of Environmental Quality to redress the errors assigned;
3. That this Court, under the authority of Va. Code Ann. § 2.2-4030, award Appellant its reasonable costs and attorneys' fees; and
4. That this Court grant such other relief as may appear to be just and proper.

Respectfully Submitted;



Richard S. Phillips, Esq.  
Virginia Bar Number 22705  
The Phillips Law Firm, P.A.  
22 W. Dover Street  
Easton, MD 21601-8903  
(410) 820-4455  
*Attorney for Appellant*



Phillip Musegaas, *pro hac vice*  
New York Bar 4410288  
Potomac River Keeper Network  
1615 M Street NW, 2<sup>nd</sup> Floor  
Washington, DC 20036  
(202) 556-2930  
[phillip@prknetwork.org](mailto:phillip@prknetwork.org)  
*Attorney for Appellant*

**ATTACHMENT A**

**Notice of Appeal filed by Potomac Riverkeeper Network and Shenandoah Riverkeeper**

**COMMONWEALTH OF VIRGINIA**  
**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN RE:      MASSANUTTEN PUBLIC SERVICE CORPORATION  
             REISSUANCE OF VPDES PERMIT NO. VA0024732,  
             MASSANUTTEN PUBLIC SERVICE CORPORATION STP**

**NOTICE OF APPEAL**

In accordance with Rule 2A:2 of the Rules of the Supreme Court of Virginia, POTOMAC RIVERKEEPER, INC. d/b/a POTOMAC RIVERKEEPER NETWORK and SHENANDOAH RIVERKEEPER (“Appellant”) hereby files this notice of appeal with David Paylor, Director of the Virginia Department of Environmental Quality, for judicial review of the Department of Environmental Quality’s March 28, 2016, decision to renew and reissue VPDES Permit No. VA0024732 for the Massanutten Public Service Corporation (“Massanutten”). The reissued permit authorizes Massanutten to discharge treated wastewater to state waters from its Massanutten Sewage Treatment Plant under the Virginia Pollutant Discharge Elimination System, the Virginia State Water Control Law, and the federal Clean Water Act and its implementing regulations.

The appeal of this case decision will be taken to the Circuit Court for the City of Richmond, 13th Judicial Circuit of Virginia, located at 400 North Ninth Street, Richmond, Virginia 23219. Under Rule 2A:3 of the Rules of the Supreme Court of Virginia, the agency record should be forwarded to the Clerk of the Circuit Court for the City of Richmond as soon as possible.

As required by Rule 2A:2(b) of the Rules of the Supreme Court of Virginia, the Appellant provides the following information:

1. The Appellant is:

Potomac Riverkeeper, Inc. d/b/a Potomac Riverkeeper Network and  
Shenandoah Riverkeeper  
c/o Phillip Musegaas, Legal Director  
1615 M Street NW, 2nd Floor  
Washington, D.C. 20036

2. Counsel for the Appellant is:

Gregory Buppert (VSB #86676)  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
gbuppert@selcva.org  
Tel: 434.977.4090  
Fax: 434.977.1483

3. The Appellee is:

Virginia Department of Environmental Quality  
c/o David Paylor, Director  
629 East Main Street  
Richmond, VA 23219

4. Counsel for the Appellee is:

Mark R. Herring, Attorney General of Virginia  
David Grandis, Assistant Attorney General  
Office of the Attorney General of Virginia  
900 East Main Street  
Richmond, VA 23219

5. The permit applicant is:

Massanutten Public Service Corporation  
c/o Don Smiley, Manager  
P.O. Box 51  
Elkton, VA 22827

6. The permit applicant's registered agent is:

Corporation Service Company, Registered Agent  
Massanutten Public Service Corporation  
Bank of America Center, 16<sup>th</sup> Floor  
1111 East Main Street  
Richmond, VA 23219

7. Counsel for the permit applicant is unknown at this time.

Dated: April 27, 2016

Respectfully submitted,

POTOMAC RIVERKEEPER, INC. d/b/a  
POTOMAC RIVERKEEPER NETWORK, and  
SHENANDOAH RIVERKEEPER



Gregory Buppert (VSB #86676)

Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902-5065  
gbuppert@selcva.org  
Tel: 434.977.4090  
Fax: 434.977.1483

*Counsel for the Potomac Riverkeeper, Inc. d/b/a  
Potomac Riverkeeper Network, and  
Shenandoah Riverkeeper*

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 27, 2016, I have mailed by certified U.S. Mail, returned receipt requested, a complete copy of the foregoing Notice of Appeal to the Appellee and its counsel and the permit applicant and its registered agent as identified above.

  
Gregory Buppert

*Counsel for the Potomac Riverkeeper, Inc. d/b/a  
Potomac Riverkeeper Network, and  
Shenandoah Riverkeeper*



**ATTACHMENT B**

**Affidavit of Mark Frondorf, Shenandoah Riverkeeper**

**Affidavit of Phillip Musegaas, Legal Director for Potomac Riverkeeper Network**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

POTOMAC RIVERKEEPER, INC. d/b/a )  
POTOMAC RIVERKEEPER NETWORK, AND )  
SHENANDOAH RIVERKEEPER )

Appellant, )

v. )

DEPARTMENT OF ENVIRONMENTAL QUALITY, )

Appellee, )

MASSANUTTEN PUBLIC SERVICE CORPORATION )

Permit applicant )

**AFFIDAVIT OF MARK FRONDORF**

COMMONWEALTH OF VIRGINIA

This day personally appeared before me, a Notary Public in and for the Commonwealth of Virginia at large, MARK FRONDORF, who, first being duly sworn, stated that:

1. My name is Mark Frondorf. I am over 18 years of age, and I am competent to give this declaration. The information in this declaration is based on my personal knowledge, information, and belief.
2. I reside at 103 N. Church Street, Berryville, VA 22611.

3. I joined the staff of the Potomac Riverkeeper Network in March 2015. My title is the Shenandoah Riverkeeper, and I am the organization's spokesman for the entirety of the Shenandoah River watershed.

4. I am passionate about river conservation in general and the Shenandoah River in particular. When I moved to the area in 1984 to attend graduate school, I specifically moved to northern Virginia so I could be in close proximity to the South Fork of the Shenandoah River. I have literally fished all three reaches of the Shenandoah River (South Fork, North Fork, and Main Stem) every year for the past 32 years.

5. In 1991 I became a fishing guide in the area, focusing on the Shenandoah and Potomac rivers. As the former president of the Potomac River Smallmouth Club, I successfully lobbied both Virginia and Maryland officials to implement and expand catch and release regulations and I was instrumental in getting the federal government to revise the Code of Federal Regulations to permit wade fishing on portions of the Potomac. I also served on the Board of Directors for the Mid-Atlantic Federation of Fly Fishers.

6. I have penned numerous letters over the years to the Virginia Department of Environmental Quality urging them to do more to protect the Shenandoah from nutrient overload. In addition, I have given dozens of talks to groups and organizations talking about the beauty and serenity of the Shenandoah River. I hold this river dear and it pains me to see it suffering from water quality issues.

7. The Potomac Riverkeeper Network is a member-supported nonprofit organization, founded in 2000, with the mission of protecting the public's right to clean water in the Potomac River watershed. The organization engages in citizen enforcement of

environmental laws to stop pollution, preserve river habitat and enhance public use and enjoyment of our shared waterways. Through advocacy and citizen enforcement actions the Potomac Riverkeeper Network seeks to prevent or remedy pollution that damages water quality and river habitats and negatively impacts the ability of its members and the public to use and enjoy the Potomac River and its tributaries.

8. The Potomac Riverkeeper Network works throughout the 14,000 square miles of the Potomac River watershed, which includes the full length of the Potomac and Shenandoah Rivers and encompasses territory in Maryland, Virginia, West Virginia, Pennsylvania, and the District of Columbia.

9. Shenandoah Riverkeeper is a branch of the Potomac Riverkeeper Network.

10. In my professional position as Shenandoah Riverkeeper, my territory covers all three reaches of the Shenandoah River. My responsibilities include raising public awareness about the importance of the River, identifying pollution problems, and participating in public processes at the local, state, and federal level to resolve and remediate those problems.

11. My responsibilities as Shenandoah Riverkeeper require that I am regularly out on the River and its tributaries. I keep a 16' Mad River Canoe at my residence in Berryville and have access to the Shenandoah Riverkeeper raft and several kayaks so that I can access the River quickly under a variety of conditions to investigate pollution events and other occurrences. Along with the Shenandoah Riverkeeper Program Manager, Alan Lehman, we paddled over 275 miles on the Shenandoah River during the past twelve months.

12. Since I became the Shenandoah Riverkeeper in March 2015, we have paddled the South Fork of the Shenandoah River stretch from Elkton to Shenandoah on multiple occasions to observe the heavy algae emanating from Boone Run (which accepts Quail Run's flow).

13. I have been actively engaged on the Massanutten VPDES Permit process since the draft permit was issued for public comment in October 2015. After reviewing the permit, I became concerned that DEQ had failed to conduct an analysis of the potential for Massanutten's nutrient discharges to contribute to, or cause violations of narrative water quality standards, particularly resulting from algae blooms in Quail Run, Boone Run and the South Fork of the Shenandoah River.

14. I also became concerned about the use of nutrient trading by Massanutten, in which the permittee purchased credits to offset annual exceedances of its annual nutrient loading limits under Virginia's Watershed General VPDES Permit for Nutrient Discharges to Chesapeake Bay ("Watershed General Permit"). Given Quail Run's periodic low flows, I am concerned that excessive amounts of nutrient pollution have been discharged into Quail Run that will cause or contribute to nutrient pollution, including frequent algae blooms in Quail Run and downstream to the South Fork of the Shenandoah.

15. Taken together, DEQ's decision to allow exceedances of Massanutten's annual nutrient load limits, combined with the agency's failure to fully assess the impact of Massanutten's discharge on Quail Run and downstream waters has hindered, and will continue to hinder my ability to use and enjoy Quail Run, Boone Run and the Shenandoah River as a private individual who regularly enjoys fishing and boating on these waterways.

16. DEQ's actions have also hindered, and continue to hinder my efforts to protect and restore the Shenandoah River and its tributaries from pollution, in my capacity as Shenandoah Riverkeeper.

17. All three reaches of the Shenandoah River have been suffering from periodic fish kills since 2005, along with major algal blooms that scientists attribute to excessive nutrient overload coming from inadequate sewer treatment plant operations and agricultural runoff. DEQ is supposed to write individual permits to ensure protection of these smaller streams.

18. I reviewed the final VPDES Permit for Massanutten when it was released on March 28, 2016, and noted that the final Permit and Fact Sheet failed to include any analysis of the effluent limits' impacts on local water quality or compliance with narrative water quality standards.

19. In my review of the final Permit, I also became concerned about the lack of detail in the Schedule of Compliance for meeting nutrient limits. In the absence of any interim requirements or deadlines, the public and Potomac Riverkeeper Network will have no way of determining whether Massanutten is on track to meet the January 1, 2020 deadline in the Schedule. If Massanutten is unable to comply with this deadline, the facility will continue to discharge excessive nutrient pollution into Quail Run and downstream waters, causing further harm to the Potomac watershed.

20. I understand that if the VPDES permit for Massanutten set nutrient limits derived from an analysis of local water quality and compliance with narrative water quality standards, and contained a Schedule of Compliance with specific interim deadlines that

would result in compliance with water quality standards, then the discharges from Massanutten would likely be reduced as quickly as possible and no longer contribute to the impairment and pollution of Quail Run, Boone Run and the Shenandoah River.

21. Reducing or eliminating the pollution from the Massanutten Sewer Treatment Plant is an issue that is important to me as the Shenandoah Riverkeeper and the Potomac Riverkeeper Network. Boone Run enters the South Fork of the Shenandoah River barely 18 miles downstream from the very start of its journey to Chesapeake Bay. Canoeing, kayaking and fishing are all designated uses of the South Fork of the Shenandoah River. It is impaired by the heavy nutrient load coming from Quail Run and then dumping into Boone Run before reaching the South Fork of the Shenandoah just below Elkton, Virginia.

22. I have spoken with many anglers, kayakers, canoeists, and birders who say they no longer want to float or access this stretch of the River because of the heavy and nutrient load entering the River. It also affects the livelihood and businesses of many Virginians who make their living providing goods and services to people wanting to use the South Fork of the Shenandoah River. Several fishing guides have informed me that they no longer want to take clients on this stretch of the river due to the frequency in which they encounter heavy algal blooms.

23. The reissuance of this permit without any scientific analysis supporting the numeric limits negatively impacts my work as Shenandoah Riverkeeper and the work of my organization to protect and restore the water quality of the Shenandoah River and its tributaries. DEQ tacitly acknowledged the algal blooms plaguing all three reaches of the

Shenandoah River, when the DEQ Valley Regional Director wrote to me on 20 May 2016 to inform me that the Valley Regional Office has hired two techs through November 2016 to perform instream algal observations in the Shenandoah.

24. The discharge of effluent with relatively high levels of nitrogen and phosphorous from the Massanutten Sewer Treatment Plant also decreases my enjoyment of the River when I am performing my duties as the Shenandoah Riverkeeper. I would feel better about the future of Quail Run and the Shenandoah River if the Department of Environmental Quality required treatment technology that would significantly reduce the concentrations of pollutants in this wastewater.

25. Treating the wastewater discharge from Massanutten STP to the levels that can be achieved with available and cost effective wastewater treatment would help minimize or eliminate the harm to Quail Run and the South Fork of the Shenandoah River caused by this discharge.

26. The Potomac Riverkeeper Network represents my personal and professional interests in seeking to protect Quail Run and the Shenandoah River system and to bring the Massanutten Sewer Treatment Plant into compliance with state and federal law.

27. The resolution of this case in favor of the Potomac Riverkeeper Network and Shenandoah Riverkeeper will help protect my interests and redress my injuries.





MARK FRONDORF

Subscribed and sworn to before me this 26<sup>th</sup> day of May, 2016.



NOTARY PUBLIC



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

POTOMAC RIVERKEEPER, INC. d/b/a  
POTOMAC RIVERKEEPER NETWORK and  
SHENANDOAH RIVERKEEPER,

Appellant,

v.

VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

Appellee,

MASSANUTTEN PUBLIC SERVICE CORPORATION

Permit applicant

Case No. \_\_\_\_\_

**AFFIDAVIT OF PHILLIP MUSEGAAS, ON BEHALF OF POTOMAC  
RIVERKEEPER, INC., AND SHENANDOAH RIVERKEEPER**

COMMONWEALTH OF VIRGINIA

This day personally appeared before me, a Notary Public in and for the Commonwealth of Virginia at large, PHILLIP MUSEGAAS, who, first being duly sworn, stated that:

1. My name is Phillip Musegaas. I am over 18 years of age, and I am competent to give this declaration. The information in this declaration is based on my personal knowledge, information, and belief.
2. I reside at 120 Seaton Place NW, Washington, DC.
3. I have been the Legal Director of Potomac Riverkeeper, Inc., d/b/a Potomac Riverkeeper Network (PRK) since March 2, 2015. I am also an officer of PRK.
4. PRK has its offices at 1615 M Street NW, Washington, DC.
5. PRK is a member supported nonprofit organization, founded in 2000, with the mission of protecting the public's right to clean water in the Potomac River watershed. PRK engages in citizen enforcement of environmental laws to stop pollution, preserve river habitat and enhance public use and enjoyment of our shared waterways. Through advocacy and citizen enforcement actions, PRK seeks to prevent or remedy pollution that damages water quality and river habitats and negatively impacts the ability of PRK's members and the public to use and enjoy the Potomac River and its tributaries.
6. PRK is a network comprised of the Potomac, Upper Potomac and Shenandoah Riverkeepers.
7. PRK works throughout the 14,000 mile Potomac River watershed, which includes the full length of the Potomac and Shenandoah Rivers, encompassing territory in Maryland, Virginia, West Virginia, Pennsylvania and the District of Columbia.
8. As part of its work, PRK regularly reviews and submits formal comments on Clean Water Act discharge permits that allow discharges of pollutants into the Potomac

watershed. PRK's goal in engaging on these permits is to reduce and eventually eliminate these discharges, in order to improve water quality and the aquatic environment.

9. PRK currently has approximately 1,000 members who live and work in the Potomac River watershed. Members of the organization regularly use and enjoy the natural resources of the Shenandoah River and its tributaries like Quail Run and Boone Run for fishing, swimming, boating, wildlife viewing, and other purposes.
10. PRK's members are adversely affected by pollution that hinders or negatively affects their ability to use and enjoy these resources.
11. The Massanutten Sewage Treatment Plant (Massanutten) is located in Rockingham County, and discharges into Quail Run, which flows into Boone Run, which empties into the South Fork of the Shenandoah River.
12. PRK members regularly use and enjoy the South Fork of the Shenandoah River, Boone Run and Quail Run downstream of Massanutten.
13. PRK began investigating water pollution issues at Massanutten in 2015, in the context of filing comments on the facility's Virginia Pollution Discharge Elimination System (VPDES) permit renewal.
14. PRK has been actively engaged in efforts to reduce nutrient pollution from Massanutten and other sources into the Shenandoah River and its tributaries since 2014. This engagement has included filing comments on the Commonwealth of

Virginia's 2014 Integrated Report in the context of the state's Clean Water Act Section 303(d) impaired waters listings.

15. PRK is aware that Massanutten discharges nutrients, including nitrogen and phosphorus, into Quail Run.
16. PRK is aware that the nutrient discharges are governed under two separate but related Clean Water Act permits, the facility specific VPDES permit and the Virginia Watershed General Permit for Nutrient Discharges to the Chesapeake Bay (Watershed Permit).
17. PRK is aware that Massanutten has exceeded its annual Waste Load Allocations for nutrient discharges specified in the Watershed Permit for at least the last two years.
18. PRK is aware that Massanutten has purchased credits to offset these exceedances over at least the past two years, as currently allowed under state law and the Watershed Permit.
19. PRK is aware that the Virginia Department of Environmental Quality (DEQ) reissued Massanutten's VPDES permit on March 28, 2016.
20. PRK is aware that the reissued VPDES permit imposes effluent limits on nitrogen and phosphorus that become effective on January 1, 2020.
21. PRK is aware that DEQ did not conduct an analysis of the nutrient discharges' potential to cause or contribute to a violation of state water quality standards in Quail Run.

22. PRK is aware that the State of Virginia has not promulgated numeric water quality standards for nutrients in state waters.
23. PRK is aware that the Wasteload Allocations for discharges of nutrients in the Watershed Permit are calculated to protect Chesapeake Bay, and not Quail Run.
24. PRK is aware that nutrient discharges that comply with the Watershed Permit Waste Load Allocations are likely to contribute to the continued impairment of Quail Run for nutrients, resulting in algae blooms that negatively affect and cause injury to the interests of PRK and its members.
25. As a result, these discharges would negatively affect and hinder PRK's ability to achieve its mission of stopping pollution and restoring river habitat in the Shenandoah River and the Potomac watershed.
26. These permitted discharges of nutrients would also directly hinder and degrade PRK's members' ability to use and enjoy Quail Run, Boone Run and the South Fork of the Shenandoah River for fishing, swimming, boating, wildlife viewing and other purposes.
27. Stricter permit limits on nutrient discharges, based on an analysis of what is required to protect water quality in Quail Run and downstream in the South Fork of the Shenandoah River, would reduce or eliminate these adverse impacts on Quail Run, Boone Run and the Shenandoah River.
28. PRK is also aware that the Schedule of Compliance included in the reissued VPDES Permit for Massanutten does not contain interim deadlines or other

benchmarks that would describe specific progress towards compliance with the effluent limitations for nutrients that come into effect on January 1, 2020.

29. PRK is aware that DEQ has not included an explanation in the reissued VPDES Permit or accompanying Fact Sheet that provides the factual basis for the four year timeline in the Schedule of Compliance.

30. PRK is aware that the lack of interim deadlines and other detail in the Schedule of Compliance makes it difficult, if not impossible for the public to discern whether Massanutten is on track to meeting the January 1, 2020 deadline.

31. The favorable resolution of this case resulting in the remand of the reissued VPDES permit to DEQ, and the issuance of a new VPDES permit with a detailed Schedule of Compliance and effluent limits calculated to protect local water quality, would protect PRK's interests and benefit its organizational mission of protecting and preserving the Shenandoah River and its tributaries and the Potomac River watershed, as well as redressing the injury resulting from excessive discharges of nutrients from Massanutten.

Phillip Musegaas

PHILLIP MUSEGAAS

Subscribed and sworn to before me this 26<sup>th</sup> day of May, 2016.

Nardos Gebrehiwot

NOTARY PUBLIC






## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 27, 2016, true copies of the foregoing **Petition for Appeal of VPDES Permit VA0024732** were served on the following parties by hand:

David K. Paylor,  
Director, Virginia Department of Environmental Quality  
Virginia Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219

The Hon. Mark Herring, Virginia Attorney General  
Office of the Attorney General of Virginia  
900 East Main Street  
Richmond, VA 23219

Massanutten Public Service Corporation (Permit Applicant)  
Via Registered Agent  
Corporation Service Company  
Bank of America Center, 16<sup>th</sup> Floor  
1111 East Main Street  
Richmond, VA 23219

  
Phillip Musegaas, *pro hac vice* pending  
New York Bar 4410288  
Potomac Riverkeeper Network  
1615 M St. NW, 2<sup>nd</sup> Floor  
Washington, DC 20036  
202-556-2930  
*Attorney for Appellant*