



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF WATERWAYS ENGINEERING AND WETLANDS

March 7, 2013

John R. Collins, Secretary-Treasurer  
Mahoning Creek Hydroelectric Company, LLC  
5425 Wisconsin Avenue  
Suite 600  
Chevy Chase, MD 20815

Re: Limited Power Permit  
DEP File No. D03-022  
Mahoning Creek Dam

Dear Mr. Collins:

Enclosed is a copy of your Limited Power Permit. Please review the permit so you are aware of the extent of authorization and permit conditions. Until the signed Acknowledgment of Permit Conditions is submitted to this office, the permit is void.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8547, Harrisburg, PA 17105-8547, 717.787.3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800.654.5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape for the Secretary of the Board at 717.787.3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

I hope this information is helpful to you. If you have any questions or need additional information, please contact me at 717.772.5948.

Sincerely,

Ryan J. Hall  
Ohio Watershed Section  
Division of Dam Safety

Enclosures: Limited Power Permit

John R. Collins, Secretary-Treasurer - 2 -  
Mahoning Creek Hydroelectric Company, LLC

March 7, 2013

**Acknowledgment of Permit Conditions**

cc: US Army Corps of Engineers, Pittsburgh District  
Gerald L. Cross, FERC, New York Regional Office

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATERWAYS ENGINEERING

**LIMITED POWER PERMIT  
MAJOR WATER POWER PROJECT**

The Department of Environmental Protection (Department), established by the Act of December 3, 1970, 71 P.S. §§ 510-1 et seq. and empowered to exercise certain powers and perform certain duties under and by virtue of the Act of November 26, 1978, P.L. 1375, No. 325, as amended by the Act of October 23, 1979, No. 70, known as the "Dam Safety and Encroachments Act"; Act of June 14, 1923, P.L. 704, as amended by the Act of July 19, 1935, P.L. 1363, known as the Limited Power Act; and the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, which empowers the Department to exercise certain powers and perform certain duties by law, vested in and imposed upon the Water Supply Commission of Pennsylvania and the Water and Power Resources Board, hereby issues this permit to:

Mahoning Creek Hydroelectric Company, LLC, 5425 Wisconsin Avenue, Suite 600, Chevy Chase, MD,  
20815

giving its consent to the construction and use of a dam to develop water power as part of a power project not within the jurisdiction of the United States, as follows:

To construct, operate and maintain a Hydro Power Unit for the production of up to 6.0 MW of electricity  
to contribute to the First Energy/West Penn grid at the existing Mahoning Creek Dam located across  
Mahoning Creek in Wayne Township, Armstrong County

This permit is issued in response to an application filed with the Department of Environmental Protection on the 22nd day of January 2013, and with the understanding that the work shall be performed in accordance with the approved maps, plans, profiles, and specifications filed with this application, subject, however, to the provisions of the Dam Safety and Encroachments Act, the Limited Power Act, the Administrative Code, and the following conditions, regulations, and restrictions:

1. This permit does not give any property rights, either in real estate or material, or any exclusive privileges. It does not grant or confer any right, title, easement, or interest in, to, or over any land belonging to the Commonwealth of Pennsylvania. It does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations. It does not obviate the necessity of obtaining Federal assent when necessary.

- 2. All work shall be conducted under the oversight and supervision of a registered professional engineer approved by the Department. The permittee shall file with the Department at least 15 days prior to the commencement of construction a statement setting forth the name of the registered professional engineer and the contractor conducting the work, including names and employers of personnel responsible for the supervision of construction. The registered professional engineer or a competent representative shall be on the work site at all times during significant construction activities until completion of the dam.
- 3. Prior to commencement of work, the permittee must schedule a pre-construction meeting to review the conditions of the permit and discuss details of the proposed construction. This meeting should be held at the dam site and include the engineer, contractor, permittee, and a representative of the Department of Environmental Protection. To schedule this meeting, please contact:

N/A  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 4. The permittee shall fully inform the engineer or contractor, responsible for the supervision and conduct of work, of the terms, conditions, restrictions, and covenants of this permit. Prior to the commencement of construction, the permittee shall file with the Department in writing, on a form provided by the Department, a statement signed by the permittee and an individual responsible for the supervision or conduct of the construction work acknowledging and accepting the general and special conditions contained in the permit. Unless the acknowledgment and acceptance have been filed, the permit is void. A copy of the permit and the acknowledgment shall be available at the work site for inspection upon request by an officer or agent of the Department or another Federal, State, County, or Municipal Agency.
- 5. At least 15 days prior to commencement of construction, the permittee shall notify the Department, in writing, of the proposed time of commencement of this work.
- 6. The project site shall at all times be available for, and the work shall at all times be subject to, inspection by representatives of the Department.
- 7. No changes shall be made to the approved maps, plans, profiles, and specifications, except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the maps, plans, profiles, and specifications as may be considered necessary.
- 8. The permittee shall implement and monitor the Erosion and Sedimentation Control Plan prepared in accordance with the Department's Chapter 102 regulations so as to minimize erosion and prevent excessive sedimentation into the receiving watercourse or body of water.
- 9. The project site shall at all times be available for inspection by authorized officers and employees of the Armstrong County Conservation District. Prior to commencement and upon completion of

the work authorized by this permit, the permittee shall notify the Armstrong County Conservation District at:

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. The project site shall at all times be available for inspection by authorized officers and employees of the Pennsylvania Fish and Boat Commission. Prior to commencement and upon completion of the work authorized by this permit, the permittee shall notify the Pennsylvania Fish and Boat Commission's Southwest Regional Office at:

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. If the use of explosives in any waterways is required, the permittee shall secure the prior written permit from the Pennsylvania Fish and Boat Commission, pursuant to the Pennsylvania Fish and Boat Code, Act 1980-175 Title 30 Pennsylvania Consolidated Statutes, Section 2906. Requests should be directed to the Pennsylvania Fish and Boat Commission, Division of Environmental Services, 450 Robinson Lane, Bellefonte, PA 16823, Telephone: 814-359-5147.

12. All trees of no value and brush cleared from the area under this permit shall be burned at such time and under such conditions as to prevent the fire from spreading to adjoining timber land provided, however, that before such burning is begun, the Regional Air Pollution Control Engineer of the Department of Environmental Protection in charge of the Region in which the area is located shall be notified.

13. No material shall be placed on any portion of the foundation until a representative of the Department has approved, in writing, such portion of the foundation. No earth or other embankment material that is in a frozen condition shall be covered or placed in embankments. Concrete shall not be placed in freezing weather except under conditions approved by the Department.

14. A detailed report upon the status of the construction shall be mailed monthly to the "Division of Dam Safety, P.O. Box 8554, Harrisburg, PA 17105-8554", until work upon the dam has been completed.

15. If the work authorized by this permit is not completed on or before \_\_\_\_\_, this permit, if not previously revoked or specifically extended by the Department in writing, shall become void without further notification. If construction work has not been completed within the time specified in the

permit and the time limit specified in the permit has not been extended in writing by the Department or if a permit has been revoked for any reason, the permittee shall, at his own expense and in a manner that the Department requires, restore the watercourse and floodplain to their former condition.

16. Within thirty (30) days after the completion of the work authorized in this permit, the permittee shall file with the Division of Dam Safety, a certified statement signed by the supervising engineer and by the permittee that the work has been performed in accordance with this permit and the approved maps, plans, profiles, and specifications. Further, the permittee shall submit to the Division of Dam Safety, within ninety (90) days after the date of completion of the work authorized by this permit, a set of final "As-Built Plans" for the project, showing changes from the original plans and specifications.
17. The Department shall be notified at least one week in advance of the time when it is proposed to begin to store water in the reservoir or pond created by the dam for which this permit is issued. The Department requires the permittee to allow a portion of the natural stream flow to pass the dam while the reservoir or pond is being filled. This notice is required in order that arrangements may be made to have a representative on the grounds before or during the filling if the Department considers it desirable. Sufficient water to support fish life shall be allowed to flow into the stream below the dam, during the period of its construction or repair and while the reservoir is being filled. The permittee agrees to abide by such rules and regulations as to the storage and discharge of water, and as to the level of the reservoir created by said dam, as may be prescribed from time to time by the Department.
18. The permittee shall operate and maintain the dam authorized herein in a safe condition in accordance with the permit terms and conditions; the approved maps, plans, profiles and specifications; and the regulations of the Department. Any repairs or maintenance involving modifications of the dam from its original specifications, and any repairs or reconstruction involving a substantial portion of the structure as defined by regulations of the Department shall require the prior written approval or permit of the Department.
19. The permittee agrees to operate and maintain any earthen dam embankment, upstream and downstream groin areas, and upstream and downstream toe areas free of all trees, shrubs and woody vines. These areas shall be maintained with a perennial sod forming ground cover. The Department must approve vegetative cover seed mixes. The permittee further agrees to operate and maintain any spillway approach channels, control sections and outlet channels free of all trees, shrubs and woody vines and to remove debris that may accumulate after runoff events.
20. The permittee agrees to give the Department at least thirty (30) days advance written notice of any actual or anticipated changes in the ownership of the dam, or the lake formed by the dam, or of any portion of the dam or lake, and shall furnish the Division of Dam Safety, P.O. Box 8554, Harrisburg, PA 17105-8554 with name(s) and address(es), and further agrees to execute an assignment of this permit to the new owner(s).
21. The permittee agrees in accepting this permit, to install, upon the request of the Pennsylvania Fish and Boat Commission, such fishway or fishways as the said Commission may require. (See Section 185, of the Act of May 2, 1925, P.L. 448, as amended by the Act of April 22, 1929, P.L. 621). Attention is also called to Section 191 of the Act of May 2, 1925, P.L. 448, as amended by Act No.113, approved May 29, 1935, which provides that no person owning, leasing, or


maintaining a dam, holding back waters inhabited by fish, shall draw off such waters without first receiving written permission from the Pennsylvania Fish and Boat Commission.

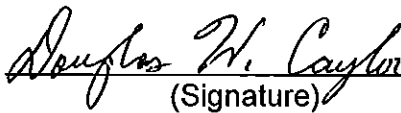
22. That the duration of this Limited Power Permit shall be for a period of 50 years, provided, however, that the permittee shall be entitled to extension and renewal thereof, until the said permittee shall have received through recapture or purchase by the Commonwealth, or by a duly authorized subsequent permittee, repayment of the capital prudently invested in the power project upon the faith of the permit, plus such reasonable damages, if any, to property of the permittee valuable, serviceable, and dependent for its usefulness upon the continuance of such permit, but not recaptured or purchased as may be caused by the severance there from of property taken. Should the permittee, for any reason whatsoever, abandon the project, for which the dam herein authorized forms a part, or cease to operate the same for a period of three (3) years then this permit shall cease and be null and void and the permittee shall, at his own expense and to such extent and in such time and manner as the Department may require, remove all or any portion of the dam and restore the watercourse to its former condition. No claim shall be made against the Commonwealth of Pennsylvania on account of any such removal.

23. The Department reserves the right to suspend or revoke this permit if, in its opinion, the best interest of the Commonwealth will be served.

**SEE ATTACHED PAGE FOR ADDITIONAL SPECIAL CONDITIONS.**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

  
\_\_\_\_\_  
Roger P. Adams, P.E.  
Chief  
Division of Dam Safety  
Bureau of Waterways Engineering

Attest:   
\_\_\_\_\_  
(Signature)

3-7-2013  
\_\_\_\_\_  
(Issue Date)

**SPECIAL CONDITIONS**

The permittee is advised that, since this permit authorizes the construction, operation and maintenance of a hydropower unit, Standard Condition Nos. 2, 3, 4, 5, 8, 9, 10, 13, 14, 15, 16, and 17, relating to the construction of dam, may not be applicable to this permit.

The permittee shall pay to the Department of Environmental Protection, for the privilege hereby granted, the sum of \$300.00 annually. This payment for any calendar year shall be made at the end of the year or within 30 days thereafter upon bills rendered or approved by the Department.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ACKNOWLEDGMENT OF PERMIT CONDITIONS

DEP File No. \_\_\_\_\_

\_\_\_\_\_ Township

\_\_\_\_\_ County

Sir/Madam:

Acknowledgment is made that I, \_\_\_\_\_, and  
(Permittee Name)

\_\_\_\_\_  
(Name, address and telephone of engineer responsible for supervision of work)

\_\_\_\_\_ ,  
have been apprised of and are familiar with the terms and conditions of Permit No. \_\_\_\_\_

issued to \_\_\_\_\_  
(Permittee)

giving its consent to \_\_\_\_\_  
(Work authorized as stated on permit)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Permittee signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of engineer responsible for supervision of work)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Department representative attending pre-construction meeting)

\_\_\_\_\_  
(Date)

Return this completed form to DEP acknowledging permit conditions:

Department of Environmental Protection  
Bureau of Waterways Engineering and Wetlands  
Division of Dam Safety  
P.O. Box 8460  
Harrisburg, PA 17105-8460