

Attachment A
Chronology of Significant Contacts between EPA and Plaintiffs regarding Indian Creek TMDL and their requests for Reconsideration

EPA is making this decision today, in part, to respond to requests for reconsideration of the Indian Creek nutrient TMDL submitted by Mr. John Hall on February 3, 2010 and September 14, 2010, on behalf of a group of Pennsylvania communities, including the Telford Borough Authority. Additionally, EPA is responding to requests for reconsideration of the Indian Creek sediment TMDL submitted by Mr. Steve Hann on March 18, 2013 and June 26, 2013, on behalf of Lower Salford Township Authority, Lower Salford Township, Franconia Township and Franconia Sewer Authority. Over the years, Mr. Hall and others have submitted many comments to (and had many conversations with) EPA – both before and after EPA’s establishment of the Indian Creek nutrient and sediment TMDLs. EPA has prepared this Chronology of Contacts to provide a summary of those comments and communications.

2007

1. October 4, 2007 – Nutrient Forum sponsored by EPA Region 3 (R3) included presentations and lively discussion between EPA experts, Pennsylvania Department of Environmental Protection (PADEP), other nutrient experts. Attendance included William Hall of Hall and Associates.
2. November 20, 2007 – *Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application*. Prepared for EPA, Region 3, Philadelphia, PA by Michael J. Paul and Lei Zheng, Tetra Tech, Inc.

2008

3. February 27, 2008 to April 18, 2008 – Public comment period for proposed nutrient (nitrogen and phosphorus) and sediment TMDLs for Indian Creek Watershed, Pennsylvania
4. April 8, 2008 – meeting between John Hall, EPA R3 and others (Pennsylvania Municipal Authorities Association).
5. April 11, 2008 – letter from John Hall to Jon Capacasa requesting EPA withdraw proposed Chester, Paxton, and Indian Creek TMDLs, asserting EPA’s “bad” and “manifestly incorrect” science.
6. April 18, 2008 – letter from John Hall to Ben Grumbles requesting EPA Headquarters (HQ) review of proposed TMDLs.
7. April 18, 2008 – letter from John Hines, Acting Director, Bureau of Watershed Management, PADEP, Southcentral Regional Office to Lenka Berlin, EPA Region 3

stating: “[w]ith respect to phosphorus, the Department supports the approach that EPA used as an interpretation of the Commonwealth’s narrative criteria.”

8. April 22, 2008 – meeting at EPA HQ with John Hall
9. May 1, 2008 – letter from John Hall to James Curtin identifying “legal concerns” with TMDLs and characterizing EPA approach as “seriously flawed on both procedural and substantive grounds.”
10. May 21, 2008 – letter from John Hall to Ben Grumbles requesting that he “step into this matter immediately and stop” EPA R3’s “unlawful” efforts “to bolster” the administrative record by giving appearance that PADEP “authorized” EPA R3’s actions. Hall claims “blatant fabrication and willful misrepresentation of state law.”
11. June 3, 2008 – letter from Robert Koroncai to John Hines (PADEP) requesting “clarification regarding PADEP’s support for the approach EPA used to determine a phosphorus endpoint” in the PA nutrient TMDLs, including Indian Creek.
12. June 12, 2008 – EPA teleconference call with John Hall and clients on PA TMDLs (John Goodin, Mike Haire, Tom Henry and Jon Capacasa).
13. June 27, 2008 – letter from John Hines, Acting Director, Bureau of Watershed Management, PADEP, Southcentral Regional Office to Robert Koroncai, EPA Region 3 stating: “it is DEP’s view that the chosen approach and endpoint adequately protect all beneficial water uses in those watersheds.”
14. June 25, 2008 – Mr. Hall submits additional comments to EPA R3 including some pertaining to Indian Creek.
15. June 30, 2008 – After considering many comments, and making significant changes to the proposed TMDLs, EPA establishes Indian Creek nutrient and sediment TMDLs along with several other nutrient and sediment TMDLs in Pennsylvania including a comprehensive response to comments documents.

Contacts and communication between Plaintiff and EPA after establishment of the Indian Creek TMDL:

16. August 21, 2008 – letter from John Hall to Stephen Johnson, EPA Administrator, (with attachments) requesting peer review of EPA’s “approach to developing instream standards for nutrients” allegedly used in the Indian Creek nutrient TMDL among others.
17. September 30, 2008 – letter from John Hall to Stephen Johnson giving “notice of intent to file suit” against EPA for disregard/violation of mandatory duties under the CWA regarding the establishment of the Indian Creek TMDLs (among others).
18. October 2, 2008 – letter from John Hall to Stephen Johnson providing “supplemental information” re 8/21/08 request for peer review.

19. November 10, 2008 – memorandum from Michael Paul and Lei Zheng at Tetra Tech to Tom Henry regarding PA TMDL endpoints.
20. November 13, 2008 – EPA at Mr. Hall’s request hosts a meeting with in DC to discuss concerns regarding Indian Creek TMDL (among others).
21. November 25, 2008 – letter from John Hall to Ephraim King thanking EPA for the meeting and providing additional information in support of peer review request, including potential “charge questions.”
22. December 24, 2008 – letter from Ephraim King to John Hall agreeing to conduct peer review of EPA’s empirical approaches in context to a proposed addendum to EPA’s 2000 *Nutrient Criteria Technical Guidance Manual – Rivers and Streams* (EPA-822-B-00-002). While not addressing how EPA established the Indian Creek TMDL (or other Pennsylvania nutrient TMDLs), the proposal does cover some of the statistical and scientific approaches EPA used in interpreting Pennsylvania’s narrative water quality standard and deriving the water quality endpoint used in the TMDL.

2009

23. January 14, 2009 – letter from John Hall to Ephraim King requesting clarification of EPA’s continued belief in sufficiency of PA TMDLs and asking questions regarding form and content of peer review.
24. January 22, 2009 – letter from John Hall to Ephraim King requesting “open Science Advisory Board (SAB) peer review with public input of EPA’s conditional probability method.”
25. February 12, 2009 – letter from Ephraim King to John Hall stating EPA’s belief that PA nutrient TMDLs were “appropriately developed and supported by the underlying record” but remaining “open to the outcome of the peer review” and its relevance in considering those issues with respect to the TMDLs.
26. August 17, 2009 – letter from William Hall of Hall and Associates to Lisa Jackson, EPA Administrator, requesting additional time for presentations at SAB peer review meeting
27. September 11, 2009 – SAB conducts peer review meeting in DC
28. September 18, 2009 – letter from John Hall to EPA OST Director Ephraim King requesting withdrawal of PA nutrient TMDLs (including Indian Creek nutrient TMDL) in light of issues discussed at September 11, 2009 peer review meeting.
29. October 9, 2009 – email from John Hall to Ephraim King attaching draft letter he intends to send to EPA if it doesn’t agree to withdraw the TMDLs. Letter would charge “purposeful, wantonly abusive and grossly negligent actions specifically undertaken by EPA Region III and supported by Headquarters staff.” Draft letter never sent.

30. October 26, 2009 – phone call between John Hall and Ephraim King expressing EPA’s need to see final SAB report before making decision on reconsideration of TMDLs.
31. November 3, 2009 – letter from John Hall to Ephraim King requesting OST “fully explore the substance of the “technical and legal improprieties . . . ignored by EPA HQ to date” and requesting answer “shortly” on “how the TMDLs will be withdrawn.”
32. November 19, 2009 – SAB releases *draft* peer review report
33. November 20, 2009 – email from John Hall to Ephraim King requesting a decision on the PA nutrient TMDLs “before the Thanksgiving holiday” in light of just-released draft SAB report.

2010

34. February 4, 2010 – letter from John Hall to Jon Capacasa and John Hines (PADEP) requesting joint EPA/DEP meeting to discuss new information (with attachments) supporting his request for reconsideration of the PA nutrient TMDLs.
35. April 22, 2010 – meeting at EPA HQ with John Hall
36. April 27, 2010 – letter from SAB to Lisa Jackson submitting *final* SAB peer review report. Report concludes *that* “stressor-response approach is a legitimate, scientifically based method for developing numeric criteria if the approach is appropriately applied (i.e., not used in isolation but as part of a weight-of-evidence approach.” SAB also said draft guidance “does not present a complete or balanced view” and recommends “restructuring and substantial revision.”
37. July 8, 2010 – EPA, DEP, Mr. Hall, Steve Hann (attorney for Lower Salford et al) and various clients meet in Philadelphia as part of settlement discussion and to “discuss path forward.” Parties discuss various technical options to reduce nutrient/sediment pollution. Msrs Hall and Hann present their concerns. EPA states it is presently standing behind TMDLs but agrees to continue considering issues raised and will review for EPA OW publication of final Nutrient Guidance Addendum addressing SAB Comments on draft Guidance.
38. July 30, 2010 – Mr. Hall Letter to Jon Capacasa, rejecting EPA invitation to propose any nutrient reduction plan until and unless EPA first withdraws TMDLs. Hall repeats request to withdraw TMDLs.
39. August 16, 2010 Hahn Settlement response to Jon Capacasa.
40. September 14, 2010 – letter (w/attachments) from John Hall to Messrs. Perciasepe/Sussman alleging “serious ethical and professional improprieties,” “intentional scientific misrepresentation, malfeasance and fabrication of regulatory

requirements” in connection with establishment of PA nutrient TMDLs and “application of similar approaches nationwide” in the setting of nutrient WQS.

41. October 4, 2010 –letter (w/attachments) from John Hall to Nancy Stoner submitting “documentation” that PA nutrient TMDLs are “seriously flawed and should be withdrawn.”
42. October 15, 2010 – Letter from OW AA Peter Silva to Mr. Hall regarding Hall’s letter of September 14, 2010. Mr. Silva rejected Mr. Hall’s allegations of ethical and professional impropriety, but agreed to continue to consider the technical issues raised as part of the request to reconsider the withdrawal of the Pennsylvania nutrient TMDLs.
43. December 5, 2010 – In response to request from PADEP, Jon Capacasa provides oral testimony at Pennsylvania Environmental Hearing Board (EHB) hearing. This hearing was part of the litigation by Telford and Lower Salford (among others) challenging EPA-established nutrient TMDLs including Indian Creek Nutrient and Sediment TMDLs in state court. Both Mr. Hall and Mr. Hann cross examine Mr. Capacasa.
44. November 2010 – EPA publishes final guidance addendum entitled *Using Stressor-response Relationships to Derive Numeric Nutrient Criteria (EPA-820-S-10-001)*

2011

45. May 12, 2011 – letter from U.S. Senator Robert P. Casey, Jr. to Jon Capacasa, requesting information on the Pennsylvania nutrient TMDLs (including Indian Creek) in light of the SAB review.
46. May 18, 2011 – PA EHB issues decision dismissing challenge to PA nutrient TMDLs established by EPA on grounds including there was no final action by a state agency and so the tribunal lacked jurisdiction.
47. August 11, 2011 – letter from U.S. EPA Region 3 Administrator Shawn Garvin to U.S. Senator Robert P. Casey, Jr. responding that PA nutrient TMDLs (including Indian Creek) were based on sound science and reflect Agency policy for nutrient TMDLs.
48. October 17, 2011 – Franconia Township, Franconia Sewer Authority, Lower Salford Township and Lower Salford Township Authority (“Lower Salford Plaintiffs”) file Complaint against EPA.

2012

49. February- March 2012 – Counsel for Lower Salford Plaintiffs and EPA discuss possibility of continuing settlement discussions.
50. March 12, 2012 – EPA sends Lower Salford Plaintiffs a settlement document that EPA proposes as the basis for further settlement discussions.

51. March-May 2012 – Lower Salford Plaintiffs agree to explore possibility of settlement with EPA. Plaintiffs also agree to expand settlement discussions to include PADEP and to schedule a meeting between EPA, PADEP and Lower Salford Plaintiffs. EPA talks with PADEP about barriers to their participation.
52. July 18, 2012 – *Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application – Follow-up Analysis*. Prepared for EPA, Region 3, Philadelphia, PA by Michael J. Paul, James Robbiani, Lei Zheng, Teresa Rafi, Sen Bai, and Peter Von Loewe, Tetra Tech, Inc.
53. July 19, 2012 – *Evaluation of Nutrients as a Stressor of Aquatic Life in Wissahickon Creek, PA*. Prepared for EPA, Region 3, Philadelphia, PA by Michael J. Paul, Tetra Tech, Inc.
54. August 2012 – EPA has substantive discussions with PADEP on their concerns with EPA's proposed settlement document. Responding to counsel discussions, Lower Salford Plaintiffs send letter dated 8/24/12 providing additional details of settlement proposal.
55. September 2012 – With Lower Salford Plaintiffs' counsel permission, PADEP counsel forwards to EPA the written comments of Plaintiffs to PADEP (8/24/12) as part of settlement discussions in appeal of stormwater permit by Lower Salford and Franconia to EHB. EPA and PADEP counsel discuss PADEP concerns and EPA shares additional documents with PADEP (conference call 9/6/12). Several PADEP staff and managers working on stormwater and permit issues relevant to settlement discussions retire.
56. October-November 2012 – EPA and PADEP continue discussions regarding technical and permitting issues.
57. November 20, 2012 – Telford Borough Authority filed case against EPA case filed Complaint against EPA challenging Indian Creek TMDL. *Telford Borough Authority v. EPA*, Civil No. 2:12- 6548.
58. December 2012 – EPA shares draft Settlement Framework paper with PADEP for review and comment.

2013

59. February 11, 2013 – EPA sent a draft Settlement Framework to Lower Salford. In March and April 2013. EPA discussed that proposed framework with Lower Salford as well as the state NPDES permitting authority, PADEP, and began to prepare a revised version of the Settlement Framework based on those discussions. March 18, 2013 – Lower Salford sent a settlement letter to EPA regarding new and additional issues with the sediment component of the challenged Indian Creek TMDL for EPA's consideration in the settlement discussions.

60. May to June 2013 – Work on the revised Framework, with significant input from PADEP on complex technical and policy issues, continued in May and June of 2013. EPA conducted several calls with Lower Salford during that time regarding the progress made with PADEP.
61. June 26, 2013 – Lower Salford sent a second letter raising technical concerns regarding the reference watershed approach and sediment loading rates used to develop the Indian Creek sediment TMDL and requesting EPA to withdraw the TMDL.
62. July 2013 – EPA expanded the settlement discussions in the *Lower Salford* case to include Plaintiffs in the *Telford Borough* case along with PADEP, the NPDES permitting authority and an essential player in any comprehensive settlement of these issues.
63. July 30, 2013 – An in-person meeting was held between EPA, PADEP, Lower Salford, and Telford. At that meeting, EPA presented the revised Settlement Framework that had resulted from its discussions with Lower Salford and PADEP over the prior few months. Telford agreed that PADEP was an essential party to settlement discussions. Both sets of plaintiffs discussed their concerns and issues with the proposed Framework, as well as with the TMDL more broadly. EPA requested, and plaintiffs agreed to provide, counterproposals to the EPA/PADEP Settlement Framework. The parties scheduled a follow-up meeting for October 24, 2013.
64. September 26, 2013 – Telford Plaintiffs submitted a counterproposal to EPA/PADEP Settlement Framework.
65. Early October 2013 – EPA and Lower Salford held several calls to discuss issues related to this matter. Due to the government shutdown, however, the planned follow-up meeting between EPA, PADEP and both sets of plaintiffs was cancelled.
66. November 11, 2013 – Lower Salford Plaintiffs submitted a counterproposal to EPA/PADEP Settlement Framework.
67. November 26, 2013 – In response to ongoing litigation in the *Telford Borough* case regarding Telford’s contention that EPA had denied its request for reconsideration, Jon Capacasa, EPA R3 Water Protection Division Director, signed a declaration on November 26, 2013. Among other things, this declaration stated that a final Agency decision to grant or deny these Plaintiffs’ request for reconsideration of the Indian Creek TMDLs would be made by March 21, 2014.

2014

68. March 21, 2014 – EPA makes a final decision in the request for reconsideration of the Indian Creek nutrient and sediment TMDLs established June 30, 2008.