DECHERT LLP
BY: Michael H. McGinley
Attorney ID No. 325545
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Tel: (215) 994-2463
michael.mcginley@dechert.com

Attorney for *Amici Curiae* Protecting Our Streams & Environment, Inc.; Save Our Lives & Environment, Inc.; and Clean Air, Streams & Environment, Inc.

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PA
CIVIL ACTION – LAW

LORALEE WEST, BARBARA AND RONALD MATTSON, PETER AND KATHRYN MORRIS, CHRISTOPHER AND JENNIFER FRANKLIN, PATRICIA AND FRANCIS GREY, BRIAN AND DEBRA LORTIE, AND BRIAN AND DANA McELWEE, Plaintiffs, v. WAYNESBOROUGH COUNTRY CLUB OF CHESTER COUNTY, Defendant.	Docket No. 2023-02023-IR

AMICI CURIAE **BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

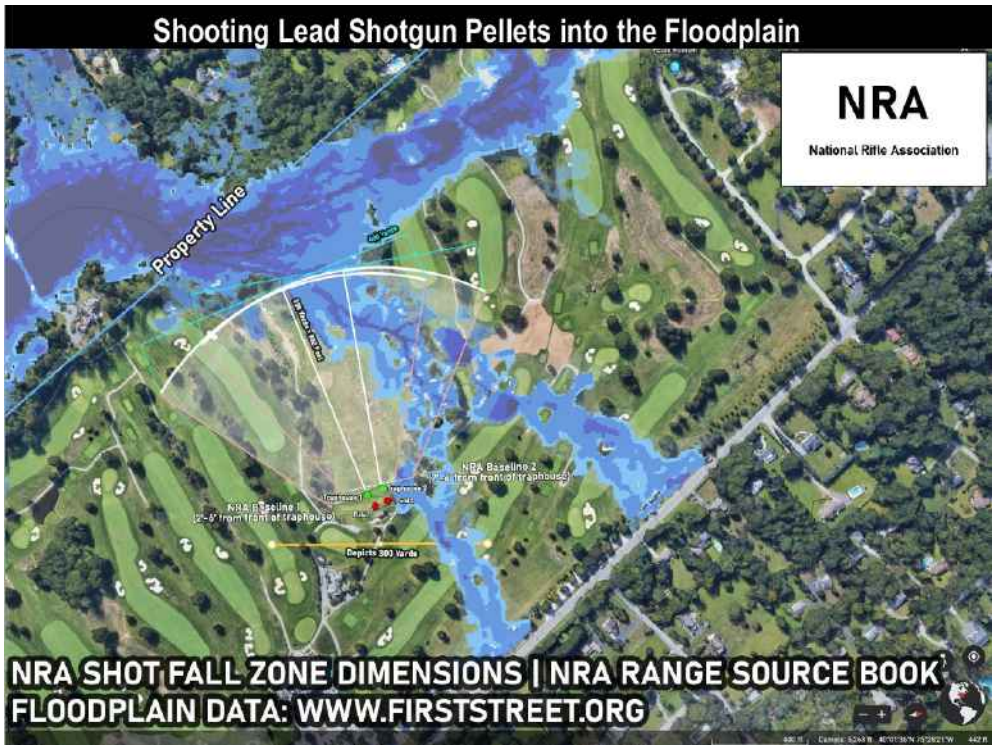
INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant Waynesborough Country Club's Trapshooting Program is harmful to the environment in more ways than one. Not only does it generate significant noise pollution, but it also contaminates the surrounding soil, groundwater, and streams. Those twin threats harm the surrounding ecosystem and those living within it. This Court should therefore grant Plaintiffs' Motion for Summary Judgment and enjoin the Trapshooting Program.

As *Amici Curiae* Protecting Our Streams & Environment, Inc.; Save Our Lives & Environment, Inc.; and Clean Air, Streams & Environment, Inc. (the "Environmental Organizations") previously described in their brief filed with this Court on May 6, 2024, lead contamination is dangerous. It is a poison. And it is undisputed and well-known that lead shot negatively affects both wildlife and people as the toxin travels up the food chain. The environmental harms are only magnified given the irresponsibly selected location of the shooting range at Waynesborough Country Club (the "Club"), placed in the midst of a downward sloping floodplain which is crossed by a stream feeding into the watershed.

The National Rifle Association ("NRA") and American Trapshooting Association ("ATA") both prescribe shotfall safety zones in which shooting activity should take place. But the shotfall zones of the Club's range clearly slope downhill across the floodplain and well beyond a stream cutting across the range, which serves as a tributary for the Crum Creek Watershed and some of the major waterways in Eastern Pennsylvania, including the Delaware River, as the following figures demonstrate. The following figures further demonstrate both the NRA and ATA shotfall zones would call for dimensions fanning out to adjacent golf fairways and covering a pond frequented by wildlife.

Figures 1 and 2: Overlay of NRA and ATA Shotfall Zones with Floodplain at the Club's Shooting Range[1]



[1] Figures 1 and 2 reflect images from Google Earth, overlaid with floodplain data from www.firststreet.org and shotfall zones as detailed by NRA and ATA trapshooting guidance, respectively.

This location has tangible and substantial consequences. Each year, the Club's Trapshooting Program deposits tens of millions of lead pellets downhill over this floodplain. As described below, an average November-to-March shooting season produces at least 1,700 to 1,900 rounds of trap, translating to at least 43,000 to 48,000 lead shots at 25 shots per round. *See infra* Section III. Since the Club utilizes one-ounce lead shot that contains over 400 lead pellets, this shooting activity results in at least ***17 to 19 million lead pellets*** dropped into the Club's range and thus the floodplain on which it is located. *See infra* Section III. And, to make matters worse, the Club has disregarded well-established best practices from the Environmental Protection Agency ("EPA") for mitigating the inevitable environmental damage that will be caused by lead shot.

The Club's shooting range is thus dangerous to the community and the environment. This Court should halt this detrimental conduct before the problems grow more serious.

ARGUMENT

I. Lead Contamination From The Club's Trapshooting Program Is Harmful To Waterways And Surrounding Ecosystems.

As described in the Environmental Organizations' first brief, the Club's Trapshooting Program generates dangerous lead pollution that will ultimately harm the surrounding community. The dangers of lead contamination are well established. In humans, lead exposure can cause medical problems including cardiovascular issues, kidney disease, and reproductive problems, as well as anemia, stunted growth, and cognitive harms to children. *See* Environmental Organizations' Amici Br. at 2-3 (May 6, 2024). This harm is not theoretical—research has linked lead poisoning to the premature deaths of millions of people every year. Dylan Matthews, "Lead Poisoning Could Be Killing More People Than HIV, Malaria, and Car Accidents Combined," Vox (Sept. 14, 2023), https://bit.ly/3wlALS1.

Lead contamination is just as harmful to the environment, including plants and animals who depend on clean soil and water. Because the effects of lead poisoning are "broadly similar to all vertebrates," wildlife suffer symptoms of lead exposure that mirror human symptoms. Deborah J. Pain et al., *Effects of Lead from Ammunition on Birds and Other Wildlife: A Review and Update*, 48 Ambio 935, 936 (2019), https://bit.ly/44pOmEy. These can include, for example, paralysis, ocular lesions, and muscle atrophy in birds, *see id.* at 936, 945; or cardiovascular, endocrine, and central nervous system damage in fish, *see* Ju-Wook Lee et al., *Toxic Effects of Lead Exposure on Bioaccumulation, Oxidative Stress, Neurotoxicity, and Immune Responses in Fish: A Review*, 68 Env't Toxicology & Pharmacology 101, 101 (2019), https://bit.ly/3wngUlo.

Shotgun ammunition—like the lead ammunition used by the Club—is a major source of this harmful lead contamination. *See* Jane Houlihan & Richard Wiles, *Lead Pollution at Outdoor Firing Ranges*, Env't Working Grp., at 1 (2001) (finding at the time that outdoor firing ranges were responsible for "put[ting] more lead into the environment than nearly any other major industrial sector in the U.S."). Lead bullets and pellets become "shotfall" that is scattered across the range—with the area in which they land called the "shotfall zone." U.S. Environmental Protection Agency, *Best Management Practices for Lead at Outdoor Shooting Ranges*, at III-4 (June 2005), https://bit.ly/4b3d4gl (hereinafter, "EPA BMPs").

The soil of a shooting range becomes contaminated through a process called "lead weathering," which occurs when lead shot falls to the ground and is exposed to air and water. As a result of lead weathering, "*[a]ll* of the [lead] in a pellet will be ultimately . . . dispersed into the environment to some degree." Xinde Cao et al., *Lead Transformation and Distribution in the Soils of Shooting Ranges in Florida, USA*, 307 Sci. Total Env't 179, 179 (2003), https://bit.ly/4dm3BC2 (emphasis added); *see also* Donald W. Hardison Jr. et al., *Lead Contamination in Shooting Range*

Soils from Abrasion of Lead Bullets and Subsequent Weathering, 328 Sci. Total. Env't 175, 175 (2004) (demonstrating that abrasion of lead bullets and their subsequent weathering can be a significant source of lead contamination in soils of a newly opened shooting range).

This shotfall also contaminates ground and surface water, which local residents and wildlife then consume. That is especially true when a trapshooting range is placed within a floodplain that drains downhill into the watershed. *See* EPA BMPs, *supra*, at III-4. Where the "shotfall zone" of a shooting range intersects with waterways or floodplains—as is indisputably the case with the Club's range—it logically follows that the lead will be spread to the surrounding ecosystem. The lead shot and weathered lead particles are absorbed into the water table, either directly or when the water passes through contaminated soil. *See* Hardison Jr. et al., *supra*, at 183. The lead that collects within a floodplain is then rapidly absorbed into the adjacent waterway in the occurrence of a flood, during which excess surface water is held in the floodplain until the bordering waterway can absorb it. *See Watersheds, Flooding, and Pollution*, Nat'l Oceanic & Atmospheric Admin. (Feb. 1, 2019), https://bit.ly/3Aop1Qo.

Indeed, floods can transport contaminated sediments, including lead, downstream from the point of contamination, thereby increasing exposure risks for local communities and wildlife, particularly in areas where sediments are frequently deposited and then mobilized by subsequent floods. *See* Elizabeth Kramer, *Superfund National Priorities List (NPL) Sites Near Big River and Floodplain*, EPA (Sept. 2021), https://bit.ly/3SYDkSd. Thus, as explained in a 1997 guidebook from the National Shooting Sports Foundation, "lead at shotgun and rifle/pistol ranges has the potential to affect: surface water, groundwater, and soil (primarily through dissolving in water that runs off ranges or soaks into the ground)." Nat'l Shooting Sports Fdn., *Environmental Aspects of Construction and Management of Outdoor Shooting Ranges*, 7-1 (1997), https://bit.ly/4dj5YWn.

A widely circulated EPA guide from 2005 similarly explained that "[l]ead bullets, bullet particles[,] or dissolved lead can be moved by storm water runoff" and into the broader environment. EPA BMPs, *supra*, at I-2.

II. Safety Guidelines From Reliable Sources Contain Clear Practices To Prevent Contamination Of Floodplains And Resulting Environmental Harms—Which The Club Chooses Not To Employ.

There is no environmentally defensible reason for the Club to use lead shot. Steel and bismuth remain viable and less toxic alternatives to lead pellets. *See* Vernon G. Thomas & David A. Anderson, *Banning the Use of Lead Shot - Options for the International Olympic Committee*, 43 Envtl. Pol'y & L. 300, 304 (2013) (discussing the Olympic Games' transition from using lead shot to less toxic alternatives, including steel shot, in all of its sport shooting events); Vernon G. Thomas, *Availability and Use of Lead-free Shotgun and Rifle Cartridges in the UK, with Reference to Regulations in Other Jurisdictions*, Oxford Lead Symposium 85, 97 (2014) ("Steel shot represents the most widely used non-toxic alternative to lead and is comparably priced."); *id.* at 87 (discussing bismuth as a readily available and effective non-toxic substitute for lead shot).

But even if steel shot or bismuth were unavailable, there are strategies available to limit the detrimental effects of lead contamination. The Club, however, chose to place its trapshooting range along a downward sloping floodplain flowing into the Crum Creek Watershed, while ignoring many of the EPA's practices that would mitigate such a risky site selection. The Club has therefore set the stage for an inevitable environmental problem affecting the drinking and ground water in the surrounding community.

A. The Club Has Failed To Observe Crucial Site Selection Guidelines.

The NRA has long recommended a diligent site selection process that involves "[o]btain[ing] from the state, county and local authorities, copies of ordinances, zoning regulations, soil conservation standards, health department requirements and any other regulation

which may pertain to the project." NRA, *The Range Source Book*, Sec. 2.04.1(a) (I-1-5) (1999) (hereinafter, "NRA Range Source Book 1999"). Organizations are then directed to undertake "[a] thorough review of these documents" to identify information crucial to constructing a shooting range, including "where a firearm can be discharged" and, importantly, "**what must be done to protect the environment**." *Id.* (emphasis added); *see also The Range Source Book*, NRA, Sec. 2.01.2 (2023) (hereinafter, "NRA Range Source Book 2023") ("During the planning phase, be careful to minimize any adverse impact on the surrounding environment."). The NRA further emphasizes giving due consideration to "[e]nvironmental [r]estrictions," including "water pollution," NRA Range Source Book 1999, *supra*, at Sec. 2.04.1.2(d) (I-1-6), noting throughout the Source Book that these issues "are important, especially when pollution problems threaten wetland areas," *id.* at Sec. 2.04.3 (I-3-14). The Pennsylvania Department of Environmental Protection similarly instructs that responsible site selection for outdoor shooting ranges is vital: "shooting (shot drop areas) *should not occur over streams*" and other surface water resources. Pennsylvania Department of Environmental Protection, Bureau of Environmental Cleanup and Brownfields, *Best Management Practices for Lead at Outdoor Ranges*, at 1 (Sept. 5, 2015), https://bit.ly/4a7z3kS (emphasis added).

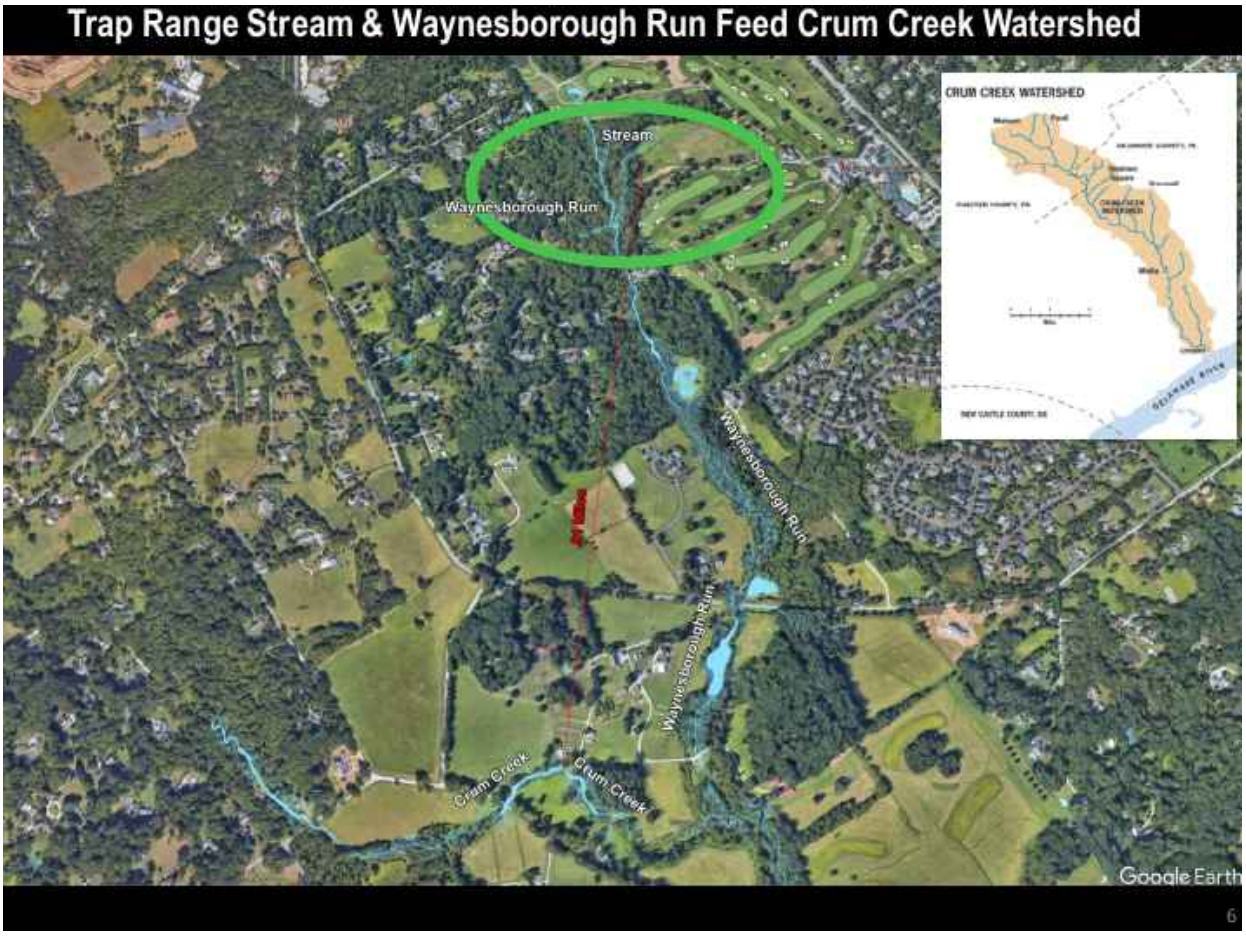
Here, despite many warnings and notices from the community at large, including from past and present Club members, the Club has failed to select an environmentally responsible location for its trapshooting range. Key features of the Club's range's location—namely, its intersection with a floodplain and stream that feeds the Crum Creek Watershed—amplify the long-term risk of lead contamination. The Club has received notice of these environmental risks from the local community for years, yet it chooses to ignore those issues and the clear guidance from the NRA, ATA, and Department of Environmental Protection.

First, the Club directs its trapshooting activities on a sloping golf driving range with a vertical drop approximating 30 feet downhill, cutting across a stream that has aptly been named "Lead Shot Run" by the local community. This stream then flows into larger local tributary creeks as part of the Crum Creek Watershed that ultimately feeds into Springton Reservoir, and eventually the Delaware River, *see Interactive Map of Streams and Rivers in the United States*, Am. Geosciences Inst. (last accessed Aug. 19, 2024), https://bit.ly/3WGHrDv, and as depicted by Figures 3, 4, and 5 below:

Figure 3: Trap Range Stream Intersects with Stream[2]

[2] Figure 3 reflects a drone photograph of the Club.

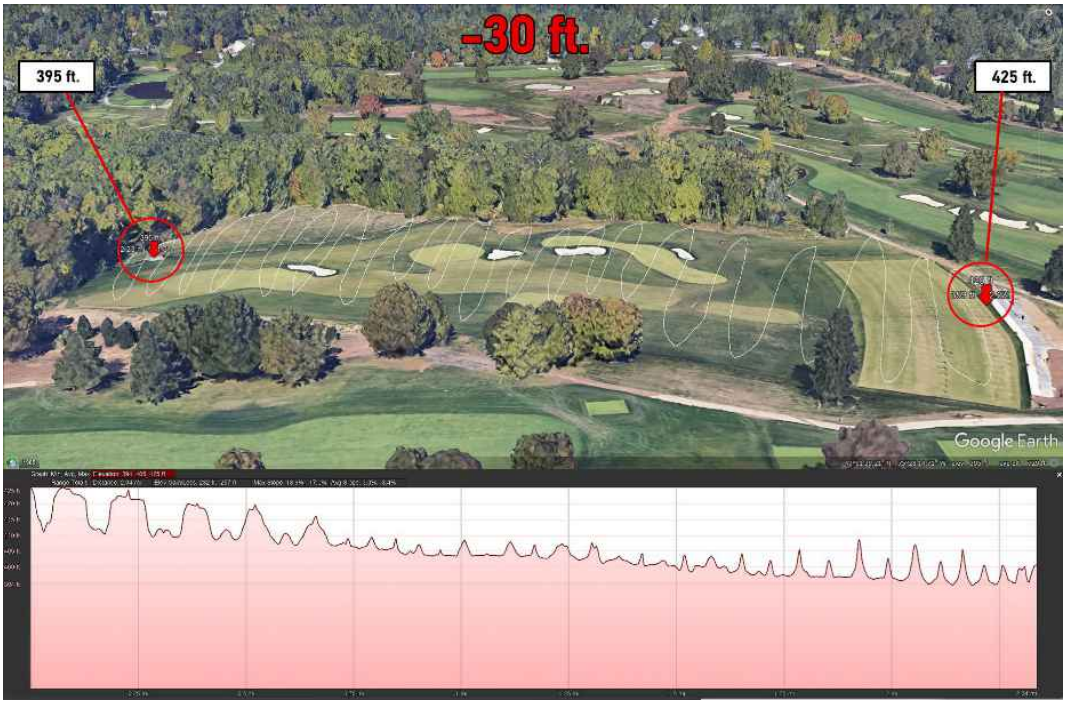
Figure 4: Trap Range Stream Feeds into Waynesborough Run and Crum Creek Watershed[3]



Thus, the natural flow of runoff from any rain will carry shotfall and contaminated soil downhill from the range directly into the stream.

[3] Figure 4 reflects an image taken from Google Earth, overlaid with a map taken from the CRC Watersheds Associations. *See Crum Creek Watershed*, CRC Watersheds Association, https://bit.ly/4fQwM1T.

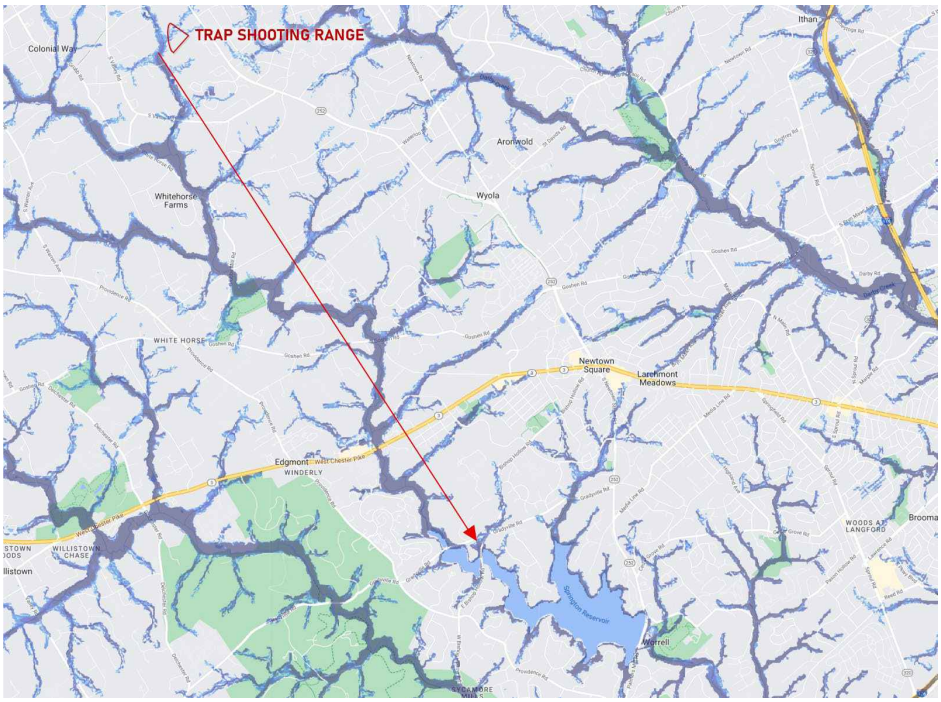
Figure 5: Trap Shooting Range Vertical Drop of Approximately 30 Feet[4]

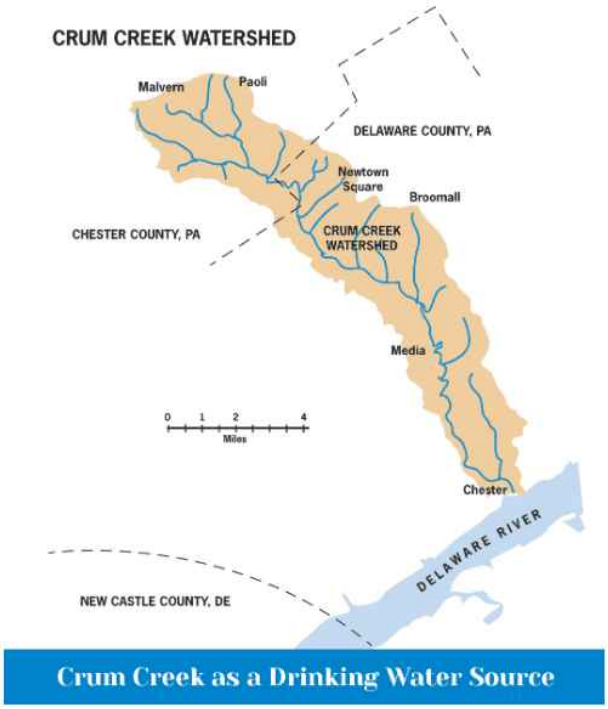


Second, a large portion of the shotfall zone sweeps across the stream's floodplain. The Club's range considerably overlaps with the floodplain. Roughly a third of the shooting range's shotfall zone under both the ATA and NRA guidelines—which appear in translucent white cast in Figures 1 and 2 above—intersects with the floodplain surrounding Lead Shot Run. *See supra* p.2. Because floodplains hold excess water during heavy rainfall before draining directly into the waterways they border, lead within the shot range is deposited directly into the floodplain and left to steep in collected surface water during periods of heavy rain. This contaminated water is then absorbed and swept downstream into the larger waterways of the Crum Creek Watershed.

[4] Figure 5 depicts a satellite image from and elevation graph generated by Google Earth Pro.

Figures 6 and 7: Floodplain from Range Feeds the Crum Creek Watershed and Springton Reservoir[5]





[5] Figures 6 and 7 depict an image taken from Redfin.com and a map taken from the CRC Watersheds Association, respectively. *See Crum Creek Watershed*, CRC Watersheds Association, https://bit.ly/4fQwM1T.

Third, the Club is aware of the environmental risks associated with the use of lead shot on a golf driving range that doubles as a trapshooting range. Since Fall of 2020, neighbors (including some Club members) have expressed concerns that the "shooting range is located over wetlands," and that shooting of lead pellets "could have serious long term implications for [neighbors'] drinking water, not to mention the immediate concern to wildlife." Ex. A-1, Letter from Neighbors to Kim Koelle, Club President, at 3 (Nov. 2020). An April 2021 open letter to Club members expressed the same concerns. *See* Ex. A-2, Open Letter to WCC Members, at 1 (Apr. 2021) ("[W]e remain concerned that the significant quality of life, quality of drinking water and other potential environmental issues created by the Trap Shooting Program are not concerns that WCC's leadership takes seriously."). Since at least December 2022, the Club has also been advised that its trapshooting range is non-compliant with the applicable shotfall zone safety standards articulated by the NRA and ATA—both of which require shotfall zones that fan out onto the golf fairways adjacent to the trapshooting and driving range and extend well beyond the stream that cuts across the range. *See* Ex. A-8, Letter from Bonita Stone, Esq. to William Shotzbarger, Esq., at 2 (Dec. 31, 2022). And in January and February 2023, among other dates, the Club was again notified of the inherent danger of discharging large volumes of lead shot each week across streams and wetlands. *See* Exs. A-3 & A-4, Letters from Bonita Stone, Esq. to William Shotzbarger, Esq. (Jan. 16, 2023 & Feb. 6, 2023). And those are not the only times that the Club and its legal counsel have received similar letters over the last two years.

More recently, Crum Creek Watersheds Association, a nonprofit "with the mission to protect, conserve, and restore the natural resources" of local watersheds, has criticized the Club's practice. Ex. A-5, Letter from Ted Leisenring, CRC Watersheds Association President, to Waynesborough Country Club Board of Governors (Aug. 16, 2024). Because lead shot at the Club

is "being fired over a section of the Crum Creek and into the floodplain that flows into the Crum Creek Watershed," the Association has expressed "concern" regarding lead "contamination of this critical water resource that is the source of public drinking water" and nourishment for "waterfowl and other wildlife." *Id.*

In sum, given the topography and waterways on the golf driving range on which the Club placed its trapshooting range, it is impossible to conclude that the Club selected this site—a downward-gradient expanse of land in the midst of a floodplain with a stream cutting through—with any environmental concerns in mind. In fact, it seems the Club could have only selected this site for the convenience of its other programs and to maximize use of the space while the driving range is empty during the winter. The Club's site selection in a floodplain feeding the Crum Creek Watershed has snubbed the most basic guidance designed to protect the environment and surrounding community from these types of activities.

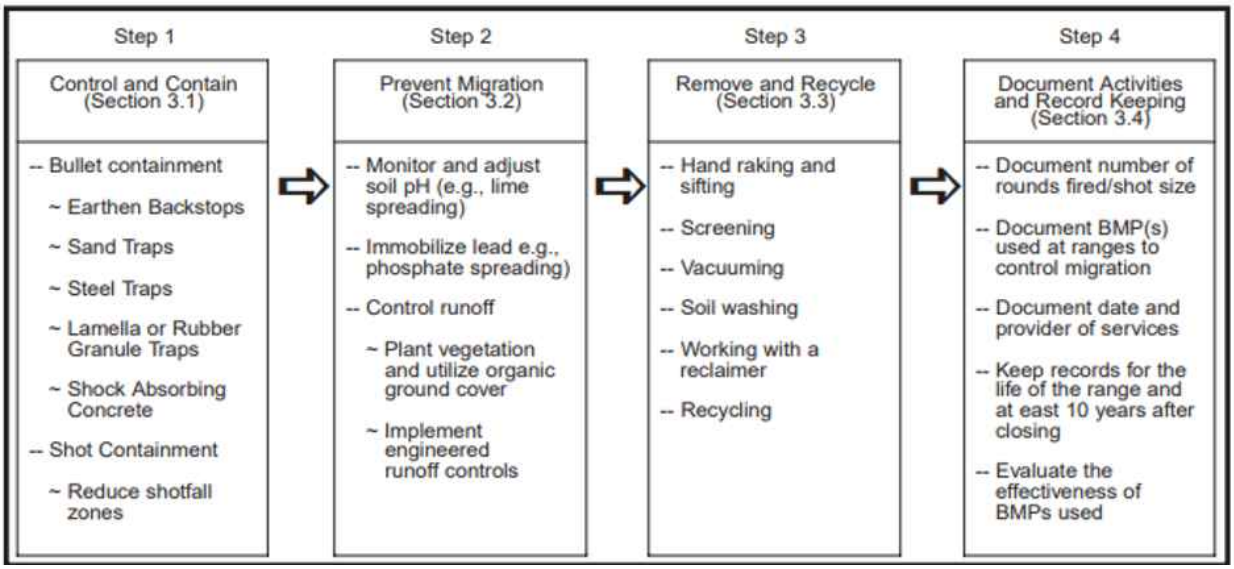
B. The Club's Meager Mitigation Attempts Are Insufficient Compared To More Effective Measures To Combat Environmental Harms.

While depositing lead into these waterways, floodplains, and surrounding environment, the Club has largely failed to adopt the most effective methods to prevent its resulting harm.

The NRA outlines several best practices for lead management to prevent unacceptable degrees of contamination. *See* NRA Range Source Book 1999, *supra*, at Sec. 4.05.1 (I-5-7); *see also* NRA Range Source Book 2023, *supra*, at Sec. 2.2.04. Principally, it encourages ranges to observe the regulations provided in the Resource Conservation & Recovery Act ("RCRA"). NRA Range Source Book 1999, *supra*, at Sec. 4.05.1 (I-5-7). Passed in 1976, the RCRA provides "cradle-to-grave coverage of hazardous wastes, *i.e.*, it covers the generation, transportation, treatment, storage, and disposal of hazardous waste." *Id.* In addition to this federal law, all 50 states have passed complementary laws covering hazardous wastes. *Id.*

To abide by the RCRA, the EPA recommends that shooting ranges engage in specific "Best Management Practices." *See* EPA BMPs, *supra*, at III-1. These Best Management Practices are publicly accessible online and have been available for decades. And they specifically emphasize the importance of ranges that operate proximate to waterways heeding the EPA's guidance, "since national attention has focused on ranges located adjacent to water." *Id.* at I-13. The EPA identifies the following practices:

Figure 8: EPA Best Management Practices[6]



As shown above, mitigating lead contamination requires a constant and multi-faceted effort to minimize the environmental harms inflicted by shooting ranges. And "[a]n effective lead management program requires implementing and evaluating BMPs from *each of the four* steps identified." *Id.* III-1 (emphasis added).

The Club's existing lead management practices appear insufficient to avoid the enhanced contamination risks created by the trapshooting range's location intersecting a floodplain and

[6] Figure 8 is a chart from the U.S. Environmental Protection Agency, *Best Management Practices for Lead at Outdoor Shooting Ranges*, at III-1 (June 2005), https://bit.ly/4b3d4gl.

streams. The Club previously represented that it employs just two of the methods outlined in the EPA resource discussed above: vacuuming and limescale application. *See* Ex. A-6, WCC's Trap Shooting Program Address to Our Members (Jan. 27, 2023); Ex. A-4, Letter from Bonita Stone, Esq. to William Shotzbarger, Esq., at 2 (Feb. 6, 2023). "Vacuuming," as the name suggests, uses a vacuum machine to collect spent lead shot that, once collected, is sifted through a screening system that filters out the collected lead shot and allows the soil and other organic material collected to be returned to the range. EPA BMPs, *supra*, at III-14. "Limescale application" is used to adjust the soil's pH, minimizing the lead's potential to degrade and making it less likely to leach into groundwater. *Id.* at III-5. These measures address just two of the EPA's four enumerated steps for a successful lead management program, and the Club offers no evidence that they are actually implemented or utilized with any regularity, if ever. For example, the Club stated in January 2023 that "*[a]t the end of each season*, the Club reclaims lead on the range by vacuuming." Ex. A-6, WCC's Trap Shooting Program Address to Our Members (Jan. 27, 2023) (emphasis added). Yet the Club's subsequent Environmental Stewardship Plan makes only one passing reference to the *possibility* that they *may* vacuum lead. *See* Ex. A-7, Environmental Stewardship Plan: Waynesborough Country Club Trap Shooting Venue, Prepared by Dr. Richard Peddicord, at 11 (Mar. 2023) ("Consider scraping or excavating with conventional earthmoving or lawn maintenance equipment, vacuuming, raking, and other possible methods.").

The Club thus has not demonstrated that it is actually vacuuming lead or has the capabilities to do so. And even assuming that the Club does vacuum at the *end* of each season, such belated, limited efforts cannot remediate the volume of lead shot discharged throughout the entire season, particularly when winter storms are likely to sweep lead pellets downstream in the floodplain or quickly weather lead pellets into the surrounding soil and stream.

Despite the fact that the trapshooting range's shotfall zone slopes downhill over a floodplain and crosses a stream (Lead Shot Run), which feeds the Crum Creek Watershed, the Club further brazenly ignores the EPA's call for heightened attention to these contamination risks. Notably, despite many inquiries over several years from concerned neighbors about the lead contamination flowing downhill and into the Crum Creek Watershed, the Club and its counsel have refused to provide evidence that the Club engages in any of the EPA best practices suggested to document and monitor contamination levels, which are necessary to gauge the appropriate remediation practices. The Club's inadequate "management" of lead contamination therefore leaves the health of its surrounding environment to chance.

III. The Club's Shooting Program Poses Serious Risk Of Dangerous Lead Contamination Of Surrounding Streams And Floodplains.

With its irresponsible trap range placement and limited trap lead contamination prevention and mitigation practices, the Club's Trapshooting Program poses an inescapable risk to the surrounding ecosystem, particularly due to the volume of the shooting activity. During a typical Sunday afternoon trapshooting session at the Club, shooters are active for approximately three hours, discharging at least 100 to 200 pounds of lead shot down-gradient into the floodplain and directly towards Lead Shot Run, which in turn flows into Waynesborough Run and Crum Creek, and then on to larger bodies of water. *See* Ex. A-8, Letter from Bonita Stone, Esq. to William Shotzbarger, Esq., at 3 (Dec. 31, 2022).

The Club's 2016-2017 season-end report to members exemplifies the significant quantity of lead released into the surrounding environment. As the 2017 Annual Report boasted, "we hosted over 150 shooters, who shot 1,725 rounds of trap (that's over ***43,000 shots***)." Ex. A-9, *52nd Annual Report*, at 41 (2017) (emphasis added). The Club's Trapshooting Program utilizes Winchester Xtra-Lite, 12-gauge, no.8 one-ounce lead shot, and each single ounce of shot contains over 400

lead pellets. Ex. A-10, Winchester Xtra-Lite Target Load. Therefore, with over 400 lead pellets in a one-ounce shotgun shell, 43,000 individual shots resulted in over ***17 million lead pellets*** deposited into the floodplain feeding the Crum Creek Watershed during the 2016-2017 season. Ex. A-11, Trap Reconciliation Spreadsheet.

Similarly, in the Club's 2020 Annual Report, it advertised that, as of January 17, 2020—the middle of the season—the shooters had already fired "828 rounds of trap with an average of 92 per week." Ex. A-12, Waynesborough Country Club, *55th Annual Report*, at 62 (2020). Because the typical season runs approximately 21 weeks from November through late March, if half of the season saw an average of 92 rounds per week, then the full 2019-2020 season likely resulted in 1,923 rounds (*i.e.*, 92 rounds a week for 21 weeks). With an average of 25 shots per round, this would have resulted in over ***48,000 individual shots of lead*** or over ***19 million lead pellets*** released into the environment. *See* Ex. A-11, Trap Reconciliation Spreadsheet.

In conducting this trapshooting activity in a floodplain feeding the Crum Creek Watershed, the Club is depositing hazardous waste—in the form of enormous quantities of lead shot—into the surrounding ecosystem. And the Club surely knows or at least should know that it cannot engage in that dangerous conduct. Indeed, the Club's publicly-available mortgage covenants from mortgage documents signed in 2019 and 2021 appear to specifically prohibit the firing of "Hazardous Substances" such as lead shot. Ex. A-13, WSFS Open-End Mortgage Security Agreement (Oct. 21, 2021); *see* Ex. A-3, Letter from Bonita Stone, Esq. to William Shotzbarger, Esq. (Jan. 16, 2023). These mortgage covenants explicitly "prohibit the use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substances" on the Club's property. Ex. A-13, WSFS Open-End Mortgage Security Agreement

(Oct. 21, 2021) (containing signatures from President and Treasurer of the Club).[7] And they define the term "Hazardous Substances" in the "very broadest sense" to "include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws." *Id.* Lead is unequivocally a hazardous substance as defined by the Clean Water Act. 40 C.F.R. § 116.4A.

The Club has no good answer to any of this. And the Club's environmental expert ignores the ground and surface water sources that fall within the Club's range. As detailed above and as Figures 1 and 2 demonstrate, the shotfall safety zones that are compliant with the NRA and ATA guidelines cover the full area of the stream and floodplain that cross the range, not to mention adjacent golf fairways and a pond. The Club's expert, seemingly dismissing these NRA and ATA guidelines, produced a figure depicting a shotfall range that cannot be safety-compliant under either NRA or ATA guidelines because it conspicuously *excludes* the floodplain feeding Crum Creek Watershed and Lead Shot Run, across which lead shot regularly falls. *See* Ex. A-14, Expert Report of Dr. Richard K. Peddicord, at Figure 3 & 6-7 (Aug. 15, 2024).[8]

The Club's expert also suggests that, because prohibited levels of lead have not yet been identified, the environmental harms discussed by Plaintiffs' Complaint and the Environmental

[7] The Club's environmental expert nonetheless implies that he has expertise not only in environmental issues but also in the analysis and meaning of the Club's mortgage covenants and loan agreements. His unsupported conclusion that "[s]hot and targets as used at the Waynesborough Country Club (WCC) Trap Range are not hazardous substances" within the meaning of the covenants is untenable. Ex. A-14, Expert Report of Dr. Richard K. Peddicord, at 13 (Aug. 15, 2024). *See* Ex. A-13, WSFS Open-End Mortgage Security Agreement (Oct. 21, 2021).

[8] The Club submitted expert reports on the environmental and safety issues attendant to the Club's Trapshooting Program—despite its claims that the environmental concerns are not relevant to this litigation—and tellingly, the Club did *not* submit an expert report on the noise issues that are the principal subject of the litigation.

Organizations' briefing are of no concern for the Court. *Id.* at 8–10. But his rationale is flawed. Dr. Peddicord does not provide an authoritative report on water or soil contamination levels on which this Court should rely to conclude whether local water sources have suffered or could in the future suffer lead contamination. Instead, without providing any evidence that neighboring wells had been sampled for the study, he attempts to cast doubt on the accuracy of the sampling undertaken by a Plaintiff's company, as well as data in third-party production copies of that Company's sampling. But the detrimental effects of this quantity of lead are undeniable.

Moreover, the Club's expert report focuses on water contamination, but that is just one of many environmental harms that result from lead shot. As discussed at length in the Environmental Organizations' initial brief, lead contamination also poses a serious threat to the health of those living within the contaminated ecosystem. This harm can be direct (*e.g.*, where a bird ingests a piece of a lead pellet) or indirect (*e.g.*, where the lead from ammunition breaks down into the soil and is absorbed by plants, which are then consumed by wildlife). The harms can manifest at the site of the trapshooting range and at great distance from the site of contamination, as the lead pollution is transmitted into neighboring environments in waterways and up the food chain.

Ultimately, the Environmental Organizations' primary concern is that the Club's Trapshooting Program will create irreparable lead contamination over the long-term, given the location of the trap range on a golf driving range, sloping downhill in the midst of a floodplain, crossed by a stream feeding the Crum Creek Watershed. Whether or not *current* readings have exceeded acceptable limits—and to be clear, "[t]he EPA has set the maximum contaminant level goal for lead in drinking water at zero"—the Club's actions unequivocally pose a threat of *future* harm to the surrounding waterways and environment. *See* Centers for Disease Control, *About Lead in Drinking Water* (Apr. 10, 2024), https://bit.ly/4dWD4v2. As explained above, the Club's

site selection fundamentally conflicts with guidance designed to protect the environment and avoid the inevitable risks generated by the Club's program. And while the Club has an Environmental Stewardship Plan that gestures toward compliance with EPA best practices, those remediation efforts fall short, especially because the Club has offered no evidence of how it is *implementing* this plan, what measures it has actually adopted, and how—if at all—it has assessed these measures to effectively preserve the environment. *See* Ex. A-14, Expert Report of Dr. Richard K. Peddicord, at 13 (Aug. 15, 2024); Ex. A-7, Environmental Stewardship Plan: Waynesborough Country Club Trap Shooting Venue, Prepared by Dr. Richard Peddicord (Mar. 2023).

CONCLUSION

Amici respectfully urge this Court to grant Plaintiffs' motion for summary judgment and enjoin the Club's trapshooting program.

Respectfully Submitted,

Dated: August 23, 2024

/s/ Michael H. McGinley
Michael H. McGinley
Attorney ID No. 325545
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Tel: (215) 994-2463
michael.mcginley@dechert.com

Counsel for Amici Curiae