

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2134

DELAWARE RIVERKEEPER NETWORK; MAYA K. VAN
ROSSUM; DELAWARE RIVERKEEPER; CITIZENS FOR
PENNSYLVANIA’S FUTURE,
Petitioners

v.

PENNSYLVANIA ENVIRONMENTAL HEARING BOARD and
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION

On Petition for Review of an Order of the Pennsylvania
Environmental Hearing Board
Board Member and Judge Bernard A. Labuskes, Jr., EHB
Docket No. 2023-026-L

Before: PORTER, MATEY, and AMBRO, *Circuit Judges*.
Submitted: June 5, 2026; Filed: Oct. 14, 2026

OPINION OF THE COURT

MATEY, *Circuit Judge*. A pipeline builder procured Pennsylvania environmental permits required by federal law. Objectors challenge that decision. But the Commonwealth acted reasonably, so we will deny their petition.

I.

In 2021, Transcontinental Gas Pipe Line Company (“Transco”) sought to expand natural gas transmission through Pennsylvania, New Jersey, and Maryland by building two new pipeline segments in Pennsylvania supported by associated facilities (the “Project”). That required Transco to obtain “a certificate of public convenience and necessity” from the Federal Energy Regulatory Commission (“FERC”). 15 U.S.C. § 717f(b), (c); *see* 18 C.F.R. §§ 157.1–157.23.¹ FERC issued Transco a conditional certificate, which required Transco to obtain a Water Quality Certification under Section 401 of the Clean Water Act, because the Project’s Pennsylvania portions could “result in . . . discharge into the navigable waters.” 33 U.S.C. § 1341(a). Complying, Transco asked for certification from the Pennsylvania Department of Environmental Protection (“PADEP”) that any discharge would comply with applicable federal and state law. *See id.* PADEP conditionally certified the Project, contingent on Transco’s receipt of certain Pennsylvania water quality permits: (1) an Erosion and Sediment Control Permit and (2) Water Obstruction and Encroachment Permits for each of two affected counties (the “102 Permit” and “105 Permits,” respectively). *See* 25 Pa. Code §§ 102, 105.² About a year later, after public hearings

¹ Department of Energy Organization Act, Pub. L. No. 95-91, § 402(a)(1)(D), 91 Stat. 565, 584 (1977).

² Chapter 102 primarily relates to work done in upland areas, while Chapter 105 primarily relates to work done in water resources. To receive a 102 permit, “persons proposing or conducting earth disturbance activities [must] develop, implement and maintain BMPs [Best Management Practices]” to “protect, maintain, reclaim and restore water quality and the existing and designated uses of waters of this Commonwealth.” 25 Pa. Code § 102.2. A 105 permit is meant to “assure proper

and comment, PADEP issued Transco the permits, prompting FERC’s authorization to break ground on the Project.

But progress on the Project was frustrated when a group of outsiders³ (“Riverkeepers”) challenged PADEP’s decision to issue the permits before Pennsylvania’s Environmental Hearing Board (“Board”). The Riverkeepers argued that the Permits did not satisfy the Commonwealth’s conditions for certification. While that appeal was pending, Transco completed construction of the Project, and gas began flowing through the pipeline in 2024.

Soon after, the Board held a five-day session to consider the appeal, hearing testimony of eleven witnesses, including seven experts. After post-hearing briefing, the Board dismissed Riverkeepers’ appeal, finding no evidence “that there has been any actual environmental harm or degradation as a result of Transco’s Project.” App. 102. Riverkeepers filed this petition for review of the Board’s determination. We granted Transco’s motion to appear as intervenor in support of PADEP and the Board (together, “Pennsylvania”).

II.

planning, design, construction, maintenance, monitoring and supervision of” dams and reservoirs for safety and for “water obstructions and encroachments . . . to prevent unreasonable interference with water flow and to protect navigation.” *Id.* § 105.2.

³ These are Citizens for Pennsylvania’s Future, Maya K. van Rossum, the Delaware Riverkeeper, and Delaware Riverkeeper Network.

We begin by setting the standard for our review. Petitioners and Pennsylvania argue we must mirror the standard used by the Pennsylvania appellate courts,⁴ while Transco points to “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” under 5 U.S.C. § 706(2)(A). Prior panel decisions provide only a hazy answer. One stated that courts “review under the arbitrary and capricious standard state action taken pursuant to federal law.” *Del. Riverkeeper Network v. Sec’y Pa. Dep’t of Env’t Prot. (Riverkeeper I)*, 833 F.3d 360, 377 (3d Cir. 2016) (applying that standard to PADEP permitting under the Clean Water Act in a 15 U.S.C. § 717r(d)(1) petition); *see also Nat. Res. Def. Council, Inc. v. N.J. Dep’t of Env’t Prot.*, 2026 WL 2639510, at *5 (3d Cir. Sept. 8, 2026) (same). Another looked “to [state] law to determine the prism of our review of . . . [state] administrative agency decisions.” *Twp. of Bordentown v. FERC*, 903 F.3d 234, 270 (3d Cir. 2018). So we clear the air and confirm that § 706 supplies the standard to review state action in petitions brought under 15 U.S.C. § 717r(d)(1).

A.

“Arbitrary and capricious” is a familiar term of art expressing the commonsense principle that where a “person had power given to do a thing at his discretion, it is to be understood of sound discretion.” *Estwick v. City of London*, 82

⁴ Which requires a court to affirm the Board’s decision absent legal errors, or if “any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.” *Tire Jockey Serv., Inc. v. Commonwealth, Dep’t of Env’t Prot.*, 915 A.2d 1165, 1185 (Pa. 2007) (quoting 2 Pa. C.S. § 704).

Eng. Rep. 515, 516 (KB) (1647).⁵ And when some authority was given to “commissioners” their “proceedings ought to be limited and bound with the rule of *reason* and law.” *Rooke’s Case*, 5 Co. Rep. 99b, 100b (1598) (emphasis added); *see also R. v. Askew*, 98 Eng. Rep. 139, 141 (KB) (1768). The principle is manifest in the administration because an “executor, who having a double trust put in him, both to have a part in the legislative, and the supreme execution of the law, acts against both, when he goes about to set up his own arbitrary will.” 2 John Locke, *Two Treatises of Government* 313 (J. Sheppard & G. Nugent eds., 1779).

In the United States, courts have long understood that “arbitrary and capricious” actions by non-federal actors under “official authority” were “subject to the law’s correction.” *Merrill v. Humphrey*, 24 Mich. 170, 173 (1871). So, when Congress granted a railroad the authority to stake a line, whose sections would “not be liable to sale, entry, or pre-emption . . . except by the company,” the Supreme Court observed that “the land department” did not need to “accept an arbitrary and capricious selection of the line.” *Buttz v. N. Pac. R.R. Co.*, 119

⁵ *Cessante ratione legis cessat ipsa lex*: “Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself.” Herbert Broom, *A Selection of Legal Maxims* 129 (8th ed. 1911). Actions not grounded in reason are not law, which is itself “the highest reason.” Marcus Tullius Cicero, *On the Republic on the Laws* 317 (C. Keyes, transl.); Thomas Aquinas, *Summa Theologica*, pt. I-II, q. 90, art. 2 (Fathers of the English Dominican Province transl., Benziger Bros. 1947) (“[P]ractical reason . . . directed to the last end which is the common good . . . has the nature of a law.”).

U.S. 55, 72 (1886); *see also Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110 (1902) (retaining the power to prevent “the absolutely uncontrolled and arbitrary action of a public and administrative officer”). Congress placed those principles into the Administrative Procedure Act (“APA”) not as a novel feature, but as a “general restatement of the principles of judicial review embodied in many statutes and judicial decisions.” U.S. Dep’t of Just., Attorney General’s Manual on the Administrative Procedure Act 93 (1947).

B.

As recognized by other courts, this same background principle of judicial review applies to state agencies, even though the APA does not. *See* 5 U.S.C. § 701(b)(1).⁶ The Supreme Court gives “‘permitting authority’ considerable leeway,” simply asking “whether the state agency’s . . . determination was reasonable, in light of the statutory guides and the state administrative record.” *Alaska Dep’t of Env’t Conservation v. EPA*, 540 U.S. 461, 490, 494 (2004). And, as mentioned, we have recognized this as the correct standard when “review[ing] . . . state action pursuant to the Clean Water Act.” *Riverkeeper I*, 833 F.3d at 377.⁷ That explains prior

⁶ *See, e.g., Sierra Club v. W. Va. Dep’t of Env’t Prot.*, 64 F.4th 487, 501 (4th Cir. 2023) (“[W]e review a state agency’s CWA Section 401 certification decision under the APA’s arbitrary and capricious standard.”); *Const. Pipeline Co. v. N.Y. St. Dep’t of Env’t Conservation*, 868 F.3d 87, 100 (2d Cir. 2017) (“[I]f the agency correctly interpreted federal law, we review its factual determinations under the arbitrary-and-capricious standard.”).

⁷ *See also Del. Riverkeeper Network v. Sec’y Pa. Dep’t of Env’t Prot. (Riverkeeper II)*, 903 F.3d 65, 76 (3d Cir. 2018);

sentiments on “afford[ing]” state agencies “the deference they would receive under state law,” *Bordentown*, 903 F.3d at 270, as referring to “the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of” statutes and regulations. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Some courts “seek aid from the interpretations of those responsible for implementing particular statutes” in exercising such judgment. *Id.* (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *United States v. Am. Trucking Ass’ns*, 310 U.S. 534, 549 (1940)). We merely acknowledged this as permissible. But that relates to the scope of legal review, which always fixes “the boundaries of delegated authority, an inquiry that includes defining the range of permissible criteria. In such an empowering arrangement, responsibility for meaning is shared between court and agency.” Henry P. Monaghan, *Marbury and the Administrative State*, 83 Colum. L. Rev. 1, 27 (1983) (quoted in *Loper Bright*, 603 U.S. at 395).⁸

Accordingly, we review state agency actions taken pursuant to Congressional authority under the arbitrary and

Del. Riverkeeper Network v. Sec’y Pa. Dep’t of Env’t Prot. (Riverkeeper III), 783 F. App’x 124, 127 (3d Cir. 2019).

⁸ Even though Riverkeepers make faint attempts to frame their arguments as interpretive questions, they really attack actions taken within the authority granted to PADEP and the Board. Nevertheless, we review “pure legal questions” de novo. *Dep’t of Env’t Prot. v. Cumberland Coal Res., LP*, 102 A.3d 962, 970 (Pa. 2014); *Mylan Inc. & Subsidiaries v. Comm’r of Internal Revenue*, 76 F.4th 230, 242 n.18 (3d Cir. 2023) (reviewing the interpretation of statutes and regulations de novo).

capricious standard, at least where, as here, no legislative directive or choice of law rule tasks us with adopting another standard or borrowing the state's standard.⁹

III.

On to the merits, and whether Pennsylvania arbitrarily granted the 102 and 105 Permits. Then, we ask whether those actions violated the Environmental Rights Amendment. Finding Pennsylvania's actions reasonable, and without regulatory or constitutional concerns, we will deny the petition.

A.

The Clean Water Act requires states to maintain a "statewide antidegradation policy." 40 C.F.R. § 131.12(a); *see also* 33 U.S.C. § 1313(d)(4)(B). Pennsylvania sets the stringency of antidegradation rules against the affected body of water with three classifications: "Exceptional Value," "High Quality," and other. 25 Pa. Code § 93.4c.¹⁰ Pennsylvania

⁹ "Agency action is arbitrary and capricious when the agency fails to 'examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Riverkeeper I*, 833 F.3d at 377 (quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). "The party challenging the agency determination bears the burden of demonstrating prejudice," and "mistakes that have no bearing on the substantive decision of an agency" are not prejudicial. *Id.* Factual determinations are reviewed for clear error. *Id.*

¹⁰ The "other" category includes all waters, of which existing and designated uses must be maintained and protected. 25 Pa. Code § 93.4a(a). For "High Quality Waters," both uses

considered the Project to cross Exceptional Value or High Quality watersheds.

An applicant seeking a 102 permit for “Exceptional Value” or “High Quality” watersheds must satisfy both a “technology-based” and a “quality-based” standard, if a “nondischarge alternative” is not available.¹¹ App. 127; 25 Pa. Code § 102.1, 102.4(b)(6), 102.8(h).¹² The technology-based standard requires the applicant to adopt “the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies,” or

and quality must be maintained and protected, unless the Department finds that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. *Id.* §§ 93.4a(c), 93.4c(b)(1)(iii). For “Exceptional Value Waters,” the water quality of the waters must be maintained and protected, no exceptions. *Id.* § 93.4a(d).

¹¹ Nondischarge alternatives are “[e]nvironmentally sound and cost-effective” best management practices, or “BMPs,” that “eliminate the net change in stormwater volume, rate and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities.” *Id.* §§ 93.4c(b)(1)(i)(A), 102.1.

¹² For High Quality waters, PADEP may “allow a reduction of water quality” if “allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.” *Id.* § 93.4c(b)(1)(iii).

“ABACT.” 25 Pa. Code § 93.4c(b)(1)(i)(A).¹³ Pennsylvania maintains a manual delineating “nondischarge alternatives and ABACT . . . design standards.” *Id.* § 102.4(b)(6)(iii). By contrast, the quality-based standard, as one might suspect, is open-ended, merely requiring the applicant to demonstrate that the discharge will “maintain and protect the existing quality of receiving surface waters.” *Id.* § 93.4c(b)(1)(i)(B).

Riverkeepers argue PADEP did not require a separate demonstration for the water quality-based standard before issuing the 102 Permit. They first claim that the regulations compelled Transco to produce specific data for PADEP’s consideration including pre- and post-construction in-stream water quality tests.¹⁴ True, PADEP has required such sampling for other projects. But Riverkeepers point to no provision that compels the production of this data in every case.¹⁵ Rather, as the Board recognized, ordering specific data for a given project “is a matter within [PADEP]’s reasoned discretion using its best professional judgment.” App. 128. Failing to require

¹³ This stands for “[a]ntidegradation best available combination of technologies.” *Id.* § 102.1.

¹⁴ During PADEP’s review, Riverkeepers could have “provide[d] . . . additional information . . . regarding existing use protection for the surface water[s]” but did not. *Id.* § 93.4c(a)(1)(iii).

¹⁵ They argue that 25 Pa. Code § 93.4c(a)(1)(i) compels in-stream sampling data, but that provision merely says “[PADEP]’s evaluation of information” may include certain types of data, like “data gathered at [PADEP]’s own initiative.”

certain data is not a legal error, as Riverkeepers would have it.¹⁶

Riverkeepers also claim PADEP skipped the step of screening the Project for effects on water quality by relying exclusively on ABACT, but the record tells a different story. As the Board recognized, PADEP reviewed extensive information about water resources and site conditions (including water quality information, flow type, stream depth, substrate type, slope, the types of riparian vegetation and aquatic organisms present, and the geometry of streams, among other characteristics) before concluding water quality would be sufficiently protected with the 102 Permit. Not only that, but the permit required ABACT BMPs and “restoration to meadow in good condition.” App. 89. The Board acknowledged that these protective BMPs are designed to result “in little to no increase in the rate and volume of stormwater runoff.” *Id.*

So PADEP considered water quality information, just not the kind that Riverkeepers wanted. The Board rejected Riverkeepers’ expert’s opinion “that more baseline data was required” because the data he advocated for was “excessive, a search for knowledge for knowledge’s sake alone, without adding any practical value.” App. 143.¹⁷ It instead credited

¹⁶ Nor was the choice to not require that information irrational given the extensive amount of data already at PADEP’s disposal. *See infra* pp. 11–13.

¹⁷ The Board discredited both of Riverkeepers’ experts, noting “[t]he design of control measures is largely an engineering function, yet . . . [Riverkeepers] presented the testimony of two ecologists, neither of whom was qualified to opine on the design of BMPs.” App. 130.

Transco's experts, who "explained why pre- and post-construction in-stream sampling was not reasonable for this Project." App. 131. It also made factual findings that the nature of the construction project would not affect water quality. And the Board found the utility line and pipeline crossings used "in the dry" construction, which briefly diverts water flow from the construction area during excavation. App. 132. As the Board explained, "[w]orking 'in the dry' means there will be no major change to the shape of the stream after pipeline installation and that there will be no extra sediment." *Id.* Finally, it noted that by complying with Chapter 102, the permits already required lots of information regarding pre- and post-construction site conditions.¹⁸ "We will not reevaluate the [Board]'s credibility determinations or reweigh this evidence." *Leatherwood, Inc. v. Commonwealth, Dep't of Env't Prot.*, 819 A.2d 604, 612 (Pa. Commw. Ct. 2003). Supported by a record replete with factual findings, and no evidence from Riverkeepers that their preferred water quality information

¹⁸ See, e.g., 25 Pa. Code §§ 102.4(b)(1)–(9) (extensive environmental and safety plans pre-construction), 102.6(a)(2) (data from Pennsylvania Natural Heritage Program), 102.8(f)(1)–(15) (extensive site data and features), 102.8(g)(1)–(6) (site data), 102.8(h) (considerations, including manuals, on complying with antidegradation requirements). Riverkeepers do not argue that the Project falls out of compliance with these requirements, or the many forms, checklists, and manuals designed to facilitate regulatory requirements.

would have altered the outcome, we cannot say Pennsylvania’s decision to issue the 102 Permit was arbitrary and capricious.¹⁹

B.

We turn next to the 105 Permits. Chapter 105 regulates disturbances in water resources like dams and reservoirs. It lays out a fact-bound decision tree, where the PADEP is given great discretion at each branch to make determinations on broad terms. For instance, permits will not issue for

¹⁹ Since the 102 Permit was properly issued, the Board did not err in finding the corresponding requirements of the 105 Permits met.

Riverkeepers’ argument regarding the burden the Board imposed on them below also fails. It was Riverkeepers’ burden in bringing its third-party challenge to show by a preponderance of the evidence that “[PADEP] acted contrary to the law or unreasonably or that its decision is not supported by the facts.” *Gibraltar Rock, Inc. v. Pa. Dep’t of Env’t Prot.*, 286 A.3d 713, 718 (Pa. 2022); 25 Pa. Code § 1021.122(c)(2). Riverkeepers argue that the Board heightened this burden, asking them to affirmatively prove that environmental harm would result from issuing the Permits, not just that the process was insufficient to evaluate the effects. But where Riverkeepers attack open-ended standards, like the quality-based standard, which is designed to ensure against environmental harm, the unreasonableness of the Board’s conclusion would turn on the existence of some environmental risk posed by the Permits. *See, e.g., Leatherwood, Inc.*, 819 A.2d at 612 (noting the lack of credible evidence presented by a third party establishing “the risk of bird/aircraft collisions posed by [a] Landfill”). So we reject Riverkeepers’ claim that the Board improperly heightened its burden.

Exceptional Value (“EV”) waters if there is an “adverse impact,” “impairment,” or a “diminution of resources sufficient to interfere with their uses.” 25 Pa. Code § 105.18a(a)(1), (5)–(6). For non-EV waters,²⁰ the project must not create a “major impairment” or a “significant adverse impact.” *Id.* § 105.18a(b)(1), (6). The cumulative effect of the project and other projects may not result in “impairment” of the resource. *Id.* § 105.18a(a)(6). Before issuing a 105 permit, PADEP must “consider[] the impact of the wetlands values and functions in making a determination of adverse impact.” *Id.* § 105.14(b)(13). A project may “[r]ectify the impact by repairing, rehabilitating or restoring the impacted environment,” thus resulting in no adverse effect. *Id.* § 105.1(i)(B); *see id.* §§ 105.14(c)(2), 105.16(a). The regulations then establish several ways by which permits may still issue even if the project would impose adverse effects. *See, e.g., id.* §§ 105.16, 105.18a. As the Board rightly noted, “[a]ll of these imprecise terms obviously leave a great deal of room for the exercise of reasonable discretion.” App. 138.

PADEP found that the Project would impose no permanent adverse effects to wetland functions or values. To make that so, it put in place mitigation requirements in the 105 Permits, including “conditions regarding restoration.” App. 144. Those conditions accounted for temporary “impacts” and permanent “impacts,” like the “change in vegetation” from mowing the pipeline right-of-way. App. 143.

Unsatisfied, Riverkeepers say that PADEP did not properly account for the time it takes to restore natural resources. But as the Board explained, the “record is replete

²⁰ For purposes of § 105, there are only two categories of wetlands. *See* 25 Pa. Code § 105.17.

with evidence that Transco must obtain full restoration within a reasonable period of time, and extensive monitoring is required to ensure that happens.” App. 146. Riverkeepers point to no legal basis for their argument that “a reasonable period” is not a permissible period. Moreover, Riverkeepers offer no evidence that permanent effects were erroneously classified as temporary. Rather, the Board discredited Riverkeepers’ expert testimony regarding temporary and permanent effects. It was reasonable to do so, given that the expert’s testimony lacked any specific examples, was based on a partial and hasty review of the record, and lacked any site visits.

We also find no error in the Board’s treatment of permanent effects. The regulations provide that projects must not create “adverse impact[s],” which implies that some “impact[s]” are permissible. 25 Pa. Code § 105.18a(a)(1). All parties agree that an “impact” is adverse when the functions and values of wetlands are not maintained.²¹ “Functions and values that are physically and biologically the same as those that are lost shall be replaced at a minimum ratio of 1:1.” *Id.* § 105.20a(a)(2).

The Board determined that the Project would impose “no loss of hydrology or biogeochemical processes,” even though there will be a “change in the type of vegetation growing in the wetland.” App. 97. The permanent “impact” was limited to the vegetative change due to mowing the narrow area “immediately above the pipeline right-of-way” about every three years, which is needed for pipeline integrity, as well as for FERC inspections. App. 148. That constitutes a

²¹ Chapter 105 provides a non-exhaustive list of wetland functions, mostly concerning ecology and hydrology. *Id.* § 105.1.

permanent change “because you can’t plant trees on top of where the pipeline is located.” App. 1201. Yet the Project mitigates for that mowing with offsite replacements at a ratio greater than the minimum one-to-one required by the regulations.

Waving all this away, Riverkeepers object that “the Permits do not ensure that the functions and values of wetlands are restored.” Opening Br. 34. But it directs our attention to nothing specifically lacking and simply complains that the performance standards in the mitigation plans are insufficient. We cannot upset the Board’s contrary conclusion. During the Board’s adjudication, Transco presented many “witnesses explain[ing] why this functional conversion would not result in any adverse impact,” while Riverkeepers “offered no contrary evidence.” App. 144. Riverkeepers’ wetland expert did not even state an opinion on whether the Project would have an adverse effect.

Riverkeepers finally argue that PADEP did not account for cumulative effects, that is, effects from the Project and prior projects becoming adverse in the aggregate. “In evaluating the cumulative impact,” PADEP is tasked to “consider whether numerous piecemeal changes may result in a major impairment of the wetland resources.” 25 Pa. Code § 105.14(b)(14). Here, PADEP considered Transco’s cumulative effects analysis, which included assessments of previously constructed pipelines around the Project. “[M]ost of the Project collocated the new pipelines with preexisting pipelines,” which even Riverkeepers’ experts admitted, comes with environmental efficiencies. App. 149.

Still, Riverkeepers latch onto the co-located pipeline portions, noting that the Project expanded the right-of-way in these areas and now clears out more vegetation on a routine

basis. But the record supports a finding that the Project mitigates “the creeping out of the right-of-way over time.” App. 1324. Transco’s applications acknowledged and accounted for those cumulative effects, and experts found that the Project “is not expected to have a negative cumulative impact to wetland resources as a whole.” App. 1313. As one witness testified—agreeing with Riverkeepers—most of the effect associated with the collocated pipelines is the “cutting of vegetation,” which is not an adverse “impact.” App. 1325. Neither is the accumulation of this cutting because “any impacts were mitigated for, and so when we look at all those together, it would not constitute an impairment to resources.” App. 1312. Crediting this testimony, the Board could reasonably conclude there were no cumulative adverse effects.

C.

Failing to establish a regulatory error, Riverkeepers lodge a constitutional claim under Pennsylvania’s Environmental Rights Amendment (“ERA”). The Amendment imposes on state agencies, “[a]s trustee,” the duty to “conserve and maintain” the Commonwealth’s “public natural resources,” including “pure water.” Pa. Const. art. I § 27; *see Pa. Env’t Def. Found. v. Commonwealth*, 161 A.3d 911, 931 n.23 (Pa. 2017). The Pennsylvania Supreme Court applies ordinary trust principles when evaluating state actions under the Amendment, asking whether the agency acted reasonably “to accomplish the trust’s purposes” by giving “all of the beneficiaries due regard for their respective interests in light of the purposes of the trust.” *See Pa. Env’t Def. Found.*, 161 A.3d at 932–33.

We see no daylight between Riverkeepers’ regulatory and constitutional arguments, and so they resolve the same way. Riverkeepers argue PADEP failed its constitutional

duties by “not using easily ascertainable information about water quality” in its review, Opening Br. 40–42; “failing to ensure . . . the Project . . . did not require adequate post-construction monitoring,” Opening Br. 43–44; and “treating newly-planted saplings as equivalent in environmental value to mature forest in its determination that deforestation impacts in the construction right-of-way [were] ‘temporary,’” Opening Br. 44. These merely repackage their prior arguments under a constitutional veil.²²

Taken together, Riverkeepers ask us to find that the Amendment sets more granular requirements than the regulations. Or that even if PADEP and the Board acted reasonably under the regulations, they acted unreasonably under the “broad and flexible terms” of the ERA. *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 963 (Pa. 2013) (plurality opinion). We decline that innovation because, by design, the Amendment obliged complementary legislation to fill in “administrative details” because “the generalized terms comprising the [Amendment] do not articulate them.” *Id.* at 958. The General Assembly did just that, eventually leading to Chapters 93, 102, and 105 of the

²² The Board has consistently rejected ERA challenges that simply reframe alleged regulatory violations. *See, e.g.*, App. 150; *Liberty Twp. v. PADEP*, No. 2021-007-L, 2024 WL 202006, at *62–63 (Pa. Env. Hrg. Bd. Jan. 8, 2024); *Del. Riverkeeper Network v. PADEP*, Nos. 2021-108-L, 2021-109-L, 2022 WL 1200101, at *22 (Pa. Env’l. Hrg. Bd. Apr. 1, 2022); *Ctr. for Coalfield Just. v. PADEP* No. 2014-072-B, 2017 WL 3842580, at *34 (Pa. Env’l. Hrg. Bd. Aug. 15, 2017).

Environmental Code.²³ See *Robinson*, 83 A.3d at 958. That is why the purpose of the Amendment, to “conserve and maintain” the Commonwealth’s resources, tracks the purposes contained in the relevant water regulations. Compare Pa. Const. art. I § 27, with 25 Pa. Code §§ 102.2, 105.2.

While “complementary legislation” does not totally alleviate constitutional duties, “legislative enactments serve to define regulatory powers and duties, to describe prohibited conduct of private individuals and entities, to provide procedural safeguards, and to enunciate technical standards of environmental protection.” *Robinson*, 83 A.3d at 958. Complying with the exhaustive regulatory schemes promulgated following the Amendment’s passage almost always meets a trustee’s duty to act reasonably. *Hetherton v. Sears, Roebuck & Co.*, 593 F.2d 526, 531 (3d Cir. 1979) (“When a legislature has enacted regulations which define the standard of care to be exercised in a particular situation, an individual’s compliance with the statute normally absolves him of any need to take additional precautions absent any special circumstances . . .”).

Riverkeepers identify no special circumstances, only the ordinary balancing of preservation and progress. In response, Pennsylvania exercised reasoned discretion according to its “duties to conserve and maintain” the environment, which “are tempered by legitimate development

²³ The Amendment was ratified on May 18, 1971. *Pa. Env’t Def. Found.*, 161 A.3d at 918. “The General Assembly” then “enacted environmental statutes, most notably the Clean Streams Act,” *Robinson*, 83 A.3d at 958, which is the main statutory authority for the regulations at issue, see 25 Pa. Code §§ 93, 102, 105 (2026).

tending to improve upon the lot of Pennsylvania's citizenry." *Robinson*, 83 A.3d at 958. PADEP considered extensive water quality data, the exact data Riverkeepers claim was unconstitutionally ignored. The Permits contain a host of monitoring requirements, which the Board scrutinized and found sufficient. And the Board reasoned "the wetland replacement ratios used for the Project factor in the time it takes for trees to grow, which is why certain ratios are higher than one to one." App. 152. Pennsylvania's broadly-worded Amendment does not create more granular requirements on pipeline projects than the Commonwealth's extensive environmental regulations and the Board fulfilled its constitutional charge.

* * *

For the foregoing reasons, we will deny the petition.

Counsel for Petitioners

Devon E. Guyer

Kacy C. Manahan

DELAWARE RIVERKEEPER NETWORK

Jessica R. O'Neill

Emma H. Bast

CITIZENS FOR PENNSYLVANIA'S FUTURE

Counsel for Respondent

Michael Braymer

Margaret O. Murphy

Michael J. Scarinci

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Counsel for Intervenor

Andrew T. Bockis

John R. Dixon

Patrick F. Nugent

Elizabeth U. Witmer

SAUL EWING LLP