



March 3, 2023

Sent via Email

Kristina Heaney
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Monroe County Conservation District
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Pamela Kania, P.E.
Environmental Program Manager, Waterways and Wetlands
B.R. Patel, P.E.
Environmental Program Manager, Clean Water
PA Department of Environmental Protection
Northeast Regional Office
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Wilkes-Barre, PA 18701
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**Re: Notice of Violation 180-115, C-1 Site
NPDES Permit Number PAD450168 - NOT YET ISSUED
Tunkhannock Township, Monroe County, PA
Exceptional Value Waters – Mud Run and EV Wetlands**

Dear Ms. Heaney, Ms. Kania, and Mr. Patel:

We are in receipt of the February 1, 2023 MCCD Notice of Violation referenced above issued to David Moyer / Papillon & Moyer, along with the January 31, 2023 Monroe County Conservation District (MCCD) Site Inspection Report that details multiple violations of Chapter 102 and the PA Clean Streams Law occurring in the Exceptional Value watershed of Mud Run and EV Wetlands. **MCCD and DEP must take all immediate and necessary enforcement and injunctive actions to stop these ongoing violations and to prevent further violations of PA Chapter 102 and the PA Clean Streams Law from occurring on this property in an Exceptional Value watershed.**

In short, the Inspection Report (attached) indicates that earth disturbance activities, in the form of tree clearing, is occurring in an Exceptional Value watershed without the required NPDES permit under PA Chapter 102, without required E&S BMPs for said earth disturbance, without a required E&S Plan, without a required pre-construction meeting and notice, without a

required Post Construction Stormwater Management Plan (PCSM) Plan, and additional violations. The Inspection Report states that:

- “the contractor mobilized equipment to the site (compact track loader with cutting head attachment and excavator with cutting head attachment) and had initiated clearing activities primarily in the eastern portion of the site” and
- “multiple areas of incidental earth disturbance observed from clearing operations”.

The applicant, David Moyer’s (david.moyer@papillon-moyer.com) response to the Notice of Violation, dated and sent February 7, 2023 via Keystone Consulting Engineers, did not deny that Mr. Moyer was undertaking tree clearance and tree mulching operations on the property and admitted that they intended to complete this work prior to March 31, 2023 and “at their own risk”. Instead, they attempt to argue that the “specialized” tracked equipment being utilized somehow creates an operation that “does not involve earth disturbances.” And yet in that letter, Mr. Moyer’s consultant admits that there is a need to “protect newly cleared areas from wind and/or erosion”. Not only does this admission belay their erroneous statements that they are not undertaking land disturbance activities, but the Notice of Violation clearly indicates that multiple areas of incidental earth disturbance resulting from the clearing operations were observed by the county conservation district inspector, which are not addressed by the applicant’s response. Moreover, Mr. Moyer’s activities clearly fall within the definition of “timber harvesting activities - earth disturbance activities including the construction of skid trails, logging roads, landing areas and other similar logging or silvicultural practices” which is included in the definition of “earth disturbance activities.” 25 Pa. Code 102.1.

Additionally, in an email dated January 31, 2023, Mr. Moyer’s consultant acknowledges that the tree clearing actions risk “impairing future infiltration and septic areas or removing wooded areas that may need to be credited during the NPDES permit review process.” In other words, Mr. Moyer has chosen to seek forgiveness at a later date, rather than permission before taking this harmful action.

Any violations observed by MCCD noted in the Inspection Report constitute unlawful conduct as defined in Section 611 of the Clean Streams Law. Failure to take corrective actions to resolve the violations may result in administrative, civil and/or criminal penalties being assessed by DEP as specified at Section 602 of the Clean Streams Law. The Clean Streams Law provides for up to \$10,000 per day in civil penalties, up to \$10,000 in summary criminal penalties, and up to \$25,000 in misdemeanor criminal penalties for each violation. These penalties are essential enforcement tools to ensure that violators do not conclude that the benefits of ecological destruction outweigh the risk that their unlawful activity will be enjoined. Mr. Moyer, through his consultant, knowingly admitted to undertaking these activities “at their own risk” and we strongly encourage DEP and/or MCCD, in addition to immediate injunctive actions to stop the harm being inflicted to this sensitive habitat, to seek both civil and criminal penalties to the maximum extent possible.

Mr. Moyer is trying to play fast and loose with the Pennsylvania regulations designed to protect our water resources from exactly this type of harmful activity. Moreover, the fact that this is occurring within an Exceptional Value watershed is appalling. Mr. Moyer’s illegal actions and

utter disregard for not only the letter, but the spirit of PA Chapter 102 must not be allowed to stand. **MCCD and DEP must take swift action to immediately stop Mr. Moyer from continuing his illegal tree cutting activities, must prevent further violations and harm from occurring in this Exceptional Value watershed for this unpermitted project, and must take all other actions available to the agencies to hold Mr. Moyer and his consultants accountable for the destruction they have caused and for their willful and brazen disregard of the Commonwealth's laws.** Your agencies have a statutory duty, as well as a constitutional duty as trustees under the Environmental Rights Amendment, to protect our Exceptional Value streams from degradation.

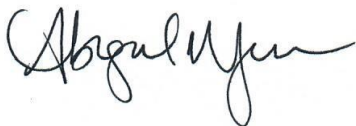
Furthermore, the public has expressed grave concern regarding this NPDES permit application. On February 6, 2023, DEP announced, after overwhelming public outcry of this proposed application, that the agency will hold a public hearing and additional comment period beyond 15 days for public comment. As of the March 3, 2023 Pennsylvania Bulletin this hearing date has not yet been announced to the public. To allow continued cutting and destruction of the sensitive habitat and trees that has occurred for Mr. Moyer's unpermitted project and in this Exceptional Value watershed almost a month *after the Notice of Violation* was issued *and* as the public process has not even played out is another slap in the face to the residents and community that has grave concerns for this project; especially in light of the Conservation District citing over 11 failures in the inspection report. **In light of this willful and continuing violation of the Clean Streams Law, section 607 of that statute requires DEP to deny the applicant's permit.**

If you have any questions, please do not hesitate to contact Faith Zerbe, Delaware Riverkeeper Network at 215-369-1188 ext. 110, or Abby Jones, PennFuture, at 570-730-4149. We thank you for your swift attention to this very serious matter.

Sincerely,



Maya K. van Rossum
the Delaware Riverkeeper
Delaware Riverkeeper Network



Abigail M. Jones, Esq.
Vice President of Legal & Policy
PennFuture

cc: Robert J. Jevin III, P.E., DEP (rojevin@pa.gov), Geoff Rogalsky, TCTWA