



March 3, 2023

Sent via Email

Kristina Heaney
District Manager
Monroe County Conservation District
8050 Running Valley Road
Stroudsburg, PA 18360
khmccd@ptd.net

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
2 Public Square
Wilkes-Barre, PA 18701
pkania@pa.gov, bhapatel@pa.gov

**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.

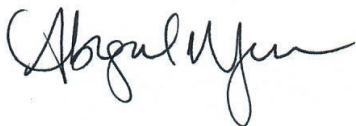
Furthermore, the public has expressed grave concern regarding this NPDES permit application. On February 6, 2023, DEP announced, after overwhelming public outcry of this proposed application, that the agency will hold a public hearing and additional comment period beyond 15 days for public comment. As 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



**CHAPTER 102 INSPECTION REPORT
MONROE COUNTY CONSERVATION DISTRICT**

Permit No.: PAD450168
Report No.: 1

GENERAL INFORMATION

Project/Site Name: I80-115, C-1 Site, LLC Permit Issuance Date: _____
 Site Address: 106 Jo Ker Road Permit Expiration Date: _____
 Site City, State, ZIP: Blakeslee, PA 18610 Permit Type: NPDES IP
 RP/Permittee Name: I80-115, C-1 Site, LLC Site Municipality(ies): Tunkhannock Twp.
 RP/Permittee Address: 186 Murphy Run Road Site County(ies): Monroe
 RP/Permittee City, State, ZIP: Stroudsburg, PA 18360 Earth Disturbance: 92.50 acres
 RP/Permittee Email: david.moyer@papillon-moyer.com Site Latitude: 41.03464
 Surface Water(s): Tunkhannock Cr./ Mud Pond Rn. Site Longitude: - 75.49424
 Special Protection? Yes No Complaint Inspection? Yes No
 Construction Stage: Clearing/Grubbing Activity: Construction >= 1 ac

Operator Name	Operator Company	Operator Email	Approved
Austin Smale/ Ryan Jones	Papillon & Moyer	david.moyer@papillon-moyer.com	<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

INSPECTION INFORMATION

Inspection Date: 1/31/2023 Inspection Time: 10:10 AM PM
 Lead Inspector Name: Steven Baade, CPESC Inspector Email: sbmccd@ptd.net
 Inspector Title: Resource Conservation Specialist Inspector Phone: 570-629-3060
 Other Inspector(s): N/A Weather: Snow flurries, 28F
 Was a representative of the project on-site during the inspection? Yes No
 Representative Name: Austin Smale and Ryan Jones Email: david.moyer@papillon-moyer.c
 Representative Company: Papillon & Moyer Phone: 570-421-5020
 Type of Inspection: Initial Follow-up (Previous Report #) Photographs attached

Brief description of the site and summary of observations:

1. The NPDES Permit for this project is currently under review and has not yet been issued.
2. Prior to obtaining the NPDES Permit for this project, 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 (d,e,f,g,m,s,w,z,bb,ff).
3. Site representatives they were instructed by the permittee contact to begin clearing of the site.
4. Multiple areas of incidental earth disturbance observed from clearing operations (a,e,f,g,s,z,bb)

INSPECTION FINDINGS	
	<input type="checkbox"/> No violations observed at this time.
a.	<input checked="" type="checkbox"/> Failure to implement and/or maintain E&S BMPs for earth disturbance (§§ 102.4(b)(1), 102.22(a)(1)).
b.	<input type="checkbox"/> Failure to develop and/or implement a written E&S Plan (§ 102.4(b)(2)).
c.	<input type="checkbox"/> Failure to have a person trained and experienced in E&S control methods develop an E&S Plan (§ 102.4(b)(3)).
d.	<input checked="" type="checkbox"/> Failure to have the E&S Plan and/or inspection/monitoring reports on-site and available for review (§ 102.4(b)(8)).
e.	<input checked="" type="checkbox"/> Failure of permittee to obtain all necessary approvals/permits from DEP/CCD prior to commencing earth disturbance (§ 102.4(d)).
f.	<input checked="" type="checkbox"/> Failure to hold a pre-construction meeting and/or invite DEP/CCD staff and/or provide at least 7 days' notice (§ 102.5(e)).
g.	<input checked="" type="checkbox"/> Failure of an operator to submit a co-permittee acknowledgement form (§ 102.5(h)).
h.	<input type="checkbox"/> Failure to prepare and/or implement and/or provide upon request a PPC Plan when required (§ 102.5(l)).
i.	<input type="checkbox"/> Failure to temporarily stabilize areas where there will be a cessation of earth disturbance activities for at least 4 days (§ 102.22(b)).
j.	<input type="checkbox"/> Failure to complete or accurately complete visual site inspections as required by the permit (CSL § 402(b)).
k.	<input type="checkbox"/> Failure to implement PCSM BMPs as specified in the approved PCSM Plan (§ 102.8(a)).
l.	<input type="checkbox"/> Failure to operate and maintain PCSM BMPs as specified in an approved PCSM Plan or deed (§ 102.8(a)).
m.	<input checked="" type="checkbox"/> Failure to have the PCSM Plan, inspection reports, and/or monitoring records available for review (§ 102.8(j)).
n.	<input type="checkbox"/> Failure to have a licensed professional or a designee present on-site during critical stages of PCSM BMPs (§ 102.8(k)).
o.	<input type="checkbox"/> Failure to record an instrument for PCSM BMPs (§ 102.8(m)(2)).
p.	<input type="checkbox"/> Failure to meet riparian forest buffer criteria (§ 102.14(b)).
q.	<input type="checkbox"/> Failure to permanently stabilize a project site or any phase or stage thereof (§ 102.22(a)).
r.	<input type="checkbox"/> Failure to remove temporary E&S BMPs once permanent stabilization has been established (§ 102.22(a)(1)).
s.	<input checked="" type="checkbox"/> Failure to obtain NPDES permit prior to commencing earth disturbance activity with at least one acre of disturbance (§ 102.5(a)).
t.	<input type="checkbox"/> Failure to obtain E&S permit prior to commencing earth disturbance activity with at least 25 acres of disturbance for timber harvesting and road maintenance (§ 102.5(b)).
u.	<input type="checkbox"/> Failure to obtain E&S permit prior to commencing earth disturbance activity with at least 5 acres of disturbance for oil and gas activities (§ 102.5(c)).
v.	<input type="checkbox"/> Failure of activity not requiring a permit to comply with Chapter 102 requirements (§ 102.5(k)).
w.	<input checked="" type="checkbox"/> Failure to follow the approved construction sequence in an E&S or PCSM Plan (CSL § 402(b)).
x.	<input type="checkbox"/> Failure to submit a Notice of Termination (NOT) (§ 102.7(a)).
y.	<input type="checkbox"/> Unauthorized discharge of polluting substances to waters of the Commonwealth resulting in pollution (CSL § 401).

z.	<input checked="" type="checkbox"/>	Failure to comply with the terms and conditions of a permit or order (CSL § 402(b)).
aa.	<input type="checkbox"/>	Failure to remove building materials and/or wastes from the site for recycling or disposal in accordance with DEP regulations as required by the permit (CSL § 402(b)).
bb.	<input checked="" type="checkbox"/>	Failure to comply with DEP regulations or the Clean Streams Law (CSL § 611).
cc.	<input type="checkbox"/>	Failure to take necessary measures to prevent pollutants from reaching waters of the Commonwealth (§ 91.34(a)).
dd.	<input type="checkbox"/>	Failure to notify DEP of new or expanded earth disturbance not identified in an NPDES permit application (§ 92a.24(b)).
ee.	<input type="checkbox"/>	Failure to notify and/or obtain authorization from DEP/CCD for changes to NPDES permitted activities (§ 92a.41(a)(12)).
ff.	<input checked="" type="checkbox"/>	Other: Failure to provide proof of clearance for PNDI hits
	<input type="checkbox"/>	During the inspection violations of Chapter 105 were observed and are identified in a separate Chapter 105 inspection report.
	<input type="checkbox"/>	E&S BMPs were evaluated and appear to be functioning as designed.
	<input type="checkbox"/>	PCSM BMPs were evaluated and appear to be functioning as designed.
	<input type="checkbox"/>	Form 3800-FM-BCW0531a was used to document the PCSM BMP evaluation.
	<input type="checkbox"/>	There is a need for modifications to the E&S Plan, PCSM Plan, or permit coverage.
		Describe:

COMPLIANCE ASSISTANCE RECOMMENDATIONS

1. It is recommended that all clearing and any earth disturbance activities onsite cease immediately.
2. Any areas of major rutting should be regarded and any disturbed areas should be immediately temporary stabilized with mulch or onsite wood chips from cleared trees (if available).
3. No additional clearing or earth disturbance should commence onsite until the NPDES Permit is obtained, a pre-construction meeting is held and the contractor has been brought onto the permit as a co-permittee.

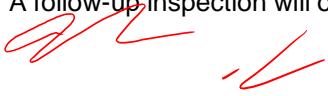
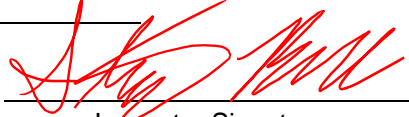
ADDITIONAL COMMENTS

NOTICE AND SIGNATURES

This report is official notification that a representative of the Department of Environmental Protection (DEP) has conducted an inspection of your earth disturbance activity to determine compliance with 25 Pa. Code Chapter 102 and the Pennsylvania Clean Streams Law. This representative may be an employee of a County Conservation District (CCD), which by delegation agreement with DEP is authorized to investigate complaints, inspect earth disturbance activities and conduct compliance actions. Any violations observed by DEP/CCD have been noted in this report and 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. This report does not constitute an Order or appealable action of DEP. Nothing contained herein shall be deemed to grant or imply immunity from legal action for any violation noted herein. For further information or assistance contact the DEP/CCD inspector.

The Project Site Representative's signature acknowledges that they have read the report and were given an opportunity to discuss the report with the inspector. The signature does not necessarily mean the signee agrees with the report. All comments by the inspector are based on visual site observations and do not constitute professional practice under applicable law.

- Violations are documented in this report and this report serves as a Notice of Violation (NOV).
- A follow-up inspection will occur on or about: 2/21/23

 _____ Site Representative Signature	<u>11/31/23</u> _____ Date	 _____ Inspector Signature	<u>11/31/23</u> _____ Date
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cc: