



Southwest Regional Office

June 19, 2014

Via Certified Mail # 7000 1670 0005 1025 4213 and First Class Mail

Appalachian Timber Company
5441 National Pike
Markleysburg, PA 15459

Re: Compliance Order
Violations of the Clean Streams Law
Curry Timber Harvest Project
Dunbar Township, Fayette County

Dear Mr. Merschat:

Please find enclosed a Compliance Orders from the Pennsylvania Department of Environmental Protection. The Order states that, except as required by this Order, cease all earth disturbance activities on the above-referenced property until the Department provides you with written authorization to resume activities.

This Order also requires that you revise your Erosion and Sediment (E&S) Control Plan immediately addressing the deficiencies outlined in the Fayette County Conservation District's review of the current E&S plan. In addition, the E&S controls you install must be appropriate for special protection watersheds. Temporary and permanent stabilization measures should be employed in the disturbed areas.

If you have any questions, please contact me at 412-442-5219.

Sincerely,

Abbey Falcone Owoc
Environmental Group Manager
DEP Waterways and Wetlands Program
Conservation, Restoration and Inspection Section
Enclosures

cc: Charles Curry, Curry Lumber Company
Fayette County Conservation District
Gail Guenther, Assistant Counsel

Commonwealth of Pennsylvania
 Department of Environmental Protection
 Bureau of Waterways Engineering and Wetlands
COMPLIANCE ORDER

		DEP DOCKET NO.	
PERSON SUBJECT TO ORDER Appalachian Timber Products		PHONE NO. 724-329-1990	
ADDRESS 5441 National Pike Markleysburg PA 15459		MUNICIPALITY Dunbar Township	
PROJECT NAME OR DESCRIPTION Curry Timber Harvest Project		COUNTY Fayette	
PERMIT NO. N/A	DATE OF INSPECTION 5/19/2014	TIME OF INSPECTION FROM 11:00 A.M. TO P.M.	A.M. P.M.
NAME AND TITLE OF RECIPIENT John Merschat, Owner			DATE OF SERVICE 6/19/2014

The Department of Environmental Protection is the agency with the authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.1 *et seq.*, and Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177 as amended, 71 P.S. §510-17, and the Rules and Regulations of the Environmental Quality Board adopted thereunder.

The undersigned authorized representative of the Department has conducted an inspection of the above project on the above date and has determined that violations listed in this Order exist. This Order constitutes a separate Order for each violation listed.

Pursuant to Sections 5, 316, 402, and 610 of the Clean Streams Law (35 P.S. §§691.5, 691.316, 691.402, and 691.610) and Section 1917-A of the Administrative Code, as amended, 71 P.S. §510-17, the Department hereby ORDERS that the person shall perform the remedial actions listed in this Order.

Failure to comply with this Order constitutes unlawful conduct under Section 611 of the Clean Streams Law (35 P.S. §691.611). Section 605 of the Clean Streams Law (35 P.S. §691.605) provides that the Department may assess a civil penalty of up to Ten Thousand Dollars (\$10,000) per day for each violation of this Order.

Nothing contained in this Order shall be construed to relieve or limit the obligations of the above-mentioned person to comply with the terms and conditions of any permit existing or hereafter issued by the Department to this person, or to limit any civil or criminal liability of this person. Additional requirements may be imposed in the future by subsequent Department orders or other actions. Your prompt compliance with this Order will be considered when assessing a civil penalty for the violation(s) which is (are) the subject of this Order.

APPEAL NOTICE

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or an audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717) 787-3483 FOR MORE INFORMATION.

DEPARTMENT REPRESENTATIVE PHONE NUMBER: (412) <u>442-5219</u> NAME: <u>Abbey Owoc</u> (Print) TITLE: <u>Environmental Group Manager</u> ADDRESS: <u>400 Waterfront Drive</u> <u>Pittsburgh PA 15222</u> SIGNATURE: <u>Abbey Owoc 6/19/2014</u> (Date)	ACKNOWLEDGEMENT OF SERVICE The undersigned representative, hereby acknowledges receipt of this order and attachment(s) hereto. This signature does not constitute an acknowledgement that any or all of the violations listed in the attachment(s) have occurred or continue to occur. SIGNATURE: <u>sent certified mail</u> DATE: <u>June 19, 2014</u>
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Person Subject to ORDER:
Curry Lumber Company
Project Name: Curry Timber Harvest Project
Permit No.: N/A

COMPLIANCE ORDER

Site Conditions: Descriptions and Violations

- ☐ A. **CAUSED OR ALLOWED EARTH DISTURBANCE WITHOUT FIRST OBTAINING APPROPRIATE PERMIT COVERAGE.**
Commenced earth disturbance activity, prior to obtaining an appropriate permit.
1. **Description**
Conducting earth disturbance activities without authorization of a permit. (Specify permit needed) _____
 2. **Violation**
Conducting an earth disturbance activity without obtaining a permit in violation of 25 Pa. Code §102.5 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402, and 691.611.
- ☐ B. **CAUSED OR ALLOWED EARTH DISTURBANCE WITHOUT AN EROSION AND SEDIMENT CONTROL PLAN RESULTING IN POTENTIAL FOR POLLUTION.**
1. **Description**
Conducting an earth disturbance activity without developing an Erosion and Sediment Plan. Failure to develop, implement, and maintain an effective Erosion and Sediment Plan has created a danger of sediment pollution to enter _____

 2. **Violation**
Conducting an earth disturbance activity without developing an Erosion and Sediment Plan, in violation of 25 Pa. Code §102.4, and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.
- ☐ C. **CAUSED OR ALLOWED EARTH DISTURBANCE WITHOUT AN EROSION AND SEDIMENT CONTROL PLAN FOR AGRICULTURAL PLOWING AND FILLING ACTIVITIES AND/OR FOR ANIMAL HEAVY USE AREAS.**
1. **Description**
Conducting an earth disturbance activity without developing an Erosion and Sediment Plan. Failure to develop, implement, and maintain an effective Erosion and Sediment Plan has created a danger of sediment pollution to enter _____

 2. **Violation**
Conducting an earth disturbance activity without developing an Erosion and Sediment Plan, in violation of 25 Pa. Code §102.4(2), and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.
- ☐ D. **CAUSED OR ALLOWED EARTH DISTURBANCE WITHOUT AN EROSION AND SEDIMENT CONTROL PLAN, RESULTING IN POLLUTION.**
1. **Description**
Conducting an earth disturbance activity without developing an Erosion and Sediment Control Plan. Failure to develop, implement, and maintain an effective Erosion and Sediment Control Plan has resulted in sediment pollution entering _____

 2. **Violation**
Conducting an earth disturbance activity without an Erosion and Sediment Control Plan and causing sediment pollution to enter _____

- water(s) of the Commonwealth, in violation of 25 Pa. Code §102.4, and Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§691.401 and 691.611.

Person Subject to ORDER:
Curry Lumber Company
Project Name: Curry Timber Harvest Project
Permit No.: N/A

COMPLIANCE ORDER

Site Conditions: Descriptions and Violations (continued)

- ☒ E. FAILURE TO IMPLEMENT OR MAINTAIN EFFECTIVE EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES, AS REQUIRED BY 25 PA. CODE CHAPTER 102, THAT MINIMIZE THE POTENTIAL FOR ACCELERATED EROSION AND SEDIMENTATION, RESULTING IN POTENTIAL POLLUTION.
1. **Description**
Conducting earth disturbance activities without implementing or maintaining erosion and sediment control best management practices that minimize the potential for accelerated erosion and sedimentation. Failure to implement or maintain effective erosion and sediment control best management practices has resulted in a potential for sediment pollution to enter Morgan Run, a High Quality Cold Water Fishery and
_____ water of the Commonwealth.
2. **Violation**
Failure to implement or maintain erosion and sediment control best management practices that minimize the potential for accelerated erosion and resulting in potential pollution to Morgan Run, a High Quality Cold Water Fishery and
_____ water of the Commonwealth, in violation of 25 Pa. Code §102.4, and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.
- ☒ F. FAILURE TO IMPLEMENT OR MAINTAIN EFFECTIVE EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES, AS REQUIRED BY 25 PA. CODE CHAPTER 102, THAT MINIMIZE THE POTENTIAL ACCELERATED EROSION AND SEDIMENTATION, RESULTING IN POLLUTION.
1. **Description**
Conducting an earth disturbance activity without implementing or maintaining erosion and sediment control best management practices that minimize the potential for accelerated erosion and sedimentation. Failure to implement or maintain effective erosion and sediment control best management practices has resulted in sediment pollution to enter Morgan Run, a High Quality Cold Water Fishery and
_____ water of the Commonwealth.
2. **Violation**
Failure to implement or maintain erosion and sediment control best management practices resulting in sediment pollution to enter Morgan Run, a High Quality Cold Water Fishery and
_____ water of the Commonwealth, in violation of 25 Pa. Code §102.4, and Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§691.401 and 691.611.

Person Subject to ORDER:
Curry Lumber Company
Project Name: Curry Timber Harvest Project
Permit No.: N/A

COMPLIANCE ORDER
Site Conditions: Descriptions and Violations
(continued)

☐ **G. FAILURE TO COMPLY WITH THE CONDITIONS OF THE PERMIT RESULTING IN POLLUTION.**

1. Description

Failure to comply the terms and conditions of the permit including effluent limitations, monitoring and reporting requirements, and other terms, conditions, criteria and special requirements for the discharge of stormwater from construction activities.

2. Violation

Failure to comply with the terms and conditions of the permit resulting in sediment pollution to enter _____

_____ water(s) of the Commonwealth, in violation of 25 Pa. Code §102.4 and Sections 401 and 611 of the Clean Streams Law, 35 P.S. §§691.401 and 691.611.

☐ **H. FAILURE TO COMPLY WITH THE CONDITIONS OF THE PERMIT RESULTING IN POTENTIAL POLLUTION.**

1. Description

Failure to comply the terms and conditions of the permit including effluent limitations, monitoring and reporting requirements, and other terms, conditions, criteria and special requirements for the discharge of stormwater from construction activities.

2. Violation

Failure to comply with the terms and conditions of the permit resulting in the potential for sediment pollution to enter _____

_____ water(s) of the Commonwealth, in violation of 25 Pa. Code §102.4 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§691.402 and 691.611.

Commonwealth of Pennsylvania
Department of Environmental Protection
Bureau of Waterways Engineering and Wetlands

Person Subject to ORDER: Curry Lumber Company
Project Name: Curry Timber Harvest Project
Permit No.: N/A

COMPLIANCE ORDER Remedial Actions

- (X) Except as required by this Order, immediately cease all earth disturbance activities until written authorization is given by the Department to resume earth disturbance activities.
- (X) Implement the following best management practices at the project site so that the potential for accelerated erosion and sedimentation shall be minimized: (1) Temporary stabilization should be applied to areas where activity has ceased for 4 days or greater (2) Permanent stabilization should be applied to the disturbed areas
(3) Erosion and sediment controls should be inspected weekly and after each runoff event until a uniform 70 % vegetative cover has been achieved.
(4) Install erosion controls, considered ABACT for a Special Protection watershed in order to prevent sediment-laden water from leaving the site, with particular attention to the landing area

Complete implementation of these best management practices by July 1, 2014.

- (X) Develop an Erosion and Sediment Control Plan that minimizes accelerated erosion and sedimentation that includes all requirements listed in 25 Pa. Code §102.4 by June 27, 2014, file the Plan with the following office(s): Fayette County Conservation District
10 Nickman Plaza
Lemont Furnace, PA 15456

The Fayette County Conservation District has identified deficiencies in the review of the Erosion and Sediment Control Plan.

Those deficiencies should be addressed in the form of a plan revision.

- () Immediately begin implementing and maintaining erosion and sediment control best management practices as detailed in the Erosion And Sediment Control Plan, including, but not limited to: _____

Complete implementation and maintenance of the erosion and sediment control best management practices by _____.

- () Submit a full and complete (Erosion and Sediment Plan) (NPDES Stormwater Discharge Associated with Construction Activity) permit application or Notice of Intent (NOI), as specified by _____, and submit the (permit application) (NOI) to the following office: _____

- () Develop a post construction Stormwater Management Plan that controls post construction stormwater runoff for rate, volume, and water quality by _____, and file the plan with the following office(s): _____

- () Immediately begin implementing and maintaining post construction stormwater best management practices complete implementation and maintenance of the post construction stormwater best management practices by _____

