

New York State Department of Environmental Conservation
Division of Water, Region 9
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April 18, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Mike Bessell
Stony Creek Energy LLC
120 North Lee Street, Suite
Falls Church, VA 22046

Dear Mr. Bessell:

**Notice of Violation (NOV)
Failure to Comply With
SPDES Permit GP-0-10-001
Stony Creek Wind Farm Substation Site
Centerline Road
Orangeville (T), Wyoming County
SPDES Permit No. NYR10W211**

The New York State Department of Environmental Conservation ("the Department") is responsible for the implementation and enforcement of the provisions of Article 17 of the Environmental Conservation Law (ECL), the rules and regulations promulgated thereunder, and the provisions of permits issued under Article 17, such as State Pollutant Discharge Elimination System (SPDES) permits. **PLEASE TAKE NOTICE THAT YOU ARE IN VIOLATION OF ECL 17-0803 and the SPDES General Permit for Stormwater Discharges From Construction Activity, GP-0-10-001 ("the Permit").**

Please be advised that Part VII.C. of the Permit stipulates that there are substantial criminal, civil, and administrative penalties associated with violating the provisions of the Permit. ECL 71-1929 provides that any person who violates ECL Article 17-0803 or any rule or regulation promulgated pursuant thereto, or any permit issued thereunder, shall be liable for a civil penalty not to exceed **\$37,500.00 per day for each violation**, plus an additional penalty not to exceed **\$37,500.00 for each day that the violation continues**, and that such person may be enjoined from continuing the violation.

This NOV is issued because of your failure to comply with the SPDES permit identified above in connection with construction activities located at Centerline Road in the Town of Orangeville, New York ("the Site").

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PLEASE TAKE FURTHER NOTICE THAT compliance with this **NOTICE** by immediately correcting the violations shall not relieve you of any liability for penalties or appropriate sanctions for the past violations. However, failure to immediately comply with this **NOTICE** by correcting the violations could result in a larger penalty than would otherwise be assessed, should you be determined to be in violation of the ECL.

On April 12, 2013 the Department received a citizen complaint that beginning on April 11, 2013 the Site was discharging water and sediment to a small creek located immediately east of the Site. This area was identified as a wetland in the Storm Water Pollution Prevention Plan (SWPPP), and it ultimately discharges to Stony Creek.

In response to the complaint, I visited the Site on April 14, 2013 to conduct a comprehensive inspection with respect to the Site's compliance with the Permit. The inspection findings, and noted violations of General Permit requirements are summarized below:

1. Part II.C.2 of the General Permit requires a copy of the General Permit to be maintained on the Site. A copy of the General Permit was not present during the inspection, and must be added to the other required materials.
2. Part III.A.4 of the General Permit requires that the SWPPP be kept current so that it accurately documents the erosion and sediment controls practices that are being/will be used during construction. The SWPPP present at the site is not in compliance with the General Permit requirements. For example, the construction area which is located to the north of Centerline Road is not included in the SWPPP. The SWPPP must be updated and maintained throughout the project.
3. Part III.A.6 of the Permit requires signed statements for each of the contractors and subcontractors certifying that they agree to comply with the terms and conditions of the SWPPP; agree to implement any corrective actions identified by the qualified inspector during a site inspection; identify the specific elements of the SWPPP that they are responsible for; and provide the name and title of the "trained contractor". This information is not included in the SWPPP that is on-site, and must it be modified accordingly.
4. Part IV.C.a.2.a requires weekly inspections which cover items described in Part IV.C.4. The weekly inspection records do not cover all required items. There are several sediment and erosion control devices (i.e., stone sediment traps) employed at the Site which are not properly identified on the inspection form, and the condition of each device is not recorded. The weekly inspection record form must be revised and used appropriately.
5. Part VII.H.2 of the General Permit requires that the SWPPP be signed by a person described in Part VII.H.1 or a duly authorized representative. The SWPPP that is present on Site does not contain a required signature, and must be appropriately updated.

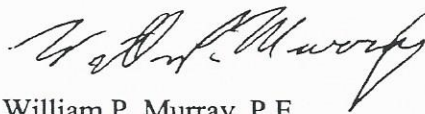
6. Sediment and erosion controls have not been installed as designed and specified in the SWPPP. Several stone sediment traps have been installed which either do not conform to the designs identified in the SWPPP, or which haven't been detailed in the SWPPP. Practices must be revised, or the SWPPP updated to include all controls being used.
7. Sediment and erosion control practices must be maintained so they are in effective operating condition at all times. At the time of the Site inspection, several issues were identified, including but not limited to, inadequate maintenance of the silt fencing. Many areas along the east end of the Site were observed to have silt fence which had been washed out, and were no longer buried at the minimum depth. Also, there was at least one occurrence where a stone sediment trap was at or near maximum silt capacity, and was not being maintained at the time of inspection. Controls must be properly maintained to function properly.

It is my understanding that the applicant is utilizing a qualified inspector meeting the requirements as identified in Part IV.C of the General Permit, which conforms to the following: *"someone working under the direct supervision of, and at the same company as, the licensed Professional Engineer or Registered Landscape Architect, provided they have received four (4) hours of Department endorsed training in proper erosion and sediment control principles from a Soil and Water Conservation District, or other Department endorsed entity."* Please provide the Department with the name of the person providing direct supervision to the qualified inspector, and documentation of appropriate qualifications.

Although not a requirement, I also suggest that you consider constructing and utilizing the storm water pond detailed in the SWPPP as a storm water post-construction control. As communicated by the Town of Orangeville's Environmental Inspector, the field located to the east of the substation (currently being utilized as a filter strip) is showing signs of reaching its maximum load capacity, and may fail to provide effective filtration of storm water prior to the final silt fence control.

Please contact me within 14 days of the date of this NOV with a plan for correcting the violations of the General Permit detailed above. Thank you for your cooperation in addressing and resolving this matter.

Sincerely,



William P. Murray, P.E.
Environmental Engineer I

ecc: Mr. Jeffrey Konsella, NYSDEC, Regional Water Engineer
Ms. Maureen Brady, NYSDEC, Regional Attorney
Mr. William Smythe, NYSDEC, Division of Water
Mr. Charles Rosenburg, NYSDEC, Division of Fish, Wildlife & Marine Resources
cc: Ms. Barbara Wagner, Stantec