

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

M&G Realty, Inc. 2100 North George Street York, PA 17404	:	Violations of The Clean Streams Law and DEP Chapters 92a and 102 of Title 25 of the Pennsylvania Code.
	:	
Curry Excavating, Inc. 3403 Mill Road Duncansville, PA 16655	:	Antis Township, Blair County DEP File NOV 07 23 102

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 27th day of November, 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and M&G Realty, Inc. (“M&G Realty”) and Curry Excavating, Inc. (“Curry Excavating”).

The Department has found and determined the following:

- A. The Department is the agency with the duty and 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 – 691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder.
- B. M&G Realty is a Pennsylvania Business Corporation that maintains a mailing address of 2100 North George Street, York, PA 17404. Tim L. Rutter is President of, and has signature authority for, M&G Realty. Todd M. Rutter is Secretary of, and has signature authority for, M&G Realty.
- C. M&G Realty is the permittee for Rutter’s Store #82 located at the North-West corner of the intersection of East Pleasant Valley Boulevard and Sabbath Rest Road in Antis Township, Blair County, Pennsylvania (“Site”). M&G Realty is the permittee under the National Pollution Discharge Elimination System (“NPDES”) Permit number PAD070014 (“NPDES Permit”) for earth disturbance activities at the Site.
- D. M&G Realty contracted with Curry Excavating to construction activities and earth disturbance at the Site. M&G Realty and Curry Excavating represent to the Department that pursuant to the contract, Curry Excavating assumed full responsibility for performing all construction activities, site disturbance, and monitoring of same in accordance with all permits, approvals, and regulations, including the NPDES Permit.
- E. Curry Excavating is a Pennsylvania Business Corporation that maintains a mailing address of 3403 Mill Road, Duncansville, PA 16655. Richard T. Curry is the owner, President, and sole officer of, and has signature authority for, Curry Excavating.

- F. Curry Excavating is the co-permittee on the NPDES Permit and the contractor which performed construction activities and earth disturbance activities at the Site.
- G. The receiving waters for the Site are Sandy Run, an unnamed tributary (UNT) to Sandy Run, and associated wetlands, which are all waters of the Commonwealth and surface waters of the Commonwealth. The designated use for the segment of Sandy Run is listed in 25 Pa. Code § 93.9n as High-Quality Waters (“HQ”) and Cold-Water Fishes (“CWF”) and Migratory Fishes (“MF”). The wetlands are classified as Exceptional Value wetlands in accordance with 25 Pa. Code § 105.17.
- H. M&G Realty and Curry Excavating represent to the Department that Curry Excavating’s conduct caused the violations identified in this CACP. M&G Realty, as owner of the Site and permittee under the NPDES Permit, is also responsible for all violations at the Site.
- I. The Blair County Conservation District (“BCCD”) performed on-site inspections of the activities on the Site. The BCCD documented the following conditions and violations at the Site during these inspections:
1. During inspections on May 1, 2023, May 10, 2023, May 16, 2023, June 8, 2023, July 3, 2023, July 31, 2023, and August 25, 2023, the BCCD determined that M&G Realty and Curry Excavating failed to implement and/or maintain effective Best Management Practices (“BMPs”) to effectively minimize accelerated erosion and sedimentation at the Site.
 2. During an inspection on May 1, 2023, the BCCD determined that M&G Realty and Curry Excavating failed to hold a pre-construction meeting with the Department and/or BCCD.
 3. During inspections on May 1, 2023, May 10, 2023, May 16, 2023, June 8, 2023, July 3, 2023, July 31, 2023, and August 25, 2023, the BCCD determined that M&G Realty and Curry Excavating failed to follow the approved construction sequence in the E&S Plan.
 4. During an inspection on May 1, 2023, the BCCD determined that M&G Realty, and Curry Excavating failed to comply with the terms and conditions of the NPDES Permit.
- J. M&G Realty and Curry Excavating’s failure to implement and/or maintain erosion and sedimentation control BMPs to effectively minimize accelerated erosion and sedimentation is a violation of 25 Pa. Code § 102.4 and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.
- K. M&G Realty and Curry Excavating’s failure to hold a pre-construction meeting with the Department and/or BCCD is a violation of 25 Pa. Code § 102.5(e) and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.
- L. M&G Realty and Curry Excavating’s failure to follow the approved construction sequence in the E&S Plan constitutes unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

- M. M&G Realty and Curry Excavating's failure to comply with the terms and conditions of the NPDES Permit constitutes unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402, and 691.611.
- N. M&G Realty, and Curry Excavating's violations described in Paragraphs I. through M., above, constitute unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611; and subject M&G Realty and Curry Excavating to civil penalty liability under Section 605 of the Clean Streams Law 35 P.S. § 691.605.

ASSESSMENT

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by M&G Realty and Curry Excavating as follows:

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Clean Streams Law, 35 P.S. § 691.605, the Department hereby assesses a civil penalty of \$73,153.00, which M&G Realty and Curry Excavating hereby agree to pay.
2. **Civil Penalty Settlement.** M&G Realty and Curry Excavating consent to the assessment of the civil penalty of SEVENTY-THREE THOUSAND ONE HUNDRED FIFTY-THREE DOLLARS (\$73,153.00), which shall be paid in full upon signing this CACP. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs J. through N., above, for the dates set forth in Paragraph I., above. The payment shall be by corporate check or the like, made payable to the following: a) payment in the amount of **\$70,270.00** to the "**Commonwealth of Pennsylvania**" with, "**Clean Water Fund**" in the memo line and b) payment in the amount of **\$2,883.00** to the "**Blair County Conservation District**," sent c/o Mr. Ronald C. Eberts Jr., Environmental Protection Compliance Specialist, DEP Waterways and Wetlands Program, 909 Elmerton Avenue, Harrisburg, Pennsylvania 17110-8200.
3. **Findings.**
 - a. In any matter or proceeding between M&G Realty and/or Curry Excavating and the Department, M&G Realty and Curry Excavating shall not challenge or deny the Department's assertion of the truth, accuracy, or validity of Paragraphs A. through N., above.
 - b. The parties do not authorize any other persons to use the Findings in this CACP in any matter or proceeding.
4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. M&G Realty and Curry Excavating reserve the right to challenge any action which the Department may take but waive the right to challenge the content or validity of this CACP.

5. **Execution of Agreement.** This CACP may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused the CACP to be executed by their duly authorized representatives. The undersigned representatives of M&G Realty and Curry Excavating certify, under penalty of law, as provided by 18 Pa. C.S.A. § 4904, that they are authorized to execute this CACP on behalf of M&G Realty and Curry Excavating, that M&G Realty and Curry Excavating consent to the entry of this CACP as an ASSESSMENT of the Department; that M&G Realty and Curry Excavating hereby knowingly waive any right to a hearing under the statutes referenced in this CACP; and, that M&G Realty and Curry Excavating knowingly waive their rights to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa. C.S.A. § 103(a) and Chapters 5A and 7A; or any other provision of law. (Signature by M&G Realty and/or Curry Excavating's attorney(s) certifies only that this CACP has been signed after consulting with legal counsel.)

FOR M&G REALTY, INC.:

s/ Tim L. Rutter 11/15/2023

Tim L. Rutter Date
President

s/ Todd M. Rutter 11/15/2023

Todd M. Rutter Date
Secretary

s/ Christopher J. Reed 11/15/2023

Christopher J. Reed Date
Counsel for M&G Realty, Inc.

FOR CURRY EXCAVATING, INC:

s/ Richard T. Curry 11/15/2023

Richard T. Curry Date
Owner, President, and Sole Officer

s/ Christopher T. Michelone 11/15/2023

Christopher T. Michelone Date
Counsel for Curry Excavating, Inc.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

s/ Scott R. Williamson 11/27/2023

Scott R. Williamson Date
Program Manager
Waterways and Wetlands Program

s/Curtis C. Sullivan 11/27/2023

Curtis C. Sullivan, Esq. Date
Supervisory Counsel