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RECEIVED

September 21, 2016

Gina McCarthy, Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

EPA, Region III, ORC

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SEP 27 2016

EPA REGION III
OFFICE OF REGIONAL ADMINISTRATOR

Shawn Garvin
Region III Administrator
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

RE: 60-Day Notice of Intent to File a Citizen Suite for EPA's Failure to Perform Its Non-Discretionary Duties under Section 303(c) of the Clean Water Act

Dear Administrator McCarthy and Regional Administrator Garvin:

On behalf of George Barto, Beth Barto, and the citizens of the Borough of Blairsville, ("Citizens") in accordance with Section 505 of the Clean Water Act ("CWA"), 33 U.S.C. §1365; 40 CFR §136, we hereby notify the Administrator of U.S. Environmental Protection Agency ("Administrator" or "EPA") of their intent to sue for failure to perform its non-discretionary duties pursuant to Section 303(c) of the CWA.

The Borough of Blairsville ("Blairsville") has undergone extensive improvements over the past ten years; transforming the community from having a Combined Sewer System with 29 CSO's in 1998, to 5 CSO's presently. These updates have been conducted through a variety of Federal and State grant programs that transformed significant portions of the city to a separate storm sewer system and separate sanitary sewer system.¹ By 2009, approximately one-third of Blairsville had been provided with a separate storm system.² Multiple subsequent extensive

¹ PENNVEST grant of \$10.45 million with \$3 million loan, PennWorks loan of \$56,000 and grant of \$2.48 million

² See "Sewage Treatment Expansion Project to break ground Friday" published November 9, 2009 in the Indiana Gazette (<https://www.indianagazette.com/news/print.php?article=46446>) retrieved on 7/18/2016

projects have expanded the separate storm and sewage systems.³ The Borough of Blairsville and the Blairsville Municipal Authority maintain a partial Combined Sewage System, as well as Separate Sanitary Sewage System and Separate Stormwater System.

A. Background

I. Stormwater Management Failures

Pennsylvania enacted the Storm water Management Act (“Act 167”) in 1978, providing that all counties must comply with the requirements to develop watershed storm management plans within two years of the Pennsylvania Department of Environmental Protections (“DEP”) enactment of guidelines. In 1985, the DEP enacted such guidelines, however, Indiana County, in which the Borough of Blairsville is located, was allowed extensions for over twenty years, until the county took up the projected and completed Phase 1 in March of 2015.

In 2002, the DEP integrated their approach to stormwater management with the federal Clean Water Act, requiring Act 167 Stormwater Management Plans and NPDES permit requirements to include the same planning objectives. Compliance with the requirements of Act 167 planning protocol can satisfy the requirements of the MS4 General Permit and an NPDES Storm water Discharge Associated with Construction Activity Permit. However, the DEP failed to require Indiana County to comply with Act 167 until over twenty years had passed, during which time planning and construction within the county has increased environmental concerns associated with storm water runoff, as well as damage to private property. While Indiana County Completed Phase 1 of the Act 167 Stormwater Management Plan in March of 2015, Phase II of the process has not yet been completed and the PADEP has again not required Indiana County to comply with Act 167.

The Blairsville area, designated as an Urbanized Cluster in the 2010 Census, has seen significant increases in stormwater runoff and pollution due to the recent growth pressure from development in the area. Blairsville sits 100-250 feet above the Conemaugh River and Blacklick Creek. Indiana County Phase 1 Act 167 Stormwater Management Plan described the Conemaugh River, which forms the western and southern borders of Blairsville, as having recurring stormwater problems due to considerable growth pressure, particularly along designated growth areas along south US Rt. 119 Corridor in Blairsville.⁴ Additionally Blacklick Creek, which runs 1 to 1.5 miles north of Blairsville, also suffers from reoccurring stormwater problems and moderate growth pressure due to the designated growth area along the south US Rt. 119 Corridor in Blairsville.⁵ Further, the recent widening of US 119 and the widening and construction of safety improvements to US 22 have significantly affected land use as well as the establishment of a Wyoming Technical Institute at the US 119/22 interchange 1 mile from Blairsville.⁶ Expansion also occurred between Wyoming Technical Institute and Blairsville,

³ See “Blairsville Municipal Authority launches plan expansion” published April 27, 2012 in the Tribune Review (http://triblive.com/x/blairvilledispatch/s_654937.html) retrieved 7/18/2016

⁴ Page 26 of Indiana Count Phase 1 Act 167 Stormwater Management Plan, Scope of Study

⁵ Page 26 of Indiana Count Phase 1 Act 167 Stormwater Management Plan, Scope of Study

⁶ Page 8 of Indiana Count Phase 1 Act 167 Stormwater Management Plan, Scope of Study

including the Corporate Campus, IRMC at Chestnut Ridge, housing for the Wyoming Technical Institute, Hampton Inn, and Walmart among others.⁷ Not surprisingly, this notable and recognized growth in the area has increased Blairsville's stormwater problems significantly.

II. Conemaugh River Impairment

The 2014 Pennsylvania Integrated List of All Waters (formerly the 305(d) Report) reasserted that pollutants requiring a TMDL have impaired the Conemaugh River due to Urban Runoff/Storm Sewers toxicity. The EPA approved the PADEP's Section 305(d) list on December 19, 2014.

The Pennsylvania DEP recognized in March 2004 that much of the land in the Conemaugh Watershed had been converted to low- or high-intensity development after a TMDL was developed for Unnamed Tributary 44769 to the Conemaugh River, located 2,000 feet up the Conemaugh River from Blairsville. The TMDL was established due to after impairment from agricultural and urban runoff/storm sewers identified in the 1996 Section 303(d) list.⁸ In 2003 Pennsylvania recognized Subbasin 18D, covering the portion of the Conemaugh River surrounding Blairsville, as a concern for impairment. It was designated it as a Category I Priority watershed in the Pennsylvania Unified Watershed Assessment, where concerns were specifically cited around the major highways (US Routes 22 and 119) in the region which converge in Blairsville and future threats were identified as stormwater runoff in the area surrounding Blairsville.⁹

III. NPDES Permitting

Blairsville Borough STP operates their combined sewerage system under NPDES Permit No. PA0021610. The PA DEP recognizes Blairsville Borough LTCP Completion date as 7/31/2010, following the reduction of all but 5 of the CSO's, and Blairsville is currently subject to Post-Construction Compliance Monitoring to assure the effectiveness of compliance with Clean Water Act requirements, and in meeting the requirements established in the LTCP.

IV. Resources and Recent Projects

Blairsville's Sewage Treatment Plant underwent extensive improvements and expansion in 2009 and 2010, spending \$12.93 million in grants and a \$3 million loan for the project. The expansion constituted the largest funding in the state for any such project.¹⁰ Additionally the

⁷ See "Sewage Treatment Expansion Project to break ground Friday" published November 9, 2009 in the Indiana Gazette (<https://www.indianagazette.com/news/print.php?article=46446> on 7/18/2016) retrieved 7/18/2016

⁸ "Unnamed Tributary 44769 to Conemaugh River – Total Maximum Daily Load" PA DEP 08/2004 (https://ofmpub.epa.gov/waters10/attains_impaired_waters.show_tmdl_document?p_tmdl_doc_blobs_id=70386) retrieved 8/3/2016.

⁹ "Watershed Restoration Action Strategy (WRAS) State Water Plan Subbasin 18D Blacklick Creek and Conemaugh River Watersheds Indiana, Cambria and Westmoreland Counties" Updated 09/2003 (http://files.dep.state.pa.us/Water/Watershed%20Management/lib/watershedmgmt/nonpoint_source/wras/wras-18d.pdf) retrieved 8/3/2016

¹⁰ See "Sewage Treatment Expansion Project to break ground Friday" published November 9, 2009 in the Indiana Gazette (<https://www.indianagazette.com/news/print.php?article=46446> on 7/18/2016) Sen. Don White stated:

project separated 2.5 miles of sanitary sewers that eliminated 13 combined sewer overflows.¹¹

B. NPDES Permit Violations

Discharges of any pollutants (other than dredged or fill material) from a point source into waters of the United States are prohibited under 33 U.S.C. 1311, except in compliance with a permit issued pursuant to the NPDES program under 33 U.S.C. 1342. The permit holder must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. 40 CFR 122.41(a). Each violation of a permit limit or condition is a violation of both the permit and the CWA for which civil penalties of up to \$37,500 per day per violation can be imposed. 33 USC 1319(d) and 40 CFR 19.4.

Whenever, on any basis of information available to her the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections, in a permit issued under Section 402 of the Act, she has a non-discretionary duty to require such persons to comply with such section or requirement. 33 U.S.C. 1319.

I. Failure to Submit DMR Reports

Blairsville Borough STP operates their combined sewerage system under NPDES Permit No. PA0021610. Under this permit Blairsville Borough STP is required to submit DMR reports on a monthly basis,¹² however, Blairsville Borough STP has been in violation of this requirement from April 1, 2013 through March 31, 2014, July 1, 2014 through June 31, 2015 and November 28, 2015 to the present. The PA DEP NPDES Permitting program recognizes a failure to submit a DMR as a “significant violation.”¹³

II. Failure to Comply with CSO Policy and Unauthorized CSOs

All NPDES permits for discharges from a CSS must conform to the EPA’s Combined Sewer Overflow Control Policy. 33 USC 1342(q)(1). The CSO Policy requires (1) implementation of nine minimum technology-based controls (NMCs) set forth in the CSO Policy, no later than January 1, 1997, and (2) development and implementation of a long-term CSO Control Plan (LTCP) that will ultimately result in compliance with the requirements of the CWA. The LTCP must include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of CSO controls. Despite this requirement for the PA DEP to monitor Blairsville in this manner, rates of flooding have increased, backups leading to sewage

“The development that’s going to accrue over the next 10-15 years is going to be heavily situated in the southern party of the [Indiana] county on Route 119 and Route 22... This [project] is one that is so critical to Pennsylvania.”

¹¹ See “Blairsville Municipal Authority launches plan expansion” published April 27, 2012 in the Tribune Review (http://triblive.com/x/blairvilledispatch/s_654937.html) retrieved 7/18/2016

¹² See also “Pennsylvania Combined Sewer Overflow (CSO) Policy”, PA DEP Document Number 385-2000-011, Attachment 2 “Phase II Individual Permit Requirements for Large CSO Systems, Effective Date March 9, 2013.

¹³ “Discharge Monitoring Reports Overview and Summary” Bureau of Point and Non-Point Source Management, PA DEP, 2/2014.

in houses have occurred with staggering frequency, and unmonitored and unpermitted CSO's have occurred.

A Combined Sewage Overflow is an intermittent overflow or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) *prior to reaching the headworks of the sewage treatment facility, which* results from a flow in excess of the dry weather carrying capacity of the system. [Emphasis not original]. 025 Pa. Code § 92a.2. CSOs may only occur at specifically identified locations in the NPDES permit application submitted by the holder of the permit.

These continuing and ongoing failures are evidenced by the following events:

Sewage Backup into Basements and Failure to Monitor and Maintain CSOs and Systems

Within Blairsville, immediately north of U.S. Route 119, is a neighborhood recorded as the Walnut Hill Plan of Lots. Within this plan of lots, Hart Avenue and Point Street form a corner. Moving south along Point Street, Elm Street intersects and runs parallel to Hart Avenue. Traveling Northeast on Hart Avenue away from Point Street, Hart Avenue crosses Turner Drive and enters Burrell Township, where the road becomes LaMantia Lane. LaMantia Lane was recorded as the Walnut Hill Extension Development and was developed by Philip LaMantia, who has since deeded the sewage systems of the development to Blairsville.¹⁴

Stormwater runoff from the roofs of the properties on LaMantia Lane connect directly by pipe, into the sewage line of the combined sewer system. The sewer line crosses Turner Drive, continues along part of Hart Avenue, then turns, flows south, and crosses under Elm Street. Additionally, the stormwater runoff from the roof of properties on the southern side of Elm Street¹⁵, are also developed and owned by Philip LaMantia, and connect by pipe directly into the sewage line of the combined sewer system. Blairsville Borough employees discovered this connecting pipe on August 28, 2013.¹⁶

When storms occur, a great deal of Storm Water flows from the roofs, through these pipes directly into the sewage system, rather than into the stormwater drains. This causes an overflow of sewage, not into a designated Outfall, but into the homes of property owners. The properties on the southern side of Hart Avenue, near Turner Avenue, have on multiple occasions, been contaminated by large amounts of sewage erupting from the sewage lines into their homes and basements. These properties are at a continual risk that further sewage backflows will occur.

Flooding and Point Source Discharges of Pollutants from Walnut Hill

¹⁴ Commonwealth of Pennsylvania, Indiana County, Recorder of Deeds, Deed Book Volume 1101, Page 688 (02/11/1997), and Deed Book Volume 832, Page 746 (5/11/1983).

¹⁵ Including 33 Point Street, Blairsville PA 15717.

¹⁶ Philip LaMantia's son, Michael LaMantia served as Chairman for Blairsville Municipal Authority from 2008-2012

CWA Section 502 broadly defines a “Pollutant” to including “rock, sand, and cellar dirt.” 33 USC 1326(6). Sediment that is primarily composed of sand and dirt is a pollutant.¹⁷ “Point Source” is “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure.... From which pollutants are or may be discharged.” 33 USC 1362(14)

During storm water events on Walnut Hill, the stormwater runoff runs in a channel down Hart Avenue, toward the intersection of Hart Avenue and Point Street, then down Point Street, to the intersection of Elm Street and Point Street. Point Street increase in elevation as it approaches Hart Avenue, making storm water flow down Point Street towards Elm Street. However, the only stormwater inlets are located in the middle of Hart Avenue and at the intersection of Point Street and Hart Avenue. The owner of 32 Hart Avenue purchased the undeveloped property across the street, and with the permission of the Borough, buried a pipe beneath Hart Avenue to redirect the stormwater from the stormwater pipes in front of his house, onto this undeveloped property. Due to the slope of the land, the water from this pipe flows in a channel across the land, onto PA-217. PA-217 runs at a steep incline down the hill and contains no storm drain inlets. The stormwater flows in a channel down PA-217, across the land until it runs directly into the Conemaugh River.

No storm drains other than the ones at the intersection of Hart Avenue and Point Street, and in front of 32 Hart Avenue, are located within the Walnut Hill Plan of Lots, including Point Street, Holland Drive, Turner Drive, Sunset Drive, and Walnut Hill Street. These streets make up nearly 4,500 feet of road on an incline, without stormwater inlets. Turner Drive, which runs parallel to Point Street and crosses Hart Avenue/LaMantia Lane, has no stormwater drains. Turner Drive is at a higher elevation than Elm Street, causing additional stormwater to flow onto Elm Street, which is made up of sand, dirt, gravel, and contains no storm drains. Further, the property owner of 3 Elm Street built his property up by approximately three (3) feet, which directs additional stormwater onto Elm Street. The stormwater flow increased so substantially that 5 Elm Street experienced basement flooding in August 2013, May 2015, and June 2015 and continues to be at risk. The Borough Engineer and Manager recognizes that stormwater inlets should be spaced about 300 feet apart in a flat area to be effective¹⁸, however, the Borough has repeatedly refused to pave and install storm drains on Elm Street, leaving it a road primarily composed of sand, dirt and gravel.¹⁹

This sediment constitutes a pollutant that is discharged by channels and streams of water flowing from Elm Street, down the streets of Walnut Hill and via channels and streams until they meet PA-217 which floods and overflows into the Conemaugh River. These discharges are a

¹⁷ *Driscoll v. Adams* 181 F.3d 1285, 1291 (11th Cir. 1999)

¹⁸ “Blairsville flooding to be addressed with storm drainage study, additional inlets.” From Tribune Review, published July 23, 2015 (<http://triblive.com/news/indiana/8779525-74/evans-borough-storm?printerfriendly=true>), retrieved 8/5/2016.

¹⁹ Blairsville recognizes that stormwater problems within the Walnut Hill Plan of Lots is the responsibility of the Borough by the Borough’s confirmation, by letter to the providers of this Notice, dated October 14, 2015, of Walnut Hill’s inclusion in the Stormwater Management Plan being constructed under Act 167.

direct result of the gross mismanagement and failures to maintain and implement the requirements of the CSO Policy.

Blairsville Authorities have failed to implement the nine minimum controls by failing to maintain the proper operation and regular maintenance programs for their sewer system, maximize flow to the POTW for treatment, control solids and floatable materials from being discharged in CSOs, monitor to the efficacy of CSO controls. In Blairsville Long-Term Control Plan, inadequate consideration was taken as to sensitive areas, in evaluating alternatives, in taking due consideration of cost/performance considerations, in monitoring their sewage system for the nine minimum controls.

Blairsville Borough STP has failed to maintain proper operation and regular maintenance programs for the sewer system and CSO outfalls. In the Walnut Hill Plan of lots and Walnut Hill Extension, the sewage system has contained inadequate sizes of piping, directed stormwater into the sewage pipes, caused backups and sewage to damage multiple homes and seep into the surrounding land, and causing stormwater run-off to be channeled directly into the Conemaugh River. Blairsville Borough STP has received significant amounts of grants and funding to address these problems. Blairsville has been on notice that this area has experienced problems for decades, but rather than choosing to use the funding to replace the Combined Sewer System with a Separate Sewerage System, Blairsville chose to upgrade many areas not prone to such problems instead. Additionally, Blairsville Borough STP failed to adequately evaluate the operational and maintenance procedures, in order to include appropriate criteria for conducting regular inspections of the sewer system equipment and sewer collection systems, so as to properly repair or replacement portions where necessary. Had these considerations been taken, the frequent and ongoing flooding and sewage overflow occurrences in the Walnut Hill Plan of Lots would have been addressed. Blairsville Borough STP has also failed to effectively monitored and characterize CSO. Blairsville also failed to develop a routine report to record and summarize information received regarding street and basement flooding, or in the event that a record was maintained, it was disregarded.

Further, Blairsville officials are aware that waste materials have been dumped into storm inlets, including hydraulic fluid, however these instances have not been reported or steps taken to enforce against such dumping.²⁰

In order to alleviate these continual and ongoing violations, the EPA should require Blairsville Authorities to separate the combined sewer system in the Walnut Hill Plan of Lots; to pave Elm Street to prevent pollutants from flowing into the Conemaugh River and allow the installation of inlets to the separated storm sewer on Elm Street; and to require the installation of inlets to the separate storm sewer within the entirety of the Walnut Hill Plan of Lots.

²⁰ "Blairsville flooding to be addressed with storm drainage study, additional inlets." From Tribune Review, published July 23, 2015 (<http://triblive.com/news/indiana/8779525-74/evans-borough-storm?printerfriendly=true>), retrieved 8/5/2016.

III. Prohibited SSOs

Discharges from an SSO are prohibited. 025 Pa Code § 92a.47(c). In the event of a SSO, Permit Holders are required to provide oral notification within 24 hours, and provide a written report within 5 hours of the event. 40 CFR 122.41(l)(6) However, Blairsville has failed to comply with the reporting requirements of the CWA following the following SSOs. Additionally each SSO event constitutes an NPDES Permit violation.

Sulfur Run Sanitary Sewage Overflow and Sewage Discharges into Homes due to Water Infiltration into SSS

On May 23, 2016, Blairsville experienced a stormwater event that caused the erosion of a sewage line at North Spring Street. Blairsville Municipal Authority was aware of water infiltration into the sanitary sewer line along Sulphur Run since at least February 5, 2015.²¹ A large landslide that had occurred many months previously along Sulfur Run exposed this location. Sulfur Run empties directly into the Conemaugh River. The Borough of Blairsville failed to take action in March of 2016 to support or repair the area surrounding the exposed sewage line, despite the Blairsville Municipal Authority granting a loan for the work.

On May 27, 2016, another heavy rainfall occurred, and caused the sewer line to break, permitting raw sewage to flow down Sulfur Run into the Conemaugh River, requiring the initialization of back-up pumps.²²

On May 28, 2016, additional erosion occurred, and the catch basin on the bottom of Spring Street broke and caused additional damage. Because of these occurrences, copious amounts of sewage flooded into the basements of residents and businesses in the immediate area, including residents on South Walnut Street.

Morewood Avenue and Martha Street Sewage Discharges into Homes due to Water Infiltration into SSS

Sewage backups have occurred following the separation of the sanitary sewer line and the storm water line in the area of Morewood Avenue and the intersection of Martha Street. Stormwater has infiltrated the Separate Sanitary Sewer and caused back flowing of sewage into the homes of several residents as well as the Specialty Bar Products Company. This has recurred repeatedly, most recently occurring on August 28, 2016. The Blairsville Municipal Authority was aware that water infiltration of the Sanitary Sewer System was causing overflow since at least February of 2015.²³ No action was taken when it was brought to the attention of the Borough and Municipal Authority again in June of 2016. Prior to the separation of the

²¹ "Blairsville Municipal Authority Holds Line on Rates for 2015" Tribune Review, Retrieved 08/29/2016 from <http://triblive.com/news.indiana/7700222-74/authority-sewer-board>

²² Indiana Gazette article June 2

²³ "Blairsville Municipal Authority Holds Line on Rates for 2015" February 5, 2015 ,Tribune Review, (<http://triblive.com/news.indiana/7700222-74/authority-sewer-board>) Retrieved 08/29/2016

stormwater and sewage lines, the property owners and residents did not experience sewage backup in their homes.

C. Failure to Designate Blairsville as a Small MS4 under 40 C.F.R. 122.35(b)(3)

Blairsville's separate stormwater system is a small MS4 pursuant to 122.26(b)(8). Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32. Unless a small MS4 qualifies for a waiver under 40 C.F.R. 122.32(c), it is a regulated small MS4 if designed as so by the NPDES permitting authority, including where the designation is made pursuant to 40 C.F.R. 123.35(b)(3) and (b)(4).

Pursuant to C.F.R. 123.35(b), a NPDES permitting authority must develop a process, as well as criteria to designate small MS4s other than those described in 122.32(a)(1). In making small MS4 designations, the NPDES permitting authority must designate any small MS4 that meets the criteria established under 122.35(b). 40 C.F.R. 122.35(b)(3). Pursuant to 33 U.S.C. 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978.

The Pennsylvania DEP is required to use census data and environmental data to identify MS4s that have the potential to be regulated based upon whether stormwater discharges from the MS4 (1) Discharge into sensitive waters, (2) Population density or growth potential, (3) contiguity to an urbanized area, and (4) significant contributor of pollutants to waters of the United States/Commonwealth of Pennsylvania. Discharges to sensitive waters are defined as being either (a) 303(d) Listed waters impaired, or likely to be impaired, by stormwater, (b) waters with established TMDL, (3) HQ or EV waters, (4) Waters used for drinking or recreation, (e) critical habitat for plant or animal species.²⁴

Should criteria be met “DEP **will** determine if discharge from the MS4: will exceed water quality standards, impairs designated uses, or has significant biological and ecological impacts.”

All of Blairsville's discharges are into impaired waters, the Conemaugh River is listed in the 2014 Pennsylvania Integrated List of All Waters (formerly the 305(d) Report), which reasserted that Pollutants Requiring a TMDL have impaired the Conemaugh River due to Urban Runoff/Storm Sewers toxicity. Additionally it was already recognized in March 2004 that much of the land in the Conemaugh Watershed had been converted to low- or high-intensity development after a TMDL was developed for Unnamed Tributary 44769 to the Conemaugh River, located 2,000 feet up the Conemaugh River from Blairsville, after impairment due to agricultural and urban runoff/storm sewers discharge that were identified in the 1996 Section 303(d) list.²⁵

²⁴ DEP Bureau of Point and Non-Point Source Management, Document Number 385-0820-001 “Designation Criteria for Regulated Small Municipal Separate Storm Sewer Systems (MS4), effective upon publication on Saturday, August 22, 2015 in 45 Pa.B. 4493, 4546-4557.

²⁵ “Unnamed Tributary 44769 to Conemaugh River – Total Maximum Daily Load” PA DEP 08/2004 (https://ofmpub.epa.gov/waters10/attains_impaired_waters.show_tmdl_document?p_tmdl_doc_blobs_id=70386) retrieved 8/3/2016.

Blairsville Borough has a population density of 2,591.3 people per square mile and development in the area is increasing. There are thus far ineffective protections in place under the Pennsylvania Stormwater Management Act as Pennsylvania has failed to enforce its own regulations. As such, the stormwater management within Blairsville has caused hundreds of thousands of dollars in damage to local businesses and homes and sediment, floatables, metals, hydrocarbons, oil, grease, and pathogens (due to the stormwater infiltration into the sanitary sewer lines causing sewage backup and cross contamination) to be discharged into the Conemaugh River from the accelerated runoff of floodwaters from downtown Blairsville. This has happened numerous times in the past several years, due to a failed sewer separation project that left the catch basin and stormwater lines improperly installed on Market Street. Most recently it occurred during the week of May 23, 2016, when flooding was so extreme as to cause \$15,000 in damage to Hewitt's Real Estate's Market Street Office at 213 E. Market Street, as well as causing a 50 yard "lake" in the Tractor Supply lot, and damage to PA Wine & Spirits. Market Street decreases in elevation until it travels over the Conemaugh River.²⁶ These floods primarily affected the Market Street, Campbell Street, and Morrow Street area, including flooding the train tracks that run behind and across Market Street. The Borough Manager, Tim Evans, acknowledged that the storm sewer lines were installed incorrectly in 2010 during the large sewer separation project done by the Blairsville Municipal Authority at the time, which results in the ongoing recurrence of stormwater backups and flooding.²⁷

As Blairsville has attempted to transition from a Combined Sewer System to a Separate Storm Sewer system and Sanitary Sewer system Blairsville has been more than negligent in its failure to properly install systems, monitor them, and repair and replace improperly installed portions of the Separate Stormwater System. The failure to designate Blairsville as a small MS4 has led to a lack of accountability for the flooding that has been plaguing the Market Street, Campbell Street and Morrow Street Area, damaging business and permitting non-point source discharges of dangerous pollutants. Because the stormwater runoff impairs designated uses and the satisfaction of the above factors require it be subject to investigation, the EPA has a non-discretionary duty to require its designation as a small MS4.

D. Failure to notify Blairsville that it must apply for a NPDES permit for all discharges from its Separate Storm Water System

Section 402 of the CWA addresses stormwater runoff. Stormwater discharges require permits where the "Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States." 33 U.S.C. 1342(p)(2)(E). The Administrator is authorized to issue regulations that "designate stormwater discharges, other than those described in paragraph 2, to be regulated to protect water quality." 33 U.S.C. 1342(p)(6).

²⁶ "Blairsville Residents Want Answers on Flooding" Indiana Gazette, Thursday, June 2, 2016. (<https://www.indiana gazette.com/news/print.php?article=24324399>) retrieved on 8/10/2016.

²⁷ Id.

Accordingly, the Administrator issued regulations affirming that “A discharge, which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2.” 40 CFR 122.26(a)(1)(v)

For discharges composed entirely of stormwater, an NPDES permit will be required when “The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) of concern; or “The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, determines that the discharge, **or category of discharges within a geographic area**, contributes to a violation of a water quality standard or is a **significant contributor of pollutants to waters of the United States.**” 40 CFR 122.26(a)(9)(i)(D)

The Pennsylvania DEP has recognized that the development in the Blairsville area has causing impairment due to urban runoff/stormwater as far back as 1996 when it was identified in the Section 303(d) list. In 2003 Subbasin 18D was designated by the Pennsylvania DEP as a concern for impairment due to stormwater runoff. Most recently, the Pennsylvania DEP recognized urban runoff/stormwater as a cause of impairment in the Conemaugh River as reflected in its 2014 Pennsylvania Integrated List of All Waters, requiring a TMDL to be established that address the pollutants of concern.

By doing so, Pennsylvania DEP recognized stormwater runoff as significant contributor of pollutants to waters of the United States, and therefore a determination has been made under 40 CFR 122.26(a)(9)(i)(D), that operators must obtain permits under the provisions of the CWA and EPA’s regulatory framework implementing the CWA. “The Regional Administrator **shall notify** the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice.” “Operators of storm water discharges designated pursuant to paragraphs (a)(9)(i)(C) and (a)(9)(i)(D) of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director. 40 CFR 122.26(a)(9)(iii)

The Director or Regional Administrator has failed to notify Blairsville that it must apply for a NPDES permit for all discharges from its Separate Storm Water System. The Regional Administrator is required to notify the discharger in writing and send an application form with the notice. 40 CFR 124.52(b). This failure is a violation of a nondiscretionary duty of the EPA subject to enforcement under the citizen suit provisions of the CWA.

E. Persons Giving Notice

George Barto and Beth Barto are located at 5 Elm Street, Blairsville PA 15717, and their main phone number is (724) 459-8898. Counsel for George Barto and Beth Barto, Grudowski Law Associates, P.C., is located with principal offices in the Law & Finance Building, 429 Fourth Avenue, Suite 1001, Pittsburgh, PA 15219 with their main phone number of (412) 904-1940. By this letter, the parties provide notice that they intend to sue the EPA Administrator for her failure to carry out her non-discretionary duty to require Blairsville Borough Sewage Treatment Plan to comply with NPDES Permit No. PA0021610 and the CWA; to , George Barto and Beth Barto reserve all rights to amend this notice and identify additional claims as further facts are developed.

Sincerely,

A handwritten signature in cursive script that reads "Vanda Raszewski".

Vanda Raszewski, Esq.
Grudowski Law Associates, P.C.
Law & Finance Building
429 Fourth Avenue, Suite 1001
Pittsburgh PA, 15219
(412) 904-1940
vr@grudowskilaw.com

Counsel for George Barto and Beth Barto

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 21, 2015, I caused a true and accurate copy of George Barto and Beth Barto's Notice of Intent to Sue the United States Environmental Protection Agency to be mailed via certified first class mail to:

Gina McCarthy, Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Shawn Garvin
Region III Administrator
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029


Vanda Raszewski, Esq.