

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III Philadelphia, Pennsylvania 19103

Lackawanna College
501 Vine Street
Scranton, Pennsylvania 18509
Property Located At:
2390 State Route 848
New Milford, Pennsylvania 18834
Susquehanna County
Respondent
Proceeding Under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)
ORDER FOR COMPLIANCE ON CONSENT
Docket No. CWA-03-2022-0123DW

I. STATUTORY AUTHORITY

- 1. This Order for Compliance on Consent ("Order") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has re-delegated it to the Director of the Enforcement and Compliance Assurance Division.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

- 2. Lackawanna College ("Respondent") is a private, non-profit corporation for higher education based in Scranton, Pennsylvania. Respondent owns and operated a satellite campus at the property located at 2390 State Route 848, New Milford, Susquehanna County, Pennsylvania, 41.825499°N, -75.681533°W ("Site"), identified on the attached "Exhibit A."
3. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. The Site is bisected by an unnamed perennial tributary of Nine Partners Creek (“Unnamed Tributary”). Nine Partners Creek is a cold-water fishery and perennial tributary of Tunkhannock Creek, which is a perennial tributary of the Susquehanna River, a traditional navigable water. Therefore, the Unnamed Tributary and its abutting wetlands at the Site are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
5. Commencing on or about 2009, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged and/or dredged fill material into palustrine emergent wetlands abutting the Unnamed Tributary at the Site, as described in Paragraph 4 above and depicted in Exhibit A attached hereto, without authorization from the U.S. Army Corps of Engineers (“Corps”). Respondent’s unauthorized discharge of fill material, which included asphalt, paved approximately 0.96 acres of wetlands at the Site to put up a parking lot and temporary classroom buildings. Approximately 0.96 acres of unauthorized fill material remains at the Site. The retention basin and the sewage holding tank, a total of approximately 0.0872 acres and as seen in Exhibit A,) will remain in place and the College will remove the equivalent area adjacent to the basin, for a total restoration of 0.96 acres.
6. The term “fill material” within the meaning of 40 C.F.R. § 232.2 includes any pollutant which replaces portions of “waters of the United States” with dry land or which changes the bottom elevation of a water body for any purpose. The term “discharge of fill material” includes “placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
7. The equipment referenced in Paragraph 5 above, from which the dredged and/or fill material was discharged to “waters of the United States,” constitutes a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to “waters of the United States” except in compliance with a permit issued by the Corps under Section 404 of the Act, 33 U.S.C. § 1344.
9. At no time during the discharge of dredged and/or fill material into waters of the United States at the Site did the Respondent have a permit from the Corps as required by Section 404 of the Act, 33 U.S.C. § 1344.
10. Respondent, by discharging dredged and/or fill material from a “point source” to “waters of the United States” without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

### III. ORDER FOR COMPLIANCE

Pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), EPA ORDERS the Respondent to do the following:

11. **Delineation of Jurisdictional Waters.** If Respondent disagrees with the delineation of unauthorized fill in jurisdictional waters of the United States as provided in Exhibit A, within sixty (60) days of the effective date of this Order, Respondent may submit a revised delineation of waters of the U.S. at the Site or provide Respondent's own delineation of waters using the 1987 Corps of Engineers Wetland Delineation Manual. EPA will notify Respondent of its approval or disapproval of the revised delineation within thirty (30) days of receipt. If EPA disapproves of all or part of Respondent's delineation report, Respondent shall, within thirty (30) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the delineation for approval. If EPA finds the revised delineation deficient, Respondent will accept the delineation presented in Exhibit A.
12. **Compliance Activities.** By April 30, 2023 Respondent shall completely remove or cause to be removed, the unauthorized fill material from waters of the United States at the Site, as delineated in Exhibit A or as revised as provided in Paragraph 11, and restore the function of wetlands within the fill removal area, according to the following provisions:
  - a. **Removal and Restoration Plan.** Within sixty (60) days of the effective date of this Order, or within 60 days upon approval of a revised delineation of jurisdictional waters at the Site as provided in Paragraph 11 whichever is later, submit to EPA a fill removal and wetland restoration plan ("Removal & Restoration Plan" or "RRP") as follows:
    - i. RRP shall be prepared by a qualified professional.
    - ii. RRP shall identify a point of contact for implementation of the RRP.
    - iii. RRP shall include a construction, maintenance, and monitoring schedule in accordance with this section of the Order.
    - iv. RRP shall outline success criteria consisting of:
      1. Fill removal completed to the appropriate lateral extent and depth;
      2. Establishment and survival of at least 80 percent areal coverage of native wetland vegetation; and
      3. Less than 10 percent areal coverage of non-native invasive species.
  - b. EPA will notify Respondent of the approval or disapproval of the RRP within thirty (30) days of receipt. If EPA disapproves of all or part of the RRP, Respondent shall, within thirty (30) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the RRP for EPA approval. EPA retains the right, if the RRP is not approved as provided in this Order, to require Respondent complete fill removal and wetland restoration at the Site in accordance with a plan developed by EPA.
  - c. **Erosion and Sediment Control.** For any land disturbance activities at the Site associated with the RRP, implement erosion and sediment control measures in



- compliance with local, County, and/or PADEP regulations at 25 Pa. Code Chapter 102, Erosion and Sediment Control, including an Erosion and Sediment Control Plan or National Pollution Discharge Elimination System (NPDES) Permit.
- d. **Fill Removal.** Remove unauthorized fill material from within the lateral extent of jurisdictional waters as depicted in Exhibit A, or as revised, and to the depth of pre-fill conditions as follows:
- i. Prior to initiating fill removal activities, Respondent shall stake onsite the area and depth of fill to be removed and notify EPA via email or phone so that EPA may field-verify.
  - ii. Immediately following field review, EPA shall provide Respondent written notice via email confirming whether Respondent marked the correct lateral extent and depth of fill to be removed at the Site, or if adjustments are needed.
  - iii. Upon confirmation from EPA that the correct area and depth of fill to be removed is identified, Respondent may proceed with fill removal at the Site.
  - iv. Prior to completing fill removal activities, Respondent shall notify EPA via email or phone so that EPA may field-verify that fill is removed to the appropriate grade before wetland restoration activities may proceed.
- e. **Wetland Restoration.** Implement wetland restoration activities as follows:
- i. Following fill removal work, apply a thin layer of topsoil at the surface, left rough with undulating microtopography, and apply a native wetland seed mix and straw mulch to the finished soil surface.
  - ii. Wetland seed mix shall be approved by EPA prior to application.
  - iii. Seed mix application and first year maintenance procedures shall follow seed supplier recommendations.
- f. **Fill Disposal.** Dispose of all unauthorized fill material removed from the Site, including clean fill and solid waste, in an upland area in accordance with waste management regulations and 25 Pa. Code Chapter 102, Erosion and Sediment Control. Asphalt removed from the Site shall be taken to an asphalt recycling facility.
- g. **As-Built Report.** Within 30 days of completing restoration activities, submit to the EPA via email an as-built report documenting:
- i. Total volume of fill material removed from jurisdictional waters at the Site.
  - ii. Names and locations of all disposal site(s) and amount of fill disposed at each.
  - iii. Type and rate (pounds/square foot) of seed mix applied at the Site.
  - iv. An aerial image or map graphic showing extent of fill removal and seed mix application.
  - v. Photographs documenting as-built conditions.
- h. **Monitoring.** Begin monitoring the growing season after implementing the RRP to track the Site's achievement of success criteria. Submit an annual monitoring report to EPA by December 31 for at least two years following implementation and for as long as necessary until the project achieves success criteria.

1. **Termination.** Once EPA confirms that success criteria have been achieved, EPA will provide Respondent with a notice of termination of the RRP and fulfillment of all obligations under this Order.
13. No later than 30 days from the Effective Date, Respondent shall submit to EPA for review a list of deadlines included in this Order. For any deliverable required by the Order, the list shall indicate whether EPA approval is required. The list shall be in substantially the same form as Appendix E and shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties). Within 10 days of modification of any deadline under this Order, Respondent shall provide an updated list reflecting changes to the future schedule. In the event of conflict between the list generated pursuant to this Paragraph and the Order, the Order shall control.
14. Respondent's failure to complete the above-described compliance activities in a manner consistent with this Order shall be deemed a violation of this Order.
15. Respondent shall send all correspondence and questions related to this Order via phone or email to:

Section Chief, SDWA and Wetlands Section  
c/o Monica Crosby, Enforcement Officer  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region III  
Philadelphia, PA 19103  
Email: crosby.monica@epa.gov  
Telephone: (410) 305-2930

#### IV. GENERAL PROVISIONS

16. Respondent must include the following certification with each submission by Respondent pursuant to this Order. A Representative of Respondent authorized to sign on behalf of Respondent must sign the certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

17. Respondent's compliance with the terms of this Order shall not relieve Respondent of the obligation to comply with all applicable provisions of the Clean Water Act or any other

Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.

18. Violation of the terms of this Order may result in further EPA enforcement action including, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, initiation of judicial proceedings that allow for civil penalties of up to \$56,460 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).
19. Respondent will permit EPA personnel on the Site for the purpose of inspecting work performed pursuant to this Order upon reasonable notice. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
20. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
21. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
22. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the tasks set forth in Paragraphs 11-12 of this Order, above, is deemed restitution, remediation, or required to come into compliance with the law.

## **VII. EFFECTIVE DATE**

The effective date of this Order shall be the date of receipt of the executed document.

FOR THE RESPONDENT:

Date: 7/12/22

  
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Jill Murphree, President  
Lackawanna College  
for Lackawanna College, Respondent

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

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*[Digital Signature and Date]*  
Karen Melvin, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region III



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this Administrative Order for Compliance on Consent, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent to the following via email:

A. James Hailstone, Counsel for Lackawanna College  
Kreder Brooks Hailstone LLP  
Suite 200, 220 Penn Avenue  
Scranton, Pennsylvania 18501  
jhailstone@kbh-law.com

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*[Digital Signature and Date]*

Monica Crosby  
US EPA Region III

**Exhibit A**  
**For Administrative Order for Compliance on Consent**  
**Lackawanna College, New Milford Campus**

