

February 12, 2010

Certified No. 7008 1830 0003 6515 2896
Return Receipt Requested

Ms. Linda Bridwell, PE
Manager, Water Supply
Kentucky American Water
2300 Richmond Road
Lexington, Kentucky 40502

Re: Notice of Violation
AI ID: 84662
AI Name: KY American Water
Activity ID: ENV20100001
Franklin County, Kentucky

Dear Ms. Bridwell:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered during a Division of Water Investigation conducted on February 2, 2010 at your construction site on Woodlake Road in Franklin County. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3358.

Sincerely,

Mitzi Delius
Environmental Inspector III
Division of Water

Enclosures

*c: Ms. Lee Anne Devine, U.S. Army Corp of Engineers
Mr. Alan Grant, Division of Water Water Quality Certification Section
Mr. Scott Phelps, Division of Water Dam Safety Floodplain Compliance*

COMMONWEALTH OF KENTUCKY
Energy and Environment Cabinet
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Ms. Linda Bridwell, PE
Manager, Water Supply
Kentucky American Water
2300 Richmond Road
Lexington, Kentucky 40502

AI Name: KY American Water **AI ID:** 84662 **Activity ID:** ENV20100001
County: Franklin **Enforcement Case ID:** **Date(s) Violation(s) Observed:** 02/02/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000084662():

No person, city, county, or other political subdivision of the state shall deposit or cause to be deposited any matter that will in any way restrict or disturb the flow of water in the channel or in the floodway of any stream except where a permit has been issued for construction under KRS 151.250, or to encroach on the reservoir area of any dam authorized by the Congress of the United States, or under the jurisdiction of the Commonwealth, or any of its political subdivisions. [KRS 151.310]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet without first applying for a Stream Construction Permit.

The remedial measure(s), and date(s) to be completed by are as follows:

Cease filling in the floodway without approval. Complete the enclosed Remedial Information for Stream/Floodplain Violation form and submit to the Division of Water Dam Safety and Floodplain Compliance Section by March 1, 2010. The Division's Dam Safety & Floodplain Compliance Section may require additional remedial measures and could be contacted for assistance at (502) 564-3410. Within thirty (30) days from the receipt of this notice, also submit a written notification to the undersigned, detailing the corrective action(s) taken to achieve compliance. Furthermore, all your future stream construction activities and work in floodway/floodplain must be approved by the Kentucky Division of Water prior to the commencement of construction activities. [KRS 151.310]

2 Violation Description for Subject Item AIOO0000084662():

Section 2. Applicability. This administrative regulation shall apply to all construction across, along, or adjacent to a stream (i.e., the base floodplain) or in the floodway of a stream for which a construction permit is required pursuant to KRS 151.250, except for the construction of dams as defined in KRS 151.100. [401 KAR 4:060 Section 2]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet without first applying for a Stream Construction Permit.

The remedial measure(s), and date(s) to be completed by are as follows:

Cease filling in the floodway/floodplain without approval. Complete the enclosed Remedial Information for Stream/Floodplain Violation form and submit to the Division of Water Dam Safety and Floodplain Compliance Section by March 1, 2010. The Division's Dam Safety & Floodplain Compliance Section may require additional remedial measures and could be contacted for assistance at (502) 564-3410. Within thirty (30) days from the receipt of this notice, also submit a written notification to the undersigned, detailing the corrective action(s) taken to achieve compliance. Furthermore, all your future stream construction activities and work in floodway/floodplain must be approved by the Kentucky Division of Water prior to the commencement of construction activities. [401 KAR 4:060 Section 2]

3 Violation Description for Subject Item AIOO0000084662():

Notwithstanding any other provision of law, no person and no city, county, or other political subdivision of the state, including levee districts, drainage districts, flood control districts or systems, or similar bodies, shall commence the construction, reconstruction, relocation or improvement of any dam, embankment, levee, dike, bridge, fill or other obstruction (except those constructed by the Department of Highways) across or along any stream, or in the floodway of any stream, unless the plans and specifications for such work have been submitted by the person or political subdivision responsible for the construction, reconstruction or improvement and such plans and specifications have been approved in writing by the cabinet and a permit issued. However, the cabinet by regulation may exempt those dams, embankments or other obstructions which are not of such size or type as to require approval by the cabinet in the interest of safety or retention of water supply. [KRS 151.250]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet without first applying for a Stream Construction Permit.

The remedial measure(s), and date(s) to be completed by are as follows:

Cease filling in the floodway/floodplain without approval. Complete the enclosed Remedial Information for Stream/Floodplain Violation form and submit to the Division of Water Dam Safety and Floodplain Compliance Section by March 1, 2010. The Division's Dam Safety & Floodplain Compliance Section may require additional remedial measures and may be contacted for assistance at (502) 564-3410. Within thirty (30) days from the receipt of this notice, also submit a written notification to the undersigned, detailing the corrective action(s) taken to achieve compliance. Furthermore, all your future stream construction activities and work in floodway/floodplain must be approved by the Kentucky Division of Water prior to the commencement of construction activities. [KRS 151.250]

4 Violation Description for Subject Item AIOO0000084662():

Whenever plans and specifications have been approved in writing and a permit issued by the cabinet, no person, city, county, or other political subdivision shall deviate from the approved plans in the construction, reconstruction, relocation or improvement unless such change is submitted in writing to the cabinet and prior approval is received from the cabinet in writing before proceeding with the work. Any substantial deviation from the approved plans shall be construed as commencing without a permit and punishable by the penalties provided in KRS151.990. [KRS 151.280(2)]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet, a deviation from the stream construction permit (Permit Number 16687) obtained from the Division of Water on September 6, 2008 which approved construction of sub-fluvial stream crossings.

The remedial measure(s), and date(s) to be completed by are as follows:

Complete the enclosed Remedial Information for Stream/Floodplain Violation form and submit to the Division of Water Dam Safety and Floodplain Compliance Section by March 1, 2010. The Division's Dam Safety & Floodplain Compliance Section may require additional remedial measures and may be contacted for assistance at (502) 564-3410. Within thirty (30) days from the receipt of this notice, also submit a written notification to the undersigned, detailing the corrective action(s) taken to achieve compliance. Furthermore, all your future stream construction activities and work in floodway/floodplain must be approved by the Kentucky Division of Water prior to the commencement of construction activities. [KRS 151.280]

5 Violation Description for Subject Item AIOO0000084662():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted by placement of fill at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet.

The remedial measure(s), and date(s) to be completed by are as follows:

Cease all activity which is contributing or has contributed to the pollution of the waters of the Commonwealth. All your future stream construction activities shall be approved by the U.S. Army Corps of Engineers and by the Kentucky Division of Water prior to the commencement of construction activities. [KRS 224.70-110]

6 Violation Description for Subject Item AIOO0000084662():

Surface waters shall not be aesthetically or otherwise degraded. [401 KAR 10:031 Section 2]

Description of Non Compliance:

A Division of Water investigation at the Kentucky American Water Company Transmission Line site in Franklin County on February 2, 2010, revealed that approximately 1000 feet of stream (Buck Run Creek) was adversely impacted at approximate GPS location of N38° 12' 51.0", W84° 45' 03.1" and N38° 12' 42.4", W84° 45' 09.4" during the installation of the 42" waterline. The adverse impact consisted of filling in the stream channel for approximately 1000 feet resulting in deviating from the Water Quality Certification (#2007-0119-1) obtained from the Division of Water on October 5, 2007 which allowed 50 linear feet of stream impact per crossing.

The remedial measure(s), and date(s) to be completed by are as follows:

Complete and submit by March 23, 2010 the enclosed Water Quality Certification Application to the Division's Water Quality Certification Section. Include a detailed stream restoration plan describing how the impacted stream reach is to be restored. The stream restoration plan shall be submitted in accordance with the Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources, Final Rule (33 CFR Parts 325 and 332) published April 10, 2008. Within thirty (30) days from the receipt of this notice, contact Lee Anne Devine with the U.S. Army Corps of Engineers to obtain a Section 404 permit. Ms. Devine's contact information is: (502) 315-6692, US Army Engineer District, Louisville District Corps of Engineers, P.O. Box 59, Louisville, KY 40201-0059. Within thirty (30) days from the receipt of this notice, also submit a written notification to the undersigned, detailing the corrective action(s) taken to achieve compliance. Implement and maintain appropriate Best Management Practices to minimize stream impacts. Furthermore, all your future stream construction activities shall be approved by the U.S. Army Corps of Engineers and by the Kentucky Division of Water prior to the commencement of construction activities. [401 KAR 10:031 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Frankfort Regional Office
643 Teton Trail, Suite B
Frankfort, Kentucky 40601
502-564-3358 (8:00 AM – 4:30 PM)
Mitzi Delius, Environmental Inspector III

Issued By:
Mitzi Delius, Environmental Inspector III
Date: February 12, 2010

Issued By:
Mr. Massoud Shoa, Environmental Control Supervisor
Date: February 12, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 2896