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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0452

Austin Caperton, Cabinet Secretary  
dep.wv.gov

March 2, 2020

City of Charles Town  
ATTN: Jane E. Arnett  
661 South George St, Ste 101  
Charles Town, WV 25414

**CERTIFIED RETURN RECEIPT REQUESTED**

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Jane E. Arnett:

Enclosed is Order No. 9080 dated March 2, 2020. This Order is issued to City of Charles Town by the director of the Division of Water and Waste Management under the authority of West Virginia State Code 22-11-15. This Order contains notification of the right of appeal under the provisions of West Virginia State Code 22-11-21.

  
Jeremy W. Bandy  
Chief Inspector

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cc: Kathryn Emery, P.E., Acting Director, DWWM (via e-mail)  
Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (via e-mail)  
Harold D. Ward, Deputy Secretary for Operations, WVDEP (via e-mail)  
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)  
Brad Wright, Assistant Chief Inspector, EE/WW (via e-mail)  
David C. Simmons, Assistant Chief Inspector, EE (via e-mail)  
Laura McGee, Environmental Resources Program Manager, EE (via e-mail)  
Tammy Potter, Environmental Resources Specialist, EE (via e-mail)  
John Hendley, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)  
Lisa Trakis, US EPA, Region III (via e-mail)



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**ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: City of Charles Town  
ATTN: Jane E. Arnett  
661 South George St, Ste 101  
Charles Town, WV 25414

DATE: March 2, 2020

ORDER NO.: 9080

**INTRODUCTION**

The following findings are made, and Order issued to City of Charles Town pursuant to the authority vested in the Director of the Division of Water and Waste Management under West Virginia State Code 22-11-1 et seq.

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. On December 5, 2012, the 2012 Construction Stormwater General Permit, WV/NPDES Water Pollution Control Permit No. WV0115924, was issued. On January 4, 2013, the WV/NPDES Permit became effective.
2. As a result of engaging in land disturbance operations associated with construction activities, the City of Ranson was registered under the 2012 Construction Stormwater General Permit. WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR109958, was issued to the City of Ranson for the discharge of stormwater from this site.
3. On January 1, 2019, West Virginia Department of Environmental Protection (WVDEP) provided notice that the 2012 Construction Stormwater General Permit was extended until March 31, 2019.

Promoting a healthy environment.

4. On January 10, 2019, the 2019 Construction Stormwater General Permit was issued, with an effective date of February 9, 2019.
5. On February 8, 2019, the February 2019 Construction Stormwater General Permit was appealed before the Environmental Quality Board (EQB) in Appeal Nos. 19-03-EQB and 19-04-EQB.
6. On April 20, 2019, the aforementioned WV/NPDES permit was transferred from the City of Ranson to the City of Charles Town.
7. On May 31, 2019, the EQB entered an order approving a settlement agreement resolving the appeals received in response to the February 2019 Construction Stormwater General Permit. The settlement agreement required WVDEP to revise the February 2019 Construction Stormwater General Permit, resulting in a modified draft permit. In accordance with federal statute and regulations, the modified draft permit was submitted to the United States Environmental Protection Agency (USEPA) for review and comment. On October 31, 2019, USEPA's review of the proposed modification resulted in the issuance of a specific objection letter. On January 1, 2020, WVDEP requested that the proposed draft modification be withdrawn from consideration, leaving the February 2019 Construction Stormwater General Permit in effect.
8. On February 4, 2020, City of Charles Town submitted an application for coverage for the aforementioned site under the 2019 Construction Stormwater General Permit.

### **ORDER FOR COMPLIANCE**

And now, this day of March 2, 2020, City of Charles Town is hereby ORDERED by the Director as follows:

1. City of Charles Town shall immediately take measures to initiate compliance with all pertinent State laws and rules and the Clean Water Act. This Order does not modify any permit or relieve City of Charles Town from obligations to comply any applicable requirements.
2. Upon the effective date of this Order, City of Charles Town shall comply with the measures in this Order and take all steps necessary to control stormwater at the aforementioned site. Compliance with this Order and the measures identified below shall continue until coverage under the February 2019 Construction Stormwater General Permit is obtained.
  - a. City of Charles Town shall ensure that discharges from the site will not create conditions not allowable in waters of the State, as described in WV Legislative Rule 47CSR2 Section 3.2.
  - b. City of Charles Town shall comply with the Stormwater Pollution Prevention Plan (SWPPP) previously approved by WVDEP, until the new SWPPP is approved by WVDEP and becomes effective in association with the February 2019 Construction Stormwater General Permit.

- c. City of Charles Town shall modify the approved SWPPP whenever there is a change in design, construction, scope of operation, or maintenance which has the potential to adversely affect surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities.
- d. City of Charles Town shall develop a description of erosion and sediment controls appropriate for the project and implement such controls.
- e. City of Charles Town shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances).
- f. City of Charles Town shall inspect all erosion and sediment controls on the site at least once every seven (7) calendar days and with twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period. Written records of all inspections shall be maintained onsite and shall be made available to WVDEP personnel upon request.
- g. City of Charles Town shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the designated spill alert telephone number, 800-642-3074.
- h. City of Charles Town shall ensure that sediment-laden water does not leave the site without going through an appropriate best management practice.
- i. City of Charles Town shall ensure that proper interim and permanent vegetative stabilization practices are being conducted. Specifically:
  - i. Stabilization practices may include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.
  - ii. Stabilization measures shall be initiated no more than seven (7) days after the construction activity in a portion of the site has permanently ceased.
  - iii. Stabilization measures shall be initiated on any portion of the site by the seventh day after construction activities temporarily cease, unless construction activities will resume within fourteen (14) days after activities first ceased.
  - iv. Areas where seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching must be reseeded immediately or as soon as weather conditions allow.
  - v. Clean water diversions shall be stabilized prior to use.

### **OTHER PROVISIONS**

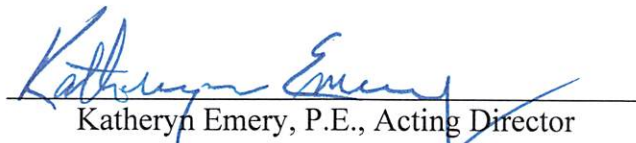
1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving City of Charles Town of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject City of Charles Town to additional enforcement action in accordance with the applicable law.

2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
3. This Order is binding on City of Charles Town, its successors and assigns.
4. This Order shall terminate upon the following events, whichever should occur first:
  - a. Coverage under the effective Construction Stormwater General Permit is obtained for the aforementioned site.
  - b. Six (6) months after the effective date of this Order.

### **RIGHT OF APPEAL**

Notice is hereby given of your right to appeal any terms and conditions of this Order by which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of West Virginia State Code 22-11-21 within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.

  
Kathryn Emery, P.E., Acting Director  
Division of Water and Waste Management