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ARNOLD & BAILEY

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208 N. George Street
Charles Town, WV 25414

T: 304 725 2002
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April 1, 2020

Jackie Shultz, Clerk
West Virginia Environmental Quality Board
601 57th Street, SE
Charleston WV 25304

Re: Jefferson County Foundation, Inc. v. WVDEP

Dear Ms. Shultz:

Please find enclosed an original and two (2) copies of a **NOTICE OF APPEAL** for filing in the above-captioned matter.

Please note that the Appellant is requesting an immediate stop work order.

Thank you for your time and attention to this matter.

Very truly yours,

Christopher P. Stroech, Esq.

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

**JEFFERSON COUNTY FOUNDATION, INC. and
CHRISTINE L. WIMER,**

Appellants,

Appeal No. _____

v.

**KATHY EMERY, DIRECTOR
DIVISION OF WATER AND WASTE, MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Appellee.

NOTICE OF APPEAL

Action Complained Of: Now comes the Appellants, the Jefferson County Foundation, Inc. and Dr. Christine L. Wimer (“Appellants”), by and through counsel, Christopher P. Stroeck, Esq. and the law firm of Arnold and Bailey, PLLC, and respectfully represent that they are aggrieved parties by the issuance of Order No. 9080 (the “Order”) by the West Virginia Department of Environmental Protection (“DEP”), acting through its Division of Water and Waste Management, on March 2, 2020, to the City of Charles Town (“the City”). *See* Order attached hereto as Exhibit B.

Appellants assert that the issuance of the subject Order to the City allowed the City to circumvent the permitting process and in doing so denied the Appellants and others an opportunity to comment on and contribute to the stormwater protections and procedures for the project being allowed by the Order. Appellants further assert that the Order violates certain applicable regulations for enforcing and implementing the federal National Pollutant Discharge Elimination System (“NPDES”) standards, and as a result, puts the water resources of the area at increased risk.

Relief Requested: Appellants therefore pray that this matter be reviewed and that the Environmental Quality Board (“the Board”) grant the following relief: (1) vacate and terminate Order No. 9080 issued to the City of Charles Town; (2) **immediately order that the City of Charles Town stop work until they have been issued a Construction Stormwater General Permit Registration under the 2019 Construction Stormwater General Permit;** and (3) provide all other necessary and appropriate relief.

Specific Objections: The specific objections to the action, including questions of fact and law be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto as Exhibit A. The objections may be factual or legal.

Dated this 1st day of April, 2020.



Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414
304-725-2002
304-725-0283 (Fax)
cstroech@arnoldandbailey.com

APPELLANTS
By Counsel

EXHIBIT A

The Parties

1. Plaintiff, the Jefferson County Foundation, Inc. ("JCF"), is a West Virginia 501(c)(3) Non-Profit Corporation, formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCF has a primary business address of P.O. Box 460, Ranson, West Virginia, 25438.
2. JCF educates and advocates for effective and accountable government, sustainable development, and the protection of health, heritage, and the environment. It has a current priority focus of ensuring the accountability of all government entities that are involved in and responsible for the location, construction, permitting, and operation of the proposed Rockwool industrial facility in Jefferson County.
3. JCF has a Board of Directors consisting of three (3) members, who all own real property in Jefferson County, West Virginia. This Appeal is being brought by the Directors, on behalf of the organization, in both their individual capacities as property owners and organizational capacities as Directors.
4. Plaintiff, Dr. Christine L. Wimer, owns real property at 3546 Old Leetown Pike, Ranson, West Virginia, 25438, where her property value and groundwater source may be impacted by the adverse groundwater release impacts from Rockwool and ancillary construction projects such as the construction of the subject sewer line to the Subject Project construction site. Dr. Wimer's property is one (1) mile from this site.
5. The West Virginia Department of Environmental Protection ("DEP") is a government agency of the State of West Virginia. The challenged permit was issued by the DEP's Division of Water & Waste Management, by Kathy Emery, P.E., Acting

Director, and has a primary address of 601 57th Street SE, Charlestown, West Virginia, 25304.

Facts and Procedural History

6. On 12/05/12, the Construction Stormwater General Permit was issued by the DEP (WV/NPDES Water Pollution Control Permit No. WV 0115924; the "2012 Permit"), and went into effect on 01/04/13. The 2012 Permit remained in effect through 2017 and was extended into 2019 before being replaced on 02/9/19 by the "2019 Permit", and regulates stormwater associated with construction and development activities by varying industries and businesses.

7. The 2012 Permit provides certain conditions under which all registered entities are required to operate. Although a state permit, the EPA must agree to the terms and conditions set forth in the permit as part of the regulatory process that allows the DEP to implement and enforce the NPDES program.

8. On 06/08/18, the application for registration (WVR109958) under the 2012 Permit was submitted on behalf of the City of Ranson to construct the Route 9 Sewer Project (the "Subject Project") On 08/31/18, the Registration was approved by the DEP and issued to the City of Ranson.

9. On 01/01/19, the DEP issued a letter extending the expiration date of the 2012 Permit to 03/31/19. On 01/10/19, the DEP released its new Construction Stormwater General Permit to be effective 02/09/19. The DEP advised that any entity, to include the City of Ranson, would be covered under the 2012 Permit if it registered for work prior to 02/09/18. All covered entities had ninety (90) days therefrom to submit a full application for continued coverage or submit a notice of termination.

10. However, on 02/8/19, Jefferson Asphalt Products filed an appeal of the proposed 2019 Permit to the EQB and requested a stay of the same. The Contractors Association of West Virginia joined the Appeal. The City of Ranson was not party to the appeal.

11. On 4/29/19, the EQB granted a stay for the 2019 Permit, effective from the permit effective date of 02/09/19 to sixty (60) days past the date of stay, or 06/28/19. Conditions from the previous 2012 Permit applied during the stay. The stay applied to all covered entities, including the City of Ranson.

12. On 04/20/19, the City of Charles Town took over the Subject Project from Ranson as part of a sewer consolidation. Charles Town did not apply for continuation of coverage under the 2019 Permit within ninety (90) days of the permit taking effect.

13. On 05/31/19, a settlement between the DEP, Jefferson Asphalt Products and the Contractors Association of West Virginia was reached regarding the proposed 2019 Permit. This settlement was approved by the EQB, and public comment was accepted from 08/09/19 through 09/13/19. This revision allowed permittees with projects authorized under the 2012 Permit before 02/09/19 to modify or complete remaining authorized construction activities under the 2012 Permit terms and conditions for up to an additional eighteen (18) months. The EPA had ninety (90) days to comment on the proposed 2019 Permit.

14. On 11/01/19, the EPA objected to the proposed 2019 Permit. The EPA then directed that the DEP could not issue its revised permit until it clears the EPA objections, and further giving the DEP ninety (90) days to do so. The EPA specifically noted that no company, which included the City of Charles Town, may continue to operate under the 2012 Permit.

15. On 02/04/20, the Charles Town initiated an application for reissue of their now expired 2012 Permit Registration under the 2019 Permit.
16. On 02/18/20, the Subject Project was formally awarded to Snyder Environmental Services Inc. ("Snyder") and groundwork began almost immediately but not any later than 02/21/20.
17. JCF then filed a complaint with the DEP that Charles Town was constructing the Subject Project without a proper registration under the 2019 Permit.
18. On 03/2/20, the DEP issued the subject Order, allowing Charles Town to continue to operate without a permit registration for up to six (6) months. *See* Exhibit B.
19. It is imperative to note that the Subject Project is expected to take only 6-7 months to complete, according to the registration application.
20. On 03/9/20, Brad Wright of the DEP sent JCF a response to the complaint and a copy of the subject Order #9080. *See* Email Response attached hereto as Exhibit C.

SPECIFIC OBJECTIONS

Appellants assert that the DEP acted in an arbitrary and capricious manner, and/or in clear violation of state and federal law as follows:

21. The issuance of the subject Order allows Charles Town to construct the Subject Project without a required permit registration.

W.Va. Code § 22-11-8 (2020) provides, in part, as follows:

- (b) It is unlawful for any person, unless the person holds a permit therefor from the department, which is in full force and effect, to:
 - (1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;
 - (2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;

Charles Town does not have an individual Construction Stormwater Permit from either the EPA or the DEP, nor does the City have a Construction Stormwater General Permit Registration. The City has applied for a Construction Stormwater General Permit Registration, but this registration has not yet been issued. The registration application is currently in the public comment period.

The City has avoided the permitting process by applying late for reapplication. For all the work performed up unto the issuance of a permit registration, this Order has allowed the City to subvert the entire permitting process but most importantly the review process including the public's contribution to the review of the permit conditions.

The City is constructing the Subject Project without a Construction Stormwater Permit and has the potential to make, cause or add to the sediment load of an existing outlet of stormwater to waters of the state including ground water. The Subject Project also has the potential to be a point source of sediment-laden water or other waste into the waters of the state including ground water.

22. W.Va. Code 22-11-15 (2020) is an enforcement statute that the DEP can use to stop and/or remediate pollution events. The DEP is arbitrarily and improperly using this statute to allow Charles Town to circumvent the proper registration process.

23. Water quality standards themselves were improperly incorporated wholesale by reference in the Order.

W.Va. Code § 22-11-8 (2020) provides, in part, as follows:

(a) The secretary may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that the discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article and article three, chapter twenty-two-b of this code. While

permits shall contain conditions that are designed to meet all applicable state and federal water quality standards and effluent limitations, water quality standards themselves shall not be incorporated wholesale either expressly or by reference as effluent standards or limitations in a permit issued pursuant to this article.

The subject Order states, in part, the following:

- 2.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.
- 2.d. City of Charles town shall develop a description of erosion and sediment controls appropriate for the project and implement such controls.
- 2.e. City of Charles Town shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances).

The Order allows conditions otherwise not allowable by law in a permit, as it incorporates wholesale WV Legislative Rule 47CSR2 Section 3.2. The Order is written in such a way that it is excessively vague to a point that it is not enforceable. This also limits the ability of the public to monitor the project because they do not have a set of publicly available standards by which they can judge the project stormwater controls.

24. The Order allows the City to operate under the expired 2012 Permit. Per 40 CFR 122.46(b), the term of an NPDES permit shall not be extended by modification beyond a maximum duration of five (5) years. The Stormwater Pollution Protection Plan was approved under the 2012 Permit. This creates a situation where the work will start under one set of requirements and regulations and then be completed under another.

25. The subject Order allows the City to self-regulate, i.e., make up its own rules and plan for protecting the water resources from stormwater pollution, without evaluation by the state experts charged with that responsibility under the NPDES permitting process.

W.Va. Code § 22-11-11 (2020) provides, in part, as follows:

- (a) The chief or his or her duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine

whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the office of environmental health services of the state bureau of public health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section eight of this article, the chief shall consult with the director of the state geological and economic survey and the chief of the office of oil and gas of the division, and all such persons shall cooperate with the chief and assist him or her in carrying out the duties and responsibilities imposed upon him or her under the provisions of this article and the rules of the director and board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules of the director.

(b) The division's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules of the board or director: Provided, That the chief may issue a permit whenever in his or her judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in subsection (e), section section six, article six of this chapter.”

The subject Order, in part, states the following:

2.d. City of Charlestown shall develop a description of erosion and sediment controls appropriate for the project and implement such controls.

2.e. City of Charles Town shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances).

Essentially, the City is allowed to “develop” and “implement” without review. The terms “appropriate” and “properly” are too vague to be useful. The whole purpose of the permitting process is to have the plan that is made by the party performing the project rigorously evaluated by an independent regulator and the public. This process is meant to

draw out insufficiencies and inaccuracies in the plan so they may be corrected and thus better protect the water resources and the environment. This has completely removed the safeguards of DEP and public review leaving the water resources and the environment vulnerable to damage due to insufficiencies or inaccuracies in the City's plan.

26. The City is starting the project under the permit conditions of the 2012 Permit but its permit registration application is being judged and approved under the 2019 Permit. By virtue of starting under the 2012 Permit, the City may not be able to fulfill the requirements of the permit application they have submitted.

40 CFR 122.46 (a-b) provides:

- § 122.46 Duration of permits (applicable to State programs, see § 123.25).
- (a) NPDES permits shall be effective for a fixed term not to exceed 5 years.
- (b) Except as provided in § 122.6, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

The subject Order, in part, provides as follow:

City of Charles Town Shall comply with the Stormwater Pollution Prevention Plan (SWPPP) previously approved by the WVDEP, until the new SWPPP is approved by WVDEP and becomes effective in association with the February 2019 Construction Stormwater General Permit.

By allowing the City to work under a less stringent set of permit conditions, it will be impossible for them to perform several of the things that are required by the new permit registration that is currently under review and governed by the new, more protective, 2019 Construction Stormwater General Permit.

One important example is a karst mitigation plan. Under the 2012 Permit, the City was not required to have a karst mitigation plan. Under the 2019 Permit, the City is required to have such a plan. When it submitted its application on 02/4/20, the City did not submit a karst mitigation plan and had to be asked to do so by the permit writer. The

City subsequently submitted a cursory karst mitigation plan. The plan provides in part:

- (a) A site investigation shall be performed by the contractor as noted in the latest version of the Chesapeake Stormwater Network Technical Bulletin No. 1, "Stormwater Design Guidelines for Karst Terrain in the Chesapeake Bay Watershed". (This should be considered the minimum requirement and applicable to all Karst areas in West Virginia.)
- (b) All necessary site investigations as noted in the above-referenced bulletin shall be completed by a qualified professional engineer or geologist, licensed by the State of West Virginia and experienced in working in Karst Terrain.

Since the City also started work on 02/21/220, it is highly improbable that they were able to have such an evaluation completed by a qualified individual on the same day. The City is likely proceeding without performing such an evaluation and is therefore unable to perform the other requirements of the karst mitigation plan such as ensuring that "all sinkholes identified prior to construction shall be either remediated or separated from construction by a minimum one hundred-feet (100')."

Because the City has been allowed to continue under this Order, when the permit registration application that is currently under review is approved, it will be unable to fulfill some of the permit registration requirements.

Not waiting for the completion of the public comment period creates uncertainty by allowing work to proceed under the 2012 Permit conditions, without DEP consideration of the independent review and input from an informed public. Thus, the work will be finished, impossible to redo, and the terms and conditions of the 2019 Permit registration effectively meaningless. Any delay was caused by the failure of the City to timely follow the proper procedures. This failure presents significant risks of groundwater contamination and to the habitat of the Madison Cave Isopod.

Request for Immediate Stop Work Order

Upon information and belief, the work presently being performed is in a high risk karst area. If the works proceeds without the proper review identified herein, the Appellants, and others, may be irreparably harmed by adverse groundwater impacts. The City will not be harmed in any way if the construction halts pending the proper review.



west virginia department of environmental protection

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

Austin Caperton, Cabinet Secretary
dep.wv.gov

March 2, 2020

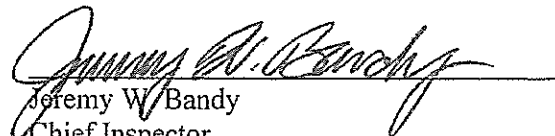
City of Charles Town
ATTN: Jane E. Arnett
661 South George St, Ste 101
Charles Town, WV 25414

CERTIFIED RETURN RECEIPT REQUESTED

9489 0090 0027 6201 5695 71

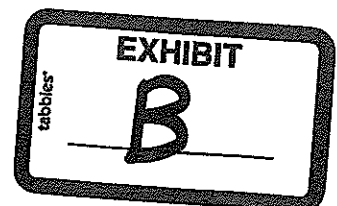
Jane E. Arnett:

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

cc: Katheryn 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)

Promoting a healthy environment.





west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0452

Austin Caperton, Cabinet Secretary
dep.wv.gov

**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

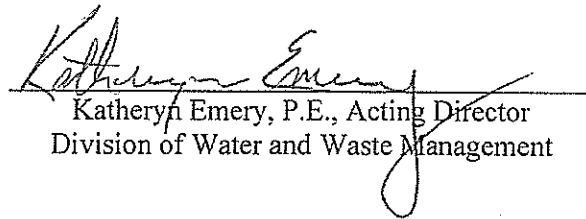
1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving City of Charles Town of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may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


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

Wednesday, April 1, 2020 at 13:26:22 Eastern Daylight Time

Subject: Fw: [External] pending construction stormwater permit registration WVR109958 - Complaint
Date: Wednesday, April 1, 2020 at 1:24:04 PM Eastern Daylight Time
From: Chrissy Wimer
To: Christopher Stroeck, Billie Garde, Billie Garde
Attachments: CHARLES TOWN, CITY OF_9080_UNILATERAL ORDER.pdf

----- Forwarded Message -----

From: Wright, Brad M <brad.m.wright@wv.gov>
To: Chrissy Wimer <clwimer1@yahoo.com>
Cc: Board, Larry D <Larry.D.Board@wv.gov>; Parsons, David A <David.A.Parsons@wv.gov>; Kanehl, Michael K <Michael.K.Kanehl@wv.gov>
Sent: Monday, March 9, 2020, 01:16:30 PM EDT
Subject: RE: [External] pending construction stormwater permit registration WVR109958 - Complaint

Chrissy,

I received your e-mail of March 2, 2020. Hopefully, this response provides some clarity.

Some permittees previously covered under the 2012 Construction Stormwater NPDES general permit are currently without permit coverage due to concerns regarding the issuance of the 2019 version of the permit. This includes the City of Charles Town. Upon EPA's specific objection to the issuance of the modified version of the 2019 permit, the agency withdrew that version and initiated the authorization of permit coverage for those applicants who filed applications under the February 2019 version of the permit. We intend to issue a 2020 version of the general permit.

WVDEP has issued the attached Unilateral Order to the City of Charles Town. This Order requires permit application within 30 days and allows the City of Charles Town to continue construction activities for a short period under the terms and conditions of the Order. This Order will remain in effect for no longer than 6 months from the date of issuance. This Order is consistent with how we intend to address other similarly affected construction projects across the state.

Should you have additional questions or concerns, please direct them to me, as Mr. Kanehl does not inspect construction projects and will not be able to provide appropriate guidance.

Kindest Regards,

Brad Wright

From: Chrissy Wimer <clwimer1@yahoo.com>
Sent: Monday, March 2, 2020 4:32 PM
To: Wright, Brad M <Brad.M.Wright@wv.gov>; Kanehl, Michael K <Michael.K.Kanehl@wv.gov>
Cc: Board, Larry D <Larry.D.Board@wv.gov>; Parsons, David A <David.A.Parsons@wv.gov>
Subject: [External] pending construction stormwater permit registration WVR109958 - Complaint



CAUTION: External email. Do not click links or open attachments unless you verify sender.

Dear Mr. Kanehl and Mr Wright,

I did not hear follow up from our previous complaint as you said I could expect on Friday. Please accept this as a further complaint on the same permit. As they have now added an inappropriate sign. I included Mr Kanehl here as I found him on the directory as the DWWM Inspector for Jefferson County. Please let me know if this is incorrect. Thank you for your time and I look forward to your response.

This complaint is in reference to *pending* construction stormwater permit registration WVR109958, which is a reissue of an expired stormwater registration, WVR109958, previously held by the City of Ranson (10/2018). The entire project was taken over by the City of Charles Town (under their Utility Board, POTW operating permit WV0022349). The reissue is pending and technical corrections are still being sought by the Permit Reviewer, Andy Parsons.

Our complaint is that:

- 1) Work has begun on the construction project, as evidenced by the attached photos, taken at the location of the posted public notice sign on War Admiral Blvd., Bardane, WV. Photos were taken on March 2, 2020.
- 2) The public notice sign at War Admiral Blvd. is incorrect and not in compliance with Construction Stormwater Jan. 2019 General Permit. The main violations are:
 - a) No applicant name or emergency phone number. The phone number (304-724-3866) is for an inactive City of Ranson employee (Michael Martin) who in 2018 did work for Ranson, but no longer does. Moreover, the City of Ranson no longer has anything to do with this project, and the correct phone number for the Charles Town Utility Board needs to be displayed.
 - b) There is no Project Reference ID, nor any Permit Number (Jan. 2019 Construction Stormwater General Permit requires that the Permit Number be displayed within 7 business days of being assigned a permit number). The Permit Number has been known since the Project Applicant applied for reissue on January 29, 2020.
 - c) The sign was to be displayed within 72 hours of filing the application, yet—as evidenced by the date on the public notice sign itself—it states application date of 2/28/2020. That is incorrect. The online eSS application gate opened on 2/4/2020. Moreover, local residents like myself observed that the sign did not go up until this past weekend (2/29 - 3/1/2020).

Please conduct an inspection of this site and issue a clear STOP WORK order to the City of Charles Town and its contractor, Jefferson Environmental.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

JEFFERSON COUNTY FOUNDATION, INC.,

Appellant,

v.

Appeal No. _____

KATHY EMERY, ACTING DIRECTOR,
DIVISION OF WATER & WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I, Christopher P. Stroech, Esq., counsel for Appellant, do hereby certify that I have served a true copy of the foregoing NOTICE OF APPEAL upon the following parties by United States mail, postage prepaid, this 1st day of April, 2020:

Jackie Shultz, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

012 - Fed Express

WVDEP - OFFICE OF LEGAL SERVICES
601 57th Street, SE
Charleston, WV 25304


M: 4/1/2020

WVDEP
ACTING DIRECTOR, DIVISION OF WATER AND WASTE MANAGEMENT
601 57th Street, SE
Charleston, WV 25304

M: 4/1/2020

CITY OF CHARLES TOWN
ATTN: Jane E. Arnett
661 South George Street, Suite 101
Charles Town, WV 25414

M: 4/1/2020



Christopher P. Stroech, Esq.