



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Harold D. Ward, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: CD DG Wallace, LLC
ATTN: Josh Allen
9461 Kenwood Road
Cincinnati, OH 45242

DATE: April 23, 2024

ORDER NO.: 10227

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code 22-11-1 et seq. to CD DG Wallace, LLC (hereinafter, “CD”).

FINDINGS OF FACT

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

1. CD is conducting land disturbance activity associated with construction of a store in Harrison County, West Virginia. CD was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR111411, on January 20, 2022.
2. On August 18, 2021, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility, in response to a complaint. During the inspection, WVDEP personnel observed and documented that improperly installed silt fence at the waste area was being overwhelmed, allowing a discharge of turbid water into an adjacent field. In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b.(2) – CD discharged pollutants from a land disturbance into a conveyance and substantially added to the load of pollutants at an existing outlet that flows into waters of the State, without an authorized WV/NPDES permit. Turbid water was flowing from the site into an outlet that discharges to Little Tenmile Creek. Silt fence and compost filter sock were ineffective in preventing sediment from discharging to the outlet.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W21-17-008-JHH was issued to CD.

3. On September 16, 2021, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented several slips on the uphill area of the project. In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b.(2) – CD discharged pollutants from a land disturbance into a conveyance and substantially added to the load of pollutants at an existing outlet that flows into waters of the State, without an authorized WV/NPDES permit. There was evidence that turbid water had continued to flow from the site into an outlet that discharges to Little Tenmile Creek. Silt fence and compost filter sock were ineffective in preventing sediment from discharging to the outlet.

As a result of the aforementioned violation, NOV No. W21-17-009-JHH was issued to CD.

4. On October 29, 2021, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented that improperly installed silt fence at the waste area was being overwhelmed, allowing a discharge of turbid water into an adjacent field. In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b.(2) – CD discharged pollutants from a land disturbance into a conveyance and substantially added to the load of pollutants of an existing outlet that flows into waters of the State, without an authorized WV/NPDES permit. Turbid water was flowing from the site into an outlet that discharges to Little Tenmile Creek. Silt fence and compost filter sock were ineffective in preventing sediment from discharging to the outlet.

As a result of the aforementioned violation, NOV No. W21-17-081-TGW was issued to CD.

5. On February 9, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rule and the WV/NPDES permit were observed and documented:

- a. Section III.B.2.a. – CD failed to conduct inspections.
- b. Section III.C.2. – CD failed to modify the Stormwater Pollution Prevention Plan (SWPPP) whenever the SWPPP proved to be ineffective in achieving the general

objectives of controlling pollutants in storm water discharges associated with construction activities. Sediment laden water was leaving the southern portion of the site; however, the SWPPP did not include provisions for perimeter controls in the area.

- c. Section II.H.4. – CD failed to inspect and clean all adjacent public and private roads of debris originating from the construction site. As a result, there was track-out onto a public roadway (WV-20).
- d. Section I.B. – CD failed to comply with the SWPPP. Several erosion control devices were not in place as detailed by the SWPPP. The storm drain inlet protection on the western portion of the site was not installed as detailed in the SWPPP. The plan calls for sediment traps to be installed on the northern portion of the site (Proposed Sediment Trap 1) and on the southern portion of the site (Proposed Sediment Trap 2); however, neither of these Best Management Practices (BMPs) were installed.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. Multiple perimeter controls were in need of maintenance.
- f. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Multiple perimeter controls were not properly implemented. These controls were not properly merged together and/or toed-in correctly. Silt fence was installed in an area of concentrated flow.
- g. Section II.H.1.d. – CD failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads.
- h. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. As a result of controls which were not properly merged together or toed-in, sediment laden water was bypassing treatment and leaving the site via a drop inlet. On the southern portion of the site, sediment laden water was leaving the site. As a result of failure to provide a stabilized construction entrance, there was track-out onto a public roadway (WV-20), and there were sediment deposits in the ditch.
- i. Section III.A.2. – CD failed to dispose of all solid waste/demolition material in accordance with WV Legislative Rule 33CSR1. Trash and debris were present over various parts of the site.
- j. Section III.A.3. – CD failed to provide interim stabilization on the eastern portion of the site where construction activities had temporarily ceased for more than fourteen (14) days.
- k. 47CSR2 Section 3.2.a. – CD caused conditions not allowable by creating distinctly visible settleable solids in the waters of the State. Sediment laden water left the southern portion of the site and entered an ephemeral stream, causing a plume in the unnamed tributary (UNT) of Little Tenmile Creek (39° 23'27.70" N, -80° 27'41.69" W).

As a result of the aforementioned violations, NOV No. W22-17-011-TGW was issued to CD.

6. On February 16, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:
- a. Section III.B.2.a. – CD failed to conduct inspections.
 - b. Section III.C.2. – CD failed to modify the SWPPP whenever it proved to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activities. Sediment-laden water was leaving the southern portion of the site; however, the SWPPP does not include provisions for perimeter controls in the area.
 - c. Section I.B. – CD failed to comply with the approved SWPPP. Several erosion control devices were not in place as detailed by the SWPPP. Proposed Sediment Traps 1 and 2 were not installed, and there was no protection at the existing drop inlet.
 - d. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. Multiple perimeter controls were in need of maintenance.
 - e. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Multiple perimeter controls were not properly implemented. These controls were either toed-in incorrectly or not properly merged together.
 - f. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Due to the lack of drop inlet protection, sediment deposits were present in the bottom of the drop inlet. Due to the lack of a stabilized construction entrance, track-out was present on public roadway WV-20. In addition, sediment deposits were present in the adjacent ditch line, which is beyond the Limits of Disturbance (LOD).
 - g. Section III.A.2. – CD failed to dispose of all solid waste/demolition material in accordance with WV Legislative Rule 33CSR1. Trash and debris were present throughout the site.
 - h. Section III.A.3. – CD failed to provide interim stabilization on the eastern portion of the site where construction activities had temporarily ceased for more than fourteen (14) days.
 - i. Section II.H.1.d. – CD failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads.

As a result of the aforementioned violations, NOV No. W22-17-012-TGW was issued to CD.

7. On March 21, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:
- a. Section III.B.2.a. – CD failed to conduct inspections.
 - b. Section III.C.2. – CD failed to modify the SWPPP whenever there was a change in design, construction, scope of operation, or maintenance of BMPs, which had the potential to adversely impact the surface waters of the State or which had a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWPPP proved to be ineffective in achieving the general

objectives of controlling pollutants in storm water discharges associated with construction activities. On the southern portion of the site, CD installed a sewage line, which was not included in the original permitted LOD. Therefore, perimeter controls were not required for this area. However, sediment deposits had been deposited off-site in this area, and the SWPPP had not been modified.

- c. Section II.H.4. – CD failed to inspect and clean all adjacent public and private roads of debris originating from the construction site. As a result, track-out was noted on the public roadway (WV-20).
- d. Section I.B. – CD failed to comply with the SWPPP. Several erosion control devices were not in place as detailed by the SWPPP. Sediment Traps 1 and 2 were still not installed.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. Compost filter sock was in need of maintenance, and sediment deposits had overwhelmed the BMP. Multiple portions of silt fence required maintenance on the western portion of the site.
- f. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Multiple portions of silt fence were not properly implemented on the western portion of the site.
- g. Section II.H.1.d. – CD failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads.
- h. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. The lack of perimeter controls allowed sediment to be deposited off-site.
- i. Section I.G. – CD failed to prohibit discharges of material other than stormwater. There was no designated concrete washout facility on the site. CD had been washing concrete near the construction entrance and in Sediment Trap 1, which has a culvert that discharges into a drop inlet adjacent to the project.
- j. Section III.A.3. – CD failed to provide interim stabilization on the earthen slip area on the eastern portion of the site where construction activities had temporarily ceased for more than fourteen (14) days. As a result, erosion gullies formed in the area.

As a result of the aforementioned violations, NOV No. W22-17-021-TGW was issued to CD.

- 8. On April 21, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the West Virginia Legislative Rule and the WV/NPDES permit were observed and documented:
 - a. Section II.H.3.b.13. – CD failed to provide inlet and outlet protection for Sediment Trap 2.
 - b. Section III.B.2.a. – CD failed to conduct inspections.
 - c. Section III.C.2. – CD failed to modify the SWPPP whenever there was a change in design, construction, scope of operation, or maintenance of BMPs, which had the potential to adversely impact the surface waters of the State or which had a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWPPP proved to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with

construction activities. On the southern portion of the site, CD installed a sewage line, which was not included in the original permitted LOD. Therefore, perimeter controls were not required for this area. However, sediment deposits had been deposited off-site in this area, and the SWPPP had not been modified.

- d. Section I.B. – CD failed to comply with the approved SWPPP. Sediment Trap 1 had not been installed.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. Multiple portions of silt fence and compost filter sock were in need of maintenance.
- f. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Multiple portions of silt fence and compost filter sock were not properly implemented.
- g. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Due to incorrect installation and/or inadequate maintenance, sediment laden water was bypassing silt fence and leaving the site. Due to the lack of inlet/outlet protection at Sediment Trap 2, sediment laden water left the site without treatment. In an area on the Southern portion of the site, CD had installed a sewer line without installing any perimeter controls. As a result, sediment laden water could leave the site without treatment.
- h. Section III.A.3. – CD failed to provide interim stabilization at the earthen slip area on the eastern portion of the site where construction activities had temporarily ceased for more than fourteen (14) days. As a result, erosion gullies formed in the area.
- i. 47CSR2 Section 3.2.b. – CD caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the stream. Due to the unstable outlet at Sediment Trap 2, sediment laden water left the site without treatment, entered the adjacent ditch line, and discharged into a UNT of Little Tenmile Creek, resulting in sediment deposits on the bottom of the stream (39° 23'28.01" N, -80° 27'41.02" W).

As a result of the aforementioned violations, NOV No. W22-17-032-TGW was issued to CD.

9. On June 1, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:
 - a. Section II.H.3.b.13. – CD failed to provide inlet and outlet protection for Sediment Trap 2. As a result of this unstable outlet, sediment laden water was leaving the site without treatment.
 - b. Section III.B.2.a. – CD failed to conduct inspections.
 - c. Section III.C.2. – CD failed to modify the SWPPP whenever there was a change in design, construction, scope of operation, or maintenance of BMPS, which had the potential to adversely impact the surface waters of the State or which had a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWPPP proved to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activities. On the southern portion of the site, CD installed a sewage

line, which was not included in the original permitted LOD. Therefore, perimeter controls were not required for this area. However, sediment deposits had been deposited off-site in this area, and the SWPPP had not been modified.

- d. Section I.B. – CD failed to comply with the approved SWPPP. Sediment Trap 1 was still not in place.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. Multiple controls were in need of maintenance on the site and around the waste site. The compost filter sock checks installed near the entrance to the project were in need of maintenance.
- f. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Silt fence was installed in a concentrated flow area, and the BMP was overwhelmed, allowing sediment laden water to leave the site and enter the adjacent drop inlet. An unstable inlet and outlet in Sediment Trap 2 allowed sediment laden water to leave the site without treatment.
- g. Section III.A.3. – CD failed to provide interim stabilization on areas where construction activities had temporarily ceased for more than fourteen (14) days.
- h. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Silt fence was installed in a concentrated flow area, resulting in the BMP being overwhelmed, allowing sediment laden water to leave the site and enter the adjacent drop inlet. Compost filter sock was not properly staked, and perimeter controls were not properly merged together.
- i. Section II.H.3.b.9. – CD failed to protect fill slopes. There were erosion gullies on the earthen slip area on the eastern portion of the site and throughout the waste area due to concentrated flow across a non-stabilized area.
- j. Appendix A.15. – CD failed to post an outlet marker at Sediment Trap 2.

As a result of the aforementioned violations, NOV No. W22-17-048-TGW was issued to Cross Development LLC.

10. On November 9, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Section II.H.3.b.13. – CD failed to provide inlet and outlet protection for Sediment Traps 1 and 2.
- b. Section II.H.3.b.9. – CD failed to protect fill slopes. There were erosion gullies on the earthen slip area on the eastern portion of the site and on the waste area due to concentrated flow across a non-stabilized area.
- c. Section III.B.2.f. – CD failed to maintain records that document self-inspections of erosion control devices and maintenance activities.
- d. Appendix A.15. – CD failed to post an outlet marker at Sediment Traps 1 and 2.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. The perimeter controls installed around the waste area were in need of maintenance.
- f. Section II.F. – CD failed to properly implement controls in accordance with standard procedures and as described in the approved SWPPP. Compost filter

socks, used for perimeter controls and drop inlet protection, were lacking the required staking.

As a result of the aforementioned violations, NOV No. W22-17-083-TGW was issued to CD.

11. On June 28, 2023, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Section II.H.3.b.13. – CD failed to provide inlet and outlet protection for Sediment Traps 1 and 2.
- b. Section II.H.3.b.9. – CD failed to protect fill slopes. There were erosion gullies near the earthen slip area and on the non-contiguous waste area due to concentrated flow across a non-stabilized area.
- c. Section III.B.2.f. – CD failed to maintain records that document self-inspections of erosion control devices and maintenance activities.
- d. Appendix A.15. – CD failed to post an outlet marker at Sediment Traps 1 and 2.
- e. Appendix B.I.1. – CD failed to properly operate and maintain all activities and installed BMPs. The perimeter controls installed around the waste area, silt fence installed near the building and parking area, and compost filter sock installed near the entrance were in need of maintenance.
- f. Section II.H.3.b.10. – CD failed to properly operate Sediment Traps 1 and 2. The structures were not holding water due to leaks; therefore, the required 50% wet storage was not being maintained.
- g. Section I.G. – CD failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Compost filter sock installed near the entrance and perimeter controls installed around the non-contiguous waste area were in need of maintenance. As a result of a lack of maintenance, sediment and sediment laden water were bypassing treatment and leaving the site.
- h. Section III.A.3. – CD failed to reseed areas that did not germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding. Vegetation failed to germinate at the non-contiguous waste area, and there was no evidence of reseeding.

As a result of the aforementioned violations, NOV No. W23-17-048-TGW was issued to CD.

12. On January 24, 2024, WVDEP personnel and representatives of CD met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. CD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, CD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when CD will achieve compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules. The plan of corrective action shall include, but not be limited to, provisions for proper remediation of all areas identified in this Order where conditions not allowable were observed and documented in waters of the State, as defined in WV Legislative Rule 47CSR2 Section 3.2. In addition, the plan of corrective action shall include, but not be limited to, provisions for submittal of a report which documents that proper remediation of the aforementioned areas has occurred. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR111411 and Order No. 10227. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**


Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of CD's WV/NPDES permit and WV Legislative Rule violations, CD shall be assessed a civil administrative penalty of forty-one thousand five hundred thirty dollars (\$41,530) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. CD hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, CD agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, CD does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding CD other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, CD shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after CD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and CD shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which CD intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of CD (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving CD 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 CD to additional penalties and injunctive relief in accordance with the applicable law.
5. 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.
6. This Order is binding on CD, its successors and assigns.
7. This Order shall terminate upon CD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



~~Josh Allen, Senior Vice President~~ Joe Dell, CEO
CD DG Wallace LLC

7/18/2025

Date

Public Notice begin:

Date

Public Notice end:

Date

Jeremy W. Bandy, Director
Division of Water and Waste Management

Date



Photo 1: The ditch conveying turbid water toward the inlet.



Photo 2: Turbid water inside the inlet that leads underneath Rt. 20 and discharges off-site.



Photo 3: The outlet that discharges to Little Tenmile Creek. Turbid water was being discharged.



Photo 4: Silt fence overwhelmed with turbid water.



Photo 5: Land disturbance at the site.



Photo 6: Silt fence overwhelmed at the waste area across the road from the site.



Photo 7: Silt fence is being overwhelmed, and sediment is being discharged into the adjacent field.



Photo 8: Silt fence not properly implemented around the waste site.



Photo 1: Several slips on the uphill side of the project.



Photo 2: Sediment traveling along the road, toward an inlet that discharges into Little Tenmile Creek.



Photo 3: The outlet that discharges to Little Tenmile Creek.



Sediment laden water leaving the project and traveling down the ditch line and across Rt. 20.



Sediment laden water leaving the site.



Waste area.



Land disturbance at the site.



Land disturbance at the site.



The southern portion of the site.



The orange arrow indicates silt fence that is in need of maintenance.



Sediment laden water is bypassing treatment due to a lack of maintenance to the installed silt fence.



The path of sediment laden water leaving the site.



Sediment laden water entering the drain located under the rock rip rap channel.



Sediment laden water entering the adjacent drop inlet



Sediment laden water entering the culvert and discharging toward Little Tenmile.



Sediment laden water discharging from the outlet of the culvert.



Sediment laden water from the project.



The area on the southern portion where perimeter controls are not required by the SWPPP; however, sediment laden water was leaving the site.



Sediment laden water that has left the site.



Sediment laden water discharging from the permitted project.



The sediment laden water that left the site discharged into an ephemeral stream (UNT of Little Tenmile Creek) causing Conditions Not Allowable in waters of the state (39° 23'27.70" N, -80° 27'41.69" W).



The eastern portion of the site, where there is no temporary stabilization.



Silt fence in need of maintenance.



Solid waste.



Solid waste.



Solid waste.



Silt fence needing maintenance.



A non-stabilized construction entrance.



Track-out on WV-20, as a result of a non-stabilized construction entrance.



Proposed Sediment Trap 1 not installed, as stated in the SWPPP.



Area where Sediment Trap 2 should have been installed.



Silt fence was not properly toed-in, and sediment laden water can bypass treatment and leave the site.



Sediment laden water bypassing improperly installed silt fence and leaving the site.



Sediment laden water entering an underdrain and leaving the site.



Sediment laden water discharging through the underdrain and leaving the site via culvert. There is no protection for the existing drop inlet.



Sediment laden water that is discharging out of the culvert.



Silt fence was not properly merged (orange arrow) and needed maintenance (red arrow).



Silt fence that was not properly toed-in (orange arrow) and is in need of maintenance (red arrow).



Silt fence that was improperly implemented in a concentrated flow area.



Sediment deposits in the adjacent ditch line.



Sediment deposits.



The eastern portion of the site with no temporary stabilization.



The slip area, showing the lack of temporary stabilization.



Sediment Trap 1 not installed, as stated in the SWPPP.



Sediment Trap 2 not installed, as stated in the SWPPP.



Solid waste.



Area where the SWPPP was not modified to add perimeter controls.



Perimeter controls not properly implemented.



Silt fence not properly toed into the ground.



Controls were not toed into the ground.



Multiple pieces of silt fence needed maintenance.



Sediment laden water leaving the site at the unstabilized construction entrance.



Sediment deposits in the adjacent ditch line.



Sediment deposits in the bottom of the drop inlet. There is no drop inlet protection in place.



Silt fence installed in a concentrated flow area.



The Southern portion of the site, which was not included in the SWPPP.



Perimeter controls are not in place, and sediment deposits were present beyond the permitted LOD; however, the SWPPP had not been modified.



Off-site sediment deposits.



Area where Sediment Trap 2 should have been installed.



Compost filter sock that is in need of maintenance (orange arrow) and silt fence that was not properly implemented (red arrow).



Silt fence that is in need of maintenance.



Earthen slip area on the eastern portion of the site, without temporary stabilization.



A continuation of the earthen slip area that has not been temporarily stabilized.



The area where Sediment Trap 1 should have been installed. Concrete is being washed into the proposed Sediment Trap 1 area. The orange arrow indicates the culvert inlet that discharges toward a drop inlet adjacent to the project.



Washing concrete onto the ground, allowing it to integrate with storm water.



The non-stabilized construction entrance, with track-out onto a public roadway (WV-20).



A compost filter sock that was not properly implemented and required staking.



The area where Proposed Sediment Trap 1 should have been installed.



The earthen slip area on the eastern portion of the site, with no temporary stabilization.



Sloughing on the earthen slip area on the eastern portion of the site.



Evidence of sediment laden water leaving the site.



Silt fence was not toed into the ground.



Sediment deposits behind the installed control, indicating a bypass.



Silt fence needed maintenance.



Silt fence in a concentrated flow area.



Compost filter sock that lacks the required staking.



Silt fence needed maintenance.



Compost filter sock lacking the required staking.



Silt fence needed maintenance.



Silt fence was not properly toed into the ground.



Proposed Sediment Trap 2 with an unstable inlet/outlet.



Unstable inlet.



Unstable outlet of Sediment Trap 2.



Sediment and sediment laden water in the adjacent ditch.



Unstable outlet from the adjacent ditch, with sediment and sediment laden water.



Fresh sediment deposits in the adjacent ditch.



Sediment and sediment laden water leaving the site. The southern portion of the site was not within the permitted LOD, and the SWPPP has not been modified to add perimeter controls.



The sediment trail entering the ephemeral stream, causing Conditions Not Allowable in the UNT of Little Tenmile Creek (39° 23'28.01" N, -80° 27'41.02" W).



Sediment deposits in the stream.



Sediment trail.



Looking toward the permitted project from the UNT of Little Tenmile Creek.



The ditch and the sediment and sediment laden water that has discharged into it.



The unstable outlet of Sediment Trap 2.



The eastern portion of the site, with fill slope erosion and no stabilization.



Sediment laden water that has started to pool against the building.



The earthen slip area, with erosion gullies and a lack of temporary stabilization.



Sediment Trap 1 is not functional or fully installed.



Silt fence installed in a concentrated flow area at the outlet of non-functional Sediment Trap 1.



Sediment laden water and sediment deposits in the bottom of the drop inlet, as a result of improper implementation of silt fence.



Improperly implemented silt fence.



Perimeter controls needed maintenance.



An unstable inlet for Sediment Trap 2.



An unstable inlet for Sediment Trap 2.



An unstable outlet from Sediment Trap 2.



Sediment deposits discharging off the LOD.



SWPPP has not been modified to install perimeter controls in the area where the sewer line was installed.



Improper merging of perimeter controls.



Earthen slip area.



Sediment discharging off the LOD.



Compost filter sock check needed maintenance.



Compost filter sock is missing the required staking.



Sediment discharging past the installed compost filter sock check.



Sediment bypassing the compost filter sock, which needed maintenance.



The waste area with a lack of temporary stabilization and erosion gullies. Silt fence needed maintenance.



Waste area.



Compost filter sock missing the required staking.



Perimeter controls not properly merged.



Perimeter controls that were not properly merged. Compost filter sock is missing the required staking.



Compost filter sock that is missing the required staking.



Erosion gullies near the earthen slip area, due to concentrated flow across a non-stabilized surface.



A portion of the hill behind the building, with erosion gullies due to concentrated flow across a non-stabilized area.



An erosion gully in the waste area, due to concentrated flow across a non-stabilized area.



Erosion gullies in the waste area.



Silt fence needed maintenance at the waste area, allowing sediment laden water to leave the site untreated.



An unstable inlet to Sediment Trap 2.



No outlet marker for Sediment Trap 2.



Compost filter sock lacking the required staking.



The red arrows show compost filter socks lacking the required staking, and the blue arrow shows the outlet of Sediment Trap 1 with no marker.



Unstable inlets to Sediment Trap 1.



A photo taken from a previous inspection on 11/9/2022. As shown, vegetation had not germinated and there is no evidence of reseeded in the photo. Natural vegetation had started to germinate.



As shown, natural vegetation has started to germinate and there is no evidence of the company reseeding the waste area.



An erosion gully noted in the waste area. This is due to a concentrated flow going across a non-stabilized surface.



Silt fence showing the need for maintenance in the waste area.



More silt fence showing the need for maintenance.



More erosion gullies noted in the waste area. This is due to a concentrated flow going across a non-stabilized surface.



Silt fence showing the need for maintenance. As a result, sediment deposits were noted beyond the installed controls. Also shown are more erosion gullies. This is due to a concentrated flow going across a non-stabilized surface.



Unstable inlets traversing into Sediment Trap 1. Also shown is a lack of a 50% wet storage as required in the SWPPP.



This is the outlet of Sediment Trap 1 showing evidence of a leak within the structure as water is discharging through the outlet despite not being at a 50% wet storage.



No outlet marker in place at the outlet of Sediment Trap 1.



Compost filter sock showing the need for maintenance. As shown, sediment and sediment laden water from the project have bypassed treatment and left the site.



Evidence of sediment deposits off of the company's LOD.



An erosion gully noted near the earthen slip portion of the site. This is due to a concentrated flow going across a non-stabilized surface.



Another erosion gully noted near the earthen slip portion of the site. This is due to a concentrated flow going across a non-stabilized surface.



More erosion gullies noted near the earthen slip portion of the site. This is due to a concentrated flow going across a non-stabilized surface.



Silt fence installed near the building and parking area is in need of maintenance.



Sediment Trap 2 not holding the required 50% wet storage as required.



The drainage point of the sediment trap.



A photo taken at the outlet of the Sediment Trap 2. As shown, there is evidence of water discharging through the outlet meaning there is a leak within the structure of the trap.



A close-up photo of the outlet.



No outlet marker in place at the outlet of Sediment Trap 2.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

CD DG Wallace, LLC

Receiving Stream:

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2A, 3A, 4A	5A, 6A, 7A, 8B, 9B, 10C, 11C	5B, 6B, 7B, 8C, 9C	5C, 7C, 5E, 6D, 7E, 8E, 9E, 10E, 11E, 11F	5D, 6C, 7D, 8D, 9D, 5F, 6E, 7F, 8F, 9H, 10F, 5G, 6I, 7G, 8A, 9A, 10A, 11A	5I, 6G	5J, 6H, 7J, 8H, 9G, 11H	5K, 8I	6F, 7H, 9F, 11G	7I	9I, 10B, 11B	9J, 10D, 11D
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	1	1	1	1	1	1	1	0
c)	Sensitivity of the Environment	0 to 3	1	0	1	1	1	1	1	1	1	1	1	0
d)	Length of Time	1 to 3	3	3	3	3	3	1	3	1	3	1	3	3
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	1	1	1	1	1	1	1	1	0
	Average Potential for Harm Factor		1.4	0.8	1.4	1.4	1.4	1	1.4	1	1.4	1	1.4	0.8
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	3	3	3	3	3	1

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2A, 3A, 4A	Moderate	Major	\$4,400	1	\$4,400
5A, 6A, 7A, 8B, 9B, 10C, 11C	Minor	Major	\$1,900	1	\$1,900
5B, 6B, 7B, 8C, 9C	Moderate	Major	\$4,400	1	\$4,400
5C, 7C, 5E, 6D, 7E, 8E, 9E, 10E, 11E, 11F	Moderate	Major	\$4,400	1	\$4,400
5D, 6C, 7D, 8D, 9D, 5F, 6E, 7F, 8F, 9H, 10F, 5G, 6I, 7G, 8A, 9A, 10A, 11A	Moderate	Major	\$4,400	1	\$4,400
5I, 6G	Minor	Major	\$2,000	1	\$2,000
5J, 6H, 7J, 8H, 9G, 11H	Moderate	Major	\$4,400	1	\$4,400
5K, 8I	Minor	Major	\$2,000	2	\$4,000
6F, 7H, 9F, 11G	Moderate	Major	\$4,400	1	\$4,400
7I	Minor	Major	\$2,000	1	\$2,000
9I, 10B, 11B	Moderate	Major	\$4,400	1	\$4,400
9J, 10D, 11D	Minor	Minor	\$800	1	\$800
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$41,500

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$4,150
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$4,150)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$41,530

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	Economic benefit not warranted.