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ENVIRONMENTAL  
ENFORCEMENT  
Charleston

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west virginia department of environmental protection

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Division of Water and Waste Management  
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Austin Caperton, Cabinet Secretary  
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**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: Greenbrier County Commission  
Kelly Banton  
912 Court Street N.  
Lewisburg, WV 24901

DATE: August 27, 2020

ORDER NO.: 9075

**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 Greenbrier County Commission.

**FINDINGS OF FACT**

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

1. Greenbrier County Commission is conducting land disturbance activity associated with construction of a sports complex in Lewisburg, Greenbrier County, West Virginia. Greenbrier County Commission was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR109065, on May 2, 2018. WVR109065 was superseded by the current Registration No. WVR110366 that was issued on September 3, 2019 for a different phase of the same project.
2. On October 31, 2018, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.b.-Greenbrier County Commission caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of multiple unnamed tributaries (UNTs) of Greenbrier River.

Promoting a healthy environment.

- b. Appendix A.I.15 (previously Section G.4.b.8) -Greenbrier County Commission failed to display a public notice sign near the entrance to the construction site for the duration of the project.
- c. Section II.F (previously Section G.4.e.2) - Greenbrier County Commission failed to properly implement controls. Specifically, there was improperly installed silt fence at the outlet of Trap 1; there were inadequate perimeter controls installed on the eastern side of the site, the western side of the site, and along the entrance road; there was inappropriate use of controls; silt fence was installed in concentrated flow areas; and additional stream protection was needed on the upstream side of the stream near the entrance road.
- d. Section III.C.1 (previously Section G.4.e.2.A.ii,j) - Greenbrier County Commission failed to prevent sediment-laden water from leaving the site without going through an appropriate device.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W18-13-003-CP was issued to Greenbrier County Commission.

- 3. On October 22, 2019, WVDEP personnel conducted an inspection of the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.a.- Greenbrier County Commission caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the UNT of the Greenbrier River and the Greenbrier River, with a total observed distance of 1.15 miles.
  - b. Section III.C.1 (previously Section G.4.e.2.A.ii,j) - Greenbrier County Commission failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Sediment laden water was entering the receiving stream from several points on the project through malfunctioning controls, including Basin No. 2 and circumvented or overtopped perimeter Best Management Practices (BMPs).

As a result of the aforementioned violations, NOV No. W19-13-001-JHH was issued to Greenbrier County Commission.

- 4. On October 23, 2019, WVDEP personnel conducted an inspection of the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.b. – Greenbrier County Commission caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of a UNT of the Greenbrier River.
  - b. Appendix B.I.1 (previously Section D.1) - Greenbrier County Commission failed to properly operate and maintain all systems of treatment and controls. Specifically, perimeter silt fence needed maintenance or removed, and the riser in Sediment Basin (SB) 4 was leaking.

- c. Section I.B (previously Section G.4) - Greenbrier County Commission failed to follow the Stormwater Pollution Prevention Plan (SWPPP). Specifically, SB 2 was not installed per SWPPP specifications.
- d. Section II.F (previously Section G.4.e.2) - Greenbrier County Commission failed to properly implement controls. Specifically, there was improperly installed silt fence in areas of concentrated flow at the outlet of SB 1 and 4 and at the natural spring west of SB 1; the diversion directing flow into SB 1 from SB 5 had an insufficient number of ditch checks installed; the diversion west of the SB 1 checks were improperly sized and installed; and both diversions leading to SB 1 lacked a proper terminus.
- e. Section II.H.3.b (previously Section G.4.e.2.A.ii.b) - Greenbrier County Commission failed to properly operate a sediment basin. SB 2 lacked a riser, as described in SWPPP page C5.3.
- f. Section II.H.3.b.13 (previously Section G.4.e.2.A.ii.c) - Greenbrier County Commission failed to provide inlet protection for SB 1, 2, 3, 4, and 5.
- g. Section II.H.3.b.9 (previously Section G.4.e.2.A.ii.d) - Greenbrier County Commission failed to install diversions to direct runoff to SB 1, 2, 3, 4, and 5.
- h. Section II.H.3.b.9 (previously Section G.4.e.2.A.ii.f) - Greenbrier County Commission failed to protect fill slopes in the following locations: south of SB 2, SB 3, west of SB 4, the diversion between SB5 to SB 1, and between the entrance road and SB 1.
- i. Section III.C.1 (previously Section G.4.e.2.A.ii.j) - Greenbrier County Commission failed to prevent sediment-laden water from leaving the site without going through an appropriate device at the outlet of SB 4, east of the diversion between SB 1 and SB 5, and west of SB 1 at the natural spring channel.

As a result of the aforementioned violations, NOV No. W19-13-006-CP was issued to Greenbrier County Commission.

5. On December 17, 2019, WVDEP personnel conducted an inspection of the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. Appendix B.I.1 (previously Section D.1)- Greenbrier County Commission failed to properly operate and maintain all systems of treatment and controls. Specifically, silt fence on the western side of the site was overtopped.
  - b. Section I.B (previously Section G.4) - Greenbrier County Commission failed to follow the SWPPP. Multiple controls, including three major trapping structures, were not installed in accordance with the SWPPP.
  - c. Section III.C.2 (previously Section G.4.c) - Greenbrier County Commission failed to modify its SWPPP when the SWPPP proved to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges.
  - d. Section III.A.3 (previously Section G.4.e.2.A.i)- Greenbrier County Commission failed to initiate stabilization measures on all areas where construction activities had permanently ceased for more than seven (7) days.
  - e. Section III.A.3 (previously Section G.4.e.2.A.i.b) - Greenbrier County Commission failed to provide interim stabilization on areas where construction activities had temporarily ceased for more than fourteen (14) days.

- f. Section II.H.3.b.13 (previously Section G.4.e.2.A.ii.c)- Greenbrier County Commission failed to provide inlet protection for SB 1.
- g. Section II.H.3.b.9 (previously Section G.4.e.2.A.ii.f) - Greenbrier County Commission failed to protect fill slopes on the western and eastern sides of the site.
- h. Section III.C.1 (previously Section G.4.e.2.A.ii.j) - Greenbrier County Commission failed to prevent sediment-laden water from leaving the site without going through an appropriate device at the following locations: the culvert under the access road, the eastern side of the diversion leading to SB 1, and SB 1.
- i. 47CSR2 Section 3.2.a.- Greenbrier County Commission caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the UNT of Greenbrier River.
- j. 47CSR2 Section 3.2.b. - Greenbrier County Commission caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the UNT of Greenbrier River.

As a result of the aforementioned violations, NOV No. W19-13-007-CP was issued to Greenbrier County Commission.

- 6. On December 17, 2019, WVDEP personnel conducted a citizen complaint investigation related to the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. Section III.C.1 (previously Section G.4.e.2.A.ii.j) – Greenbrier County Commission failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Sediment laden water was entering the receiving stream from several points on the project through nonexistent or inadequate controls.
  - b. 47CSR2 Section 3.2.a. - Greenbrier County Commission caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the UNT of the Greenbrier River and the Greenbrier River. Conditions not allowable were observed over a distance of 0.48 miles.
  - c. 47CSR2 Section 3.2.b. - Greenbrier County Commission caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the UNT of Greenbrier River. Conditions not allowable were observed over a distance of 0.48 miles.

As a result of the aforementioned violations, NOV No. W19-13-002-JHH was issued to Greenbrier County Commission.

- 7. On August 7, 2020, WVDEP personnel conducted an inspection of the project. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
  - a. Appendix B.I.1 (previously Section D.1) - Greenbrier County Commission failed to properly operate and maintain all systems of treatment and controls. The installed controls needed maintenance throughout the site.

- b. Section II.H.3.b.9 (previously Section G.4.e.2.A.ii.d) – Greenbrier County Commission failed to install diversions to direct the runoff to the trapping structure on the northwestern side and failed to stabilize internal diversions upon reaching the final grade.
- c. Section II.H.3.b.9 (previously Section G.4.e.2.A.ii.f) – Greenbrier County Commission failed to protect fill slopes throughout the site.
- d. Section II.H.5. (previously Section G.4.e.2.C.vi) – Greenbrier County Commission failed to maintain records that document inspections of erosion control devices and maintenance activities.
- e. Section I.B (previously Section G.4) – Greenbrier County Commission failed to follow the approved SWPPP and properly implement controls. Specifically, the silt fence was improperly installed in concentrated flow areas; stabilization matting was undermined in multiple places and was installed over large rocks; improperly sized stone was used for ditch checks; and control devices were being improperly used.
- f. Section III.A.3. (previously Section G.4.e.2.A.i) – Greenbrier County Commission failed to reseed areas that failed to germinate within thirty (30) days after seeding in multiple areas throughout the site and failed to provide interim stabilization on areas where construction activities had temporarily ceased for more than fourteen (14) days on the southern side of permanent pond one (1).
- g. Section II.H.3.b.13 (previously Section G.4.e.2.A.ii.c)– Greenbrier County Commission failed to provide inlet protection for sediment control structures at the temporary and permanent ponds.
- h. Section III.B. (previously Section G.4.e.2.D) – Greenbrier County Commission failed to conduct inspections of erosion control devices.
- i. 47CSR2 Section 3.2.a. - Greenbrier County Commission caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the Greenbrier River.
- j. 47CSR2 Section 3.2.b. - Greenbrier County Commission caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the UNT of the Greenbrier River.

As a result of the aforementioned violations, NOV No. W20-13-003-CP was issued to Greenbrier County Commission.

- 8. On August 20, 2020, WVDEP personnel met with Greenbrier County Commission representatives 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. Greenbrier County Commission shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.

2. Within thirty (30) days of the effective date of this Order, Greenbrier County Commission shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Greenbrier County Commission will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration Nos. WVR109065 and WVR110366, and Order No. 9075. 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 be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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 Greenbrier County Commission's Legislative Rule and permit violations, Greenbrier County Commission shall be assessed a civil administrative penalty of one hundred nine thousand one hundred fifty dollars (\$109,150) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. Greenbrier County Commission hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, Greenbrier County Commission 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, Greenbrier County Commission 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 Greenbrier County Commission 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, Greenbrier County Commission 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 Greenbrier County Commission becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Greenbrier County Commission 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 Greenbrier County Commission 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 Greenbrier County Commission (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 Greenbrier County Commission 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 Greenbrier County Commission 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 Greenbrier County Commission, its successors and assigns.

7. This Order shall terminate upon Greenbrier County Commission's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
~~Kelly Banton~~ *Lowell Rose, President*  
Greenbrier County Commission

9-22-2020  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date