



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Patrick Alexander
705-5 Development Group, LLC.
1298 Suncrest Towne Centre
Morgantown, WV 26505

DATE: November 12, 2015

ORDER NO.: 8490

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, Chapter 22, Article 11, Section 1 et seq. to 705-5 Development Group LLC (hereinafter "705-5 Development Group").

FINDINGS OF FACT

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

1. 705-5 Development Group is conducting land disturbance activity known as Gateway Village - Caravasos located in Morgantown, Monongalia County, West Virginia. 705-5 Development Group was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106392, on March 12, 2013. Gateway Village – Caravasos is a land disturbance activity that was originally intended to be an extension of the adjacent project known as Gateway Village Apartments.
2. On August 29, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR2 Section 3.2.b-Activity at the aforementioned site caused conditions not allowable in waters of the State by creating distinctly visible solids in an unnamed

tributary of West Run, a tributary of the Monongahela River. Specifically, pond muckings from the sediment basin were discarded into the unnamed tributary.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-TWH-082912-001 was issued.

3. On February 14, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 47CSR10 Section 3.1 and 22-11-8-No WV/NPDES permit was obtained prior to commencing construction activity with land disturbance of one (1) acre or greater. WVDEP personnel had not received a WV/NPDES permit application, nor had the Gateway Village Apartments WV/NPDES permit been modified to include the land disturbance activity known as the Gateway Village - Caravazos project.

As a result of the aforementioned violation, NOV No. W-NW-TWH-021413-001 was issued to 705-5 Development Group.

4. On March 19, 2013, WVDEP issued Unilateral Order No. 7820 in response to the aforementioned violations. The Order required the following:
 - a. Cease and desist any further land development activity until such time when compliance with Unilateral Order No. 7820 was achieved.
 - b. Within ten (10) days of the effective date of Unilateral Order No. 7820, submit for approval a proposed Plan of Corrective Action (POCA), outlining action items and completion dates for how and when compliance with Unilateral Order No. 7820 would be achieved.
 - c. Immediately install and maintain necessary storm water and sediment/erosion control devices to prevent the release of sediment-laden water into waters of the State. All disturbed areas were to be immediately temporarily mulched until such time when compliance with Unilateral Order No. 7820 was achieved.
 - d. Contact WVDEP personnel for a follow up inspection to confirm all requirements of Unilateral Order No. 7820 had been met prior to restarting operations.
5. On April 11, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of 705-5's WV/NPDES permit were observed and documented:
 - a. Section B-705-5 failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Several erosion and sediment control devices were not in place as detailed on the engineered and approved SWPPP.
 - b. Section G.4.e.2.A.i.d-705-5 failed to stabilize clean water diversions prior to becoming functional.
 - c. Section G.4.e.2.A.i-705-5 failed to initiate stabilization measures, such as seed and mulch, on portions of the site where construction activities had temporarily or permanently ceased for greater than seven (>7) days and had not resumed within fourteen (14) days.

- d. Section G.4.e.2.A.i.c-705-5 failed to reseed areas that failed to germinate adequately (uniform perennial vegetative cover with a density of at least seventy percent) within thirty (30) days after seeding and mulching.

As a result of the aforementioned violations, NOV No. W-NW-TWH-041113-001 and three (3) Warnings were issued to 705-5 Development Group.

6. On June 12, 2013, WVDEP issued correspondence stating that the POCA had been received as required by Item No. two (2) under the Order for Compliance section of Unilateral Order No. 7820. The POCA was approved and was incorporated as a term of Unilateral Order No. 7820.
7. On June 27, 2013, WVDEP issued correspondence stating that compliance with the terms and conditions of Unilateral Order No. 7820 had been achieved, and Unilateral Order No. 7820 was terminated.
8. On June 18, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of 705-5 Development Group's WV/NPDES permit were observed and documented:
 - a. Section D.1-705-5 Development Group failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, the sediment basin was unmaintained and was full of sediment/vegetation, and the inlets eroded in on the basin, which was no longer operating in a functional capacity.
 - b. Section G.4.e.2.A.ii.j-705-5 Development Group allowed sediment-laden water to leave the site without first passing through an appropriate treatment device. Specifically, significant amounts of sediment-laden storm water was bypassing the sediment basin and leaving the site without going through an appropriate erosion and sediment control Best Management Practice (BMP).
 - c. Section G.4.e.2.A.i-705-5 Development Group failed to initiate stabilization measures, such as seed and mulch, on portions of the site where construction activities had temporarily or permanently ceased for greater than seven (>7) days and had not resumed within fourteen (14) days.
 - d. Section G.4.e.2.A.i.c-705-5 Development Group failed to reseed areas that failed to germinate adequately (uniform perennial vegetative cover with a density of at least seventy percent (70%) within thirty (30) days after seeding and mulching.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-061815-001, W-NW-TWH-061815-002, and two (2) Warnings were issued to 705-5 Development Group.

ORDER FOR COMPLIANCE

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

1. 705-5 Development Group shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.

2. Within ten (10) days of the effective date of this Order, 705-5 Development Group shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when 705-5 Development Group will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106392, and Order No. 8490. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Satellite Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of this plan 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.

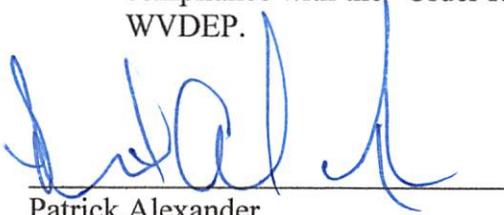
3. Because of 705-5 Development Group's West Virginia Code, Legislative Rule, and permit violations, 705-5 Development Group shall be assessed a civil administrative penalty of four thousand six hundred thirty dollars (\$4,630) to be paid to the West Virginia Department of Environmental Protection for 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. 705-5 Development Group hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, 705-5 Development Group 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, 705-5 Development Group 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 705-5 Development Group 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, 705-5 Development Group 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 705-5 Development Group becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and 705-5 Development Group 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 705-5 Development Group 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 705-5 Development Group (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 705-5 Development Group 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 705-5 Development Group 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 705-5 Development Group, its successors and assigns.

7. This Order shall terminate upon 705-5 Development Group's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Patrick Alexander
705-5 Development Group LLC

12/10/15
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised March 2013

RECEIVED

DEC 15 2015

**ENVIRONMENTAL
ENFORCEMENT**



P2140682

Earth disturbing construction activities commenced prior to obtaining a WV/NPDES permit



P2140687

Large amount of uncontained and unstabilized soil immediately upslope of the receiving stream



P2140689

Sediment basin with eroding and unstabilized inlets



P2140691

Dam side of sediment basin along stream showing signs of slope failure



P6182413

Sediment basin full of sediment/vegetation and no longer operating in a functional capacity



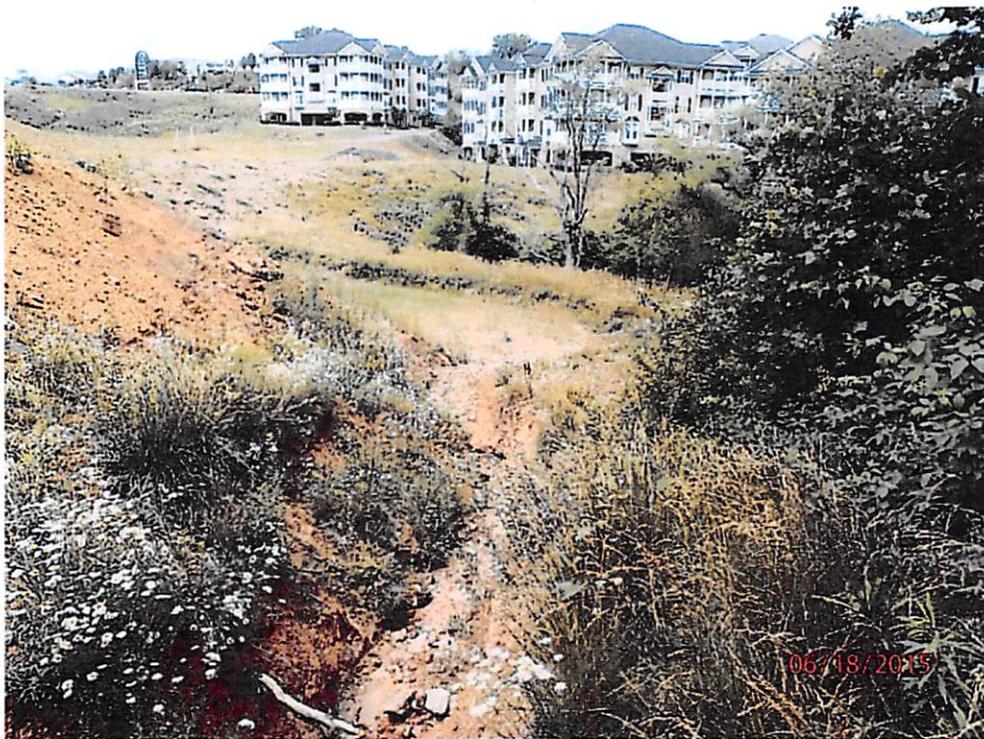
P6182414

Unstabilized basin inlets eroding and displacing large amounts of sediment into the basin



P6182415

Unstabilized basin inlets eroding and displacing large amounts of sediment into the basin



P6182418

Unstabilized basin inlets eroding and displacing large amounts of sediment into the basin



P6182419

Disturbed portions of site left idle for >14 days with no seeding and mulching practices in place



P6182424

Disturbed portions of site left idle for >14 days with no seeding and mulching practices in place



P6182425

Disturbed portions of site left idle for >14 days with no seeding and mulching practices in place



P6182428

Upslope clean stormwater being introduced to the disturbed portions of the project



P6182429

Disturbed portions of site left idle for >14 days with no seeding and mulching practices in place



P6182427

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182430

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182432

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182433

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182434

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182435

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P6182437

Evidence of sediment-laden water entering DI and bypassing basin/treatment toward State waters



P8290970

Sediment Basin eroding into the receiving stream



P8290971

Pond muckings dumped on stream bank causing Conditions Not Allowable in State waters



P8290973

Pond muckings dumped on stream bank causing Conditions Not Allowable in State waters



P8290975

Sediment Basin slope eroding into the receiving stream



P8290976

Sediment Basin not functioning as engineered



P8290976

Large disturbance with no erosion and sediment controls in place

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: 705-5 Development Group, LLC Receiving Stream: UT West Run

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#											
			8a	8b										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1										
Average Potential for Harm Factor			1	1	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3										

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.

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		\$400
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$200		\$200
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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$630
Penalty =			\$4,630

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$200
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$200
Comments: Avoided cost of sediment basin maintenance.	