



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Patrick Alexander
921 Canyon Road
Morgantown, WV 26508

DATE: October 16, 2014

ORDER NO.: MM-15-05

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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. to Patrick Alexander (hereinafter “Mr. Alexander”).

FINDINGS OF FACT

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

1. On March 27, 2003, Gateway Village, LLC was issued WV/NPDES Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR100147, for land disturbance activity known as “Gateway Village Apartments” in Morgantown, Monongalia County, West Virginia. On March 12, 2013, WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106392, was issued for land disturbance activity known as “Gateway Village – Caravassos,” which was intended to be an extension of the adjacent Gateway Village Apartments project.

2. On March 19, 2013, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 7820 to Gateway Village, LLC., of which Mr. Alexander was Manager. The Order was issued in response to Gateway Village, LLC's violations of WV Legislative Rules and WV State Code.
3. Mr. Alexander operates a construction project with land disturbance located near Pierpont, Monongalia County, West Virginia. Mr. Alexander was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106783, on November 22, 2013.
4. On June 17, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Mr. Alexander's WV/NPDES permit were observed and documented:
 - a. D.1 - The permittee failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, Mr. Alexander failed to properly install/maintain silt fence, maintain proper diversions to convey stormwater to the sediment basin as engineered, and make the sediment basin functional as engineered prior to the area that it drains being disturbed.
 - b. 47CSR11 Section 2.2a - Mr. Alexander failed to give immediate notification to the Office of Water Resources' Emergency Notification Number of any spill or accidental discharges of pollutants with the potential to pollute waters of the State.
 - c. G.4.a - The permittee failed to maintain the Storm Water Pollution Prevention Plan (SWPPP) on site.
 - d. C.15 - The permittee failed to maintain an outlet marker in accordance with WV Legislative Rule 47CSR11 Section 9.
 - e. G.4.b.8 - The permittee failed to display an entrance sign for the project.
 - f. G.4.e.2.A.i - The permittee 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 did not resume within fourteen (14) days.
 - g. G.4.e.2.A.i.c - The permittee failed to reseed areas where the seed failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
 - h. G.4.e.2.A.ii.f - The permittee failed to provide fill slope protection by using measures to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels. Specifically, the diversion designed to convey stormwater to the sediment basin was diverted over the face of a fill slope.
 - i. G.4.e.2.A.ii.j - The permittee allowed sediment-laden water to leave the site without going through an appropriate best management practice (BMP). Specifically, the sediment-laden stormwater directed over the face of the fill slope bypassed the sediment basin.
 - j. G.4.e.2.D - The permittee failed to develop a maintenance plan that provides that all erosion controls on the site are inspected at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.
 - k. G.4.e.2.C.v - The permittee failed to maintain onsite tracking procedures for the weekly erosion control inspection or make them available to the inspector.

- l. 22-15-10(e) - Mr. Alexander failed to properly dispose of solid waste in a manner which did not endanger the environment or the public health, safety, or welfare. Specifically, Mr. Alexander dumped industrial chemical waste, associated containers, and other solid waste onto the ground.
- m. 47CSR58 Section 7.1 - Mr. Alexander allowed crude oil or a petroleum product derived from crude oil or natural gas or other chemical mixture which may impact groundwater quality to escape from its storage containers and flow onto or under the land surface in such a manner that could impact groundwater quality. Specifically, Mr. Alexander dumped industrial chemical waste and associated containers onto the ground.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-TWH-061714-001, W-NW-TWH-061714-002, SW-NW-TWH-061714-003, and GW-NW-TWH-061714-004 and nine (9) Warnings were issued to Mr. Alexander.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Mr. Alexander shall immediately take all measures to initiate compliance with all terms and conditions of his WV/NPDES permit and pertinent laws and rules.
2. Within ten (10) days of the effective date of this Order, Mr. Alexander shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mr. Alexander will achieve compliance with all terms and conditions of his WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106783, and Order No. MM-15-05. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional 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 Mr. Alexander's Legislative Rule and permit violations, Mr. Alexander shall be assessed a civil administrative penalty of twenty thousand nine hundred eight dollars (\$20,908) 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. Mr. Alexander hereby waives his right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, Mr. Alexander 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, Mr. Alexander 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 Mr. Alexander 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, Mr. Alexander shall have the burden of proving that the delay was caused by circumstances beyond his 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 Mr. Alexander becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mr. Alexander 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 Mr. Alexander 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 Mr. Alexander (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 Mr. Alexander 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 Mr. Alexander 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 Mr. Alexander, his successors and assigns.
7. This Order shall terminate upon Mr. Alexander's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Patrick Alexander

1/23/15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

JAN 27 2015

ENVIRONMENTAL
ENFORCEMENT



P6170810

Unknown product disposed of on and under the ground surface



P6170811

Totes of unknown products being smashed on site in preparation for improper Class D landfill disposal



P6170813

Buckets of petroleum product (contents spilled on ground) staged for improper Class D landfill disposal



P6170814

Smashed totes and buckets (contents spilled on ground) staged for improper Class D landfill disposal



P6170819

Totes smashed containing unknown product staged for improper Class D landfill disposal



P6170825

Totes containing unknown products staged on site for smashing and improper Class D landfill disposal



P6170827

Stormwater runoff causing erosion draining toward tote staging area



P6170842

Lack of timely seeding and mulching practices on site and fill slope erosion



P6170843

Lack of timely seeding and mulching practices on site



P6170832

Sediment basin not made functional as engineered prior to the area it drains being disturbed



P6170833

Evidence of stormwater passing over fill slope and by passing the sediment basin



P6170834

Silt fence not properly installed



P6170835
Silt fence not properly installed



P6170836
Silt fence not properly installed

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Patrick Alexander **Receiving Stream:** Crammeys Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			4.a.	4.b.	4.c.	4.d.	4.e.	4.f.	4.g.	4.h.	4.i.	4.j.	4.k.		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	1	1	0	0	0	1	1	1	1	0	0		
c)	Sensitivity of the Environment	0 to 3	1	1	0	0	0	1	1	1	1	0	0		
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	0	0	1	1	1	1	0	0		
Average Potential for Harm Factor			1	1	0.4	0.4	0.4	1	1	1	1	0.4	0.4	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	1	1	1	2	2	3	3	2	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.

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		\$1,380
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$5,698		\$5,698
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			\$7,108
Penalty =			\$20,908

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$5,698
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$5,698
Comments: Avoided costs of properly installed silt fencing, seeding/mulching, and installation of a riser pipe.	