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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0470  
Fax: (304) 926-0488

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: Calvin Hodder, President  
Corwin Place Development Inc.  
201 Palomino Drive  
Bethel Park, PA 15102

DATE: May 4, 2016

ORDER NO.: 8529

**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 Corwin Place Development Inc. (hereinafter "Corwin").

**FINDINGS OF FACT**

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

1. Corwin is conducting land disturbance activity in Morgantown, Monongalia County, West Virginia. On January 9, 2015, Corwin was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR107348.
2. On December 7, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Corwin's WV/NPDES permit were observed and documented:
  - a. Section B-Corwin failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Specifically, a stabilized construction entrance and diversion ditches throughout the site were not installed and maintained as detailed in the approved SWPPP. Sediment Trap 1, Sediment Trap 2, Compost Filter Sock Sediment Trap 3, and their related conveyance measures were not installed as detailed in the approved SWPPP.
  - b. G.4.e.2.A.ii.j-Corwin allowed sediment-laden water to leave the site without going through an appropriate erosion and sediment control Best Management Practice (BMP). Evidence of sediment-laden water in the form of sediment deposits was

Promoting a healthy environment.

observed on the site and led into the Phase I portion of the project and other private properties.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-120715-003 and W-NW-TWH-120715-004 were issued to Corwin.

3. On February 2, 2016, WVDEP issued Order No. 8517 to Corwin in response to the aforementioned violations. The Order required Corwin to:
  - a. Cease and desist any further land development activity until such time when compliance with the terms and conditions of its WV/NPDES permit and all pertinent laws and rules was achieved.
  - b. Submit an approvable plan of corrective action within ten (10) days of the effective date of the Order.
  - 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.
4. On February 2, 2016, WVDEP personnel conducted a record review and determined that the aforementioned WV/NPDES permit expired on January 9, 2016. Corwin place failed to reapply for the WV/NPDES permit prior to its expiration, a violation of WV Legislative Rule 47CSR10 Section 5.2.
5. On April 7, 2016, WVDEP personnel met with representatives of Corwin to discuss the terms and conditions of the Order.
6. On April 13, 2016, Corwin submitted an approved plan of corrective action that outlined action items and completion dates for how and when Corwin Place would achieve compliance. The plan of corrective action was incorporated into and became part of this Order. Failure to adhere to the approved plan and schedule is a violation of this Order.
7. On April 29, 2016, Corwin renewed its WV/NPDES permit.

#### **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. Corwin shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Corwin's Legislative Rule and permit violations, Corwin shall be assessed a civil administrative penalty of five thousand four hundred thirty dollars (\$5,430) 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. Corwin 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, Corwin 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, Corwin 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 Corwin 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, Corwin 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 Corwin becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Corwin 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 Corwin 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 Corwin (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 Corwin 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 Corwin 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 Corwin, its successors and assigns.
7. This Order shall terminate upon Corwin's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Calvin W. Hodder  
Calvin Hodder, President  
Corwin Place Development Inc.

5/10/16  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

MAY 21 2016

ENVIRONMENTAL  
ENFORCEMENT



April 13<sup>th</sup>, 2016

Ms. Tonya Mather  
2031 Pleasant Valley Rd. Suite 1  
Fairmont, WV 26554

**RECEIVED**

APR 18 2016

**ENVIRONMENTAL  
ENFORCEMENT**

RE: Response to Draft Consent Order No. 8529  
WVNPDES Permit No. WVR107348  
Corwin Place Phase 2  
Morgantown, Monongalia County, West Virginia  
Cheat Road Engineering Project No. 15-185-001

Dear Ms. Mather:

This letter is prepared to provide a written response and serve as a plan of corrective action regarding comments received from the West Virginia Department of Environmental Protection (WVDEP) in a letter dated February 8<sup>th</sup>, 2016 regarding the comments from the Draft Consent Order No. 8529.

The following is provided to respond to the WVDEP's comments. For clarity, each violation is retyped with the plan of action immediately below.

*On December 7<sup>th</sup>, 2015, WVDEP personnel conducted an inspection of the facility. During the inspections, violations of the following sections of the terms and conditions of Corwin's WVNPDES permit were observed and documented:*

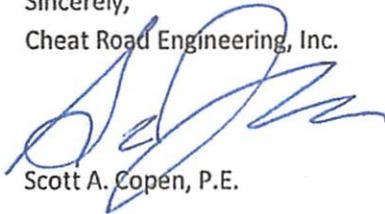
- a. *Section B-Corwin failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Specifically, a stabilized construction entrance and diversion ditches throughout the site were not installed and maintained as detailed in the approved SWPPP. Sediment Trap 1, Sediment Trap 2, Compost Filter Sock Sediment Trap 3, and their related conveyance measures were not installed as detailed in the approved SWPPP.*
  - b. *G.4.e.2.A.ii.j-Corwin allowed sediment-laden water to leave the site without going through an appropriate erosion and sediment control Best Management Practice (BMP). Evidence of sediment-laden water in the form of sediment deposits was observed on the site and led into the Phase 1 portion of the project and other private properties.*
- On March 14<sup>th</sup> the stabilized construction entrance was installed, and installation of the sediment traps began. All three sediment traps were completed on March 19<sup>th</sup> and all

diversion ditches were installed and completed on March 22<sup>nd</sup>. Also, during an on-site meeting on March 28<sup>th</sup>, WVDEP representative stated that all measures were taken to correct the issues stated above.

*On February 2<sup>nd</sup>, 2016 WVDEP personnel conducted a record review and determined that the aforementioned WV/NPDES permit expired on January 9<sup>th</sup>, 2016. Corwin Place failed to reapply for the WV/NPDES permit prior to its expiration, a violation of WV Legislative Rule 47CSR10 Section 5.2.*

- A new NPDES Modification will be submitted no later than Friday April 15<sup>th</sup>, 2016.

Sincerely,  
Cheat Road Engineering, Inc.



Scott A. Copen, P.E.

CC: File (15-185-001)



PC072764

Corwin Place Phase I (foreground) and Phase II (background)



PC072764

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072768

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072769

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072771

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072773

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072775

Stabilized construction entrance not installed and maintained as detailed in approved SWPPP



PC072777

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



PC072781

Small slip area near entrance releasing sediment downslope with no E&S controls in place



PC072787

Rock Lined Swale not in place as detailed on the approved SWPPP



PC072788

Rock Lined Swale not in place as detailed on the approved SWPPP



PC072790

Sediment Trap 2 not in place as detailed on the approved SWPPP



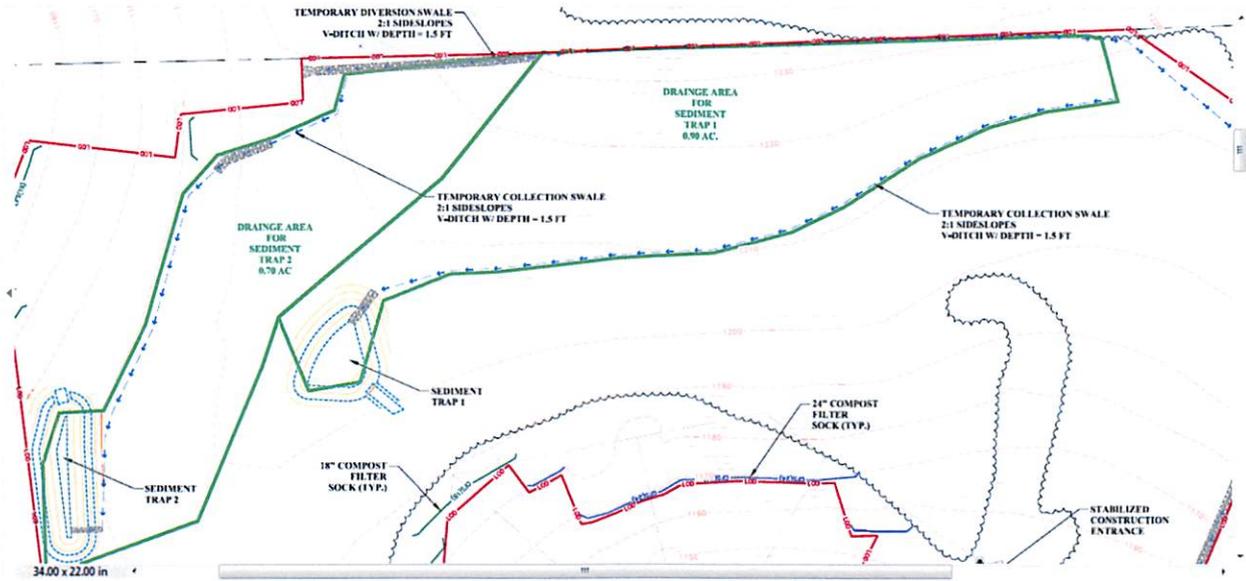
PC072792

Compost Filter Sock Sediment Trap 3 not in place as detailed in the approved SWPPP

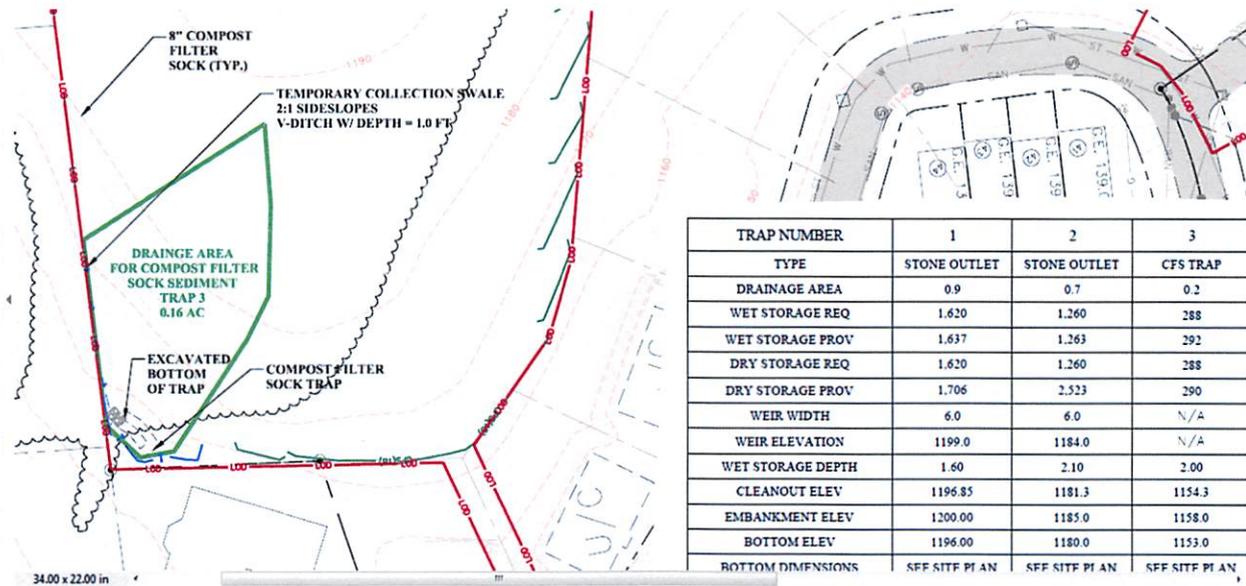


PC072795

Evidence of sediment-laden water leaving Phase II without passing through an appropriate BMP



Screenshot from submitted SWPPP  
Sediment Trap 1, Sediment Trap 2, and related conveyance measures not in place



Screenshot from submitted SWPPP  
Compost Filter Sock Sediment Trap 3 not in place

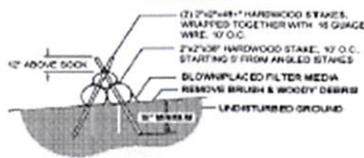
**STANDARD CONSTRUCTION DETAIL #3=11  
Compost Sock Sediment Trap**



- 12" DIAMETER SOCK
- 18" DIAMETER SOCK
- 24" DIAMETER SOCK

1. Compost Sock Sediment Trap shall be sized to provide 2,000 cubic feet of storage capacity for each acre tributary to the trap.
2. Minimum base width is equivalent to the height.
3. Sediment accumulation shall not exceed 1/3 the total height of the trap.
4. Socks shall be of larger diameter at the base of the trap and decrease in diameter for successive layers as indicated to the left.
6. Ends of the trap shall be a minimum of 1 foot higher in elevation than the mid-section, which shall be located at the point of discharge.

**PLAN VIEW**



Adapted from Filtrex

**STAKING DETAIL**

Screenshot from submitted SWPPP  
Compost Filter Sock Sediment Trap 3 not in place



Screenshot from submitted SWPPP  
Compost Filter Sock Sediment Trap 3 not in place

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Corwin Place Development Inc. 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	2b	4									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1	1	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	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		\$600
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		10	(\$600)
6.2.b.3 - Cooperation with the Secretary		10	(\$600)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$570)</b>
<b>Penalty =</b>			<b>\$5,430</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> No economic benefit warranted.	